

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

FISKARS BRANDS, INC.,
2537 Daniels Street
Madison, WI 53718,

Case No. 10-CV-762

Plaintiff,

v.

ELEMENTAL TOOLS LLC,
1851 Stratford Park Place
Apartment 105
Reston, VA 20190

Defendant.

COMPLAINT

Plaintiff Fiskars Brands, Inc. (“Fiskars”), by its attorneys, Foley & Lardner LLP, files this Complaint against defendant Elemental Tools LLC (“Elemental”), and alleges as follows:

1. This is a declaratory judgment action that seeks a declaration that U.S. Patent No. 6,223,372 (the “372 patent”), issued to Launce R. Barber (“Barber”) on May 1, 2001, and as to which Elemental claims an enforceable interest, is invalid and not infringed by Fiskars and that U.S. Patent No. D533,427 (the “427 patent”), issued to Barber and Thomas Stokes on December 12, 2006, and as to which Elemental claims an enforceable interest, is not infringed by Fiskars.

2. This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331, 1338, 2201 and 2202 to hear this declaratory judgment action arising under the patent laws of the United States, 35 U.S.C. § 102 *et seq.*

3. Venue is proper in this district under 28 U.S.C. § 1391(b).

4. Fiskars is a Wisconsin corporation, having a principal place of business at 2537 Daniels Street, Madison, WI 53718. Among the products made and sold by Fiskars is the Gerber Curve Keychain Tool (“Curve Tool”), which is depicted in **Exhibit A**.

5. Elemental is a Virginia limited liability company with a place of business at 1851 Stratford Park Place, Apartment 105, Reston, VA 20190, whose Registered Agent is Barber. As set forth below, Elemental asserts that it has rights in the ’372 and ’427 patents, directed to a “Combination Carabiner and Tool Device,” that are enforceable through litigation. Copies of the ’372 and ’427 patents are attached, respectively, as **Exhibits B and C**.

6. As set forth below, Elemental’s communications to Fiskars and Fiskars’s customers and with regard to the Curve Tool subjects it to the personal jurisdiction in this Court under the Wisconsin long arm statute, Wis. Stats. 801.05(3) and (4), and the United States Constitution, as Elemental’s actions, including actions directed to this state, caused injury to Fiskars and were accompanied by solicitation activities carried on within this state.

7. On April 16, 2010, Elemental, through its counsel, sent the letter attached as **Exhibit D** to Fiskars and its customer Target Corp. (“Target”). The letter asserted that “the claims of the Barber ’372 patent . . . read on the structure of your Gerber CURVE Carabiner Knife [sic]” and proposed that Fiskars and Target license “the past and present manufacture and sale of the Gerber CURVE Carabiner Knife [sic] and any structurally similar Carabiner knives at 20 percent of their retail sales prices.” Upon information and belief, Elemental’s reference to the “Gerber CURVE Carabiner Knife” refers to the Curve Tool.

8. Fiskars responded with a April 21, 2010 letter from its counsel, Foley & Lardner LLP, a copy of which is attached as **Exhibit E**, denying infringement and declining Elemental's invitation to enter into a license.

9. Elemental responded with a May 25, 2010 letter to Fiskars's counsel, a copy of which is attached as **Exhibit F**, which asserted that "the claims of the '372 Patent—especially Claim 1—clearly read on the Gerber Curve product" and threatened that "Fiskars would at the very best pay your firm hundreds of thousands of dollar in fees to (most likely) eventually take a license after many months or several years."

10. On November 24, 2010, Elemental's counsel sent the letter attached as **Exhibit G** to Fiskars's customer, Amazon.com, Inc. ("Amazon"), alleging that "[t]he claims of the Barber '372 Patent ... read on the structure of" certain products sold by Amazon, including the Curve Tool, that certain products sold by Amazon, including the Curve Tool, "also are covered by the claims of U.S. Patent No. D533,427-S," and that "Elemental will file a preliminary injunction motion on December 3rd and set it for a hearing on December 10th in the United States District Court for the Eastern District of Virginia, Richmond Division, if a settlement agreement has not been reached by December 2, 2010."

11. As set forth in the letter attached as **Exhibit H**, Amazon has demanded that Fiskars defend and indemnify it against the claims asserted in **Exhibit G**.

12. Each claim of the '372 patent is invalid for violation of the requirements for patentability set forth in 35 U.S.C. §§ 102, 103 and/or 112.

13. If any claim of the '372 patent is valid, it cannot be construed to cover the Curve Tool such that Fiskars would be found to infringe the '372 patent.

14. Upon information and belief, as set forth in U.S. District Court for the District of Oregon Case No. 04-CV-01557-JE, Elemental does not possess the right to enforce any claims of the '372 patent, as those rights are claimed by Kai USA, Ltd.

15. No claims of the '427 patent can be construed to cover the Curve Tool such that Fiskars would be found to infringe the '427 patent.

16. As shown in **Exhibits D-H**, there is a justiciable controversy between the parties that is ripe for adjudication. Elemental contends that the Curve Tool infringes one or more claims of the '372 and '427 patents and that it is entitled to and will take legal action to resolve this controversy. Fiskars contends that the claims of the '372 patent are invalid, are not enforceable by Elemental and that Fiskars does not infringe any valid claim of the '372 or '427 patents. Fiskars and Elemental have adverse interests as to the validity of and Elemental's right to enforce the '372 patent and Fiskars's alleged infringement of the '372 and '427 patents.

REQUEST FOR RELIEF

WHEREFORE, plaintiff Fiskars requests that judgment be entered against defendant Elemental and that this Court award Fiskars the following:

- A. A declaration that the '372 patent is invalid;
- B. A declaration that Fiskars has not infringed the '372 patent;
- C. A declaration that Elemental has no right to enforce the '372 patent;
- D. A declaration that Fiskars has not infringed the '427 patent;
- E. A declaration that this is an exceptional case under 35 U.S.C. § 285;
- F. Fiskars's reasonable actual attorneys' fees and costs; and
- G. Such other relief as the Court deems appropriate.

JURY DEMAND

Pursuant to Fed. R. Civ. P. 38(b), Fiskars demands a trial by jury of all triable issues.

Dated this 3rd day of December 2010.

s/Allen A. Arntsen

Allen A. Arntsen (SBN 1015038)

FOLEY & LARDNER LLP

150 E. Gilman Street

P.O. Box 1497

Madison, WI 53701-1497

(608) 257-5035 (telephone)

(608) 258-4258 (facsimile)

Attorneys for Plaintiff,

Fiskars Brands, Inc.