

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

**ARLINGTON INDUSTRIES, INC.,
Plaintiff,**

v.

**ELECTRONIC CUSTOM
DISTRIBUTORS, INC.,
Defendant.**

Civil Action No.: _____

Filed Electronically

Jury Trial Demanded

COMPLAINT FOR DECLARATORY JUDGMENT

Plaintiff, Arlington Industries, Inc., by counsel, for its Complaint against Defendant, Electronic Custom Distributors, Inc., alleges as follows:

Nature of Action

1. This is an action for a declaratory judgment that each claim of U.S. Patent No. 7,654,405 entitled “Method and System of a Detachable Nose Plate” (“’405 Patent”) is invalid and/or not infringed by Arlington Industries either directly or as an inducing or contributory infringer. A true and exact copy of the ‘405 Patent is attached as Exhibit A.

The Parties

2. Plaintiff Arlington Industries, Inc. (“Arlington Industries”) is a corporation organized and existing under the laws of the State of New York with a principal place of business in Scranton, Pennsylvania.

3. Upon information and belief, Defendant Electronic Custom Distributors, Inc. (“ECD” or “Defendant”) is a corporation organized and existing under the laws of the State of Texas with a principal place of business located at 4747 Westpark Drive, Houston, Texas 77027. Upon information and belief, ECD also trades and distributes goods under the name Direct Connect.

4. ECD is the assignee of record of the ‘405 Patent.

Jurisdiction and Venue

5. This action arises under the Declaratory Judgment Act, §§2201 and 2202, and under the Patent Laws of the United States, Title 35 of the United States Code. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§1331 and 1338(a).

6. Upon information and belief, ECD, under one or more of its trade names, regularly engages in business with dealers, vendors, and customers in the Commonwealth of Pennsylvania, and, further, distributes products in this judicial district. Accordingly, personal jurisdiction exists over the Defendant.

7. Venue is proper in this Court under 28 U.S.C. §1391(b) and (c) and 28 U.S.C. §1400(b).

Background

8. Arlington Industries is a leading manufacturer of metallic and non-metallic electrical fittings and connectors and related materials. Arlington has been in continuous operation in this field for over fifty years.

9. Arlington Industries sells and distributes a variety of entrance plates and hoods for the installation of low-voltage cables in residential and commercial settings. These products include Arlington's "Scoop Series" products, namely CED1, CED1BL, CEDH1, and CEDH1BL (collectively "Products").

10. Upon information and belief, ECD distributes audio, video, and telecommunication products to vendors throughout the United States.

11. The '405 Patent issued on February 2, 2010 from application number 11/550,028 ("028 Application"). The '028 Application was filed on October 17, 2006 by patent practitioner Mark E. Scott of Conley Rose, P.C. When filed, the Application Data Sheet identified Direct Connect as the assignee of record; however, it does not appear that any formal assignment was recorded with the U.S. Patent and Trademark Office at that time. On or about March 2, 2007, a formal assignment was filed which assigned the '405 Patent to ECD.

12. Prior to any examination on the merits, ECD filed two preliminary amendments. The second preliminary amendment, filed on April 8, 2008, added five new claims.

13. On February 26, 2009, ECD filed a third amendment to the '028 Application, this time adding nine new claims.

14. Upon information and belief, ECD made the foregoing amendments, and further amended the existing claim language, after having learned of the existence of one or more of Arlington Industries' Products.

15. Upon information and belief, ECD sought to expand the scope of the claims of the '028 Application in an effort to encompass the Products sold by Arlington Industries.

16. Arlington Industries is the record owner of U.S. Patent No. 7,563,979 ("979 Patent") for a protective cable chute for routing low-voltage cables through walls. One or more of Arlington's Products are covered by the claim(s) of the '979 Patent.

17. On or about September 23, 2009, a request for an *ex-parte* re-examination, pursuant to 35 U.S.C. §302, was filed for the '979 Patent. The re-examination request, allegedly raising a substantial new question of patentability, was based upon the combination of the ECD '028 Application and two other prior art references.

18. The request for re-examination was filed by Mark E. Scott of Conley Rose, P.C., the same patent attorney and law firm which prosecuted the '405 Patent. Further, the attorney docket number for the '405 Application was 1833-0110. The attorney docket number for the *ex-parte* re-examination is 1833-02600. Upon information and belief, the "1833" designation identifies ECD as the client.

19. Thus, although the identity of the party requesting the *ex-parte* re-examination is not public information, Arlington Industries reasonably believes that the re-examination was initiated by ECD.

20. The electrical connector and fitting field is highly competitive, with a business advantage going to the parties that are able to consistently bring new and useful products to market.

21. As a result, litigation between competing businesses is commonplace in an attempt to exclude others from the market. Indeed, ECD has on at least one occasion within the last two years brought suit in the Southern District of Texas in an attempt to enforce one of its patents.

22. Further, during a telephone discussion held on February 9, 2010, with Thomas J. Gretz, Executive Vice President of Arlington Industries, C.J. Provenzano, Vice President of ECD, made clear that ECD would be commencing litigation against Arlington Industries.

23. Mr. Provenzano indicated in the February 9, 2010 conversation that ECD believes that Arlington Industries violated its patent and he further reiterated that ECD has not yet lost a patent lawsuit.

24. Mr. Provenzano also stated that Arlington Industries was violating ECD's patent and that he wanted "what was coming to him" because of the violation of ECD's patent, making clear that ECD intends to take legal action against Arlington Industries in regard to the patent at issue.

25. Due to the facts and circumstance set forth herein, Arlington Industries reasonably believes that ECD is positioning itself to file suit against Arlington Industries for infringement of the '405 Patent.

26. Arlington Industries is therefore threatened with imminent litigation with regard to a patent that it does not infringe and which is invalid.

27. Accordingly, Arlington Industries is being harmed by uncertainty of the current and future marketability of its Products.

Count I
Declaratory Judgment of Non-Infringement

28. Arlington Industries repeats and re-alleges the allegations of the above paragraphs as if fully set forth herein.

29. An actual controversy exists between Arlington Industries and Defendant regarding whether or not Arlington Industries has infringed or continues to infringe any claim of the '405 Patent.

30. Arlington Industries is not infringing and has never infringed any claim of the '405 Patent, either directly or indirectly, either literally or under the doctrine of equivalents.

31. Under these circumstances, Arlington Industries is entitled to a declaratory judgment from this Court that Arlington Industries does not and has not infringed the '405 Patent directly, as contributory infringer, or by inducing a third-party to infringe.

Count II
Declaratory Judgment of Invalidity

32. Arlington Industries repeats and re-alleges the allegations of the above paragraphs as if fully set forth herein.

33. An actual controversy exists between Arlington Industries and Defendant regarding whether or not each claim of the '405 Patent is valid.

34. The claims of the '405 Patent are invalid because the alleged invention fails to satisfy one or more conditions of patentability set forth in 35 U.S.C. §§ 102, 103, and/or 112.

35. Arlington Industries is entitled to a declaratory judgment that each claim of the '405 Patent is invalid.

Jury Demand

Plaintiff Arlington Industries requests a trial by jury pursuant to Rule 38 of the Federal Rules of Civil Procedure.

PRAYER FOR RELIEF

Plaintiff Arlington Industries, Inc. respectfully requests that this Court find in favor of Arlington Industries, Inc. and against the Defendant Electronic Custom Distributors, Inc, and enter judgment as follows, ordering that:

- a. Each and every claim of U.S. Patent No. 7,654,405 is invalid;
- b. Arlington Industries has not infringed U.S. Patent No. 7,654,405 directly, indirectly, contributorily, or by inducement, and, therefore, Arlington Industries is not liable for infringement of any claim of the patent-in-suit;
- c. Defendant and its agents and all persons in concert or participation with them be enjoined from threatening, asserting, or charging infringement, or instituting any action for infringement, of U.S. Patent No. 7,654,405 by or against Arlington Industries or its suppliers, vendors, distributors, importers, customers, or users of its Products;
- d. Arlington Industries be awarded its costs and attorneys' fees incurred in prosecuting this action, as provided for by 35 U.S.C. § 285, plus interest; and
- e. Arlington Industries be awarded such other relief as the Court deems just and proper.

Respectfully Submitted,

By: /s/ Robert J. Tribeck

Robert J. Tribeck, Esq.
Pa. I.D. No. 74486
Rhoads & Sinon LLP
One South Market Square
P. O. Box 1146
Harrisburg, Pennsylvania 17108-1146
Telephone: (717) 233-5731
Email: rtribeck@rhoads-sinon.com

Auzville Jackson, Jr., Esq.
(subject to admission *pro hac vice*)
Jackson Patent Group
8001 Franklin Farms Drive, Suite 210
Richmond, Virginia 23229
Telephone: (804) 740-6828
Email: auzville.jackson@verizon.net

Anthony Tacconi, Esq.
Pa. I.D. No. 90000
Intellectual Property & Commercial Law
Group PLC
4860 Cox Road, Suite 200
Glen Allen, Virginia 23060
Telephone: 804.658.1108
Email: atacconi@va-ipcl.com
Attorneys for Arlington Industries, Inc.