

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
PENSACOLA DIVISION**

TECHSHELL, INC.

Plaintiff

v.

BEST BUY CO., INC.,
BESTBUY.COM, LLC, and
BEST BUY STORES, L.P.,

Defendants.

Civil Action No.: _____

JURY TRIAL DEMANDED

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff, Techshell, Inc., for its Complaint against Defendants, Best Buy Co., Inc., BESTBUY.COM, LLC, and Best Buy Stores, L.P., alleges as follows:

INTRODUCTION

1. This is an action for patent infringement arising under the patent laws of the United States, Title 35, United States Code.

THE PARTIES

2. Plaintiff, Techshell Inc. (hereinafter "Techshell") is a Florida Corporation with a principal place of business located at 1501 Newcastle Way, Pensacola, Florida 32534.

3. On information and belief, Defendant Best Buy Co., Inc. (hereinafter "Best Buy Co.") is a Minnesota Corporation with a principal place of business at 7601 Penn Avenue South, Richfield, Minnesota 55423.

4. On information and belief, Defendant BESTBUY.COM, LLC (hereinafter “BESTBUY.COM”) is a Virginia Limited Liability Company with a principal place of business at 7601 Penn Avenue South, Richfield, Minnesota 55423.

5. On information and belief, Defendant Best Buy Stores, L.P. (hereinafter “Best Buy Stores”) is a Virginia Limited Partnership with a principal place of business at 7601 Penn Avenue South, Richfield, Minnesota 55423. Best Buy Co., BESTBUY.COM, and Best Buy Stores are collectively referred to hereinafter as the Defendants.

JURISDICTION AND VENUE

6. This Court has subject matter jurisdiction over all causes of action set forth herein pursuant to 28 U.S.C. §§ 1331 and 1338(a) because this action arises under the patent laws of the United States, Title 35, United States Code, including 35 U.S.C. §271 *et seq.*

7. This Court has personal jurisdiction over Defendants as: (i) Defendants maintain regular and systematic business contacts with the State of Florida and within this judicial district and division; (ii) Defendants purposely, regularly, and continuously conduct business in the State of Florida and within this judicial district and division; (iii) Defendants purposefully direct their activities at residents of the State of Florida; (iv) the causes of action set forth herein arise out of or relate to the Defendants’ activities in the State of Florida; and (v) the exercise of jurisdiction over Defendants will not offend the traditional notions of fair play and substantial justice.

8. Venue is proper in this judicial district and division pursuant to 28 U.S.C. §1331, §1338(a), §§1391(b)(c), and §1400(b).

GENERAL ALLEGATIONS

9. Techshell is a Pensacola company that has manufactured, offers for sale, and sells

protective covers for laptop computers.

10. The owner and operator of Techshell, Mr. Haile Bekele, was the first person to invent a protective cover for laptop computers.

11. On April 21, 2006, Mr. Bekele and Techshell filed a provisional patent application for the new and innovative protective covers for laptop computers that Mr. Bekele invented.

12. Thereafter, Techshell began manufacturing, importing, offering for sale, and/or selling protective covers for laptop computers.

13. Upon information and belief, Techshell was the only company to offer for sale and sell protective covers for laptop computers from at least May 2006 to September 2006.

14. In January 2007, Techshell displayed and sold its protective covers for laptop computers at the MacWorld Expo.

15. After the MacWorld Expo, other companies began manufacturing, importing, selling, and offering for sale similar knock-off protective covers for laptop computers.

16. In an effort to retain its market share while its patent application was pending before the United States Patent & Trademark Office, Techshell advertised its protective covers in various magazines and displayed its protective covers at various trade shows, including the 2008 MacWorld Expo.

17. Techshell also contacted various distributors and retailers, including one or more of the Defendants, in an attempt to further expand the distribution of its protective covers. Techshell informed these distributors and retailers, including one or more of the Defendants, that it had applied for a patent on its protective covers and that the patent application was pending before the United States Patent and Trademark Office.

18. Despite Techshell's best efforts to retain a significant market share for its patent pending protective covers, Techshell's market share diminished as larger, well financed computer accessory companies began selling knock-off protective covers.

19. One such computer accessory company, Incase Designs Corporation ("Incase"), announced its first launch of a protective cover for a laptop computer in early 2008. And, even though Incase's first launch was not announced until 2008, about two years after Mr. Bekele and Techshell first invented protective covers for laptop computers, Incase claimed that its knock-off protective covers were "new" and "innovative."

20. On January 5, 2010, the United States Patent and Trademark Office duly and legally issued United States Patent No. 7,643,274, entitled "Protective Cover For Laptop Computer." A true and correct copy of U.S. Patent No. 7,643,274 ("the '274 Patent") is attached hereto as Exhibit "A."

21. Soon after the '274 Patent issued, Techshell filed a patent infringement action against several computer accessory companies that manufactured, used, offered for sale, sold and/or imported protective covers for laptop computers. This lawsuit initially was filed on May 11, 2010 and was concluded on or about April 12, 2011 upon the entry of a judgment against the final remaining defendant.

22. On March 15, 2011, the United States Patent and Trademark Office duly and legally issued United States Patent No. 7,907,400, also entitled "Protective Cover For Laptop Computer." A true and correct copy of U.S. Patent No. 7,907,400 ("the '400 Patent") is attached hereto as Exhibit "B."

23. Upon information and belief, Defendants have and continue to use, import, sell

and/or offer for sale protective covers for laptop computers that are subject to the aforementioned patents issued to Techshell.

24. On information and belief, some of the protective covers Defendants use, offer for sale, and/or sell have and continue to be purchased by Defendants from Speculative Product Design, Inc. (also known as "Speck").

25. On information and belief, some of the protective covers Defendants use, offer for sale, and/or sell have and continue to be purchased by Defendants from Incase.

26. As Speck has licensed the aforementioned Techshell patents, the Defendants may use, offer for sale, and sell protective covers purchased by Defendants directly from Speck. As a result, Techshell is not presently asserting any claims nor seeking any damages from Defendants due to Defendants use, offering for sale, and/or selling of protective covers for laptop computers that Defendants purchase directly from Speck.

27. Incase, however, has not licensed the aforementioned Techshell patents. As a result, Techshell's claims asserted against the Defendants, and the damages being sought from these Defendants, arise out of the Defendants' use, offering for sale, and sale of protective covers for laptop computers that Defendants purchased from Incase.

COUNT ONE: PATENT INFRINGEMENT
(United States Patent No. 7,643,274)

28. Techshell realleges and incorporates herein the allegations of paragraphs 1 through 27 of this Complaint as if fully set forth herein.

29. Techshell is the owner, by assignment, of all right, title, and interest in and to U.S. Patent No. 7,643,274, including the right to bring suit for past, present, and future patent infringement, and to collect past, present, and future damages.

30. The '274 Patent is valid.

31. The '274 Patent is enforceable.

32. Defendants have in the past and continue to infringe one or more claims of the '274 Patent in violation of 35 U.S.C. §271. Defendants' infringing acts include, but are not necessarily limited to, Defendants' use, offer for sale, and sale of protective covers for computers, including laptop computers, notebook computers, and netbook computers (hereinafter "Defendants' protective covers").

33. Representative examples of Defendants' infringing protective covers include, but are not necessarily limited to, Defendants' use, offer for sale, and sale of the following: (a) Incase – Hardshell Case for 13.3" Aluminum Apple MacBook (Green)(Exhibit "C"); (b) Incase – Hardshell Case for 13.3" Aluminum Apple MacBook (Black)(Exhibit "C"); (c) Incase – Hard Shell Laptop Case for Apple MacBook Pro 13" (Aubergine)(Exhibit "C"); (d) Incase – Hard Shell Laptop Case for Apple MacBook Pro 13" (Blueberry)(Exhibit "C"); (e) Incase – Hard Shell Laptop Case for Apple MacBook Pro 13" (Grape) (Exhibit "C"); (f) Incase – HardShell Laptop Case for MacBook Pro 15" (Blueberry)(Exhibit "C"); (g) Incase – Perforated Hard Shell Case for Apple MacBook Pro Laptops (White); (h) Incase – Perforated Hard Shell Case for Apple MacBook Pro Laptops (Black)(Exhibit "C"); (i) Incase – Hard Shell Laptop Case for Apple MacBook Pro 15" (Aubergine)(Exhibit "C"); and (j) Incase – Hard Shell Laptop Case for Apple MacBook 15" (Grape)(Exhibit "C").

34. Defendants' protective covers comprise an exterior cover for a laptop computer having a display portion and a keyboard portion, comprising a first elastic planar element for placement on an outside surface of the display portion, the first elastic planar element including: a raised edge along a perimeter of the first elastic planar element, wherein the raised edge extends toward the display portion; and a plurality of tabs located on the raised edge, wherein each tab extends from the raised edge for gripping the display portion.

35. Defendants' protective covers comprise a second elastic planar element for placement on an outside surface of the keyboard portion, the second elastic planar element being separate and independent from the first elastic planar element, the second elastic planar element including: a raised edge along a perimeter of the second planar element, wherein the raised edge extends toward the keyboard portion; and a plurality of tabs located on the raised edge, wherein each tab extends from the raised edge for gripping the keyboard portion.

36. Defendants' protective covers comprise an elastic plastic material.

37. Defendants' protective covers comprise a colored, transparent plastic material.

38. Defendants' protective covers comprise a substantially rectangular shape.

39. Defendants' protective covers comprise at least one orifice for allowing access to a removable media port in the keyboard portion.

40. Defendants' protective covers comprise a raised edge for covering a section of all sides of the display portion and a plurality of tabs located on the raised edge.

41. Defendants' protective covers are sold at Defendants' retail establishments located in the State of Florida. Residents of the State of Florida may also purchase the protective covers directly from Defendants via the Internet.

42. On information and belief, as of April 5, 2011, Incase was obligated to, and did, inform Defendants that Defendants continued use, offering for sale, and sale of protective covers purchased by Defendants from Incase allegedly infringe the '274 Patent.

43. On information and belief, Defendants infringement of the '274 Patent has been, and continues to be, willful and deliberate, entitling Techshell to increased damages pursuant to 35 U.S.C. §284 and to attorneys' fees pursuant to 35 U.S.C. §285.

44. Techshell has and continues to suffer damages as a direct and proximate result of Defendants' infringement of the '274 Patent and will suffer additional and irreparable damages unless Defendants are permanently enjoined by this Court from continuing its infringement. Techshell has no adequate remedy at law.

45. Techshell is entitled to: (i) damages adequate to compensate it for Defendants' infringement of the '274 Patent, which amounts to, at a minimum, a reasonable royalty; (ii) Techshell's lost profits; (iii) treble damages; (iv) attorneys' fees; (v) costs; and (vi) a preliminary and thereafter permanent injunction.

COUNT TWO: PATENT INFRINGEMENT
(United States Patent No. 7,907,400)

46. Techshell realleges and incorporates herein the allegations of paragraphs 1 through 45 of this Complaint as if fully set forth herein.

47. On March 15, 2011, the United States Patent and Trademark Office duly and legally issued United States Patent No. 7907,400, also entitled "Protective Cover For Laptop Computer." A true and correct copy of U.S. Patent No. 7,907,400 is attached hereto as Exhibit "B."

48. Techshell is the owner, by assignment, of all right, title, and interest in and to U.S. Patent No. 7,907,400, including the right to bring suit for past, present, and future patent infringement, and to collect past, present, and future damages.

49. The '400 Patent is valid.

50. The '400 Patent is enforceable.

51. Defendants have in the past and continue to infringe one or more claims of the '400 Patent in violation of 35 U.S.C. §271(a). Defendants' infringing acts include, but are not necessarily limited to, Defendants use, offer for sale, and sale of protective covers for computers, including laptop computers, notebook computers, and netbook computers (hereinafter "Defendants' protective covers").

52. Representative examples of Defendants' infringing protective covers include, but are not necessarily limited to, those covers previously identified in Count One of the Complaint.

53. Defendants' protective covers comprise an exterior cover for a laptop computer having a display portion and a keyboard portion, comprising a first elastic planar element for placement on an outside surface of the display portion, the first elastic planar element including: a raised edge along a perimeter of the first elastic planar element, wherein the raised edge extends toward the display portion; and a plurality of tabs located on the raised edge, wherein each tab extends from the raised edge for gripping the display portion.

54. Defendants' protective covers comprise a second elastic planar element for placement on an outside surface of the keyboard portion, the second elastic planar element being separate and independent from the first elastic planar element, the second elastic planar element including: a raised edge along a perimeter of the second planar element, wherein the raised edge

extends toward the keyboard portion; and a plurality of tabs located on the raised edge, wherein each tab extends from the raised edge for gripping the keyboard portion.

55. Defendants' protective covers comprise an elastic plastic material.

56. Defendants' protective covers comprise a colored, transparent plastic material.

57. Defendants' protective covers comprise a substantially rectangular shape.

58. Defendants' protective covers comprise at least one orifice for allowing access to a removable media port in the keyboard portion.

59. Defendants' protective covers comprise a raised edge for covering a section of all sides of the display portion and a plurality of tabs located on the raised edge.

60. Defendants' protective covers comprise a plurality of orifices in the second elastic planar element for allowing circulation of air.

61. Defendants' protective covers comprise a rounded corner at the junction of the raised edge and the first planar element.

62. Defendants' protective covers comprise a rounded corner at the junction of the raised edge and the second planar element.

63. Defendants' protective covers wherein the keyboard portion of the laptop computer comprises a QWERTY keyboard.

64. Defendants' protective covers are sold at Defendants' retail establishments located in the State of Florida. Residents of the State of Florida may also purchase the protective covers directly from Defendants via the Internet.

65. On information and belief, as of April 5, 2011, Incase was obligated to, and did, inform Defendants that Defendants continued use, offering for sale, and sale of protective covers purchased by Defendants from Incase allegedly infringe the '400 Patent.

66. On information and belief, Defendants' infringement of the '400 Patent has been, and continues to be, willful and deliberate, entitling Techshell to increased damages pursuant to 35 U.S.C. §284 and to attorneys' fees pursuant to 35 U.S.C. §285.

67. Techshell has and continues to suffer damages as a direct and proximate result of Defendants' infringement of the '400 Patent and will suffer additional and irreparable damages unless Defendants are permanently enjoined by this Court from continuing its infringement. Techshell has no adequate remedy at law.

68. Techshell is entitled to: (i) damages adequate to compensate it for Defendants' infringement of the '400 Patent, which amounts to, at a minimum, a reasonable royalty; (ii) Techshell's lost profits; (iii) treble damages; (iv) attorneys' fees; (v) costs; and (vi) a preliminary and thereafter permanent injunction.

PRAYER FOR RELIEF

WHEREFORE, Techshell seeks the following relief:

a. That Defendants be enjoined from further infringement of the '274 Patent and '400 Patent pursuant to 35 U.S.C. §283;

b. That Defendants be ordered to pay damages adequate to compensate Techshell for Defendants' infringement of the '274 Patent and the '400 Patent pursuant to 35 U.S.C. §284;

c. That all Defendants be ordered to pay Techshell Techshell's lost profits due to Defendants' infringement of the '274 Patent and the '400 Patent pursuant to 35 U.S.C. §284;

- d. That Defendants be ordered to pay Techshell treble damages pursuant to 35 U.S.C. §284;
- e. That Defendants be ordered to pay prejudgment interest pursuant to 35 U.S.C. §284;
- f. That Defendants be ordered to pay all costs associated with this action pursuant to 35 U.S.C. §284;
- g. That Defendants be ordered to pay Techshell's attorneys' fees pursuant to 35 U.S.C. §285;
- h. That Techshell be granted such other and additional relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

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

Respectfully submitted, this 19th day of May, 2011.

/s/ Charles F. Beall, Jr.
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