

1 Matthew L. Bycer (Ariz. Bar #025391)
2 Stoneman Law Offices Ltd
3 3724 North 3rd Street,
4 Suite 200
5 Phoenix, AZ 85012
6 Email: matt@patentdoc.com
7 Phone: 602.263.9200
8 Fax: 602.277.4883

9 *Attorney for Plaintiffs*

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

L & D Manufacturing, LLC, an Arizona
limited liability company, and

Lawrence D. Leabo, an individual residing in
Arizona

Plaintiffs,

v.

James Ross, an individual

Defendant.

**COMPLAINT FOR
DECLARATORY JUDGMENT OF
NON-INFRINGEMENT AND
INVALIDITY OF
U.S. PATENT NO. 6,467,303**

Plaintiffs L & D Manufacturing and Lawrence D. Leabo (“Leabo”) allege as follows
for its Complaint for Declaratory Judgment against Defendant James Ross (“Ross”).

PARTIES

1. Plaintiff L & D Manufacturing is a limited liability company formed in Arizona, with
its principal place of business located at 4029 W. Morrow Dr., Glendale, AZ 85308.

2. Plaintiff L & D Manufacturing manufactures certain DTR devices in the State of
Arizona that improve the efficiency of cooler and air conditioning units by lowering

1 discharge temperatures so as to increase condenser capacity and unit capacity, thus extending
2 condenser life and reducing energy cost. Plaintiff L & D Manufacturing sells and distributes
3 certain DTR devices within and from the State of Arizona.

4 3. Plaintiff Lawrence D. Leabo is an individual residing in Glendale, Arizona.

5 4. Upon information and belief, Defendant Ross is presumed to be an individual
6 residing at 15600 Egan Road, Jamestown, California 95327.

7 5. Upon information and belief, Ross is the inventor and owner of U.S. Patent No.
8 6,467,303 (“the ‘303 patent”), entitled “Hot Discharge Gas Desuperheater”. A true and
9 correct copy of the ‘303 patent is attached hereto as Exhibit A.

10 6. Upon information and belief, Ross is the manufacturer and distributor of certain
11 desuperheaters, including distribution and sales within the State of Arizona.

12 7. On February 15, 2011, Ross, through his counsel, sent a letter to Leabo accusing
13 Leabo of directly infringing, contributorily infringing, and inducing others to infringe the
14 ‘303 patent. Ross demanded that Leabo immediately cease and desist from further allegedly
15 infringing acts. The letter states that Ross “is committed to protecting his patent rights
16 against infringers.” Furthermore, Ross indicated that he “will seek out the identity of
17 [Leabo’s] customers and [Ross] will make them aware that [Leabo’s DTR device]...
18 constitutes direct infringement of the ‘303 patent.” The letter is attached hereto as Exhibit
19 B.

20
21 **JURISDICTION AND VENUE**

22 8. Plaintiff Leabo herein incorporates paragraphs 1-7 as set forth above.

23 9. This action arises under the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and
24 under the patent laws of the United States, Title 35 of the United States Code. This Court
25 has jurisdiction over this action pursuant to 35 U.S.C. § 271, *et seq.*, and 28 U.S.C. §§ 1331,
26 1338, and 2201 - 2202.

27 10. Venue is proper in this District under 28 U.S.C. §§ 1391 and 1400(b) because a
28 substantial part of the events giving rise to the claims at issue occurred in this District.

1 11. This Court has personal jurisdiction over Ross by virtue of the business activities
2 Ross conducts within the State of Arizona, resulting in sufficient minimum contacts with
3 this forum.

4
5 **COUNT I**

6 **(Declaratory Judgment of Non-Infringement of the '303 patent)**

7 12. Plaintiff Leabo herein incorporates paragraphs 1-11 as set forth above.

8 13. Plaintiff Leabo has not infringed and does not infringe, directly or indirectly, literally
9 or under the doctrine of equivalents any valid claim of the '303 patent.

10 14. Plaintiff Leabo has not used, offered for sale, sold, or imported into the United States
11 the subject matter claimed in any valid claim of the '303 patent and, therefore, has not
12 infringed any valid claim of the '303 patent.

13 15. Plaintiff Leabo has not contributorily infringed, and/or induced infringement of any
14 claim of the '303 patent and is not liable for infringement thereof.

15 16. One or more of the limitations resulting in the '303 patent are not present in the
16 accused DTR Device products sold by Plaintiff Leabo and, therefore, the design and use of
17 the accused DTR Device products do not infringe any claims of the '303 patent.

18 17. Plaintiff Leabo has not induced infringement of the '303 patent, either by publishing
19 installation instructions for the DTR Device or otherwise.

20
21 **COUNT II**

22 **(Declaratory Judgment of Invalidity of the '303 patent)**

23 18. Plaintiff Leabo herein incorporates and realleges the allegations of Paragraphs 1-16 as
24 set forth above.

25 19. An actual controversy exists between Plaintiff Leabo and Ross with respect to the
26 validity of the '303 patent.

1 20. The '303 patent is invalid for failure to comply with one or more of the requirements
2 of the patent laws of the United States, including, but not limited to, those codified at 35
3 U.S.C. §§ 101, 102, 103 and 112.

4 21. Plaintiff Leabo seeks a declaration that the '303 patent is invalid and/or
5 unenforceable.

6
7 **PRAYER FOR RELIEF**

8 WHEREFORE, Plaintiff Leabo respectfully requests that this Court:

- 9
10 A. Declare that Plaintiff Leabo has not infringed and does not infringe any claims
of the '303 patent;
11
12 B. Declare that the claims of the '303 patent are invalid and unenforceable;
13
14 C. Declare that this case exceptional under 35 U.S.C. § 285 and awarding Plaintiff
Leabo its reasonable attorneys' fees in this action;
15
16 D. Awarding Plaintiff Leabo its costs and expenses in this action; and
17
18 E. Award Plaintiff Leabo such other and further relief as the Court may deem
proper and just.

19 **DEMAND FOR JURY TRIAL**

20 Pursuant to Federal Rules of Civil Procedure Rule 38, Plaintiff hereby demands a jury
21 trial on all issues triable by jury.

22 Respectfully Submitted,

23
24 Dated: February 24, 2011

Stoneman Law Offices Ltd

25 By: /Matthew L. Bycer/

26 Matthew L. Bycer
3724 North 3rd Street,
27 Suite 200
Phoenix, AZ 85012
Email: matt@patentdoc.com
28 Tel: 602-263-9200

*Attorney for Plaintiffs
L & D Manufacturing and
Lawrence D. Leabo*

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