

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

AERIELLE TECHNOLOGIES, INC.

and AERIELLE, INC.

Plaintiffs,

v.

**PHILIPS ELECTRONICS NORTH
AMERICA CORPORATION and DLO
HOLDINGS, INC.**

Defendants.

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**CASE NO. 2:08-CV-270
JURY**

PLAINTIFFS' ORIGINAL COMPLAINT

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW Aerielle Technologies, Inc. and Aerielle, Inc., and files this their Original Complaint against the above-captioned defendants and in support thereof would respectfully show the Court as follows:

I. PARTIES

1. Plaintiffs Aerielle Technologies, Inc. and Aerielle, Inc. (collectively "Aerielle" or "Plaintiffs") are corporations organized under the laws of the state of California, with their principal place of business at 190 S. Whisman Road, Bldg. B, Mountain View, CA 94041. Aerielle, is a consumer electronics designer whose products include wireless accessories for portable mobile audio devices such as I-Pod, MP3/4 players, and related products.

2. Defendant Philips Electronics North America Corporation ("PHILIPS") is a corporation formed under the laws of the state of Delaware, with its principal place of business at 200 Franklin Square Dr., Somerset, New Jersey 08873. PHILIPS may be served with summons a copy of this complaint by serving its registered agent, Corporation Service Company, 701 Brazos Street, Austin,

Texas 78701.

3. Defendant DLO Holdings, Inc. (“DLO”) is a corporation formed under the laws of the state of North Carolina, with its principal place of business at 327 Hillsborough Street, Raleigh, N.C. 27603. DLO may be served with summons and a copy of this complaint by serving its registered agent, Corporation Service Company, 701 Brazos Street, Austin, Texas 78701.

II. JURISDICTION AND VENUE

4. This is an action for patent infringement arising under the Patent Laws of the United States, 35 U.S.C. § 1, et seq.

5. Subject matter jurisdiction is proper in this Court under 28 U.S.C. §§331 and 1338(a).

6. This Court has personal jurisdiction over PHILIPS and DLO because, among other things, PHILIPS and DLO regularly do business in this judicial district and because PHILIPS and DLO have established minimum contacts with the forum and the exercise of jurisdiction over PHILIPS and DLO will not offend traditional notions of fair play and substantial justice. On information and belief, PHILIPS and DLO place infringing products into the stream of commerce with the reasonable expectation and/or knowledge that the actual or potential ultimate purchasers and users are located throughout the United States, including within this judicial district. On information and belief, PHILIPS and DLO have voluntarily conducted business and solicited customers in the State of Texas, including in this judicial district. On information and belief, PHILIPS and DLO sell, advertise, market and distribute infringing products throughout this judicial district. PHILIPS and DLO have committed and continue to commit acts of patent infringement in this judicial district.

7. Venue is proper in this judicial district under 28 U.S.C. §1391(b), (c) and 1400(b) because PHILIPS and DLO are subject to personal jurisdiction in the Eastern District of Texas as discussed in the preceding paragraph.

II. BACKGROUND FACTS

8. Aerielle, is a consumer electronics designer whose products include wireless accessories for portable mobile audio devices such as I-Pod, MP3/4 players, and related products. Included in these devices are FM transmitter devices such as the ATB350P and ATB0004. These devices are can be used with audio devices such as iPods so that the music on the iPod can be broadcast and heard through a nearby FM radio such as a car radio.

9. On December 5, 2005, Aerielle, Inc. and PHILIPS entered into a Merchandising Agreement whereby PHILIPS agreed to “use its reasonable commercial efforts to promote, market, sell and distribute the Approved Products.” “Approved Products” being a term defined in the Merchandising Agreement and amendments thereto. However, PHILIPS has ceased to do so.

10. The Merchandising Agreement also provided actual notice to PHILIPS of the two patents-in-suit.

11. Moreover, in the summer of 2007, PHILIPS acquired DLO.

12. Upon information and belief, DLO is now a wholly-owned subsidiary of PHILIPS.

13. DLO sells products that include FM transmitter devices that are similar to the Approved Products.

III. THE PATENTS-IN-SUIT

14. PHILIPS and DLO have infringed and continue to infringe at least two Aerielle patents. United States Patent No. 6,671,494 (“the ‘494 Patent”), entitled “Small, Battery Operated RF Transmitter for Portable Audio Devices for Use with Headphones With RF Receiver,” was duly and legally issued by the United States Patent and Trademark Office to John James on December 30, 2003. A copy of the ‘494 Patent is attached hereto as Exhibit A. United States Patent No. 5,771,441

(“the ‘441 Patent”), entitled “Small, Battery Operated RF Transmitter for Portable Audio Devices for Use With Headphones With RF Receiver,” was duly and legally issued by the United States Patent and Trademark Office to John E. Alstatt on June 23, 1998. A copy of the ‘441 Patent is attached hereto as Exhibit B. The claims of infringement against PHILIPS on the ‘494 Patent and ‘441 Patent are asserted in the alternative to the extent they conflict. The claims of infringement against DLO on the ‘494 Patent and ‘441 Patent are asserted in the alternative to the extent they conflict.

15. The ‘441 Patent and the ‘494 Patent have been assigned to Aerielle who is their current owner with full rights to sue and recover damages and otherwise enforce the ‘441 Patent and the ‘494 Patent.

16. The ‘441 Patent and the ‘494 Patent are valid and enforceable.

COUNT 1 – INFRINGEMENT OF ‘494 PATENT

17. PHILIPS and DLO have infringed, and are still infringing, literally and/or under the doctrine of equivalents, one or more claims of the ‘494 Patent in at least this State and District by making, using, offering to sell, selling, and/or importing products that infringe one or more of the claims of the ‘494 Patent.

18. PHILIPS and DLO have also contributed to and/or induced, and continues to contribute to and/or induce, the infringement of one or more claims of the ‘494 Patent, in at least this State and District.

19. On information and belief, PHILIPS’s and DLOs infringement of one or more claims of the ‘494 Patent has taken place, with full knowledge of the ‘494 Patent and has been, and continues to be, willful, deliberate, and intentional.

20. PHILIPS's and DLO's infringement of one or more claims of the '494 Patent has injured Aerielle, and Aerielle is entitled to recover damages adequate to compensate it for PHILIPS's and DLO's infringement, which in no event can be less than a reasonable royalty.

21. PHILIPS and DLO have caused Aerielle substantial damage and irreparable injury by its infringement of one or more claims of the '494 Patent, and Aerielle will continue to suffer damage and irreparable injury unless and until the infringement of PHILIPS and DLO are enjoined by this Court.

COUNT 2 – INFRINGEMENT OF '441 PATENT

22. PHILIPS and DLO have infringed, and is still infringing, literally and/or under the doctrine of equivalents, one or more claims of the '441 Patent in at least this State and District by making, using, offering to sell, selling, and/or importing products that infringe one or more of the claims of the '441 Patent.

23. PHILIPS and DLO have also contributed to and/or induced, and continues to contribute to and/or induce, the infringement of one or more claims of the '441 Patent, in at least this State and District.

24. On information and belief, PHILIPS's and DLO's infringement of one or more claims of the '441 Patent has taken place, with full knowledge of the '441 Patent and has been, and continues to be, willful, deliberate, and intentional.

25. PHILIPS's and DLO's infringement of one or more claims of the '441 Patent has injured Aerielle, and Aerielle is entitled to recover damages adequate to compensate it for PHILIPS's and DLO's infringement, which in no event can be less than a reasonable royalty.

26. PHILIPS and DLO have caused Aerielle substantial damage and irreparable injury by its infringement of one or more claims of the '441 Patent, and Aerielle will continue to suffer damage and irreparable injury unless and until the infringement of PHILIPS and DLO are enjoined by this Court.

COUN T 3 – BREACH OF CONTRACT (AGAINST PHILIPS ONLY)

27. PHILIPS has breached the Merchandising Agreement by failing to “use its reasonable commercial efforts to promote, market, sell and distribute the Approved Products” in accordance with the terms of that agreement. As a result, Aerielle, Inc. has suffered actual, direct damages for which it seeks recovery by this suit.

IV. PRAYER

28. WHEREFORE, Plaintiff Aerielle respectfully requests that:

- A. Defendant PHILIPS and DLO be summoned to appear and answer;
- B. Plaintiffs be granted judgment against Defendants;
- C. The Court enter a judgment that PHILIPS and DLO have infringed, contributorily infringed, and/or induced the infringement of the '494 Patent and the '441 Patent, and continues to infringe, contribute to the infringement of, and/or induce the infringement of the '494 Patent and the '441 Patent;
- D. The Court enter a judgment that PHILIPS's and DLO's infringement of the '494 Patent and the '441 Patent was willful and continues to be willful;
- E. The Court enter permanent injunction enjoining PHILIPS, its officers, directors, servants, consultants, managers, employees, agents, attorneys, successors, assigns, affiliates, subsidiaries, and all persons in active concert or participation with any of them, from infringement, contributory infringement, and inducement of infringement of the '494 Patent and the '441 Patent, including but not limited to making, using, offering to sell, selling, or importing any products that infringe, literally or under the doctrine of equivalents, the '494 Patent and the '441 Patent;
- F. The Court enter permanent injunction enjoining DLO, its officers, directors, servants, consultants, managers, employees, agents, attorneys, successors, assigns, affiliates,

subsidiaries, and all persons in active concert or participation with any of them, from infringement, contributory infringement, and inducement of infringement of the '494 Patent and the '441 Patent, including but not limited to making, using, offering to sell, selling, or importing any products that infringe, literally or under the doctrine of equivalents, the '494 Patent and the '441 Patent;

- G. The Court enter an award to Aerielle of all damages adequate to compensate Aerielle for PHILIPS's and DLO's infringement, contributory infringement, and/or inducement of infringement, such damages to be determined by a jury and, if necessary, an accounting of all damages;
- H. The Court enter a judgment that PHILIPS has breached its contract with Aerielle, Inc. and that the Court enter an award to Aerielle of all damages adequate to compensate Aerielle, Inc. for the harm it suffered from the breach of contract;
- I. The Court award pre-judgment and post-judgment interest as allowed by law;
- J. The Court enter an award of increased damages in an amount not less than three times the amount of damages awarded to Aerielle for PHILIPS's and DLO's willful infringement of the '494 Patent and the '441 Patent;
- K. The Court enter a declaration that this is an exceptional case under 35 U.S.C. §285 and enter an award of the reasonable attorney's fees, costs, and expenses incurred by Aerielle in this action; and
- L. The Court grant Plaintiffs such further relief to which Plaintiffs may show themselves justly entitled.

Respectfully submitted,

A handwritten signature in black ink, reading "Michael C. Smith", written over a horizontal line.

Michael C. Smith

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