

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
TYLER DIVISION

)	CASE NO. <u>6:07-cv-156-LED</u>
BOMBARDIER RECREATIONAL)	
PRODUCTS, INC. and BRP U.S., INC.,)	
)	JURY TRIAL DEMANDED
Plaintiffs,)	
)	
vs.)	
)	
KAWASAKI HEAVY INDUSTRIES, LTD.,)	
KAWASAKI MOTORS CORP., U.S.A., and)	
KAWASAKI MOTORS MANUFACTURING)	
CORP., U.S.A.,)	
)	
Defendants.)	
)	

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiffs, Bombardier Recreational Products, Inc. and BRP U.S., Inc., for their Complaint against defendants Kawasaki Heavy Industries, Ltd., Kawasaki Motors Corporation, U.S.A., and Kawasaki Motors Manufacturing Corp., U.S.A., aver as follows:

JURISDICTION AND VENUE

1. This is an action for patent infringement arising under the Patent Laws of the United States, 35 U.S.C. §§ 271, 281-285.
2. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a).
3. Venue is proper in this Judicial District pursuant to 28 U.S.C. § 1391(b) and (c) and 1400(b).

PARTIES

4. Plaintiff Bombardier Recreational Products, Inc. (“Bombardier”) is a corporation organized and existing under the laws of Canada and having a principal place of business at 726 rue St-Joseph Street, Valcourt, Québec, Canada, J0E 2L0. Bombardier manufactures and sells personal watercraft (“PWCs”) under the trademark Sea-Doo.

5. Plaintiff BRP U.S., Inc. (“BRP”) is a corporation organized and existing under the laws of the State of Delaware and having a principal place of business at 10101 Science Drive, Sturtevant, Wisconsin 53177. BRP imports, distributes and sells throughout the United States, including this judicial district, Sea-Doo PWCs manufactured by Bombardier, and also designs, develops and tests Sea-Doo PWCs.

6. On information and belief, defendant Kawasaki Heavy Industries, Ltd. (“KHI”) is a corporation of Japan having a principal place of business at Kobe Crystal Tower, 1-3, Higashikawasaki-cho, 1-chome, Chuo-ku, Kobe, Hyogo 650-8680, Japan.

7. On information and belief, defendant Kawasaki Motors Manufacturing Corp., U.S.A. (“KMMC”) is a wholly-owned corporate subsidiary of KHI organized and existing under the laws of the State of Nebraska and having a principal place of business at 6600 Northwest 27th Street, Lincoln, NE 68524. On information and belief, KMMC is KHI’s U.S. manufacturing arm for PWCs.

8. On information and belief, defendant Kawasaki Motors Corporation, U.S.A., (“KMC”) is a wholly-owned corporate subsidiary of KHI organized and existing under the laws of the State of California and having a principal place of business at 9950 Jeronimo Road, Irvine, California 92618. On information and belief, KMC is the U.S. sales and distribution arm of KHI for PWCs manufactured by KMMC.

9. On information and belief, defendants KHI, KMMC and KMC, acting in concert, have engaged in (a) the manufacture in the U.S. of Kawasaki PWCs and components thereof, (b) the offer for sale and sale of said PWCs and components in the U.S., including this judicial district, and (c) the sale of said PWCs and components outside the U.S., including Canada.

COUNT I

**Patent Infringement (U.S. Pat. No. 5,369,360)
(35 U.S.C. § 271)**

10. Plaintiffs reiterate and incorporate the allegations set forth in paragraphs 1-9 above as if fully set forth herein.

11. On November 29, 1994, United States Patent No. 5,369,360 entitled “Recessed Paddle Wheel Speed Measuring Device For Personal Watercraft” (“the ‘360 patent”) was duly and legally issued by the United States Patent & Trademark Office.

12. Plaintiff Bombardier is the lawful owner by assignment of all right, title and interest in and to the ‘360 patent.

13. Plaintiff BRP holds an exclusive license under the `360 patent to import and sell PWCs.

14. On information and belief, defendant KMMC has infringed the ‘360 patent in violation of 35 U.S.C. § 271 (a) by making, using, offering for sale and selling infringing PWCs including but not limited to the Ultra 250X model in the U.S. without authority or license from BRP or Bombardier.

15. On information and belief, defendant KMMC has actively induced others to infringe the `360 patent in violation of 35 U.S.C. § 271(b) by knowingly encouraging, aiding and abetting (i) KMC and retail dealers to offer for sale and sell and (ii) retail purchasers to use,

infringing PWCs including by not limited to the Ultra 250X model in the U.S. without authority or license from BRP or Bombardier.

16. On information and belief, defendant KMC has infringed the '360 patent in violation of 35 U.S.C. § 271(a) by offering for sale and selling infringing PWCs including by not limited to the Ultra 250X model in the U.S. without authority or license from BRP or Bombardier.

17. On information and belief, defendant KMC has actively induced others to infringe the '360 patent in violation of 35 U.S.C. § 271(b) by knowingly encouraging, aiding and abetting (i) KMMC to manufacture and sell, (ii) retail dealers to offer for sale and sell and (iii) retail purchasers to use, infringing PWCs including by not limited to the Ultra 250X model in the U.S. without authority or license from BRP or Bombardier.

18. On information and belief, defendant KHI is liable for infringement of the '360 patent under 35 U.S.C. § 271(a) because it has used its control over its wholly-owned subsidiaries KMMC and KMC to cause them, acting as its agents, to manufacture, offer for sale and sell infringing PWCs including by not limited to the Ultra 250X model in the U.S. without authority or license from BRP or Bombardier.

19. On information and belief, KHI has actively induced others to infringe the '360 patent in violation of 35 U.S.C. § 271(b) by knowingly planning, encouraging, directing, overseeing, aiding and abetting (i) KMMC and KMC to manufacture, use, offer for sale and sell, (ii) retail dealers to offer for sale and sell and (iii) retail purchasers to use, infringing PWCs including by not limited to the Ultra 250X model in the U.S. without authority or license from BRP or Bombardier.

20. On information and belief, defendants' infringement has been in willful disregard of BRP's and Bombardier's patent rights, making this an exceptional case within the meaning of 35 U.S.C. § 285.

21. The aforesaid infringing activity has caused damage to plaintiffs, including loss of profits from sales they would have made but for the infringements. Unless enjoined, the aforesaid infringing activity will continue and cause irreparable injury to plaintiffs for which there is no adequate remedy at law.

COUNT II

Patent Infringement (U.S. Pat. No. 6,276,291) (35 U.S.C. § 271)

22. Plaintiffs reiterate and incorporate the allegations set forth in paragraphs 1-21 above as if fully set forth herein.

23. On August 21, 2001, United States Patent No. 6,276,291 entitled "Adjustable Steering Column" ("the '291 patent") was duly and legally issued by the United States Patent & Trademark Office.

24. Plaintiff Bombardier is the lawful owner by assignment of all right, title and interest in and to the '291 patent.

25. Plaintiff BRP holds an exclusive license under the '291 patent to import and sell PWCs.

26. On information and belief, defendant KMMC has infringed the '291 patent in violation of 35 U.S.C. § 271(a) by making, using, offering for sale and selling infringing PWCs including by not limited to the Ultra 250X model in the U.S. without authority or license from BRP or Bombardier.

27. On information and belief, defendant KMMC has actively induced others to infringe the '291 patent in violation of 35 U.S.C. § 271(b) by knowingly encouraging, aiding and abetting (i) KMC and retail dealers to offer for sale and sell and (ii) retail purchasers to use, infringing PWCs including by not limited to the Ultra 250X model in the U.S. without authority or license from BRP or Bombardier.

28. On information and belief, defendant KMC has infringed the '291 patent in violation of 35 U.S.C. § 271(a) by offering for sale and selling infringing PWCs including by not limited to the Ultra 250X model in the U.S. without authority or license from BRP or Bombardier.

29. On information and belief, defendant KMC has actively induced others to infringe the '291 patent in violation of 35 U.S.C. § 271(b) by knowingly encouraging, aiding and abetting (i) KMMC to manufacture and sell, (ii) retail dealers to offer for sale and sell and (iii) retail purchasers to use, infringing PWCs including by not limited to the Ultra 250X model in the U.S. without authority or license from BRP or Bombardier.

30. On information and belief, defendant KHI is liable for infringement of the '291 patent under 35 U.S.C. § 271(a) because it has used its control over its wholly-owned subsidiaries KMMC and KMC to cause them, acting as its agents, to manufacture, offer for sale and sell infringing PWCs including by not limited to the Ultra 250X model in the U.S. without authority or license from BRP or Bombardier.

31. On information and belief, defendant KHI has actively induced infringement of the '291 patent in violation of 35 U.S.C. § 271(b) by knowingly planning, encouraging, directing, overseeing, aiding and abetting (i) KMMC and KMC to manufacture, use, offer for sale and sell, (ii) retail dealers to offer for sale and sell and (iii) retail purchasers to use,

infringing PWCs including by not limited to the Ultra 250X model in the U.S. without authority or license from BRP or Bombardier.

32. On information and belief, defendants' infringement has been in willful disregard of BRP's and Bombardier's patent rights, making this an exceptional case within the meaning of 35 U.S.C. § 285.

33. The aforesaid infringing activity has caused damage to plaintiffs, including loss of profits from sales they would have made but for the infringement. Unless enjoined, the aforesaid infringing activity will continue and cause irreparable injury to plaintiffs for which there is no adequate remedy at law.

COUNT III

Patent Infringement (U.S. Pat. No. 6,551,155) (35 U.S.C. § 271)

34. Plaintiffs reiterate and incorporate the allegations set forth in paragraphs 1-33 above as if fully set forth herein.

35. On April 22, 2003, United States Patent No. 6,551,155 entitled "Personal Watercraft Having An Improved Exhaust System" ("the '155 patent") was duly and legally issued by the United States Patent & Trademark Office.

36. Plaintiff Bombardier is the lawful owner by assignment of all right, title and interest in and to the '155 patent.

37. Plaintiff BRP holds an exclusive license under the '155 patent to import and sell PWCs.

38. On information and belief, defendant KMMC has infringed the '155 patent in violation of 35 U.S.C. § 271(a) by making, using, offering for sale and selling infringing PWCs

including by not limited to the Ultra 250X model in the U.S. without authority or license from BRP or Bombardier.

39. On information and belief, defendant KMMC has actively induced others to infringe the '155 patent in violation of 35 U.S.C. § 271(b) by knowingly encouraging, aiding and abetting (i) KMC and retail dealers to offer for sale and sell and (ii) retail purchasers to use, infringing PWCs including by not limited to the Ultra 250X model in the U.S. without authority or license from BRP or Bombardier.

40. On information and belief, defendant KMC has infringed the '155 patent in violation of 35 U.S.C. § 271(a) by offering for sale and selling infringing PWCs including by not limited to the Ultra 250X model in the U.S. without authority or license from BRP or Bombardier.

41. On information and belief, defendant KMC has actively induced others to infringe the '155 patent in violation of 35 U.S.C. § 271(b) by knowingly encouraging, aiding and abetting (i) KMMC to manufacture and sell, (ii) retail dealers to offer for sale and sell and (iii) retail purchasers to use, infringing PWCs including by not limited to the Ultra 250X model in the U.S. without authority or license from BRP or Bombardier.

42. On information and belief, defendant KHI is liable for infringement of the '155 patent under 35 U.S.C. § 271(a) because it has used its control over its wholly-owned subsidiaries KMMC and KMC to cause them, acting as its agents, to manufacture, offer for sale and sell infringing PWCs including by not limited to the Ultra 250X model in the U.S. without authority or license from BRP or Bombardier.

43. On information and belief, defendant KHI has actively induced infringement of the '155 patent in violation 35 U.S.C. § 271(b) by knowingly planning, encouraging, directing,

overseeing, aiding and abetting (i) KMMC and KMC to manufacture, use, offer for sale and sell, (ii) retail dealers to offer for sale and sell and (iii) retail purchasers to use, infringing PWCs including by not limited to the Ultra 250X model in the U.S. without authority or license from BRP or Bombardier.

44. On information and belief, defendants' infringement has been in willful disregard of BRP's and Bombardier's patent rights, making this an exceptional case within the meaning of 35 U.S.C. § 285.

45. The aforesaid infringing activity has caused damage to plaintiffs, including loss of profits from sales they would have made but for the infringement. Unless enjoined, the aforesaid infringing activity will continue and cause irreparable injury to plaintiffs for which there is no adequate remedy at law.

COUNT IV

Patent Infringement (U.S. Pat. No. 6,668,742) (35 U.S.C. § 271)

46. Plaintiffs reiterate and incorporate the allegations set forth in paragraphs 1-45 above as if fully set forth herein.

47. On December 30, 2003, United States Patent No. 6,668,742 entitled "Personal Watercraft With Storage Tray" ("the '742 patent") was duly and legally issued by the United States Patent & Trademark Office.

48. Plaintiff Bombardier is the lawful owner by assignment of all right, title and interest in and to the '742 patent.

49. Plaintiff BRP holds an exclusive license under the '742 patent to import and sell PWCs.

50. On information and belief, defendant KMMC has infringed the '742 patent in violation of 35 U.S.C. § 271(a) by making, using, offering for sale and selling infringing PWCs including by not limited to the Ultra 250X model in the U.S. without authority or license from BRP or Bombardier.

51. On information and belief, defendant KMMC has actively induced others to infringe the '742 patent in violation of 35 U.S.C. § 271(b) by knowingly encouraging, aiding and abetting (i) KMC and retail dealers to offer for sale and sell and (ii) retail purchasers to use, infringing PWCs including by not limited to the Ultra 250X model in the U.S. without authority or license from BRP or Bombardier.

52. On information and belief, defendant KMC has infringed the '742 patent in violation of 35 U.S.C. § 271(a) by offering for sale and selling infringing PWCs including by not limited to the Ultra 250X model in the U.S. without authority or license from BRP or Bombardier.

53. On information and belief, defendant KMC has actively induced others to infringe the '742 patent in violation of 35 U.S.C. § 271(b) by knowingly encouraging, aiding and abetting (i) KMMC to manufacture and sell, (ii) retail dealers to offer for sale and sell and (iii) retail purchasers to use, infringing PWCs including by not limited to the Ultra 250X model in the U.S. without authority or license from BRP or Bombardier.

54. On information and belief, defendant KHI is liable for infringement of the '742 patent under 35 U.S.C. § 271(a) because it has used its control over its wholly-owned subsidiaries KMMC and KMC to cause them, acting as its agents, to manufacture, offer for sale and sell infringing PWCs including by not limited to the Ultra 250X model in the U.S. without authority or license from BRP or Bombardier.

55. On information and belief, defendant KHI has actively induced infringement of the '742 patent in violation 35 U.S.C. § 271(b) by knowingly planning, encouraging, directing, overseeing, aiding and abetting (i) KMMC and KMC to manufacture, use, offer for sale and sell, (ii) retail dealers to offer for sale and sell and (iii) retail purchasers to use, infringing PWCs including by not limited to the Ultra 250X model in the U.S. without authority or license from BRP or Bombardier.

56. On information and belief, defendants' infringement has been in willful disregard of BRP's and Bombardier's patent rights, making this an exceptional case within the meaning of 35 U.S.C. § 285.

57. The aforesaid infringing activity has caused damage to plaintiffs, including loss of profits from sales they would have made but for the infringement. Unless enjoined, the aforesaid infringing activity will continue and cause irreparable injury to plaintiffs for which there is no adequate remedy at law.

COUNT V

Patent Infringement (U.S. Pat. No. 6,772,061) (35 U.S.C. § 271)

58. Plaintiffs reiterate and incorporate the allegations set forth in paragraphs 1-57 above as if fully set forth herein.

59. On August 3, 2004, United States Patent No. 6,772,061 entitled "System, Method, And Apparatus For Controlling Vehicle Performance" ("the '061 patent") was duly and legally issued by the United States Patent & Trademark Office.

60. Plaintiff Bombardier is the lawful owner by assignment of all right, title and interest in and to the '061 patent.

61. Plaintiff BRP holds an exclusive license under the '061 patent to import and sell PWCs.

62. On information and belief, defendant KMMC has infringed the '061 patent in violation of 35 U.S.C. § 271(a) by making, using, offering for sale and selling infringing PWCs including by not limited to the Ultra 250X model the U.S. without authority or license from BRP or Bombardier.

63. On information and belief, defendant KMMC has actively induced others to infringe the '061 patent in violation of 35 U.S.C. § 271(b) by knowingly encouraging, aiding and abetting (i) KMC and retail dealers to offer for sale and sell and (ii) retail purchasers to use, infringing PWCs including by not limited to the Ultra 250X model in the U.S. without authority or license from BRP or Bombardier.

64. On information and belief, defendant KMC has infringed the '061 patent in violation of 35 U.S.C. § 271(a) by offering for sale and selling infringing PWCs including by not limited to the Ultra 250X model in the U.S. without authority or license from BRP or Bombardier.

65. On information and belief, defendant KMC has actively induced others to infringe the '061 patent in violation of 35 U.S.C. § 271(b) by knowingly encouraging, aiding and abetting (i) KMMC to manufacture and sell, (ii) retail dealers to offer for sale and sell and (iii) retail purchasers to use, infringing PWCs including by not limited to the Ultra 250X model in the U.S. without authority or license from BRP or Bombardier.

66. On information and belief, defendant KHI is liable for infringement of the '061 patent under 35 U.S.C. § 271(a) because it has used its control over its wholly-owned subsidiaries KMMC and KMC to cause them, acting as its agents, to manufacture, offer for sale

and sell infringing PWCs including by not limited to the Ultra 250X model in the U.S. without authority or license from BRP or Bombardier.

67. On information and belief, defendant KHI has actively induced infringement of the '061 patent in violation 35 U.S.C. § 271(b) by knowingly planning, encouraging, directing, overseeing, aiding and abetting (i) KMMC and KMC to manufacture, use, offer for sale and sell, (ii) retail dealers to offer for sale and sell and (iii) retail purchasers to use, infringing PWCs including by not limited to the Ultra 250X model in the U.S. without authority or license from BRP or Bombardier.

68. On information and belief, defendants' infringement has been in willful disregard of BRP's and Bombardier's patent rights, making this an exceptional case within the meaning of 35 U.S.C. § 285.

69. The aforesaid infringing activity has caused damage to plaintiffs, including loss of profits from sales they would have made but for the infringement. Unless enjoined, the aforesaid infringing activity will continue and cause irreparable injury to plaintiffs for which there is no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully pray for judgment and an order against defendants:

A. Adjudging that the manufacture, use, offer for sale, sale and/or importation of defendants' PWCs infringes the `360 patent, the `291 patent, the '155 patent, the '742 patent and the '061 patent;

B. Adjudging that each of defendants has infringed and actively induced others to infringe the `360 patent, the `291 patent, the '155 patent, the '742 patent and the '061 patent;

C. Adjudging that each defendants' infringement of the `360 patent, the `291 patent, the '155 patent, the '742 patent and the '061 patent has been willful;

D. Enjoining each defendant, its officers, directors, employees, attorneys, agents, representatives, parents, subsidiaries, affiliates and all other persons acting in concert, participation or privity with it, and its successors and assigns, from infringing, contributorily infringing and/or inducing others to infringe the `360 patent, the `291 patent, the '155 patent, the '742 patent and/or the '061 patent;

E. Awarding plaintiffs the damages they have sustained by reason of defendants' infringement, together with interest and costs pursuant to 35 U.S.C. § 284;

F. Awarding plaintiffs increased damages of three times the amount found or assessed by reason of the willful and deliberate nature of defendants' acts of infringement pursuant to 35 U.S.C. § 284;

G. Adjudging this to be an exceptional case and awarding plaintiffs their attorney fees pursuant to 35 U.S.C. § 285; and

