

FILED

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

2006 JUN 29 PM 3: 54

U.S. DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO, FLORIDA

OMEGA PATENTS, L.L.C.,
a Georgia corporation,

Civil Action No. _____

Plaintiff,

6:06-cv-893-ORL-22JGG

vs.

**INJUNCTIVE RELIEF REQUESTED
JURY TRIAL REQUESTED**

ASTROFLEX, INC.,
An alien business organization,

Defendant.

_____ /

COMPLAINT

Plaintiff Omega Patents, LLC, through its undersigned counsel, hereby files its Complaint against Defendant Astroflex, Inc., and alleges:

PARTIES, JURISDICTION, AND VENUE

1. Plaintiff Omega Patents, L.L.C. ("Omega") is a Georgia limited liability company.
2. Defendant Astroflex, Inc. ("Astroflex") is, upon information and belief, an alien business corporation formed under Canadian laws, which sells and offers for sale products in the United States, including within the Middle District of Florida.
3. Astroflex sells and offers for sale throughout the United States, including within this judicial district and division, data communications bus adaptors and/or vehicle remote control systems which infringe Plaintiff's United States Patent No. 6,812,829 B1 (the "Patent-in-Suit"). Upon information and

belief, Defendant has substantial and not isolated contacts with the State of Florida, and has committed acts of infringement within the State of Florida, including the Middle District of Florida, sufficient to confer personal jurisdiction upon Defendant. Alternatively, this Court has *in personam* jurisdiction over Astroflex because Omega and Astroflex entered into an Agreement in which Astroflex specifically agreed to submit to this Court's jurisdiction to resolve any dispute under the Agreement in this Judicial District.

4. This Court has jurisdiction over the subject matter of this action, pursuant to 28 U.S.C. §§1331, 1332 and 1338(a).

5. Venue properly lies within this judicial district and division, pursuant to 28 U.S.C. §1391(a) through (d) and 28 U.S.C. §1400(b).

STATEMENT OF FACTS

6. Vehicle security devices rely upon electronic communications to perform many security functions. Kenneth E. Flick, the inventor of the Patent-in-Suit, is recognized as an innovator in the vehicle security systems industry.

7. A series of inventions by Mr. Flick involves vehicle data communications bus products, including interfaces for remotely-controlling certain functions of the vehicle. The Patent-in-Suit describe some of Mr. Flick's inventions in the field. Mr. Flick has assigned all of his rights to the inventions claimed in the Patent-in-Suit to Omega.

8. Defendant sells and has offered for sale, in the United States and in this district, vehicle data communication bus products which infringe one or more

of the claims of the Patent-in-Suit.

9. On December 29, 2004, Plaintiff and Defendant entered a Release for Patent Infringement Damages and Patent License Option ("Agreement"). A true and correct copy of the agreement is attached hereto as Exhibit A.

10. Under the terms of the Agreement, Astroflex was barred from making, having made, offering for sale, or selling any products covered by the Patent-in-Suit anytime after May 31, 2005.

11. Astroflex has not exercised its option to obtain a license and does not have a license to practice under the Patent-in-Suit. Omega hereby revokes the option rights of Astroflex.

12. Omega has been forced to retain the undersigned counsel to enforce the terms of the Agreement, and is entitled to recovery of all fees and costs pursuant to the Agreement.

13. All conditions precedent to bringing this claim have been met, are excused, or have been waived.

COUNT I
Action for Infringement of the Patent-in-Suit

14. Count I is an action by Omega against Astroflex for monetary damages and injunctive relief for Astroflex's infringement of U.S. Patent No. 6,812,829 B1.

15. Omega herein restates and reincorporates into this Count the allegations of Paragraphs 1 through 13, above.

16. Upon information and belief Astroflex has made and/or offered for

sale and sold and/or distributed vehicle remote control products that infringe directly, by inducement and/or contributorily, one or more claims of the Patent-in-Suit.

17. Omega is entitled to compensatory damages and injunctive relief for Astroflex's infringing activities.

18. Upon information and belief, Astroflex lacks justifiable belief that there is no infringement or that the infringed claims are invalid. Astroflex's infringement is, therefore, willful, and Omega is entitled to an award of exemplary damages, attorneys' fees, and costs in bringing this action.

Wherefore, Plaintiff Omega prays this Honorable Court enter such preliminary and final orders and judgments as are necessary to provide Omega with the following requested relief:

- A. A preliminary and then permanent injunction enjoining Astroflex from infringing each of the Patent-in-Suit;
- B. An award of damages against Astroflex under 35 U.S.C. §284 in an amount adequate to compensate Omega for Astroflex's infringement, but in no event less than a reasonable royalty for the use made by Astroflex of the inventions set forth in the Patent-in-Suit;
- C. An award against Astroflex for exemplary damages, attorneys' fees, and costs under 35 U.S.C. § 285; and
- D. Such other relief this Court deems just and proper.

COUNT II

Action for Breach of License Agreement Against Astroflex

19. Count II is an action by Omega against Astroflex for breach of the Agreement.

20. Omega herein restates and reincorporates into this Count the allegations of Paragraphs 1 through 13, above.

21. Astroflex has breached the terms of the Agreement between Omega and Astroflex by selling products that infringe directly, by inducement and/or contributorily, one or more claims of the Patent-in-Suit, proximately causing damages to Omega.

Wherefore, Plaintiff Omega prays this Honorable Court enter such preliminary and final orders and judgments as are necessary to provide Omega with the following requested relief:

- A. A Judgment in favor of Omega for monetary damages against Astroflex;
- B. An award against Astroflex for Omega's reasonable attorneys' fees;
- C. Such other relief this Court deems just and proper.

JURY TRIAL REQUEST

Omega requests a trial by jury as to all matters so triable.

Respectfully submitted this 29th day of June, 2006.

s/Brian R. Gilchrist

Brian R. Gilchrist

Florida Bar No. 774065

bgilchrist@addmg.com

Ryan T. Santurri

Florida Bar No. 0015698

rsanturri@addmg.com

Allen, Dyer, Doppelt, Milbrath
& Gilchrist, P.A.

255 South Orange Avenue, Suite 1401

Post Office Box 3791

Orlando, FL 32802-3791

Telephone: 407-841-2330

Facsimile: 407-841-2343

Counsel for Plaintiff

Exhibit A

**RELEASE FOR PATENT INFRINGEMENT DAMAGES
AND PATENT LICENSE OPTION**

THIS AGREEMENT is made as of this _____ of December, 2004, by and between OMEGA PATENTS, LLC a limited liability corporation of Georgia, with offices at 5326 Presley Place, Douglasville, GA 30135 ("OMEGA") and its current owner, Kenneth E. Flick ("Flick"), and ASTROFLEX, INC. a corporation of Canada, with offices at 1164 Route 220 St-Elie d'Orford, Quebec, Canada JOB 2S0 ("ASTROFLEX") (collectively the "PARTIES").

WITNESSETH:

WHEREAS, OMEGA is the sole and exclusive owner of those patents identified herein as applied to vehicle remote system controls (collectively, the "Patents"), believes that the Patents are valid and enforceable, has asserted patent infringement claims against ASTROFLEX, desires to now grant a release to ASTROFLEX for claims of past alleged patent infringement damages, and desires to grant a limited patent license option to ASTROFLEX;

WHEREAS, ASTROFLEX believes that it has not infringed the Patents and/or the Patents are invalid and desires to obtain a release for claims of past patent infringement damages, agrees to cease and desist activities alleged to be infringement of the Patents, and agrees to accept the limited patent license option herein to thereby avoid conflict and legal expense;

NOW, THEREFORE, in consideration of the mutual promises and covenants herein contained, the parties hereto agree as follows:

1. OMEGA is the owner of the Patents identified as:

U.S. Letters Patent No. 5,719,551;
U.S. Letters Patent No. 6,011,460 B1;
U.S. Letters Patent No. 6,243,004 B1;
U.S. Letters Patent No. 6,249,216 B1;
U.S. Letters Patent No. 6,275,147 B1;
U.S. Letters Patent No. 6,529,124 B2;
U.S. Letters Patent No. 6,696,927 B2;
U.S. Letters Patent No. 6,756,885 B1;
U.S. Letters Patent No. 6,756,886 B2;
U.S. Letters Patent No. 6,771,167 B1;
U.S. Letters Patent No. 6,812,829 B1;
Canadian Patent No. 2,320,248;
Canadian Patent No. 2,415,023; and
European Patent No. 1,053,128.

2. OMEGA has the authority to grant a release for claims of alleged patent infringement damages of the Patents to ASTROFLEX in the licensed territory of the United States of America, Canada, Great Britain, France, Italy and Germany.

3. ASTROFLEX represents and warrants that no later than January 31, 2005, it will have ceased making or having made any further alleged infringing products, and that its entire inventory of such alleged infringing products will be fully sold off by May 31, 2005.

4. After May 31, 2005, ASTROFLEX will not make, have made, offer for sale, or sell any products allegedly covered by the Patents except in conjunction with an authorized licensee of OMEGA as long as such authorized licensee of OMEGA remains an authorized patent licensee of OMEGA, and ASTROFLEX will comply with all patent marking requirements imposed upon such licensee.

5. ASTROFLEX represents and warrants that its total prior sales of alleged infringing products through December 31, 2003 were seventeen thousand, two hundred and eighty-five (17,285) products.

6. ASTROFLEX will make no public statements, press releases or other announcements relating to the terms of or existence of this Agreement without the prior written approval of OMEGA.

7. ASTROFLEX agrees to defend, indemnify and hold OMEGA and its officers, directors, agents, and employees, harmless against all costs, expenses, and losses (including reasonable attorney fees and costs) incurred through claims of third parties against OMEGA based on the manufacture or sale of the allegedly infringing Astroflex products including, but not limited to, actions founded on product liability.

8. ASTROFLEX agrees to pay immediately upon execution of this Agreement, a first alleged damage payment of forty-three thousand, two hundred, twelve dollars and fifty cents (\$43,212.50 U.S.) based upon a discounted damage amount of two dollars and fifty cents (\$2.50) per product.

9. ASTROFLEX further agrees to pay a second alleged damage payment calculated as five dollars (\$5.00 U.S.) times the number of alleged infringing products sold from January 1, 2004 through December 31, 2004, and this amount is due by March 1, 2005.

10. ASTROFLEX further agrees to pay a third alleged damage payment calculated as five dollars (\$5.00 U.S.) times the number of alleged infringing products sold from January 1, 2005 through May 31, 2005, and this amount is due by July 1, 2005.

11. In exchange for the consideration and representations made by ASTROFLEX, OMEGA hereby grants a release for claims of patent infringement damages to ASTROFLEX.

12. OMEGA also grants to ASTROFLEX an option to obtain a non-exclusive limited patent license under the Patents for licensed products only in an integrated form, that is, meaning a remote starter or keyless entry unit including data bus operational feature(s) integrally included therein (such as illustrated in FIGS. 1 and 4 of U.S. Patent No. 6,529,124), and not individual or stand-alone data bus modules, and such other terms not inconsistent herewith as outlined in the attached Proposed Patent License Agreement at the then prevailing royalty rate(s). This option shall be unilaterally exercisable by ASTROFLEX and shall remain open until exercised in writing by ASTROFLEX prior to December 31, 2010.

13. By execution of this Agreement, ASTROFLEX does not admit infringement of any of the Patents or validity of any of the Patents. OMEGA and Flick agree that they (and any

related entity) will not use or attempt to use this Agreement as evidence that ASTROFLEX infringes or believes that it infringes any valid claim of the Patents.

14. Both OMEGA and Flick further grant a world-wide release to ASTROFLEX, its officers, employees, and agents for any claim, including patent infringement, that could have been asserted arising out of the manufacture, use, sale or offer for sale of the alleged infringing products or any other products of ASTROFLEX as of the date of this agreement, and this shall extend to every patent and patent application owned by OMEGA and/or Flick (or any related entity).

15. In the event a provision of this Agreement is held to be illegal or unenforceable, the offending provision shall be severed, with the remaining portion of this Agreement continuing in full force and effect.

16. In the event any action is brought to enforce the terms of this Agreement, the prevailing PARTY in such an action shall receive from the losing PARTY an award of the prevailing PARTY's reasonable attorneys' fees, costs, expenses, including but not limited to reasonable attorneys' fees, costs and expenses incurred after breach and prior to filing suit, during litigation and incurred on appeal.

17. This Agreement shall be governed in accordance with the laws of the State of Florida and the United States. All disputes under this Agreement shall be resolved by litigation in the courts of the State of Florida including the federal courts therein and the PARTIES all consent to the jurisdiction of such courts, agree to accept service of process by mail, and hereby waive any jurisdictional or venue defenses otherwise available to it.

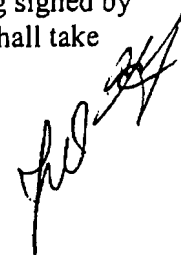
18. The provisions of the Agreement shall be binding upon and shall inure to the benefit of the PARTIES hereto, their heirs, administrators, successors and assigns.

19. Neither PARTY may assign this Agreement or the rights and obligations thereunder to any third party without the prior express written approval of the other party which shall not be unreasonably withheld.

20. No waiver by either PARTY of any default shall be deemed as a waiver of prior or subsequent default of the same of other provisions of this Agreement.

21. If any term, clause or provision hereof is held invalid or unenforceable by a court of competent jurisdiction, such invalidity shall not affect the validity or operation of any other term, clause or provision and such invalid term, clause or provision shall be deemed to be severed from the Agreement.

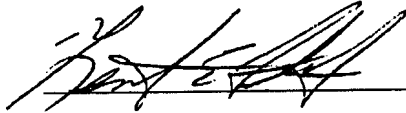
22. This Agreement constitutes the entire understanding of the PARTIES, and revokes and supersedes all prior agreements between the PARTIES and is intended as a final expression of their Agreement. It shall not be modified or amended except in writing signed by the PARTIES hereto and specifically referring to this Agreement. This Agreement shall take precedence over any other documents that may conflict with this Agreement.

A handwritten signature in black ink, appearing to be 'J. D. ...', is located in the bottom right corner of the page.

23. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same Agreement. Facsimile signatures shall be sufficient as original.

THE SIGNATORIES HAVE CAREFULLY READ THIS ENTIRE AGREEMENT AND HAVE HAD THE OPPORTUNITY TO CONSULT WITH THEIR ATTORNEYS IF DESIRED. THE SIGNATORIES FULLY UNDERSTAND THE FINAL AND BINDING EFFECT OF THIS AGREEMENT. THE ONLY PROMISES OR REPRESENTATIONS MADE TO ANY SIGNATORY ABOUT THIS AGREEMENT AND TO SIGN THIS AGREEMENT ARE CONTAINED IN THIS AGREEMENT. THE SIGNATORIES ARE SIGNING THIS AGREEMENT VOLUNTARILY.

OMEGA PATENTS, LLC

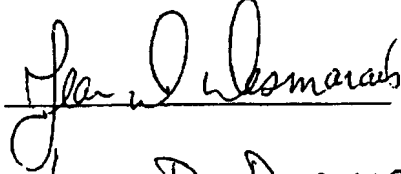


Name: KENNETH E FLICK

Title: PRES

Date: DEC 29, 2004

ASTROFLEX, INC.



Name: JEAN D DESMARAIS

Title: president

Date: Dec. 28, 2004

KENNETH E. FLICK (an individual)



Name: KENNETH E FLICK

Date: DEC 29, 2004