

JURISDICTION AND VENUE

4. This action arises under the Acts of Congress relating to patents, Title 35 U.S.C. §§ 271 *et seq.* As such, this court has subject matter jurisdiction under the provisions of Title 28 U.S.C. §§ 1331 and 1338 because this action involves federal questions of law.

5. This action includes a claim for declaratory judgment. There is an actual controversy between the parties with regard to HBI's assertion of noninfringement and invalidity of certain patents believed to be owned by Symbol. A reasonable apprehension of a suit for infringement of these patents has been created by Symbol, or those acting by or for Symbol, with respect to HBI's ability to make, use, sell or offer to sell its battery products. Accordingly, this Court has subject matter jurisdiction in accordance with 28 U.S.C. §§ 2201 and 2202.

6. Venue is proper in this judicial district pursuant to the provisions of 28 U.S.C. §§ 1391(b) and (c) and 1400(b).

FACTUAL BACKGROUND

7. Upon information and belief Defendant Symbol is the owner of U.S. Patent Nos. D473,186 (Exhibit A), issued April 15, 2003, D488,436 (Exhibit B), issued April 13, 2004, 6,730,432 (Exhibit C), issued May 4, 2004 and D503,673 (Exhibit D), issued April 5, 2005 (collectively referred to hereinafter as "the Symbol Patents").

8. HBI sells, offers to sell, and distributes in Pennsylvania certain batteries.

9. Upon information and belief, Symbol sells, offers to sell, and distributes in Pennsylvania equipment and related competing batteries, allegedly covered by the Symbol Patents.

10. On January 25, 2005, Symbol contacted HBI by letter regarding Symbol's ownership of the Symbol Patents that allegedly relate to HBI's products (Exhibit E).

11. Again on April 13, 2006, Symbol contacted HBI by letter proposing a meeting at Symbol's headquarters to discuss possible resolution of the matters discussed in the January 25, 2005 letter (Exhibit F).

12. Prior to agreeing to the meeting, Symbol initially assured HBI that Symbol was not going to file suit against HBI.

13. On May 24, 2006, as a result of these assurances made to HBI by Symbol, Symbol and HBI met to discuss possible business resolution of the issues relating to the Symbol Patents.

14. Contrary to the assurances made to HBI by Symbol, Symbol opened up the meeting by informing HBI of its IP rights, and stating that HBI was to review and negotiate a proposed license agreement before Symbol filed a complaint.

15. Symbol also stated that it "had lost some aftermarket share and [demanding a license fee] is a fair way to make up their loss." Symbol also stated that it "does not like the aftermarket pricing" of HBI.

16. Symbol's claimed infringement of the Symbol Patents by HBI is set forth provided in its June 8, 2006 letter to HBI (Exhibit G).

17. In the June 8, 2006 letter, Symbol stated therein that HBI is manufacturing and selling infringing "products that infringe Symbol's IP", and demanded that HBI cease such activity, and pay Symbol an unreasonable upfront fee to "compensate symbol for Harvard's prior sales of infringing products."

18. Symbol further stated that it "has tried to resolve this IP dispute with [Harvard] amicably", and "[i]f Harvard is unwilling to agree to the above terms, the parties would appear to be at an impasse in negotiating a resolution to this matter."

19. Based upon the foregoing paragraphs, HBI has reasonable apprehension that Symbol will improperly utilize the Symbol Patents to interfere with HBI's business. Absent declaratory and injunctive relief from the Court, HBI is likely to suffer serious and irreparable damage from Symbol's assertion of its unsupported claims, for which there is no adequate remedy at law.

COUNT I

**DECLARATORY JUDGMENT OF INVALIDITY
UNITED STATES PATENT NO. D473,186**

20. HBI repeats and re-alleges, and incorporates by reference, the foregoing paragraphs as though the same were fully set forth at length herein.

21. U.S. Patent No. D473,186 is invalid for failure to meet the conditions of patentability specified in 35 U.S.C §§ 101, 102 and/or 103 and other applicable statutory sections.

22. A valid and justiciable controversy has arisen and exists between HBI and Symbol pursuant to 28 U.S.C. § 2201. HBI desires a judicial determination and declaration of the respective rights and duties of the parties. Such a determination and declaration is necessary and appropriate at this time in order that the parties may ascertain their respective rights and duties.

COUNT II

**DECLARATORY JUDGMENT OF NONINFRINGEMENT
UNITED STATES PATENT NO. D473,186**

23. HBI repeats and re-alleges, and incorporates by reference, the foregoing paragraphs as though the same were fully set forth at length herein.

24. HBI's Customer Model HBM-8000L does not infringe any valid claim of U.S. Patent No. D473,186.

25. HBI has not directly infringed, willfully infringed, induced infringement, nor contributorily infringed any valid claim of U.S. Patent No. D473,186 pursuant to 35 U.S.C § 282.

26. A valid and justiciable controversy has arisen and exists between HBI and Symbol pursuant to 28 U.S.C. § 2201. HBI desires a judicial determination and declaration of the respective rights and duties of the parties. Such a determination and declaration is necessary and appropriate at this time in order that the parties may ascertain their respective rights and duties.

COUNT III

DECLARATORY JUDGMENT OF INVALIDITY UNITED STATES PATENT NO. D488,436

27. HBI repeats and re-alleges, and incorporates by reference, the foregoing paragraphs as though the same were fully set forth at length herein.

28. U.S. Patent No. D488,436 is invalid for failure to meet the conditions of patentability specified in 35 U.S.C §§ 101, 102 and/or 103 and other applicable statutory sections.

29. A valid and justiciable controversy has arisen and exists between HBI and Symbol pursuant to 28 U.S.C. § 2201. HBI desires a judicial determination and declaration of the respective rights and duties of the parties. Such a determination and declaration is necessary and appropriate at this time in order that the parties may ascertain their respective rights and duties.

COUNT IV

**DECLARATORY JUDGMENT OF NONINFRINGEMENT
UNITED STATES PATENT NO. D488,436**

30. HBI repeats and re-alleges, and incorporates by reference, the foregoing paragraphs as though the same were fully set forth at length herein.

31. HBI's Customer Model HBM-9000L does not infringe any valid claim of U.S. Patent No. D488,436.

32. HBI has not directly infringed, willfully infringed, induced infringement, nor contributorily infringed any valid claim of U.S. Patent No. D488,436 pursuant to 35 U.S.C § 282.

33. A valid and justiciable controversy has arisen and exists between HBI and Symbol pursuant to 28 U.S.C. § 2201. HBI desires a judicial determination and declaration of the respective rights and duties of the parties. Such a determination and declaration is necessary and appropriate at this time in order that the parties may ascertain their respective rights and duties.

COUNT V

**DECLARATORY JUDGMENT OF INVALIDITY
UNITED STATES PATENT NO. 6,730,432**

34. HBI repeats and re-alleges, and incorporates by reference, the foregoing paragraphs as though the same were fully set forth at length herein.

35. U.S. Patent No. 6,730,432 is invalid for failure to meet the conditions of patentability specified in 35 U.S.C §§ 101, 102 and/or 103, and/or failure to comply with the requirements of 35 U.S.C. § 112 and other applicable statutory sections.

36. A valid and justiciable controversy has arisen and exists between HBI and Symbol pursuant to 28 U.S.C. § 2201. HBI desires a judicial determination and declaration of the respective rights and duties of the parties. Such a determination and declaration is necessary and appropriate at this time in order that the parties may ascertain their respective rights and duties.

COUNT VI

**DECLARATORY JUDGMENT OF NONINFRINGEMENT
UNITED STATES PATENT NO. 6,730,432**

37. HBI repeats and re-alleges, and incorporates by reference, the foregoing paragraphs as though the same were fully set forth at length herein.

38. HBI's Customer Model HBM-9000L does not infringe any valid claim of U.S. Patent No. 6,730,432.

39. HBI has not directly infringed, willfully infringed, induced infringement, nor contributorily infringed any valid claim of U.S. Patent No. 6,730,432 pursuant to 35 U.S.C § 282.

40. A valid and justiciable controversy has arisen and exists between HBI and Symbol pursuant to 28 U.S.C. § 2201. HBI desires a judicial determination and declaration of the respective rights and duties of the parties. Such a determination and declaration is necessary and appropriate at this time in order that the parties may ascertain their respective rights and duties.

COUNT VII

**DECLARATORY JUDGMENT OF INVALIDITY
UNITED STATES PATENT NO. D503,673**

41. HBI repeats and re-alleges, and incorporates by reference, the foregoing paragraphs as though the same were fully set forth at length herein.

42. U.S. Patent No. D503,673 is invalid for failure to meet the conditions of patentability specified in 35 U.S.C §§ 101, 102 and/or 103 and other applicable statutory sections.

43. A valid and justiciable controversy has arisen and exists between HBI and Symbol pursuant to 28 U.S.C. § 2201. HBI desires a judicial determination and declaration of the respective rights and duties of the parties. Such a determination and declaration is necessary and appropriate at this time in order that the parties may ascertain their respective rights and duties.

COUNT VIII

**DECLARATORY JUDGMENT OF NONINFRINGEMENT
UNITED STATES PATENT NO. D503,673**

44. HBI repeats and re-alleges, and incorporates by reference, the foregoing paragraphs as though the same were fully set forth at length herein.

45. HBI's Customer Model HBM-1727L does not infringe any valid claim of U.S. Patent No. D503,673.

46. HBI has not directly infringed, willfully infringed, induced infringement, nor contributorily infringed any valid claim of U.S. Patent No. D503,673 pursuant to 35 U.S.C § 282..

47. A valid and justiciable controversy has arisen and exists between HBI and Symbol pursuant to 28 U.S.C. § 2201. HBI desires a judicial determination and declaration of the respective rights and duties of the parties. Such a determination and declaration is necessary and appropriate at this time in order that the parties may ascertain their respective rights and duties.

COUNT IX

**DECLARATORY JUDGMENT OF PATENT MISUSE
THE SYMBOL PATENTS**

48. HBI repeats and re-alleges, and incorporates by reference, the foregoing paragraphs as though the same were fully set forth at length herein.
49. Symbol has stated that it has lost market share in the aftermarket battery market.
50. Symbol also stated that it does not like the pricing used for HBI's batteries.
51. Symbol is attempting to take back its lost market share and fix the pricing of aftermarket batteries.
52. Symbol's practices are not within the scope of any valid patent right granted to Symbol.
53. Symbol's practices have an anti-competitive effect on the battery market.
54. The Symbol Patents are invalid and/or unenforceable due to patent misuse.
55. Symbol's conduct described above will cause irreparable damage to HBI's business.

COUNT X

**DECLARATORY JUDGMENT OF
COMMON LAW UNFAIR COMPETITION**

56. HBI repeats and re-alleges, and incorporates by reference, the foregoing paragraphs as though the same were fully set forth at length herein.
57. This cause of action arises under the common law.
58. HBI and Symbol are competitors in the aftermarket battery market.
59. Symbol allegations of infringement by HBI are aimed at obtaining loss market share and controlling pricing for aftermarket batteries.

60. On information and belief, Symbol's activities, including but not limited to Symbol's patent misuse, constitute unfair competition and unfair trade practices.

JURY DEMAND

61. Pursuant to Fed. R. Civ. P 38(b), HBI requests a trial by jury.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Harvard Battery, Inc. prays for relief as follows:

A. Declaratory judgment stating that:

1. Plaintiff Harvard Battery, Inc. has not directly infringed, willfully infringed, induced infringement, nor contributorily infringed any valid claim of U.S. Patent Nos. D473,186, D488,436, 6,730,432 and D503,673.

2. U.S. Patent Nos. D473,186, D488,436, 6,730,432 and D503,673 are invalid and unenforceable; and

3. Defendant Symbol Technologies, Inc., and those in active concert or participation with Defendant Symbol who receive actual notice thereof, are permanently enjoined from initiating patent infringement litigation against Plaintiff Harvard Battery, Inc., or threatening Harvard Battery, Inc. or any of its customers, dealers, licensees, subsidiaries, parents, agents, servants, or employees, or any prospective or present sellers, dealers, licensees, distributors, customers, or users of Plaintiff Harvard Battery, Inc.'s products, with patent infringement litigation based on any or all of U.S. Patent Nos. D473,186, D488,436, 6,730,432 and D503,673, or charging any of them either verbally or in writing with infringement of either or all of U.S. Patent Nos. D473,186, D488,436, 6,730,432 and D503,673.

B. A judgment awarding damages to Plaintiff Harvard Battery, Inc. for its costs, disbursements, and attorney's fees incurred in prosecuting this action, with interest, including

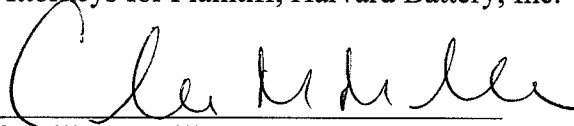
damages for an exceptional case, pursuant to 35 U.S.C. § 285, and otherwise according to law;
and

C. Such other relief as the Court may deem just, equitable and proper.

Dated: June 21, 2006

Respectfully submitted by:

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