

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS

FILED-ED-4
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CLERK
U.S. DISTRICT COURT

DOCKETED

JAN 27 2004

PARA GEAR EQUIPMENT CO. INC.,
an Illinois corporation

Plaintiff,

v.

SQUARE ONE PARACHUTES, INC.,
a California corporation, and
ANTHONY J. DOMENICO, a
California resident

Defendants.

Civil Action No. JUDGE JOHN W DARRAH

Judge

04C 0601

MAGISTRATE JUDGE
GERALDINE SOAT BROWN

COMPLAINT FOR DECLARATORY JUDGMENT

Plaintiff, Para Gear Equipment Co. Inc. (sometimes hereinafter referred to as "Para Gear") for its Complaint against Defendants, Square One Parachutes, Inc. (sometimes hereinafter referred to as "Square One") and Anthony J. Domenico (sometimes hereinafter referred to as "Domenico"), alleges as follows:

JURISDICTION

1. The Court has jurisdiction of this action pursuant to 28 U.S.C. §§1331 and 1338. This action arises under the Declaratory Judgment and Patent Laws of the United States, including 28 U.S.C. §§2201 and 2202, and 35 U.S.C. §1, et seq., as set forth below.

2. A case of actual controversy within this Court's jurisdiction exists between Plaintiff, Para Gear and Defendants, Square One and Domenico, jointly and severally, with respect to the non-infringement of U.S. Patent No. Des. 381,886 (sometimes hereinafter referred to as "886 patent")(Plaintiff's Exhibit 1) purportedly held by Square One.

1-1

3. The Court has supplemental, pendant and ancillary jurisdiction pursuant to 28 U.S.C. §1367.

VENUE

4. Venue for this action is proper in this District, pursuant to 28 U.S.C. §1391 and Illinois Statutes 735 ILCS 5/2-209. Events between the parties took place in this District, and based upon information and belief, Square One and Domenico, jointly and severally, do business within this District.

PARTIES

5. Plaintiff, Para Gear Equipment Co. Inc., is an Illinois corporation, with a place of business at 3839 W. Oakton Street, Skokie, Illinois 60076.

6. Upon information and belief, Defendant, Square One Parachutes, Inc. is a California corporation having its principal place of business at 425 W. Rider Street, Suite B-7, Perris, California 92571.

7. Upon information and belief, Defendant, Anthony J. Domenico, is an individual residing at 12650 Softwind Dr., Moreno Valley, California 92553.

8. Upon information and belief, Domenico is the registered agent of Square One, principal shareholder of Square One, is the Chief Executive Officer of Square One, and directs the operations of Square One.

FACTS

9. Wayne M. Chancellor, counsel for Square One, sent a letter dated October 13, 2003, (Plaintiff's Exhibit 2) to Para Gear in Skokie, Illinois, and charged Para Gear with infringement of the '886 patent.

10. Domenico sent an undated letter (Plaintiff's Exhibit 3) to Para Gear in Skokie, Illinois, received by Para Gear on January 5, 2004, charging Para Gear with patent infringement of the '886 patent and threatening Para Gear with a lawsuit.

11. Domenico sent a letter (Plaintiff's Exhibit 4) dated January 7, 2004, to Para Gear in Skokie, Illinois, stating that he would pursue Para Gear legally for infringement of his '886 patent.

12. The foregoing threats identified in paragraphs 9, 10, and 11 herein made by Square One and Domenico against Para Gear are groundless and were made in bad faith.

13. Para Gear has suffered and will continue to suffer financial losses by loss of sales in an amount yet to be determined as a result of the conduct of Square One and Domenico.

14. Square One and Domenico's threats have given Para Gear a reasonable apprehension of being sued for patent infringement.

**COUNT I
DOMENICO'S FRAUD ON THE PATENT AND TRADEMARK OFFICE**

15. Para Gear repeats and realleges paragraphs 1 through 14 herein and incorporate those paragraphs in this Count by reference.

16. Prior to 1994, Domenico offered for sale to Para Gear a Square One hook knife identified as Square One Part No. 20200 (sometimes hereinafter referred to as "20200 knife").

17. Photographs of the 20200 knife offered for sale to Para Gear are attached hereto and marked as Plaintiff's Exhibit 5, 6, and 7.

18. Square One catalog from 1993-1994 published in 1993 as identified in the copyright notice (Plaintiff's Exhibit 8) at page 83 (Plaintiff's Exhibit 9) shows a photograph of the 20200 knife.

19. The 20200 knife was on sale for more than one year prior to December 22, 1995, the filing date in the U.S. Patent and Trademark Office of the application for patent (Plaintiff's Exhibit 10)(sometimes hereinafter referred to as "Design Application") which resulted in the '886 patent.

20. Based upon information and belief, Domenico knew that the 20200 knife was continuously on sale from 1993.

21. Domenico signed the Design Application on December 19, 1995.

22. Domenico stated in the Design Application the following:

"I acknowledge the duty to disclose information which is material to the examination of this application in accordance with Section 1.56(a) of Title 37 of the Code of Federal Regulations.

I declare further that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful, false statements and the like so made are punishable by fine or

imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful, false statements may jeopardize the validity of the application or any patent issuing thereon."

23. Domenico, through his attorney, filed in the U.S. Patent and Trademark Office on March 18, 1996, his Information Disclosure Statement (Plaintiff's Exhibit 11) in compliance with his duty to disclose information material to the examination of the Design Application.

24. The items of information listed in the Information Disclosure Statement were:

<u>Patent No.</u>	<u>Date</u>	<u>Name</u>	<u>Country</u>
1,472,826	11/06/23	Champlin	USA (Plaintiff's Exhibit 12)
3,370,163	02/20/68	Brill	USA (Plaintiff's Exhibit 13)
4,783,867	11/15/88	Tsao	USA (Plaintiff's Exhibit 14)
4,918,775	04/24/90	Leu	USA (Plaintiff's Exhibit 15)
4,944,392	07/31/90	Hull et al.	USA (Plaintiff's Exhibit 16)
5,313,376	05/17/94	McIntosh	USA (Plaintiff's Exhibit 17)

25. The outside shape of the 20200 knife is more material to the examination of the Design Application than the items of information (Plaintiff's Exhibit 12, 13, 14, 15, 16, and 17) listed in the Information Disclosure Statement.

26. Prior to issuance of the '886 patent, Domenico did not inform the U.S. Patent and Trademark Office of the offer for sale of the 20200 knife made more than one year prior to the filing of the Design Application which resulted in the '886 patent.

27. The outside shape of the 20200 knife is identical to the outside shape of the knife which is the subject matter of the '886 patent.

28. The design of the 20200 knife was in the public domain when the Design Application was filed.

29. The design of the 20200 knife was material to the examination of the Design Application.

30. At all times during the examination of the Design Application, Domenico was aware of the construction of the 20200 knife.

31. Domenico purposefully withheld from the Patent and Trademark Office the information regarding the construction of the 20200 knife which was on sale more than one year prior to the filing date of the Design Application.

**COUNT II
PRIOR ART DISCLOSES THE PATENTED DESIGN**

32. Para Gear repeats and realleges paragraphs 1 through 31 herein and incorporates those paragraphs in this Count by reference.

33. The only difference between the 20200 knife and the patented design is that the patented design has an open interior of the handle, while the 20200 knife has two holes in the handle.

34. The construction of a knife having an open interior of the handle was well known in the art for one more year prior to the filing date of the Design Application, as is illustrated at page 1775 (Plaintiff's Exhibit 18) of McMaster-Carr Supply Company catalog published in 1990 (Plaintiff's Exhibit 19).

35. It would have been obvious for one skilled in the art to change the construction of the handle of the 20200 knife from two holes to an open interior in light of the well known construction shown in the McMaster-Carr catalog.

**COUNT III
NO INFRINGEMENT BY PARA-GEAR**

36. Para Gear repeats and realleges paragraphs 1 through 35 herein and incorporates those paragraphs in this Count by reference.

37. Para Gear has a knife identified as Para Gear Mini Captain Hook Knife (sometimes hereinafter referred to as "Para Gear knife") shown in Plaintiff's Exhibit 20, 21, 22 and 23.

38. The Para Gear knife has a different design from the patented design, in that, the Para Gear knife has an indentation adjacent to the head of the knife, while the patented design has a straight line from the handle to the head.

39. The Para Gear knife has a tab at the end of the handle, which is not included in the design.

40. An ordinary purchaser viewing the Para Gear knife and a knife made in accordance with the '886 patent would readily distinguish the difference between the knives.

PRAYER FOR RELIEF

Plaintiff, Para Gear, prays that judgment be entered in its favor against Defendants, Square One and Domenico, jointly and severally as follows:

1. Declare that Domenico willfully withheld material information from the U.S. Patent and Trademark Office during the prosecution of the application which resulted in U.S. Patent No. Des. 381,886.

2. The U.S. Patent and Trademark Office would not have issued U.S. Patent No. Des. 381,886 had it been aware of the material information withheld by Domenico, to wit, the Square One Part No. 20200 knife.

3. The design which is the subject matter of U.S. Patent No. Des. 381,886 would have been obvious to one skilled in the art more than one year prior to the date of the application.

4. U.S. Patent No. Des. 381,886 is invalid.

5. Para Gear has not infringed U.S. Patent No. Des. 381,886.

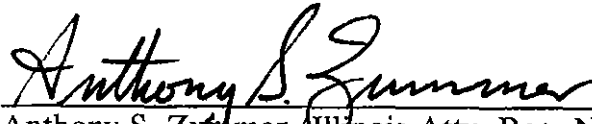
6. Para Gear Mini Captain Hook Knife does not infringe U.S. Patent No. Des. 381,886.

7. Declare that this is "an exceptional case" within the meaning of 35 U.S.C. §285.

8. Award to Para Gear its costs, disbursements, reasonable attorney's fees, damages, and treble any damages Para Gear has suffered as a result of charge of patent infringement of U.S. Patent No. Des. 381,886 by Square One and Domenico, jointly and severally.

9. Award such other further relief as the Court deems just.

Respectfully submitted,



Anthony S. Zummer (Illinois Atty. Reg. No. 3119165)

Attorney for Plaintiff

Palmatier & Zummer

39 S. LaSalle Street

Suite 1222

Chicago, IL 60603

(312) 456-0800

fax (312) 456-0804

**SEE CASE
FILE FOR
EXHIBITS**

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

(a) PLAINTIFFS

Para Gear Equipment Co. Inc.

(b) County of Residence of First Listed Plaintiff Cook
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)
Anthony S. Zummer, Palmatier & Zummer
39 S. LaSalle Street, Suite 1222
Chicago, Illinois 60603 (312) 456-0800

DEFENDANTS

Square One Parachutes, Inc.
Anthony J. Domenico

County of Residence of First Listed
(IN U.S. PLAINTIFF CASES ONLY)
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)
04C 0601
MAGISTRATE JUDGE
SERALDINE SOAT BROWN
DOCKETED
JAN 27 2004
JUDGE JOHN W. DARRAH

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
- 3 Federal Question (U.S. Government Not a Party)
- 2 U.S. Government Defendant
- 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | | | |
|---|---------------------------------------|---------------------------------------|---|---------------------------------------|---------------------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input checked="" type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input checked="" type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Inj.	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input checked="" type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act. <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendants) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609

V. ORIGIN (PLACE AN "X" IN ONE BOX ONLY)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from another district (specify)
- 6 Multidistrict Litigation
- 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write brief statement of cause. Do not cite jurisdictional statutes unless diversity.)

35 U.S.C. §1 et seq. Patent infringement and 28 U.S.C. §§2201 and 2202
Declaratory judgment

VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. This case is not a refiling of a previously dismissed action. is a refiling of case _____, previously dismissed by Judge _____

DATE: Jan 26, 2004
SIGNATURE OF ATTORNEY OF RECORD: Anthony S. Zummer

FILED-ED4
DISTRICT COURT
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2004

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS

DOCKETED

JAN 27 2004

In the Matter of Para Gear Equipment Co. Inc., an Illinois corporation
v.

Square One Parachutes, Inc., a California corporation and
Anthony J. Domenico, a California resident

JUDGE JOHN W DARRAH

Case Number:

04C 0601

APPEARANCES ARE HEREBY FILED BY THE UNDERSIGNED AS ATTORNEY(S) FOR:

Para Gear Equipment Co. Inc.

MAGISTRATE JUDGE
GERALDINE SOAT BROWN

(A)		(B)	
SIGNATURE <i>Anthony S. Zummer</i>		SIGNATURE	
NAME Anthony S. Zummer		NAME	
FIRM Palmatier & Zummer		FIRM	
STREET ADDRESS 39 S. LaSalle Street, Suite 1222		STREET ADDRESS	
CITY/STATE/ZIP Chicago, Illinois 60603		CITY/STATE/ZIP	
TELEPHONE NUMBER (312) 456-0800	FAX NUMBER (312) 456-0804	TELEPHONE NUMBER	FAX NUMBER
E-MAIL ADDRESS azummer@cs.com		E-MAIL ADDRESS	
IDENTIFICATION NUMBER (SEE ITEM 4 ON REVERSE) 3119165		IDENTIFICATION NUMBER (SEE ITEM 4 ON REVERSE)	
MEMBER OF TRIAL BAR? YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>		MEMBER OF TRIAL BAR? YES <input type="checkbox"/> NO <input type="checkbox"/>	
TRIAL ATTORNEY? YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>		TRIAL ATTORNEY? YES <input type="checkbox"/> NO <input type="checkbox"/>	
		DESIGNATED AS LOCAL COUNSEL? YES <input type="checkbox"/> NO <input type="checkbox"/>	
(C)		(D)	
SIGNATURE		SIGNATURE	
NAME		NAME	
FIRM		FIRM	
STREET ADDRESS		STREET ADDRESS	
CITY/STATE/ZIP		CITY/STATE/ZIP	
TELEPHONE NUMBER	FAX NUMBER	TELEPHONE NUMBER	FAX NUMBER
E-MAIL ADDRESS		E-MAIL ADDRESS	
IDENTIFICATION NUMBER (SEE ITEM 4 ON REVERSE)		IDENTIFICATION NUMBER (SEE ITEM 4 ON REVERSE)	
MEMBER OF TRIAL BAR? YES <input type="checkbox"/> NO <input type="checkbox"/>		MEMBER OF TRIAL BAR? YES <input type="checkbox"/> NO <input type="checkbox"/>	
TRIAL ATTORNEY? YES <input type="checkbox"/> NO <input type="checkbox"/>		TRIAL ATTORNEY? YES <input type="checkbox"/> NO <input type="checkbox"/>	
DESIGNATED AS LOCAL COUNSEL? YES <input type="checkbox"/> NO <input type="checkbox"/>		DESIGNATED AS LOCAL COUNSEL? YES <input type="checkbox"/> NO <input type="checkbox"/>	

U.S. DISTRICT COURT
 NORTHERN DISTRICT OF ILLINOIS
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