

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

THE GILLETTE COMPANY, BRAUN GMBH,
and GILLETTE COMMERCIAL OPERATIONS
NORTH AMERICA,

Plaintiffs,

v.

SKYVISION INC., DANE ROBINSON and
WATERPIK TECHNOLOGIES, INC.

Defendants.

MAGISTRATE JUDGE

Case No. 04 CV-

04 12391 NMG

RECEIPT # 6048
AMOUNT \$ 150.00
SUMMONS ISSUED B
LOCAL RULE 4.1 ✓
WAIVER FORM ✓
MCF ISSUED ✓
BY DPTY. CLK. M.P.
DATE 11/12/04

COMPLAINT FOR DECLARATORY JUDGMENT

(Jury Trial Demanded)

Plaintiffs The Gillette Company, Braun GmbH, and Gillette Commercial Operations North America (collectively "Gillette") bring this action to obtain a declaratory judgment that Gillette's manufacture, use, sale, offer for sale and importation of its Oral-B® Hummingbird™ Power Flosser and Pick, and Floss and Pick Attachments (collectively "Hummingbird") and Oral-B® ProfessionalCare™ 8000 Series, e.g., models 8850 and 8860, with an Interdental Cleaner (Pick) Attachment (collectively "ProfessionalCare 8000") do not infringe any valid claim of United States Patent Nos. 5,573,020, 5,787,908 and 5,944,033 (the "Patents-in-Suit"). This action is filed pursuant to 28 U.S.C. §§ 2201 and 2202 for the purpose of resolving an actual and justiciable controversy between Gillette and Defendants.

Parties

1. The Gillette Company is a corporation organized under the laws of the state of Delaware with its principal place of business at Prudential Tower Building, Boston,

Massachusetts 02199. Gillette sells the Hummingbird and ProfessionalCare 8000 in the United States.

2. Braun GmbH (“Braun”) is a corporation organized under the laws of Germany with its principal place of business at Frankfurter Str. 145, 61476 Kronberg, Germany. Braun was formerly known as Braun Aktiengesellschaft. Braun is a wholly owned subsidiary of The Gillette Company and is involved in manufacturing the Hummingbird and ProfessionalCare 8000 outside of the United States.

3. Gillette Commercial Operations North America (“Gillette Partnership”) is a Massachusetts General Partnership. Gillette Partnership sells the Hummingbird and ProfessionalCare 8000 within the United States. The Gillette Company is the majority partner of the Gillette Partnership.

4. On information and belief, Skyvision Inc. (“Skyvision”) is a corporation organized under the laws of the state of Arizona with its principal place of business at 2103 East Southern Avenue, Tempe, Arizona 85282.

5. On information and belief, Dana Q. Robinson (“Robinson”) is an individual residing and/or having a business at 2103 East Southern Avenue, Tempe, Arizona 85282. Robinson is the President of Skyvision.

6. On information and belief, Waterpik Technologies, Inc. (“Waterpik”) is a corporation organized under the laws of the state of California with its principal place of business at 23 Corporate Plaza, Suite 246, Newport Beach, California 92660.

Jurisdiction and Venue

7. Gillette brings this action under the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, to obtain a judicial declaration that the Patents-in-Suit, purportedly owned by

Robinson and/or Skyvision, have not been infringed by Gillette or its customers and are invalid. This action arises under the patent laws of the United States, 35 U.S.C. §§ 1 et seq., and is based upon an actual and justiciable controversy between the parties with respect to the infringement and validity of the Patents-in-Suit.

8. This Court has jurisdiction under 28 U.S.C. §§ 1331, 1338(a), 2201 and 2202. Diversity of citizenship also exists under 28 U.S.C. § 1332, and the amount in controversy exceeds \$75,000, exclusive of costs and interest.

9. Venue is proper before this court pursuant to 28 U.S.C. §§ 1391(b), (c), and 1400(b) because the claims involve federal questions of patent law and Defendants are subject to personal jurisdiction in this district.

10. On July 10, 1997, Robinson and Skyvision entered into an agreement with Braun Aktiengesellschaft and Braun, Inc. The agreement granted Braun an exclusive field of use license in United States Patent No. 5,573,020, which is one of the Patents-in-Suit. The agreement, which both Robinson and Skyvision signed, expressly states that the license agreement shall be governed by the internal laws of the Commonwealth of Massachusetts. Robinson and Skyvision have availed themselves of the benefits of the laws and courts of Massachusetts.

11. As described in greater detail herein, Robinson and Skyvision have repeatedly and on numerous occasions conducted their business of licensing the Patents-in-Suit with Gillette individuals located in Massachusetts.

12. On information and belief, Waterpik regularly conducts business in Massachusetts. Waterpik's products are widely sold in stores throughout Massachusetts, generating substantial revenue.

13. The defendants are subject to specific and/or general jurisdiction in this Court.

Defendants' Claims Against Gillette

14. In March 2004, Gillette introduced the Oral-B® Hummingbird™ Power Flosser and Pick, and Floss and Pick Attachments. The Hummingbird is a battery-powered device for cleaning between teeth. The Hummingbird may be used with either a Floss or Pick Attachment.

15. In April 2004, Gillette introduced the Oral-B® ProfessionalCare™ 8000 Series, e.g., models 8850 and 8860, with an Interdental Cleaner (Pick) Attachment. The ProfessionalCare 8000 is a power toothbrush that may be used with an Interdental Cleaner (Pick) Attachment.

16. Defendants have asserted that Gillette's Hummingbird with the Pick Attachment and ProfessionalCare 8000 with the Interdental Cleaner (Pick) Attachment infringe the Patents-in-Suit. The Patents-in-Suit are:

a. United States Patent No. 5,573,020 ("the '020 Patent"), which issued on November 12, 1996, and is entitled "Dental flossing device and method therefor." A copy of the '020 Patent is attached as Exhibit A.

b. United States Patent No. 5,787,908 ("the '908 Patent"), which issued on August 4, 1998, and is entitled "Dental flossing apparatus." A copy of the '908 Patent is attached as Exhibit B.

c. United States Patent No. 5,944,033 ("the '033 Patent"), which issued on August 31, 1999, and is entitled "Dental flossing device and method therefore." A copy of the '033 Patent is attached as Exhibit C.

17. On information and belief, Robinson and/or Skyvision own the Patents-in-Suit.

18. On information and belief, Robinson and/or Skyvision entered into an agreement with Waterpik that grants Waterpik licensing rights in the Patents-in-Suit. Waterpik has represented to Gillette that Waterpik owns rights in the Patents-in-Suit, entitling Waterpik to monetary compensation for Gillette's alleged infringement.

19. Between August and November 2004, Defendants have repeatedly asserted that Gillette's Hummingbird and ProfessionalCare 8000 infringe the Patents-in-Suit.

20. Defendants have contacted Gillette in Boston numerous times between August and November 2004 to discuss Defendants' infringement allegations.

21. During telephone conferences in August, September and October 2004, Robinson alleged that Gillette's Hummingbird and ProfessionalCare 8000 infringe the '020 patent.

22. Waterpik has asserted that Gillette's Hummingbird and ProfessionalCare 8000 are covered under Waterpik's license agreement with Robinson and Skyvision, and has demanded license fees from Gillette for the alleged infringement.

23. In October 2004, Waterpik alleged during a telephone conference that Gillette's Hummingbird and ProfessionalCare 8000 infringe the '020 patent and indicated that Waterpik was considering filing a lawsuit against Gillette.

24. In November 2004, Waterpik alleged that Gillette's Hummingbird also infringes the '908 and '033 patents.

25. Robinson, Skyvision and Waterpik have individually and in concert made actual charges that Gillette infringes the Patents-in-Suit.

26. Gillette denies that the Hummingbird and ProfessionalCare 8000 have infringed or are infringing the Patents-in-Suit. Gillette further denies that it owes any license fees to Robinson, Skyvision and/or Waterpik. Accordingly, there exists an actual and justiciable

controversy between Gillette and Defendants concerning infringement and validity of the Patents-in-Suit.

27. In sum, Defendants' conduct has caused Gillette reasonably and legitimately to fear that Defendants will bring infringement actions under the Patents-in-Suit against the Hummingbird and ProfessionalCare 8000.

Count I

(Declaratory Judgment Regarding the '020 Patent)

28. Gillette incorporates by reference and realleges Paragraphs 1 through 27 of this Complaint.

29. The manufacture, use, sale, offer to sell, and/or importation of Gillette's Hummingbird, ProfessionalCare 8000 and attachments do not infringe and have not infringed any claim of the '020 Patent. In addition, the manufacture, use, sale, offer to sell, and/or importation of Gillette's Hummingbird, ProfessionalCare 8000 and attachments do not contribute to or induce the infringement of any claim of the '020 Patent; nor has Gillette ever contributed to or induced the infringement of any such claim. Gillette, its customers, and all others have the right to manufacture, have made, use, sell, offer to sell, and import Gillette's Hummingbird, ProfessionalCare 8000 and attachments unhampered and unrestricted by Defendants.

30. The claims of the '020 Patent are invalid for failure to comply with one or more provisions of the Patent Laws of the United States of America, Title 35, United States Code, Sections 101 et seq., including without limitation Sections 102, 103 and/or 112.

31. There is an actual and justiciable controversy between Gillette and Defendants over the validity and infringement of the '020 Patent.

Count II

(Declaratory Judgment Regarding the '908 Patent)

32. Gillette incorporates by reference and realleges Paragraphs 1 through 30 of this Complaint.

33. The manufacture, use, sale, offer to sell, and/or importation of Gillette's Hummingbird, ProfessionalCare 8000 and attachments do not infringe and have not infringed any claim of the '908 Patent. In addition, the manufacture, use, sale, offer to sell, and/or importation of Gillette's Hummingbird, ProfessionalCare 8000 and attachments do not contribute to or induce the infringement of any claim of the '908 Patent; nor has Gillette ever contributed to or induced the infringement of any such claim. Gillette, its customers, and all others have the right to manufacture, have made, use, sell, offer to sell, and import Gillette's Hummingbird, ProfessionalCare 8000 and attachments unhampered and unrestricted by Defendants.

34. The claims of the '908 Patent are invalid for failure to comply with one or more provisions of the Patent Laws of the United States of America, Title 35, United States Code, Sections 101 et seq., including without limitation Sections 102, 103 and/or 112.

35. There is an actual and justiciable controversy between Gillette and Defendants over the validity and infringement of the '908 Patent.

Count III

(Declaratory Judgment Regarding the '033 Patent)

36. Gillette incorporates by reference and realleges Paragraphs 1 through 34 of this Complaint.

37. The manufacture, use, sale, offer to sell, and/or importation of Gillette's Hummingbird, ProfessionalCare 8000 and attachments do not infringe and have not infringed any claim of the '033 Patent. In addition, the manufacture, use, sale, offer to sell, and/or importation of Gillette's Hummingbird, ProfessionalCare 8000 and attachments do not contribute to or induce the infringement of any claim of the '033 Patent; nor has Gillette ever contributed to or induced the infringement of any such claim. Gillette, its customers, and all others have the right to manufacture, have made, use, sell, offer to sell, and import Gillette's Hummingbird, ProfessionalCare 8000 and attachments unhampered and unrestricted by Defendants.

38. The claims of the '033 Patent are invalid for failure to comply with one or more provisions of the Patent Laws of the United States of America, Title 35, United States Code, Sections 101 et seq., including without limitation Sections 102, 103 and/or 112.

39. There is an actual and justiciable controversy between Gillette and Defendants over the validity and infringement of the '033 Patent.

PRAYER FOR RELIEF

WHEREFORE, Gillette asks this Court to enter judgment in Gillette's favor against Defendants granting the following relief:

A. A declaration that neither Gillette nor its products infringes or has infringed any of the claims of the Patents-in-Suit under any subsection of 35 U.S.C. § 271;

B. A declaration that the claims of the Patents-in-Suit are invalid under 35 U.S.C. §§ 102, 103, and/or 112;

C. A declaration that Gillette's Hummingbird, ProfessionalCare 8000 and attachments are not covered by Waterpik's license with Robinson;

D. An order enjoining Defendants and their respective officers, partners, employees, agents, parents, subsidiaries, and affiliates from suing or threatening to sue for infringement of any of the Patents-in-Suit on the basis of the making, using, selling, offering for sale or importing of any Gillette products; and


E. Any such other and further relief, including an award of Gillette's costs of suit and attorneys' fees to the extent permitted by law, that this Court deems just and proper.

JURY DEMAND

Gillette hereby demands a trial by jury for all issues so triable.

Dated: November 12, 2004

FISH & RICHARDSON P.C.

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