

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

TRAILERMAN TRAILERS, INC.,)
)
Plaintiff,)
v.)
)
H&H TRAILER COMPANY, INC.,)
an Iowa Corporation, and CURTIS HULL,)
Individually,)
)
Defendants.)

Case No.:

JURY TRIAL DEMANDED

COMPLAINT

COMES NOW Plaintiff Trailerman Trailers, Inc., by and through its attorneys, and for its Complaint against Defendants H&H Trailer Company, Inc., and Curtis Hull, hereby states as follows:

1. This is an action for declaratory judgment seeking, among other relief, a declaration under the Federal Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, that Trailerman has not infringed upon any of the claims of U.S. Patent No. 6,589,005 (“the ’005 Patent”), and that the ’005 Patent is invalid and unenforceable.

2. Plaintiff Trailerman Trailers, Inc. (“Trailerman”) is a Missouri corporation having a principal place of business in Louisiana, Missouri.

3. Upon information and belief, Defendant H&H Trailer Company, Inc. (“H&H”) is an Iowa corporation having a principal place of business in Clarinda, Iowa.

4. Upon information and belief, Defendant Curtis Hull (“Hull”) is a resident of Clarinda, Iowa.

5. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331, 1332, and 1338, and under the Declaratory Judgment Act, 28 U.S.C. §§ 2201

and 2202, for the purpose of granting the declaratory relief sought herein. Upon information and belief, Plaintiff TrILERMAN and Defendants H&H and Hull are citizens of different states and the amount in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs.

6. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391 and 1400 because: (i) a substantial portion of the events giving rise to this action occurred in this judicial district; (ii) Defendants H&H and Hull are subject to personal jurisdiction in this judicial district; and/or (iii) H&H and Hull do business, and may be found, in this judicial district.

7. Upon information and belief, H&H is the assignee of record and owner of the '005 Patent.

8. Upon information and belief, Curtis Hull is the owner of H&H and is the sole named alleged inventor of record on the '005 Patent.

9. By letters of July 17, 2003 and August 7, 2003, H&H, by and through its attorneys, accused TrILERMAN's Hydratilt model trailer of infringing upon the claims of the '005 Patent. In its letters to TrILERMAN, H&H demanded that "infringement promptly cease."

10. An actual, substantial, and continuing justiciable controversy has arisen and exists between TrILERMAN, H&H, and Hull, as a result of H&H's and Hull's allegations and demands. TrILERMAN respectfully desires a judicial determination and declaration of the parties' respective rights and duties concerning the '005 Patent. Such a determination is necessary and appropriate at this time in order that the parties may ascertain their respective rights and duties regarding the validity, enforceability, and alleged infringement of the '005 Patent.

Count I – Declaratory Judgement Action

11. TrILERMAN realleges and incorporates each and every allegation set forth in paragraphs 1 through 10 of the Complaint as if fully set forth and restated herein.

12. TrILERMAN's Hydratilt does not infringe any valid or enforceable claims of the '005 Patent.

13. Upon information and belief, all of the claims of the '005 Patent are invalid, void and/or unenforceable, for at least one or more of the following reasons:

(a) the patentee did not invent the subject matter of the '005 Patent, nor did he make any invention or discovery, either novel, original, or otherwise, within the meaning of United States Code, Title 35;

(b) the alleged invention of the '005 Patent was made by another in this country before the patentee's alleged invention, and such other person had not abandoned, suppressed, or concealed it;

(c) in light of the prior art at the time the alleged invention was made, the subject matter as claimed in the '005 Patent would have been obvious to one of ordinary skill in the art to which the alleged invention relates and does not constitute a patentable invention;

(d) more than one year prior to the filing of the original application which matured into the '005 Patent, the alleged invention was described in printed publications in this country, and/or was in public use and on sale in this country;

(e) before the alleged invention claimed in the '005 Patent by the patentee, the alleged invention was known or used by others in this country and was described in a printed publication in this country;

(f) The alleged invention does not involve the exercise of inventive faculty but only the judgment, knowledge and skill possessed by persons having ordinary skill in the art at the time of the alleged invention thereof by the patentee; and/or

(g) The patent does not contain a written description of the alleged invention in such full, clear, concise and exact terms to enable one skilled in the art to which it is directed to make and use it, and, further, does not set forth the best mode contemplated by the alleged inventor of carrying out the alleged invention.

14. Upon information and belief, the '005 Patent is unenforceable for inequitable conduct.

15. More than one year prior to the filing date of said application, H&H and its owner Hull made, used, offered for sale, and sold the tiltbed trailer shown in, and allegedly covered by, the claims of the '005 Patent.

16. The application that matured into the '005 Patent was filed on September 1, 2000.

17. At least as early as March 22, 1999, some eighteen months prior to the filing of the application for the '005 Patent, Defendant H&H offered a manual pump/hydraulic lift tiltbed trailer for sale. On or about March 22, 1999, K&E Trailer Sales ordered a manual pump/hydraulic lift tiltbed trailer from Defendant H&H.

18. Defendant H&H manufactured a manual pump/hydraulic lift tiltbed trailer on or about August 5, 1999, and assigned it VIN # 4J6FT1826YB000016.

19. By invoice of August 9, 1999, H&H delivered trailer VIN # 4J6FT1826YB000016 to K&E Trailer Sales. K&E paid H&H for trailer VIN # 4J6FT1826YB000016 on August 27, 1999.

20. The manual pump/hydraulic lift tiltbed trailer VIN # 4J6FT1826YB000016 is identical in all material respects to the alleged invention claimed in the '005 Patent.

21. Upon information and belief, H&H offered for sale the trailer claimed in the '005 Patent at least as early as May 8, 1996.

22. Under 37 C.F.R. § 1.56, “[e]ach individual associated with the filing and prosecution of a patent application has a duty of candor and good faith in dealing with the [Patent] Office, which includes a duty to disclose to the Office all information known to that individual to be material to patentability as defined in this section.” Information is material to patentability when it is not cumulative and it “establishes, by itself or in combination with other information, a prima facie case of unpatentability of a claim.” Individuals associated with the filing or prosecution of a patent application include each inventor named in the application and each attorney or agent who prepares or prosecutes the application.

22. H&H’s offer of sale and sale of the manual pump/hydraulic lift tiltbed trailer VIN # 4J6FT1826YB000016, as well as H&H’s offer of sale and sale of numerous other tiltbed trailers, more than one year prior to the filing date of the application that matured into the '005 Patent was material to the patentability of the alleged invention claimed in the '005 Patent.

23. Upon information and belief, as the owner of H&H and named inventor on the '005 Patent, Hull knew that H&H sold the tiltbed trailer claimed in the '005 Patent more than one year prior to the filing date of the application and knew that such sales were material to the patentability of the alleged invention claimed in the '005 Patent.

24. In violation of his duty of candor to the Patent Office, Hull did not disclose his and H&H’s prior sales of the alleged invention claimed in the '005 Patent during the pendency of the application for the '005 Patent.

25. Upon information and belief, Hull intended to defraud the Patent Office by failing to disclose H&H's offer of sale and sale of tilted trailers that were material to the patentability of the alleged invention claimed in the '005 Patent.


WHEREFORE, TrILERMAN prays for judgment against H&H and Hull as follows:

- a. For a judicial declaration that the '005 Patent is invalid and/or unenforceable;
- b. For a judicial declaration that TrILERMAN has not infringed any valid and/or enforceable claims of the '005 Patent;
- c. For an order that H&H, Hull, their agents, and all persons acting in concert or participation with any of them, be enjoined from charging infringement of or instituting any action for infringement of the '005 Patent against TrILERMAN;
- d. For a declaration that this is an exceptional case under 35 U.S.C. § 285 and an award of attorneys' fees and costs in this action; and
- e. For such other and further relief as the Court deems just and equitable.

Dated: March 4, 2004

Respectfully submitted,

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ATTORNEYS FOR TRILERMAN TRAILERS, INC.