

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TENNESSEE
AT KNOXVILLE

FILED

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UNITED CUTLERY)
CORPORATION)
)
Plaintiff,)
)
v.)
)
KAI U.S.A., LTD.)
D/B/A. KERSHAW KNIVES)
)
Defendants.)

U.S. DISTRICT COURT
EASTERN DIST. TENN.

BY _____ DEP. CLERK

Case Number 3:04-cv-304
Phillips/Guyton

COMPLAINT

Comes now your Plaintiff, United Cutlery Corporation, and alleges as follows:

JURISDICTION AND VENUE

1. Plaintiff, United Cutlery Corporation, hereinafter "United", is a corporation of the State of Tennessee having its principal place of business at 1425 United Blvd, Sevierville, Tennessee, 37876.

2. Upon information and belief, the defendant, KAI U.S.A., LTD. D/B/A. KERSHAW KNIVES hereinafter "Kershaw", is a Japanese corporation having a principal place of business at 18600 SW Teton Ave, Tualatin, Oregon, 97062.

3. This is an action for a Declaratory Judgment that United States Patent No. 6,145,202 is invalid and/or unenforceable and not infringed by United. This action arises under the Patent Laws of the United States. Jurisdiction is based upon 28 U.S.C. §§ 1338(a), 2201 and 2202. Venue is proper under 28 U.S.C. § 1391.

4. Personal jurisdiction over Kershaw is conferred in that, on information and belief, products manufactured and sold by Kershaw can be, and on information and belief have been, purchased by residents of Tennessee and residents of this judicial district through Kershaw's authorized dealers located in Tennessee.

COUNT I - DECLARATORY JUDGMENT

5. Upon information an belief, Kershaw is the assignee of the '202 patent which issued on November 14, 2000. A copy of United States Patent No. 6,145,202 (hereinafter the "'202 patent'") is attached hereto as **Exhibit A**. The '202 patent is a utility patent which issued from Application Serial No. 09/096,870, which claimed priority to provisional Application Serial No. 60/077,390 filed on March 10, 1998. The '202 patent claims a mechanism to assist in opening and closing a folding knife, as described and illustrated in the drawings of the patent.

6. The plaintiff, United, manufactures and offers for sale among other things, knives, including assisted opening knives, in competition with the defendants.

7. By verbal communications, including a personal meeting on July 21, 2004, and in negotiations surrounding the settlement of a similar patent infringement litigation brought by Kershaw against another knife manufacturer, namely Camillus Cutlery Company (KAI U.S.A., LTD. D/B/A KERSHAW KNIVES v. CAMILLUS CUTLERY COMPANY, No. CV03-1427 AS, United States District Court, District of Oregon), Kershaw, through its agent, accused United of infringing the '202 patent, and threatened legal action.

8. As a result of this infringement accusation, United has a reasonable fear and apprehension that patent infringement litigation will be brought against it. An actual justiciable controversy therefore exists between the parties.

9. United has not infringed, and is not infringing, the '202 patent, either directly or contributorily, and United has not induced, and is not inducing, the infringement of the '202 patent.

10. The '202 patent is invalid and of no force and effect as to any claim thereof for failure to meet the requirements of the patent laws of the United States, including the requirements of 35 U.S.C. §§ 102, 103 and 112.

11. United reserves the right to raise a claim of inequitable conduct if the discovery and proof support such a claim.

12. The allegations of Kershaw that United has infringed the '202 patent are frivolous and this is an exceptional case within the meaning of 35 U.S.C. § 285 entitling United to an award of its attorney fees and costs of this litigation.

WHEREFORE, United Cutlery Corporation prays:

a. With respect to COUNT I against Kai U.S.A. Ltd, D/B/A Kershaw Knives:

(1) That the Court enter an Order permanently enjoining Kai U.S.A. Ltd, D/B/A Kershaw Knives, and its officers, agents, servants, subcontractors, suppliers, and employees and others controlled by Kai U.S.A. Ltd, D/B/A Kershaw Knives, from making further allegations or claims that plaintiff has infringed the '202 patent;

(2) that U.S. Patent 6,145,202 be declared invalid and/or unenforceable, and declared not infringed by any product of United;

(3) that the Court award United its attorney fees and cost of the action; and

(4) for such other and further relief as the Court may deem just and equitable.

Respectfully submitted,
UNITED CUTLERY CORPORATION



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