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FILED

12-3-03

AT 8:30 M
WILLIAM T. WALSH
CLERK

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

COMMERCIAL SEATING PRODUCTS,
INC.,

Plaintiff,

v.

DRAKE CORPORATION,

Defendant.

CIVIL ACTION NO.

03cv5774
(HAA)

COMPLAINT

Plaintiff, Commercial Seating Products, Inc. ("Commercial Seating"), by way of Complaint against Defendant Drake Corporation ("Drake") says:

PARTIES

1. Commercial Seating is a New Jersey corporation, with principal offices in Little Ferry, New Jersey.

2. Commercial Seating imports and sells, among other things, folding chairs made of synthetic polymeric materials.

3. On information and belief, Drake is a New Jersey corporation with principal offices located at 154 Tices Lane, New Brunswick, New Jersey.

4. On information and belief, Drake is in the business of marketing and or selling, among other things, folding chairs made of synthetic polymeric materials.

5. On information and belief, Drake is the assignee of and current owner of United States Patent No. 6,099,073 ("the '073 Patent").

JURISDICTION

6. This court has jurisdiction over the patent claims pursuant to 28 U.S.C. § 1338, as permitted by the Declaratory Judgement Act, 28 U.S.C. § 2201.

VENUE

7. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391(b) and (c) in that Drake is a corporation which is doing business in this district and as such is a resident of and subject to personal jurisdiction in this district.

BACKGROUND

8. By letters dated September 9, 2003, Drake alleged to at least two of Commercial Seating's customers that Commercial Seating's chairs as sold by those customers infringe certain patent rights owned by Drake which are set forth in the '073 Patent. (Exhibit A)

9. In response, counsel for Commercial Seating in a letter dated September 17, 2003, advised Drake that after review of the matter it appeared that the claims of the patent were directed toward several features not found in Commercial Seating's chair. (Exhibit B). Said letter further requested that Drake specifically identify the patent claims alleged to be infringed and features of

Commercial Seating" chair that Drake believes fall within the claims of the patent. Said letter further expressed concern that Drake had chosen to communicate directly with Commercial Seating's customers which conduct appeared to be an attempt to use the '073 patent to disrupt business relations between Commercial Seating and its customers.

10. Drake did not respond to Commercial Seating's counsel with respect to any of the matters set forth in said letter of September 17, 2003.

11. Rather than bring an action against Commercial Seating in the District of New Jersey where jurisdiction exists over both Commercial Seating and Drake, on or about November 4, 2003, Drake instituted an action alleging patent infringement against one of Commercial Seating's customers in the United States District Court for the District of Massachusetts. That action is entitled Drake Corporation v. International Events Products, LLC, and has been assigned civil action number 03cv12160GAO. (Exhibit C)

COUNT I
(Declaratory Judgment of Non-Infringement)

12. Commercial Seating and realleges each and every allegation previously set forth in this complaint as if set forth fully herein.

13. An actual controversy exists between Commercial Seating and Drake respecting claims that Commercial Seating and its customers have infringed one or more of the claims of the '073 patent.

14. Commercial Seating and its customers have not infringed any valid claim of the '073 patent.

15. Commercial Seating is entitled to a declaratory Judgment that is has not infringed any valid claim of the '073 patent.


WHEREFORE, Commercial Seating demands against Drake:

- (a) A declaration that Commercial does not infringe the '073 patent; and
- (b) Such other relief as the court deems equitable and just.

JURY DEMAND

Commercial Seating hereby demands a trial by jury on all issues so triable herein.

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DATED: December 2, 2003

CERTIFICATION PURSUANT TO L.CIV. R. 11-2

Drake Corporation has brought an action against International Events Products, LLC in U.S. District Court for the District of Massachusetts Docket No. 03-12160(GAO) alleging infringement of U.S. Patent No. 6,099,073.


DENNIS F. GLEASON

DATED: December 2, 2003

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