

02-73871

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JOHN CORBETT O'MEARA

McKECHNIE VEHICLE COMPONENTS USA, Inc.
a Delaware Corporation,

MAGISTRATE JUDGE CARLSON

Plaintiff,

v.

ORIGINAL

LACKS INDUSTRIES, INC., a
Michigan Corporation,

Defendant.

02CV73871DT

BUTZEL LONG

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COMPLAINT

McKechnie Vehicle Components USA, Inc. (hereinafter "MVC"), by its undersigned counsel, complains against Lacks Industries, Inc. ("Lacks") as follows.

1. This action arises under the patent laws of the United States, 35 U.S.C. § 146, and seeks a review of the Final Judgment of the Board of Patent Appeals and Interferences of the United States Patent and Trademark Office in Interference No. 103,836, issued August 15, 2002 (the "Board Decision"). A copy of the Board Decision is attached as Exhibit A. This decision was adverse to Plaintiff MVC, awarding priority to an invention relating to a composite vehicle wheel assembly to the assignor of Defendant Lacks, Lee Chase, and determining that Claims 24 and 44-48 of U.S. Patent application Ser. No. 08/479,658 ("the '658 application) were patentable to Chase.

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2. Review by this Court of the Board Decision is specifically provided for under 35 U.S.C. § 146, and jurisdiction and venue in this Court are also proper under 28 U.S.C. §§ 1331(a) and 1391(b).

3. Plaintiff MVC is a Delaware corporation having a principal place of business in Troy, Michigan, and is the assignee of the entire right, title, and interest in and to the invention of Jeffrey Beam relating to vehicle wheel construction as disclosed and claimed in U.S. Patent No. 5,368,370, granted November 29, 1994 ("the '370 patent").

4. Upon information and belief, Defendant Lacks is a Michigan corporation with a principal place of business in Grand Rapids, Michigan, and is the assignee of the entire right, title, and interest in and to the invention of Lee Chase relating to composite vehicle wheel disclosed and claimed in the '658 application.

5. The U.S. Patent and Trademark Office determined that the '370 patent and the '658 application claimed common subject matter with respect to composite vehicle wheels that were substantially identical inventions.

6. The U.S. Patent and Trademark Office declared an interference to exist on the common subject matter defined by the following single Count, in order to determine whether the assignor of the MVC or the assignor of Lacks was the first inventor thereof:

A composite vehicle wheel assembly comprising:
an annular rim defining a central axis and having a pair of spaced rim flanges;
a spider concentrically fixed within said rim for connecting to a rotating hub, said spider including a plurality of spokes;
an ornamental applique of a uniform material thickness overlapping said rim and said spider;
said applique having an annular outer connecting portion disposed adjacent one of said rim flanges, an annular inner connecting portion and a plurality of vent openings aligned between said spokes of said spider and positioned between said inner and outer connecting portions;
a curable adhesive of substantially uniform thickness disposed between

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said applique and said rim and said spider along overlapping surface areas; and locking means coating between said applique and said rim and said spider while said adhesive cures and for continued retention thereafter to hold said applique in place.

7. After an administrative hearing based in part on evidentiary records developed by the parties and in part on argument of the parties contained in briefs filed by their counsel, the Board of Patent Appeals and Interferences, by its Final Judgment, erroneously awarded priority of invention as to the subject matter of the Count to Lee Chase, the assignor of Defendant Lacks, and ruled that Chase is entitled to a patent with Claims 24 and 44-48 of the '658 application corresponding to the Count.

8. The assignor of Plaintiff MVC, Jeffrey Beam, and not the assignor of Defendant Lacks, Lee Chase, was the first to conceive the invention defined by the Count and, coupled with due diligence thereafter, to reduce said invention to practice.

9. The assignor of Plaintiff MVC, Jeffrey Beam, and not the assignor of Defendant Lacks, Lee Chase, was the first inventor of the subject matter of the Count and should have been awarded priority by the Board of Patent Appeals and Interferences, all to the benefit of MVC.

10. The assignor of Defendant Lacks, Lee Chase, is not entitled to a patent with Claims 24 and 44-48 corresponding to the Count, by reason of the fact that said claims are not supported by the disclosure of the '658 application as required by 35 U.S.C. § 112.

WHEREFORE, Plaintiff MVC prays for the following relief:

A. An order reversing the Final Judgment of the Board of Patent Appeals and Interferences;

B. An order awarding priority of the invention defined by the Count to Jeffrey Beam, and directing the U.S. Patent and Trademark Office to reinstate the entitlement of Beam to the '370 patent with its Claims 1-17 corresponding to the Count;

C. An order enjoining the Commissioner of Patents, pending final resolution of this action, from issuing to the assignor of Defendant Lacks, Lee Chase, a patent with Claims 24 and 44-48 corresponding to the Count; and

D. Such other and further relief as this Court may deem appropriate.

Respectfully submitted,

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Dated: September 26, 2002

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DOCUMENTS OR PAGES
THAT WERE NOT
SCANNED**