

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA
EASTERN DIVISION

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U.S. DISTRICT COURT
N.D. OF ALABAMA
pro

WELLBORN CABINET, INC.)
)
 Plaintiff,)
)
 vs.)
)
 MASCO CORPORATION)
 and Kraftmaid CABINETRY, INC.)
)
 Defendants.)

Civil Action No. _____

CV-01-BU-1478-E

Jury Trial

COMPLAINT

Plaintiff Wellborn Cabinet, Inc. (“Wellborn”) seeks a declaratory judgment of noninfringement of defendants Masco Corporation, Inc. (“Masco”) and Kraftmaid Cabinetry, Inc. (Kraftmaid)’s U.S. Patent Nos. 6,102,502 (“the ‘502 Patent”) and D429, 427 (“the ‘427 Patent”) or, in the alternative, the invalidity of ‘502 Patent and ‘427 Patent. Plaintiff also asserts federal antitrust claims against defendants.

THE PARTIES

1. Plaintiff Wellborn is an Alabama corporation with its principal place of business in Ashland, Alabama.
2. Upon information and belief, defendant Masco is a Michigan corporation having its principal place of business in Taylor, Michigan.
3. Upon information and belief, defendant Kraftmaid is an Ohio Corporation and a subsidiary of Masco having its principal place of business in Middlefield, Ohio.

JURISDICTION AND VENUE

4. This Court has federal question and diversity jurisdiction over this action in accordance with the provisions of 28 U.S.C. §§ 1331, 1332, 1338 and 2201.

5. Venue is proper in this District because Masco and Kraftmaid have transacted business here and because they are subject to personal jurisdiction in this District pursuant to 28 U.S.C. § 1391.

FACTUAL ALLEGATIONS

6. For over forty years, Wellborn has been in the business, *inter alia*, of designing and manufacturing cabinetry. Defendants, which also design and manufacture cabinetry, are competitors of plaintiff. Defendants possess market power in the cabinetry market.

7. Since the early 1950s, manufacturers have built and used what are called selling centers. Selling centers are stands used to display the manufacturer's different products. When, for example, a distributor's floor space is limited, selling centers are an essential sales tool for manufacturers.

8. In the mid- to late 1990s, companies in the cabinetry business began to build and use sales centers, particularly as the home center market developed (*e.g.*, Home Depot, Lowe's). Those companies included plaintiff, defendants and numerous others.

9. On February 20, 1998, defendants filed U.S. Application Serial No. 29/083, 919, directed to a design for a cabinetry merchandising display. In effect, defendants sought a patent on sales centers. On August 15, 2000, the application was issued as U.S. Patent No. Des. 429,427 ("the '427 Patent").

10. On October 5, 1998, defendants filed U.S. Application Serial No. 09/166,650, directed to a cabinetry merchandising unit with door display. Again, defendants sought a patent on sales centers. (The application claimed the benefit of the filing date of U.S. Provisional Application No. 60/073/320, filed February 20, 1998.) On August 15, 2000, defendants were issued U.S. Patent No. 6,102,502 (“the ‘502 Patent”).

11. In letters dated February 19, 2001 and May 4, 2001, which are attached hereto as Exhibits A and B, defendants allege that Wellborn has infringed the ‘427 Patent and ‘502 Patent, and threaten to sue Wellborn on the basis of such alleged infringement.

12. As a result of Masco and Kraftmaid’s threats, a real case and actual controversy exists within the meaning of 28 U.S.C. §§ 2201, *et seq.*

13. Defendants’ threatened use of its patents against Wellborn is but part of a pattern and practice of anticompetitive and predatory conduct which has the purpose and effect of reducing or eliminating competition in the market in which Wellborn competes.

FIRST CAUSE OF ACTION

(Noninfringement of the ‘427 Patent)

14. Wellborn realleges and incorporates the allegations in the preceding paragraphs as if fully set forth herein.

15. In letters dated February 1, 2001 and May 4, 2001, defendants allege that Wellborn has infringed the ‘427 Patent, and threaten to sue Wellborn on the basis of such alleged infringement.

16. No claim of the ‘427 Patent has been infringed by Wellborn.

SECOND CAUSE OF ACTION

(Noninfringement of the '502 Patent)

17. Wellborn realleges and incorporates the allegations in the preceding paragraphs as if fully set forth herein.

18. In letters dated February 1, 2001 and May 4, 2001, defendants allege that Wellborn has infringed the '502 Patent, and threaten to sue Wellborn on the basis of such alleged infringement.

19. No claim of the '502 Patent has been infringed by Wellborn.

THIRD CAUSE OF ACTION

(Invalidity of '427 Patent)

20. Wellborn realleges and incorporates the allegations in the preceding paragraphs as if fully set forth herein.

21. The claim of the '427 Patent is invalid under 35 U.S.C. §§ 102 and 103 because the subject matter of the claim is disclosed or taught by the prior art.

22. The claim of the '427 Patent is invalid under 35 U.S.C. § 112 because the matter claimed in the '427 Patent was not disclosed in the original filed application and was added new matter.

23. The claim of the '427 Patent is invalid under 35 U.S.C. § 112 because the claim is not enabled.

24. The claim of the '427 Patent is invalid under 35 U.S.C. § 112 for failure to comply with the written description requirement.

FOURTH CAUSE OF ACTION

(Invalidity of '502 Patent)

25. Wellborn realleges and incorporates the allegations in the preceding paragraphs as if fully set forth herein.

26. One or more claims of the '502 Patent are invalid under 35 U.S.C. §§ 102 and 103 because they are disclosed or taught by the prior art.

27. One or more claims of the '502 Patent are invalid under 35 U.S.C. § 112 because the matter claimed in the '502 Patent was not disclosed in the original filed application and was added new matter.

28. One or more claims of the '502 Patent are invalid under 35 U.S.C. § 112 because those claims are not enabled.

29. One or more claims of the '502 Patent are invalid under 35 U.S.C. § 112 for failure to comply with the written description requirement.

FIFTH CAUSE OF ACTION

(Inequitable Conduct With Respect To Patent '427)

30. Wellborn realleges and incorporates the allegations in the preceding paragraphs as if fully set forth herein.

31. During the pendency of the application that resulted in the '427 Patent, defendants were in possession of information material to patentability of the subject matter of the '427 Patent, namely, that the cabinetry merchandising unit with door display had been known or used by others in the United States or described in a printed publication before the invention thereof by the patent applicant.

32. During the pendency of the application that resulted in the '427 Patent, defendants were in possession of information material to patentability of the subject matter of the '502 Patent, namely, that the cabinetry merchandising unit with door display had been patented or described in a printed publication, or in public use or on sale in the United States, more than one year prior to the date of application for patent in the United States.

33. Defendants intentionally did not disclose information material to the patentability of the subject matter of the '427 Patent.

34. Defendants' intentional failure to disclose information material to the patentability of the subject matter of the '427 Patent constitutes inequitable conduct by defendants.

35. Defendants failed to meet their duty of candor, good faith and honesty, including the duty of disclosure pursuant to 37 CFR §1.56.

SIXTH CAUSE OF ACTION

(Inequitable Conduct With Respect To Patent '502)

36. Wellborn realleges and incorporates the allegations in the preceding paragraphs as if fully set forth herein.

37. During the pendency of the application that resulted in the '502 Patent, defendants were in possession of information material to patentability of the subject matter of the '502 Patent, namely, that the cabinetry merchandising display had been known or used by others in the United States or described in a printed publication before the invention thereof by the patent applicant.

38. During the pendency of the application that resulted in the '502 Patent, defendants were in possession of information material to patentability of the subject matter of the '502 Patent, namely, that the cabinetry merchandising display had been patented or described in a printed

publication, or in public use or on sale in the United States, more than one year prior to the date of application for patent in the United States.

39. Defendants intentionally did not disclose information material to the patentability of the subject matter of the '502 Patent.

40. Defendants' intentional failure to disclose information material to the patentability of the subject matter of the '502 Patent constitutes inequitable conduct by defendants.

41. Defendants failed to meet their duty of candor, good faith and honesty, including the duty of disclosure pursuant to 37 CFR § 1.56.

SEVENTH CAUSE OF ACTION

(Sherman Act Section Two Violation)

42. Wellborn realleges and incorporates the allegations in the preceding paragraphs as if fully set forth herein.

43. Plaintiff and defendants compete in the same geographic and product market.

44. Defendants possess market power in the relevant market.

45. Defendants have engaged in anticompetitive conduct by, *inter alia*, misusing their patents against Wellborn for the purpose of reducing or eliminating competition in the relevant market.

46. Defendants' anticompetitive conduct violates Section Two of the Sherman Act.

WHEREFORE, Wellborn prays:

- a. For an Order declaring that Wellborn infringed no claims of the '427 Patent;
- b. For an Order declaring that Wellborn infringed no claim of the '502 Patent;

- c. For an Order declaring one or more claims of the '427 Patent invalid pursuant to 35 U.S.C. §§ 102, 103 or 112;
- d. For an Order declaring one or more claims of the '502 Patent invalid pursuant to 35 U.S.C. §§ 102, 103 or 112;
- e. For an Order declaring the claims of the '427 Patent unenforceable due to inequitable conduct under 37 CFR § 1.56;
- f. For an Order declaring the claim of the '502 Patent unenforceable due to inequitable conduct under 37 CFR § 1.56;
- g. A finding that defendants have violated Section Two of the Sherman Act;
- h. An award of damages, reasonable attorneys' fees and an assessment of costs in prosecuting this action against defendants; and
- i. For such other and further relief as this Court may deem just and proper.

Plaintiff demands a jury to determine all issues of fact.

Respectfully submitted,



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