

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

GERBER SCIENTIFIC
INTERNATIONAL, INC.,

Plaintiff,

-against-

ROLAND DGA CORPORATION, and
ROLAND DG CORPORATION,

Defendants.

CIVIL ACTION NO.
3:06-cv-02024-CFD

**SECOND AMENDED COMPLAINT FOR INJUNCTIVE RELIEF AND
DAMAGES FOR PATENT INFRINGEMENT (35 U.S.C. §§ 271 and 281)**

The plaintiff, Gerber Scientific International, Inc. ("Gerber Scientific"), for its complaint against the defendants Roland DGA Corporation ("Roland DGA"), and Roland DG Corporation ("Roland DG"), alleges as follows:

NATURE OF THE CASE

1. This is an action seeking injunctive relief and damages for patent infringement arising from violations of the Patent Act of the United States, more particularly 35 U.S.C. §§ 271 and 281.

JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1331 (federal question), and 28 U.S.C. § 1338 (patent, trademark and copyright).

3. Venue is proper in the District of Connecticut pursuant to 28 U.S.C. §§ 1391(b) and (c)).

THE PARTIES

4. Gerber Scientific is and was at all relevant times a corporation organized and existing under the laws of the State of Connecticut, with offices at 83 Gerber Road West, South Windsor, Connecticut 06074.

5. Gerber Scientific is a leader in providing innovative end-to-end customer solutions to the world's sign making and specialty graphics, ophthalmic lens processing, and apparel and flexible materials industries.

6. Upon information and belief, the defendant Roland DGA is and was at all relevant times a corporation organized and existing under the laws of the State of California, with offices at 15363 Barranca Parkway, Irvine, California 92618.

7. Upon information and belief, Roland DGA is the U.S. based marketing, distribution and sales affiliate of the defendant Roland DG Corporation.

8. Upon information and belief, Roland DG is and was at all relevant times a corporation organized and existing under the laws of Japan, with offices at 1-6-4 Shinmiyakoda, Kita-ku, Hamamatsu-shi, Shizuoka-ken, 431-2103 Japan.

9. Upon information and belief, Roland DG is the manufacturer of sign, graphic arts, fine art, photography, engraving, and 3D modeling technology.

10. Upon information and belief, the defendants do business within this judicial district.

FACTS COMMON TO ALL CAUSES OF ACTION

11. Gerber Scientific strives to develop unique systems that assist the creative process, thereby dramatically shortening the product development cycle.

12. These innovative products drive new technology, lower costs, and are unmatched in quality, features, service and benefits, thereby enabling Gerber Scientific's customers to compete effectively in their markets.

Gerber Scientific's '135 Patent

13. One such innovation is the subject of Gerber Scientific's U.S. Patent No. 5,537,135 ("'135 Patent"), which issued on July 16, 1996, and is for a method and apparatus for preparing graphic products utilizing a printer to print on sheet material and a cutter to cut the sheet material. A copy of the '135 Patent is attached as Exhibit 1.

14. A reexamination certificate for the '135 patent issued on May 2, 2006. A copy of the reexamination certificate is attached as Exhibit 2.

15. The '135 patent was duly and legally assigned to Gerber Scientific, its current owner.

The Defendants' Infringement of the '135 Patent

16. The defendants' computer hardware and software for the "print/cut" production of signs and other durable graphics embodies the subject matter protected by the '135 Patent.

17. Gerber Scientific offered to negotiate the terms of a license under the '135 Patent with Roland DGA.

18. Roland DGA refused to negotiate a license or discontinue its importation, offering for sale and/or sale of the aforementioned products.

19. By this action, Gerber Scientific seeks to enjoin the defendants, and those acting in concert and participation with them from infringing, contributing to the infringement of, and inducing others to infringe the '135 Patent.

20. Gerber Scientific further seeks monetary damages for the injury incurred as a result of the defendants' activities.

**GERBER SCIENTIFIC'S CLAIM FOR PATENT
INFRINGEMENT PURSUANT TO 35 U.S.C. §§ 271
AND 281 SEEKING INJUNCTIVE AND MONETARY RELIEF**

21. Gerber Scientific realleges paragraphs 1 through 20 as if fully set forth herein.

22. The defendants have and are infringing the '135 Patent by manufacturing, importing, offering for sale and/or selling computer hardware and software for the "print/cut" production of signs and other durable graphics which embody the subject matter of the patented invention of the '135 Patent, in the District of Connecticut and elsewhere in the United States, in violation of the Patent Laws of the United States.

23. The defendants have actual notice of Gerber Scientific's patent rights.

24. Upon information and belief, the defendants have continued to commit acts of infringement of the '135 Patent, despite notice of Gerber Scientific's rights under the '135 Patent, within the District of Connecticut and elsewhere in the United States, and will continue to do so unless enjoined by this Court.

25. Upon information and belief, despite knowledge of Gerber Scientific's rights under the '135 Patent, the defendants have continued to actively contribute to and induce the infringement of the '135 Patent within the District of Connecticut and elsewhere in the United States and will continue to do so unless enjoined by this Court.

26. Gerber Scientific does not have an adequate remedy at law.

27. Upon information and belief, the defendants' direct and contributory infringement, and active inducement of infringement is willful, intentional and deliberate, and has deprived Gerber Scientific of sales and profits which lawfully belong to it and which it otherwise would have made.

28. On account of the defendants' activities in this State, County and District of Connecticut, and throughout the United States, Gerber Scientific has been injured in an amount not yet ascertained, but believed to be in excess of one million dollars (\$1,000,000.00).

29. This is an exceptional case within the provisions of 35 U.S.C. § 285, and Gerber is therefore entitled to the recovery of its attorneys' fees upon prevailing in this action.

WHEREFORE, Gerber Scientific demands judgment:

a. finding that the defendants have infringed, contributed to the infringement of, and induced others to infringe the '135 Patent;

b. preliminarily and permanently enjoining and restraining the defendants, their agents, servants, employees,

successors and assigns, and all those acting in concert or participation with them, from:

(i) manufacturing, producing, distributing, importing, purchasing or selling computer hardware and software for the "print/cut" production of signs and other durable graphics embodying the subject matter of the invention of the '135 Patent;

(ii) engaging in any other activity constituting an infringement of the '135 Patent;

(iii) inducing, contributing to, assisting, aiding, or abetting any other person or business entity in engaging in or performing any of the activities referred to herein;

c. directing that the defendants, at their own expense, recall all computer hardware and software for the "print/cut" production of signs and other durable graphics that embodies the inventions of the claims of the '135 Patent which were manufactured, distributed, sold or shipped by them, and to reimburse their customers from whom said merchandise was recalled;

d. directing that the defendants deliver to Gerber Scientific's attorneys or representatives for destruction all products, molds, plates, dies and any other materials in their possession or under their control which embody the inventions of the claims of the '135 Patent;

e. directing that the defendants file with the Court and serve on Gerber Scientific's counsel a report in writing and under oath setting forth in detail the manner in which they have complied with any temporary restraining order, or preliminary or permanent injunction entered herein within thirty (30) days of receipt of service of any such order or injunction;

f. directing that the defendants account to Gerber Scientific for actual damages suffered by it, including its lost sales as a result of the infringement, contributory infringement, and/or the active inducement of infringement of the '135 Patent, directing that such damages be trebled because of the willful and deliberate nature and character of the infringement, together with an assessment of interest, and awarding Gerber Scientific judgment in that amount against the defendants;

g. directing that the defendants account to Gerber Scientific for their unjustly received profits resulting from infringement of the '135 Patent;

h. for an assessment of costs, interest, and attorneys' fees incurred by Gerber Scientific; and


i. for such other and further relief as the Court deems just and proper.

Demand for Jury Trial

Gerber Scientific demands a trial by jury on all issues so triable.

Dated: July 21, 2009
New York, NY

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CERTIFICATION OF ELECTRONIC FILING

I hereby certify that on March 9, 2010, a copy of the foregoing was filed electronically and served by mail on anyone unable to accept electronic filing. Notice of this filing will be sent by e-mail to all parties by operation of the Court's electronic filing system or by mail to anyone unable to accept electronic filing as indicated on the Notice of Electronic Filing. Parties may access this filing through the Court's CM/ECF System.

/s/ Nicholas A. Pisarsky