

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
ST. JOSEPH DIVISION**

GRAY MANUFACTURING COMPANY, INC.,))	
)	
Plaintiff,))	
)	
vs.))	Case No. 5:09-cv-06024-HFS
)	
STERTIL B.V., and))	JURY TRIAL DEMANDED
)	
STERTIL-KONI U.S.A., INC.,))	
)	
Defendants.))	

FIRST-AMENDED COMPLAINT

Plaintiff, Gray Manufacturing Company, Inc., by and through its counsel, for its First-Amended Complaint against Defendants Stertil B.V. and Stertil-Koni U.S.A., Inc, states and alleges as follows:

Type of Action:

1. This action is brought under the patent laws of the United States, Title 35, United States Code, 35 U.S.C. §§ 100, *et seq.*

2. Gray Manufacturing Company, Inc. (“Gray Manufacturing”) is the owner of certain patents covering wireless portable lift systems used in the automotive, truck, heavy-duty truck, and service vehicle industries, upon which Defendant Stertil B.V. and its subsidiary Defendant Stertil-Koni U.S.A., Inc. (“Stertil-Koni”) are infringing.

Parties:

3. Gray Manufacturing is a family-owned, Missouri corporation with its principal place of business located at 3501 S. Leonard Road, St. Joseph, Missouri. Gray Manufacturing is in the business of designing, manufacturing, marketing, selling, and servicing professional shop

service equipment, including jacks and lifting equipment for the automotive, truck, heavy-duty truck, and service vehicle industries. Prior to October 1, 2006, Gray Manufacturing was named Gray Automotive Products Co.

4. Defendant Stertil B.V. is an alien corporation located at Westkern 3, 9288 CA, P.O. Box 23, 9288 ZG, Kootstertille (The Netherlands). Stertil B.V. is in the business of manufacturing, distributing, exporting, marketing, offering for sale, and selling commercial vehicle lifts for the automotive industry, including but not limited to, the ST 1073 and ST 1082 Wireless Mobile Column Lifts which infringe on the patents of Gray Manufacturing.

5. Defendant Stertil-Koni is a Maryland corporation located at 200 Log Canoe Circle, Stevensville, Maryland 21666, and is a subsidiary of Defendant Stertil B.V. Defendant Stertil-Koni is in the business of importing, warehousing, marketing, offering for sale, and selling commercial vehicle lifts for the automotive industry in North America, including but not limited to, the Models ST 1073 and ST 1082 Wireless Mobile Column Lifts which infringe on the patents of Gray Manufacturing.

6. Defendants were acting in concert at all times relevant herein with objectives that included infringing upon the subject patents duly and lawfully owned by Gray Manufacturing such that the act or omission of one of the Defendants is the act or omission of the other.

Jurisdiction and Venue:

7. This Court has subject-matter jurisdiction under 28 U.S.C. § 1338(a).

8. This Court has personal jurisdiction of the parties and venue is proper in this District under 28 U.S.C. § 1391(b)-(d) and § 1400(b). Defendants engage in business in Missouri, in this District, and in the St. Joseph Division, including but not limited to, by offering to sell and selling their products therein.

General Allegations:

9. United States Patent No. 6,634,461 (hereinafter the “’461 Patent”), entitled “Coordinated Lift System,” was duly and legally issued by the United States Patent and Trademark Office (“the Patent Office”) on October 21, 2003.

10. U.S. patent application Serial No. 10/166,134, which was filed June 10, 2002, matured into the ‘461 Patent.

11. Gray Manufacturing owns all right, title and interest in and to the ‘461 Patent.

12. A true and accurate copy of the ‘461 Patent is attached hereto as **Exhibit A** and made a part hereof by reference as though fully set forth herein.

13. Gray Manufacturing, on August 4, 2005, filed a Request for Reissue of its ‘461 Patent in which Gray Manufacturing sought Patent Office review of the validity of the claims of the ‘461 patent in view of additional prior art of which Gray Manufacturing recently had become aware.

14. On August 24, 2010 the Patent Office issued to Gray Manufacturing Reissued Patent No. RE41,554 which sustained the validity of claims 16, 19, 21, 22, 23, 24, 25, 27, 28, 30, 44, 46, 47, 48, and 49 of the ‘461 Patent with amendments.

15. A true and accurate copy of Reissued Patent No. RE41,554 (hereinafter the “’554 Reissue Patent”) is attached hereto as **Exhibit B** and made a part hereof by reference as though fully set forth herein.

16. United States Patent No. 7,014,012 (hereinafter the “’012 Patent”), also entitled “Coordinated Lift System,” was duly and legally issued by the Patent Office on March 21, 2006.

17. U.S. patent application Serial No. 10/634,457, which was filed on August 5, 2003, matured into the ‘012 Patent.

18. Gray Manufacturing owns all right, title and interest in and to the '012 Patent.

19. A true and accurate copy of the '012 Patent is attached hereto as **Exhibit C** and made a part hereof by reference as though fully set forth herein.

20. Gray Manufacturing has designed and is now actively engaged in the manufacturing, marketing and sale of products covered by the '554 Reissue and '012 Patents, including the Gray Manufacturing Model WPLS-160 Wireless Portable Lift System, throughout the United States and North America.

21. Defendants are and have been aware of Gray Manufacturing's patents since at least 2004, have in the past acknowledged these rights, and have even sought to obtain protection themselves under these patents through a license to practice Gray Manufacturing's patents.

22. Beginning on November 26, 2004, Steril B.V. contacted Gray Manufacturing to congratulate it regarding the development of its WPLS-160 Wireless Portable Lift System and to request that Gray Manufacturing grant Steril B.V. a license to manufacture and sell a wireless portable lift system covered by the '461 Patent.

23. On December 22, 2004, and again on April 4, 2005, Gray Manufacturing declined Steril B.V.'s request for a license under the '461 Patent, and further advised that Gray Manufacturing owns other pending patent applications relating to wireless lifting devices which would issue from the Patent Office; *i.e.*, the '012 Patent.

24. On May 23, 2005, Defendant Steril B.V. again contacted Gray Manufacturing by letter and threatened to contest Gray Manufacturing's patent rights should it not provide Steril B.V. with the requested license agreement, on the basis that a purported prior art reference identified in Hopperus-Buma Int'l Patent Application WO 92/19.527, rendered the subject matter of Gray Manufacturing's patent rights obvious.

25. On June 23, 2005, Gray Manufacturing requested a copy of this purported prior art reference from Steril B.V., and upon receiving the Hopperus-Buma reference, promptly provided it to the Patent Office for consideration on the then-pending '012 Patent.

26. On July 28, 2005, Steril B.V. again contacted Gray Manufacturing by letter, stating “[t]he intention is that our companies can together enjoy the benefits of the protection under your patent(s), linked together through a license agreement,” but further threatening “if a response is not received on or before August 15, 2005, we have been advised to seriously consider filing a request for re-examination of the US patent 6.634.461.”

27. A true and accurate copy of this July 28, 2005 letter is attached hereto as **Exhibit D** and made a part hereof by reference as though fully set forth herein.

28. On March 21, 2006, the Patent Office issued the '012 Patent after fully considering the Hopperus-Buma reference.

29. On May 4, 2006, Steril B.V. filed a request for re-examination of the '461 Patent. The request did not present any materials which reveal any new prior art of any significance. That re-examination of the '461 is currently pending having been combined with the Gray Manufacturing Reissue proceeding.

30. On October 18, 2006, the Gray Manufacturing Reissue proceeding and the Steril re-examination proceeding were merged into a single proceeding before the Patent Office.

31. On February 23, 2009, Steril-Koni wrote a letter to Gray Manufacturing advising that “Steril-Koni plans to introduce a wireless lift device in the near future in the North American market” and again inquired whether Gray Manufacturing “is interested in pursuing a cooperative venture regarding U.S. Patent Nos. 6,634,461 and 7,014,012.”

32. By letter dated February 23, 2009, Gray Manufacturing again declined Defendants' request for a license to practice its patents and advised Defendants that it would vigorously enforce its patent rights.

33. On February 23, 2009, Defendants issued a press release stating that they are offering fully wireless mobile lifts in the United States and North America for immediate sale. Those wireless mobile lifts infringe upon Gray Manufacturing's patents.

34. Defendants are also actively marketing their infringing products on their website and therein list their sales representatives authorized to sell the infringing products in Missouri, in this District, and in the St. Joseph Division.

35. Defendants, directly and through their authorized representatives, have offered to sell the infringing products in Missouri, in this District, and in the St. Joseph Division.

36. On August 24, 2010, the Patent Office concluded the combined reissue and re-examination of the '461 and issued to Gray Manufacturing Reissued Patent No. RE41,554 which sustained the validity of claims 16, 19, 21, 22, 23, 24, 25, 27, 28, 30, 44, 46, 47, 48, and 49 of the '461 Patent with amendments.

37. Gray Manufacturing incorporates by reference as though fully set forth herein, ¶¶ 1 through 36 in each and every count hereinafter set forth.

Liability:

COUNT I

Infringement of the '554 Reissue Patent against both Defendants

COMES NOW Gray Manufacturing, and for its first cause of action against Defendants, states and alleges as follows:

38. Defendants, without authority to do so, have infringed and continue to infringe on the '554 Reissue Patent in violation of 35 U.S.C. § 271 by making, using, offering to sell, and

selling wireless mobile column lifts. The infringement is active and ongoing, and occurring within and outside of this judicial District.

39. Defendants are aware of their infringement, but nevertheless continue to infringe on the '554 Reissue Patent.

40. Defendants' infringement of the '554 Reissue Patent, upon information and belief, has been willful and in conscious disregard of Gray Manufacturing's rights.

41. As a direct and proximate result of Defendants' infringement of the '554 Reissue, Gray Manufacturing has been damaged and is entitled to recover damages from Defendants under 35 U.S.C. § 284.

42. Gray Manufacturing does not have an adequate remedy at law. It is now, and will in the future be, irreparably harmed and damaged by Defendants' infringement unless this Court enjoins Defendants from continuing their infringement under 35 U.S.C. § 283.

COUNT II
Infringement of the '012 Patent against both Defendants

COMES NOW Gray Manufacturing, and for its first cause of action against Defendants, states and alleges as follows:

43. Defendants, without authority to do so, have infringed and continue to infringe on the '012 Patent in violation of 35 U.S.C. § 271 by making, using, offering to sell, and selling wireless mobile column lifts. The infringement is active and ongoing, and occurring within and outside of this judicial District.

44. Defendants are aware of their infringement but nevertheless continue to infringe on the '012 Patent.

45. Defendants' infringement of the '012 Patent, upon information and belief, has been willful and in conscious disregard of Gray Manufacturing's rights.

46. As a direct and proximate result of Defendants' infringement of the '012 Patent, Gray Manufacturing has been damaged and is entitled to recover damages from Defendants under 35 U.S.C. § 284.

47. Gray Manufacturing does not have an adequate remedy at law. It is now, and will in the future be, irreparably harmed and damaged by Defendants' infringement unless this Court enjoins Defendants from continuing their infringement under 35 U.S.C. § 283.

Prayer for Relief:

WHEREFORE, Plaintiff Gray Manufacturing prays for the following judgments and relief against Defendants:

(a) Judgment that Defendants Steril B.V. and Steril-Koni have infringed upon United States Patent Nos. RE41,554 and 7,014,012;

(b) Judgment under 35 U.S.C. § 283 and Fed. R. Civ. P. 65(d), enjoining Defendants Steril B.V. and Steril-Koni and all those in active concert with them from infringing upon United States Patent Nos. RE41,554 and 7,014,012;

(c) Judgment that Defendants Steril B.V. and Steril-Koni be required to account for their profits from infringement of Gray Manufacturing's patents;

(d) Judgment against Defendants Steril B.V. and Steril-Koni for damages adequate to compensate Gray Manufacturing for Defendants' infringement under 35 U.S.C. § 284, together with pre-judgment and post-judgment interest;

(e) Judgment for treble damages against Defendants Steril B.V. and Steril-Koni under 35 U.S.C. § 284;

(f) Judgment for Gray Manufacturing's costs, expenses and reasonable attorneys' fees against Defendants Steril B.V. and Steril-Koni under 35 U.S.C. §§ 284 and 285; and

(g) Judgment for such other relief as the Court deems just and proper under the circumstances.

Jury Demand:

Plaintiff demands trial by jury of all issues so triable.

Dated: August 31, 2010

Respectfully submitted,

POLSINELLI SHUGHART PC

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