

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

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Jodi A. Schwendimann, f/k/a)	Civil No. 08-162 (ADM/JSM)
Jodi A. Dalvey,)	
	Plaintiff,)	
vs.)	
)	
Arkwright Advanced Coating, Inc., and)	AMENDED COMPLAINT
Oce Imaging Supplies, Inc., f/k/a)	(PATENT INFRINGEMENT)
Arkwright, Inc.,)	JURY TRIAL DEMANDED
)	
	Defendants.)	
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Plaintiff Jodi A. Schwendimann, f/k/a Jodi A. Dalvey (“Plaintiff”), for her Complaint against Defendants Arkwright Advanced Coating, Inc. (“AAC”) and Oce Imaging Supplies, Inc., f/k/a Arkwright, Inc., (“Oce”) (collectively, “Defendants”), states and alleges as follows:

THE PARTIES

1. Plaintiff is an individual and resident of Hennepin County, Minnesota. She owns and operates a small business known as Cooler Concepts. Plaintiff, through Cooler Concepts, is in the business of manufacturing and selling specialty paper products, including inkjet image transfer paper or sheets.

2. Upon information and belief, Defendant AAC is a Virginia corporation with its principal place of business located at 538 Main Street, Fiskeville, RI, 02823. In or about July of 2008, AAC purchased the majority of the assets of Arkwright, Inc., and is currently engaged in the business of producing coating film and paper, including photo papers, self adhesive papers, inkjet films, and inkjet image transfer papers or sheets.

3. Upon information and belief, at the time AAC purchased the assets of Arkwright, Inc., it was known as Sihl, Inc. However, Sihl, Inc. subsequently changed its name to AAC in or around August of 2008.

4. Upon information and belief, Defendant Oce is a Rhode Island corporation with its principal place of business located at 100 Oakview Drive, Trumbull, CT 06611. Defendant Oce was formerly known as Arkwright, Inc., but changed its name on or about September 8, 2008 after the majority of its assets were purchased by AAC.

5. Upon information and belief, Defendant Oce is a wholly owned subsidiary of Oce, N.V., a Dutch international holding company.

JURISDICTION AND VENUE

6. This is an action for patent infringement arising under the Patent Act of the United States, 35 U.S.C. § 1 *et seq.*, and for declaratory judgment under the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*

7. This Court has original and exclusive jurisdiction of this action under 28 U.S.C. §§ 1331 and 1338(a). This Court also has original jurisdiction under 28 U.S.C. § 1332 because the amount in controversy exceeds \$75,000.00 and this action is between citizens of different states. This Court has supplemental jurisdiction under § 1367(a)

8. Defendants are selling or have sold products within the State of Minnesota and this judicial district which infringe patents owned by Plaintiff, thus Defendants are subject to the jurisdiction of this Court.

9. Venue is proper in this district under 28 U.S.C. § 1391 (b) and (c), and 28 U.S.C. § 1400 (a) and (b) in that Defendant is subject to personal jurisdiction in this district.

FACTUAL ALLEGATIONS

I. PLAINTIFF'S PATENTS

10. Plaintiff owns U.S. Patent No. RE41,623 (the "'623 Reissue Patent") issued on or about September 7, 2010. The '623 Reissue Patent is a reissue of U.S. Patent No. 6,884,311 (the "'311 Patent") entitled "Method of Image Transfer On A Colored Base", which was filed on April 3, 2000 and issued to Plaintiff on April 26, 2005. Copies of the '623 Reissue Patent and the '311 Patent are attached hereto as Exhibits A and B.

11. Plaintiff owns U.S. Patent No. 7,749,581 entitled "Image Transfer on a Colored Base," issued July 6, 2010 (the "'581 Patent"). A copy of the '581 Patent is attached hereto as Exhibit C.

12. Plaintiff owns U.S. Patent No. 7,754,042 entitled "Method of Image Transfer on a Colored Base," issued July 13, 2010 (the "'042 Patent"). A copy of the '042 Patent is attached hereto as Exhibit D.

13. Plaintiff owns U.S. Patent No. 7,766,475 entitled "Image Transfer on a Colored Base" issued August 3, 2010 (the "'475 Patent"). A copy of the '475 Patent is attached hereto as Exhibit E.

14. Plaintiff owns U.S. Patent No. 7,771,554 entitled “Image Transfer on a Colored Base” issued August 10, 2010 (the “‘554 Patent”). A copy of the ‘554 Patent is attached hereto as Exhibit F

15. Plaintiff owns U.S. Patent No. 7,824,748 entitled “Image Transfer on a Colored Base” issued November 2, 2010 (the “‘748 Patent”). A copy of the ‘748 Patent is attached hereto as Exhibit G.

16. Prior to the embodiments of the inventions described and claimed in Plaintiff’s above patents, the method for transferring an image onto a colored base and to an article comprising a dark base and an image with a light background on the base was a multiple step process.

17. The image transfer sheet inventions described and claimed in Plaintiff’s above patents reduce the number of steps required to transfer an image onto a colored base and to an article comprising a dark base and an image with a light background on the base.

18. Plaintiff has been practicing the inventions described and claimed in her patents through Cooler Concepts, which has an exclusive implied license to Plaintiff’s patents, by manufacturing and selling these innovative image transfer sheets.

19. One of the uses of the image transfer sheets is to allow customers to print an image from a consumer or commercial printer, place the paper on a “base” (such as a T-shirt) and then, using heat, transfer the printed image to the base. This process is a modern “iron-on,” allowing users to, among other things, print an image from their home printer, and transfer it to a T-shirt by ironing over the transfer paper.

20. Plaintiff's patented image transfer sheets and process have many other uses in the consumer, commercial, and industry markets.

II. DEFENDANTS' INFRINGING ACTIVITIES

21. Until approximately July of 2008, Arkwright, Inc. made, used, sold, and/or offered for sale image transfer sheets, and potentially other products, which infringed at least claim 6 of the '311 Patent, including, but not limited to Arkwright's Multi-Surface Transfer Paper (Arkwright Stock No. 754-00) and Arkwright's Fashion Transfer for Dark Colored Fabrics (Arkwright Stock No. 889.55).

22. Claim 6 of the '311 Patent was subsequently reissued in substantially identical form as claim 6 of the '623 Reissue Patent.

23. In or about July of 2008, Arkwright, Inc. sold the majority of its assets to AAC. Subsequently, AAC continued to make, use, sell and/or offer for sale the infringing products previously made, used, sold, and/or offered for sale by Arkwright, Inc.

24. Subsequent to the asset sale, Arkwright, Inc. changed its name to Oce.

25. Upon information and belief, Oce, and subsequently AAC had actual knowledge of the '311 Patent, but nonetheless made and continued to make, use, sell, and/or offer to sell their infringing products.

26. Through Oce's and AAC's marketing of their infringing products, Plaintiff lost customers, sales and profits.

27. As to Oce, Plaintiff seeks monetary damages arising from Oce's infringement of claim 6 of the '623 Reissue Patent prior to the July 2008 asset sale.

Because claim 6 of the '623 Reissue Patent is substantially identical to claim 6 of the '311 Patent, Plaintiff is entitled to recover damages from Oce for infringement predating the September 7, 2010 reissue date of the '623 Reissue Patent.

28. As to AAC, Plaintiff seeks monetary damages and injunctive relief arising from AAC's infringement following the July 2008 asset sale.

29. More specifically, from the period of July 2008 to September 7, 2010, Plaintiff is entitled to recover damages from AAC for infringement of claim 6 of the '623 Reissue Patent because claim 6 of the '623 Reissue Patent is substantially identical to claim 6 of the '311 Patent.

30. Additionally, Plaintiff is entitled to recover damages from AAC for infringement of claims of the '623 Reissue Patent, the '581 Patent, the '042 Patent, the '475 Patent, the '554 Patent, and the '748 Patent occurring after these patents' respective issuance dates.

III. AAC'S PATENT

31. By virtue of assignment and the asset purchase with Oce, AAC is the owner of United States Patent No. 6,667,093, which was filed on April 19, 2001, issued on December 23, 2003, and is entitled "Ink-jet printable *transfer* papers for use with fabric materials" (emphasis in original) ("AAC's Patent").

32. AAC's Patent is invalid as a result of Plaintiff's prior patents.

COUNT I **Infringement of U.S. Patent No. RE41,623 By Oce**

33. Plaintiff incorporates by reference the above paragraphs as if stated herein.

34. The '623 Reissue Patent is a valid and enforceable reissue of the '311 patent.

35. Oce directly, knowingly and actively infringed claims of the '623 Reissue Patent, including, without limitation, claim 6.

36. In addition, Oce induced and contributed to the infringement of the '623 Reissue Patent.

37. Oce's acts of direct infringement included, but were not limited to, making, using, selling, and/or offering for sale within this District and elsewhere its image transfer sheets, and/or other products or methods incorporating Plaintiff's patented image transfer sheets or methods for transferring an image to a colored substrate comprising woven, fabric based material as claimed in the '623 Reissue Patent.

38. Oce's acts of inducing and contributory infringement included, but were not limited to, causing end consumers to directly infringe the '623 Reissue Patent by selling and/or offering for sale image transfer sheets to end consumers with explicit instructions to use the image transfer sheets in a manner that Oce knew infringed the '623 Reissue Patent.

39. Oce's illegal patent infringement activities have caused loss and injury to Plaintiff, for which Plaintiff is entitled to monetary damages.

40. Because claim 6 of the '623 Reissue Patent is substantially identical to claim 6 of the '311 Patent, Plaintiff's claim for monetary damages arising from Oce's infringement of claim 6 prior to the reissue date survived the reissue process and remains valid.

41. Upon information and belief, Oce's infringement was intentional, knowing, willful, deliberate, without license or justification, and with full knowledge of Plaintiff's rights.

42. Because of Oce's willful conduct, Plaintiff is entitled to recover three times her damages, as well as lost profits, costs, attorney fees and investigative fees.

COUNT II

Infringement of U.S. Patent Nos. RE41,623; 7,749,581; 7,754,042; 7,766,475; 7,771,554; and 7,824,748 By AAC

43. Plaintiff incorporates by reference the above paragraphs as if stated herein.

44. The '623 Reissue Patent is a valid and enforceable reissue of the '311 patent.

45. The '581, '042, '475, '554 and '748 Patents are valid and enforceable.

46. AAC has infringed, and is directly, knowingly and actively infringing claims of the '623 Reissue Patent, including, without limitation, claims 1-7, 9 and 13-17.

47. AAC has infringed, and is directly, knowingly and actively infringing claims of the '581 Patent, including, without limitation, claims 1-5, 9-12, 17-19, and 24-26.

48. AAC has infringed, and is directly, knowingly and actively infringing claims of the '042 Patent, including, without limitation, claims 1-3, 6-8, 10-16, and 18-20.

49. AAC has infringed, and is directly, knowingly and actively infringing claims of the '475 Patent, including, without limitation, claims 13, and 15-16.

50. AAC has infringed, and is directly, knowingly and actively infringing claims of the '554 Patent, including, without limitation, claims 1-4, and 9-11.

51. In addition, AAC induced and contributed to, and is inducing and contributing to, the infringement of the above patents.

52. AAC's acts of direct infringement include, but are not limited to, making, using, selling, and/or offering for sale within this District and elsewhere its image transfer sheets, and/or other products or methods incorporating Plaintiff's patented image transfer sheets or methods for transferring an image to a colored substrate comprising woven fabric based material as claimed in the above patents.

53. AAC's acts of inducing and contributory infringement include, but are not limited to, causing end consumers to directly infringe Plaintiff's patents by selling and/or offering for sale image transfer sheets to end consumers with explicit instructions to use the image transfer sheets in a manner that AAC knows infringes.

54. Such illegal patent infringement activities have caused and will continue to cause loss and injury to Plaintiff, for which Plaintiff is entitled to monetary damages and injunctive relief.

55. Because claim 6 of the '623 Reissue Patent is substantially identical to claim 6 of the '311 Patent, Plaintiff's claim for monetary damages arising from infringement of claim 6 prior to the reissue date survived the reissue process and remains valid.

56. Upon information and belief, AAC's infringement was and continues to be intentional, knowing, willful, deliberate, without license or justification, and with full knowledge of Plaintiff's rights.

57. Because of AAC's willful conduct, Plaintiff is entitled to recover three times her damages, as well as lost profits, costs, attorney fees and investigative fees.

58. AAC has caused and will continued to cause Plaintiff irreparable injury and damage by infringing Plaintiff's patents for which Plaintiff has no adequate remedy at law, unless and until this Court enjoins AAC.

COUNT III
Declaratory Judgment

59. Plaintiff incorporates by reference the above paragraphs as if stated herein.

60. By virtue of their applicable priority dates, Plaintiff's patents have priority over AAC's Patent.

61. AAC's Patent is invalid pursuant to, among other reasons, 35 U.S.C. § 102(e)(1) because the alleged invention is described in the application for the '311 Patent, which was filed on April 3, 2000.

62. The Court should issue a declaratory judgment pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, that AAC's Patent is invalid.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for relief as follows:

1. A judgment that Defendant Oce has infringed, induced infringement, and contributorily infringed Plaintiff's rights under the '623 Reissue Patent;

2. A judgment that Defendant AAC has infringed, induced infringement, and contributorily infringed Plaintiff's rights under the '623 Reissue Patent, and the '581, '042, '475, '554, and '748 Patents

3. A permanent injunction enjoining AAC from infringing, inducing infringement, and from contributing to the infringement of the '623 Reissue Patent, and the '581, '042, '475, '554, and '748 Patents

4. A judgment that at least some of Oce's and AAC's various acts of infringement have been in willful and in deliberate disregard of Plaintiff's patent rights;

5. A judgment awarding Plaintiff compensatory and exemplary damages, but not less than a reasonable royalty, including allowance of multiplied damages based on Oce's and AAC's willful and deliberate infringement;

6. A judgment awarding Plaintiff her costs incurred herein, including attorneys' fees for an exceptional case pursuant to 35 U.S.C. § 285;

7. A judgment declaring that AAC's Patent is invalid; and

8. A judgment awarding Plaintiff such other and further relief as the Court may deem just and equitable.

JURY DEMAND

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiff hereby demands a jury trial as to all issues so triable.

December 29, 2010

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