

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

TMI PRODUCTS, INC.,

Plaintiff/Counterclaim
Defendant,

v.

AUDIOVOX CORPORATION and
AUDIOVOX ELECTRONICS
CORPORATION,

Defendants/Counterclaim
Plaintiffs.

Civil Action No. 2:09-cv-01794(DRH)(ARL)

FIRST AMENDED COMPLAINT FOR PATENT INFRINGEMENT

AND DEMAND FOR JURY TRIAL

Plaintiff TMI Products, Inc. (“TMI”) files this first amended complaint against Audiovox Corporation and Audiovox Electronics Corporation (collectively, “Audiovox,” or “Defendants”), and alleges as follows:

THE PARTIES

1. TMI is a corporation duly organized and existing under the laws of the California, with its principal place of business at 1493 E. Bentley Drive, Corona, California 92879. TMI holds an exclusive license to U.S. Patent Nos. 7,040,697 (“the ’697 Patent”) and 7,407,227 (“the ’227 Patent”). TMI’s exclusive license includes the exclusive world-wide rights to sublicense the ’697 and ’227 patents, and to enforce the ’697 and ’227 patents against alleged infringers. TMI is also the owner by assignment of U.S. Patent No. 7,597,393 (“the ’393 Patent”).

2. Upon information and belief, Audiovox Corporation is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business at 180 Marcus Boulevard, Hauppauge, New York.

3. Upon information and belief, Audiovox Electronics Corporation is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business at 180 Marcus Boulevard, Hauppauge, New York, and it is a wholly owned subsidiary of Audiovox Corporation.

NATURE OF THE ACTION

4. In this civil action, TMI seeks damages and injunctive relief against Defendants for acts of patent infringement in violation of the Patent Act of the United States, 35 U.S.C. §§ 1 *et seq.*

JURISDICTION AND VENUE

5. This Court has subject matter jurisdiction pursuant to the provisions of 28 U.S.C. §§ 1331 and 1338(a), because this is an action for patent infringement arising under the laws of the United States, including 35 U.S.C. §§ 1 *et seq.*

6. Venue is proper under 28 U.S.C. §§ 1391(c) and 1400(b), in that the acts and transactions complained of herein were conceived, carried out, made effective, or had effect within the States of California and New York and within this Judicial District, among other places.

7. On information and belief, Audiovox Corporation resides in this Judicial District by virtue of its business activities in this Judicial District, including conducting its business activities from its principal place of business that is located in this Judicial District.

8. On information and belief, Audiovox Electronics Corporation resides in this Judicial District by virtue of its business activities in this Judicial District, including conducting its business activities from its principal place of business that is located in this Judicial District.

9. On information and belief, Audiovox Corporation markets and sells, throughout the United States and including in this Judicial District, headrest mountable video systems through its wholly owned subsidiary, Audiovox Electronics Corporation. On information and belief, all profits from Audiovox Electronics Corporation's sales of headrest mountable video systems flow to Audiovox Corporation.

10. On information and belief, based at least on the facts stated above, this Court has personal jurisdiction over Defendants.

BACKGROUND

11. On May 9, 2006, the United States Patent & Trademark Office duly and legally issued the '697 Patent, entitled "HEADREST HAVING AN INTEGRATED VIDEO SCREEN." A true and correct copy of the '697 Patent is attached as Exhibit A and incorporated herein by reference.

12. On August 5, 2008, the United States Patent & Trademark Office duly and legally issued the '227 Patent, entitled "HEADREST HAVING AN INTEGRATED VIDEO SCREEN." A true and correct copy of the '227 Patent is attached as Exhibit B and incorporated herein by reference.

13. On October 6, 2009, the United States Patent & Trademark Office duly and legally issued the '393 Patent, entitled "HEADREST/HEAD RESTRAINT HAVING AN INTEGRATED VIDEO SCREEN." A true and correct copy of the '393 Patent is attached as Exhibit C and incorporated herein by reference.

FIRST CLAIM FOR RELIEF

(Infringement of U.S. Patent No. 7,040,697 – the '697 Patent)

14. TMI incorporates herein by reference the allegations set forth in paragraphs 1-13 of this Complaint as though fully set forth herein.

15. On information and belief, Calli Ventosa, Inc. and Tierra Vista Corp. are the joint legal owners by assignment of the '697 Patent from Timely Innovations, LP, which is the original assignee listed on the front page of the '697 Patent. TMI is the

exclusive licensee of the '697 Patent, having acquired from Calli Ventosa, Inc. and Tierra Vista Corp. substantially all rights in the '697 Patent, including the exclusive world-wide right to sublicense the '697 Patent and to enforce the '697 Patent against any and all infringers.

16. Defendants have directly infringed and continue to directly infringe the '697 Patent by making, using, selling, or offering for sale in or importing into the United States mobile video headrest systems that embody or otherwise practice one or more of the claims of the '697 Patent, such as, without limitation, products and systems marketed as the "Movies2Go Universal Headrest" and the "Advent Custom Headrest Systems."

17. On information and belief, Defendants have indirectly infringed and continue to indirectly infringe the '697 Patent by actively inducing direct infringement by other persons who operate and/or use mobile video headrest systems such as, without limitation, products and systems marketed as the "Movies2Go Universal Headrest" and the "Advent Custom Headrest Systems," or otherwise practice one or more of the claims of the '697 Patent, when Defendants had knowledge of the '697 Patent and knew or should have known that their actions would induce direct infringement by others and intended that their actions would induce direct infringement by others.

18. On information and belief, Defendants have indirectly infringed and continue to indirectly infringe the '697 Patent by contributory infringement by providing non-staple articles of commerce to others for use in an infringing system or method with respect to mobile video headrest systems such as, without limitation, products and systems marketed as the "Movies2Go Universal Headrest" and the "Advent Custom Headrest Systems," with knowledge of the '697 Patent and knowledge that these non-staple articles of commerce are used as a material part of the claimed inventions of the '697 Patent.

19. On information and belief, Defendants will continue to infringe the '697 Patent as alleged in this Complaint unless enjoined by this Court.

20. On information and belief, Defendants' infringement of the '697 Patent is, has been, and continues to be willful and deliberate.

21. As a direct and proximate result of Defendants' infringement of the '697 Patent, TMI has been and continues to be damaged in an amount yet to be determined.

22. Unless Defendants and their respective officers, agents, servants, and employees, and all persons acting in concert with Defendants, are enjoined from infringing the '697 Patent, TMI will be greatly and irreparably harmed.

23. By reason of the above acts, TMI is entitled to injunctive relief enjoining and restraining Defendants, and their respective officers, agents, servants, and employees, and all persons acting in concert with Defendants, from further infringement of the '697 Patent.

SECOND CLAIM FOR RELIEF

(Infringement of U.S. Patent No. 7,407,227 – the '227 Patent)

24. TMI incorporates herein by reference the allegations set forth in paragraphs 1-23 of this Complaint as though fully set forth herein.

25. On information and belief, Calli Ventosa, Inc. and Tierra Vista Corp. are the joint legal owners by assignment of the '227 Patent from Timely Innovations, LP, which is the original assignee listed on the front page of the '227 Patent. TMI is the exclusive licensee of the '227 Patent, having acquired from Calli Ventosa, Inc. and Tierra Vista Corp. substantially all rights in the '227 Patent, including the exclusive world-wide right to sublicense the '227 Patent and to enforce the '227 Patent against any and all infringers.

26. Defendants have directly infringed and continue to directly infringe the '227 Patent by making, using, selling, or offering for sale in or importing into the United States mobile video headrest systems that embody or otherwise practice one or more of the claims of the '227 Patent, such as, without limitation, products and systems marketed as the "Movies2Go Universal Headrest" and the "Advent Custom Headrest Systems."

27. On information and belief, Defendants have indirectly infringed and continue to indirectly infringe the '227 Patent by actively inducing direct infringement by other persons who operate and/or use mobile video headrest systems such as, without limitation, products and systems marketed as the "Movies2Go Universal Headrest" and the "Advent Custom Headrest Systems," or otherwise practice one or more of the claims of the '227 Patent, when Defendants had knowledge of the '227 Patent and knew or should have known that their actions would induce direct infringement by others and intended that their actions would induce direct infringement by others.

28. On information and belief, Defendants have indirectly infringed and continue to indirectly infringe the '227 Patent by contributory infringement by providing non-staple articles of commerce to others for use in an infringing system or method with respect to mobile video headrest systems such as, without limitation, products and systems marketed as the "Movies2Go Universal Headrest" and the "Advent Custom Headrest Systems," with knowledge of the '227 Patent and knowledge that these non-staple articles of commerce are used as a material part of the claimed inventions of the '227 Patent.

29. On information and belief, Defendants will continue to infringe the '227 Patent as alleged in this Complaint unless enjoined by this Court.

30. On information and belief, Defendants' infringement of the '227 Patent is, has been, and continues to be willful and deliberate.

31. As a direct and proximate result of Defendants' infringement of the '227 Patent, TMI has been and continues to be damaged in an amount yet to be determined.

32. Unless Defendants and their respective officers, agents, servants, and employees, and all persons acting in concert with Defendants, are enjoined from infringing the '227 Patent, TMI will be greatly and irreparably harmed.

33. By reason of the above acts, TMI is entitled to injunctive relief enjoining and restraining Defendants, and their respective officers, agents, servants, and employees,

and all persons acting in concert with Defendants, from further infringement of the '227 Patent.

THIRD CLAIM FOR RELIEF

(Infringement of U.S. Patent No. 7,597,393 – the '393 Patent)

34. TMI incorporates herein by reference the allegations set forth in paragraphs 1-33 of this Complaint as though fully set forth herein.

35. On information and belief, TMI is the owner by assignment of the '393 Patent and possesses all rights in the '393 Patent, including the exclusive world-wide right to sublicense the '393 Patent and to enforce the '393 Patent against any and all infringers.

36. Defendants have directly infringed and continue to directly infringe the '393 Patent by making, using, selling, or offering for sale in or importing into the United States mobile video headrest systems that embody or otherwise practice one or more of the claims of the '393 Patent, such as, without limitation, products and systems marketed as the "Movies2Go Universal Headrest" and the "Advent Custom Headrest Systems."

37. On information and belief, Defendants have indirectly infringed and continue to indirectly infringe the '393 Patent by actively inducing direct infringement by other persons who operate and/or use mobile video headrest systems such as, without limitation, products and systems marketed as the "Movies2Go Universal Headrest" and the "Advent Custom Headrest Systems," or otherwise practice one or more of the claims of the '393 Patent, when Defendants had knowledge of the '393 Patent and knew or should have known that their actions would induce direct infringement by others and intended that their actions would induce direct infringement by others.

38. On information and belief, Defendants have indirectly infringed and continue to indirectly infringe the '393 Patent by contributory infringement by providing non-staple articles of commerce to others for use in an infringing system or method with respect to mobile video headrest systems such as, without limitation, products and systems marketed as the "Movies2Go Universal Headrest" and the "Advent Custom Headrest

Systems,” with knowledge of the ’393 Patent and knowledge that these non-staple articles of commerce are used as a material part of the claimed inventions of the ’393 Patent.

39. On information and belief, Defendants will continue to infringe the ’393 Patent as alleged in this Complaint unless enjoined by this Court.

40. On information and belief, Defendants’ infringement of the ’393 Patent is, has been, and continues to be willful and deliberate.

41. As a direct and proximate result of Defendants’ infringement of the ’393 Patent, TMI has been and continues to be damaged in an amount yet to be determined.

42. Unless Defendants and their respective officers, agents, servants, and employees, and all persons acting in concert with Defendants, are enjoined from infringing the ’393 Patent, TMI will be greatly and irreparably harmed.

43. By reason of the above acts, TMI is entitled to injunctive relief enjoining and restraining Defendants, and their respective officers, agents, servants, and employees, and all persons acting in concert with Defendants, from further infringement of the ’393 Patent.

PRAYER FOR RELIEF

WHEREFORE, TMI prays for judgment against Defendants as follows:

1. For a judicial determination and declaration that Defendants directly infringe United States Letters Patent Nos. 7,040,697, 7,407,227, and 7,597,393 by making, using, offering to sell and/or selling mobile video headrest systems such as, without limitation, products and systems marketed as the “Movies2Go Universal Headrest” and the “Advent Custom Headrest Systems”;

2. For a judicial determination and declaration that Defendants induce direct infringement of United States Letters Patent Nos. 7,040,697, 7,407,227, and 7,597,393;

3. For a judicial determination and declaration that Defendants commit contributory infringement of United States Letters Patent Nos. 7,040,697, 7,407,227, and 7,597,393;

4. For a judicial determination and decree that Defendants' infringement of United States Letters Patent Nos. 7,040,697, 7,407,227, and 7,597,393 is willful;

5. For damages resulting from Defendants' past and present infringement of United States Letters Patent Nos. 7,040,697, 7,407,227, and 7,597,393 and the trebling of such damages because of the willful and deliberate nature of its infringement;

6. For injunctive relief against further infringement of United States Letters Patent Nos. 7,040,697, 7,407,227, and 7,597,393 by Defendants, their respective officers, directors, shareholders, agents, servants, employees, and all other entities and individuals acting in concert with the enjoined entities or on their behalf;

7. For a declaration that this is an exceptional case under 35 U.S.C. § 285 and for an award of attorneys' fees and costs in this action;

8. For an assessment of prejudgment interest; and

9. For such other and further relief as the Court may deem just and proper under the circumstances.

DATED: October 29, 2009

Respectfully submitted,

/s/ Frank W. Ryan

Frank W. Ryan

NIXON PEABODY LLP
437 Madison Avenue
New York, NY 10022
(212) 940-3129

Reynaldo C. Barceló (*pro hac vice*)
BARCELÓ & HARRISON, LLP
2901 West Coast Hwy, Suite 200
Newport Beach, CA 92663
(949) 340-9736

*Attorneys for Plaintiff/Counterclaim Defendant
TMI Products, Inc.*