

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

FISHMAN TRANSDUCERS, INC.)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 06-cv-11002 GAO
)	
L.R. BAGGS COMPANY and)	
L.R. BAGGS CORPORATION,)	
)	
Defendants.)	

FIRST AMENDED COMPLAINT AND JURY TRIAL DEMAND

Plaintiff, Fishman Transducers, Inc., brings this First Amended Complaint against the Defendants, L.R. Baggs Company and L.R. Baggs Corp. (collectively, “Baggs”) for patent infringement and breach of contract.

PARTIES

1. Fishman Transducers, Inc. (“Fishman”) is a Delaware corporation with its primary place of business at 340-D Fordham Road, Wilmington, Massachusetts.
2. L.R. Baggs Company (“Baggs Co.”) is a sole proprietorship with its primary place of business at 483 North Frontage Road in Nipomo, California.
3. L.R. Baggs Corporation (“Baggs Corp.”) is a California corporation with its primary place of business at 483 North Frontage Road, Nipomo, California.
4. On information and belief, Baggs Corp. succeeded to all relevant rights and interests of Baggs Co. on or about January 1, 2004.

JURISDICTION AND VENUE

5. This action arises under the patent laws of the United States, in particular, 35 U.S.C. §§271, 281, 283, 284, and 285.

6. This Court has subject matter jurisdiction under 28 U.S.C. §1331 and 1338 as to the claims presented in Count I of this Complaint, because they arise under the Constitution and laws of the United States, and because this is an action relating to patents.

7. Pursuant to 28 U.S.C. §1367(a), this Court has supplemental jurisdiction as to the claims presented in Counts I and II of this Complaint for breach of the patent license agreement between the parties.

8. This Court has personal jurisdiction over Baggs Co. under the Massachusetts long arm statute, M.G.L. Ch. 223A, Section 3.

9. This Court has personal jurisdiction over Baggs Corp. under the Massachusetts long arm statute, M.G.L. Ch. 223A, Section 3

10. Venue is proper in this District under 28 U.S.C. §1391(b) and (c), because Baggs Co. and Baggs Corp. are subject to personal jurisdiction in this District and therefore reside in this District.

FACTS COMMON TO ALL COUNTS

11. Fishman is a leading designer and manufacturer of acoustic amplification products for the music industry. Among Fishman's products are instrument transducers that may be used with a stringed musical instrument.

12. On information and belief, Baggs Corp. markets and sells, in Massachusetts and nationally, a transducer called the "Element" for use in acoustical guitars.

13. On information and belief, prior to January 1, 2004, Baggs Co. marketed and sold, in Massachusetts and nationally, a transducer called the “Element” for use in acoustical guitars.

14. Fishman is the owner by assignment of all right and title to U.S. Patent No. 5,319,153 (the “ ‘153 Patent”), which duly issued on June 7, 1994, entitled “Musical Instrument Transducer Assembly Having a Piezoelectric Sheet,” a copy of which is attached to this First Amended Complaint as Exhibit A.

15. On January 19, 2000, Fishman and Baggs Co. entered into a Non-Exclusive License Agreement (the “Agreement”). A true and accurate copy of the Agreement is attached to this First Amended Complaint as Exhibit B.

16. Under ¶¶ 1.2, 1.3, and 2.1 of the Agreement, Baggs Co. obtained a non-exclusive license under five Fishman patents (U.S. Patent Nos. 5,155,285; 5,319,153; 5,463,185; 5,670,733; and 5,817,966) to make, have made, import, use, sell or otherwise dispose of “Licensed Products,” including Baggs Co.’s “Ribbon TransducerTM” and “colorable variations thereof,” as well as such transducers incorporated into specified Baggs Co. systems, during the term of the Agreement, which, but for the license, would infringe one or more of the licensed Fishman patents.

17. Baggs Co. has continuing obligations to Fishman under ¶ 3.2 of the Agreement, including the obligation to pay Fishman a royalty of \$2.00 for each “Licensed Product” sold by or on behalf of Baggs Co.

18. The “Element” transducer is a “colorable variation” of the Baggs Ribbon Transducer and constitutes a “Licensed Product” pursuant to the Agreement.

COUNT I
(Breach of Contract Against Baggs Co.)

19. Fishman incorporates by reference the foregoing paragraphs as if fully set forth herein.

20. Baggs Co. breached the Agreement by failing and refusing to pay royalties thereunder to Fishman in connection with the manufacture, use and sale of the “Element” transducers by Baggs Co. and/or Baggs Corp.

21. Fishman provided notice of such breach to Baggs Co. by letter from counsel dated June 8, 2006, addressed to Baggs Co. pursuant to the Agreement, enclosing a copy of the Complaint in this action asserting, inter alia, breach of the License Agreement for failure to pay royalties in connection with the manufacture, use, and sale of “Element” transducers.

22. Baggs Co. has failed to remedy such breach.

23. By reason of Baggs Co.’s breach of the Agreement Fishman has suffered damages in an amount yet to be ascertained.

COUNT II
(Breach of Contract Against Baggs Corp.)

24. Fishman incorporates by reference the foregoing paragraphs as if fully set forth herein.

25. On information and belief, Baggs Co. assigned its rights under the Agreement to Baggs Corp. on or about January 1, 2004, and Baggs Corp. thereby assumed all obligations of Baggs Co. under the Agreement.

26. Baggs Corp. has continuing obligations to Fishman under ¶ 3.2 of the Agreement, including the obligation to pay Fishman a royalty of \$2.00 for each “Licensed Product” sold by or on behalf of Baggs Co.

27. Baggs Corp. breached the Agreement by failing and refusing to pay royalties thereunder to Fishman in connection with the manufacture, use and sale of the Baggs “Element” transducers by Baggs Corp.

28. Fishman provided notice of such breach to Baggs Corp. by letter from counsel dated June 8, 2006, addressed to Baggs Co. pursuant to the Agreement, enclosing a copy of the Complaint in this action asserting, inter alia, breach of the License Agreement for failure to pay royalties in connection with the manufacture, use, and sale of Baggs’ “Element” transducers.

29. Baggs Corp. has failed to remedy such breach.

30. By reason of Baggs Corp.’s breach of the Agreement Fishman has suffered damages in an amount yet to be ascertained.

COUNT III
(Patent Infringement Against Baggs Co.)

31. Fishman incorporates by reference the foregoing paragraphs as if fully set forth herein.

32. Upon information and belief, the Baggs “Element” transducer is depicted (not to scale) in the attached Exhibit C together with item numbers that correspond to the various elements parenthetically referenced below in Claim 38.

33. Claim 38 of the ‘153 patent recites (without the bold parenthetical references):

A transducer assembly (**A**) for a stringed musical instrument comprising:

an elongated dielectric member (**B1**) having a conductive material (**B2**) on a surface;

a first elongated piezoelectric sheet (**C1**) having

a first surface (**C2**) which covers at least most of the conductive material (**B2**) on the surface of the dielectric member (**B1**), and

a second surface (**C3**);

an elongated conductive member (**D**) covering at least most of the second surface (**C3**), and being in electrical contact with the piezoelectric sheet (**C1**); and

a conductive lead (**E1**) having a first contact (**E2**) electrically coupled to the conductive material (**B2**) on the surface of the dielectric member (**B1**), and a second contact (**E3**) electrically coupled to the conductive member (**D**).

34. Upon information and belief, the Baggs “Element” transducer is a transducer assembly (**A**) useful for converting the vibrations of the strings of a stringed musical instrument into an electrical signal.

35. Upon information and belief, the Baggs “Element” transducer uses an elongated printed circuit board material (**B1**), that serves and functions as a dielectric member, on which is placed a copper coating to form a conductive material (**B2**).

36. Upon information and belief, the Baggs “Element” transducer contains a thin layer of adhesive that covers at least a portion of this conductive material and adheres a piezoelectric sheet (**C1**) to the conductive material (**B2**). As recited in claim 38, the piezoelectric sheet of the Baggs Element transducer (**C1**) has both a first surface (**C2**) and a second surface (**C3**), the first surface covering at least most (if not all) of the copper coated conductive material (**B2**) on the dielectric member (**B1**).

37. Upon information and belief, the Baggs “Element” transducer also has an elongated conductive member (**D**) in the form of a conductive sheath-like structure that is in

direct contact with the second surface (**C3**) of the piezoelectric sheet (**C1**) and covers at least most (if not all) of that surface.

38. Upon information and belief, the elongated conductive member (**D**) of the Baggs “Element” transducer is in electrical contact with the piezoelectric sheet (**C1**), because charge separation in the piezoelectric sheet can cause electron flow in the conductive member (**D**). In operation, for example, deformation of the piezoelectric sheet arising from vibration of the strings causes a separation of electrical charge (*i.e.*, a non-zero electrical potential difference) between the first surface (**C2**) and second surface (**C3**) of the sheet. The non-zero charge proximate to the second surface (**C3**) in turn can create an electrical charge in the conductive member (**D**). As a result, the conductive member (**D**) of Baggs’ “Element” transducer is in electrical contact with the piezoelectric sheet (**C1**).

39. Upon information and belief, the conductive member (**D**) of Baggs’ “Element” transducer is bent to form a portion that is easily connected to a second contact (**E3**) of a conductive lead (**E1**), such as, for example, a jack, plug or connection block. The Baggs “Element” transducer also comprises a wire that is soldered to the copper coating forming the conductive material (**B2**). The wire is a conductive lead that is also easily connected to first contact (**E2**) of the conductive lead (**E1**).

40. Upon information and belief, the Baggs “Element” transducer provides a conductive lead that is essential for the Baggs transducer to be useful, *i.e.*, the conductive material and conductive member are connected to some sort of conductive lead so that the electrical signal generated by the transducer can be used by a electrical circuit to eventually drive a speaker and produce a sound that corresponds to the vibrations of the strings of the musical instrument.

41. Baggs Co. has infringed, and continues to infringe, at least claim 38 of the '153 patent by at least making, using, selling and/or offering to sell the Baggs "Element" transducer in violation of 35 U.S.C. §271(a).

42. Baggs Co.'s infringement of the '153 patent is willful, because Baggs Co. had actual knowledge of the '153 patent based on the Agreement with Fishman.

43. Baggs Co.'s infringing activities have caused, and continue to cause, Fishman to suffer damages in a sum not yet ascertained, and have caused, are causing, and threaten to continue to cause irreparable harm to Fishman.

44. On information and belief, Baggs Co. will continue to infringe the '153 patent unless it is enjoined from doing so by this Court.

COUNT IV
(Patent Infringement Against Baggs Corp.)

45. Fishman incorporates by reference the foregoing paragraphs as if fully set forth herein.

46. Baggs Corp. has infringed, and continue to infringe, at least claim 38 of the '153 patent by, at least, making, using, selling and/or offering to sell the Baggs "Element" transducer in violation of 35 U.S.C. §271(a).

47. Baggs Corp.'s infringement of the '153 patent is willful, because Baggs Corp. had actual knowledge of the '153 patent based on the Agreement with Fishman.

49. Baggs Corp.'s infringing activities have caused, and continue to cause, Fishman to suffer damages in a sum not yet ascertained, and have caused, are causing, and threaten to continue to cause irreparable harm to Fishman.

50. On information and belief, Baggs Corp. will continue to infringe the '153 patent unless it is enjoined from doing so by this Court.

WHEREFORE, Fishman prays that this Court:

- a. preliminarily, and, after trial, permanently enjoin Baggs Co. and Baggs Corp. ("Baggs"), their agents, employees, and all persons and organizations in privity or in active concert with Baggs, from continued infringement of the '153 patent;
- b. award Fishman compensatory damages in a sum to be determined at trial for Baggs' infringement of the '153 patent, pursuant to 35 U.S.C. §284;
- c. award Fishman increased damages to the maximum of three times the compensatory damages under 35 U.S.C §284;
- d. declare this to be an exceptional case, and award Fishman its reasonable attorneys fees pursuant to 35 U.S.C. §285;
- e. award Fishman its damages for breach of the Agreement,
- f. award Fishman its costs of this lawsuit;
- g. award Fishman interest on the award, costs, fees and other charges to the maximum extent permissible including prejudgment interest; and
- h. award Fishman such other and further relief as the Court may deem to be just and reasonable.

JURY TRIAL DEMAND

Plaintiff demands a trial by jury on all issues so triable.

Respectfully submitted,

FISHMAN TRANSDUCERS, INC.

By its attorney,

/s/Sibley P. Reppert

Sibley P. Reppert, BBO #416900

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Dated: March 2, 2007

CERTIFICATE OF SERVICE

I, Sibley P. Reppert, hereby certify that I caused the foregoing to be served via the Court's ECF system, on counsel of record this 2nd day of March, 2007.

/s/ Sibley P. Reppert