

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

THE HOLMES GROUP, INC.,	)	U.S.D.C. C.A. No. 05-10504-NMG
	)	
Plaintiff,	)	FIRST AMENDED COMPLAINT
v.	)	
	)	Jury Trial Demanded
EURO-PRO OPERATING, LLC	)	
	)	
Defendant.	)	

Plaintiff, The Holmes Group, Inc., by way of its First Amended Complaint against defendant, EURO-PRO OPERATING, LLC, alleges and says:

THE PARTIES

1. Plaintiff, THE HOLMES GROUP, INC. (“HOLMES”), is a Massachusetts corporation having a principal place of business at One Holmes Way, Milford, Massachusetts 01757.

2. Upon information and belief, defendant, EURO-PRO OPERATING, LLC (“EURO-PRO”), is a Delaware corporation having a principal place of business at 1210 Washington Street, Newton, Massachusetts 02465-2147.

SUBJECT MATTER JURISDICTION

3. Jurisdiction over the subject matter of the within First Amended Complaint is vested in the United States District Court pursuant to 28 U.S.C. § 1331 [general federal question jurisdiction] and 28 U.S.C. § 1338(a) [special federal question jurisdiction].

IN PERSONAM JURISDICTION

4. Jurisdiction over the persons of defendants is vested in the United States District Court for the District of Massachusetts by virtue of defendant being domiciled and by maintaining its principal place of business in this federal judicial district.

VENUE

5. Venue over the within action is proper in the federal judicial district comprising the United States District Court for the District of Massachusetts pursuant to 28 U.S.C. § 1391(b) and 28 U.S.C. § 1400(b).

PATENT INFRINGEMENT

6. HOLMES is the owner by assignment of all right, title, and interest in and to United States Letters Patent No. 6,573,483 B1 (hereinafter referred to as “the '483 patent”) entitled, “Programmable Slow-Cooker Appliance”. A copy of the '483 patent is attached hereto as Exhibit A.

7. The '483 patent was duly and legally issued on June 2, 2003 to HOLMES. The '483 patent remains in full force and effect.

8. HOLMES is the owner by assignment of all right, title, and interest in and to United States Letters Patent No. 6,740,855 B1 (hereinafter referred to as “the '855 patent”) entitled, “Programmable Slow-Cooker Appliance”. A copy of the '855 patent is attached hereto as Exhibit B.

9. The '855 patent was duly and legally issued on May 25, 2004 to HOLMES. The '855 patent remains in full force and effect.

10. HOLMES is the owner by assignment of all right, title, and interest in and to

United States Letters Patent No. 6,872,921 B1 (hereinafter referred to as “the '921 patent”), entitled, “Programmable Slow-Cooker Appliance.” A copy of the '921 patent is attached hereto as Exhibit C.

11. HOLMES has and continues to distribute, market, and sell programmable slow cooker appliances covered by the claims of the '483 patent, the '855 patent and the '921 patent (hereinafter collectively referred to as “the patents-in-suit”).

12. On information and belief, EURO-PRO has imported, distributed, marketed, offered for sale, and sold certain slow cooker appliances (hereinafter “the accused products”) covered by the claims of the patents-in-suit. On information and belief, at least one such accused product is identified as the Euro-Pro® Programmable Intelligent Gourmet Slow Cooker, Model KC276T. A copy of the owner’s manual for this model is attached as Exhibit D.

13. The activities of EURO-PRO constitute infringement of the patents-in-suit.

14. EURO-PRO’s infringement of the patents-in-suit has been without license from HOLMES and in violation of HOLMES’ patent rights, and it is believed that EURO-PRO will continue to infringe HOLMES’ patent rights unless enjoined by this Court.

15. Upon information and belief, Stanley Rosenzweig is a principal owner in EURO-PRO. Prior to his current status at EURO-PRO, Mr. Rosenzweig was the Chief Operating Officer of HOLMES and continues to be one of its stockholders. Mr. Rosenzweig’s employment at HOLMES was terminated on January 11, 2002. Mr. Rosenzweig was aware of, and familiar with HOLMES’ research and development and proprietary information leading to the patent applications related to programmable slow cookers while employed at HOLMES.

16. Upon leaving employment at HOLMES, Mr. Rosenzweig and/or EURO-PRO

also hired at least six (6) HOLMES employees, including Heather Jones-Lawlor, product manager in the kitchen business unit, some of whom also were very familiar with HOLMES' design strategies for slow cookers and the innovative, proprietary information resulting in the patents-in-suit identified herein during their employment at HOLMES.

17. In view of the foregoing, EURO-PRO's acts of infringement have been willful and deliberate, with full knowledge of HOLMES' patent rights.

18. As a result of EURO-PRO's willful infringement of the patents-in-suit, HOLMES has been damaged and will continue to be damaged in an amount to be determined at trial. HOLMES has suffered and will continue to suffer irreparable injury unless the infringing activities of EURO-PRO are enjoined.

19. By virtue of EURO-PRO's willful and deliberate infringement, this is an "exceptional case" within the meaning of 35 U.S.C. § 285.

WHEREFORE, HOLMES prays for the following relief:

- A. Judgment for HOLMES on its cause of action for patent infringement.
- B. Preliminary and permanent injunction enjoining EURO-PRO, its officers, directors, agents, employees, and all those in active concert or participation with them who receive actual notice of the judgment by personal service or otherwise, from making, using, importing, offering for sale, and selling infringing fans and from otherwise infringing, contributing to infringement, and actively inducing infringement of the patents-in-suit.

C. An award of compensatory and punitive damages to HOLMES by reason of the wrongs committed by EURO-PRO, including an award of increased damages pursuant to 35 U.S.C. § 284, for defendant's willful and deliberate patent infringement.

D. An award of costs of this action together with HOLMES' attorneys' fees pursuant to 35 U.S.C. § 285.

E. An assessment of interest on the damages so computed.

F. Such other and further relief as this Court deems just and proper.

PLAINTIFF DEMANDS A TRIAL BY JURY.

THE HOLMES GROUP, INC.  
By its Attorneys,

Dated: March 31, 2005

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