

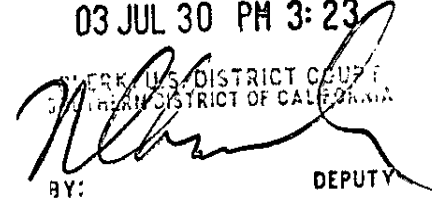
RYC 7/31/03 11:12  
3:03-CV-01508 AFFINITY INC V. MOTSON  
\*3\*  
\*AMDCMP.\*

1 WILLIAM V. WHELAN, CAL. BAR NO. 116372  
2 JONATHAN HANGARTNER, CAL. BAR NO. 196268  
3 SHEPPARD, MULLIN, RICHTER & HAMPTON LLP  
4 A Limited Liability Partnership  
5 Including Professional Corporations  
6 501 West Broadway, 19th Floor  
7 San Diego, California 92101-3598  
8 Telephone: (619) 338-6500  
9 Facsimile: (619) 234-3815

6 Attorneys for Plaintiff  
7 NATIONAL LEATHER GOODS CO., INC.,  
8 d/b/a AFFINITY BUSINESS ACCESSORIES

FILED

03 JUL 30 PM 3:23

BY:  DEPUTY  
CLERK, U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

9 UNITED STATES DISTRICT COURT  
10 SOUTHERN DISTRICT OF CALIFORNIA

12 NATIONAL LEATHER GOODS CO.,  
13 INC., d/b/a AFFINITY BUSINESS  
ACCESSORIES,

14 Plaintiff,

15 v.

16 W. DAVID MOTSON,

17 Defendant.

Case No. '03 CV 1508 L LAB

FIRST AMENDED COMPLAINT

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19  
20 COMES NOW, the plaintiff, National Leather Goods Co., Inc., d/b/a Affinity  
21 Business Accessories ("Affinity"), by and through its undersigned counsel, and for its  
22 complaint against defendant W. David Motson ("Motson"), avers as follows:

23  
24 JURISDICTION AND VENUE

25  
26 1. This action is brought for a declaratory judgment of patent  
27 noninfringement pursuant to Title 28, U.S.C. §§ 2201 & 2202 to resolve an actual  
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3

1 controversy and substantial dispute relating to alleged patent infringement of a United States  
2 Patent allegedly owned by defendant Motson.

3  
4 2. This Court has subject matter jurisdiction pursuant to Title 28, U.S.C.  
5 § 1338(a) as this action arises under the laws of the United States relating to patents and  
6 protection of patent rights. (35 U.S.C. § 101, *et. seq.*)

7  
8 3. This Court has personal jurisdiction in that defendant Motson and/or  
9 his agent have intentionally caused threats of patent litigation to be directed towards  
10 plaintiff Affinity knowing that Affinity is located in California.

11  
12 4. Venue is proper in this judicial district pursuant to Title 28, U.S.C.  
13 § 1391. Venue is further proper in this judicial district in that plaintiff Affinity is located in  
14 this judicial district, the harm from defendant's intentional conduct has been felt in this  
15 judicial district; and, acts giving rise to the cause of action were committed in this judicial  
16 district.

17  
18 **PARTIES**

19  
20 5. Plaintiff Affinity has its principal place of business at 767 Anita Street,  
21 Suite D, Chula Vista, California 91911. Affinity is in the business of designing,  
22 manufacturing, marketing, installing and selling various leather goods, including the  
23 Personal Organizer which is the subject of this litigation.

24  
25 6. Defendant Motson is an individual residing in Cherry Hill, New Jersey.  
26 Motson is engaged in, *inter alia*, sales of various goods "throughout the United States"  
27 including the Personal Organizer which is the subject of this complaint.

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**FACTS COMMON TO ALL COUNTS**

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7. Defendant Motson is the ostensible owner of United States Patent No. 6,264,029 (“’029 Patent”) issued July 24, 2001 in the name of W. David Motson and entitled Portable Organizer.

8. On or about March 11, 2003, Motson initiated an action for patent infringement in the United States District Court for the District of New Jersey (“New Jersey Action”).

9. In the New Jersey Action, Motson charged Franklin Covey Company (“Franklin Covey”) with infringement of Motson’s ’029 Patent by virtue of Franklin Covey’s sales of a personal organizer designed for carrying a personal assist device commonly referred to as a “PDA.”

10. The accused personal organizer product in the New Jersey Action is manufactured for Franklin Covey by plaintiff Affinity.

11. During the course of the last few weeks, Motson’s counsel has threatened to sue Affinity for patent infringement based upon Affinity’s providing a personal organizer product to Franklin Covey.

12. As a direct result of Motson’s actions, including his initiation of the New Jersey Action, as well as threats by his counsel, Affinity has an objective good faith basis to believe that it will be sued for patent infringement.



1           20. Motson's threats of legal action and his legal action against one of  
2 Affinity's customers have adversely and unlawfully affected the ability of plaintiff Affinity  
3 to market, sell and distribute their personal organizer products and has caused Affinity  
4 irreparable harm including, but not limited to, potential harm to Affinity's reputation.

5  
6           21. To the extent that any claim of the '029 Patent is a valid claim, plaintiff  
7 Affinity does not infringe any such claim.

8  
9           22. Motson, by his actions, and those of his agents, as described herein, has  
10 caused damage and harm to plaintiff Affinity in that they have raised substantial issues  
11 regarding Affinity's right to continue to market and sell Affinity's personal organizer  
12 products and have and will cause actual damages to Affinity.

13  
14           WHEREFORE, plaintiff Affinity requests that this Court enter judgment in its  
15 favor and against defendant W. David Motson:

16  
17           (a) declaring that the manufacture, use, sale and offer for sale of Affinity's  
18 personal organizer products does not infringe any claim of any patent owned by defendant  
19 Motson;

20  
21           (b) awarding Affinity all of its damages;

22  
23           (c) awarding Affinity its costs and attorneys' fees pursuant to 35 U.S.C.  
24 § 285 due to the exceptional nature of this case;

25  
26           (d) preliminarily and permanently enjoining defendant Motson and anyone  
27 acting on his behalf from further patent infringement litigation and threats of patent  
28 infringement litigation; and,

1 (e) providing such other and further relief to Affinity as this Court deems  
2 necessary, just and appropriate.  
3

4 Dated: July 30, 2003  
5

6 SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

7  
8 By



JONATHAN HANGARTNER

Attorneys for Plaintiff  
NATIONAL LEATHER GOODS CO., INC.,  
d/b/a AFFINITY BUSINESS ACCESSORIES

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1 National Leather Goods Co., Inc., d/b/a Affinity Business Accessories v. W. David Motson  
2 U.S. District Court Case No. '03 CV 1508 L LAB

3 PROOF OF SERVICE BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED

4 I am employed in the County of San Diego; I am over the age of eighteen  
5 years and not a party to the within entitled action; my business address is 501 West  
6 Broadway, 19th Floor, San Diego, California 92101-3598.

7 On July 30, 2003, I served the following document described as:

8 **FIRST AMENDED COMPLAINT**

9 on the interested party(ies) in this action by placing true copies thereof enclosed in sealed  
10 envelopes and/or packages addressed as follows:

11 W. David Motson  
12 417 Columbia Blvd.  
13 Cherry Hill, NJ 08002  
14 Telephone: 856/667-8096

15  **BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED:** I am "readily  
16 familiar" with the firm's practice of collection and processing correspondence for  
17 mailing by certified mail, return receipt requested. Under that practice it would be  
18 deposited with the U.S. postal service on that same day with postage thereon fully  
19 prepaid at San Diego, California in the ordinary course of business. I am aware that  
20 on motion of the party served, service is presumed invalid if postal cancellation date  
21 or postage meter date is more than one day after date of deposit for mailing in  
22 affidavit.

23  **BY OVERNIGHT DELIVERY:** I served such envelope or package to be  
24 delivered on the same day to an authorized courier or driver authorized by the  
25 overnight service carrier to receive documents, in an envelope or package  
26 designated by the overnight service carrier.

27  **BY FACSIMILE:** I served said document(s) to be transmitted by facsimile  
28 pursuant to Rule 2008 of the California Rules of Court. The telephone number of  
the sending facsimile machine was 619-234-3815. The name(s) and facsimile  
machine telephone number(s) of the person(s) served are set forth in the service list.  
The sending facsimile machine (or the machine used to forward the facsimile)  
issued a transmission report confirming that the transmission was complete and  
without error. Pursuant to Rule 2008(e), a copy of that report is attached to this  
declaration.

**BY HAND DELIVERY:** I caused such envelope(s) to be delivered by hand to the  
office of the addressee(s).

**STATE:** I declare under penalty of perjury under the laws of the State of  
California that the foregoing is true and correct.

**FEDERAL:** I declare that I am employed in the office of a member of the bar of  
this Court at whose direction the service was made. I declare under penalty of  
perjury under the laws of the United States of America that the foregoing is true and  
correct.



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Executed on **July 30, 2003**, at San Diego, California.

  
ROSA GARCIA VERNETTI