

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

BOMBARDIER RECREATIONAL
PRODUCTS, INC. and BRP, INC.,

Plaintiffs,

CASE NO.: 6:06-cv-00195-JA-JGG

vs.

JURY TRIAL DEMANDED

KAWASAKI HEAVY INDUSTRIES, LTD.,
KAWASAKI MOTORS CORP., U.S.A., and
KAWASAKI MOTORS MANUFACTURING
CORP., U.S.A.,

Defendants.

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AMENDED COMPLAINT FOR PATENT INFRINGEMENT

Plaintiffs, Bombardier Recreational Products, Inc. and BRP U.S., Inc., for their Complaint against defendants Kawasaki Heavy Industries, Ltd., Kawasaki Motors Corporation, U.S.A., and Kawasaki Motors Manufacturing Corp., U.S.A., aver as follows:

JURISDICTION AND VENUE

1. This is an action for patent infringement arising under the Patent Laws of the United States, 35 U.S.C. §§ 271, 281-285.
2. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a).
3. Venue is proper in this Judicial District pursuant to 28 U.S.C. §§ 1391(b) and (c) and 1400(b).

PARTIES

4. Plaintiff Bombardier Recreational Products, Inc. (“Bombardier”) is a corporation organized and existing under the laws of Canada and having a principal place of business at 726 rue St-Joseph Steering, Valcourt, Québec, Canada, J0E 2L0. Bombardier manufactures and sells personal watercraft (“PWCs”) under the trademark Sea-Doo.

5. Plaintiff BRP U.S., Inc. (“BRP”) is a corporation organized and existing under the laws of the State of Delaware and having a principal place of business at 10101 Science Drive, Sturtevant, Wisconsin 53177. BRP imports, distributes and sells throughout the United States, including this judicial district, Sea-Doo PWCs manufactured by Bombardier, and also designs, develops and tests Sea-Doo PWCs at its facility located in this Judicial District at 1111 J. A. Bombardier Blvd., Palm Bay, Florida 32908.

6. On information and belief, defendant Kawasaki Heavy Industries, Ltd. (“KHI”) is a corporation of Japan having a principal place of business at Kobe Crystal Tower, 1-3, Higashikawasaki-cho, 1-chome, Chuo-ku, Kobe, Hyogo 650-8680, Japan.

7. On information and belief, defendant Kawasaki Motors Manufacturing Corp., U.S.A. (“KMMC”) is a wholly-owned corporate subsidiary of KHI organized and existing under the laws of the State of Nebraska and having a principal place of business at 6600 Northwest 27th Steering, Lincoln, NE 68524. On information and belief, KMMC is KHI’s U.S. manufacturing arm for PWCs.

8. On information and belief, defendant Kawasaki Motors Corporation, U.S.A., (“KMC”) is a wholly-owned corporate subsidiary of KHI organized and existing under the laws of the State of California and having a principal place of business at 9950 Jeronimo Road, Irvine, California 92618. On information and belief, KMC is the U.S. sales and distribution arm of KHI for PWCs manufactured by KMMC.

9. On information and belief, defendants KHI, KMMC and KMC, acting in concert, have engaged in (a) the manufacture in the U.S. of Kawasaki PWCs and components thereof including a feature providing off-throttle steering capability referred to as the “Kawasaki Smart Steering” system, (b) the offer for sale and sale of said PWCs and components in the U.S., including this judicial district, and (c) the sale of said PWCs and components outside the U.S., including Canada.

COUNT I

Patent Infringement (U.S. Pat. No. 6,336,833) (35 U.S.C. § 271)

10. Plaintiffs reiterate and incorporate the allegations set forth in paragraphs 1-9 above as if fully set forth herein.

11. On January 8, 2002, United States Patent No. 6,336,833 entitled “Watercraft With Steer-Responsive Throttle” (“the ‘833 patent”) was duly and legally issued by the United States Patent & Trademark Office.

12. Plaintiff BRP is the lawful owner by assignment of all right, title and interest in and to the ‘833 patent.

13. Plaintiff Bombardier holds an exclusive license under the `833 patent to manufacture PWCs.

14. On information and belief, PWCs incorporating the Kawasaki Smart Steering system practice and embody the invention of one or more claims of the `833 patent.

15. On information and belief, defendant KMMC has infringed the `833 patent in violation of 35 U.S.C. § 271 (a) by making, using, offering for sale and selling infringing PWCs incorporating the Kawasaki Smart Steering system in the U.S. without authority or license from BRP or Bombardier.

16. On information and belief, defendant KMMC has actively induced others to infringe the `833 patent in violation of 35 U.S.C. § 271(b) by knowingly encouraging, aiding and abetting (i) KMC and retail dealers to offer for sale and sell and (ii) retail purchasers to use, infringing PWCs incorporating the Kawasaki Smart Steering system in the U.S. without authority or license from BRP or Bombardier.

17. On information and belief, defendant KMC has infringed the `833 patent in violation of 35 U.S.C. § 271(a) by offering for sale and selling infringing PWCs incorporating the Kawasaki Smart Steering system in the U.S. without authority or license from BRP or Bombardier.

18. On information and belief, defendant KMC has actively induced others to infringe the `833 patent in violation of 35 U.S.C. § 271(b) by knowingly encouraging, aiding and abetting (i) KMMC to manufacture and sell, (ii) retail dealers to offer for sale

and sell and (iii) retail purchasers to use, infringing PWCs incorporating the Kawasaki Smart Steering system in the U.S. without authority or license from BRP or Bombardier.

19. On information and belief, defendant KHI is liable for infringement of the '833 patent under 35 U.S.C. § 271(a) because it has used its control over its wholly-owned subsidiaries KMMC and KMC to cause them, acting as its agents, to manufacture, offer for sale and sell infringing PWCs incorporating the Kawasaki Smart Steering system in the U.S. without authority or license from BRP or Bombardier.

20. On information and belief, Defendant KHI has actively induced others to infringe the '833 patent in violation of 35 U.S.C. § 271(b) by knowingly planning, encouraging, directing, overseeing, aiding and abetting (i) KMMC and KMC to manufacture, use, offer for sale and sell, (ii) retail dealers to offer for sale and sell and (iii) retail purchasers to use, infringing PWCs incorporating the Kawasaki Smart Steering system in the U.S. without authority or license from BRP or Bombardier.

21. On information and belief, defendants have had actual knowledge of the '833 patent since at least as early as May 2003. On information and belief, defendants' infringement has been in willful disregard of BRP's and Bombardier's patent rights, making this an exceptional case within the meaning of 35 U.S.C. § 285.

22. The aforesaid infringing activity has caused damage to plaintiffs, including loss of profits from sales they would have made but for the infringements. Unless enjoined, the aforesaid infringing activity will continue and cause irreparable injury to plaintiffs for which there is no adequate remedy at law.

COUNT II

**Patent Infringement (U.S. Pat. No. 6,405,669)
(35 U.S.C. § 271)**

23. Plaintiff BRP reiterates and incorporates the allegations set forth in paragraphs 1-22 above as if fully set forth herein.

24. On June 18, 2002, United States Patent No. 6,405,669 entitled “Watercraft With Steer-Response Engine Speed Controller” (“the ‘669 patent”) was duly and legally issued by the United States Patent & Trademark Office.

25. Plaintiff BRP is the lawful owner by assignment of all right, title and interest in and to the ‘669 patent.

26. Plaintiff Bombardier holds an exclusive license under the ‘669 patent to manufacture PWCs.

27. On information and belief, PWCs incorporating the Kawasaki Smart Steering system practice and embody the invention of one or more claims of the ‘669 patent.

28. On information and belief, defendant KMMC has infringed the ‘669 patent in violation of 35 U.S.C. § 271(a) by making, using, offering for sale and selling infringing PWCs incorporating the Kawasaki Smart Steering system in the U.S. without authority or license from BRP or Bombardier.

29. On information and belief, defendant KMMC has actively induced others to infringe the ‘669 patent in violation of 35 U.S.C. § 271(b) by knowingly encouraging, aiding and abetting (i) KMC and retail dealers to offer for sale and sell and (ii) retail

purchasers to use, infringing PWCs incorporating the Kawasaki Smart Steering system in the U.S. without authority or license from BRP or Bombardier.

30. On information and belief, defendant KMC has infringed the '669 patent in violation of 35 U.S.C. § 271(a) by offering for sale and selling infringing PWCs incorporating the Kawasaki Smart Steering system in the U.S. without authority or license from BRP or Bombardier.

31. On information and belief, defendant KMC has actively induced others to infringe the '669 patent in violation of 35 U.S.C. § 271(b) by knowingly encouraging, aiding and abetting (i) KMMC to manufacture and sell, (ii) retail dealers to offer for sale and sell and (iii) retail purchasers to use, infringing PWCs incorporating the Kawasaki Smart Steering system in the U.S. without authority or license from BRP or Bombardier.

32. On information and belief, defendant KHI is liable for infringement of the '669 patent under 35 U.S.C. § 271(a) because it has used its control over its wholly-owned subsidiaries KMMC and KMC to cause them, acting as its agents, to manufacture, offer for sale and sell infringing PWCs incorporating the Kawasaki Smart Steering system in the U.S. without authority or license from BRP or Bombardier.

33. On information and belief, defendant KHI has actively induced infringement of the '669 patent in violation of 35 U.S.C. § 271(b) by knowingly planning, encouraging, directing, overseeing, aiding and abetting (i) KMMC and KMC to manufacture, use, offer for sale and sell, (ii) retail dealers to offer for sale and sell and (iii) retail purchasers to use, infringing PWCs incorporating the Kawasaki Smart Steering system in the U.S. without authority or license from BRP or Bombardier.

34. On information and belief, defendants have had actual knowledge of the '669 patent since at least as early as May 2003. On information and belief, defendants' infringement has been in willful disregard of BRP's and Bombardier's patent rights, making this an exceptional case within the meaning of 35 U.S.C. § 285.

35. The aforesaid infringing activity has caused damage to plaintiffs, including loss of profits from sales they would have made but for the infringement. Unless enjoined, the aforesaid infringing activity will continue and cause irreparable injury to plaintiffs for which there is no adequate remedy at law.

COUNT III

Patent Infringement (U.S. Pat. No. 6,428,371) (35 U.S.C. § 271)

36. Plaintiff BRP reiterates and incorporates the allegations set forth in paragraphs 1-35 above as if fully set forth herein.

37. On August 6, 2002, United States Patent No. 6,428,371 entitled "Watercraft With Steer Responsive Engine Speed Controller" ("the '371 patent") was duly and legally issued by the United States Patent & Trademark Office.

38. Plaintiff BRP is the lawful owner by assignment of all right, title and interest in and to the '371 patent.

39. Plaintiff Bombardier holds an exclusive license under the '371 patent to manufacture PWCs.

40. On information and belief, PWCs incorporating the Kawasaki Smart Steering system practice and embody the invention of one or more claims of the '371 patent.

41. On information and belief, defendant KMMC has infringed the '371 patent in violation of 35 U.S.C. § 271(a) by making, using, offering for sale and selling infringing PWCs incorporating the Kawasaki Smart Steering system in the U.S. without authority or license from BRP or Bombardier.

42. On information and belief, defendant KMMC has actively induced others to infringe the '371 patent in violation of 35 U.S.C. § 271(b) by knowingly encouraging, aiding and abetting (i) KMC and retail dealers to offer for sale and sell and (ii) retail purchasers to use, infringing PWCs incorporating the Kawasaki Smart Steering system in the U.S. without authority or license from BRP or Bombardier.

43. On information and belief, defendant KMC has infringed the '371 patent in violation of 35 U.S.C. § 271(a) by offering for sale and selling infringing PWCs incorporating the Kawasaki Smart Steering system in the U.S. without authority or license from BRP or Bombardier.

44. On information and belief, defendant KMC has actively induced others to infringe the '371 patent in violation of 35 U.S.C. § 271(b) by knowingly encouraging, aiding and abetting (i) KMMC to manufacture and sell, (ii) retail dealers to offer for sale and sell and (iii) retail purchasers to use, infringing PWCs incorporating the Kawasaki Smart Steering system in the U.S. without authority or license from BRP or Bombardier.

45. On information and belief, defendant KHI is liable for infringement of the '371 patent under 35 U.S.C. § 271(a) because it has used its control over its wholly-owned subsidiaries KMMC and KMC to cause them, acting as its agents, to manufacture,

offer for sale and sell infringing PWCs incorporating the Kawasaki Smart Steering system in the U.S. without authority or license from BRP or Bombardier.

46. On information and belief, defendant KHI has actively induced infringement of the '371 patent in violation 35 U.S.C. § 271(b) by knowingly planning, encouraging, directing, overseeing, aiding and abetting (i) KMMC and KMC to manufacture, use, offer for sale and sell, (ii) retail dealers to offer for sale and sell and (iii) retail purchasers to use, infringing PWCs incorporating the Kawasaki Smart Steering system in the U.S. without authority or license from BRP or Bombardier.

47. On information and belief, defendants have had actual knowledge of the '371 patent since at least as early as May 2003. On information and belief, defendants' infringement has been in willful disregard of BRP's and Bombardier's patent rights, making this an exceptional case within the meaning of 35 U.S.C. § 285.

48. The aforesaid infringing activity has caused damage to plaintiffs, including loss of profits from sales they would have made but for the infringement. Unless enjoined, the aforesaid infringing activity will continue and cause irreparable injury to plaintiffs for which there is no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully pray for judgment and an order against defendants:

A. Adjudging that the manufacture, use, offer for sale, sale and/or importation of PWCs that incorporate the Kawasaki Smart Steering system infringes the '833 patent, the '669 patent and the '371 patent;

B. Adjudging that each of defendants has infringed and actively induced others to infringe the `833 patent, the `669 patent and the `371 patent;

C. Adjudging that each defendants' infringement of the `833 patent, the `669 patent and the `371 patent has been willful;

D. Enjoining each defendant, its officers, directors, employees, attorneys, agents, representatives, parents, subsidiaries, affiliates and all other persons acting in concert, participation or privity with it, and its successors and assigns, from infringing, contributorily infringing and/or inducing others to infringe the `833 patent, the `669 patent and/or the `371 patent;

E. Awarding plaintiffs the damages they have sustained by reason of defendants' infringement, together with interest and costs pursuant to 35 U.S.C. § 284;

F. Awarding plaintiffs increased damages of three times the amount found or assessed by reason of the willful and deliberate nature of defendants' acts of infringement pursuant to 35 U.S.C. § 284;

G. Adjudging this to be an exceptional case and awarding plaintiffs their attorney fees pursuant to 35 U.S.C. § 285; and

H. Awarding to plaintiffs such other and further relief that this Court may deem just and proper.

JURY DEMAND

Plaintiffs hereby demand a trial by jury in the above-captioned action on all claims for relief which they are entitled to have tried to a jury.

Dated: February 21, 2006

Respectfully submitted,

/S/ DAVID C. WILLIS

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