

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 06-81054 – MIDDLEBROOKS/JOHNSON

LEVENGER COMPANY
a Florida Corporation,
Plaintiff,

v.

JACOBO (JACK) FELDMAN, et al

Defendants.

SECOND AMENDED COMPLAINT

Plaintiff, LEVENGER COMPANY, by and through its undersigned attorneys, files this Second Amended Complaint pursuant to Written Consent filed by Defendants, and complains against Defendants, jointly and severally, and alleges as follows:

CORRECTION OF CAPTION

The first-named defendant is Jacobo (Jack) Feldman, not Jacobo K. Feldman

NATURE OF THIS ACTION

1. Plaintiff seeks a declaration of patent unenforceability and invalidity, a refund of all patent license fees paid, a determination that Defendants Jack (Jacobo) Feldman and SHIRLEY FELDMAN engaged in inequitable conduct before the United States Patent and Trademark Office, a determination that this is an exceptional case, and reimbursement to Plaintiff of its reasonable attorney fees. In addition, Plaintiff seeks a determination that JACK FELDMAN and SHIRLEY FELDMAN engaged in fraud and misrepresentation in connection with a certain License Agreement dated approximately July 1, 2004 and that JACK FELDMAN,

SHIRLEY FELDMAN and/or one of the other defendant entities violated Plaintiff's rights and/or conspired to violate Plaintiff's rights under such License Agreement, engaged in breach of contract, unfair competition, and false designation of origin under the Lanham Act and Florida common law. In the alternative, if it is determined that the patents are valid and enforceable, judgment that JACK FELDMAN and/or SHIRLEY FELDMAN and/or one of the defendant entities have infringed said patent in violation of the exclusive rights conveyed to Plaintiff pursuant to the License Agreement.

THE PARTIES

2. Plaintiff LEVINGER COMPANY, (LEVINGER) is a corporation organizing and existing under the laws of the state of Florida and doing business at 420 South Congress Avenue, Delray Beach, Broward County, Florida 33445, within this judicial district and division.

3. Defendant JACOBO (JACK) FELDMAN is, upon information and belief, an individual residing within this judicial district and division and having a business address c/o Rollabind, Inc., 3117 N.W. 25th Avenue, Pompano Beach, FL 33069 within this judicial district and division.

4. Defendant SHIRLEY FELDMAN is, upon information and belief, an individual residing within this judicial district and division and having a business address c/o Rollabind, Inc., 3117 N.W. 25th Avenue, Pompano Beach, FL 33069 within this judicial district and division.

5. Defendant ROLLABIND, LLC (ROLLABIND) is, upon information and belief, a Florida Limited Liability Company having a principal address at 3117 NW 25th Avenue, Pompano Beach. Broward County, Florida 33069 within this judicial district and division. Upon

information and belief this Defendant is owned and/or controlled legally or de facto by Defendant JACK FELDMAN and/or Defendant SHIRLEY FELDMAN.

6. Defendant SJ CREATIVE GROUP, LLC. (SJ CREATIVE) is, upon information and belief, a Florida Limited Liability Company having a principal address at 2300 W. Sample Road, Suite 202, Pompano Beach, Broward County, Florida 33073, within this judicial district and division. Upon information and belief this Defendant assists in advertising the availability of licenses which allows third parties to act in violation of Plaintiff's rights. Plaintiff will clarify its allegations against this Defendant as discovery progresses.

7. Defendant SHIRJA, INC., (SHIRJA) is, upon information and belief, a Florida Corporation having a principal address at 2300 W. Sample Road, Suite 202, Pompano Beach, Broward County, Florida 33073, within this judicial district and division. Upon information and belief this Defendant claims to own the Rollabind trademark and authorizes, licenses or otherwise permits Defendant ROLLABIND to use such trademark in some of the activities complained of herein.

JURISDICTION AND VENUE

8. This Court has original and exclusive jurisdiction of Counts I, II and III pursuant to Title 28 United States Code, § 2201 (the Declaratory Judgments Act) and pursuant to Title 28, United States Code, § 1338(a) because this action arises under the Patent Laws of the United States, Title 35, United States Code, § 1 et seq. seeking declarations of patent invalidity and unenforceability.

9. Should the Court determine the patents are valid and enforceable, then this Court has original and exclusive jurisdiction of Counts VIII, IX and X pursuant to Title 28, United States Code, § 1338(a) because this action arises under the patent laws of the United States (Title 35 United States Code, § 1 et. seq.) for infringement of a United States Letters Patent.

10. This Court has original jurisdiction pursuant to Title 28, United States Code § 1338(b) and supplemental jurisdiction pursuant to Title 28, United States Code § 1367(a) as to all other counts since they form part of the same case or controversy and/or since they are joined with a substantial and related claim under the Patent Laws of the United States.

11. Venue is proper in this judicial district pursuant to Title 28, United States Code § 1400(b) because Defendants reside in this judicial district and/or Defendants have committed acts of infringement and have a regular and established place of business within this judicial district, and/or pursuant to Title 28, United States Code, § 1391, because all parties reside in, and/or the claim arose in, this judicial district and division.

COUNT I – DECLARATION OF PATENT INVALIDITY

12. Plaintiff realleges paragraphs 1-4, 8, and 11 as fully and completely as if set forth herein verbatim.

13. United States Letters Patent No. 5,553,959, a copy of which was attached to the original complaint as Exhibit A, issued September 10, 1996, was filed on June 7, 1995 and relates to a Notebook System.

14. United States Letters Patent No. 5,749,667, a copy of which was attached to the original complaint as Exhibit B, issued May 12, 1998, has an effective filing date of June 7, 1995, and also relates to a Notebook System. Collectively United States Letters Patent Nos. 5,553,959 and 5,749,667 are referred to herein as LICENSED PATENTS.

15. Defendants JACK FELDMAN and SHIRLEY FELDMAN claim to be the inventors of the LICENSED PATENTS and to own the LICENSED PATENTS.

16. Effective July 1, 2004, Defendants JACK FELDMAN and SHIRLEY FELDMAN, as owners of the LICENSED PATENTS, granted certain rights to Plaintiff LEVINGER pursuant to a License Agreement. A copy of the License Agreement is not appended hereto because some of the terms of the License Agreement are confidential.

17. Defendants JACK FELDMAN and SHIRLEY FELDMAN, having entered into a License Agreement with Plaintiff and demanding payment of royalties under said License Agreement in respect of the LICENSED PATENTS, have created justiciable controversy which is a cloud upon Plaintiff's business and which will interfere with and harm Plaintiff's business.

18. More than one year prior to June 7, 1995, the Flic 'N Roll Notebook System was offered for sale in the United States and catalogs of the Flic 'N Roll Notebook System were publicly available in the United States. A copy of that portion of the Flic 'N Roll catalog, filed with the United States Patent and Trademark Office and publicly available prior to June 7, 1994, was annexed to the Amended Complaint as Exhibit C.

19. More than one year prior to June 7, 1995, Spanish Utility Model Patent issued from Spanish Patent Application No. 295374. A copy of the Spanish Utility Model Patent was annexed to the Amended Complaint as Exhibit D. The company identified in Exhibit D as the owner or proprietor of Exhibit D is MILOS.

20. Each of Exhibits C and D disclose all the features which Defendants contended were missing from the prior art and upon which patentability of the LICENSED PATENTS was predicated.

21. Based at least in part on Exhibits C and /or D, the LICENSED PATENTS are invalid pursuant to 35 U.S.C. § 102 and/or § 103.

COUNT II – INEQUITABLE CONDUCT

22. Plaintiff realleges paragraphs 1-3, 8,11, 13 – 15 and 18 as fully and completely as if set forth herein verbatim.

23. The Flic 'N Roll Notebook System is relevant, material prior art to the LICENSED PATENTS.

24. Prior to Plaintiff and Defendants JACK FELDMAN and SHIRLEY FELDMAN entering into the License Agreement, Defendant JACK FELDMAN and/or one of his companies was a vendor to Plaintiff for notebook products which, at that time, Defendant JACK FELDMAN contended were covered by his patents or patent applications.

25. Prior to Defendant JACK FELDMAN and/or one of his companies becoming a vendor to Plaintiff, Defendant JACK FELDMAN claimed to have some relationship with Flic and/or Mapal Plastics. At the request of Defendant JACK FELDMAN, at least the first payment from Plaintiff for products supplied by Defendant JACK FELDMAN and/or one of his companies was by check made payable to Flic.

26. Mapal Plastics is, on information and belief, the originator of the product known as the Flic 'N Roll Notebook System.

27. The Flic 'N Roll Notebook System discloses all the features which Defendants JACK FELDMAN and SHIRLEY FELDMAN contended were missing from the prior art and

upon which patentability of the LICENSED PATENTS was predicated. The Flic 'N Roll Notebook System is more relevant and more material than any prior art made of record in the United States Patent and Trademark Office during the proceedings leading to the grant of United States Patents Nos. 5,553,959 and 5,749,667. The Flic 'N Roll Notebook System includes *inter alia*, a configuration of openings in the sheet (and a related disk-like structure) corresponding to Figure 3 of each of said United States Patents Nos. 5,553,959 and 5,749,667, as distinguished and differentiated from the prior art disclosed by Defendants JACK FELDMAN and SHIRLEY FELDMAN in each of Figures 5 and 7 of United States Patents Nos. 5,553,959 and 5,749,667.

28. The Flic 'N Roll Notebook System was prior art known to Defendant JACK FELDMAN but not identified by Defendant JACK FELDMAN to the United States Patent and Trademark Office.

29. Defendant JACK FELDMAN had an obligation to disclose material prior art to the United States Patent and Trademark Office and breached that obligation and misdirected the United States Patent and Trademark Office by intentionally failing to disclose the Flic 'N Roll Notebook System to the United States Patent and Trademark Office, and by disclosing less relevant prior art during the proceedings leading up to the grant of the LICENSED PATENTS.

30. The intentional failure of Defendants JACK FELDMAN to disclose the Flic 'N Roll Notebook System prior art to the United States Patent and Trademark Office during the proceedings leading up to the grant of the LICENSED PATENTS constitutes inequitable conduct.

31. The LICENSED PATENTS are unenforceable based on the inequitable conduct of Defendant JACK FELDMAN.

COUNT III - PATENT UNENFORCEABILITY DUE TO MISUSE

32. Plaintiff realleges paragraphs 1-4, 8, 11, 13-15 and 16 as fully and completely as if set forth herein verbatim.

33. Upon information and belief, Defendants JACK FELDMAN and SHIRLEY FELDMAN entered into a License Agreement with Geiger Bros – Sun Graphix under the LICENSED PATENTS.

34. Upon information and belief, the License Agreement referred to in the preceding paragraph requires payment of a license fee by Geiger Bros – Sun Graphix for those products made by Geiger Bros – Sun Graphix for Plaintiff.

35. The License Agreement referred to in Paragraph 16 requires payment of a license fee from Plaintiff for the products made by Geiger Bros – Sun Graphix for Plaintiff.

36. The activities of Defendants JACK FELDMAN and SHIRLEY FELDMAN in extracting two license fees for the same product under the LICENSED PATENTS amount to patent misuse rendering the LICENSED PATENTS unenforceable.

COUNT IV –FRAUD AND MISREPRESENTATION

37. Plaintiff realleges paragraphs 1-3, 10, 11 and 16 as fully and completely as if set forth herein verbatim.

38. In approximately late 1995 or early 1996, Defendant JACK FELDMAN and Defendant ROLLABIND proposed that Plaintiff LEVANGER market certain products manufactured by Defendant JACK FELDMAN and/or Defendant ROLLABIND under a vendor-vendee relationship. As part of the negotiations leading up to the vendor-vendee relationship, Defendant JACK FELDMAN further represented, on behalf of himself and/or ROLLABIND

that because of his patents and/or patent applications, no other company could sell comparable notebook products in the United States.

39. The statements of Defendant JACK FELDMAN as described in this Count were false, were known by Defendant JACK FELDMAN to be false, and were made by Defendant JACK FELDMAN with the intent of inducing Plaintiff to rely upon those statements and enter into a vendor-vendee relationship with Defendant JACK FELDMAN and/or one of his companies.

40. Plaintiff, to its detriment, reasonably relied on the representations described in this Count, and began advertising such notebook products in its Spring 1996 catalog, purchasing such products from Defendant JACK FELDMAN, with at least the first check made payable to Flic at the request of Defendant JACK FELDMAN, and with subsequent checks made payable to Defendant ROLLABIND.

41. During the period after Defendant ROLLABIND became a vendor to Plaintiff, until approximately July 2004, whenever Plaintiff identified comparable notebook products in the United States and informed Defendant JACK FELDMAN about such products, Defendant JACK FELDMAN on behalf of himself and Defendant ROLLABIND, repeated his knowingly false representations that no other company could sell comparable products in the United States and promised to take care of the situation. After each representation, such products were not thereafter immediately seen in the United States market by Plaintiff, and Plaintiff reasonably continued to rely on Defendant JACK FELDMAN's repeated representations as described in this Count that no other company could sell comparable products in the United States.

42. The continued representations of Defendant JACK FELDMAN referred to in paragraph 41 were made with the intent of inducing Plaintiff to rely upon those representations

and maintain the vendor-vendee relationship with Defendant JACK FELDMAN and/or one Defendant ROLLABIND, and were false and were known by Defendant JACK FELDMAN to be false.

43. Plaintiff, to its detriment, continued to reasonably rely on the representations referred to in this Count and continued the vendor-vendee relationship.

44. In approximately 2004, Defendant ROLLABIND indicated an inability to manufacture notebook products for Plaintiff LEVINGER with the quality, quantity and delivery schedules requested by Plaintiff.

45. In approximately 2004, Defendant JACK FELDMAN proposed, on behalf of himself and Defendant SHIRLEY FELDMAN to license Plaintiff LEVINGER under the patents identified herein as the LICENSED PATENTS. As part of the negotiations leading up to the License Agreement, Defendant JACK FELDMAN again represented that no other company could sell comparable notebook products in the United States because of the patent position of JACK FELDMAN and SHIRLEY FELDMAN.

46. The statements and representations referred to in the preceding paragraph were made with the intent of inducing Plaintiff to rely upon those statements and enter into a License Agreement with Defendant JACK FELDMAN and SHIRLEY FELDMAN, and were false and were known by Defendant JACK FELDMAN to be false.

47. Plaintiff reasonably relied on all the representations described in this Count of the Second Amended Complaint to its detriment and entered into the License Agreement referred to in paragraph 16 of this Second Amended. Complaint, and made royalty payments thereunder.

48. But for such representations described in this Count of the Second Amended Complaint, Plaintiff would not have entered into a vendor-vendee relationship with Defendant

JACK FELDMAN and Defendant ROLLABIND, and would not entered into said License Agreement with Defendant JACK FELDMAN and Defendant SHIRLEY FELDMAN.

49. But for such representations described in this Count of the Second Amended Complaint, Plaintiff would not have entered into the License Agreement and would not have been obligated to make any payments to Defendant JACK FELDMAN and Defendant SHIRLEY FELDMAN.

50. Plaintiff has been damaged and injured to its detriment by its reasonable reliance on the representations described in this Count of the Second Amended Complaint in an amount at least equal to the total of all license fees paid under the License Agreement.

COUNT V – BREACH OF LICENSE AGREEMENT

51. Plaintiff realleges paragraphs 1-5, 10 11 and 16 above as fully and completely as if set forth herein verbatim.

52. The License Agreement between Plaintiff LEVINGER and Defendants JACK FELDMAN and SHIRLEY FELDMAN included certain exclusive rights in favor of Plaintiff.

53. Defendants JACK FELDMAN and SHIRLEY FELDMAN have, on information and belief licensed third parties in violation of Plaintiff's exclusive rights under the License Agreement.

54. Defendant ROLLABIND has, on information and belief, under the control of Defendant JACK FELDMAN and/or under an implied License from JACK FELDMAN and SHIRLEY FELDMAN, manufactured and/or sold notebook products to third parties in violation of Plaintiff's exclusive rights under the License Agreement.

55. The activities of Defendants JACK FELDMAN, SHIRLEY FELDMAN and ROLLABIND amount to violation of Plaintiff LEVENGER'S rights under the License Agreement, to the injury and detriment of Plaintiff LEVENGER, and Plaintiff LEVENGER seeks compensation in an amount to be determined after discovery of the full scope of the activities of the Defendants identified in this Count.

COUNT VI – INDUCING BREACH OF LICENSE AGREEMENT

56. Plaintiff realleges paragraphs 1-3, 5, 6, 10, 11, 16 and 53 above as fully and completely as if set forth herein verbatim.

57. Defendant SJ CREATIVE has, on information and belief, advertised the availability of licenses for notebook products and, as a result, induced Defendants ROLLABIND and JACK FELDMAN to breach the License Agreement with Plaintiff and induced Defendants JACK FELDMAN and SHIRLEY FELDMAN to grant licensed under the LICENSED PATENTS to third parties in violation of the exclusive rights of Plaintiff under the License Agreement.

58. The activities of Defendant SJ CREATIVE induced Defendants JACK FELDMAN, SHIRLEY FELDMAN and ROLLABIND to act in violation of Plaintiff LEVENGER'S rights under the License Agreement, to the injury and detriment of Plaintiff LEVENGER, and Plaintiff LEVENGER seeks compensation in an amount to be determined after discovery of the full scope of the activities of the Defendants identified in this Count

COUNT VII – UNFAIR COMPETITION

59. Plaintiff realleges paragraphs 1-3, 6, 7, 10, and 11 above as fully and completely as if set forth herein verbatim.

60. As a result of long, continuous and substantial efforts, product development, advertising and promotion, Plaintiff LEVANGER has long enjoyed a reputation as a leading manufacturer and supplier of high quality products including but not limited to notebook systems. Through favorable public acceptance and recognition, as evidenced by, *inter alia*, volume of sales, the purchasing public has come to know and recognize the LEVANGER name as well as the appearance of the LEVANGER notebook systems, both of which constitute LEVANGER assets of substantial value as symbols of quality products, design, appearance, and which contribute to the goodwill enjoyed by LEVANGER.

61. Upon information and belief, Defendant ROLLABIND maintains an internet website at the domain "rollabind.com" and Defendant JACK FELDMAN is identified as the administrative contact for Defendant ROLLABIND for such website.

62. Defendant ROLLABIND advertises on the aforementioned website that Plaintiff is its Licensee and that entities may contact Defendant SJ CREATIVE for available licensing opportunities.

63. The aforementioned website advertises that individuals can contact Defendant SJ CREATIVE for more information on ROLLABIND and its products.

64. Defendant SHIRJA claims ownership of the trademark "Rollabind" for Notebook Systems, under which Defendant ROLLABIND's products are sold.

65. Defendant JACK FELDMAN has indicated to Plaintiff LEVANGER that he controls Defendant ROLLABIND. The specific legal and business relationship as among defendants is otherwise presently unknown.

66. In recognition of the value of the LEVANGER name and product appearance, and in recognition of the quality of the LEVANGER products, Defendants JACK FELDMAN and

ROLLABIND advertise the LEVANGER products and the license to LEVANGER on the aforementioned internet website.

67. Plaintiff LEVANGER has developed a specific appearance for its notebook system products including as early as Autumn 1996 the overall appearance, a leather stitched cover, and the appearance of individual pages and refill or replacement pages.

68. Defendant ROLLABIND or persons acting under license from Defendants JACK FELDMAN and SHIRLEY FELDMAN have manufactured, imported and/or sold stationery products (including refill or replacement pages which fit within LEVANGER products) which substantially duplicate the appearance of LEVANGER stationery products (including refill or replacement pages) in interstate commerce, which constitutes false description of original and unfair competition, and which is likely to cause confusion, mistake or deception as to affiliation, connection or association of the Defendants named in this Count and their third party licensees with LEVANGER and/or as to the origin, sponsorship or approval of the stationery products of the Defendants named in this Count and their third party licensees by LEVANGER.

69. The activities referred to in this Count include products with the ROLLABIND trademark under actual or implied license from Defendant SHIRJA.

70. The activities of the Defendants as described in this Count were carried out with the intent to confuse, deceive or mislead consumers into believing that the products made by the Defendants named in this Count and/or licensed by the Defendants named in this Count were made, authorized, licensed by, and/or sponsored by Plaintiff and/or affiliated with or approved by Plaintiff.

71. The activities of the Defendants as described in this Count are likely to cause confusion, mistake or deception as to the source, origin, sponsorship or affiliation between

Plaintiff and one or more of the Defendants named in this Count with respect to notebook systems.

72. The activities of the Defendants as described in this Count amount to unfair competition in violation of Title 15, U.S.C. § 1125(a) and constitute unfair competition under the laws of the State of Florida, all to the injury or detriment of Plaintiff.

COUNT VIII – PATENT INFRINGEMENT

73. Plaintiff realleges paragraphs 1- 3, 9, 11, 16, 53 and 54 as fully and completely as if set forth herein verbatim.

74. If the LICENSED PATENTS are valid, the notebook systems imported, offered for sale, made and/or sold by JACK FELDMAN, ROLLABIND, and/or third parties acting under license from JACK FELDMAN and SHIRLEY FELDMAN infringe the LICENSED PATENTS in violation of Title 35, U.S.C. § 271(a) and in violation of Plaintiff's exclusive rights under the License Agreement, all to the injury and detriment of Plaintiff.

COUNT IX – INDUCING PATENT INFRINGEMENT

75. Plaintiff realleges paragraphs 1- 7, 9, 11, 16, 53, 54, 57 and 58 as fully and completely as if set forth herein verbatim.

76. If the LICENSED PATENTS are valid, the activities of the Defendants named in this Count amounts to active inducement of infringement of the LICENSED PATENTS in violation of Title 35, U.S.C. § 271(b) and in violation of Plaintiff's exclusive rights under the License Agreement, all to the injury and detriment of Plaintiff.

COUNT X – CONTRIBUTORY PATENT INFRINGEMENT

77. Plaintiff realleges paragraphs 1- 7, 9, 11, 16, 53, 54, 57 and 58 as fully and completely as if set forth herein verbatim.

78. If the LICENSED PATENTS are valid, the activities of the Defendants named in this Count amounts to contributory infringement of the LICENSED PATENTS in violation of Title 35, U.S.C. § 271(c) and in violation of Plaintiff's exclusive rights under the License Agreement, all to the injury and detriment of Plaintiff.

COUNT XI – REFUND OF LICENSE FEES

79. Plaintiff realleges paragraphs 1-4, 10, 11 and 16, as fully and completely as if set forth herein verbatim.

80. Plaintiff erroneously computed and paid license fees under the License Agreement for items which did not fall within the definition of Licensed Products and Plaintiff is entitled to a refund of such overpayment independent of the validity and enforceability of the LICENSED PATENTS.

WHEREFORE, Plaintiff LEVINGER COMPANY prays for the following relief:

- a) Judgment that any claims of the LICENSED PATENTS which allegedly cover any LEVINGER product are invalid;
- b) Judgment that if any claims of the LICENSED PATENTS are valid, they are not infringed by Plaintiff;
- c) Judgment that Plaintiff is not liable to Defendant for any future royalties nor has any other obligations under the License Agreement or under any other intellectual property rights of Defendant;

- d) Judgment that the LICENSED PATENTS are unenforceable for inequitable conduct;
- e) Judgment that the LICENSED PATENTS are unenforceable for patent misuse;
- f) Judgment that if any of the claims of the LICENSED PATENTS are valid and enforceable, then the activities, advertisements and products of Defendants and the products of third parties referred to herein infringe one or more claims of the LICENSED PATENTS and Plaintiff's rights thereunder;
- g) Judgment that the licenses granted to third parties are in violation of the License Agreement between Plaintiff and Defendants, JACK FELDMAN and SHIRLEY FELDMAN;
- h) Judgment that the activities, advertisement and products of Defendants and the products of third parties referred to herein violate Plaintiff's rights under 15 U.S.C. §1125(a) and the Florida common law of unfair competition;
- i) In the event that the LICENSED PATENTS are valid and enforceable, for an accounting and an award of damages as Plaintiff has suffered as a result of patent infringement but in no event less than a reasonable royalty;

j) For an accounting and an award of damages Plaintiff has suffered for breach of the License Agreement;

k) For an accounting and a refund to Plaintiff of any royalties paid for products not covered by the LICENSED PATENTS;

l) For an accounting and a refund to Plaintiff of any royalties paid for sales during the time that Defendant has infringed upon Plaintiff's Exclusive Rights under the License Agreement and/or for any royalties paid during the time that anyone acting under color of license from Defendant has infringed upon Plaintiff's Exclusive Rights under the License Agreement;

m) For a refund of all license fees paid if the LICENSED PATENTS are unenforceable for inequitable conduct;

n) For a refund of all license fees paid if the LICENSED PATENTS are unenforceable for patent misuse;

o) To the extent that any refunds of license fees are liquidated amounts, pre-judgment interest thereon.

p) For a determination that this is an exceptional case and that Plaintiff is entitled to recover its reasonable attorney fees if the LICENSED PATENTS are determined to be unenforceable;

q) For a determination that if the patents are valid and enforceable, that the infringement in violation of the exclusive rights of Plaintiff has been willful, and for an increase in damages based upon willful infringement of the exclusive rights of the Plaintiff;

r) For an increase in damages based upon willful violations of 15 U.S.C. §1125(a);

s) For an injunction permanently restraining and enjoining further infringement of the LICENSED PATENTS by Defendants or anyone claiming under Defendants in violation of the exclusive rights of Plaintiff, if the LICENSED PATENTS are determined to be valid and enforceable;

t) For an injunction permanently restraining and enjoining further violations of 15 U.S.C. §1125(a);

u) Judgment that the License Agreement was entered into based on fraud and representation and a refund of all moneys paid by LEVENGER thereunder;

v) That Plaintiff shall have judgments for its costs and reasonable attorney fees; and

w) For such other and further relief as the Court may deem just and proper.

Dated: March 2, 2007

West Palm Beach, FL

Respectfully submitted,

LEVENGER COMPANY

By /s/ Joseph W. Bain
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AKERMAN SENTERFITT

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was filed electronically using the Court's CM/ECF system, thus constituting service on all attorneys of record who have registered to use the CM/ECF system, this 2nd day of March, 2007.

/s/ Kirk Humphreys

Kirk Humphreys
Akerman Senterfitt