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UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

CV '05 1253 AA 11

DYE PRECISION, INC., a California corporation,

Plaintiff,

v.

SMART PARTS, INC., a Pennsylvania corporation, **AND WDP, LTD.**, an England company,

Defendants.

CV No. _____

COMPLAINT FOR DECLARATORY JUDGMENT OF:

1. **INVALIDITY OF PATENTS;**
2. **UNENFORCEABILITY OF PATENTS;**
3. **NON-INFRINGEMENT OF PATENTS;**
4. **RESCISSION OF LICENSE AGREEMENT;**
5. **NON-INFRINGEMENT OF PATENT;**
6. **LACHES AND ESTOPPEL; AND**
7. **INVALIDITY OF PATENT**

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Plaintiff DYE Precision, Inc. ("DYE") hereby complains of Defendants Smart Parts, Inc. ("Smart Parts") and WDP, Ltd. ("WDP") and alleges as follows:

JURISDICTION AND VENUE

1. DYE's claims for declaratory judgment of patent invalidity, unenforceability of patent, non-infringement of patent, and estoppel arise under the Declaratory Judgments Act, 28 USC §§ 2201 and 2202, the Patent Laws of the United States, 35 USC § 100, *et seq.*, and federal common law based upon an actual justiciable controversy between the parties, to declare that DYE is free to continue to make, use, sell, and offer to sell all of its paintball guns and related products that have been accused of infringement. The Court has jurisdiction over the subject matter of these claims pursuant to 28 USC §§ 1331, 1332(a) and 1338(a).

2. DYE's claim for rescission of license agreement is based on the applicable laws of the State of Oregon. The Court has jurisdiction over the subject matter of this claim pursuant to 28 USC §§ 1332(a) and 1367.

3. Venue is proper in this judicial district under 28 USC § 1391.

THE PARTIES

4. DYE is a California corporation with a place of business located at 10637 Scripps Summit Court, San Diego, California.

5. DYE is informed and believes that Defendant Smart Parts is a Pennsylvania corporation with a place of business located at 100 Station Street, Loyalhanna, Pennsylvania.

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6. DYE is informed and believes that Defendant WDP is an England company with a place of business located at 221 Mount Street, Nechells, Birmingham, United Kingdom.

THE PATENTS AT ISSUE

7. Smart Parts has asserted infringement of two patents against DYE that are part of a family of five related patents all issuing from the same application no. 08/586,960 filed on January 16, 1996. The five issued patents, all entitled "Pneumatically Operated Projectile Launching Device," are U.S. Patent Nos. 5,881,707 ("the '707 patent"), 5,967,133 ("the '133 patent"), 6,035,843 ("the '843 patent"), 6,474,326 ("the '326 patent") and 6,637,421 ("the '421 patent").

8. The '707, '133, '843, '326 and '421 patents all list at issuance or through later filed Certificates of Correction the following four named inventors: David Smith, Raymond Gaston, William Gardner, Jr., and Adam Gardner (hereinafter, the "Named Inventors").

9. The two patents from the "Pneumatically Operated Projectile Launching Device" family asserted by Smart Parts against DYE are the '133 and '421 patents. Smart Parts claims to be the owner of the '133 and '421 patents.

10. This Court (Judge Garr King), on March 7, 2005, in Case No. 02-1557-KI between Smart Parts and WDP, finally ruled that Dr. Edward C. Hensel was an inventor of one of the patents of the "Pneumatically Operated Projectile Launching Device" family, the '326 patent. Accordingly, DYE is informed and believes that Dr. Hensel is or was an owner of the '326 patent by operation of law. DYE is further informed and believes that Dr. Hensel assigned his ownership rights in his invention of the '326 patent to WDP.

11. Based on the foregoing, DYE is informed and believes that WDP is an owner of the '326 patent.

12. DYE is further informed and believes that, by virtue of the relationship between the '326 patent and the other "Pneumatically Operated Projectile Launching Device" family of patents, Dr. Hensel is also an inventor and is or was an owner of the '707, '133, '843, and '421 patents by virtue of this Court ruling that Dr. Hensel was an inventor of the '326 patent. DYE is further informed and believes that Dr. Hensel also assigned his ownership rights in his invention of the '707, '133, '843, and '421 patents to WDP.

13. Based on the foregoing, DYE is informed and believes that WDP is also an owner of the '707, '133, '843, and '421 patents.

14. Smart Parts has also asserted infringement against DYE of U.S. Patent No. 5,228,427 ("the '427 patent") entitled "Improved Barrel for Paintball Gun."

FIRST CLAIM FOR RELIEF

(Declaration of Invalidity of '707, '133, '843, '326 and '421 Patents)

(Against Co-owners Smart Parts and WDP)

15. DYE incorporates herein by reference each of the allegations set forth in paragraphs 1 through 14 above.

16. Smart Parts has asserted the '133 and '421 patents against DYE, and DYE is under reasonable apprehension that the other patents in the "Pneumatically Operated Projectile Launching Device" family, the '707, '843, and '326 patents, will be asserted against it.

17. DYE is informed and believes that one or more claims of the '707, '133, '843, '326 and '421 patents are invalid under 35 USC §§ 102, 103, and/or 112 for one or more of the following reasons:

A. The invention claimed is not patentable for one or more of the reasons set forth in 35 USC § 102;

B. The invention claimed would have been obvious to one of ordinary skill in the art at the time the invention was made under 35 USC § 103;

C. The specification and claims of the '707, '133, '843, '326 and '421 patents do not comply with one or more of the requirements of 35 USC § 112, including without limitation the written description, enablement and best mode requirements of the first paragraph of 35 USC § 112.

18. DYE is further informed and believes that the '707, '133, '843, '326 and '421 patents are invalid because their true inventorship cannot be corrected under 35 USC § 256.

19. Smart Parts has asserted the "Pneumatically Operated Projectile Launching Device" family of patents against DYE, and thus declaratory relief is both appropriate and necessary to establish that the '707, '133, '843, '326 and '421 patents are invalid and thus cannot be asserted against DYE.

20. DYE is informed and believes that Smart Parts' assertion of all or a portion of the "Pneumatically Operated Projectile Launching Device" family of patents against DYE is in bad faith and against public policy because Smart Parts is aware that the '707, '133, '843, '326 and '421 patents are invalid at least for the reasons that Dr. Hensel's written description, enabling disclosure of the claimed invention, and best mode of carrying out the claimed invention were withheld from the '707, '133, '843, '326 and '421 patents, and that the '707, '133, '843, '326 and '421 patents have incorrect inventorship in that they fail to name Dr. Hensel as an inventor and cannot be cured or corrected.

21. Accordingly, DYE is informed and believes that this case is exceptional under 35 USC § 285, entitling DYE to an award of its attorney fees incurred in this action.

SECOND CLAIM FOR RELIEF

(Declaration of Unenforceability of '707, '133, '843, '326 and '421 Patents)

(Against Co-owners Smart Parts and WDP)

22. DYE incorporates herein by reference each of the allegations set forth in paragraphs 1 through 21 above.

23. DYE is informed and believes that the '707, '133, '843, '326 and '421 patents are unenforceable under the doctrine of inequitable conduct or fraud on the Patent Office.

24. DYE is informed and believes that when application no. 08/586,960 was filed on January 16, 1996, and when the subsequent applications leading to the '707, '133, '843, '326 and '421 patents were filed, one or more of the Named Inventors was aware that Dr. Hensel was a true inventor of the '707, '133, '843, '326 and '421 patents and that he was intentionally omitted from application no. 08/586,960 and from the subsequent applications when they were filed.

25. DYE is informed and believes that one or more of the Named Inventors was aware that by January 16, 1996, and by the time the subsequent applications leading to the '707, '133, '843, '326 and '421 patents were filed, Dr. Hensel had completed or substantially completed his work on the claimed invention, including the claimed "electrical circuit" or "electrical timing circuit" of the '707, '133, '843, '326 and '421 patents, and that this work required substantial and inventive effort on the part of Dr. Hensel.

26. DYE is informed and believes that when application no. 08/586,960 was filed on January 16, 1996, and when the subsequent applications leading to the '707, '133, '843,

'326 and '421 patents were filed, one or more of the Named Inventors were aware that none of them had invented or were even capable of inventing the claimed "electrical circuit" or "electrical timing circuit" of the '707, '133, '843, '326 and '421 patents.

27. DYE is informed and believes that when application no. 08/586,960 was filed on January 16, 1996, and when the subsequent applications leading to the 707, '133, '843, '326 and '421 patents were filed, one or more of the Named Inventors were aware that the written description of the claimed inventions of Dr. Hensel had been intentionally omitted from the patent applications to further conceal the fact that Dr. Hensel was a true inventor and to deliberately deprive the Patent Office and the public of the invention for which patent protection was sought.

28. DYE is informed and believes that when application no. 08/586,960 was filed on January 16, 1996, and when the subsequent applications leading to the 707, '133, '843, '326 and '421 patents were filed, one or more of the Named Inventors were aware that the enabling disclosure of the claimed inventions of Dr. Hensel had been intentionally omitted from the patent applications to further conceal the fact that Dr. Hensel was a true inventor and to deliberately deprive the Patent Office and the public of the ability to make and use the invention for which patent protection was sought.

29. DYE is informed and believes that when application no. 08/586,960 was filed on January 16, 1996, and when the subsequent applications leading to the 707, '133, '843, '326 and '421 patents were filed, one or more of the Named Inventors were aware that the best mode of carrying out the claimed inventions of Dr. Hensel had been intentionally omitted from the patent applications to further conceal the fact that Dr. Hensel was a true inventor and to

deliberately deprive the Patent Office and the public of the Named Inventors' best mode of carrying out the invention for which patent protection was sought.

30. DYE is informed and believes that Smart Parts applied for a Certificate of Correction from the Patent Office that issued on April 10, 2001, for the '707 patent to change the name of the listed inventor from William Gardner, Jr. to the Named Inventors, and that in doing so the Named Inventors certified that the claimed error in listing only William Gardner, Jr. as an inventor was made without deceptive intent.

31. DYE is informed and believes that Smart Parts applied for a Certificate of Correction from the Patent Office that issued on September 26, 2000, for the '133 patent to change the name of the listed inventor from William Gardner, Jr. to the Named Inventors, and that in doing so the Named Inventors certified that the claimed error in listing only William Gardner, Jr. as an inventor was made without deceptive intent.

32. DYE is informed and believes that at the time the above-referenced Certificates of Correction for the '707 and '133 patents were sought from the Patent Office, the Named Inventors were aware of the above-alleged facts with respect to the true inventorship of Dr. Hensel, deliberately concealed those facts from the Patent Office, and so further defrauded the Patent Office by falsely certifying that the errors in the '707 and '133 patents sought to be corrected were made without deceptive intent.

33. DYE is informed and believes that perhaps others involved with the filing and prosecution of application no. 08/586,960, the subsequent applications leading to the 707, '133, '843, '326 and '421 patents, and the Certificates of Correction referenced above were aware of these facts alleged above, including the true inventorship of Dr. Hensel, and intentionally withheld them from the Patent Office.

34. Based on the foregoing, DYE is informed and believes that the entire "Pneumatically Operated Projectile Launching Device" family of patents, including any such patents to be issued in the future on currently pending applications or continuations thereof, are unenforceable under the doctrine of inequitable conduct or fraud on the Patent Office.

35. Smart Parts has asserted the "Pneumatically Operated Projectile Launching Device" family of patents against DYE, and thus declaratory relief is both appropriate and necessary to establish that the '707, '133, '843, '326 and '421 patents are unenforceable and thus cannot be asserted against DYE.

36. DYE is informed and believes that Smart Parts' assertion of all or a portion of the "Pneumatically Operated Projectile Launching Device" family of patents against DYE is in bad faith and against public policy because Smart Parts is aware that the '707, '133, '843, '326 and '421 patents are unenforceable at least for the reasons that Dr. Hensel's true inventorship of the claimed invention was deliberately withheld from the Patent Office by the Named Inventors and that the Named Inventors deliberately withheld the written description, enabling disclosure of the claimed invention, and best mode of carrying out the claimed invention from the '707, '133, '843, '326 and '421 patents.

37. Accordingly, DYE is informed and believes that this case is exceptional under 35 USC § 285, entitling DYE to an award of its attorney fees incurred in this action.

THIRD CLAIM FOR RELIEF

(Declaration of Non-Infringement of '707, '133, '843, '326 and '421 Patents)

(Against Co-owners Smart Parts and WDP)

38. DYE incorporates herein by reference each of the allegations set forth in paragraphs 1 through 37 above.

39. All or part of the claims of the "Pneumatically Operated Projectile Launching Device" family of patents are not infringed by any paintball gun or related paintball gun product made, used, sold, or offered for sale by DYE.

40. Smart Parts has asserted the "Pneumatically Operated Projectile Launching Device" family of patents against DYE, and thus declaratory relief is both appropriate and necessary to establish that all or part of the claims of the '707, '133, '843, '326 and '421 patents are not infringed and thus cannot be asserted against DYE.

41. DYE is informed and believes that Smart Parts' assertion of all or a portion of the "Pneumatically Operated Projectile Launching Device" family of patents against DYE is in bad faith and against public policy for the reasons alleged herein above and incorporated herein by reference.

42. Accordingly, DYE is informed and believes that this case is exceptional under 35 USC § 285, entitling DYE to an award of its attorney fees incurred in this action.

FOURTH CLAIM FOR RELIEF

(Rescission of License Agreement)

(Against Smart Parts)

43. DYE incorporates herein by reference each of the allegations set forth in paragraphs 1 through 42 above.

44. On or about September 9, 2003, DYE entered into a confidential Patent License Agreement with Smart Parts whereby DYE became a licensee of the '707, '133, '843, '326 and '421 patents. In return for the license, DYE agreed to and did pay Smart Parts a substantial initial licensing fee and substantial ongoing royalties for the manufacture and sale of paintball guns covered by the license.

45. As part of the Patent License Agreement between Smart Parts and DYE, Smart Parts stated that it owned the '707, '133, '843, '326 and '421 patents and that, to the best of its knowledge, the patents were valid and enforceable. DYE was unable to discover the true facts regarding the invalidity and unenforceability of the '707, '133, '843, '326 and '421 patents because Smart Parts concealed the true inventorship of the patents, and reasonably relied on the representations of Smart Parts in entering into the Patent License Agreement and paying the substantial initial licensing fee and ongoing royalties under the license.

46. DYE is informed and believes that, at the time Smart Parts and DYE entered into the Patent License Agreement, Smart Parts was aware that the '707, '133, '843, '326 and '421 patents were not valid or enforceable because Dr. Hensel was a true inventor whose identity and inventive work were deliberately withheld from the patent applications and the Patent Office, but Smart Parts deliberately misrepresented the true facts to DYE in order to induce DYE to enter into the Patent License Agreement and pay Smart Parts the substantial initial licensing fee and ongoing royalties under the license.

47. DYE is informed and believes that, as a direct result of Smart Part's deliberate and intentional misrepresentation of the true facts, DYE has been greatly damaged by having to pay the substantial initial licensing fee and ongoing royalties under the license for what Smart Parts knew to be invalid and unenforceable patents, and DYE has also lost sales of its paintball guns by having to charge consumers higher prices for its paintball guns as a direct result of having to pay the substantial initial licensing fee and ongoing royalties under the license.

48. Wherefore, DYE is entitled to full rescission of the Patent License Agreement, including full return of the substantial initial licensing fee and all royalties paid to

Smart Parts under the license, plus interest at the rate provided by law. DYE is also entitled to damages in an amount presently unknown to DYE but to be proven at trial for lost sales of paintball guns resulting from having to charge consumers higher prices for its paintball guns, plus interest at the rate provided by law.

FIFTH CLAIM FOR RELIEF

(Declaration of Non-Infringement of '427 Patent)

(Against Smart Parts)

49. DYE incorporates herein by reference each of the allegations set forth in paragraphs 1 through 48 above.

50. The '427 patent is not infringed by any paintball gun or related paintball gun product made, used, sold, or offered for sale by DYE.

51. Smart Parts has asserted the '427 patent against DYE, and thus declaratory relief is both appropriate and necessary to establish that the '427 patent is not infringed and thus cannot be asserted against DYE.

52. DYE is informed and believes that Smart Parts' assertion of the '427 patent against DYE is in bad faith and against public policy at least for the reasons that Smart Parts is aware that DYE does not infringe the '427 patent and that Smart Parts is estopped to assert infringement of the '427 patent against DYE.

53. Accordingly, DYE is informed and believes that this case is exceptional under 35 USC § 285, entitling DYE to an award of its attorney fees incurred in this action.

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SIXTH CLAIM FOR RELIEF

(Declaration of Laches and Estoppel re '427 Patent)

(Against Smart Parts)

54. DYE incorporates herein by reference each of the allegations set forth in paragraphs 1 through 53 above.

55. On at least one occasion Smart Parts informed DYE that it did not infringe the '427 patent and that Smart Parts would not assert the '427 patent against DYE.

56. DYE and Smart Parts are partners in an organization called "Paintball Sports Promotion" or "PSP" LLC.

57. On or about March of 2001 at a meeting of the partners of PSP LLC during the Los Angeles Open Paintball Tournament in Corona, California, William Gardner, Jr. of Smart Parts informed Dave DeHaan of DYE that there was uncertainty on the part of Smart Parts as to whether DYE infringed the '427 patent and that Smart Parts would not assert the '427 patent against DYE.

58. The '427 patent issued on July 20, 1993, and DYE has been making and selling commercially the same or similar paintball gun barrels as are presently accused of infringing the '427 patent since 1994. Additionally, Dave DeHaan of DYE has made and used publicly and professionally the same or similar paintball gun barrels as are presently accused of infringing the '427 patent since at least before 1990.

59. DYE is informed and believes that Smart Parts was and is aware that DYE has been making and selling commercially the same or similar paintball gun barrels as are presently accused of infringing the '427 patent since 1994, and that Dave DeHaan of DYE has

made and used publicly and professionally the same or similar paintball gun barrels as are presently accused of infringing the '427 patent since at least before 1990.

60. Smart Parts has never asserted the '427 patent against DYE and has never accused DYE or put DYE on notice of allegedly infringing the '427 patent until the filing of a lawsuit on or about July 5, 2005.

61. DYE, in reasonable reliance on the statements from an officer of Smart Parts that it would not sue DYE and the failure of Smart Parts to assert the '427 patent for over ten years or put DYE on notice of alleged infringement, made and sold and continued to make and sell the paintball guns and paintball gun barrels now accused by Smart Parts of infringing the '427 patent.

62. DYE, as a result of its reasonable reliance on the statements of Smart Parts, the prolonged inaction of Smart Parts with respect to the '427 patent, and Smart Parts' unreasonable delay in asserting the '427 patent, will be materially prejudiced if Smart Parts is now permitted to proceed with its infringement suit of the '427 patent.

63. Wherefore, DYE is informed and believes that Smart Parts is legally and equitably estopped to assert the '427 patent against DYE and that laches applies to any claim by Smart Parts for alleged infringement of the '427 patent.

64. Smart Parts has asserted the '427 patent against DYE, and thus declaratory relief is both appropriate and necessary to establish that Smart Parts is estopped to assert the '427 patent against DYE and that laches applies to any claim by Smart Parts for alleged infringement of the '427 patent.

65. DYE is informed and believes that Smart Parts' assertion of the '427 patent against DYE is in bad faith and against public policy at least for the reasons that Smart Parts is

aware that DYE does not infringe the '427 patent and that Smart Parts is estopped to assert infringement of the '427 patent against DYE.

66. Accordingly, DYE is informed and believes that this case is exceptional under 35 USC § 285, entitling DYE to an award of its attorney fees incurred in this action.

SEVENTH CLAIM FOR RELIEF

(Declaration of Invalidity of '427 Patent)

(Against Smart Parts)

67. DYE incorporates herein by reference each of the allegations set forth in paragraphs 1 through 66 above.

68. DYE is informed and believes that one or more claims of the '427 patent are invalid under 35 USC §§ 102, 103, and/or 112 for one or more of the following reasons:

A. The invention claimed is not patentable for one or more of the reasons set forth in 35 USC § 102;

B. The invention claimed would have been obvious to one of ordinary skill in the art at the time the invention was made under 35 USC § 103;

C. The specification and claims of the '427 patent do not comply with one or more of the requirements of 35 USC § 112, including without limitation the written description, enablement and best mode requirements of the first paragraph of 35 USC § 112.

69. Smart Parts has asserted the '427 patent against DYE, and thus declaratory relief is both appropriate and necessary to establish that the '427 patent is invalid and thus cannot be asserted against DYE.

70. DYE is informed and believes that Smart Parts' assertion of the '427 patent against DYE is in bad faith and against public policy at least for the reasons that Smart Parts is

aware that DYE does not infringe the '427 patent and that Smart Parts is estopped to assert infringement of the '427 patent against DYE.

71. Accordingly, DYE is informed and believes that this case is exceptional under 35 USC § 285, entitling DYE to an award of its attorney fees incurred in this action.

DEMAND FOR JUDGMENT

WHEREFORE, DYE prays for judgment against Smart Parts as follows:

A. That a judgment be entered declaring that the '707, '133, '843, '326 and '421 patents and any related patents claiming priority to application no. 08/586,960 filed on January 16, 1996 are invalid, and thus without force or effect against DYE, and its officers, agents, servants, employees, and customers;

B. That a judgment be entered declaring that the '707, '133, '843, '326 and '421 patents and any related patents claiming priority to application no. 08/586,960 filed on January 16, 1996 are unenforceable, and thus without force or effect against DYE, and its officers, agents, servants, employees, and customers;

C. That a judgment be entered declaring that the manufacture, use, sale, and offer for sale of any and all of the products of DYE have not infringed and do not infringe any claim of the '707, '133, '843, '326 and '421 patents;

D. That a judgment be entered granting DYE full rescission of the Patent License Agreement, including full return of the substantial initial licensing fee and all royalties paid to Smart Parts under the license, and an award of all damages resulting from DYE's having licensed invalid and unenforceable patents, plus interest at the rate provided by law;

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E. That a judgment be entered declaring that the manufacture, use, sale, and offer for sale of any and all of the products of DYE have not infringed and do not infringe any claim of the '427 patent;

F. That a judgment be entered declaring that Smart Parts is estopped to assert the '427 patent against DYE and that laches applies to any claim by Smart Parts for alleged infringement of the '427 patent;

G. That a judgment be entered declaring that the '427 patent is invalid, and thus without force or effect against DYE, and its officers, agents, servants, employees, and customers;

H. That Smart Parts and its agents, representatives, attorneys, and those persons in active concert or participation with any of such persons be permanently restrained and enjoined from initiating infringement litigation against, or threatening DYE, or any of its customers, dealers, or suppliers, or any prospective or present sellers, dealers, distributors, or customers of DYE with infringement litigation, or charging any of them either orally or in writing with infringement of any of the patents in suit or any related patents;

I. That this case be found exceptional under 35 USC § 285 for the reasons alleged herein above and that DYE is therefore entitled to recover its attorney fees;

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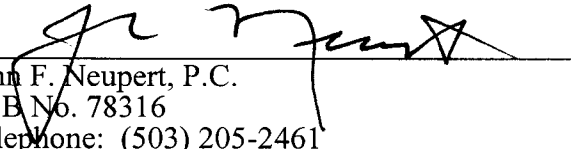
J. That DYE be awarded its costs of suit including expert witness fees; and

K. That DYE be awarded such other and further relief as is deemed just and

proper.

DATED this 12th day of August, 2005.

MILLER NASH LLP



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