

JURISDICTION

4. This is an action under the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, which arises from an actual and existing controversy between Plaintiff SmartTruck and Defendant Vanguard.

5. This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 (federal question), 1332 (diversity), 1338(a) (action arising under an Act of Congress relating to patents), and 2201 (declaratory judgments).

6. This Court has personal jurisdiction over Defendant Vanguard pursuant to FRCP Rule 4 and S.C. Code Sections 36-2-802, 36-2-803 and/or 36-2-805 because Defendant Vanguard has constitutionally sufficient contacts with this District so as to make personal jurisdiction proper in this Court. On information and belief, Defendant Vanguard conducts or solicits business within this District and elsewhere in South Carolina. On information and belief, Defendant Vanguard derives substantial revenue from the sales of its products and/or its services within this District and elsewhere in South Carolina.

VENUE

7. Venue is proper in this District under 28 U.S.C. §§ 1391 and 1400.

GENERAL ALLEGATIONS

8. Plaintiff SmartTruck sells a product known as the Trailer UnderTray System.

9. The Trailer UnderTray System can include a Front Tray Fairing. The Front Tray Fairing is suitable for use with various different trailer types.

10. Plaintiff SmartTruck does not sell trailers of any type including so-called “over-the-road” trailers.

11. Upon information and belief, Defendant Vanguard sells over-the-road trailers and parts and services related thereto.

12. Defendant Vanguard, through its outside counsel, sent Plaintiff SmartTruck a letter dated February 24, 2011. A copy of Defendant Vanguard's February 24, 2011 letter is attached hereto as Exhibit B. In that letter, counsel for Vanguard states that they "represent Vanguard National Trailer Corporation...in the licensing and enforcement of Vanguard's United States Patent No. 7,789,453..." Exhibit B at pg. 1. The letter alleges that "SmartTruck's UnderTray System infringes claims of the '453 patent." Id. The letter further indicates that "...Vanguard is prepared to enforce its patent rights through litigation..." Id. at pg. 7.

13. Defendant Vanguard's February 24, 2011 letter purports to include a claim chart showing how "SmartTruck's Front Tray Fairing infringes at least claims 11, 12, 14, and 21 of the '453 patent." Exhibit B at pg. 2.

14. Defendant Vanguard's threat of litigation and position that Plaintiff SmartTruck's Trailer UnderTray System and the Front Tray Fairing infringe claims of the '453 patent has cast a cloud over Plaintiff SmartTruck's right to sell the Trailer UnderTray System with a Front Tray Fairing.

15. An actual and justiciable controversy exists between Plaintiff SmartTruck and Defendant Vanguard concerning the alleged infringement of the '453 patent.

DECLARATORY JUDGMENT OF NON-INFRINGEMENT

16. Plaintiff SmartTruck incorporates by reference paragraphs 1 through 15 above as though fully set forth herein.

17. Plaintiff SmartTruck is not infringing and has not infringed, either directly or indirectly, nor has it contributorily infringed or induced others to infringe, any claim of the '453 patent.

18. Plaintiff SmartTruck's manufacture, use, sale, or offer to sell of the Trailer UnderTray System will not infringe, either directly or indirectly, any claim of the '453 patent.

19. Plaintiff SmartTruck's manufacture, use, sale, or offer to sell of the Front Tray Fairing will not infringe, either directly or indirectly, any claim of the '453 patent.

20. Plaintiff SmartTruck is entitled to a declaratory judgment that it has not, or will not, directly or indirectly infringe any claim of the '453 patent by manufacturing, using, selling, or offering to sell either the Trailer UnderTray System or the Front Tray Fairing.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff SmartTruck requests that the Court enter a judgment:

21. Declaring that the manufacture, use, offer for sale or sale of the SmartTruck Trailer UnderTray System does not infringe any claim of the '453 patent;

22. Declaring that the manufacture, use, offer for sale or sale of the SmartTruck Front Tray Fairing does not infringe any claim of the '453 patent;

23. Declaring that Plaintiff has not directly infringed, contributorily infringed, or induced others to infringe any claim of the '453 patent by the manufacture, use, offer for sale or sale of the SmartTruck Trailer UnderTray System or the SmartTruck Front Tray Fairing;

24. Declaring this to be an exceptional case and awarding Plaintiff SmartTruck its reasonable attorneys' fees under 35 U.S.C. § 285;

25. Awarding Plaintiff SmartTruck such further and other relief as this Court may deem just and proper.

DEMAND FOR JURY TRIAL

JURY DEMAND: Plaintiff requests a trial by jury of any and all issues triable of right
by a jury.

Respectfully submitted,

DATE: March 14, 2011

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