

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

STAR HEADLIGHT & LANTERN COMPANY, INC.,

Plaintiff,

v.

A.G. DESIGN & ASSOCIATES, LLC,

Defendant.

COMPLAINT

JURY TRIAL DEMANDED

Plaintiff, Star Headlight & Lantern Company, Inc. (“Star”), for its Complaint against Defendant, alleges as follows:

JURISDICTION AND VENUE

1. This action involves a claim for declaratory judgment of patent invalidity and non-infringement pursuant to 28 U.S.C. §§ 2201 and 2202. Jurisdiction for this claim is predicated on 28 U.S.C. §§ 1331 and 1338(a).
2. Venue is proper in this District pursuant to 28 U.S.C. 1391 and 28 U.S.C. § 1400(b).

THE PARTIES

3. Star is a New York corporation, with a place of business at 455 Rochester Street, Avon, New York 14414-9503.

4. Upon information and belief, A.G. Design & Associates, LLC (“A.G. Design”) is a Washington State limited liability company, with a place of business at 959 Vashon Street, Greenbank WA 98253.

5. Upon information and belief A.G. Design is in the business of designing, manufacturing and marketing safety lighting.

6. Upon information and belief, defendant has done, and is doing, business in New York and is subject to personal jurisdiction in this court.

7. Upon information and belief, defendant has done, and is doing, business in this judicial district through solicitation of business, advertising and sale of products to customers and causing its products to be introduced into the stream of commerce in the Western District of New York.

JURY DEMAND

8. Plaintiff Star demands a trial by jury as to all issues raised in this action.

CAUSE OF ACTION
(STAR’S REQUEST FOR DECLARATORY JUDGMENT
OF PATENT INVALIDITY AND NON-INFRINGEMENT)

9. Upon information and belief, A.G. Design is the assignee of all rights to U.S. Patent No. 7,118,245 (the “245 Patent). The ‘245 Patent is incorporated by reference in this complaint.

10. Star has been and is at present manufacturing and selling the Star 2007 lantern in the United States.

11. As a result of the acts set forth below, an actual justiciable controversy exists between the parties with respect to the validity of the above-mentioned '245 Patent and its alleged infringement by the manufacture and sale of the Star 2007 product.

12. Upon information and belief, A.G. Design has taken action in federal court in the Western District of Washington against other parties in an attempt to enforce its alleged patent rights.

13. By letter dated July 13, 2007, counsel for A.G. Design demanded that Star confirm that it would "cease and desist any further manufacturing, marketing or sales of the Star 2007 lantern". The letter stated that "If we do not receive this confirmation, we will move to amend our current suit and add your company as an additional defendant".

14. By virtue of this letter to Star that it believed Star to be infringing A.G. Design's patent rights, and A.G. Design's litigation against other parties regarding its patent rights, there is a substantial and continuing justiciable controversy between plaintiff and defendant as to defendant's right to a patent monopoly covering plaintiff's lanterns, and as to the validity and scope of the patent, and as to plaintiff's continuing right to make, inventory, ship, sell, and offer to sell its lanterns.

15. Plaintiff contends that the claims of A.G. Design's '245 Patent is not infringed by plaintiff by the making, using, offering to sell or selling of any product.

16. In addition, plaintiff contends that the '245 Patent is invalid, unenforceable, and void for one or more of the reasons stated below:

a. Prior to the alleged inventions by Allen Herrington, (herein "Herrington"), the sole named inventor of the '245 Patent, or more than one year prior to the date of the application for the '245 Patent, the alleged invention was patented or

described in printed publications in the United States or in foreign countries.

b. Herrington, the sole named inventor of the '245 Patent, was not the original or first or sole inventor or discoverer of the alleged invention purporting to be patented by Herrington, but it had previously been devised by others.

c. Prior to the alleged invention by Herrington, the alleged invention had been known to or used by others in the United States.

d. For more than one year prior to the filing of the patent application in the United States, the alleged invention, or all material or substantial part or parts of such invention, had been in public use or on sale in this country.

e. The alleged invention of the patent was described in patents granted on applications for patents of others filed in the United States before the alleged invention by the applicant here involved.

f. Prior to the alleged invention by Herrington, the alleged invention was made in this country by others who had not abandoned, suppressed, or concealed it.

g. The differences between the subject matter sought to be patented and the prior art are such that the subject matter claimed in the '245 Patent as a whole would have been obvious, at the time the alleged invention was made, to a person having ordinary skill in the art to which such subject matter pertained, and such subject matter did not involve patentable inventions.

h. The specification of the '245 Patent fails to contain written description of the alleged invention, and of the manner and process of making and using it, in such full, clear, concise and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most clearly connected, to make and use it, and fails

to set forth the best mode contemplated by the inventor of carrying out Herrington's alleged invention.

i. The claims set forth in the '245 patent are vague and indefinite and fail to particularly point out or distinctly claim the subject matters that Herrington regarded as his invention.

j. If the '245 Patent is construed to cover Star products that Star may have made, used, or sold, the patent is invalid in view of the prior art.

17. Unless defendant is enjoined from the above-mentioned acts, it will continue to assert that Star is infringing the '245 Patent by making and selling the Star 2007 lantern and will continue to interfere with Star's business with respect to such manufacture and sale.

WHEREFORE, Star demands judgment against A.G. Design as follows:

A. Declaring that defendant is without a right or authority to threaten or maintain suit against plaintiff for alleged infringement of the A.G. Design Patent;

B. Declaring that the A.G. Design Patent is invalid, unenforceable and void in law;

C. Declaring that the A.G. Design Patent is not infringed by plaintiff because of the making, offering to sell, selling or using of any lantern by plaintiff;

D. Declaring that it is the right of Star to continue to make, offer to sell, use and sell Star products, without any threat or other interference whatsoever against Star by A.G. Design, based on or arising out of the ownership of the A.G. Design Patent or any interest in such patent;

E. Enjoining A.G. Design pending the final adjudication of this action, and

permanently afterwards, from prosecuting or bringing or threatening to bring any action against any buyers, sellers, or users of Star's products for alleged infringement of the A.G. Design Patent;

F. Enjoining A.G. Design, its officers, agents, employees, and attorneys, pending the final adjudication of this action, and permanently afterwards, from charging or asserting that the manufacture, use, or sale of Star's lantern is in violation or infringes defendant's alleged patent rights under the A.G. Design Patent; and

G. Awarding plaintiff costs, expenses and reasonable attorney's fees incurred in this suit.

Dated: July 20, 2007
Pittsford, New York

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