

ORIGINAL

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
FORT WORTH DIVISION

BOLLINGER INDUSTRIES, L.P.,

Plaintiff,

v.

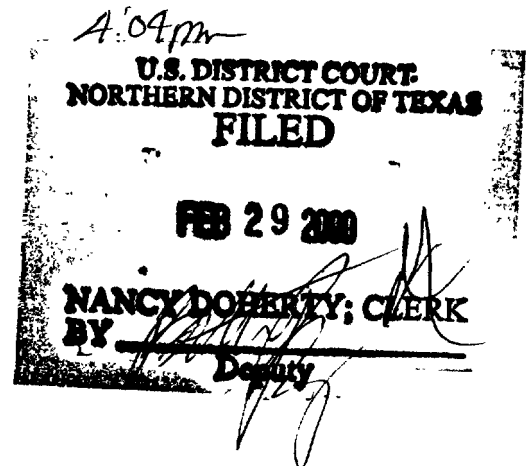
PRECISE EXERCISE  
EQUIPMENT, INC. and  
FITNESS INNOVATIONS AND  
TECHNOLOGIES, INC.

Defendants.

Civil Action No.:

Judge:

400 - CV - 0135 - A



**PLAINTIFF'S ORIGINAL COMPLAINT FOR DECLARATORY  
JUDGMENTS OF NON-INFRINGEMENT AND INVALIDITY**

Plaintiff Bollinger Industries, L.P. (hereinafter referred to as "Bollinger L.P."), for its complaint against Defendants Precise Exercise Equipment, Inc. ("Precise") and Fitness Innovations and Technologies, Inc. (F.I.T.) alleges as follows:

**The Parties and Personal Jurisdiction**

1. Plaintiff Bollinger L.P. is a Limited Partnership organized and existing under the laws of the State of Texas with a principal place of business at 602 Fountain Parkway, Grand Prairie, Texas 75050. Bollinger L.P. sells fitness products, including abdominal exercise devices known as "AbRock'It Plus" and "EZ Abs."

2. Defendant Precise is a corporation organized and existing under the laws of the State of New Jersey with a place of business at 200 Mantua Road, Pacific Palisades, California 90272. On information and belief, Precise is also the owner of United States

Patent No. 5,577,987 (hereinafter the '987 patent) entitled "Abdominal Exerciser Device" which issued on November 26, 1996. A true and correct copy of the '987 patent is attached hereto as Exhibit 1.

3. On information and belief, Precise is engaged in the business of marketing and selling exercise equipment and related accessories in this judicial district and in interstate commerce. Also on information and belief, Precise contends that a number of the exercise equipment products that it sells, including the "Ab Trainer," "Portable Ab Roller," and "Ab Roller Plus," are covered by the claims of the '987 patent.

4. Defendant F.I.T. is a corporation organized and existing under the laws of the State of Delaware with a place of business at 200 Mantua Road, Pacific Palisades, California 90272. On information and belief, F.I.T. is a licensee of the '987 patent.

5. On information and belief, F.I.T. is engaged in the business of marketing and selling exercise equipment and related accessories in the consumer market in this judicial district and in interstate commerce. On information and belief, F.I.T. also sells products within this judicial district that F.I.T. contends are covered by the '987 patent.

6. Precise and F.I.T. have purposely availed themselves of this forum through substantial and ongoing contacts that include selling or offering to sell products in this district that are covered, or that they contend are covered, by the '987 patent.

7. Precise and F.I.T. have also purposely availed themselves of this forum by transmitting documents to Plaintiff Bollinger L.P.'s place of business in this district that give

rise to a reasonable apprehension by Bollinger L.P. that it will be sued for infringement of the '987 patent.

8. This cause of action arises under the patent laws of the United States, Title 35, United States Code, more particularly, 35 U.S.C. §§271 *et seq.*

9. This Court has jurisdiction of this action pursuant to Title 28, U.S.C. §§ 1338(a) and 2201.

### **Venue**

10. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b).

### **Basis for Declaratory Judgments**

11. Plaintiff Bollinger L.P. incorporates herein the allegations of paragraphs 1-10 as though fully set forth herein.

12. Precise and F.I.T. have created a reasonable apprehension that Bollinger L.P. will be sued by Precise and F.I.T. for alleged infringement of the '987 patent for making, having made, offering to sell and/or selling abdominal exercise devices known commercially as "Ab Rock'It Plus" and "EZ Abs." On January 24, 2000, Precise and F.I.T. filed a suit for patent infringement against Kmart Corporation and Bollinger Industries, Inc. in the United States District Court for the Western District of California (*Precise Exercise Equipment, Inc. v. KMart Corp.*, CV-00-759 SVW (BQRx))[hereinafter referred to as "the California suit"]. Bollinger Industries, Inc. is a Delaware corporation which is related to Bollinger L.P. Kmart Corporation ("Kmart") is a reseller of the "AbRock'It Plus" and "EZ Abs" devices, which

are sold to it by Bollinger L.P. In the California suit, Precise and F.I.T. accused Kmart of infringing the '987 patent through sales of the "AbRock'It Plus" and "EZ Abs."

13. A copy of the California suit naming Kmart Corporation (copy attached at Exhibit 2) was subsequently served upon Bollinger Industries, Inc. at the address of its registered agent in this judicial district at 602 Fountain Parkway, Grand Prairie, Texas 75050.

14. Because Precise and F.I.T. have brought a patent infringement suit against others for alleged manufacture and/or sale of the same exercise devices that Bollinger L.P. sells, these defendants have created a reasonable apprehension that Bollinger L.P. will also be sued for infringement of the '987 patent. Precise and F.I.T. have, therefore, created a justiciable case or controversy.

15. To resolve and afford relief from the case or controversy which Defendants' actions have precipitated, Plaintiff Bollinger is entitled to a declaratory judgment that it has not infringed the '987 patent through manufacture, sales or offers to sell the "AbRock'It Plus" or the "EZ Abs" exercise devices. Plaintiff Bollinger is further entitled to a declaratory judgment that the '987 patent is invalid.

#### **Count I -- Non-Infringement of the '987 Patent**

16. The "AbRock'It Plus" and the "EZ Abs" devices sold by Bollinger L.P. do not infringe any claim of the '987 patent.

#### **Count II -- Invalidity of the '987 Patent**

17. The '987 patent is invalid under one or more sections of Part II of Title 35 of the United States Code, including without limitation, 35 U.S.C. § 102 (relating to

anticipation); 35 U.S.C. § 103 (relating to obviousness); 35 U.S.C. § 112 (relating to disclosure and claiming); and 35 U.S.C. § 256 (relating to inventorship).

**WHEREFORE**, Bollinger prays for:

(a) a judgment that Bollinger has not infringed any claim of United States Patent No. 5,577,987 by making, having made, selling, or offering to sell the “AbRock’It Plus” or the “EZ Abs” abdominal exercise devices;

(b) a judgment that United States Patent No. 5,577,987 is invalid and/or unenforceable;

(c) an award of the costs of this action and reasonable attorney's fees herein incurred; and

(d) pre- and post-judgment interest and such other and further relief as this Court may deem appropriate.

Respectfully Submitted,

Date: 2/29/2000

By:



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