

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

QUANTUM GROUP, INC.)
)
)
Plaintiff,)
)
v.)
)
KMART CORPORATION, LOWE'S)
COMPANIES, INC. and COTTER &)
COMPANY,)
)
Defendants.)

Civil Action No.
JUDGE ZAGEL
MAGISTRATE JUDGE ROSEMOND

JURY TRIAL DEMANDED

FILED-EDS
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CLERK
U.S. DISTRICT COURT

00C 2086

COMPLAINT

Plaintiff, Quantum Group, Inc. ("Quantum") complains of defendants KMart Corporation ("KMart"), Lowe's Companies, Inc. ("Lowe's") and Cotter & Company ("Cotter") (collectively, "Defendants") as follows.

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1. This is a claim for patent infringement arising under the patent laws of the United States, 35 U.S.C. § 271. This Court has exclusive jurisdiction over the subject matter of this action under 28 U.S.C. § 1338(a).
2. Quantum is a California corporation with headquarters at 11211 Sorrento Valley Road, San Diego, California 92121.
3. KMart is a Michigan corporation with its principal place of business in Troy, Michigan. It can be served through its registered agent in this judicial district, CT Corporation, 208 South LaSalle Street, Chicago, Illinois 60604-1135.
4. Lowe's is a North Carolina corporation with its principal place of business in North Wilkesboro, North Carolina.
5. Cotter is a Delaware corporation with its principal

1-1

place of business in Chicago, Illinois.

6. Defendants transact business in this judicial district by offering and selling products in this judicial district and elsewhere in the United States. This includes carbon monoxide detector products that are at issue in this lawsuit. Venue is proper in this judicial district under 28 U.S.C. §§ 1391(d) and 1400(b).

7. In earlier related litigation in this district, Quantum Group, Inc. v. American Sensors, Inc., Case No. 96 C 0761 (Hart, Judge), Quantum alleged that products made, used, sold, imported and offered for sale by American Sensors, Inc. and American Sensors Electronics, Inc. (and its U.S. distributor, Klesman and Associates) infringed United States Patent No. 4,896,143, entitled, "GAS CONCENTRATION SENSOR WITH DOSE MONITORING," issued January 23, 1990 and assigned to Quantum ("the `143 patent"). Quantum owns and has standing to sue for infringement of the `143 patent.

8. The American Sensors entities supplied Defendants here with carbon monoxide detectors, the accused products of the earlier suit. During the pendency of the American Sensors litigation, the American Sensors entities entered bankruptcy proceedings in Canada. After denying a motion for summary judgment of infringement, see 47 U.S.P.Q.2d 1678 (N.D. Ill. 1997), this Court stayed further proceedings against the American Sensors entities as a matter of comity. The American Sensors litigation is not currently pending, as it has been

administratively dismissed until termination of bankruptcy proceedings in Canada and subject to assets being available to satisfy Quantum's claims.

9. North American Detectors, Inc. ("NADI") acquired the product line Quantum had accused of infringement in the American Sensors litigation. Quantum thereafter filed a patent infringement action in this district against NADI, Quantum Group, Inc. v. North American Detectors, Inc., 98 C 3841 (Marovich, J.). A final judgment was entered in that case on February 29, 2000 enjoining North American Detectors from further infringement of the `143 patent, absent a license.

10. Defendants have infringed the `143 patent at least by using, selling, importing and/or offering for sale carbon monoxide detectors manufactured and/or supplied by American Sensors, Inc. and/or American Sensors Electronics, Inc. that are covered, both literally and under the doctrine of equivalents, by at least claims 4 and 8 of the `143 patent. Defendants have also induced and contributed to the infringement of others of the `143 patent. Defendants' infringement has occurred in this and other judicial districts.

11. Quantum has received no compensation or recovery from or on behalf of the American Sensors entities for damage caused by their infringement of the `143 patent. Liability for patent infringement is joint and several.

12. Quantum expressly does not allege infringement by products manufactured and/or supplied by NADI, but rather

products manufactured and/or supplied to Defendants prior to NADI acquiring the American Sensors product line. Quantum may determine that Defendants continue to infringe by using, selling, importing or offering to sell products made by entities other than American Sensors or NADI.

13. Defendants have each been on notice of the `143 patent since at least July 8, 1999, but have taken no steps either to determine whether they were or are infringing, or to obtain a license from Quantum. Defendants' infringement has been willful.

14. Defendants' infringement has injured Quantum and Quantum is entitled to recover damages adequate to compensate for infringement of the `143 patent.

PRAYER FOR RELIEF

WHEREFORE, Quantum asks this Court to enter judgment against Defendants, their subsidiaries, affiliates, agents, servants, employees, attorneys and all persons in active concert or participation with them, granting Quantum the following relief:

A. An award to Quantum of such damages that are adequate to compensate it for the Defendants' infringement, the damages to be no less than a reasonable royalty;

B. An award of prejudgment interest from the date infringement of the `143 patent began; and

C. Such other and further relief as this Court and/or a jury may deem proper and just.

JURY DEMAND

Quantum demands a trial by jury.

QUANTUM GROUP, INC.

Dated:

April 5, 2000



Timothy J. Haller
Robert P. Greenspoon
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(312) 236-0733

Attorneys for QUANTUM GROUP, INC.

JS 44
(Rev. 12/96)

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

QUANTUM GROUP, INC.

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF San Diego
California
(EXCEPT IN U.S. PLAINTIFF CASES)

DEFENDANTS

MAGISTRATE JUDGE ROSEMOND

KMART CORPORATION, LOWE'S COMPANIES, INC.
and COTIER & COMPANY

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT Oakland
Michigan
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

(312) 236-0733
NIRO, SCAVONE, HALLER & NIRO
181 West Madison Street, Suite 4600
Chicago, IL 60602

ATTORNEYS (IF KNOWN)

00C 2086
JUDGE ZAGEL

II. BASIS OF JURISDICTION (PLACE AN "X" IN ONE BOX ONLY)

- 1 U.S. Government Plaintiff
- 2 U.S. Government Defendant
- 3 Federal Question (U.S. Government Not a Party)
- 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN "X" IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

- | | | | | | |
|---|----------------------------|----------------------------|---|----------------------------|--------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> |

IV. ORIGIN

(PLACE AN "X" IN ONE BOX ONLY)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from another district (specify)
- 6 Multidistrict Litigation
- 7 Appeal to District Judge from Magistrate Judgment

V. NATURE OF SUIT (PLACE AN "X" IN ONE BOX ONLY)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input checked="" type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input checked="" type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice Act <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence HABEAS CORPUS: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609

VI. CAUSE OF ACTION

(CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY.)

Patent Infringement 35 U.S.C. 271

APR 16 2000

VII. REQUESTED IN COMPLAINT

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint

JURY DEMAND: YES NO

VIII. This case is not a refiling of a previously dismissed action.

is a refiling of case number _____, previously dismissed by Judge _____

4/5/00

DATE

SIGNATURE OF ATTORNEY OF RECORD

[Handwritten Signature]

UNITED STATES DISTRICT COURT

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS**

In the Matter of
QUANTUM GROUP, INC.

v.

KMART CORPORATION, ET AL.

00C 2086

Case Number:

**JUDGE ZAGEL
MAGISTRATE JUDGE ROSEMOND**

APPEARANCES ARE HEREBY FILED BY THE UNDERSIGNED AS ATTORNEY(S) FOR:
QUANTUM GROUP

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CLERK
U.S. DISTRICT COURT

(A)	(B)
SIGNATURE <i>Timothy J. Haller</i>	SIGNATURE <i>Robert P. Greenspoon</i>
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IDENTIFICATION NUMBER (SEE ITEM 4 ON REVERSE) 3125265	IDENTIFICATION NUMBER (SEE ITEM 4 ON REVERSE) 6229357
MEMBER OF TRIAL BAR? YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>	MEMBER OF TRIAL BAR? YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>
TRIAL ATTORNEY? YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>	TRIAL ATTORNEY? YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>
	DESIGNATED AS LOCAL COUNSEL? YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>
(C)	(D)
SIGNATURE	SIGNATURE
NAME	NAME
FIRM	FIRM
STREET ADDRESS	STREET ADDRESS
CITY/STATE/ZIP	CITY/STATE/ZIP
TELEPHONE NUMBER	TELEPHONE NUMBER
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DESIGNATED AS LOCAL COUNSEL? YES <input type="checkbox"/> NO <input type="checkbox"/>	DESIGNATED AS LOCAL COUNSEL? YES <input type="checkbox"/> NO <input type="checkbox"/>