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Of Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON

COLUMBIA SPORTSWEAR COMPANY, an
Oregon corporation; COLUMBIA
SPORTSWEAR NORTH AMERICA, INC., an
Oregon corporation; COLUMBIA
SPORTSWEAR USA CORPORATION, an
Oregon corporation,

Plaintiffs,

v.

SIMMS FISHING PRODUCTS LLC, a
Delaware limited liability company.

Defendant.

Case No. **CV '09-227-KI**

**COMPLAINT FOR DECLARATORY
JUDGMENT OF NON-
INFRINGEMENT AND INVALIDITY
OF U.S. PATENT NOS. 6,405,376 AND
RE38,497**

JURY TRIAL DEMANDED

Plaintiffs COLUMBIA SPORTSWEAR COMPANY, COLUMBIA SPORTSWEAR
NORTH AMERICA, INC., and COLUMBIA SPORTSWEAR USA CORPORATION
(collectively "Columbia Sportswear") complain of defendant SIMMS FISHING PRODUCTS,
LLC ("Simms") and by this complaint allege as follows.

JURISDICTION

1. This complaint is filed under 28 U.S.C. §§ 2201 and 2202 for a Declaratory
Judgment that U.S. Patent No, 4,405,376 (the '376 patent") and U.S. Patent. No. RE38,497 ("the

35542

‘497 patent”) are invalid as anticipated under 35 U.S.C. § 102, invalid as obvious under 35 U.S.C. § 103, and invalid for failure to meet the requirements of 35 U.S.C. § 112. The complaint further seeks a Declaratory Judgment that Columbia Sportswear’s Queets River Wading Jacket does not infringe any valid claim of the ‘376 and ‘497 patents.

2. This court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a).

VENUE

3. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) and 1400(b). Defendant Simms does business in this District and, therefore, under 28 U.S.C. § 1391(c), is deemed to reside in this District. A substantial part of the events that give rise to the action occurred in this District.

THE PARTIES

4. Columbia Sportswear Company is a corporation existing under the laws of Oregon with its principal place of business in Oregon. Columbia Sportswear North America, Inc. is a corporation existing under the laws of Oregon with its principal place of business in Oregon. Columbia Sportswear North America, Inc. is a wholly-owned subsidiary of Columbia Sportswear Company. Columbia Sportswear USA Corporation is a corporation existing under the laws of Oregon with its principal place of business in Oregon. Columbia Sportswear USA Corporation is also a wholly-owned subsidiary of Columbia Sportswear Company. The companies are collectively referred to herein as “Columbia Sportswear.”

5. Columbia Sportswear designs, markets, and sells outdoor apparel, including, recently, the Queets River Wading Jacket.

6. Columbia Sportswear is informed and believes, and thereon alleges, that Simms is a limited liability corporation existing under the laws of Delaware, with its principal place of business in Bozeman, Montana. Columbia Sportswear is informed and believes, and thereon

alleges, that Simms manufactures, markets and sells outdoor apparel related to the fishing industry. Simms' outdoor apparel is offered for sale in this District.

7. Columbia Sportswear is informed and believes, and thereon alleges, that Simms is the assignee and owner of the '376 and '497 patents.

SIMMS' THREATS OF PATENT INFRINGEMENT

8. On or about December 22, 2006, Simms sent a letter to Columbia Sportswear alleging that Columbia Sportswear's Queets River Wading Jacket infringes one or more claims of the '376 and '497 patents. Simms demanded that Columbia Sportswear cease and desist its sale of the Queets River Wading Jacket. Simms threatened that it was prepared to take legal action, if necessary, to enforce its patents.

9. Following receipt of the December 22, 2006 letter, Columbia Sportswear engaged in a series of discussions with Simms concerning the validity of the '376 and '497 patents and the fact that the Queets River Wading Jacket did not have each of the elements contained in the claims of the '376 and '497 patents.

10. On or about January 13, 2009, Simms sent another letter to Columbia Sportswear stating that it continued to allege that the Queets River Wading Jacket infringes the '376 and '497 patents. Simms specifically identified claims 1-5 and 10-14 of the '376 patent and claims 11-13, 18-21, 25-29 and 31 of the '497 patent, and stated that it was prepared to file a patent lawsuit to enforce its purported intellectual property rights.

11. Columbia Sportswear denies that the '376 or '497 patents are valid, and further denies that Columbia Sportswear's Queets River Wading Jacket infringes any valid claim of the '376 or '497 patents.

12. In view of Simms' continued and specific allegations of infringement, and Simms' threat of filing a patent lawsuit, Columbia Sportswear has a reasonable apprehension of being sued by Simms.

CLAIM FOR RELIEF

13. Columbia realleges, and incorporates by reference herein, the allegations of paragraphs 1 through 12 above.

14. An actual and justiciable case or controversy, as defined under 28 U.S.C. § 2201, currently exists between Columbia Sportswear and Simms on the issue of whether the ‘376 and ‘497 patents are valid.

15. An actual and justiciable case or controversy, as defined under 28 U.S.C. § 2201, currently exists between Columbia Sportswear and Simms on the issue of whether Columbia Sportswear’s Queets Wading River Jacket infringes any valid claim of the ‘376 and ‘497 patents.

PRAYER FOR RELIEF

WHEREFORE, Columbia Sportswear prays for relief as follows:

1. A judgment declaring that the ‘376 and ‘497 patents are invalid as anticipated under 35 U.S.C. § 102;
2. A judgment declaring that the ‘376 and ‘497 patents are invalid as obvious under 35 U.S.C. § 103;
3. A judgment declaring that the ‘376 and ‘497 patents are invalid for failure to meet the requirements of 35 U.S.C. § 112;
4. A judgment declaring that Columbia’s Queets River Jacket does not infringe any valid claim of the ‘376 or ‘497 patents;
5. A judgment declaring that this is an exceptional case under 35 U.S.C. § 285, and awarding Columbia Sportswear its costs of suit, including reasonable attorney’s fees; and
6. Any such other relief as the Court deems just and proper.


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JURY TRIAL DEMANDED

Columbia Sportswear requests a trial by jury on each cause of action for which a trial by jury is proper.

DATED: February 24, 2009

K&L GATES LLP

By 
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vice)

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