

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

THE HOLMES GROUP, INC.,

05 : 11367 REK

Plaintiff

Civil Action No.

v.

COMPLAINT

WEST BEND HOUSEWARES, LLC and
FOCUS PRODUCTS GROUP, L.L.C.

Defendants.

Jury Trial Demanded

| | |
|----------------|---------|
| RECEIPT # | 65298 |
| AMOUNT \$ | 250 |
| SUMMONS ISSUED | (4) |
| LOCAL RULE 4.1 | |
| WAIVER FORM | |
| MCF ISSUED | |
| BY DPTY. CLK. | Tom |
| DATE | 6/28/05 |

MAGISTRATE JUDGE Alexander

Plaintiff, THE HOLMES GROUP, INC., by way of its Complaint against defendants,

THE WEST BEND COMPANY and FOCUS PRODUCTS GROUP, L.L.C., alleges and says:

THE PARTIES

1. Plaintiff, THE HOLMES GROUP, INC. ("HOLMES"), is a Massachusetts corporation having a principal place of business at One Holmes Way, Milford, Massachusetts 01757.

2. Upon information and belief, defendant, FOCUS PRODUCTS GROUP, L.L.C. ("FOCUS") is a limited liability Illinois corporation having a principal place of business at 120 Lakeview Parkway, Vernon Hills, Illinois 60061 and defendant, WEST BEND HOUSEWARES, LLC is a limited liability Illinois corporation having a principal place of business at 120 Lakeview Parkway, Vernon Hills, Illinois 60061, and is a wholly owned subsidiary of FOCUS; (hereinafter collectively referred to as "WEST BEND").

SUBJECT MATTER JURISDICTION

3. Jurisdiction over the subject matter of the within Complaint is vested in the United States District Court pursuant to 28 U.S.C. § 1331 [general federal question jurisdiction]

and 28 U.S.C. § 1338(a) [special federal question jurisdiction].

VENUE

4. Venue over the within action is proper in the federal judicial district comprising the United States District Court for the District of Massachusetts pursuant to 28 U.S.C. § 1391(b) and 28 U.S.C. § 1400(b).

PATENT INFRINGEMENT

5. HOLMES is the owner by assignment of all right, title, and interest in and to United States Letters Patent No. 6,573,483 B1 (hereinafter referred to as “the ‘483 patent”) entitled, “Programmable Slow-Cooker Appliance”. A copy of the ‘483 patent is attached hereto as Exhibit A.

6. The ‘483 patent was duly and legally issued on June 2, 2003 to HOLMES. The ‘483 patent remains in full force and effect.

7. HOLMES is the owner by assignment of all right, title, and interest in and to United States Letters Patent No. 6,740,855 B1 (hereinafter referred to as “the ‘855 patent”) entitled, “Programmable Slow-Cooker Appliance”. A copy of the ‘855 patent is attached hereto as Exhibit B.

8. The ‘855 patent was duly and legally issued on May 25, 2004 to HOLMES. The ‘855 patent remains in full force and effect.

9. HOLMES has and continues to distribute, market, and sell programmable slow cooker appliances covered by the claims of the ‘483 patent and the ‘855 patent (hereinafter collectively referred to as “the patents-in-suit”).

10. On information and belief, WEST BEND has manufactured, imported, distributed, marketed, offered for sale, and sold certain slow cooker appliances (hereinafter “the

accused products”) covered by the claims of the patents-in-suit. At least one such accused product is identified as the WEST BEND® Housewares 6-Quart Electronic Crockery Cooker, Model 84386. A copy of selected pages from the owner’s manual for the accused product is attached as Exhibit C.

11. The activities of WEST BEND constitute direct infringement, contributory infringement and/or actively inducing infringement of the patents-in-suit.

12. WEST BEND’s infringement of the patents-in-suit has been without license from HOLMES and in violation of HOLMES’ patent rights, and it is believed that WEST BEND will continue to infringe HOLMES’ patent rights unless enjoined by this Court.

13. WEST BEND’s acts of infringement have been willful and deliberate, with full knowledge of HOLMES’ patent rights.

14. As a result of WEST BEND’s willful infringement of the patents-in-suit, HOLMES has been damaged and will continue to be damaged in an amount to be determined at trial. HOLMES has suffered and will continue to suffer irreparable injury unless the infringing activities of WEST BEND are enjoined.

15. By virtue of WEST BEND’s willful and deliberate infringement, this is an “exceptional case” within the meaning of 35 U.S.C. § 285.

WHEREFORE, HOLMES prays for the following relief:

- A. Judgment for HOLMES on its cause of action for patent infringement.
- B. Preliminary and permanent injunction enjoining WEST BEND, its officers, directors, agents, employees, and all those in active concert or participation with them who receive actual notice of the judgment by personal service or otherwise, from making, using, importing, offering for sale, and selling infringing fans and from otherwise infringing,

contributing to infringement, and actively inducing infringement of the patents-in-suit.

C. An award of compensatory and punitive damages to HOLMES by reason of the wrongs committed by WEST BEND, including an award of increased damages pursuant to 35 U.S.C. § 284, for defendant's willful and deliberate patent infringement.

D. An award of costs of this action together with HOLMES' attorneys' fees pursuant to 35 U.S.C. § 285.

E. An assessment of interest on the damages so computed.

F. Such other and further relief as this Court deems just and proper.

PLAINTIFF DEMANDS A TRIAL BY JURY.

THE HOLMES GROUP, INC.

By its Attorneys,



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Dated: June 28, 2005

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