

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

Civil Action No.

_____)
CONTENDER US, Inc.,)
)
Plaintiff,)
v.)
Dimension-Polyant, Inc.)
)
Defendant.)
_____)

08 CA 10887 WGY

MAGISTRATE JUDGE Chen

COMPLAINT FOR DECLARATORY JUDGMENT

Plaintiff CONTENDER US, Inc. ("CONTENDER"), brings this action for a declaration of non infringement and invalidity against the Defendant, Dimension-Polyant, Inc. ("D-P").

NATURE OF THE ACTION

1. This is an action arising under the Declaratory Judgment Act, 28 U.S.C. § 2201, *et seq.*, and the patent laws of the United States, 35 U.S.C. § 271, *et seq.*, for a judgment declaring that the claims of United States Patent No. 5,403,641 ("the '641 Patent"), entitled, "Reinforced Sailcloth" are invalid, unenforceable, and *not* infringed by CONTENDER.

PARTIES

1. Plaintiff CONTENDER is a corporation, having a principal place of business at 54 Front Street, Fall River, Massachusetts 02721-4302.

2. Defendant D-P is a corporation routinely doing business in Massachusetts and having a principal place of business at 78 Highland Drive, Putnam Connecticut 06260.

JURISDICTION AND VENUE

3. This court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 (federal question), 1332 (diversity), and 1338(a) (patent).

4. Personal jurisdiction over D-P is proper under at least Federal Circuit law and the Massachusetts long-arm statute, G.L. c.223A, §3. D-P is routinely engaged in business in the Commonwealth.

5. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b) and (c). Pursuant also to LR 40.1 (C), (D), this action is properly filed in the Eastern division of the court. CONTENDER has its principal place of business in Fall River, Massachusetts, Bristol County

6. An actual controversy exists between CONTENDER on the one hand, and D-P, on the other hand, as to alleged infringement by CONTENDER of U.S. Patent No. 5,403,641 ("the '641 Patent"), and as to the validity and enforceability of the '641 Patent.

FACTUAL BACKGROUND

7. U.S. Patent No. 5,403,641 ("the '641 Patent") issued on April 5, 1995, and is entitled "Reinforced Sailcloth." A copy of the patent is attached at Exhibit A. The '641 Patent on its face lists James C. Linville, James M. McGhee, and Lawrence F. Ellis, as inventors and Dimension Polyant Sailcloth, Inc. as assignee at the time the patent issued.

8. On or about May 19, 2008, D-P forwarded a letter to CONTENDER, alleging that CONTENDER's "Code Zero" laminated sailcloth infringes the '641 Patent. A copy of this letter is attached at Exhibit B.

9. In the May 19, 2008 letter, D-P states:

- Based on our inspection of the sample of Contender's "Code Zero" laminated sailcloth shown in Exhibit B to this letter, it is apparent that Contender's "Code Zero" laminated sailcloth Infringes at least claim 1 of the '641 patent.
- We demand that Contender immediately cease and desist making, using, selling, offering for sale, and/or importing all of its Code Zero laminated products and provide an accounting of all such products imported and/or sold by Contender in the U.S.

10. In the May 19, 2008 letter, D-P also states that it "strongly suspect[s] that CONTENDER's "Zig Zag Monofilm" and "Zig Zag Skiff O.D. Monofilm" sailcloth products infringe the '641 patent."

11. CONTENDER has offered for sale and sold and continues to offer for sale and sells its "Code Zero" laminated sailcloth, as well as its "Zig Zag Monofilm" and "Zig Zag Skiff O.D. Monofilm" sailcloth.

12. CONTENDER is concerned that D-P will pursue an action for infringement of the '641 Patent against CONTENDER.

FIRST CAUSE OF ACTION
(Declaratory Judgment of Non-infringement of the '641 Patent)

13. CONTENDER incorporates Paragraphs 1-12 of this Complaint.

14. CONTENDER does *not* infringe, induce infringement *nor* contribute to infringement, literally or under the doctrine of equivalents, of any claim of the '641 Patent.

15. Thus, CONTENDER is entitled to a declaratory judgment that it has not infringed the '641 Patent.

SECOND CAUSE OF ACTION
(Declaratory Judgment of Invalidity of the '641 Patent)

16. CONTENDER incorporates Paragraphs 1-15 of this Complaint.

17. The '641 Patent is invalid, in whole or in part, as not satisfying one or more of the conditions of patentability set forth in Part II of Title 35 of the United States Code, *inter alia*, Sections 101-103 and 112.

18. The '641 Patent is invalid for failure to comply with the requirements of Title 35 of the United States Code, section 112, including, but not limited to: the specification does not contain a written description of the 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 nearly connected, to make and use the same; and the description does not adequately explain the best mode contemplated by the patentee so as to distinguish it from other inventions, as required by Title 35 of the United States Code; and the claims of the patent are excessively vague and indefinite and do not distinctly point out and define the invention.

19. In light of the prior art (including, but not limited to, U.S. Patent 4,679,519 [Linville]), at the time the allowance of the '641 Patent was made, the subject matter as claimed in the '641 Patent would have been obvious to a person skilled in the art to which the alleged invention relates and does not constitute a patentable invention under Title 35 of the United States Code, section 103.

20. Thus, CONTENDER properly seeks a declaratory judgment in its favor that the '641 Patent is invalid.

PRAYER FOR RELIEF

Wherefore, CONTENDER respectfully requests a final judgment against the Defendant:

1. Declaring that CONTENDER has neither infringed, literally or under the doctrine of equivalents, nor actively induced nor contributed to any infringement of any valid claim of the '641 Patent;
2. Declaring that the '641 Patent is invalid
3. Declaring that the '641 Patent is unenforceable;
4. Awarding CONTENDER its reasonable costs of suit and attorneys' fees incurred in the prosecution of this action; and
5. Granting to CONTENDER such other and further relief as this Court deems just and proper.

DEMAND FOR JURY TRIAL

Contender hereby demands a jury trial on all appropriate factual and legal issues.

May 27, 2008

Respectfully submitted,
CONTENDER US, Inc.
By its attorneys,



Edward J. Dailey (BBO no. 112220)
Courtney M. Quish, (BBO no. 662288)
BROMBERG SUNSTEIN LLP
125 Summer Street
Boston, Massachusetts 02110
Telephone: (617) 443-9292
Facsimile: (617) 443-0004
edailey@bromsun.com