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FILED

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION
CLERK U.S. DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO, FLORIDA

06/21 P. 2:49

REHRIG PACIFIC COMPANY,

Plaintiff,

HONORABLE _____

vs.

CASE NO. 6:00cv784 Or 19C

**ALPHA HOLDINGS, INC. and
MINERVA PLASTICS, INC. d/b/a
P&E, INC.,**

Defendants.

MARK A. CANTOR (Mich. Bar No. P32661)
ROBERT C. BRANDENBURG (Mich. Bar No. P28660)
KONSTANTINE J. DIAMOND (Mich. Bar No. P45776)
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Attorneys for Plaintiff

**COMPLAINT FOR DECLARATORY JUDGMENT
AND JURY DEMAND**



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1

I. THE PARTIES

1. Plaintiff, Rehrig Pacific Company (hereinafter "Rehrig"), is a Delaware corporation, having its principal office at 4010 East 26th Street, Los Angeles, California 90023, and does business in this district.

2. Defendant, Alpha Holdings Inc., ("Alpha Holdings") is a Texas corporation with offices at 5430 LBJ Freeway, Building 31500, Dallas, Texas, 75240 and does business in this district.

3. Defendant, Minerva Plastics, Inc. d/b/a P&E, Inc. ("P&E") is a Texas corporation having a principal office in this district at 7482 Presidents Drive, Orlando, Florida 32809, and on information and belief, has other locations in this district at 7452 Presidents Drive, Orlando, FL 32809 and 603 W. Landstreet Road, Orlando, Florida 32824. P&E is a wholly-owned subsidiary of Alpha Holdings. P&E's Florida registered agent for service is CT Corporation System, 1200 S. Pine Island Road, Plantation, Florida 33324.



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II. JURISDICTION AND VENUE

4. The declaratory judgment claim pleaded herein seeks a declaration of the rights and other legal relations of plaintiff Rehrig in respect of issues of infringement, validity and unenforceability of U.S. Patent No. 6,047,844, owned by defendants.

5. The declaratory judgment claim arises under the patent laws of the United States and jurisdiction for this claim is conferred upon the Court by 28 U.S.C. § 2201 and 28 U.S.C. § 1338.

6. Defendants have substantial contacts with the State of Florida in this judicial district related to the declaratory judgment claim pleaded herein.

7. Defendants are subject to personal jurisdiction for the declaratory judgment claim in this judicial district.

8. Venue is proper in this judicial district.



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III. OPERATIVE FACTS

9 On information and belief, defendants are the owners by assignment of U.S. Patent No. 6,047,844 (“the ‘844 patent”) issued April 11, 2000, for “Nestable Crate For Beverage Bottles.”

10. U.S. Patent No. 6,047,844 is a patent which claims priority to an earlier patent owned by defendants, U.S. Patent No. 5,823,376 (“the ‘376 patent”) which issued on October 20, 1998, and which is also related to commonly owned by U.S. Patent No. 6,006,912 (“the ‘912 patent”) which issued on December 28, 1999.

11. Defendants have sued Rehrig in the Northern District of Texas, alleging that various bottle crates manufactured and sold by Rehrig infringe the ‘376 patent and the ‘912 patent (pending Civil Action No. 399CV2314-M, Northern District of Texas).

12. In the Texas action, defendants first filed suit against Rehrig for infringement of the ‘376 patent on October 12, 1999.

13. Rehrig subsequently issued discovery to defendants in the Texas action requesting information regarding the existence of other related patents and/or patent applications.

14. Defendants did not disclose to Rehrig the existence of the pending applications which eventually led to the issuance of the ‘912 and the ‘844 patents. After



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the '912 patent issued, defendants filed an Amended Complaint with the Texas court adding the '912 patent to the suit.

15. Recently, Rehrig's counsel inquired again of defendants' counsel in the Texas action whether any other patents or applications exist which are related to the '376 and/or the '912 patents, and defendants have now failed to disclose the existence of the recently issued '844 patent which plaintiff learned of through a patent search.

16. The conduct of defendants has created a reasonable apprehension on the part of plaintiff Rehrig of being sued for patent infringement on the '844 patent with respect to activities related to the Rehrig's bottle crates.

17. There exists a justiciable case of actual controversy over which the Court has jurisdiction to declare the rights and other legal relations of plaintiff and defendants in respect of the infringement claims.

18. Rehrig has not infringed, and will not infringe, U.S. Patent No. 6,047,844 by manufacture, use or sale of Rehrig's bottle crates.

19. Upon information and belief, U.S. Patent No. 6,047,844 is invalid if interpreted to cover Rehrig's bottle crates.

20. Upon information and belief, U.S. Patent No. 6,047,844 is unenforceable due to the acts and/or omissions of defendants or their counsel during the prosecution of the application which resulted in U.S. Patent No. 6,047,844.



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IV. DEMAND FOR RELIEF

WHEREFORE, plaintiff Rehrig Pacific Company demands entry of a judgment declaring that:

- A. U.S. Patent No. 6,047,844 is not infringed;
- B. U.S. Patent No. 6,047,844 is invalid; and
- C. U.S. Patent No. 6,047,844 is unenforceable;
- D. awarding Rehrig its costs and attorney fees in bringing and maintaining this action; and
- E. awarding to Rehrig such further and additional relief as may be just and equitable.



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V. DEMAND FOR JURY TRIAL

Plaintiff Rehrig Pacific Company demands a trial by jury for all issues so triable.

Respectfully submitted,

BROOKS & KUSHMAN P.C.

Date: June 20, 2000

By: 

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Date: June 21, 2000

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