

**FILED**

JUL 13 2010

Phil Lombardi, Clerk  
U.S. DISTRICT COURT

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA**

1) BERGAN, LLC, )  
 an Oklahoma Limited Liability Company, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 1) MOTIVATION DESIGN, LLC, )  
 a Delaware Limited Liability Company, )  
 )  
 Defendant. )

**10 CV - 446 JHP PJC**

Civil Action No.:

JURY TRIAL DEMANDED  
ATTORNEYS LIEN CLAIMED

**COMPLAINT**

Plaintiff Bergan, LLC, by and through its undersigned attorneys, brings this action against Motivation Design LLC for a declaratory judgment that U.S. Patent No. D567,742 is not infringed by Bergan, LLC.

***PARTIES***

1. Plaintiff Bergan, LLC (“Bergan”) is a limited liability company duly organized and existing under the laws of the State of Oklahoma, having its principal place of business in Monkey Island, Oklahoma.

2. On information and belief, Defendant Motivation Design, LLC (“MD”) is a Delaware limited liability company having its principal place of business at 2D Fanaras Drive, Salisbury, Massachusetts 01952.

***JURISDICTION AND VENUE***

3. This Court has jurisdiction over the subject matter of this Complaint for declaration of patent non-infringement pursuant to the patent laws of the United States, 35 U.S.C. § 271 *et seq.*, under the Declaratory Judgments Act, 28 U.S.C. §§ 2201 and 2202, and under 28 U.S.C. §§ 1331, 1332(a), 1338 and 1367.

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4. This Court has personal jurisdiction over Defendant because, among other things, it has the requisite minimum contacts with the forum and, on information and belief, has physically conducted and continues to physically conduct business throughout the State of Oklahoma and in this judicial district.

5. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391(b), 1391(c), and 1400(b).

### ***BACKGROUND***

6. On April 29, 2008, U.S. Patent No. D567,742 entitled “Seat Partition for a Vehicle” was issued to Gordon C. Sputer, Christopher B. Sputer, and Ryan C. Meers (“the ‘742 patent”). A copy of the ‘742 patent is attached hereto as Exhibit “A.”

7. On information and belief, Gordon C. Sputer, Christopher B. Sputer, and Ryan C. Meers assigned their interest in the ‘742 patent to MD, whereby it became the owner of the ‘742 patent.

8. Bergan has been and is currently engaged in the manufacture and sale of pet products, including auto travel barriers.

9. MD, in a letter to Bergan dated March 23, 2010, a copy of which is attached hereto as Exhibit “B,” represented that it was the owner of the ‘742 patent and alleged that certain of Plaintiff’s products constitute an infringement of such patent, wherefore a case of actual controversy within this court’s jurisdiction exists between Plaintiff and Defendant with respect to the validity, infringement, and enforceability of such patent.

10. Bergan responded to MD’s March 23<sup>rd</sup> letter on April 5, 2010, explaining to MD that Bergan has not infringed the ‘742 patent. A copy of Bergan’s letter is attached hereto as Exhibit “C.”

11. MD, in a letter to Bergan dated June 11, 2010, a copy of which is attached hereto as Exhibit "D," reasserted its position that certain of Plaintiff's products infringe the '742 patent.

12. As a result of the aforementioned letters, Bergan has a reasonable fear and apprehension that patent infringement litigation will be brought against it as a direct, inducing, or contributory infringer of the '742 patent. An actual and justiciable controversy therefore exists between the parties.

13. Bergan has not directly infringed, induced the infringement of, nor been a contributory infringer of the '742 patent.

***CAUSE OF ACTION: DECLARATORY JUDGMENT OF  
NON-INFRINGEMENT OF THE '742 PATENT***

14. Pursuant to the Declaratory Judgments Act, 28 U.S.C. §§ 2201 and 2202, Bergan seeks a declaration that none of the auto travel barriers that it manufactures, uses, offers for sale, or sells in the United States, or imports into the United States, infringes any of the Claims of the '742 patent.

***PRAYER FOR RELIEF***

WHEREFORE, Bergan respectfully prays that, upon final jury trial hereof, this Court enter Judgment in Bergan's favor and against MD as follows:

(a) That Bergan does not manufacture, use, offer for sale, or sell in the United States, or import into the United States, any apparatus that infringes any of the Claims of the '742 patent; and

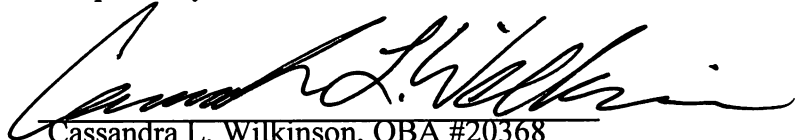
(b) That Bergan has not induced the infringement of nor been a contributory infringer of the '742 patent; and

(c) That this case is "exceptional" under 35 U.S.C. § 285 and award Bergan its attorneys' fees, expenses, and costs incurred in this action; and

(d) That Bergan be granted such other and further relief as this Court deems just and proper.

Date: July 13, 2010

Respectfully submitted,



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