

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DETROIT RADIANT PRODUCTS COMPANY,
a Michigan corporation,

Plaintiff,

vs.

L. B. WHITE CO., INC., a Delaware corporation,
FERRELLGAS, L.P., a Delaware corporation,
doing business as NRG DISTRIBUTORS, and
RAY MURRAY INC., a Commonwealth of Massachusetts
corporation, doing business as NRG DISTRIBUTORS,

Defendants.

Case No. 2:08-cv-10254

Hon. Arthur Tarnow

Magistrate Judge Virginia Morgan

HOWARD & HOWARD ATTORNEYS, P.C.

By: Jeffrey A. Sadowski (P28163)

Dean W. Amburn (P46427)

Attorneys for Plaintiff

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FIRST AMENDED COMPLAINT FOR PATENT INFRINGEMENT
AND DEMAND FOR JURY TRIAL

Plaintiff Detroit Radiant Products Company (hereinafter “Plaintiff” or “DETROIT RADIANT”) hereby complains against Defendants L. B. White Co., Inc. (hereinafter “L.B. WHITE”) and NRG Distributors, an assumed name for either Ferrellgas, L.P. or Ray Murray Inc. or both (hereinafter “NRG DISTRIBUTORS”) (collectively hereinafter “Defendants”) and alleges as follows:

THE PARTIES

1. DETROIT RADIANT is a Michigan corporation having its principal place of business in Warren, Michigan.

2. L. B. White Co., Inc. (“L.B. WHITE”) is a Delaware corporation having its principal place of business at W6636 L. B. White Road, Onalaska, Wisconsin 54650.

3. L. B. WHITE, upon information and belief, is doing business within the State of Michigan, and within the Eastern District of Michigan, and is engaged in continuous and systematic business within the Eastern District of Michigan, including the commission of acts of infringement as hereinafter stated.

4. L. B. WHITE, upon information and belief, works to develop, manufacture, market and/or sell radiant heating systems directed towards various industries.

5. NRG DISTRIBUTORS has been an assumed name for Ferrellgas, L.P., a Delaware corporation, with a principal place of business in this District at 4411 Pier North Boulevard, Flint, Michigan 48504.

6. Since October 29, 2007, NRG DISTRIBUTORS is also an assumed name for Ray Murray, Inc., a Commonwealth of Massachusetts corporation, with a principal place of business in this District at 4411 Pier North Boulevard, Flint, Michigan 48504. *See Exhibit A.*

7. NRG DISTRIBUTORS, as an assumed name for either Ferrellgas, L.P. or Ray Murray, Inc., or both, upon information and belief, is doing business within the State of Michigan, and within the Eastern District of Michigan, and is engaged in continuous and systematic business within the Eastern District of Michigan, including the commission of acts of infringement as hereinafter stated.

JURISDICTION AND VENUE

8. This is an action for patent infringement under the laws set forth in the United States Code, and particularly 35 U.S.C., *et seq.*, including §§ 101, 271, 281, and 282, and for injunctive relief to remedy the infringement and willful infringement by Defendants of United States Patent No. RE37,636 (the “‘636 Patent”).

9. This Court has jurisdiction in this action under 28 U.S.C. §§ 1331 and 1338, as there is a federal question.

10. Venue is proper in this judicial district under 28 U.S.C. §§ 1391(b) and (c) and 1400, because a substantial part of the events, acts and omissions giving rise to the action occurred in this District, and Defendants each does substantial business in this District, has a substantial presence here, and is subject to personal jurisdiction in this Court.

COUNT I

INFRINGEMENT OF THE ‘636 PATENT

11. DETROIT RADIANT repeats and realleges each and every allegation contained in the above paragraphs as if fully set forth herein.

12. On April 9, 2002, United States Reissue Patent No. RE37,636, entitled “Demand Radiant Heating System” was duly and legally issued by the United States Patent and Trademark Office. A true and correct copy of the ‘636 Patent is attached hereto as Exhibit B. The ‘636 Patent is currently the subject of a re-examination proceeding, but all but a few claims have been re-allowed, and the claims not re-allowed are not the current subject of this Complaint.

13. DETROIT RADIANT is the owner of all right, title and interest in the ‘636 Patent, including the right to sue for past, present and future infringement of the ‘636 Patent.

14. On information and belief, Defendants have infringed and continue to infringe the '636 Patent by their unauthorized making, using, offering for sale and/or selling certain products, including demand radiant heating systems, within the scope of one or more valid claims of the '636 Patent.

15. On information and belief, Defendants have so infringed and continue so to infringe the '636 Patent with knowledge and/or reckless disregard amounting to knowledge of such infringement.

16. On information and belief, Defendants, acting alone and acting in concert with and through agents and/or intermediaries, have used the infringing products within this judicial district and have placed products infringing one or more claims of the '636 Patent in the stream of commerce with knowledge that the likely destination of the infringing products is within this judicial District and throughout the United States.

17. Defendants' direct infringement of the '636 Patent has caused DETROIT RADIANT to suffer damages in an amount yet to be determined, but which amount will be proven at trial.

18. DETROIT RADIANT has no adequate remedy at law, and Defendants' infringement of the '636 Patent has violated DETROIT RADIANT's exclusive rights under the '636 Patent and irreparably damaged DETROIT RADIANT, and will cause added injury and loss to DETROIT RADIANT unless and until Defendants' infringement is enjoined by this Court.

19. DETROIT RADIANT, therefore, seeks Judgment as set forth herein.

COUNT II

CONTRIBUTORY INFRINGEMENT OF THE '636 PATENT

20. DETROIT RADIANT repeats and realleges each and every allegation contained in the above paragraphs as if fully set forth herein.

21. Upon information and belief, Defendants make, import, sell and/or offer to sell demand radiant heating systems or components with knowledge and/or reckless disregard amounting to knowledge that such products or components constitute a material part of the inventions of the '636 Patent and that they are especially made or especially adapted for use in infringement of the '636 Patent, and that such demand radiant heating systems or components are not a staple article or commodity of commerce which would be suitable for substantial non-infringing use. The actions of Defendants constitute contributory infringement of the '636 Patent.

22. On information and belief, Defendants have committed such contributory infringement and continues so to commit such contributory infringement of the '636 Patent with knowledge and/or reckless disregard amounting to knowledge of such infringement.

23. Defendants' contributory infringement of the '636 Patent has caused DETROIT RADIANT to suffer damages in an amount yet to be determined, but which amount will be proven at trial.

24. DETROIT RADIANT has no adequate remedy at law, and Defendants' contributory infringement of the '636 Patent has violated DETROIT RADIANT' exclusive rights under the '636 Patent and irreparably damaged DETROIT RADIANT, and will cause added injury and loss to DETROIT RADIANT unless and until Defendants' contributory infringement is enjoined by this Court.

25. DETROIT RADIANT, therefore, seeks Judgment as set forth herein.

COUNT III

INDUCEMENT OF INFRINGEMENT OF THE '636 PATENT

26. DETROIT RADIANT repeats and realleges each and every allegation contained in the above paragraphs as if fully set forth herein.

27. On information and belief, Defendants have actively induced the infringement of one or more claims of the '636 Patent, including actively inducing infringement by their customers.

28. Defendants' inducement of the infringement of the '636 Patent has caused DETROIT RADIANT to suffer damages in an amount not yet determined, but which amount will be proven at trial.

29. DETROIT RADIANT has no adequate remedy at law, and Defendants' inducement of infringement of the '636 Patent has violated DETROIT RADIANT's exclusive rights under the '636 Patent and irreparably damaged DETROIT RADIANT, and will cause added injury and loss to DETROIT RADIANT unless and until Defendants' inducement of infringement is enjoined by this Court.

30. DETROIT RADIANT, therefore, seeks Judgment as set forth herein.

COUNT IV

WILLFUL INFRINGEMENT OF THE '636 PATENT

31. DETROIT RADIANT repeats and realleges each and every allegation contained in the above paragraphs as if fully set forth herein.

32. On information and belief, Defendants' infringement, contributory infringement, and inducement of infringement have been willful, wanton and deliberate, and has occurred with Defendants' full knowledge of the '636 Patent.

33. DETROIT RADIANT, therefore, seeks Judgment as set forth herein.

DETROIT RADIANT'S PRAYER FOR RELIEF

WHEREFORE, DETROIT RADIANT demands that judgment be entered in its favor against Defendants as follows:

A. Permanently enjoining Defendants, and their officers, agents, servants, employees, attorneys and all those persons in privity or in active concert or participation with them, from further manufacture, importation, sale, offer for sale, and/or use of a product which infringes, contributorily infringes, or induces infringement of the '636 Patent.

B. Permanently enjoining Defendants, and their officers, agents, servants, employees, attorneys and all those persons in privity or active concert or participation with them, from further acts of infringement of the '636 Patent.

C. Ordering an accounting.

D. Awarding damages in an amount to be determined at trial, but adequate to compensate DETROIT RADIANT for Defendants' infringement, contributory infringement, and inducement of infringement of the '636 Patent.

E. Increasing the damages up to three times the amount found or asserted for Defendants' willful acts of infringement.

F. Awarding pre-judgment interest and costs.

G. Finding this case to be an exceptional case, and awarding reasonable attorneys' fees to DETROIT RADIANT.

H. Such other and further relief as this Court deems necessary and appropriate.

Respectfully submitted,

HOWARD & HOWARD ATTORNEYS, P.C.

By: /s/ Jeffrey A. Sadowski
Jeffrey A. Sadowski (P28163)
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Dated: February 1, 2008

JURY DEMAND

Plaintiff requests a jury for all issues triable by jury in this action.

Respectfully submitted,

HOWARD & HOWARD ATTORNEYS, P.C.

By: /s/ Jeffrey A. Sadowski
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Dated: February 1, 2008