

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF IOWA  
(DAVENPORT DIVISION)

<p>ELECTRONIC CONTROLLED SYSTEMS, INC. d/b/a KING CONTROLS,</p> <p>Plaintiff,</p> <p>v.</p> <p>WINEGARD COMPANY,</p> <p>Defendant.</p>	<p><b>Consolidated Case No. 3:09-cv-138</b></p> <p><b>FIRST AMENDED COMPLAINT</b> <b>(Jury Trial Demanded)</b></p>
<p>WINEGARD COMPANY,</p> <p>Plaintiff,</p> <p>v.</p> <p>ELECTRONIC CONTROLLED SYSTEMS, INC. d/b/a KING CONTROLS,</p> <p>Defendant.</p>	

Plaintiff Electronic Controlled Systems, Inc. d/b/a King Controls by and through its counsel, for its Complaint against Defendant Winegard Company, states and alleges as follows:

**PARTIES**

1. Plaintiff Electronic Controlled Systems, Inc. d/b/a King Controls (hereinafter referred to as "Plaintiff"), is a Minnesota corporation with its principal place of business at 11200 Hampshire Avenue South, Bloomington, Minnesota 55438. King Controls is the registered assumed name for Electronic Controlled Systems, Inc.

2. Upon information and belief, Defendant Winegard Company (hereinafter referred to as “Defendant”) is an Iowa corporation with its principal place of business at 3000 Kirkwood St., Burlington, IA 52601.

**JURISDICTION AND VENUE**

3. Subject matter jurisdiction is based on 28 U.S.C. §§ 1331 and 1338(a), in that this action arises under the patent laws of the United States (35 U.S.C. § 1 et seq.).

4. This Court also has jurisdiction over this civil action pursuant to 28 U.S.C. § 1332(a) as Plaintiff has diversity of citizenship in relation to Defendant and the amount in controversy exceeds \$75,000 exclusive of interest and costs.

5. Venue lies in this Court pursuant to 28 U.S.C. §§ 1391(b) and (c) as Defendant is subject to personal jurisdiction, does business, and has committed acts of infringement in this district.

**COUNT I**  
**PATENT INFRINGEMENT BY DEFENDANT**

6. Plaintiff restates, realleges, and incorporates by reference the allegations set forth in paragraphs 1 through 5.

7. On September 29, 2009, United States Patent No. 7,595,764 (hereinafter “the ‘764 Patent”) entitled “Enclosed Mobile/Transportable Satellite Antenna System” issued. A true and correct copy of the ‘764 Patent is attached hereto and made a part hereof as Exhibit A.

8. Plaintiff, as assignee, duly owns the '764 Patent, and has standing to bring legal action to enforce all rights arising under the '764 Patent.

9. Upon information and belief, Defendant has made, used, sold, offered for sale, imported, and/or exported its Carryout<sup>TM</sup> and similar satellite antenna products, in Minnesota and elsewhere in the United States.

10. Upon information and belief, Defendant's Carryout<sup>TM</sup> and similar satellite antenna products directly infringe, contributorily infringe, and induce the infringement of one or more of the claims of the '764 Patent, in violation of 35 U.S.C. § 271, and all causes of action thereunder, to the damage and injury of Plaintiff.

11. As a result of Defendant's infringement of the claims of the '764 Patent, Defendant has made and will continue to make unlawful gains and profits. Further, Plaintiff has been and will continue to be irreparably damaged and deprived of its rights secured by the '764 Patent due to the unlawful infringement by Defendant.

12. Plaintiff's products, which are made in part under the '764 Patent, including the VuQube<sup>®</sup> Portable Satellite TV System, are sold in Minnesota and elsewhere.

13. Plaintiff has been and will continue to be deprived of revenue, profit, and gain that they would otherwise have generated but for Defendant's infringement, and Defendant has caused and will continue to cause losses and damages in amounts that

cannot be determined with specificity except by an accounting, as well as irreparable losses and damages.

14. Plaintiff is entitled to preliminary and permanent injunctive relief, enjoining Defendant from further and continuing infringement of the claims of the '764 Patent.

**COUNT II**  
**PATENT INFRINGEMENT BY DEFENDANT**

15. Plaintiff restates, realleges, and incorporates by reference the allegations set forth in paragraphs 1 through 14.

16. On March 16, 2010, United States Patent No. 7,679,573 (hereinafter "the '573 Patent") entitled "Enclosed Mobile/Transportable Satellite Antenna System" issued. A true and correct copy of the '573 Patent is attached hereto and made a part hereof as Exhibit B.

17. Plaintiff, as assignee, duly owns the '573 Patent, and has standing to bring legal action to enforce all rights arising under the '573 Patent.

18. Upon information and belief, Defendant has made, used, sold, offered for sale, imported, and/or exported its Carryout<sup>TM</sup> and similar satellite antenna products in Minnesota, Iowa and elsewhere in the United States.

19. Upon information and belief Defendant's Carryout<sup>TM</sup> and similar satellite antenna products directly infringe, contributorily infringe, and induce the infringement

of one or more of the claims of the '573 Patent, in violation of 35 U.S.C. § 271, and all causes of action thereunder, to the damage and injury of Plaintiff.

20. As a result of Defendant's infringement of the claims of the '573 Patent, Defendant has made and will continue to make unlawful gains and profits. Further, Plaintiff has been and will continue to be irreparably damaged and deprived of its rights secured by the '573 Patent due to the unlawful infringement by Defendant.

21. Plaintiff's products, which are made in part under the '573 Patent, including the VuQube® Portable Satellite TV System, are sold in Minnesota and elsewhere.

22. Plaintiff has been and will continue to be deprived of revenue, profit, and gain that they would otherwise have generated but for Defendant's infringement, and Defendant has caused and will continue to cause losses and damages in amounts that cannot be determined with specificity except by an accounting, as well as irreparable losses and damages.

23. Plaintiff is entitled to preliminary and permanent injunctive relief, enjoining Defendant from further and continuing infringement of the claims of the '573 Patent.

**COUNT III**  
**PROVISIONAL RIGHTS**

24. Plaintiff restates, realleges, and incorporates by reference the allegations set forth in paragraphs 1 through 23.

25. The '764 Patent issued from U.S. Patent Application No. 11/960,657.

26. U.S. Patent Application No. 11/960,657 was published on August 7, 2008 as Publication No. 2008/0186242 A1 ("the '242 Publication").

27. On June 5, 2009, Plaintiff's President, Lael King, sent a letter to Defendant via certified mail, enclosing the '242 Publication, and providing Defendant notice *inter alia* of the '242 Publication and notice that Defendant's Carryout™ product is covered by several claims of the '242 Publication. A true and correct copy of the June 5, 2009 letter and '242 Publication are attached hereto and made a part hereof as Exhibit C.

28. Defendant received the June 5, 2009 letter on June 8, 2009.

29. The invention as claimed in the '764 Patent is substantially identical to the invention as claimed in claims 1-13 of the '242 Publication.

30. The language of claims 1-13 of the '242 Publication is identical to the language of claims 1-13 of the '764 Patent.

31. Plaintiff is entitled to a reasonable royalty from Defendant for Defendant's making, use, offers for sale, and sales in the United States of the Carryout™ satellite antenna products between June 8, 2009 and September 29, 2009 as provided by 35 U.S.C. § 154(d).

**COUNT IV**  
**WILLFUL INFRINGEMENT BY DEFENDANT**

32. Plaintiff restates, realleges, and incorporates by reference the allegations set forth in paragraphs 1 through 31.

33. The June 5, 2009 letter attached as Exhibit C further provided Defendant notice that prior to the date of the letter, the U.S. Patent Office had indicated that the claims contained in the '242 Publication were allowable. Therefore, upon information and belief, Defendant knew or should have known that its actions would constitute patent infringement when a patent containing claims from the '242 Publication, covering the Carryout<sup>TM</sup> and similar satellite antenna products, issued.

34. Despite receiving notice that its Carryout<sup>TM</sup> product was covered by claims indicated as allowable by the U.S. Patent Office, Defendant failed to change its Carryout<sup>TM</sup> and similar satellite antenna products so that they would not infringe the '764 patent.

35. Defendant received actual notice of from Plaintiff of Plaintiff's second pending patent on January 22, 2010. Defendant was fully aware of the '573 patent on the day it issued.

36. Defendant failed to change its Carryout<sup>TM</sup> and similar satellite antenna products after the issuance of the '573 patent to avoid infringing the claims of the '573 patent.

37. Defendant has not informed Plaintiff or its counsel of any legally sufficient grounds for a belief that the claims of the '746 and '573 patents were or are not infringed, invalid or unenforceable.

38. Upon information and belief, Defendant chose to continue making, using and selling the Carryout™ and similar satellite antenna products despite the objectively high likelihood that its actions would constitute infringement of the '764 and '573 Patents.

39. Upon information and belief, these acts of infringement by Defendant are willful, intentional, and in conscious disregard of Plaintiff's rights in under the '764 and '573 Patents, making this case exceptional within the meaning of the United States Patent Laws.

**JURY DEMAND**

40. Pursuant to FED. R. CIV. P. 38(b), Plaintiff requests a trial by jury.

**PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff prays for relief as follows:

A. A judgment that Defendant has directly infringed, induced infringement, and/or contributed to the infringement of Plaintiff's rights under the '764 and '573 Patents;

B. A judgment preliminarily and permanently enjoining and restraining Defendant and its subsidiaries, parents, officers, directors, agents, servants, employees, agents, affiliates, attorneys, and all other persons in active concert or participation with Defendant from directly infringing, inducing infringement, and/or contributing to the infringement of the '764 and '573 Patents;



C. A judgment that Defendant's various acts of infringement have been in willful, knowing, and deliberate disregard of Plaintiff's patent rights and requiring Defendant to pay damages under 35 U.S.C. § 284, trebled for willful infringement, with interest;

D. A judgment awarding Plaintiff damages, including provisional damages under 35 U.S.C. § 154(d) and lost profits, adequate to compensate for Defendant's infringement, but not less than a reasonable royalty, resulting from Defendant's various acts of infringement;

E. A judgment award to Plaintiff of pre-judgment and post-judgment interest on Plaintiff's damages as allowed by law;

F. A judgment awarding damages to Plaintiff for its costs, disbursements, and attorneys' fees incurred in prosecuting this action, with interest, including a finding of an exceptional case, pursuant to 35 U.S.C. § 285, and otherwise according to law; and

G. Such other relief as the Court may deem just, equitable, and proper.

Respectfully submitted,

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