

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

BLACK & DECKER INC. and)	
BLACK & DECKER (U.S.) INC.,)	Civil Action No. 06 CV 4440
)	
Plaintiffs,)	
)	Hon. Blanche M. Manning
v.)	Mag. Judge Nolan
)	
ROBERT BOSCH TOOL CORPORATION,)	
)	JURY TRIAL DEMANDED
Defendant.)	

AMENDED COMPLAINT FOR PATENT INFRINGEMENT

Plaintiffs, Black & Decker Inc. and Black & Decker (U.S.) Inc. (collectively “Black & Decker”), complain of defendant Robert Bosch Tool Corporation (“Bosch”) as follows:

1. This is a claim for patent infringement arising under the patent laws of the United States, Title 35 of the United States Code. This Court has exclusive jurisdiction over the subject matter of the claim made under 28 U.S.C. § 1338(a).

PARTIES

2. Black & Decker Inc. is a Delaware corporation having its principal place of business at 701 East Joppa Road, Towson, Maryland.

3. Black & Decker Inc. owns and has standing to sue for the infringement of United States Patent No. 7,043,283 entitled “Ruggedized Tradesworkers Radio” which issued on May 9, 2006 (“the ‘283 patent”).

4. Black & Decker Inc. owns and has standing to sue for the infringement of United States Patent No. 6,308,059 entitled “Ruggedized Tradesworkers Radio” which issued on October 23, 2001 (“the ‘059 patent”).

5. Black & Decker Inc. owns and has standing to sue for the infringement of United States Patent No. 6,788,925 entitled "Ruggedized Tradesworkers Radio" which issued on September 7, 2004 ("the '925 patent").

6. Black & Decker (U.S.) Inc. is a Maryland corporation having its principal place of business at 701 East Joppa Road, Towson, Maryland. Black & Decker (U.S.) Inc. makes and sells power tools, including specifically the portable jobsite radio/charger of the type at issue in this case. Black & Decker (U.S.) Inc. is an exclusive licensee of the '059, '925 and '283 patents and, thus, also has standing to sue for infringement of the '059, '925 and '283 patents.

7. Robert Bosch Tool Corporation is a Delaware corporation having its principal place of business at 1800 West Central Road, Mt. Prospect, Illinois 60056.

8. Bosch makes, uses, sells, offers for sale and/or imports radio/charger products called the Bosch Power Box jobsite radio, Model Nos. PB-10, PB-10CD, and the PB-10CD "Advanced" (the "Power Box jobsite radio/charger").

9. Black & Decker brought suit against Bosch, in Black & Decker, Inc., et al. v. Robert Bosch Tool Corp., Civil Action No. 04 C 7955, in which Black & Decker has accused the Bosch Power Box jobsite radio/charger (Model Nos. PB-10 and PB-10CD) of infringing claims of the '059 and '925 patents.

10. Bosch has asserted that the circuitry, electrical components, tuner, circuit boards and other features of the PB-10CD "Advanced" differ significantly from the PB-10 and PB-10CD.

11. The PB10-CD "Advanced" was not sold commercially in the United States until October 2005.

12. On November 1, 2004, Black & Decker placed Bosch on notice of claims pending before the United States Patent and Trademark Office which were substantially identical to the claims issued in the '283 patent. Bosch also had notice of the patent application for the '283 patent and even attempted, unsuccessfully, to bring a declaratory judgment claim against Black & Decker with respect to the claims in that pending patent application.

13. The '283 patent is a continuation of United States Patent Nos. 6,788,925 ("the '925 patent") and 6,308,059 ("the '059 patent"). The '283 patent issued after the close of discovery in Civil Action No. 04 C 7955 and could not reasonably be added to that Civil Action. Likewise, the PB10-CD "Advanced" was sold in the United States only after the close of discovery in Civil Action No. 04 C 7955.

14. This case is related to Civil Action No. 04 C 7955, which is scheduled for trial on September 18, 2006 because related patents and the same and similar products at issue in Civil Action No. 04 C 7955 are at issue in this case.

VENUE AND PERSONAL JURISDICTION

15. Venue is proper in this judicial district under 28 U.S.C. § 1400(b). Bosch transacts business in this district, at least by offering to sell or selling infringing Power Box jobsite radio/charger products and by advertising on the Internet in such a way as to reach customers in Illinois. Bosch also has its headquarters in this judicial district and transacts substantial business here.

16. Venue is also proper in this judicial district under 28 U.S.C. § 1391(c) because Bosch resides in this judicial district.

17. Bosch has sold a variety of power tools including portable Power Box jobsite radiochargers through retail stores in Illinois, such as Berland's located in Palatine, Illinois, Menard's located in Chicago, Illinois, and throughout the United States, and directly to customers in this judicial district.

PATENT INFRINGEMENT

18. Bosch has infringed at least one claim of the '283 patent through, among other activities, the manufacture, use, importation, sale and/or offer for sale of the Bosch Power Box jobsite radiocharger products, including the PB-10, PB-10CD, and PB-10CD "Advanced."

19. Bosch has infringed at least one claim of the '059 and '925 patents through, among other activities, the manufacture, use, importation, sale and/or offer for sale of the Bosch PB-10CD "Advanced."

20. Bosch, through its actions, has infringed and induced or contributed to the infringement of the '283, '059 and '925 patents in violation of 35 U.S.C. § 271, through, among other activities, demonstrating how to use the radio and charger on its website, *www.boschtools.com*.

21. Black & Decker has complied with the marking and/or notice provision of 35 U.S.C. § 287.

22. Black & Decker seeks provisional damages for the '283 patent pursuant to 35 U.S.C. § 154(d).

23. Bosch's infringement, contributory infringement and/or inducement to infringe has injured Black & Decker and it is entitled to recover damages adequate to compensate it for such infringement, but in no event less than a reasonable royalty.

24. Bosch has long been aware of the asserted claims of the '283, '059 and '925 patents and has, nonetheless, infringed those claims with full knowledge of the scope of the '283, '059 and '925 patents and its application to the accused Bosch Power Box jobsite radio/charger. As a consequence, Bosch's infringement, contributory infringement and/or inducement to infringe has been willful and deliberate and has injured and will continue to injure Black & Decker, unless and until this Court enters an injunction prohibiting further infringement and, specifically, enjoining further importation, manufacture, use, offer for sale and/or sale of power tools within the scope of the '283, '059 and '925 patents, and enjoining Bosch from contributing to and/or inducing infringement of the '283, '059 and '925 patents.

WHEREFORE, plaintiffs, Black & Decker Inc. and Black & Decker (U.S.) Inc., ask this Court to enter judgment against Robert Bosch Tool Corporation, and against its subsidiaries, successors, parents, affiliates, agents, servants, employees and all persons in active concert or participation with them, granting the following relief:

- A. An award of damages adequate to compensate Black & Decker for the infringement that has occurred, together with prejudgment interest from the date infringement of the patent in suit began;
- B. Provisional damages pursuant to 35 U.S.C. § 154(d);
- C. Increased damages as permitted under 35 U.S.C. § 284;
- D. A finding that this case is exceptional and an award to Black & Decker of its attorneys' fees and costs as provided by 35 U.S.C. § 285;
- E. A permanent injunction prohibiting further infringement of the '283, '059 and '925 patents; and,

F. Such other and further relief as this Court or a jury may deem proper and just.

JURY DEMAND

Black & Decker demands a trial by jury on all issues presented in this Complaint.

BLACK & DECKER INC.
BLACK & DECKER (U.S.) INC.

/s/ Dean D. Niro

Raymond P. Niro

Dean D. Niro

Christopher J. Lee

Paul C. Gibbons

David J. Mahalek

NIRO, SCAVONE, HALLER & NIRO

181 West Madison, Suite 4600

Chicago, Illinois 60602-4515

(312) 236-0733

Attorneys for Plaintiffs