

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

ORION IP, LLC,

Plaintiff,

v.

**1. EDELBROCK CORPORATION,
a Delaware Corporation;**

**2. TOSHIBA AMERICA, INC.,
a Delaware Corporation;**

**3. AMERICAN SUZUKI MOTOR
CORPORATION
a California Corporation,**

**4. KAWASAKI MOTORS CORP. USA
a Delaware Corporation,**

Defendants.

Civil Action No. 2:04-CV-449 TJW

(WARD)

JURY DEMANDED

FIRST AMENDED ORIGINAL COMPLAINT FOR PATENT INFRINGEMENT

This is an action for patent infringement in which Orion IP, LLC makes the following allegations against Edelbrock Corporation, Toshiba America, Inc., American Suzuki Motor Corporation and Kawasaki Motors Corp. USA.

PARTIES

1. Plaintiff Orion IP, LLC (“Orion”) is a Delaware limited liability company with its principal place of business at The Gardens on El Paseo, 73-545 El Paseo Boulevard, Suite 2204, Palm Desert, California 92260.

2. Defendant Edelbrock Corporation is a Delaware corporation with its principal place of business at 2700 California Street, Torrance, California 90503, and conducts business throughout the United States, Texas and the Eastern District of Texas.

3. Defendant Toshiba America, Inc. ("Toshiba") is a Delaware, corporation with its principal place of business at New York, New York. Toshiba also has division, subsidiary and group companies and dealers with offices throughout the United States, including Dallas, Texas.

4. Defendant American Suzuki Motor Corporation ("Suzuki") is a California corporation with its corporate headquarters and principal place of business in Brea, California. Suzuki also has division, subsidiary and group companies and dealers with offices throughout the United States, including Marshall, Texas.

5. Defendant Kawasaki Motors Corp., U.S.A. ("Kawasaki") is a Delaware corporation with its corporate headquarters and principal place of business in Santa Ana, California. Kawasaki also has division, subsidiary and group companies and dealers with offices throughout the United States, including Longview, Texas.

JURISDICTION AND VENUE

6. This action arises under the patent laws of the United States, Title 35 of the United States Code. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a).

7. Venue is proper in this district under 28 U.S.C. §§ 1391(c) and 1400(b). Defendants each have a regular and established place of business in this district, has transacted business in this district and, on information and belief, has committed acts of patent infringement in this district.

COUNT 1

INFRINGEMENT OF U.S. PATENT NO. 5,615,342

8. Orion, is the owner by assignment of United States Patent No. 5,615,342 (“the ‘342 patent”) entitled “Electronic Proposal Preparation System,” a true copy of which is attached as Exhibit A, duly issued on March 25, 1997

9. The ‘342 Patent was invented by Jerome D. Johnson.

10. Defendants Toshiba, Suzuki and Kawasaki have been and now are directly infringing, and indirectly infringing by way of inducing infringement and/or contributing to the infringement of the ‘342 patent in the state of Texas, in this judicial district, and elsewhere in the United States by, among other things, making and using supply chain methods, sales methods, sales systems, marketing methods, marketing systems and inventory systems covered by one or more claims of the ‘342 patent to the injury of Orion.

11. These defendants have actively induced and are actively inducing infringement of the ‘342 patent.

12. As a result of these Defendants’ infringement of the ‘342 patent, Orion has suffered monetary damages in an amount not yet determined, and will continue to suffer damages in the future unless Defendants’ infringing activities are enjoined by this Court.

13. Unless a preliminary and permanent injunction are issued enjoining these Defendants and their agents, servants, employees, attorneys, representatives, affiliates and all other acting on their behalf from infringing the ‘342 patent, Orion will be greatly and irreparably harmed.

COUNT 2

INFRINGEMENT OF U.S. PATENT NO. 5,367,627

14. Orion, is the owner by assignment of United States Patent No. 5,367,627 (“the ‘627 patent”) entitled “Computer-Assisted Parts Sales Method,” a true copy of which is attached as Exhibit B, duly issued on November 22, 1994.

15. The ‘627 Patent was invented by Jerome D. Johnson.

16. Defendants Edelbrock, Toshiba, Suzuki and Kawasaki have been and now are directly infringing, and indirectly infringing by way of inducing infringement and/or contributing to the infringement of the ‘627 patent in the state of Texas, in this judicial district, and elsewhere in the United States by, among other things, making and using supply chain methods, sales methods, sales systems, marketing methods, marketing systems and inventory systems covered by one or more claims of the ‘627 patent to the injury of Orion.

17. Defendants have actively induced and are actively inducing infringement of the ‘627 patent.

18. As a result of Defendants’ infringement of the ‘627 patent, Orion has suffered monetary damages in an amount not yet determined, and will continue to suffer damages in the future unless Defendants’ infringing activities are enjoined by this Court.

19. Unless a preliminary and permanent injunction are issued enjoining Defendants and their agents, servants, employees, attorneys, representatives, affiliates and all others acting on their behalf from infringing the ‘627 patent, Orion will be greatly and irreparably harmed.

PRAYER FOR RELIEF

WHEREFORE, Orion requests that this Court:

1. A judgment in favor of Orion that Defendants Toshiba, Suzuki and Kawasaki a have infringed, directly and indirectly by way of inducing and/or contributing to the infringement of the ‘342 patent.

2. A permanent injunction, enjoining Defendants Toshiba, Suzuki and Kawasaki and their officers, directors, agents, servants affiliates, employees, divisions, branches subsidiaries, parents and all others acting in concert or privity with any of them from infringement, inducing the infringement of, or contributing to the infringement of the '342 patent.

3. A judgment and order requiring Defendants Toshiba, Suzuki and Kawasaki to pay Orion damages for Defendants' infringement of the '342 patent, together with interest (both pre- and post- judgment), costs and disbursements as fixed by this Court under 35 U.S.C. §284;

4. A judgment in favor of Orion that Defendants Edelbrock, Toshiba, Suzuki and Kawasaki have infringed, directly and indirectly by way of inducing and/or contributing to the infringement of the '627 patent.

5. A permanent injunction, enjoining Defendants Edelbrock, Toshiba, Suzuki and Kawasaki and their officers, directors, agents, servants affiliates, employees, divisions, branches subsidiaries, parents and all others acting in concert or privity with any of them from infringement, inducing the infringement of, or contributing to the infringement of the '627 patent.

6. A judgment and order requiring Defendants Edelbrock, Toshiba, Suzuki and Kawasaki to pay Orion damages for Defendants' infringement of the '627 patent, together with interest (both pre- and post- judgment), costs and disbursements as fixed by this Court under 35 U.S.C. §284;

7. A judgment and order finding that this is an exceptional case within the meaning of 35 U.S.C. §285 and awarding to Orion its reasonable attorneys' fees; and

ORION DEMANDS A TRIAL BY JURY ON ALL ISSUES SO TRIABLE.

Dated: February 4, 2005

Respectfully submitted,

ORION IP, LLC

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