

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

ESSEX P. B. & R. CORP.)	
)	
Plaintiff,)	
)	
v.)	Cause No. _____
)	
XCAPER INDUSTRIES, LLC,)	JURY TRIAL DEMANDED
)	
<u>Serve:</u>)	
Peter D. Finch)	
17321 Eastman)	
Irvine, CA 92614)	
Defendant.)	

COMPLAINT

COMES NOW Plaintiff Essex P. B. & R. Corp. (“Essex”) and for its Complaint against Defendant Xcaper Industries, LLC (“Xcaper”), states as follows:

PARTIES, JURISDICTION AND VENUE

1. Essex is a Missouri corporation having its principal place of business in St. Louis, Missouri.
2. Xcaper is a limited liability company incorporated in the State of Delaware having its principal place of business in Irvine, California.
3. Upon information and belief, Xcaper, by itself and through its intermediaries, has for a time past and still is purposefully shipping, selling, offering for sale and/or making or having made an emergency smoke filter mask known by the product or trade name “XCAPER PERSONAL SMOKE MASK” (hereinafter the “accused device”). Xcaper does business in this judicial district.

4. This action arises under the Patent Laws of the United States, United States Code, Title 35, § 1, et. seq. The Court has jurisdiction over the subject matter of this action pursuant to United States Code, Title 28, Sections 1331 and 1338.

5. Venue is proper in this district under United States Code, Title 28, Sections 1391(b) and (c) and 1400(b).

**COUNT I -
INFRINGEMENT OF U.S. PATENT NO. 5,562,092**

6. Essex realleges paragraphs 1-5 above, inclusive, which are incorporated by reference.

7. Eric W. George was duly and legally granted by the United States Patent and Trademark Office (“PTO”) on October 8, 1996, United States Patent No. 5,562,092 (“the ‘092 patent”) entitled “FIREFIGHTER’S EMERGENCY SMOKE FILTER.” A true and correct copy of the patent is attached hereto as Exhibit A.

8. Thereafter, George assigned the ‘092 patent to U.S. Firefighter, Inc. (“U.S. Firefighter”) and U.S. Firefighter is and has continuously been the owner of all right, title and interest in and to the ‘092 patent since the assignment.

9. On or about April 12, 1999, U.S. Firefighter entered into an exclusive license agreement (the “Agreement”) with Brookdale International Systems, Inc. (“Brookdale”).

10. On or about May 29, 2007, Brookdale assigned the Agreement to Essex. Essex has standing and sufficient rights under the Agreement to initiate and maintain the instant lawsuit.

11. Upon information and belief, Xcaper, directly and through intermediaries, has for a time past and still is purposefully shipping, selling, offering for sale, and/or making or having made, or aiding and abetting and contributing to or inducing such activities, in the United States,

accused devices which infringe one or more claims of the '092 patent. Xcaper has done so without license or authority from Essex or U.S. Firefighter.

12. On or about July 23, 2008, Xcaper was sent a letter notifying Xcaper of its infringement of the '092 patent. A true and correct copy of this letter is attached hereto as Exhibit B.

13. Upon information and belief, Xcaper has and continues to infringe the '092 patent.

14. Xcaper's infringement of the '092 patent has caused and will continue to cause Essex irreparable harm for which there is no adequate remedy at law.

15. Xcaper's infringement of the '092 patent has damaged and will continue to damage Essex, including but not limited to, lost profits from lost sales, lost income from competition from infringing products, loss of opportunity of sales, and/or price erosion.

REQUEST FOR RELIEF

WHEREFORE, Essex respectfully requests that the Court enter a judgment:

- A. Declaring that Xcaper has infringed, induced and/or contributed to the infringement of the '092 patent;
- B. Permanently enjoining Xcaper, its respective subsidiaries, agents, officers, employees, directors, licensees, servants, successors, assigns, and all others acting in privity or in concert with them, from infringing, actively inducing infringement or contributing to infringement of the '092 patent;
- C. Awarding Essex damages adequate to compensate for Xcaper's infringing activities, together with interest;
- D. Awarding Essex treble damages pursuant to 35 U.S.C. § 284, and other applicable law, by reason of the willful, wanton, and deliberate nature of Essex's continued infringement;
- E. Awarding Essex its attorneys' fees and costs of suit, pursuant to 35 U.S.C. § 285, and other applicable law;

F. Awarding Essex such other and further relief as the Court may deem just and proper.

JURY DEMAND

Plaintiff Essex demands a trial by jury as to all claims and all issues properly triable thereby.

Dated: November 6, 2008

Respectfully submitted,

LEWIS, RICE & FINGERSH, L.C.

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