

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

TIGERCAT INDUSTRIES INC.,

Plaintiff,

COMPLAINT

vs.

Case No. _____

DEERE & COMPANY,

Defendant.

Plaintiff Tigercat Industries Inc. ("Tigercat"), by its attorneys, Phillips Lytle LLP, for its complaint against defendant Deere & Company ("Deere") , alleges as follows:

NATURE OF THE ACTION

1. This action seeks a declaratory judgment that United States Patent No. 6,068,035 (the "'035 patent"), which issued May 30, 2000 and is entitled "Disc Saw Felling Head Chip Path Management Construction," and United States Patent No. 6,176,280 (the "'280 patent"), which issued January 23, 2001 and is entitled "Disc Saw Felling Head Chip Path Management Construction" (collectively, the "Subject Patents"), are invalid, void, unenforceable and not infringed by Tigercat, either directly or as an inducing or contributory infringer. Copies of the '035 and '280 patents are attached as Exhibits A and B, respectively.

PARTIES

2. Tigercat is an Ontario corporation with principal offices at 40 Consolidated Drive, Paris, Ontario, Canada.

3. Upon information and belief, Deere is a Delaware corporation headquartered in Moline, Illinois.

4. Upon information and belief, Deere offers its goods for sale in the State of New York, has dealerships and distributorships for its goods in Orchard Park, New York and elsewhere in this District, and is authorized to do business in the State of New York.

5. Upon information and belief, defendant does or transacts business within the State of New York; has entered into contracts to supply goods or services in the State of New York; has committed a tortious act within the State of New York; has committed a tortious act without the State of New York causing injury to person or property within the State of New York; regularly does or solicits business within the State of New York; derives substantial revenues from goods used or services rendered in the State of New York; owns, uses or possesses real property within the State of New York; and/or expects its actions to have consequences in the State of New York, and derives substantial revenue from interstate and international commerce.

JURISDICTION AND VENUE

6. A case or actual controversy now exists between the parties, within the meaning of 28 U.S.C. § 2201, as to whether commercialization in the United States (*i.e.*, manufacture, use, sale, offer to sell or import) by Tigercat of certain tree felling heads infringes any claim of the Subject Patents.

7. Jurisdiction over the subject matter is conferred on this Court pursuant to 28 U.S.C. §§ 1331, 1338, 2201 and 2202.

8. Venue in this District is proper under 28 U.S.C. §§ 1391 and 1400(b). Upon information and belief, defendant resides in this District and/or has a regular and established place of business in this District.

9. Tigercat designs, manufactures and sells innovative forestry and logging equipment and harvesting systems, including drive-to-tree and track feller bunchers, grapple skidders, log loaders, harvesters, forwarders and a range of saws, shears and harvesting heads.

10. Deere is a manufacturer and/or seller of forestry equipment.

11. Upon information and belief, defendant is the owner of all right, title and interest in the Subject Patents.

12. On July 19, 2006, Deere commenced an action in the United States District Court for the Southern District of Iowa, Davenport Division, alleging that Tigercat infringed the Subject Patents (the "Iowa Action").

13. By Order dated February 1, 2007, the Court dismissed the Iowa Action administratively.

14. The Iowa Action places Tigercat in reasonable fear and apprehension that Deere will commence another action against Tigercat for, *inter alia*, patent infringement.

COUNT I

(Declaratory Relief: Non-Infringement)

15. Tigercat realleges paragraphs 1 through 14 above as if fully set forth herein.

16. As a result of defendant's conduct, Tigercat has a reasonable apprehension that defendant plans to file another suit against Tigercat for infringement of the Subject Patents and

that such suit is imminent. Accordingly, there exists an actual, justiciable and legal controversy between Tigercat and defendant regarding Tigercat's alleged infringement of the Subject Patents.

17. Tigercat has not directly infringed, induced the infringement of nor been a contributory infringer of the Subject Patents.

18. Tigercat is, therefore, entitled to a judicial determination and declaration that its products do not infringe, and have not infringed, any valid claim of the Subject Patents, and that Tigercat has not committed any act of infringement of the Subject Patents with respect to products made or sold by Tigercat since issuance of the Subject Patents.

COUNT II
(Declaratory Relief: Invalidity)

19. Tigercat realleges paragraphs 1 through 18 above as if fully set forth herein.

20. The Subject Patents are invalid for failure to comply with one or more of the requirements of the Patent Laws of the United States, including 35 U.S.C. §§ 102, 103 and/or 112.

21. The Subject Patents are unenforceable because defendant has misused such patents and have unlawfully attempted to extend the scope of their alleged patent rights under the Subject Patents.

22. Tigercat is, therefore, entitled to a judgment declaring that the Subject Patents are invalid, void and unenforceable.

JURY DEMAND

Pursuant to Fed. R. Civ. P. 38(b), Tigercat demands trial by jury of all issues triable of right by jury.

PRAYER FOR RELIEF

WHEREFORE, Tigercat requests that the Court enter judgment in its favor and against defendant as follows:

- A. Declaring that the Subject Patents are invalid, void and unenforceable;
- B. Declaring that Tigercat and Tigercat's products do not infringe, and have not infringed, any claim of the Subject Patents;
- C. Declaring that Tigercat has not committed any act of infringement of the Subject Patents;
- D. Enjoining defendant, their officers, agents, employees, representatives, counsel and all parties acting in concert with them, permanently and during the pendency of this action, from directly or indirectly asserting or charging infringement of the Subject Patents against Tigercat, its representatives, agents, customers and contractors, present and prospective;
- E. Declaring this an exceptional case, under 35 U.S.C. § 285, and rendering an award to Tigercat of its reasonable attorneys' fees, expenses and costs in this action; and
- F. Granting Tigercat such other and further relief as this Court deems just and proper.

Dated: Buffalo, New York
February 1, 2007

PHILLIPS LYTLE LLP

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