

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

FILED
AUG 25 2008
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CIV. 08-4134

LYNN HURLEY, an individual, and :
HURCO TECHNOLOGIES, INC., a South :
Dakota corporation, :

Plaintiffs, :

COMPLAINT

vs. :

E.H. WACHS COMPANY, INC., an Illinois :
corporation, :

Defendant. :

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Plaintiffs, Lynn Hurley and Hurco Technologies, Inc., for their Complaint against
Defendant, E.H. Wachs Company, Inc., state and allege as follows:

PARTIES

1. Plaintiff, Hurco Technologies, Inc. (“Hurco”), is incorporated under the
laws of South Dakota, and its principal place of business is located in Harrisburg, South
Dakota. Hurco manufactures and sells, among other things, devices that aid in exercising
valves and fire hydrants.

2. Plaintiff, Lynn Hurley (“Hurley”), owner of Hurco, resides in Harrisburg,
South Dakota, and is the inventor of a valve exercising system (“the Invention”) that is

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highly suitable for exercising valves and fire hydrants in an efficient and effective manner.

3. Defendant, E.H. Wachs Company, Inc. (“Wachs”), is incorporated under the laws of Illinois, and its principal place of business is located in Lincolnshire, Illinois. Wachs manufactures and sells, among other things, devices that aid in exercising valves and fire hydrants.

JURISDICTION AND VENUE

4. This Court has subject matter jurisdiction over all causes of action set forth herein pursuant to 28 U.S.C. §§ 1331 and 1338(a).

5. This a civil action for patent infringement arising under the patent laws of the United States, including 35 U.S.C. §§ 271 and 281.

6. This Court has personal jurisdiction over Wachs. Wachs conducts business in the State of South Dakota by directly selling products in South Dakota and/or selling products in South Dakota through dealers and sales associates located in South Dakota. In the “Sales Contacts” portion of Wachs’ own website (<http://www.wachsco.com>), for instance, Wachs advertises its products for sale specifically in South Dakota, and on the same website states that it has appointed a “Field Representative” for South Dakota named John Riley, and appointed a “Technical Sales Representative” for South Dakota named Harry Deitz. Sales of Wachs’ products in South Dakota, including to the City of Sioux Falls, began as early as 1974.

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7. Venue is proper in this Court under 28 U.S.C. §§ 1391(c) and 1400(b).

FACTS

8. On May 20, 2008, United States Patent No. 7,376,529, entitled “Valve Tester Control Enhancements” (“the ‘529 Patent”), was duly and legally issued to Hurley. A true and correct copy of the ‘529 Patent is attached hereto as Exhibit A.

9. The interests of Hurley in the ‘529 Patent were exclusively licensed and subsequently assigned to Hurco. Hurco is the current owner of all right, title, and interest in the ‘529 Patent.

10. Hurco manufactures and sells an embodiment of the patented invention known and marketed as the Valve Star exercising system. Each Valve Star manufactured and sold by Hurco is prominently marked with statements that the Valve Star is “covered by” the ‘529 Patent. Hurco’s product literature, which Wachs has received, also indicates that Hurco products are made under the ‘529 Patent.

11. Hurco has commercially exploited the patent invention by manufacturing and selling the Valve Star.

12. Wachs has sold and continues to sell competing products that infringe one or more claims of the ‘529 Patent.

COUNT I: PATENT INFRINGEMENT

13. Plaintiff restates all previous allegations and incorporates them herein by reference.

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14. Wachs has directly infringed, and continues to directly infringe, one or more claims of the '529 Patent literally and/or under the doctrine of equivalents by making, using, offering to sell, and/or selling products that infringe one or more claims of the '529 Patent in violation of 35 U.S.C. § 271(a).

15. Upon information and belief, Wachs has engaged in activities that constitute inducement to infringe and/or contributory infringement of the '529 Patent in violation of 35 U.S.C. § 271(b) and (c).

16. Upon information and belief, Wachs will continue its infringing activities unless enjoined by this Court as allowed by 35 U.S.C. § 283.

17. Upon information and belief, Wachs' infringement is, has been, and continues to be deliberate, willful, intentional, and with full knowledge of the existence and validity of the '529 Patent.

18. Plaintiffs have suffered damages by reason of Wachs' infringement, either directly, contributorily, or by inducement, for which they are entitled to relief under 35 U.S.C. § 284.

REQUESTED RELIEF

WHEREFORE, Plaintiffs, request a judgment against Defendant Wachs as follows:

1. That the '529 Patent is valid and enforceable;
2. That Wachs has directly or contributorily infringed, and/or induced the

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infringement of one or more claims the '529 Patent;

3. That Wachs, its officers, subsidiaries, parents, agents, servants, employees, attorneys and all parties in active concert with Wachs be preliminarily and permanently enjoined from any further infringement of the '529 Patent pursuant to 35 U.S.C. § 283;

4. That damages be awarded to Plaintiffs as a result of Wachs' infringement of the '529 Patent together with interest and costs pursuant to 35 U.S.C. § 284;

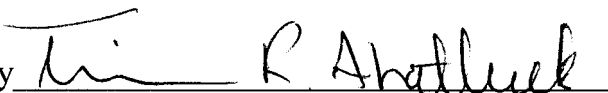
5. That this Court increase the damages assessed against Wachs to three times the amount found or assessed pursuant to 35 U.S.C. § 284 as a result of Wachs' willful infringement;

6. That this Court declare this is an exceptional case and order that Wachs pay to Plaintiffs their reasonable attorneys' fees and costs pursuant to 35 U.S.C. § 285; and

7. That this Court award such other and further relief to Plaintiffs as the Court deems just and equitable, together with their costs and disbursements in this action.

Dated this 26th day of August, 2008.

WOODS, FULLER, SHULTZ & SMITH P.C.

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JURY DEMAND

Plaintiffs request a jury trial on all issues of fact.

Dated this 26th day of August, 2008.

WOODS, FULLER, SHULTZ & SMITH P.C.

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