

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

VARIANT, INC.,

Plaintiff,

v.

ADAMS GOLF, INC.,

SUB-ZERO, INC.,

THE BILTMORE COMPANY,

ACE CASH EXPRESS INC. and

BANKRATE, INC.,

Defendants.

Case No. 6:08-cv-00478

PATENT CASE

JURY TRIAL DEMANDED

THIRD AMENDED COMPLAINT

Variant, Inc., (“Plaintiff”) files this Third Amended Complaint against Adams Golf, Inc. (“Adams Golf”), Sub-Zero, Inc. (“Sub-Zero”), The Biltmore Company (“Biltmore”), ACE Cash Express, Inc. (“ACE”), and Bankrate, Inc. (“Bankrate”) (collectively “Defendants”) for infringement of United States Patent No. 7,379,900 (hereinafter “the ‘900 patent”).

JURISDICTION

1. This is an action for patent infringement under title 35 of the United States code. Plaintiff is seeking injunctive relief as well as damages.

2. Jurisdiction is proper in this Court pursuant to 28 U.S.C. §§ 1331 (Federal Question) and 1338(a) (Patents) because this is a civil action for patent infringement arising under the United States patent statutes.

3. Venue is proper under 28 U.S.C. §§ 1391(c) and 1400(b).

4. Plaintiff is a Wisconsin corporation.

5. Defendant Adams Golf is a Delaware corporation with its principal office located in Plano, Texas. Adams has made, used, sold, offered for sale, offers for sale and/or imports apparatuses that infringe one or more claims of the '900 patent. Adams has infringed and continues to infringe the '900 patent either directly or through the acts of contributory infringement or inducement in violation of 35 U.S.C. § 271.

6. Defendant Sub-Zero is a Delaware corporation with its principal place of business in Madison, Wisconsin. Sub-Zero has made, used, sold, offered for sale, offers for sale and/or imports apparatuses that infringe one or more claims of the '900 patent. Sub-Zero has infringed and continues to infringe the '900 patent either directly or through the acts of contributory infringement or inducement in violation of 35 U.S.C. § 271.

7. Defendant Biltmore is a Delaware corporation with its principal place of business in Asheville, North Carolina. Biltmore has made, used, sold, offered for sale, offers for sale and/or imports apparatuses that infringe one or more claims of the '900 patent. Biltmore has infringed and continues to infringe the '900 patent either directly or through the acts of contributory infringement or inducement in violation of 35 U.S.C. § 271.

8. Defendant ACE is a Texas corporation with its principle place of business in Irving, Texas. ACE has made, used, sold, offered for sale, offers for sale and/or imports apparatuses that infringe one or more claims of the '900 patent. ACE has infringed and continues to infringe the '900 patent either directly or through the acts of contributory infringement or inducement in violation of 35 U.S.C. § 271.

9. Defendant Bankrate is a Florida corporation with its principle place of business in

North Palm Beach, Florida. Bankrate has made, used, sold, offered for sale, offers for sale and/or imports apparatuses that infringe one or more claims of the '900 patent. Bankrate has infringed and continues to infringe the '900 patent either directly or through the acts of contributory infringement or inducement in violation of 35 U.S.C. § 271.

10. On information and belief, Defendants' apparatuses that are alleged herein to infringe are made, used, imported, offered for sale, and/or sold in the Eastern District of Texas.

11. This court has personal jurisdiction over Defendants because Defendants have committed acts of infringement in this district; do business in this district; and/or have systematic and continuous contacts in this district.

INFRINGEMENT OF U.S. PATENT 7,379,900

12. Plaintiff incorporates paragraphs 1 through 11 herein by reference.

13. This cause of action arises under the patent laws of the United States, and in particular, 35 U.S.C. §§ 271 *et seq.*

14. Plaintiff is the exclusive licensee of the '900 patent with rights to enforce the '900 patent and sue infringers.

15. The '900 patent, titled "System for marketing goods and services utilizing computerized central and remote facilities," is valid, enforceable and was duly issued in full compliance with Title 35 of the United States Code. A copy of the '900 patent is attached hereto as Exhibit A.

16. On information and belief, Defendant Adams Golf has infringed and continues to infringe the '900 patent by making, using, importing, offering for sale and/or selling apparatuses among other things, covered by one or more claims of the '900 patent, including, but not limited to, its website, <http://www.adamsgolf.com>, and the technology associated therewith.

17. On information and belief, Defendant Sub-Zero has infringed and continues to infringe the '900 patent by making, using, importing, offering for sale and/or selling apparatuses among other things, covered by one or more claims of the '900 patent, including, but not limited to, its website, <http://www.subzero.com>, and the technology associated therewith.

18. On information and belief, Defendant Biltmore has infringed and continues to infringe the '900 patent by making, using, importing, offering for sale and/or selling apparatuses among other things, covered by one or more claims of the '900 patent, including, but not limited to, its website, <http://www.biltmore.com>, and the technology associated therewith.

19. On information and belief, Defendant ACE has infringed and continues to infringe the '900 patent by making, using, importing, offering for sale and/or selling apparatuses among other things, covered by one or more claims of the '900 patent, including, but not limited to, its website, <http://www.acecashexpress.com>, and the technology associated therewith.

20. On information and belief, Defendant Bankrate has infringed and continues to infringe the '900 patent by making, using, importing, offering for sale and/or selling apparatuses among other things, covered by one or more claims of the '900 patent, including, but not limited to, its website, <http://www.bankrate.com>, and the technology associated therewith.

21. On information and belief, Defendants contributorily infringed one or more claims of the '900 patent and continue to contributorily infringe one or more claims of the '900 patent, pursuant to 35 U.S.C. § 271 in the United States, including in this judicial district.

22. On information and belief, Defendants have induced others to infringe one or more claims of the '900 patent and continue to induce others to infringe one or more claims of the '900 patent, pursuant to 35 U.S.C. § 271 in the United States, including in this judicial district.

23. Defendants' actions complained of herein will continue unless Defendants are enjoined by this court.

24. On information and belief, Defendants' infringement is willful because Defendants have in the past and/or presently continue to infringe the '900 patent, as alleged herein, with knowledge of the '900 patent.

25. This case is exceptional pursuant to the provisions of 35 U.S.C. § 285.

26. Plaintiff has complied with 35 U.S.C. § 287.

27. Defendants' actions complained of herein are causing irreparable harm and monetary damage to Plaintiff and will continue to do so unless and until Defendants are enjoined and restrained by this Court.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff asks the Court to:

- A. Enter judgment for Plaintiff on this Third Amended Complaint;
- B. Enjoin Defendants, their agents, officers, servants, employees, attorneys and all persons in active concert or participation with Defendants who receive notice of the order from further infringement of United States Patent No. 7,379,900;
- C. Award Plaintiff damages resulting from Defendants' infringement in accordance with 35 U.S.C. § 284;
- D. Treble the damages in accordance with the provisions of 35 U.S.C. § 284;
- E. Find the case to be exceptional under the provisions of 35 U.S.C. § 285;

- F. Award Plaintiff reasonable attorney fees under 35 U.S.C. § 285;
- G. Order the impounding and destruction of all Defendants' apparatuses that infringe the '900 patent;
- H. Award Plaintiff interest and costs, including prejudgment and post judgment interest; and
- I. Award Plaintiff such further relief to which the Court finds Plaintiff entitled under law or equity.

Respectfully submitted,

/s/ Anthony G. Simon

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ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was served on all parties of record via the Court's CM/ECF system on April 21, 2009.

/s/ Anthony G. Simon

Anthony G. Simon