

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE**

Bauer Hockey, Inc.,	X	
	:	
Plaintiff,	:	
	:	
v.	:	Civil Action No. _____
	:	
Easton Sports, Inc.,	:	
	:	
Defendant.	:	
	X	

**COMPLAINT FOR PATENT INFRINGEMENT
AND DEMAND FOR JURY TRIAL**

Plaintiff Bauer Hockey, Inc. (“Bauer”), by its undersigned attorneys, alleges as follows, upon actual knowledge with respect to itself and its own acts, and upon information and belief as to all other matters:

NATURE OF THE ACTION

1. This is a civil action for patent infringement arising under the patent laws of the United States, 35 U.S.C. § 1, *et seq.*, and the Declaratory Judgment Act, 28 U.S.C. §§ 2201-2202. Plaintiff Bauer brings this action against Easton Sports, Inc. (“Easton” or “Defendant”) for its infringement of U.S. Patent No. 6,918,847 (“the ’847 patent”) to Gans, et. al., assigned to Bauer. A true and correct copy of the ’847 patent is attached as Exhibit A. Bauer also seeks (1) a declaratory judgment that Bauer’s processes for making its hockey sticks and/or hockey stick blades do not infringe U.S. Patent No. 7,850,553 and (2) a declaratory judgment that U.S. Patent No. 7,850,553 is invalid.

THE PARTIES

2. Plaintiff Bauer Hockey, Inc. is a Vermont corporation with its principal place of business located at 150 Ocean Road, Greenland, New Hampshire 03840. As more fully

described below, since the 1920s, Bauer and its predecessor companies have been in the business of developing, manufacturing, and selling ice hockey equipment.

3. Bauer is the sole owner and assignee of the '847 patent.

4. On information and belief, Defendant Easton is a Delaware corporation located at 7855 Haskell Avenue, Van Nuys, California 91406.

5. Easton purports to be the owner of U.S. Patent No. 7,850,553 (“the '553 patent,” a true and correct copy of which is attached as Exhibit B).

JURISDICTION AND VENUE

6. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1338 and 28 U.S.C. §§ 2201, *et seq.*

7. This Court has personal jurisdiction over Easton and venue is proper in the District of New Hampshire pursuant to 28 U.S.C. § 1391(b). Easton and Easton’s agents sell and cause to be sold the infringing hockey stick blades in this District, including via retail sporting goods stores and retail websites. Bauer’s claims arise in this District, where a substantial portion of the activity about which Bauer complains has taken place.

8. On April 11, 2011, the Executive Vice President and General Counsel for Defendant Easton sent a letter to Plaintiff Bauer, at its New Hampshire address, notifying it of the issuance of the '553 patent and that Easton believed Bauer was selling and offering for sale hockey sticks made using the methods set out in the '553 patent. In its letter, Easton required that “Bauer immediately cease and desist from manufacturing or offering for sale ... any hockey products whose manufacture infringes on the '553 Patent; that Bauer deliver to Easton all products made with the patented process, and that Bauer provide a full accounting of the sales of all infringing products.” (Attached as Exhibit C is a copy of this Easton letter to Bauer.) Easton

stated that unless Bauer provided “written confirmation of its agreement to the requested undertaking, or Bauer’s intention to obtain a non-exclusive license,” Easton is “prepared to undertake legal action” based on the ’553 patent. (*Id.*)

9. As noted above, Bauer’s business involves selling hockey sticks in the United States and it has no plans to cease such activities. By way of its April 11 letter to Bauer, Easton has asserted its rights under the ’553 patent. Bauer risks an action for patent infringement if it continues to sell its hockey sticks.

10. Under the totality of the circumstances, an actual controversy sufficient to establish declaratory-judgment jurisdiction exists here between Bauer and Easton.

FACTUAL BACKGROUND

11. Bauer is an established fixture in the world of hockey, with roots tracing back to the 1920s. Bauer and its related companies are one of the largest manufacturers and distributors of hockey equipment and related products worldwide, including hockey sticks.

Bauer’s ’847 patent

12. The ’847 patent is directed to “[a] hockey stick blade comprising a core extending along a longitudinal axis, the core comprising a first portion being made of foam having a first density and a second portion being made of foam having a second density. The second density is higher than the first density.” (*See* Ex. A, abstract).

13. The Applicant filed the application for the ’847 patent on October 24, 2003, and the U.S. Patent and Trademark Office (“Patent Office” or “PTO”) issued the ’847 patent on July 19, 2005.

14. Bauer is the sole owner and assignee of the ’847 patent.

Easton's '553 Patent

15. The '553 patent, identified in Easton's April 11, 2011, letter (*see* Ex. C), issued on December 14, 2010, from an application filed on July 11, 2006. (*See* Ex. B.)

Defendant's Infringing Conduct

16. Easton has offered and continues to manufacture, offer for sale, and/or sell hockey sticks and/or hockey stick blades, including at least the "S19" and "EQ50" models, that infringe claims of Bauer's '847 patent.

COUNT I
INFRINGEMENT OF US PATENT NO. 6,918,847

17. Plaintiff Bauer reaffirms and incorporates by reference each and every allegation contained in paragraphs 1 through 16 as if fully set forth herein.

18. This is a claim for patent infringement under 35 U.S.C. § 271 of Plaintiff Bauer's U.S. Patent No. 6,918,847.

19. Upon information and belief, Easton has infringed and continues to infringe the '847 patent by making, using, offering to sell, selling, and/or importing at least its S19 and/or EQ50 hockey sticks and/or its S19 and/or EQ50 hockey stick blades, including replacement blades, without permission from Plaintiff Bauer.

20. Bauer has been and will continue to be injured by Easton's infringement.

21. Upon information and belief, Easton has known of Bauer's '847 patent at least as early as November 2009 and its infringement of the '847 patent has been and continues to be deliberate, willful, and in reckless disregard of Bauer's patent rights.

COUNT II
DECLARATORY JUDGMENT AGAINST EASTON
FOR NON-INFRINGEMENT OF THE '553 PATENT

22. Plaintiff Bauer reaffirms and incorporates by reference each and every allegation contained in paragraphs 1 through 21 as if fully set forth herein.

23. An actual controversy pursuant to 28 U.S.C. §§ 2201, *et seq.* exists between Plaintiff Bauer and Defendant Easton concerning infringement of Easton's '553 patent.

24. Contrary to Easton's accusations, Bauer has not and is not infringing any claim of the '553 patent.

25. Bauer warrants a declaratory judgment that it does not infringe the claims of the '553 patent.

COUNT III
DECLARATORY JUDGMENT AGAINST EASTON
FOR INVALIDITY OF THE '553 PATENT

26. Plaintiff Bauer reaffirms and incorporates by reference each and every allegation contained in paragraphs 1 through 25 as if fully set forth herein.

27. An actual controversy pursuant to 28 U.S.C. §§ 2201, *et seq.* exists between Plaintiff Bauer and Defendant Easton concerning the validity of Easton's '553 patent.

28. The claims of the '553 patent are invalid for failing to meet the requirements of patentability under the federal patent laws, including 35 U.S.C. §§ 102, 103, and/or 112.

29. Bauer warrants a declaratory judgment that the claims of the '553 patent are invalid.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Bauer requests that this Court enter judgment in its favor on each and every claim for relief set forth above and award it the following relief, including:

- A. Judgment that Easton has infringed United States Patent No. 6,918,847;
- B. An order preliminarily and/or permanently enjoining Easton, its officers, agents, servants, employees, attorneys, and all persons acting in concert or participation with it, from infringing United States Patent No. 6,918,847;
- C. Judgment awarding Plaintiff its damages resulting from Easton's patent infringement, together with prejudgment and post-judgment interest;
- D. A finding that Easton's patent infringement has been willful and an award enhancing the damages awarded to Plaintiff to three times the amount assessed, pursuant to 35 U.S.C. § 284;
- E. A declaration that Bauer does not infringe Easton's U.S. Patent No. 7,850,553 and a final judgment incorporating same;
- F. A declaration that the claims of Easton's U.S. Patent No. 7,850,553 are invalid and a final judgment incorporating same;
- G. A finding that this is an exceptional case and award granting Plaintiff its reasonable attorneys' fees, expenses, and costs, pursuant to 35 U.S.C. § 285; and
- H. Any such other and further relief to Plaintiff as the Court deems just and proper.

JURY DEMAND

Pursuant to Fed. R. Civ. P. 38, Bauer respectfully demands a trial by jury on all issues properly triable by a jury in this action.

Respectfully submitted,

Dated: May 9, 2011

/s/ Philip R. Braley

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