

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION

FILED

2007 JUL 26 P 4:07

CLERK, US DISTRICT COURT  
WESTERN DISTRICT OF TEXAS

BY \_\_\_\_\_  
DEPUTY

ECONTROLS, INC.  
Plaintiff,

v.

PERFECT PASS CONTROL  
SYSTEMS, INC.  
Defendant.

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**SA07CA0625 XR**

Civil Action No. \_\_\_\_\_

**COMPLAINT**

Plaintiff, EControls, Inc., complains of Defendant, Perfect Pass Control Systems, Inc., as follows:

**I.**  
**PARTIES**

1. Plaintiff, EControls, Inc. ("EControls") is a company incorporated under the laws of Texas with a principle place of business 3523 Crosspoint, San Antonio, Texas 78209.
2. Defendant, Perfect Pass Control Systems, Inc. ("Perfect Pass") is a company incorporated under the laws of Nova Scotia, Canada and may be served at their principal place of business at 14 Trider Crescent, Burnside Industrial Park, Dartmouth, Nova Scotia, Canada B3B1R6.

**II.**  
**JURISDICTION AND VENUE**

3. Subject matter jurisdiction is based upon 35 U.S.C. § 1 et seq.; 28 USC §§ 1331, 1332, 1338, and 2201. The matter in controversy exceeds the minimum jurisdiction limits of this Court, exclusive of interest and costs.

4. This Court has personal jurisdiction over the Defendant since Defendant has sufficient contacts with this State and, in particular, this Judicial District, and maintenance of the suit in this Judicial District does not offend traditional notions of fair play and substantial justice. Venue is proper in this District pursuant to 28 USC §§ 1391 and 1400. The Defendant is doing business in this District, and a substantial part of Plaintiff's claims arise in this Judicial District.

5. This suit concerns U.S. Patent No. 5,700,171 (the "171 Patent"). The 171 Patent is nationwide in effect including within Texas and this District. Perfect Pass asserts that apparatuses and methods practiced by EControls and its distributors, which are the same apparatuses used and methods practiced in this District, infringe the 171 Patent.

6. Perfect Pass offers its products throughout the United States including the State of Texas and this District.

7. Perfect Pass has dealers of its products in Texas and this District including at least Ray's Marine, Sail and Ski Centre, and Texas Ski Ranch.

8. This Court has pendant and supplemental jurisdiction over all of the claims asserted herein, the claims being necessarily determinable together with the federal claims.

### **III.** **FACTS**

9. EControls was formed in February of 1994 to develop engine control systems and instrumentation, and EControls has since then become a market leader. EControls offers cutting edge expertise in the areas of control algorithms, real-time and embedded software, mechanical design, harsh environment electrical design, and dynamic, compressible flow combustion, and

thermodynamic modeling. EControls expertise in industry changes and standards is enhanced with 17 awarded patents and 75 published technical papers.

10. EControls developed a patented GPS based Watercraft Speed Control Device which it markets and sells through a distributor, AquaStar, Inc., under the trademark "Zero Off."

11. U.S. Patent No. 5,700,171 (the "171 Patent") for a non-GPS based "Speed Control System" was issued on December 23, 1997, listing Eric B. Horton as the sole inventor. It is assigned to Perfect Pass. Said patent is attached as Exhibit "A."

12. Perfect Pass expressly and/or implicitly asserts that EControls' distributor, AquaStar, Inc., infringes the 171 Patent in the marketing and sale of the "Zero Off" GPS based watercraft speed control device. Perfect Pass, implicitly threatened litigation or the need to obtain a license concerning the alleged infringement through their April 23, 2007 letter to AquaStar, Inc. Said letter is attached as Exhibit "B".

13. As a result of Perfect Pass' acts, EControls has a reasonable apprehension of being sued by Perfect Pass for infringement of the 171 Patent and/or the need to obtain a license to the 171 Patent. EControls' distributor AquaStar, Inc. has a reasonable apprehension of being sued for infringement of the 171 Patent and/or the need to obtain a license to the 171 Patent.

14. EControls has a reasonable apprehension of it's distributor being sued by Perfect Pass, who would then sue EControls for indemnification.

**IV.**  
**CAUSES OF ACTION**

**COUNT ONE – DECLARATORY JUDGMENT**

15. An actual existing and bona fide controversy exists between EControls and Perfect Pass concerning the 171 Patent including its scope, its validity, and its infringement.

16. EControls seeks a declaratory judgment that neither EControls nor EControls' distributor infringe or have infringed the 171 Patent, either literally or under the Doctrine of Equivalents.

17. EControls seeks a declaratory judgment that EControls and EControls' distributor's sale and offering to sell EControls' GPS based watercraft speed control devices and installing EControl's devices is lawful.

18. Because there exists a real and justiciable controversy regarding infringement of the 171 Patent this Court should make a declaration that EControls does not infringe the 171 Patent.

**COUNT TWO – DECLARATORY JUDGMENT OF INVALIDITY**

19. The 171 Patent is invalid and void for failure to comply with the requirements of Title 33, United States Code including, but not limited to, Section 102, 103, and/or 112. Because there exists a real and justiciable controversy regarding the validity of the 171 Patent, this Court should make a declaration that the 171 Patent is invalid.

V.  
**PRAYER FOR RELIEF**

20. WHEREFORE, PREMISES CONSIDERED, Plaintiff EControls, Inc., requests judgment against Defendant Perfect Pass Control Systems, Inc., for the following:

A. Judgment that EControls' GPS based Watercraft Speed Control Device does not infringe U.S. Patent No.5,700,171.

B. Judgment that EControls and EControls' distributor AquaStar, Inc., do not infringe U.S. Patent No.5,700,171;

C. Judgment that U.S. Patent No. 5,700,171 is invalid and/or unenforceable;

D. Judgment that EControls' apparatuses and the making, using, selling, and offering for sale EControls' products is lawful;

E. Judgment that EControls' distributor AquaStar, Inc.'s apparatuses and the making, using, selling, and offering for sale Econtrols' products is lawful;

F. A permanent injunction enjoining Perfect Pass, its directors, officers, agents, servants, employees, attorneys, and all other persons acting in privity or in concert with them from:

1. Representing that EControls' goods or services have qualities of characteristics which they do not have. This specifically includes, without limitation, representing to anyone or committing any acts calculated to cause EControls's distributor or members of the public to believe that EControls or its distributors infringe U.S. Patent No. 5,700,171;

2. Falsely describing the 171 Patent and the nature, characteristics, and qualities of Perfect Pass' goods and services.

G. Defendant be required to pay Plaintiff's costs of this action including, without limitation, Plaintiff's reasonable and necessary attorney's fees and expenses.

H. Such other and further relief to which EControls is entitled.

**JURY DEMAND**

Plaintiff respectfully requests a trial by jury.

Respectfully submitted,

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