

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

VALMONT INDUSTRIES, INC.,

Plaintiff,

v.

**EUPEN CABLE USA, INC.,
NELLO INC.,
STRUCTURAL COMPONENTS LLC, and
WANHO MANUFACTURING, LLC**

Defendants.

CIVIL ACTION NO. 6:09cv201

JURY DEMANDED

FIRST AMENDED COMPLAINT

This is an action for patent infringement in which Plaintiff Valmont Industries, Inc. (“Valmont”) makes the following allegations against Eupen Cable USA, Inc., Nello Inc., Structural Components LLC, and WANHO Manufacturing, LLC (collectively, “Defendants”):

PARTIES

1. Plaintiff Valmont is a Delaware corporation with its principal place of business at One Valmont Plaza, Omaha, Nebraska 68154.

2. On information and belief, Defendant Eupen Cable USA, Inc. (“Eupen”) is a Florida corporation with its principal place of business at 5181 110th Ave. N., Unit D, Clearwater, Florida 33760. Service upon Eupen may be made by serving its registered agent for service of process, Bobbitt, Pittenger & Company PA, 1605 Main St., Ste. 1010, Sarasota, Florida 34236.

3. On information and belief, Defendant Nello Inc. (d/b/a Nello Corporation) (“Nello”) is an Indiana corporation with its principal place of business at 211 W.

Washington St., Suite 2000, South Bend, Indiana 46601. Service upon Nello may be made by serving its registered agent for service of process, Thomas S. Botkin, 105 E. Jefferson Blvd., South Bend, Indiana 46601.

4. On information and belief, Defendant Structural Components LLC (“Structural Components”) is a Colorado limited liability company with its principal place of business at 1617A Pearl Street, Boulder, Colorado 80302. Service upon Structural Components may be made by serving its registered agent for service of process, Karen Cook, 1617A Pearl Street, Boulder, Colorado 80302, United States.

5. On information and belief, Defendant WANHO Manufacturing, LLC (“WANHO”) is a Nevada limited liability company with its principal place of business at 137 Mattatuck Heights Road, Waterbury, Connecticut 06705. Service upon WANHO may be made by serving its registered agent for service of process, Lionel Sawyer & Collins, Ltd., 300 South Fourth Street, Suite 1700, Las Vegas, Nevada 89101 United States.

JURISDICTION AND VENUE

6. This action arises under the Patent Laws of the United States, 35 U.S.C. § 101 *et seq.*, and is being brought to redress the infringement of United States Patent No. 7,466,286 (the “286 Patent”), which is owned by Valmont, a copy of which is attached as Exhibit “A” and incorporated herein by reference. Accordingly, subject matter jurisdiction over this cause of action is conferred upon this Court pursuant to 28 U.S.C. §§ 1331 and 1338.

7. On information and belief, Defendants are subject to this Court’s specific and general personal jurisdiction pursuant to due process and/or the Texas Long Arm

Statute, due at least to their substantial business in this forum, including: (i) at least a portion of the infringements alleged herein; and (ii) regularly doing or soliciting business, engaging in other persistent courses of conduct, and/or deriving substantial revenue from goods and/or services provided to individuals in Texas and in this Judicial District.

8. This Court therefore has personal jurisdiction over Defendants, and venue is proper in this Judicial District under 28 U.S.C. §§ 1391(b), (c) and 1400(b).

COUNT 1
INFRINGEMENT OF U.S. PATENT NO. 7,466,286

9. Valmont incorporates and realleges the foregoing paragraphs as if fully set forth at length.

10. On December 16, 2008, the '286 Patent was duly and legally issued for an invention entitled "Folding Frame for Mounting an Antenna."

11. Valmont is the owner of all right, title, and interest in and to the inventions set forth in the claims of the '286 Patent.

12. On information and belief, Defendants have been, and now are, directly infringing, jointly infringing, and indirectly infringing by way of inducing infringement and/or contributing to the infringement of the '286 Patent in the State of Texas, in this Judicial District, and elsewhere in the United States by, among other things, making, using, selling, offering for sale, distributing, and/or importing antenna mounts covered by one or more claims of the '286 Patent to the injury of Valmont. Defendants are thus liable for infringement of the '286 Patent pursuant to 35 U.S.C. § 271.

13. On information and belief, Eupen received actual notice of the patent application that issued as the '286 Patent, United States Patent Application No. 11/368,857 (the "'857 Patent Application"), through correspondence from Valmont sent

February 22, 2007. On information and belief, WANHO received actual notice of the '857 Patent Application through Defendant Eupen, a WANHO customer, in early 2007.

14. On information and belief, Eupen, Nello, and Structural Components received actual notice of the issued '286 Patent through correspondence from Valmont sent December 16, 2008.

15. Despite actual notice of the '286 Patent and/or '857 Patent Application, Defendants continued to directly infringe, jointly infringe, and indirectly infringe by way of inducing infringement and/or contributing to the infringement of the '286 Patent. Defendants have therefore willfully infringed the '286 Patent, making this case exceptional pursuant to 35 U.S.C. §§ 284 and 285.

16. As a result of the Defendants' infringement of the '286 Patent, Valmont has suffered monetary damages in an amount not yet determined and will continue to suffer damages in the future unless Defendants' infringing activities are enjoined by this Court.

17. As a result of Eupen and WANHO making, using, selling, offering for sale, distributing, and/or importing antenna mounts covered by one or more claims of the '857 Patent Application with actual knowledge of the '857 Patent Application during the time period beginning on the date of publication of the '857 Patent Application on September 2, 2007 and ending on the date the '286 Patent issued, Eupen and WANHO infringed Valmont's provisional rights in the '286 Patent under 35 U.S.C. § 154(d), entitling Valmont to reasonable royalty damages from Eupen and WANHO during that period.

18. Unless a preliminary and permanent injunction is issued enjoining these Defendants and their agents, servants, employees, representatives, affiliates, and all others acting in active concert therewith from infringing the '286 Patent, Valmont will be greatly and irreparably harmed.

DEMAND FOR TRIAL BY JURY

19. Plaintiff Valmont hereby demands a trial by jury.

PRAYER FOR RELIEF

WHEREFORE, Valmont prays that the Court enter:

(1) A judgment in favor of Valmont that Defendants have infringed directly, jointly, and/or indirectly by way of inducing and/or contributing to the infringement of the '286 Patent;

(2) A judgment in favor of Valmont that the Defendants' infringement has been willful;

(3) A preliminary and permanent injunction enjoining Defendants and their officers, directors, agents, servants, affiliates, employees, divisions, branches, subsidiaries, parents, and all others acting in active concert therewith from infringement, inducing the infringement of, or contributing to the infringement of the '286 Patent;

(4) A judgment and order requiring Defendants to pay Valmont its damages, costs, expenses, and prejudgment and post-judgment interest for Defendants' infringement of the '286 Patent as provided under 35 U.S.C. § 284;

(5) A judgment and order requiring Defendants Eupen and WANHO to pay Valmont a reasonable royalty for infringement of Valmont's provisional rights pursuant to 35 U.S.C. § 154(d).

(6) An award to Valmont for enhanced damages resulting from the knowing, deliberate, and willful nature of Defendants' prohibited conduct, as provided under 35 U.S.C. § 284;

(7) A judgment and order finding that this is an exceptional case within the meaning of 35 U.S.C. § 285 and awarding to Valmont its reasonable attorneys' fees; and

(8) Such other and further relief, at law or in equity, to which Valmont and is justly entitled.

Dated: June 19, 2009

Respectfully submitted,

By: /s/ Neil J. McNabney

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above and foregoing document has been served on June 19, 2009 to all counsel of record who are deemed to have consented to electronic service via the Court's CM/ECF system per Local Rule CV-5(a)(3).

/s/ Tim K. Brown