

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA**

NEWELL OPERATING COMPANY)
d/b/a AMEROCK,)
a Delaware Corporation,)

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))
Plaintiff,)

v.)

Civil Action No. 3:09-cv-166

JVJ MAXWELL, INC.)
a Texas Corporation)

JURY TRIAL DEMANDED

Serve: Walter Dykes)
Route 3)
Box 188A)
Farmersville, TX 75031)

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))
Defendant.)

COMPLAINT

Plaintiff, Newell Operating Company d/b/a Amerock (“Amerock” or “Plaintiff”), for its complaint against defendant, JVJ Maxwell, Inc. (“JVJ” or “Defendant”), seeking damages, injunctive relief and other relief for patent infringement, alleges as follows:

NATURE OF ACTION

1. This is an action for patent infringement arising under Title 35 of the United States Code seeking monetary damages and injunctive relief against JVJ due to its continued violation of Amerock’s rights in U.S. Design Patent No. D411,728 and U.S. Design Patent No. D411,793.

PARTIES

2. Plaintiff is a corporation organized and existing under the laws of Delaware. The Amerock operating division of Newell Operating Company is headquartered at 8936 North Pointe Executive Park, Huntersville, NC 28078.

3. On information and belief, JVJ is a Texas corporation organized and existing under the laws of the State of Texas, having a principal place of business at 8132 Moberly Lane, Dallas, TX 75227-2311, and doing business as “JVJ Hardware.”

JURISDICTION AND VENUE

4. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

5. This Court has personal jurisdiction over Defendant because, on information and belief, Defendant transacts business within this district, including, without limitation, the offer for sale of the infringing products described herein.

6. Upon information and belief, venue in this district is proper pursuant to 28 U.S.C §§ 1391(b) and (c) and 1400(b).

PATENTS-IN-SUIT

7. On June 18, 1998, a design patent application entitled “Pull” was filed with the United States Patent and Trademark Office, which application resulted in the granting of United States Design Patent No. D411,728, issued on June 29, 1999 (the “’728 Patent”). A true and accurate copy of the ’728 Patent, which is valid and subsisting, is attached hereto as Exhibit A.

8. On June 18, 1998, a design patent application entitled “Pull” was filed with the United States Patent and Trademark Office, which application resulted in the granting of United States Design Patent No. D411,793, issued on July 6, 1999 (the “’793 Patent”) (together with the

'728 Patent, the "Patents-in-Suit"). A true and accurate copy of the '793 Patent, which is valid and subsisting, is attached hereto as Exhibit B.

9. Amerock is the owner by assignment of all rights, title, and interest in and to the Patents-in-Suit and possesses all rights of recovery under the Patents-in-Suit, including the right to sue for infringement and recover past damages.

COUNT I
(Infringement of U.S. Design Patent No. D411,728)

10. Amerock hereby incorporates Paragraphs 1 through 9 by reference as if stated herein.

11. Defendant, without Amerock's authorization and in violation of 35 U.S.C. § 271, has infringed and continues to infringe the '728 Patent by making, using, offering to sell, and/or selling pulls of various finishes, including, without limitation, the product that JVJ identifies by SKU number 7 94395 42809 8, all of which are covered by the ornamental design for a pull claimed in the '728 Patent.

12. To the extent that the facts learned in discovery show that Defendant's infringement of the '728 Patent is or has been willful, Amerock reserves the right to request such a finding at the time of trial.

13. Defendant's conduct has caused Amerock to be deprived of rights, remunerations and profits which would have otherwise come to Amerock but for the infringement, thereby entitling Amerock to damages.

14. Amerock has no adequate remedy at law, and Defendant's conduct has caused and, if not enjoined, will continue to cause irreparable damage to Amerock.

15. As a result of Defendant's wrongful conduct, Amerock is entitled to injunctive relief.

COUNT II
(Infringement of U.S. Design Patent No. D411,793)

16. Amerock hereby incorporates Paragraphs 1 through 15 by reference as if stated herein.

17. Defendant, without Amerock's authorization and in violation of 35 U.S.C. § 271, has infringed and continues to infringe the '793 Patent by making, using, offering to sell, and/or selling pulls of various finishes, including, without limitation, the product that JVJ identifies by SKU number 7 94395 42608 7, all of which are covered by the ornamental design for a pull claimed in the '793 Patent.

18. To the extent that the facts learned in discovery show that Defendant's infringement of the '793 Patent is or has been willful, Amerock reserves the right to request such a finding at the time of trial.

19. Defendant's conduct has caused Amerock to be deprived of rights, remunerations and profits which would have otherwise come to Amerock but for the infringement, thereby entitling Amerock to damages.

20. Amerock has no adequate remedy at law, and Defendant's conduct has caused and, if not enjoined, will continue to cause irreparable damage to Amerock.

21. As a result of Defendant's wrongful conduct, Amerock is entitled to injunctive relief.

RELIEF REQUESTED

WHEREFORE, Amerock prays:

A. That this Court order, adjudge and decree that Defendant has infringed the claim of each of the Patents-in-Suit in violation of 35 U.S.C. § 271.

B. That injunctions, preliminary and permanent, be issued out of this Court restraining Defendant, and its officers, agents, servants and employees, from directly or indirectly making or causing to be made, selling, or causing to be sold, or offering for sale, importing, or using or causing to be used in any way the inventions of the claims of the Patents-in-Suit, or otherwise directly infringing, contributorily infringing or inducing infringement of the Patents-in-Suit.

C. That this Court order Defendant, its officers, agents, servants and employees to deliver up to this Court for destruction all products infringing upon, directly or otherwise, any claim of the Patents-in-Suit or the use of which would infringe, directly or otherwise, any claim of the Patents-in-Suit.

D. That Defendant be ordered to account for and pay over all proceeds and profits made by it from its wrongful infringing acts, and to account for and pay to Amerock damages in a sum to be determined by the Court.

E. That, if the evidence warrants, the damages awarded by the Court to Amerock be trebled in view of intentional copying of Amerock's patented inventions and willful and wanton violation of Amerock's patent rights.

F. That, if the evidence warrants, this Court find this to be an exceptional case under 35 U.S.C. § 285 and order Defendant to pay to Amerock reasonable attorney's fees and all other costs which may be incurred by Amerock.

G. That this Court order Defendant to pay the costs of this action, pre-judgment interest and post-judgment interest.

H. That this Court grant to Amerock such other and further relief as may be deemed just and equitable.

JURY DEMAND

Amerock hereby demands trial by jury on all issues so triable.

Dated: April 20, 2009

Respectfully submitted,

NEWELL OPERATING COMPANY d/b/a
AMEROCK

By Counsel

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