

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT KNOXVILLE**

RADIO SYSTEMS CORPORATION,)	
)	
Plaintiff,)	Case Number 3:05-CV-243
)	
v.)	
)	Hon. Thomas A. Varlan
TRI-TRONICS, INC.,)	Hon. C. Clifford Shirley Jr.
)	
Defendant.)	

AMENDED COMPLAINT

Comes now your Plaintiff, Radio Systems Corporation, and alleges as follows:

JURISDICTION AND VENUE

1. Plaintiff, Radio Systems Corporation (hereinafter "Radio Systems"), is a corporation of the State of Tennessee having its principal place of business at 10427 Electric Avenue, Knoxville, Tennessee 37932.

2. Upon information and belief, the defendant, Tri-Tronics, Inc. (hereinafter "Tri-Tronics"), is an Arizona corporation having a business address of P.O. Box 17660, Tucson, Arizona.

3. This is an action for a Declaratory Judgment that U.S. Patent No. D446,144 ("the '144 Design Patent"), U.S. Patent No. 4,802,482 ("the '482 Patent"), and U.S. Patent No. 5,193,484 ("the '484 Patent"), are not infringed by Radio Systems, and for a Declaratory Judgment that the '482 and '484 Patents are invalid and/or unenforceable. This action arises

under the Patent Laws of the United States. Jurisdiction is based upon 28 U.S.C. §§ 1338(a), 2201 and 2202. Venue is proper under 28 U.S.C. § 1391. A copy of the '144 Design Patent is attached hereto as **Exhibit A**; a copy of the '482 Patent is attached hereto as **Exhibit B**; and a copy of the '484 Patent is attached hereto as **Exhibit C**. Both the plaintiff and the defendant sell pet training products in the State of Tennessee, and in this judicial district.

COUNT I - DECLARATORY JUDGMENT REGARDING THE '144 DESIGN PATENT

4. Upon information and belief, Tri-Tronics is the owner of record of the '144 Design Patent which issued on August 7, 2001. The '144 Design Patent is a design patent that issued from Application Serial No. 135,851. The '144 Design Patent purports to claim the ornamental design of a "Portable Dog-Training Transmitter/Holster Assembly" as illustrated in the drawings of the patent. **Exhibit A**.

5. The plaintiff, Radio Systems, manufactures and offers for sale dog training products, including portable dog training transmitters, in competition with the defendant.

6. By letter dated April 15, 2005, Tri-Tronics wrote to Radio Systems accusing Radio Systems of infringing the '144 Design Patent, and threatening legal action. Such letter is attached as **Exhibit D**.

7. As a result of the aforementioned letter, Radio Systems has a reasonable fear and apprehension that patent infringement litigation will be brought against it. An actual justiciable controversy therefore exists between the parties.

8. Radio Systems has not infringed, and is not infringing, the '144 Design Patent, either directly or contributorily, and Radio Systems has not induced, and is not inducing, the infringement of the '144 Design Patent.

9. The allegations of Tri-Tronics that Radio Systems is infringing, and/or has infringed, the '144 Design Patent are frivolous and this is an exceptional case within the meaning of 35 U.S.C. § 285 entitling Radio Systems to an award of its attorney fees and costs of this litigation.

COUNT II - DECLARATORY JUDGMENT REGARDING THE '482 PATENT

10. Radio Systems hereby repeats and incorporates herein by reference Paragraphs 1-9 above.

11. Upon information and belief, Tri-Tronics is the owner of record of the '482 Patent that issued on February 7, 1989. The '482 Patent issued from Application Serial No. 99,410. The '482 Patent discloses and claims a "Method and Apparatus For Remote Control of Animal Training Stimulus." **Exhibit B.**

12. The plaintiff, Radio Systems, manufactures and offers for sale remote control animal training products in competition with the defendant.

13. By letter dated April 15, 2005, Tri-Tronics wrote to Radio Systems accusing Radio Systems of infringing the '482 Patent, and threatening legal action. Such letter is attached as **Exhibit D.**

14. As a result of the aforementioned letter, Radio Systems has a reasonable fear and apprehension that patent infringement litigation will be brought against it relating to the '482 Patent. An actual justiciable controversy therefore exists between the parties.

15. Radio Systems has not infringed, and is not infringing, the '482 Patent, either directly or contributorily, and Radio Systems has not induced, and is not inducing, the infringement of the '482 Patent.

16. Any claim of infringement of the '482 Patent by Tri-Tronics is barred by estoppel, and any claim for damages by reason of any alleged infringement is barred under the doctrine of laches.

17. The allegations of Tri-Tronics that Radio Systems is infringing, and/or has infringed, the '482 Patent are frivolous, and this is an exceptional case within the meaning of 35 U.S.C. § 285 entitling Radio Systems to an award of its attorney fees and costs of this litigation.

18. The claims of the '482 Patent are invalid and/or unenforceable for failure to meet the requirements of 35 U.S.C. § 112. Further, if any claims of the '482 Patent are construed to cover any product manufactured or sold by Radio Systems, such claims are invalid and/or unenforceable for failure to meet the requirements of the patent laws of the United States, including the requirements of 35 U.S.C. §§ 102 and 103.

COUNT III - DECLARATORY JUDGMENT REGARDING THE '484 PATENT

19. Radio Systems hereby repeats and incorporates herein by reference Paragraphs 1-18 above.

20. Upon information and belief, Tri-Tronics is the owner of record of the '484 Patent that issued on March 16, 1993. The '484 Patent issued from Application Serial No. 859,080. The '484 Patent discloses and claims an "Electrode Structure for Collar Mounted Animal Training Apparatus." **Exhibit C.**

21. The plaintiff, Radio Systems, manufactures and offers for sale collar mounted animal training products having electrodes in competition with the defendant.

22. By letter dated April 15, 2005, Tri-Tronics wrote to Radio Systems accusing Radio Systems of infringing the '484 Patent, and threatening legal action. **Exhibit D.**

23. As a result of the aforementioned letter, Radio Systems has a reasonable fear and apprehension that patent infringement litigation will be brought against it relating to the '484 Patent. An actual justiciable controversy therefore exists between the parties.

24. Radio Systems has not infringed, and is not infringing, the '484 Patent, either directly or contributorily, and Radio Systems has not induced, and is not inducing, the infringement of the '484 Patent.

25. Any claim of infringement of the '484 Patent by Tri-Tronics is barred by estoppel, and any claim for damages by reason of any alleged infringement is barred under the doctrine of laches. Any claim of infringement of the '484 Patent by Tri-Tronics is also barred by reason of Tri-Tronics' destruction of, or failure to maintain, evidence which it knew to be material to the validity of the '484 Patent, and which is material to defenses being asserted by the plaintiff.

26. If any claims of the '484 Patent are construed to cover any product manufactured or sold by Radio Systems, such claims are invalid and/or unenforceable for failure to meet the requirements of the patent laws of the United States, including the requirements of 35 U.S.C. §§ 102, 103 and/or 112.

27. On information and belief, the '484 Patent is unenforceable due to the inequitable conduct before the U.S. Patent and Trademark Office of the named inventors, their attorneys, and/or others involved in the preparation and prosecution of said patent in seeking issuance of the patent by intentionally failing to disclose to the Patent and Trademark Office information of which they were aware which was material to the examination of the application in violation of 37 C.F.R. § 1.56 and by intentionally making material misrepresentations to the Patent Office during prosecution. In this regard, the inventors, their attorney, and/or others involved in the preparation and prosecution of said patent application intentionally failed to disclose to the Patent Office their own knowledge and use of a plastic rubber material to coat electrodes, such knowledge and use occurring more than one year before the earliest filed application from which the '484 Patent claims priority. The inventors, their attorney, and/or others involved in the preparation and prosecution of the '484 Patent intentionally failed to disclose material prior art manufactured by Momentum Technologies, and failed to properly and comprehensively disclose an insulated electrode manufactured by the defendant which constituted material prior art in violation of 37 C.F.R. § 1.56. The inventors, their attorney, and/or others involved in the preparation and prosecution of the '484 Patent intentionally failed to disclose public use, disclosure, and commercial exploitation, of the claimed invention, which occurred more than one year before the filing of the first application from which the '484 Patent claims priority, such use,

disclosure, and commercial exploitation, of the claimed invention involving the distribution of the invention to approximately 25 dog trainers prior to November 26, 1985. Still further, on information and belief, during prosecution before the Patent Office, the inventor, and/or others involved in the prosecution of the application for patent, intentionally made material misrepresentations concerning the conception and reduction to practice of the claimed invention including misrepresentations regarding the length of time it took to conceive of the claimed invention after introduction of what was alleged to be the closest prior art.

28. The allegations of Tri-Tronics that Radio Systems is infringing, and/or has infringed, the '484 Patent are frivolous, and this is an exceptional case within the meaning of 35 U.S.C. § 285 entitling Radio Systems to an award of its attorney fees and costs of this litigation.

WHEREFORE, Radio Systems Corporation prays:

a. With respect to COUNT I against Tri-Tronics:

- (1) That the Court enter an Order permanently enjoining Tri-Tronics, and its officers, agents, representatives, servants, subcontractors, suppliers, and employees and others controlled by Tri-Tronics, from making further allegations or claims that plaintiff has infringed the '144 Design Patent;
- (2) that the Court declare that the '144 Design Patent is not infringed, and has not been infringed, by any product of Radio Systems;
- (3) that the Court award Radio Systems its attorney fees and cost of the action; and
- (4) for such other and further relief as the Court may deem just and equitable.

b. With respect to COUNT II against the defendant:

- (1) That the Court enter an Order permanently enjoining Tri-Tronics, and its officers, agents, representatives, servants, subcontractors, suppliers, and employees and others controlled by Tri-Tronics, from making further allegations or claims that plaintiff has infringed the '482 Patent;
- (2) that the Court declare that the '482 Patent is not infringed, and has not been infringed, by any product of Radio Systems, and declare that the '482 Patent is invalid and/or unenforceable;
- (3) that the Court declare that any claim of infringement of the '482 Patent by Tri-Tronics is barred by estoppel, and any claim for damages by reason of any alleged infringement is barred under the doctrine of laches;
- (4) that the Court award Radio Systems its attorney fees and cost of the action; and
- (5) for such other and further relief as the Court may deem just and equitable.

c. With respect to COUNT III against the defendant:

- (1) That the Court enter an Order permanently enjoining Tri-Tronics, and its officers, agents, representatives, servants, subcontractors, suppliers, and employees and others controlled by Tri-Tronics, from making further allegations or claims that plaintiff has infringed the '484 Patent;
- (2) that the Court declare that the '484 Patent is not infringed, and has not been infringed, by any product of Radio Systems, and that the Court declare the '484 Patent invalid and/or unenforceable;

- (3) that the Court declare that any claim of infringement of the '484 Patent by Tri-Tronics is barred by estoppel, and any claim for damages by reason of any alleged infringement is barred under the doctrine of laches;
- (4) that the Court award Radio Systems its attorney fees and cost of the action; and
- (5) for such other and further relief as the Court may deem just and equitable.

Respectfully submitted,

RADIO SYSTEMS CORPORATION

s/ R. Bradford Brittian

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