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WESTERN DISTRICT OF WASHINGTON
BY DEPUTY

07-CV-01921-CMP

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

No. **C07-1921** JPD

FLUKE CORPORATION, a Delaware corporation,

Plaintiff,

v.

CARY RATNER, an individual,

Defendant.

COMPLAINT FOR DECLARATORY JUDGMENT

JURY DEMAND

Plaintiff, Fluke Corporation ("Fluke"), complains against the Defendant, Cary Ratner ("Ratner"), as follows:

THE PARTIES

1. Fluke is a Delaware corporation having a principal place of business at 6920 Seaway Blvd., Everett, Washington 98203. Fluke is a leader in the manufacture, distribution, and service of electronic test tools and software.

2. On information and belief, Ratner is an individual residing in East Hills, New York.

COMPLAINT FOR DECLARATORY JUDGMENT - 1

Perkins Coie LLP
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SEA 13839 SMISS

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JURISDICTION AND VENUE

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3. This action arises under the patent laws of the United States, Title 35, United States Code. Jurisdiction is invoked pursuant to 28 U.S.C. §§ 1331 and 1338(a), and the Federal Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202 for a declaratory judgment of non-infringement and invalidity of United States Patent No. D554,152, entitled “Ergonomic Pressure Calibration Pump” (“the ‘152 patent”). A copy of the ‘152 patent is attached hereto as Exhibit A.

4. This action is based upon an actual and continuing controversy between the parties with respect to the noninfringement and invalidity of the ‘152 patent.

5. This Court has personal jurisdiction over Ratner based upon his contacts with the State of Washington, including his purposeful contacts in the State of Washington with Fluke relating to the ‘152 patent.

6. Venue in this Court is proper based upon 28 U.S.C. §§ 1391 and 1400 (b).

BACKGROUND FACTS

7. Fluke is a leader in the manufacture, distribution, and service of electronic test tools and software. Fluke designs, manufactures, markets, and sells electronic test tools and software, including parts for electronic test tools. By way of example, Fluke offers for sale pressure calibration pumps.

8. On November 16, 2007, Ratner sent a cease and desist letter to Fluke, asserting that Fluke was infringing a patent allegedly owned by Ratner. (See Exhibit B). More specifically, Ratner alleged that he is the owner of the ‘152 patent, and that Fluke was infringing the ‘152

1 patent. Ratner demanded that Fluke cease and desist selling the products accused of
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3 infringement.
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5 9. Based upon at least Ratner's claim of alleged infringement of the '152 patent,
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7 Ratner has demonstrated an intention and willingness to assert the patent rights he claims to have
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9 in design features of pressure calibration pumps against Fluke.
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11 10. Accordingly, Fluke has an apprehension that Ratner will file suit against it for
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13 infringement of the '152 patent.
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17 **FIRST CAUSE OF ACTION**
18 **DECLARATION OF NON-INFRINGEMENT OF**
19 **UNITED STATES PATENT NO. D554,152**
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22 11. Fluke hereby incorporates paragraphs 1 - 10 above as if fully set out herein.
23

24 12. An actual controversy exists between Ratner and Fluke regarding the non-
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26 infringement of the '152 patent. Unless prevented through this Declaratory Judgment action,
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28 Ratner will continue to wrongfully assert the '152 patent against Fluke.
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31 13. Fluke has not infringed, either directly, indirectly, contributorily, or by
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33 inducement, or in any other way, any claim of the '152 patent, either literally or under the
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35 doctrine of equivalents, willfully or otherwise.
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38 14. Fluke is entitled to a declaratory judgment that the '152 patent is not infringed by
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40 Fluke.
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43 **SECOND CAUSE OF ACTION**
44 **DECLARATION OF INVALIDITY OF**
45 **UNITED STATES PATENT NO. D554,152**
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47 15. Fluke hereby incorporates paragraphs 1 - 14 above as if fully set out herein.
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16. An actual controversy exists between Ratner and Fluke regarding the invalidity of the '152 patent. Unless prevented through this Declaratory Judgment action, Ratner will continue to wrongfully assert the '152 patent against Fluke.

17. The '152 patent is invalid for failure to comply with the requirements of Title 35, United States Code, including but not limited to Sections 102, 103, 112 and/or 171.

18. The '152 patent is invalid in part because the design features it claims are functional, obvious, and not novel or new.

19. Fluke is entitled to a declaratory judgment that the '152 patent is invalid.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Fluke Corporation demands:

- A. A judgment be entered declaring that the '152 patent is invalid;
- B. A judgment be entered declaring that neither Fluke nor any of its customers have

infringed the '152 patent;

- C. This case be adjudged and decreed exceptional and Fluke be awarded its costs and

attorneys fees in defending this action; and

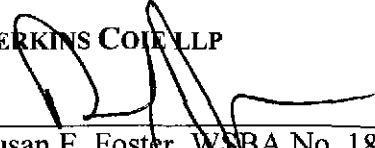
- D. For such other and further relief as the Court deems just and proper.

JURY DEMAND

Plaintiff Fluke Corporation hereby requests trial by jury of all issues so triable.

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2 DATED: December 3, 2007
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COMPLAINT FOR DECLARATORY
JUDGMENT – 5

25445-0015/13772114.1

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US00D554152S

(12) **United States Design Patent** (10) **Patent No.:** **US D554,152 S**
Ratner (45) **Date of Patent:** **** Oct. 30, 2007**

(54) **ERGONOMIC PRESSURE CALIBRATION PUMP** D476,665 S * 7/2003 Stewart D15/7
D487,899 S * 3/2004 Poon D15/7
D510,939 S * 10/2005 Nikolayev et al. D15/9

(76) **Inventor:** **Cary Ratner**, 38 Overlook Ter., East Hills, NY (US) 11577

(**) **Term:** **14 Years**

* cited by examiner

(21) **Appl. No.:** **29/266,793**

Primary Examiner—Ralf Seifert

(22) **Filed:** **Sep. 29, 2006**

(57) **CLAIM**

(51) **LOC (8) Cl.** **15-02**

The ornamental design for an ergonomic pressure calibration pump, as shown and described.

(52) **U.S. Cl.** **D15/7**

(58) **Field of Classification Search** D15/7-9;
D23/232, 231; 417/359, 415-416, 410.1,
417/321, 265, 405

DESCRIPTION

See application file for complete search history.

FIG. 1 is an illustrative front view of an ergonomic pressure calibration pump.

(56) **References Cited**

U.S. PATENT DOCUMENTS

D358,397 S * 5/1995 Phillips et al. D15/7

1 Claim, 1 Drawing Sheet

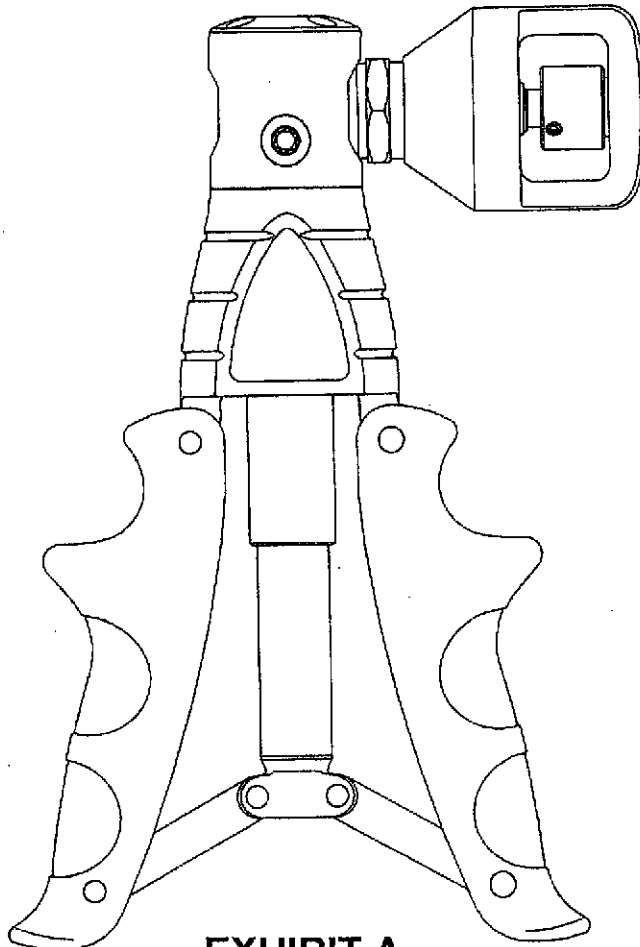


EXHIBIT A

U.S. Patent

Oct. 30, 2007

US D554,152 S

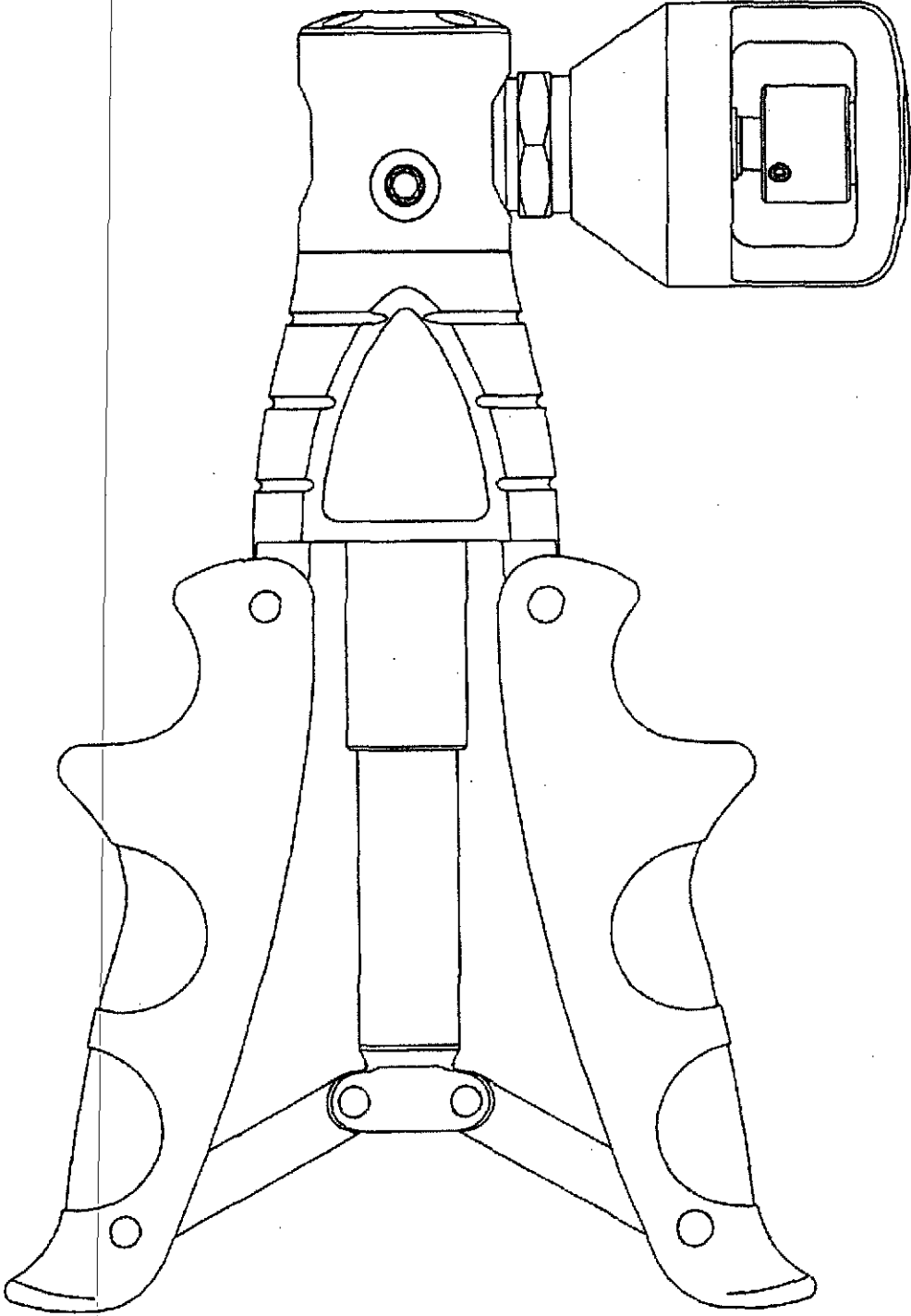
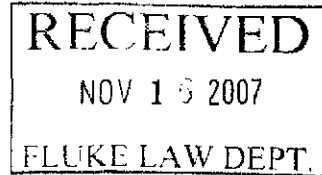


FIGURE 1
EXHIBIT A



CARY RATNER

38 Overlook Terrace, East Hills NY 11577 ° 516 746 3300 ° fax 516 739 2600

November 16, 2007

Richard A. Koske
Jim Shields
Fluke Corporation
P.O. Box 9090
Everett WA 98206

Dear Sirs,

Since the Fluke Corporation has neglected to respond to my letter dated August 20, 2007 (Please see attachment) I am sending the following update and final notice.

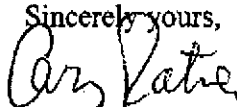
On October 30, 2007, I was formally granted a Design Patent (number D554152) which is for an "*Ergonomic Pressure Calibration Pump*". As you are aware from my earlier correspondence, the Martel pump handles incorporated this "ergonomic" design thus infringing on my patent. By Fluke selling and marketing this product in its current form, you are infringing upon both my US and International patents. In addition, since Fluke was put on prior formal notice (see attachment), and continues to market and sell this product which can now be considered to be "willful infringement". The Martel / Fluke pump as of today's date (November 16, 2007) can be found on the Fluke website.

Due to the obvious infringement, I have filed suit in the United States District Court for the Eastern District of New York (**Index CV-07-4742**) naming Martel, their manufacturer and a major distributor.

Again, and with great regret, I am kindly requesting that Fluke cease and desist from infringing on my patent, by offering these items for sale in their present form, using their images, advertising or promoting said items.

While it is not my desire to litigate against Fluke I will have no choice but to add Fluke as a defendant, if this infringement continues.

Hopefully this can be resolved amicably, and we can continue our relationship in a professional manner.

Sincerely yours,

Cary Ratner

RK-fax 425 446 5117
JS-fax 425 446 5867

Cary Ratner

38 OVERLOOK TERRACE EAST HILLS NY 11577
516 621 6664 FAX 516 621 8989

August 20, 2007

Jim Shields
Chris Gloger
Fluke Corporation
P.O. Box 9090
Everett WA 98206

Dear Sirs,

As per my conversation with Jim Shields today I regrettably have to put Martel Electronics and all of its distributors and customers including Fluke Corporation on notice that they are or will be infringing upon my design and utility patents if they should continue with the "New Fluke Pumps", in their current configuration. This is represented by the attached photo of the Beta MECP 500.

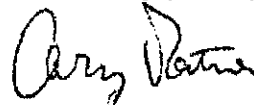
It has come to our attention that the new Fluke hydraulic and pneumatic calibration pumps, utilize an ergonomic handle whose shape infringes upon my domestic and international design and utility patents.

With regret, I am kindly requesting that Fluke cease and desist from infringing on my patents, by offering these items for sale in their present form, using their images, advertising or manufacturing said items.

Attached are pages from both my design and utility patent applications that clearly spell out the claims for the handle shape ("is allowed").

I hope that this can be resolved in a timely and amicable manner. My phone is always open for discussion.

Sincerely yours,



Cary Ratner