

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MINNESOTA**

Larry Holmberg	)	
	)	
Plaintiff,	)	Civil Action No. 09-cv-3603- MJD-RLE
	)	
v.	)	<b>AMENDED COMPLAINT FOR</b>
	)	<b>PATENT INFRINGEMENT</b>
GamePlan Gear, Inc. and	)	
	)	
H.B.D., Inc.	)	
	)	
Defendants.	)	(JURY TRIAL DEMANDED)
	)	

Plaintiff, Larry Holmberg (“Holmberg”), for his complaint against Defendants, GamePlan Gear, Inc. (“GamePlan”) and H.B.D., Inc. (“HBD”), alleges as follows:

**THE PARTIES**

1. Plaintiff Holmberg is an individual residing at 31554 410<sup>th</sup> Avenue Southeast, Gully, Minnesota, 56646.

2. Upon information and belief, Defendant GamePlan is a corporation organized under the laws of the state of Ohio having a principal place of business at 4374 Devonshire Drive, Boardman, Ohio, 44512.

3. Upon information and belief, Defendant HBD is a corporation organized under the laws of the state of North Carolina having a principal place of business at 3901 Riverdale Road, Greensboro, North Carolina, 27406.

### **JURISDICTION AND VENUE**

4. This is an action for patent infringement under the patent laws of the United States, 35 U.S.C. § 1 *et seq.*, and particularly 35 U.S.C. § 271.

5. This court has subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1338(a).

6. Upon information and belief, defendants GamePlan and HBD transact and have transacted business throughout the United States, and have committed tortious acts within the State of Minnesota, causing injury to Plaintiff Holmberg in the State of Minnesota, thereby establishing sufficient minimum contacts. This Court has personal jurisdiction over GamePlan and HBD by reason of committing acts of infringement, inducement to infringe and/or contributory infringement within the State of Minnesota and this judicial district.

7. Venue in the United States District Court for the District of Minnesota is proper pursuant to 28 U.S.C. §§ 1391(c) and 1400(b) because GamePlan and HBD are corporations over which the Court has personal jurisdiction.

### **COUNT I: INFRINGEMENT OF U.S. PATENT NO. 6,556,245**

8. Holmberg incorporates and re-alleges paragraphs 1 through 7.

9. On April 29, 2003, U.S. Patent Number 6,556,245 entitled “Game Hunting Video Camera” (“the ‘245 patent”) was duly and legally issued by the United States Patent and Trademark Office. A true and correct copy of the ‘245 patent is attached as Exhibit A to the Complaint.

10. Holmberg is the sole inventor and owner of the entire right, title, and interest in and to the '245 patent with the right to sue for past, present, and future infringement of the '245 patent.

11. Holmberg has and is marking products falling under the scope of the '245 patent with "U.S. Pat. No. 6,556,245 and other patents pending" to put the public on notice of his patent rights.

12. GamePlan and HBD have been and are making, using, selling, offering for sale, and/or importing, without license or authority from Holmberg, in this district and elsewhere in the United States, video recorders that embody the invention(s) claimed in the '245 patent under 35 U.S.C. § 271.

13. Upon information and belief, GamePlan and HBD will continue to directly infringe, contributorily infringe, and/or induce infringement of the '245 patent unless enjoined by the Court.

14. Holmberg has been damaged by GamePlan-and HBD's infringement of the '245 patent, and will continue to be damaged by that infringement unless enjoined by this court.

15. Upon information and belief, GamePlan and HBD have actual knowledge of the full contents of the '245 patent, and their prior and continuing infringement of the '245 patent was and is willful and deliberate.

#### **COUNT II: INFRINGEMENT OF U.S. PATENT NO. 7,006,144**

16. Holmberg incorporates and re-alleges paragraphs 1 through 6 7.

17. On February 28, 2006, U.S. Patent Number 7,006,144 entitled "Video Camera Recorder" ("the '144 patent") was duly and legally issued by the United States Patent and

Trademark Office. A true and correct copy of the '144 patent is attached as Exhibit B to the Complaint.

17. Holmberg is the sole inventor and owner of the entire right, title, and interest in and to the '144 patent with the right to sue for past, present, and future infringement of the '144 patent.

18 GamePlan and HBD have been and are making, using, selling, offering for sale, and/or importing, without license or authority from Holmberg, in this district and elsewhere in the United States, video recorders that embody the invention(s) claimed in the '144 patent under 35 U.S.C. § 271.

19. Upon information and belief, GamePlan and HBD will continue to directly infringe, contributorily infringe, and/or induce infringement of the '144 patent unless enjoined by the Court.

20. Holmberg has been damaged by GamePlan-and HBD's infringement of the '144 patent, and will continue to be damaged by that infringement unless enjoined by this court.

21. Upon information and belief, GamePlan and HBD have actual knowledge of the full contents of the '144 patent, and their prior and continuing infringement of the '144 patent was and is willful and deliberate.

### **PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff, Holmberg, prays for the following relief:

a. That GamePlan, its officers, agents, servants, employees and attorneys, and all persons in active concert or participation with them be found to have infringed the valid U.S. Patent No. 6,556,245, and be enjoined, preliminarily and permanently, from making, using, selling, offering for sale or importing into the United States products which infringe U.S. Patent No. 6,556,245;

b. That HBD, its officers, agents, servants, employees and attorneys, and all persons in active concert or participation with them be found to have infringed the valid U.S. Patent No. 6,556,245, and be enjoined, preliminarily and permanently, from making, using, selling, offering for sale or importing into the United States products which infringe U.S. Patent No. 6,556,245;

c. That GamePlan, its officers, agents, servants, employees and attorneys, and all persons in active concert or participation with them be found to have infringed the valid U.S. Patent No. 7,006,144, and be enjoined, preliminarily and permanently, from making, using, selling, offering for sale or importing into the United States products which infringe U.S. Patent No. 7,006,144;

d. That HBD, its officers, agents, servants, employees and attorneys, and all persons in active concert or participation with them be found to have infringed the valid U.S. Patent No. 7,006,144, and be enjoined, preliminarily and permanently, from making, using, selling, offering for sale or importing into the United States products which infringe U.S. Patent No. 7,006,144;

e. That Holmberg be compensated by GamePlan for the damages caused by GamePlan's infringement of U.S. Patent No. 6,556,245 under 35 U.S.C. § 284, in an amount to be determined by an accounting, but not less than a reasonable royalty, plus interest;

f. That Holmberg be compensated by HBD for the damages caused by HBD's infringement of U.S. Patent No. 6,556,245 under 35 U.S.C. § 284, in an amount to be determined by an accounting, but not less than a reasonable royalty, plus interest;

g. That Holmberg be compensated by GamePlan for the damages caused by GamePlan's infringement of U.S. Patent No. 7,006,144 under 35 U.S.C. § 284, in an amount to be determined by an accounting, but not less than a reasonable royalty, plus interest;

h. That Holmberg be compensated by HBD for the damages caused by HBD's infringement of U.S. Patent No. 7,006,144 under 35 U.S.C. § 284, in an amount to be determined by an accounting, but not less than a reasonable royalty, plus interest;

i. That the award of damages for infringement of U.S. Patent No. 6,556,245 be trebled as provided for by 35 U.S.C. § 284 for willful infringement by GamePlan.

j. That the award of damages for infringement of U.S. Patent No. 6,556,245 be trebled as provided for by 35 U.S.C. § 284 for willful infringement by HBD.

k. That the award of damages for infringement of U.S. Patent No. 7,006,144 be trebled as provided for by 35 U.S.C. § 284 for willful infringement by GamePlan.

l. That the award of damages for infringement of U.S. Patent No. 7,006,144 be trebled as provided for by 35 U.S.C. § 284 for willful infringement by HBD.

m. That Holmberg be awarded its costs and attorneys' fees incurred in prosecuting this exceptional case, as provided for by 35 U.S.C. § 285, plus interest; and

n. That Holmberg be awarded such other relief as the Court deems just and proper.

**JURY DEMAND**

Holmberg demands a jury trial on all issues so triable.

**Larry Holmberg,**

Dated: March 24, 2010

By: s/ Carolyn H. Beck

Carolyn H. Beck (388,203)  
David R. Fairbairn (28,125)  
KINNEY & LANGE, P.A.  
The Kinney & Lange Building  
312 South Third Avenue  
Minneapolis, MN 55415-1002  
(612) 339-1863

**ATTORNEYS FOR PLAINTIFF**  
**Larry Holmberg**