

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

**JOHNSON OUTDOORS INC. AND)
JOHNSON OUTDOORS MARINE)
ELECTRONICS, INC.)**

Plaintiffs,)

v.)

NAVICO, INC. and)

Defendant.)

**Civil Action No.: 2:10cv67
WKW(CSC)**

JURY TRIAL DEMANDED

**THIRD AMENDED
COMPLAINT FOR PATENT INFRINGEMENT**

Plaintiffs, Johnson Outdoors Inc. (“Johnson Outdoors”) and Johnson Outdoors Marine Electronics, Inc., d/b/a Humminbird (“Humminbird” and together with Johnson Outdoors, “Plaintiffs”), for their Third Amended Complaint against Navico, Inc. (“Navico” or “Defendant”), hereby allege as follows:

Nature of the Action

1. This is an action against Navico, Inc. for patent infringement.

2. In the early 2000s, Humminbird employees invented a new system, to be mounted to a boat, employing side scan sonar beams to locate fish and underwater structures, and to display them in detailed and recognizable images. On August 2, 2004, Johnson Outdoors filed U.S. Provisional Patent Application No. 60/598,326. On August 2, 2005, Johnson Outdoors filed U.S. Patent Application No. 11/195,107 (the “107 application”). On January 9, 2009, Johnson

Outdoors filed U.S. Patent Application No. 12/319,594 (the “594 application”), U.S. Patent Application No. 12/319,604 (the “604 application”), and U.S. Patent Application No. 12/319,586 (the “586” application”). The ‘107, ‘594, ‘604, and ‘586 applications are all directed to side scan sonar technology, with the ‘594, ‘604 and ‘586 applications claiming priority to the ‘107 application. The ‘107 application issued on January 26, 2010, as United States Patent No. 7,652,952 (“the ‘952 Patent”), entitled “Sonar Imaging System For Mounting To Watercraft.” The ‘594 application issued on May 4, 2010, as United States Patent No. 7,710,825 (“the ‘825 Patent”), entitled “Side Scan Sonar Imaging System With Boat Position on Display.” The ‘604 application issued on June 1, 2010, as United States Patent No. 7,729,203 (“the ‘203 Patent”), entitled “Side Scan Sonar Imaging System With Associated GPS Data.” The ‘586 application issued on July 13, 2010, as United States Patent No. 7,755,974 (“the ‘974 Patent”), entitled “Side Scan Sonar Imaging System With Enhancement.”

3. In Humminbird’s fiscal year 2005, Humminbird introduced the first of its products to employ its side scan sonar technology. In the years that followed, Humminbird introduced an array of products that used this now patented technology. These products are sold by Humminbird under its “Side Imaging” registered trademark.

4. The marketplace has enthusiastically accepted these Humminbird “Side Imaging” products. They have become the industry leading high end, premium sonar fish finders used for inland (freshwater) and near shore (saltwater) sports fishing and recreational boating.

5. With knowledge that Johnson Outdoors had filed the aforementioned patent applications to protect its side scan sonar technology, and with knowledge that the United States Patent and Trademark Office had determined that claims in the ‘107 application were patentable, Navico expended substantial resources to inform the trade, and the relevant purchasers of fish

finding products, that it too would use side scan sonar technology, and would launch the sale in the United States of its own side scan sonar products to compete directly with the Humminbird “Side Imaging” products. Navico calls these products its “Lowrance LSS-1 StructureScan Imaging System” (“StructureScan” products), which comprises an LSS-1 StructureScan Imaging Module and an LSS-1 Imaging Transducer assembly.

6. By about December, 2009, Navico commenced sales of its “StructureScan” products in the United States. These products, when used with a Lowrance High Definition System (“HDS”) display (collectively, the “Infringing Products”) in the manner instructed by Navico, directly infringe one or more claims of the ‘952 Patent, the ‘825 Patent, the ‘203 Patent, and the ‘974 Patent.

7. Therefore, Plaintiffs file this action against Navico to seek redress for ongoing infringement of Plaintiffs’ patent rights.

The Parties

8. Plaintiff, Humminbird, is a corporation duly organized and existing under Alabama law, with its principal place of business in this District at 678 Humminbird Lane, Eufaula, Alabama 36027. Plaintiff, Johnson Outdoors, is a corporation duly organized and existing under Wisconsin law, with its principal place of business located at 555 Main Street, Racine, Wisconsin 53403. Humminbird is a wholly owned subsidiary of Johnson Outdoors.

9. Upon information and belief, defendant Navico is a corporation duly organized and existing under the laws of Delaware, having a place of business located at 12000 East Skelly Drive, Tulsa, Oklahoma 74128. Upon information and belief, Navico does business under the “Lowrance” brand for certain of its products, including the Infringing Products at issue here.

Jurisdiction and Venue

10. This is an action for patent infringement arising under the patent laws of the United States (35 U.S.C. § 100 et seq.).

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

12. Upon information and belief, this Court has personal jurisdiction over Navico because it regularly conducts business with and ships products to retailers authorized to sell those products in the Middle District of Alabama and therefore has substantial contacts with this District; because it has asserted counterclaims against Plaintiffs in this action and has otherwise availed itself of an Alabama court; because it has interactive websites, www.navico.com and www.lowrance.com, that advertise and promote the Infringing Products, as well as other products, in this District; because it directs and permits owners of Lowrance HDS displays in this District to download software from www.lowrance.com to enable those displays to function with the “StructureScan” products; and because upon information and belief it has sold and offered to sell Infringing Products in this District through the aforementioned authorized retailers and has thereby injured Johnson Outdoors and Humminbird, a citizen of Alabama, in this District.

13. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391(b) and (c).

Patent-in-Suit

14. The '952 Patent has duly and legally issued to Johnson Outdoors as assignee of the inventors, David A. Betts, Robert W. Derrow, and David J. Howells. A true copy of the '952 Patent is attached hereto as Exhibit 1.

15. The '825 Patent has duly and legally issued to Johnson Outdoors as assignee of the same inventors. A true copy of the '825 Patent is attached hereto as Exhibit 2.

16. The '203 Patent has duly and legally issued to Johnson Outdoors as assignee of the same inventors. A true copy of the '203 Patent is attached hereto as Exhibit 3.

17. The '974 Patent has duly and legally issued to Johnson Outdoors as assignee of the same inventors. A true copy of the '974 Patent is attached hereto as Exhibit 4.

18. Humminbird is the exclusive licensee under the '952 Patent, the '825 Patent, the '203 Patent, and the '974 Patent, and under its license manufactures the Humminbird "Side Imaging" products in this District.

**Humminbird's "Side Imaging" Products
Are Market Leaders in Performance and Sales**

19. Since Humminbird's introduction of its "Side Imaging" products in fiscal year 2005, they have become a remarkable success. Net sales have grown from zero to over \$19 million in fiscal year 2008. Total net sales over that four year period have exceeded \$37 million, despite the difficult market for the recreational boating and fishing industries in 2007 and 2008. The Humminbird "Side Imaging" products are Humminbird's most important, and profitable, products.

20. Humminbird "Side Imaging" products have received very positive testimonials from objective, actual users and opinion leaders in the industry. For example, a visit to

www.yahogroups.com, typing in “Side Imaging Sonar” reveals an online community of over 5,000 members who have voluntarily joined to share their experiences with Humminbird “Side Imaging” products.

Navico’s Infringing Activities

21. Upon information and belief, Navico has long been engaged in the business of marketing underwater sonar products, including fish finder systems and their components. Upon information and belief, Navico’s underwater sonar products have been losing market share to Humminbird’s “Side Imaging” products in the high end, premium category.

22. Determined to compete more effectively against Humminbird’s “Side Imaging” products, Navico developed its own products, the “StructureScan” products, that copy Humminbird’s side scan sonar technology and products. Since about January, 2009, Navico has been demonstrating and displaying its “StructureScan” products.

23. Since about July 15, 2009, Navico has been indicating on its website, www.lowrance.com, that its “StructureScan” products are “Coming Very, Very Soon!”

24. In the October, 2009 issue of FLW Outdoors and in the January, 2010 issue of Bass Master magazine, both of which upon information and belief are distributed throughout the United States and in this District, Navico has advertised that the “StructureScan” product is “Now Available!”

25. More recently, Navico announced at www.lowrance.com that “[l]ong-awaited shipments” of its “StructureScan” products have begun in the United States.

26. Upon information and belief, retailers of marine products -- such as Star Marine Depot at www.starmarinedepot.com, Go There GPS at www.gotheregps.com and Marine Electronics Unlimited at www.marine-electronics-unlimited.com -- have been and are offering

for sale throughout the United States, for delivery commencing in the fourth calendar quarter of 2009, the “StructureScan” product and the Lowrance HDS display.

27. Navico directly infringes one or more claims of the ‘952 Patent, the ‘825 Patent, the ‘203 Patent, and the ‘974 Patent at least by using the “StructureScan” product mounted to a boat and operably connected to a Lowrance HDS display.

28. Navico has also actively induced and contributed to the infringement of one or more claims of the ‘952 Patent, the ‘825 Patent, the ‘203 Patent and the ‘974 Patent by others, by for example instructing purchasers of the “StructureScan” product to mount its Imaging Transducer assembly to a boat and to operably connect its Imaging Module to a Lowrance HDS display to create a sonar system with side scan sonar capability.

29. Plaintiffs have not licensed or otherwise authorized Navico or its customers to make, use, import, sell, or offer to sell sonar systems covered by the claims of the ‘952 Patent, the ‘825 Patent, the ‘203 Patent and the ‘974 Patent.

30. As a result of Navico’s infringing activities, Johnson Outdoors and Humminbird have suffered substantial and irreparable harm and lack an adequate remedy at law. Unless restrained and enjoined by this Court, Navico will continue its infringing activities, thereby causing Johnson Outdoors and Humminbird further irreparable harm.

CLAIM 1

Claim for Infringement of the '952 Patent Under 35 U.S.C. § 271

31. Plaintiffs incorporate by reference each and every allegation of paragraphs 1 through 30 of this Third Amended Complaint, as though set forth here in their entirety.

32. Since its issuance, Johnson Outdoors and Humminbird have been and still are, respectively, the sole owner and exclusive licensee of the '952 Patent including the right to sue and recover for any and all infringements thereof.

33. Navico has directly infringed, contributorily infringed, and/or induced others to infringe the '952 Patent by making, using, importing, offering to sell and/or selling the invention defined by one or more claims of the '952 Patent, without authority or license of Johnson Outdoors or Humminbird.

34. By reason of Navico's infringing activities, Johnson Outdoors and Humminbird have suffered, and will continue to suffer, substantial damages in an amount to be proven at trial.

35. Navico's acts complained of herein have damaged and will continue to damage Johnson Outdoors and Humminbird irreparably. Johnson Outdoors and Humminbird have no adequate remedy at law for these wrongs and injuries. Johnson Outdoors and Humminbird are therefore entitled to preliminary and permanent injunctions restraining and enjoining Navico from infringing the claims of the '952 Patent.

36. Upon information and belief, Navico's infringement of the '952 Patent has been deliberate and willful.

CLAIM 2

Claim for Infringement of the '825 Patent Under 35 U.S.C. § 271

37. Plaintiffs incorporate by reference each and every allegation of paragraphs 1 through 30 of this Third Amended Complaint, as though set forth here in their entirety.

38. Since its issuance, Johnson Outdoors and Humminbird have been and still are, respectively, the sole owner and exclusive licensee of the '825 Patent including the right to sue and recover for any and all infringements thereof.

39. Navico has directly infringed, contributorily infringed, and/or induced others to infringe the '825 Patent by making, using, importing, offering to sell and/or selling the invention defined by one or more claims of the '825 Patent, without authority or license of Johnson Outdoors or Humminbird.

40. By reason of Navico's infringing activities, Johnson Outdoors and Humminbird have suffered, and will continue to suffer, substantial damages in an amount to be proven at trial.

41. Navico's acts complained of herein have damaged and will continue to damage Johnson Outdoors and Humminbird irreparably. Johnson Outdoors and Humminbird have no adequate remedy at law for these wrongs and injuries. Johnson Outdoors and Humminbird are therefore entitled to preliminary and permanent injunctions restraining and enjoining Navico from infringing the claims of the '825 Patent.

42. Upon information and belief, Navico's infringement of the '825 Patent has been deliberate and willful.

CLAIM 3

Claim for Infringement of the '203 Patent Under 35 U.S.C. § 271

43. Plaintiffs incorporate by reference each and every allegation of paragraphs 1 through 30 of this Third Amended Complaint, as though set forth here in their entirety.

44. Since its issuance, Johnson Outdoors and Humminbird have been and still are, respectively, the sole owner and exclusive licensee of the '203 Patent including the right to sue and recover for any and all infringements thereof.

45. Navico has directly infringed, contributorily infringed, and/or induced others to infringe the '203 Patent by making, using, importing, offering to sell and/or selling the invention defined by one or more claims of the '203 Patent, without authority or license of Johnson Outdoors or Humminbird.

46. By reason of Navico's infringing activities, Johnson Outdoors and Humminbird have suffered, and will continue to suffer, substantial damages in an amount to be proven at trial.

47. Navico's acts complained of herein have damaged and will continue to damage Johnson Outdoors and Humminbird irreparably. Johnson Outdoors and Humminbird have no adequate remedy at law for these wrongs and injuries. Johnson Outdoors and Humminbird are therefore entitled to preliminary and permanent injunctions restraining and enjoining Navico from infringing the claims of the '203 Patent.

48. Upon information and belief, Navico's infringement of the '203 Patent has been deliberate and willful.

CLAIM 4

Claim for Infringement of the '974 Patent Under 35 U.S.C. § 271

49. Plaintiffs incorporate by reference each and every allegation of paragraphs 1 through 30 of this Third Amended Complaint, as though set forth here in their entirety.

50. Since its issuance, Johnson Outdoors and Humminbird have been and still are, respectively, the sole owner and exclusive licensee of the '974 Patent including the right to sue and recover for any and all infringements thereof.

51. Navico has directly infringed, contributorily infringed, and/or induced others to infringe the '974 Patent by making, using, importing, offering to sell and/or selling the invention defined by one or more claims of the '974 Patent, without authority or license of Johnson Outdoors or Humminbird.

52. By reason of Navico's infringing activities, Johnson Outdoors and Humminbird have suffered, and will continue to suffer, substantial damages in an amount to be proven at trial.

53. Navico's acts complained of herein have damaged and will continue to damage Johnson Outdoors and Humminbird irreparably. Johnson Outdoors and Humminbird have no adequate remedy at law for these wrongs and injuries. Johnson Outdoors and Humminbird are therefore entitled to preliminary and permanent injunctions restraining and enjoining Navico from infringing the claims of the '974 Patent.

54. Upon information and belief, Navico's infringement of the '974 Patent has been deliberate and willful.

Prayer for Relief

WHEREFORE, Plaintiffs respectfully request the Court to enter judgment that:

A. Pursuant to 35 U.S.C. § 271, Navico has directly infringed, has contributorily infringed and has induced others to infringe the '952 Patent, the '825 Patent, the '203 Patent, and the '974 Patent;

B. Pursuant to 35 U.S.C. § 283, Navico and its subsidiaries, affiliates, officers, agents, servants, employees, attorneys, successors, and assigns, and all other persons and organizations in active concert or participation with them, be preliminarily and permanently enjoined from infringing the '952 Patent, the '825 Patent, the '203 Patent, and the '974 Patent;

C. Pursuant to 35 U.S.C. § 284, Navico be ordered to pay Plaintiffs their damages adequate to compensate Plaintiffs for its infringement of the '952 Patent, the '825 Patent, the '203 Patent, and the '974 Patent, together with pre-judgment and post-judgment interest and costs;

D. Awarding Plaintiffs an accounting for acts of infringement not presented at trial and an award by the Court of additional damages for such acts of infringement;

E. Pursuant to 35 U.S.C. § 284, an award of treble damages due to the willful and deliberate nature of Navico's infringement of the '952 Patent, the '825 Patent, the '203 Patent, and the '974 Patent;

F. Pursuant to 35 U.S.C. § 285, this case be declared exceptional and that Plaintiffs be awarded their reasonable attorneys' fees, interest and costs; and

G. Plaintiffs be granted such other relief as the Court deems just and proper.

Jury Demand

Plaintiffs hereby demand a jury trial as to all issues so triable.

Respectfully submitted on this 13th day of July, 2010.

/s/ G. Lane Knight

One of the Attorneys for Plaintiffs Johnson
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CERTIFICATE OF SERVICE

I hereby certify that I have electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing and/or that a copy of the foregoing has been served upon the following by placing a copy of same in the United States mail, postage prepaid and properly addressed to them on this 13th day of July, 2010.

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