

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF KANSAS

WIRE PLUS, INC.)
724 Industrial Road)
Winfield, KS 67156,)
A Kansas Corporation,)

Plaintiff,)

v.)

MAXIMUM PRODUCTS, INC.)
6 Opportunity Way)
Newburyport, MA 01950,)
A Massachusetts Corporation,)

Defendant.)

Civil Action No. 06-1276-WEB

COMPLAINT FOR DECLARATORY JUDGMENT

Plaintiff, Wire Plus, Inc. (“Wire Plus”), for its Complaint for Declaratory Judgment states as follows:

1. Plaintiff Wire Plus is a Kansas corporation, having its principal place of business in Winfield, Kansas.
2. Defendant, Maximum Products, Inc. (“Maximum Products”) is, upon information and belief, a Massachusetts corporation, having a principal place of business in Newburyport, Massachusetts.
3. The business of Maximum Products includes the distribution, sale and marketing of various motorcycle accessory products. Maximum Products has, and is transacting business in

this district, including the distribution, sale and marketing of motorcycle products in the State of Kansas.

4. Maximum Products claims to be the owner of record of U.S. Patent Nos. 5,767,589 ("the '589 patent") and 5,900,679 ("the '679 patent"), issued on June 16, 1998 and May 4, 1999, respectively. Copies of the '589 and '679 patents are attached as Exhibits 1 and 2, respectively.

5. This is an action for a declaratory judgment of patent invalidity, unenforceability and noninfringement. Subject matter jurisdiction is based herein upon and 28 U.S.C. §§ 1331, 1332, and 1338. There is jurisdiction under 28 U.S.C. § 2201 *et seq* for the declaration rights requested in this action.

6. Venue is proper in this district under 28 U.S.C. §§ 1391(b) and 1400. A substantial part of the events giving rise to this claim arose in the District of Kansas.

7. By two letters dated July 10, 2006 (attached as Exhibit 3) and August 23, 2006 (attached as Exhibit 4), Maximum Products has asserted that certain motorcycle lighting control system products sold, distributed and marketed by Wire Plus infringe the '589 and '679 patents. In the July 10 letter, Maximum Products threatens, among other things, to seek damages and injunctive relief against Wire Plus for its alleged infringement of the '589 and '679 patents.

8. Wire Plus has at all times relevant hereto distributed, sold and marketed systems of the type accused of infringement by Maximum Products in the July 10 and August 23 letters, and Wire Plus continues to distribute, sell and market the accused systems.

9. An actual case or controversy exists between Wire Plus and Maximum Products regarding the validity, enforceability and infringement of the '589 and '679 patents and the rights of Wire Plus and Maximum Products under those patents.

10. The letters from Maximum Products attached as Exhibits 3 and 4 create a reasonable apprehension on the part of Wire Plus that Maximum Products intends to file suit against Wire Plus for patent infringement if Wire Plus continues to distribute, sell and market the accused motorcycle lighting control systems.

11. Wire Plus does not believe that it, or its accused lighting control system products, infringe the '589 and '679 patents.

12. Moreover, Wire Plus believes that the '589 and '679 patents are invalid because the alleged invention fails to satisfy the conditions for patentability specified in 35 U.S.C. §§ 102 103, and/or 112.

13. Accordingly, Maximum Products is not entitled to seek judgments of infringement, damages, or injunctive relief from Wire Plus.

14. There is a justifiable and actual controversy before the Court with regard to whether the accused motorcycle lighting control systems sold by Plaintiff Wire Plus infringe and violate any rights of Maximum Products, and specific relief may be granted under 28 U.S.C. § 2201 for a declaration of rights that will resolve the controversy giving rise to this proceeding.

WHEREFORE, Wire Plus prays that this Court enter its declaratory judgments respecting the rights, remedies, and legal obligations of the parties to this lawsuit and specifically to declare:

- (a) That Wire Plus has not infringed, induced others to infringe or contributed to the infringement of the '589 and '679 patents;

- (b) That the '589 and '679 patents are invalid and/or unenforceable;
- (c) That Maximum Products, its officers, agents, counsel, servants and employees and all persons in active concert or participation with any of them, be enjoined from charging infringement of or instituting any action for infringement of the '589 and '679 patents against Wire Plus;
- (d) That this is an exceptional case under 35 U.S.C. § 285 and that Wire Plus be awarded its reasonable attorneys' fees, expenses and costs in this action; and
- (e) That Wire Plus be granted such other and further relief as this Court deems just and appropriate.

JURY DEMAND

Plaintiff demands a trial by jury on all issues so triable.

Respectfully submitted,

LATHROP & GAGE L.C.

s/ Gerald M. Kraai

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