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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO**

BON-AIRE INDUSTRIES, INC.,)
)
Plaintiff,)
)
v.)
)
SORENSEN RESEARCH &)
DEVELOPMENT TRUST,)
)
Defendant.)
_____)

Case No. CV 07-054-S-

**COMPLAINT FOR
DECLARATORY JUDGMENT &
DEMAND FOR JURY TRIAL**

Plaintiff BON-AIRE INDUSTRIES, INC., (“Bon-Aire”), for its Complaint against Defendant SORENSEN RESEARCH & DEVELOPMENT TRUST (“Sorensen”), alleges as follows:

Nature of the Action

1. This is an action for Declaratory Judgment and other relief brought under the Federal Declaratory Judgment Act, 28 U.S.C. §§ 2201–02.

Parties

2. Bon-Aire is a corporation organized and existing under the laws of the State of Idaho, having a principal place of business at 873 East Citation Court, Boise, Idaho 83716 and is doing business in this state and district.

3. Bon-Aire has been a supplier to the automotive aftermarket since the early 1950's and is recognized for developing new concepts and new products on a continual basis.

4. On information and belief, Sorensen is a trust entity organized, administered, and existing under the laws of California, having a principal place of business at the offices of its attorneys, 9930 Mesa Rim Road, Suite 200, San Diego, California 92121.

5. On information and belief, Sorensen is in the business of acquiring and holding patents on inventions, including those purportedly invented by Mr. Jens O. Sorensen, and seeking licenses for such patents.

Jurisdiction and Venue

6. This Court has jurisdiction over the subject matter of this action on the following grounds:

(a) 28 U.S.C. § 1331, this being a civil action arising under the laws of the United States;

(b) 28 U.S.C. § 1337(a), this being a civil action arising under an Act of Congress regulating commerce and protecting trade and commerce;

(c) 28 U.S.C. § 1338(a), this being a civil action arising under an Act of Congress relating to alleged patent rights; and

(d) 28 U.S.C. § 1332, this being a civil action between citizens of different states in which the amount in controversy exceeds seventy-five thousand dollars (\$75,000.00) exclusive of interest and costs.

7. This Court may declare the rights and other legal relations of the parties in this case under 28 U.S.C. § 2201, and Federal Rule of Civil Procedure 57 because an actual and justiciable controversy exists concerning the rights of, and legal relations between, Bon-Aire and Sorensen.

8. This Court has personal jurisdiction over Sorensen consistent with the principles underlying the U.S. Constitution and Idaho's long-arm statute because, among other things, any injury caused to Bon-Aire occurred in the State of Idaho as a result of Sorensen's actions within the State of Idaho and this District.

9. Sorensen sent letters to the State and District threatening Bon-Aire with possible litigation, thus creating a reasonable apprehension of suit by Sorensen against Bon-Aire.

10. Sorensen is doing business in this State and District, including, in particular, its business of seeking patent license.

11. Venue is proper in this Court under the provisions of 28 U.S.C. §§ 1391 and/or 1400 because, among other things, (a) this is an action arising out of allegations of patent infringement, (b) Bon-Aire is in this District, (c) a substantial part of the events giving rise to Bon-Aire's claims occurred in this District, and (d) on information and believe, Sorensen is subject to personal jurisdiction in this District.

Factual Allegations

12. Sorensen has alleged that it owns whatever rights may exist in U.S. Patent No. 4,935,184, entitled “Stabilized Injunction Molding When Using a Common Mold Part With Separate Complementary Mold Parts” and issued on June 19, 1990 (“the ‘184 patent”). A copy of the ‘184 patent is attached hereto as Exhibit 1.

13. In a letter dated April 12, 2006 (“the April 12 letter”), Sorensen alleged that Bon-Aire’s “Bon-Aire Wash-N-Rinse Spray Gun”) (“the Accused Product”) is “substantially likely to have been produced through the use of a process which infringes the ‘184 patent”

14. In the April 12 letter, Sorensen stated as follows (emphasis in original):
“**PLEASE TAKE NOTICE:** This letter constitutes a notice of patent infringement in violation of 35 U.S.C. § 271.”

15. In the April 12 letter, Sorensen further stated that Bon-Aire “must obtain a license under the ‘184 patent in order to continue importing into, manufacturing, offering for sale and/or selling the Accused Product[] within the United States.”

16. In the April 12 letter, Sorensen stated that it “is prepared to withdraw the assertion of infringement with respect to any product upon sufficient proof demonstrating that the process actually used to make the product does not infringe the ‘184 patent.”

17. In a letter dated April 26, 2006, after a diligent and reasonable investigation into Sorensen’s allegations, Bon-Aire responded to the allegations of infringement set forth in Sorensen’s April 12 letter.

18. In the April 26, 2006, Bon-Aire refuted Sorensen’s allegations of infringement and provided copies of an e-mail exchange between Bon-Aire and its engineers confirming that the parts of the Accused Product “are not fabricated using the patented method.”

19. In a letter dated May 3, 2006, Sorensen acknowledged Bon Aire's indications of non-infringement of the '184 patent by the Accused Product, but Sorensen refused to withdraw its allegations of infringement.

20. In the May 3, 2006, letter, Sorensen insisted that Bon-Aire sign a multi-page declaration, which it admitted was "broader in scope than the claims of the '184 patent," "with absolutely no changes to the text" in order for Sorensen to withdraw its allegations of infringement.

21. In a letter dated May 18, 2006, Bon-Aire again refuted Sorensen's allegations of infringement and provided photographs of the actual molds used to fabricate the Accused Product as proof of the veracity of Bon-Aire's statements.

22. In the letter dated May 18, 2006, Bon-Aire also offered to make its manufacturer and his facilities available to a representative of Sorensen's choosing for independent verification of the facts as presented to Sorensen by Bon-Aire.

23. In a letter dated June 14, 2006, Sorensen ignored Bon-Aire's offer to allow Sorensen to make an independent verification of the facts and again demanded execution of the previously-provided declaration "with absolutely no changes to the text"

24. In a letter dated January 4, 2007, Sorensen continued to ignore Bon-Aire's offer to allow Sorensen to make an independent verification of the facts, again demanded execution of the previously-provided declaration, and threatened legal action, "including filing suit for infringement and moving the court for a presumption of infringement," in the event Bon-Aire "is not willing to pay [Sorensen's] one-time non-negotiable standard licensing fee of \$240,000."

25. Bon-Aire is entitled to a judgment declaring its rights as requested herein.

COUNT ONE

**DECLARATORY JUDGMENT REGARDING
ALLEGATIONS OF PATENT INFRINGEMENT**

26. Bon-Aire incorporates by reference paragraphs 1 through 24 above as if set forth fully herein.

27. There is an actual, substantial, and justiciable controversy between Bon-Aire and Sorensen concerning Sorensen's allegations that Bon-Aire has infringed the '184 patent.

28. Sorensen's allegations place a cloud over Bon-Aire's business activities and will cause uncertainty among customers, prospective customers, suppliers, and others in the marketplace, likely leading Bon-Aire to lose revenues and/or business opportunities.

29. The Accused Product and the fabrication process therefor do not infringe any rights of Sorensen in the '184 patent.

30. The Accused Product and the fabrication process therefor do not infringe any rights of Sorensen in the '184 patent because, *inter alia*, in the fabrication process for the Accused Product, there are no common mold parts used in the process.

31. More specifically, the Accused Product and the fabrication process therefor do not infringe any rights of Sorensen in the '184 patent because, *inter alia*, each of the two pieces of the Accused Product's plastic handle is molded using two separate sets of molds, such that the yellow plastic handle piece is first molded using complimentary mold parts A & A' (the gun body tooling), after which the yellow plastic handle piece is entirely removed from the mold assembly and inserted into a new mold assembly B & B' (the soft rubber tooling) wherein the pliable black plastic piece is molded and bonded to the yellow plastic handle piece. Thus, the first and second components/pieces of the Accused Product do not share a common mold part as required by the claims of the '184 patent.

32. Bon-Aire is entitled to a judgment declaring that the Accused Product and the fabrication process therefor do not infringe any rights of Sorensen in the '184 patent.

33. Bon-Aire is entitled to a judgment declaring that any and all making, using, selling, offering for sale, and/or importing into the United States of the Accused Product or any product made by the process used to fabricate the Accused Product, is and has been lawful, and otherwise declaring that Bon-Aire has not infringed whatever rights, if any, Sorensen may hold in the '184 patent.

34. As a direct and proximate result of Sorensen's allegations of patent infringement, Bon-Aire is suffering irreparable harm to its reputation and goodwill in an amount that cannot presently be ascertained and cannot be compensated adequately by monetary relief alone.

COUNT TWO

DECLARATORY JUDGMENT REGARDING PATENT INVALIDITY

35. Bon-Aire incorporates by reference paragraphs 1 through 33 above as if set forth fully herein.

36. On information and belief, Sorensen's broad assertion, construction, and/or interpretation of the '184 patent renders the claims thereof invalid in view of the prior art and/or for failure to comply with the provisions of one or more sections of the patent laws of the United States, 35 U.S.C. §§ 1 *et seq.*.

37. On information and belief, Bon-Aire is entitled to a judgment declaring that the claims of the '184 patent are invalid for failure to comply with the provisions of one or more sections of the patent laws of the United States, 35 U.S.C. § 1 *et seq.*

38. As a direct and proximate result of Sorensen's allegations against Bon-Aire, Bon-Aire is suffering irreparable injury to its reputation and goodwill in an amount that cannot presently be ascertained and cannot be compensated adequately by monetary relief alone.

WHEREFORE, Bon-Aire Industries, Inc., prays that this Court enter judgment:

- (a) Declaring that Bon-Aire has not infringed any purported patent rights of Sorensen in the '184 patent, or otherwise violated any provision of the patent laws of the United States, in connection with the Accused Product, the fabrication process therefor, or any other product made using the fabrication process for the Accused Product that is made, used, imported, sold, and/or offered for sale by Bon-Aire, including but not limited to the Accused Product;
- (b) Declaring that the '184 patent is invalid pursuant to the patent laws of the United States;
- (c) Permanently enjoining Sorensen, its successors, assigns, and any other related persons and/or entities from asserting the '184 patent against Bon-Aire in connection with the Accused Product, the fabrication process therefor, or any other product made with the process used to fabricate the Accused Product that is made, used, imported, sold, and/or offered for sale by Bon-Aire or its related companies, including but not limited to the Accused Product;
- (d) Finding in favor of Bon-Aire and declaring this case to be exceptional pursuant to 35 U.S.C. § 285;
- (e) Awarding Bon-Aire its attorneys' fees and other costs and expenses;
- (f) Awarding interest to Bon-Aire to the extent permitted by law; and

(g) Awarding to Bon-Aire such further relief as the Court deems just and proper.

JURY DEMAND

Bon-Aire respectfully requests a trial by jury on all issues so triable.

This 31st day of January, 2007.

/s/ Frank Dykas
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