

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

VI-JON, INC.,

Plaintiff,

V.

CALICO LABORATORIES, INC.,

Defendant.

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Case No:

JURY TRIAL DEMANDED

COMPLAINT

Plaintiff Vi-Jon, Inc. (“Vi-Jon”) brings this action for patent infringement against defendant Calico Laboratories, Inc. (“Calico”) seeking damages and injunctive relief. Vi-Jon alleges as follows:

JURISDICTION AND VENUE

1. This is an action for patent infringement arising under the Patent Laws of the United States, 35 U.S.C. § 1 *et seq.*, alleging infringement of United States Patent No. 6,841,523 (“the ’523 patent”). A copy of the ’523 patent is attached hereto as **Exhibit A**, and is incorporated herein by reference in its entirety.

2. This Court has exclusive subject matter jurisdiction over this action with respect to the claim for patent infringement under 28 U.S.C. §§ 1331 and 1338(a).

3. This Court has personal jurisdiction over defendant Calico because Calico is a Missouri corporation with its principal place of business in this district. *See Exhibit B.*

4. Moreover, upon information and belief, Calico conducts business in this district and infringes, contributes to the infringement of, and/or actively induces others to infringe the '523 patent in this district as alleged in this Complaint.

5. Venue is proper under 28 U.S.C. §§ 1391(b), 1391(c) and/or 1400(b), in that the defendant is a corporation subject to personal jurisdiction in the Eastern District of Missouri and thus resides, for purposes of venue, in the Eastern District of Missouri.

PARTIES

6. Vi-Jon is a corporation existing under the laws of Tennessee, having its principal place of business located at 8515 Page Avenue, St. Louis, Missouri 63114. Vi-Jon engages in business in the United States, including the sale of cosmetic products such as nail polish remover. It is a Missouri resident.

7. Calico is a corporation existing under the laws of Missouri, having its principal place of business at 100 Industrial Drive, Festus, Missouri 63028. Upon information and belief, Calico conducts business in at least the Eastern District of Missouri.

THE PATENT-IN-SUIT

8. The '523 patent entitled "Nail Polish Remover" was duly and legally issued on January 11, 2005.

9. Benjamin J. Holtz is the inventor of the '523 patent.

10. Vi-Jon is the assignee of the '523 patent.

11. The '523 patent is valid and enforceable and has been at all times relevant to the instant action.

COUNT I **PATENT INFRINGEMENT UNDER 35 U.S.C. § 271 OF THE '523 PATENT**

12. Vi-Jon incorporates by reference the allegations of paragraphs 1-11.

13. Calico has directly or indirectly infringed the '523 patent by making, using, selling, and/or offering for sale at least its "Polish Off Nail Polish Remover" product. Inspection of this product has revealed that the product composition infringes the '523 patent.

14. Upon information and belief, even after communications by Vi-Jon requesting that Calico cease infringing the '523 patent, Calico is continuing to make, use, sell, and/or offer for sale nail polish remover products which infringe the '523 patent.

15. Upon information and belief, Calico also has contributed to the infringement of the '523 Patent, and/or actively induced others to infringe the '523 patent, in this district and elsewhere in the United States.

16. Calico has caused and will continue to cause Vi-Jon substantial damage and irreparable injury by virtue of its continuing such infringement.

17. Vi-Jon is entitled to recover from Calico the damages sustained by Vi-Jon as a result of Calico's wrongful acts in an amount subject to proof at trial, and Vi-Jon is entitled to an injunction preventing Calico from continuing its wrongful acts.

18. Upon information and belief, Calico's infringement of the '523 patent is willful and deliberate.

WHEREFORE, Vi-Jon respectfully requests that the Court enter a judgment as follows:

- A. That Calico has infringed the '523 patent under 35 U.S.C. § 271;
- B. Permanently enjoining and restraining Calico, its officers, directors, agents, servants, employees, licensees, successors, assigns, those in active concert and participation with them, and all persons acting on its behalf or within its control under 35 U.S.C. § 283 from further acts that infringe the '523 patent, including, but not limited to, without the authorization of Vi-

Jon, making, using, selling, offering to sell, importing, exporting, advertising, or otherwise using, contributing to the use of, or inducing the use of all infringing products produced by Calico;

C. Requiring Defendant to:

1. Send a copy of any infringement decision in this case in favor of Vi-Jon to each distributor, retailer and wholesale purchaser to whom Calico, without authorization from Vi-Jon, has sold or otherwise distributed any products found to infringe the '523 patent, or induced to infringe the '523 patent, and informing such distributors, retailers and wholesale purchasers of the judgment and that the sale or solicited commercial transaction was wrongful;

2. Recall and collect from all persons and entities that have purchased wholesale or are distributors or retailers of any and all products found to infringe the '523 patent that were made, offered for sale, sold, or otherwise distributed by Calico, or anyone acting on its behalf, without authorization from Vi-Jon;

3. Destroy or deliver to Vi-Jon all infringing products produced by Calico; and

4. File with the Court and serve upon Vi-Jon, within thirty (30) days after entry of final judgment in this case, a report in writing and subscribed under oath setting forth in detail the form and manner in which Calico has complied with the Court's orders as prayed for.

D. Awarding Vi-Jon patent infringement damages and pre-judgment interest pursuant to 35 U.S.C. § 284 including, but not limited to, lost profits and/or a reasonable royalty;

E. Awarding Vi-Jon treble damages for willful infringement pursuant to 35 U.S.C. § 284;

F. Declaring the case exceptional and awarding Vi-Jon reasonable costs and attorneys fees pursuant to 35 U.S.C. § 285;

G. Granting Vi-Jon such other and further relief as justice and equity may require.

JURY DEMAND

Vi-Jon requests a jury trial.

Dated: June 23, 2008.

Respectfully submitted,

/s/ John H. Quinn_____

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