

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

FILED
U.S. DISTRICT COURT
DISTRICT OF COLORADO

2009 MAR -3 AM 10:58

Civil Action No. 09 - CV - 00444 - REB-MEH GREGORY S. LANGHAM
CLERK

BY _____ DEP. CLK

DAVID L. HILDEBRAND, an individual,

Plaintiff,

vs.

CTA MANUFACTURING CORP;
DREYCO INC; and
GREY PNEUMATIC CORP.

Defendants.

COMPLAINT FOR DAMAGES FOR PATENT INFRINGEMENT

JURY TRIAL DEMANDED

Plaintiff, David Hildebrand, an individual, alleges as follows:

I. PARTIES

1. Plaintiff, David Hildebrand, is an individual and resident of this judicial district.
2. Defendant, CTA MANUFACTURING CORP., is a corporation organized and existing under the laws of the State of New Jersey.
3. Defendant, DREYCO INC. is a company believed to be organized and existing under the laws of the State of New Jersey.
4. Defendant, GREY PNEUMATIC CORP. is a company believed to be organized and existing under the laws of the State of Wisconsin.

II. JURISTICTION AND VENUE

5. The Court has original jurisdiction over plaintiff's First through Fifth Claims for relief pursuant to 28 U.S.C. 1338(a).
6. Venue in this District is proper under 28 U.S.C. 1400(a) in that each of said defendants are engaged in commercial activities in this District, and has purposefully availed itself of the privilege of conducting business in this district, to an extent sufficient to satisfy the requirements of establishing "residence" for the purpose of the above statute.

III. OPERATIVE FACTS

7. Plaintiff, David Hildebrand (hereinafter "Hildebrand"), is the inventor of certain know-how for the removal of damaged bolts, lugnuts and other threaded connecting devices, including the removal of devices where either the threads or outer edges thereof have been damaged so that they cannot be removed using conventional tools.
8. Hildebrand set out to develop the device incorporating the invention, which Hildebrand intended to exploit on the commercial market for profit.
9. On April 14, 1998, Hildebrand's invention was granted protection under United States Patent No. 5,737,981, entitled "REMOVAL DEVICE FOR THREADED CONNECTING DEVICES." A copy of said Patent (hereinafter "the 981 patent") is attached hereto, labeled Exhibit "A" and incorporated herein by reference.

10. Hildebrand is informed and believes that defendants CTA Manufacturing Corp., Dreyco Inc., and Grey Pneumatic Corp. have engaged, and are now engaged, in the manufacturing, advertisement, offering of sale, sale, and/or distribution of devices which infringe the Hildebrand '981 patent.
11. On information and belief, the trade names under which the defendants' infringing devices have been manufactured, advertised, offered for sale, sold and/or distributed include; "Emergency Lug Nut Remover Socket Set", "Wheel Lug Nut Remover Kit", and "Nut/Lock Remover Master Kit", and the part [and/or] model numbers of said infringing devices include; 2300K, 2400K, 2305NR, 2306NR, 2307NR, 2308NR, 2309NR, 2310NR, 2311NR, 2312NR, 2313NR, 2314NR, 2316NR, 2318NR, A155, and A157.

IV. CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF

(Infringement of U.S. Patent No. 5,737,981 against all Defendants)

12. Hildebrand hereby incorporates paragraphs 1 through 11 as though fully set forth at this point.
13. On the basis of the actions of defendants as alleged above in paragraphs 10 and 11, each of said defendants has violated Hildebrand's rights under 35 U.S.C. 271(a) by making, using, selling or offering for sale, within the United States, subsequent to April 14, 1998, and without the express or implied authority or consent of Hildebrand, the invention described in Claims 1-14 of United States Patent No. 5,737,981.
14. As a direct proximate result of Defendants infringing acts, Hildebrand has been damaged in amounts to be determined at trial.

15. Plaintiff further alleges, on information and belief, that one or more of said Defendants have committed the infringing act as alleged herein after having been notified of the fact that said acts infringed U. S. Patent No. 5,737,981, and therefore said Defendants' infringing acts have been and are being committed willfully and intentionally.
16. As a result of the facts alleged in paragraph 15, Hildebrand is entitled to an increase in damages, and an award of attorney's fees and costs, pursuant to 35 U.S.C. 284 and 285.

SECOND CLAIM FOR RELIEF
(Injunction)

17. Hildebrand incorporates paragraphs 1 through 16 as fully set forth at this point.
18. As a result of Defendants' infringing acts, Hildebrand is suffering, and unless Defendants' infringing acts are enjoined will continue to suffer, irreparable and incalculable damage.
19. Hildebrand is therefore entitled to, and prays for, a preliminary and permanent injunction under 35 U.S.C. 283, barring Defendants, and all parties acting by, through or on behalf of said Defendants, from engaging in any further manufacture, use, sale, offering of sale, or exploitation of any products or devices which infringe Hildebrand's Patent
WHEREFORE, Hildebrand prays for judgment as hereinafter set forth.

THIRD CLAIM FOR RELIEF
(Seizure and/or destruction of infringing goods)

20. Hildebrand incorporates paragraphs 1 through 19 as though fully set forth at this point.

21. Hildebrand alleges on information and belief that as a result of Defendants' infringing acts there exists, within the United States, devices and materials which infringe Hildebrand's patent as well as marketing and promotional materials in which said infringing devices are offered for sale, in violation of 35 U.S.C. 271(a).
22. Pursuant to 35 U.S.C. 283 Hildebrand prays for an order directing the immediate seizure and/or destruction of all of said infringing devices and related marketing materials.

WHEREFORE, Hildebrand prays for judgment as hereinafter set forth.

FOURTH CLAIM FOR RELIEF

(Accounting)

23. Hildebrand incorporates paragraphs 1 through 22 as though fully set forth at this point.
24. Hildebrand is informed and believes that Defendants have realized income as a result of their infringing acts.
25. Hildebrand requests that Defendants be ordered to furnish full accounting of all such income or other value realized from their infringing acts.

WHEREFORE, Hildebrand prays for judgment as hereinafter set forth

FIFTH CLAIM FOR RELIEF

(Imposition of constructive trust)

26. Hildebrand incorporates paragraphs 1 through 22 as though fully set forth at this point.

27. Hildebrand is informed and believes that Defendants have realized and continue to realize income from their infringing acts.

28. Hildebrand requests that all income realized by Defendants from their infringing acts be placed in constructive trust for the benefit of Hildebrand.

WHEREFORE, Hildebrand prays for judgment as hereinafter set forth.

V. PRAYER FOR DAMAGES

Hildebrand seeks the following relief:

1. General Damages.
2. A preliminary and permanent injunction barring Defendants, and all persons acting by, through or on their behalf, from using, making, distributing, selling or offering for sale any devices currently sold, or any other devices, which infringe U. S. Patent 5,737,981.
3. An order directing the immediate seizure and/or destruction of all devices which infringe U. S. Patent No. 5,737,981
4. Punitive damages according to proof.
5. Enhanced damages according to proof.
6. An award of all costs and attorney's fees incurred in this action.
7. An award of any other costs associated with the filing and maintaining of this action that the Court can enter, using its inherent power.

PLAINTIFF DEMANDS A TRIAL BY JURY AS TO ALL CAUSES.

Respectfully submitted this 2 day of March, 2009



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