

IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF MISSOURI  
SOUTHERN DIVISION

BASS PRO OUTDOOR WORLD, L.L.C.,	)	
	)	
BASS PRO OUTDOORS ONLINE, L.L.C., and	)	
	)	Civil Action No.
BPS CATALOG, L.P.,	)	
	)	
Plaintiffs,	)	
v.	)	
	)	
JOHN M. BAUER, and	)	
	)	
BAUER PREMIUM FLY REELS, INC.,	)	
	)	
Defendants.	)	

**COMPLAINT FOR DECLARATORY JUDGEMENT**

For its complaint against defendant, plaintiff alleges:

1. Plaintiff BASS PRO OUTDOOR WORLD, L.L.C., is a limited liability corporation organized and existing under the laws of the State of Missouri and has its principal place of business at 2500 East Kearney, Springfield, Missouri, 65898, Plaintiff BASS PRO OUTDOORS ONLINE, L.L.C., is a limited liability corporation organized and existing under the laws of the State of Missouri and has its principal place of business at 2500 East Kearney, Springfield, Missouri, 65898, and Plaintiff BPS CATALOG, L.P., is a limited partnership organized and existing under the laws of the State of Missouri and has its principal place of business at 2500 East Kearney, Springfield, Missouri, 65898.

2. Upon information and belief, Defendant JOHN M. BAUER is an individual domiciled at 401 Corral de Tierra Road, Salinas, California, 93908 and BAUER PREMIUM FLY REELS, INC., is a corporation organized and existing under the laws of the State of California and has its principal place of business at 401 Corral de Tierra Road, Salinas, California, 93908.

3. This is an action for Declaratory Judgment under 28 U.S.C. §2201 seeking an order of patent invalidity and noninfringement, and this Court has jurisdiction under 28 U.S.C. §1338 by reason of this action arising under the Patent Laws of the United States, Title 35 of the United States Code.

4. On information and belief, defendants are doing business within this judicial district and are subject to the jurisdiction of this Court. Venue in this district is proper under 28 U.S.C. §1391(b) and (c).

5. This action arises from an actual justiciable controversy now existing between plaintiffs and defendant resulting from the filing of a complaint by defendant JOHN M. BAUER against BASS PRO SHOPS, INC. in the United States District Court for the Northern District of California, Civil Action No. C00-00625 JCS, alleging that defendant JOHN M. BAUER is the inventor and owner of the entire right, title and interest in U.S. Patent No. 5,921,492 (“the ‘492 patent”) and that BASS PRO SHOPS, INC. has infringed the ‘492 patent.

6. Plaintiffs BASS PRO OUTDOOR WORLD, L.L.C., BASS PRO OUTDOORS ONLINE, L.L.C., and BPS CATALOG, L.P., are the entities who have actually offered for sale and /or sold fishing reels of the type alleged to infringe the ‘492 patent in the action defendant JOHN M. BAUER filed against BASS PRO SHOPS, INC. in the Northern District of California.

7. Plaintiffs deny that the offer for sale and/or sale of the fishing reels entitled “White River Conservationist Large Arbor Fly Reels”, model numbers LA2, LA3 and LA4, constitutes infringement of the ‘492 patent.

8. Plaintiffs further believe that investigation and discovery procedures will reveal, and Plaintiffs aver, that said Letters Patent is invalid, unenforceable, and void for one or more of the following reasons:

a. The alleged invention of said Letters Patent does not constitute a new and useful process, machine, manufacture, or composition of matter; or a new and useful improvement therein (35 U.S.C. § 101);

b. The alleged invention claimed in said Letters Patent was known or used by others in the United States, or patented and described in a printed publication, in the United States or a foreign country, before the alleged invention thereof by the applicant for said patent (35 U.S.C. § 102(a));

c. The alleged invention claimed in said Letters Patent was patented or described in a printed publication in the United States or a foreign country, or in public use or on sale in the United States more than one year prior to the dates of the application for the patent in the United States (35 U.S.C. § 102(b));

d. The patentee in said Letters Patent abandoned the invention (35 U.S.C. §102(c));

e. The alleged invention in said Letters Patent was first patented or caused to be patented, or was the subject of an inventor’s certificate, by the applicant or his legal representatives or assigns in a foreign country prior to the dates that the application in the United States,

on an application for patent or inventor's certificate filed more than twelve (12) months before the filing dates of the application in the United States (35 U.S.C. § 102(d));

f. The alleged invention in said Letters Patent was described in a patent granted on an application for patent by another filed in the United States before the alleged invention thereof by the named patentee in said Letters Patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of 35 U.S.C. § 371(c) before the invention thereof by the named patentee in said Letters Patent (35 U.S.C. § 102(e));

g. The applicant in said Letters Patent did not himself invent the subject matter of said patent (35 U.S.C. § 102(f));

h. Before the applicant's alleged invention of said Letters Patent, the invention was made in the United States by another who had not abandoned, suppressed, or concealed the invention (35 U.S.C. § 102(g));

i. The specification of said Letters Patent fails to describe the alleged invention in a manner to enable a person skilled in the art to make and use the invention (35 U.S.C. § 112);

j. The said Letters Patent fails to set forth the best mode contemplated by the inventor in carrying out his alleged invention (35 U.S.C. § 112); and

k. The claims of said Letters Patent do not particularly point and distinctly claim the subject matter which the applicant regards as its purported invention (35 U.S.C. § 112).

l. If, and to the extent that the alleged invention of said Letters Patent is not identically disclosed or described as set forth in 35 U.S.C. § 102, the differences between the subject matter of said Letters Patent and the prior art are such that the subject matter as a whole would

have been obvious at the time the alleged invention was made to a person having ordinary skill in the art to which said subject matter pertains (35 U.S.C. § 103).

m. If any of the claims of the Letters Patent can be construed as valid over the prior art, such claim or claims cannot cover or read upon any machine, article, or apparatus made, used or sold by the Plaintiffs.

n. If any of the claims of said Letters Patent can be construed to cover any machine, article, or apparatus made, used or sold by the Plaintiffs, then said Letters Patent claims the purported invention in terms broader than any invention disclosed thereby.

o. By claiming for said Letters Patent, a broadened construction with the intent and for the purpose of causing the claims of said Letters Patent to read upon any apparatus made, used, or sold by Plaintiffs, Defendant JOHN M. BAUER has rendered the claims of said Letters Patent readable on the prior art and therefore invalid.

p. During the prosecution of the application resulting in said Letters Patent, Defendant JOHN M. BAUER limited and confined the claims in such a manner that Defendant is not entitled and is estopped to have the claims of said Letters Patent now construed sufficiently broadly to cover any apparatus, device, product, or method manufactured or sold by Plaintiffs and complained of as infringements by Defendants.

q. By reason of the proceedings in the Patent Office during the prosecution of the application which resulted in said Letters Patent, as shown by the file wrapper thereof, Defendant JOHN M. BAUER constructively abandoned the construction of the claims in said Letters Patent that would cause said patent to cover or include any apparatus or device manufactured, used, or sold, by the Plaintiffs.

r. By reason of the proceedings in the Patent Office during the prosecution of the application which resulted in said Letters Patent, as shown by the file wrapper thereof, Plaintiffs have obtained intervening rights which prevent Defendants from enforcing said patent against Plaintiffs.

WHEREFORE, plaintiffs pray:

1. That this Court grant and enter a judgment declaring U.S. Patent No. 5,921,492 and all claims thereof to be invalid and unenforceable;
2. That this Court grant and enter a judgment declaring that U.S. Patent No. 5,921,492 is not infringed by plaintiffs' sale of or offer to sell said fishing reels;
3. That this Court grant and enter a judgment declaring that plaintiffs have the right to make, use and sell fishing reels without hindrance from defendants, and that plaintiffs' customers have the same right;
4. That it be adjudged that this action is an exceptional cases within the meaning of 35 U.S.C. § 285 in accordance with which the plaintiffs are entitled to reasonable attorneys' fees.
5. That the costs of this action be assessed against defendants and that plaintiffs be awarded their reasonable attorneys' fees incurred in prosecuting this action; and
6. That plaintiffs be granted such other and further relief as the Court deems just and proper.

SHOOK, HARDY & BACON L.L.P.

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