

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

ORION IP, LLC

v.

DELTA MACHINERY COMPANY, et al.

Civil Action No. 6:07-cv-179-LED

JURY TRIAL DEMANDED

FIRST AMENDED COMPLAINT FOR PATENT INFRINGEMENT

This is an action for patent infringement in which Orion IP, LLC makes the following allegations against Delta International Machinery Corporation a/k/a Delta Machinery Company:

PARTIES

1. Plaintiff Orion IP, LLC (“Orion”) is a Texas limited liability company with its principal place of business at 207 C North Washington Avenue, Marshall, Texas 75670.

2. On information and belief, Defendant Delta International Machinery Corporation a/k/a Delta Machinery Company (“Delta” or “Defendant”) is a is a Minnesota or Tennessee Corporation having its principal place of business at 4825 Hwy. 45 North, Jackson, Tennessee. Upon information and belief, this Defendant may be served via its registered agent, CT Corporation System, 100 South 5th Street, Suite 1075, Minneapolis, Minnesota 55402

JURISDICTION AND VENUE

3. This action arises under the patent laws of the United States, Title 35 of the United States Code. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a).

4. Venue is proper in this district under 28 U.S.C. §§ 1391(c) and 1400(b). On information and belief, Defendant has a regular and established place of business in this district,

has transacted business in this district, and has committed and/or induced acts of patent infringement in this district.

5. On information and belief, Defendant is subject to this Court's specific and general personal jurisdiction pursuant to due process and/or the Texas Long Arm Statute, due at least to its substantial business in this forum, including: (i) at least a portion of the infringements alleged herein; and (ii) regularly doing or soliciting business, engaging in other persistent courses of conduct, and/or deriving substantial revenue from goods and services provided to individuals in Texas and in this Judicial District.

COUNT I

INFRINGEMENT OF U.S. PATENT NO. 5,615,342

6. Orion is the owner by assignment of United States Patent No. 5,615,342 ("the '342 Patent") entitled "Electronic Proposal Preparation System." The '342 Patent issued on March 25, 1997. A true and correct copy of the '342 Patent is attached as Exhibit A.

7. The '342 patent has been the subject of multiple claim construction rulings from the United States District Court for the Eastern District of Texas. Copies of two written Markman Orders are attached as Exhibits B and C.

8. Jerome D. Johnson is listed as the inventor on the '342 Patent.

9. Upon information and belief, Defendant Delta has been and now is directly infringing, and indirectly infringing by way of inducing infringement and/or contributing to the infringement of the '342 Patent in the State of Texas, in this judicial district, and elsewhere in the United States by, among other things, methods practiced on various websites (including, but not limited to, www.deltamachinery.com and <http://deltamachinery.com>), making and using supply chain methods, sales methods, sales systems, marketing methods, marketing systems, and

inventory systems covered by one or more claims of the '342 Patent to the injury of Orion. Defendant Delta is thus liable for infringement of the '342 Patent pursuant to 35 U.S.C. § 271.

10. Defendant has actively induced and is actively inducing infringement of the '342 Patent and is liable for contributory infringement of the '342 Patent.

11. On information and belief, to the extent any marking was required by 35 U.S.C. § 287, all predecessors in interest to the '342 Patent complied with such requirements.

12. On information and belief, at least after the filing of the present Complaint, the Defendant has infringed and continues to willfully infringe the '342 Patent.

13. As a result of this Defendant's infringement of the '342 Patent, Orion has suffered monetary damages in an amount not yet determined, and will continue to suffer damages in the future unless Defendant's infringing activities are enjoined by this Court.

14. Unless a permanent injunction is issued enjoining this Defendant and its agents, servants, employees, attorneys, representatives, affiliates, and all others acting on their behalf from infringing the '342 Patent, Orion will be greatly and irreparably harmed.

COUNT II

INFRINGEMENT OF U.S. PATENT NO. 5,367,627

15. Orion is the owner by assignment of United States Patent No. 5,367,627 ("the '627 Patent") entitled "Computer-Assisted Parts Sales Method." The '627 Patent issued on November 22, 1994. A true and correct copy of the '627 Patent is attached as Exhibit D.

16. The '627 patent has been the subject of multiple claim construction rulings from the United States District Court for the Eastern District of Texas. Copies of two written Markman Orders are attached as Exhibits B and C.

17. Jerome D. Johnson is listed as the inventor on the '627 Patent.

18. Upon information and belief, Defendant Delta has been and now is directly infringing, and indirectly infringing by way of inducing infringement and/or contributing to the infringement of the '627 Patent in the State of Texas, in this judicial district, and elsewhere in the United States by, among other things, methods practiced on various websites (including, but not limited to, www.deltamachinery.com and <http://deltamachinery.com>), making and using supply chain methods, sales methods, sales systems, marketing methods, marketing systems, and inventory systems covered by one or more claims of the '627 Patent to the injury of Orion. Defendant Delta is thus liable for infringement of the '627 Patent pursuant to 35 U.S.C. § 271.

19. Defendant has actively induced and is actively inducing infringement of the '627 Patent and is liable for contributory infringement of the '627 Patent.

20. On information and belief, to the extent any marking was required by 35 U.S.C. § 287, all predecessors in interest to the '627 Patent complied with such requirements.

21. On information and belief, at least after the filing of the present Complaint, the Defendant has infringed and continues to willfully infringe the '627 Patent.

22. As a result of this Defendant's infringement of the '627 Patent, Orion has suffered monetary damages in an amount not yet determined, and will continue to suffer damages in the future unless Defendant's infringing activities are enjoined by this Court.

23. Unless a permanent injunction is issued enjoining this Defendant and its agents, servants, employees, attorneys, representatives, affiliates, and all others acting on their behalf from infringing the '627 Patent, Orion will be greatly and irreparably harmed.

PRAYER FOR RELIEF

WHEREFORE, Orion respectfully requests that this Court enter:

1. A judgment in favor of Orion that Defendant has infringed, directly, jointly, and/or indirectly, by way of inducing and/or contributing to the infringement of the '342 Patent, and that such infringement was willful;

2. A permanent injunction enjoining Defendant and its officers, directors, agents, servants, affiliates, employees, divisions, branches, subsidiaries, parents, and all others acting in concert or privity with any of them from infringement, inducing the infringement of, or contributing to the infringement of the '342 Patent;

3. A judgment and order requiring Defendant to pay Orion its damages, costs, expenses, and prejudgment and post-judgment interest for Defendant's infringement of the '342 Patent as provided under 35 U.S.C. § 284;

4. A judgment in favor of Orion that Defendant has infringed, directly, jointly, and/or indirectly, by way of inducing and/or contributing to the infringement of the '627 Patent, and that such infringement was willful;

5. A permanent injunction enjoining Defendant and its officers, directors, agents, servants, affiliates, employees, divisions, branches, subsidiaries, parents, and all others acting in concert or privity with any of them from infringement, inducing the infringement of, or contributing to the infringement of the '627 Patent;

6. A judgment and order requiring Defendant to pay Orion its damages, costs, expenses, and prejudgment and post-judgment interest for Defendant's infringement of the '627 Patent as provided under 35 U.S.C. § 284;

7. An award to Orion for enhanced damages resulting from the knowing, deliberate, and willful nature of Defendant's prohibited conduct with notice being made at least as early as the date of the filing of this Complaint, as provided under 35 U.S.C. § 284;

8. A judgment and order finding that this is an exceptional case within the meaning of 35 U.S.C. § 285 and awarding to Orion its reasonable attorneys' fees; and

9. Any and all other relief to which Orion may show itself to be entitled.

DEMAND FOR JURY TRIAL

Plaintiff, under Rule 38 of the Federal Rules of Civil Procedure, requests a trial by jury of any issues so triable by right.

Dated: July 17, 2007

Respectfully submitted,

ORION IP, LLC

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ATTORNEYS FOR PLAINTIFF
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CERTIFICATE OF SERVICE

I hereby certify that the counsel of record who are deemed to have consented to electronic service are being served today with a copy of this document via the Court's CM/ECF system per Local Rule CV-5(a)(3). Any other counsel of record will be served by electronic mail, facsimile transmission and/or first class mail on this same date.

Dated: July 17, 2007

/s/ John J. Edmonds
John J. Edmonds