

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

2003 JUN 17 AM 9:35

TONY COLIDA,

Plaintiff,

CASE NO.:

v.

JUDGE:

MATSUSHITA ELECTRIC CORP. OF
AMERICA,

Defendant.

03-2904
C WGB)
FILED

AT 8:30 6-17-03 M
WILLIAM T. WALSH
CLERK

COMPLAINT

PLAINTIFF DECLARES AS FOLLOWS:

1. Plaintiff, TONY COLIDA, a citizen of Canada and residing at 18 Lakeshore Drive, Suite 813, in the city of Pointe Claire, Quebec H9S 5X9, CANADA, Tel: 514-423-3777;
2. Defendant, MATSUSHITA ELECTRIC CORP. OF AMERICA, a duly incorporated company having a principal head office at One Panasonic Way, 3C-1 Secaucus, New Jersey, 07094 U.S.A. Tel: 201-348-7799;
3. At all relevant time, Defendant transacts business by advertising, selling or offering for sale, repairing and supporting, directly or indirectly themselves or through their distributors, within the United States and elsewhere in the world including portable cellular handset telephones and has committed acts of infringement on the U.S. Design Patents sued upon in this District;

THE CAUSE OF DISPUTE:

4. This is an action for infringement of United States Design Patent No. 321,347 and 321349;

HISTORY:

5. Plaintiff is the inventor and designer and the United States Patents owner of a item entitled a "Cellular Portable Handset Telephone" as will be evidenced more fully hereinbelow;

6. On November 5, 1991, U.S. Design Patent No. 321,347 and 321,349 were granted to Plaintiff by the United States Patent Commission for the "Cellular Portable Handset Telephone", the whole as appears more fully from the United States Patent produced herewith as Plaintiff's **Exhibit P-1**;

7. The said invention consists of a new, original, and ornamental design for an article of manufacture entitled the "Cellular Portable Handheld Telephone";

THE INFRINGEMENT:

8. On or about January of 2003, it came to the Plaintiff's attention that the Defendant had already begun manufacturing and selling in the United States of America and elsewhere in the world, a Cellular Portable Handset Telephone known as the "Panasonic GD87" model, the whole as appears more fully from a copy of a promotional advertising flyer by Defendant produced herewith as Plaintiff's **Exhibit P - 2**;

9. Defendant's "Panasonic GD87" product conforms to the distinctive design incorporated into Plaintiff's portable cellular patent design, and in so doing constitutes

an infringement and appropriation of Plaintiff's rights in such design;

10. Defendant's "Panasonic GD87" cellular phone has met with wide commercial acceptance and is being sold throughout the United States and world wide, the whole without the authorization and/or compensation to the Plaintiff;

11. Plaintiff has invested considerable energy and money in the development and the promotion of his United States Design Patents;

12. Plaintiff, in his capacity, has priority in connection to the distinctive design incorporated into the Defendant's "Panasonic GD87" portable cellular handset telephone;

13. Notwithstanding Plaintiff's patent, Defendant, since a precise date unknown to Plaintiff but known to Defendant, have been infringing upon Plaintiff's United States Patents by directly or under its control, authorization or instructions, manufacturing, selling, distributing and advertising, illegally and without authority the "Panasonic GD87" cellular portable handset telephone which infringes on Plaintiff's United States Design Patent bearing numbers 321,347 and 321,349;

14. More particularly, Defendant's "Panasonic GD87" Cellular Portable Handheld Telephone infringes on Plaintiff's U.S. Design Patent in that: it reproduces the curvature of the bodies, the arrangement of the keypads and display screens, and the overall size and appearance of the phone;

15. The sales of the "Panasonic GD87" Cellular Portable Handset Telephones by

Defendant is causing Plaintiff to suffer important losses as well as damages to his clear rights. Moreover, as a result of said infringing activities, Defendant is making unlawful profits from the illegally appropriated design incorporated into its cellular portable handheld telephone which it may prove impossible for Plaintiff to prove and to quantify without the assistance of this Court;

16. That the full extent of Defendant's infringing activities is unknown to Plaintiff but is known to the Defendant and therefore Plaintiff claims relief in respect of all acts of infringement by Defendant, past, present and future;

17. Plaintiff informed the Defendant of the infringement of his United States Patent protected design through a letter dated January 3, 2003, the whole as appears more fully from a copy of the letter addressed to the corporate office of the Defendant produced herewith as Plaintiff's **Exhibit P-3**;

18. On January 3, 2003, Defendant replied to Plaintiff, in which Defendant stated that they "acknowledge the receipt of my letter and the parent division is responsible for handling patent matters" the whole as appears more fully from a copy of a letter from Defendant is produced herewith as **Exhibit P-4**;

19. Furthermore, on January 9, 2003, Defendant's counsel also replied to Plaintiff's letter of January 3, 2003 and requesting more time to respond to Plaintiff's infringement claim, the whole as appears more fully from a copy of the letter from Defendant as Plaintiff's **Exhibit P-5**;

20. On February 4, 2003, Defendant's counsel replied to Plaintiff's letter, in which

Defendant states that they have not yet completed their review on the case. Furthermore, Defendant requests from Plaintiff to share a confidential License Agreements, in which Plaintiff granted non-exclusive Licenses for the same U.S. Design Patents mentioned in this case, to Motorola, Inc. and Samsung Electronics Co. Ltd. the whole as appears more fully from a copy of the letter produced herewith as Plaintiff's **Exhibit P-6**;

21. On March 3, 2002, Defendant's counsel replied to Plaintiff, in which Defendant states "...we do not believe that Matsushita's telephones appropriate any novel ornamental feature of cellular telephone patented design and therefore it is not interested in a license", the whole appears more fully from a letter addressed to the Plaintiff produced herewith as Plaintiff's **Exhibit P-7**;

22. The Defendant has been notified in writing of Plaintiff rights under the U.S. Design Patent No. 321,347 and 321,349, for a "Cellular Portable Handset Telephones - notwithstanding this, the Defendant, with full knowledge of the patent and without prior authorization of Plaintiff has willfully, wantonly and deliberately continued to infringe in flagrant disregard of Plaintiff's rights under the patent;

23. Damages caused to the Plaintiff through the infringement of his patent rights are estimated at one hundred million US dollars (\$100,000,000 US), but Plaintiff reserves his rights to amend the quantum of the damages suffered by him once the full extent of Defendant's infringement activities are made known by the accounting demanded below;

WHEREFORE, Plaintiff requests judgment as follows:

GRANT the present action;

CONDEMN Defendant to pay the plaintiff the sum of one hundred million US dollars (\$100,000,00 US), as of the dated hereof, the whole with interest on a cumulative basis plus the legal indemnity in accordance with the laws of the United States of America;

ORDER Defendant to furnish an accounting of all sales of the "Panasonic GD87" model cellular portable handset telephones in the United States and world-wide resulting from Defendant's infringement of Plaintiff's United States Design Patent No. 321,347 and 321349, including;

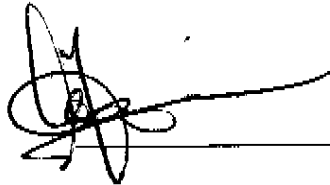
- a. a statement of sales directly, through subsidiaries, and through dealers and distributors;
- b. a statement of the retail sales price;
- c. a statement of gross revenues and profits;
- d. a statement of gross revenues and profit from maintenance and repairs;
- e. a statement of current inventory;
- f. a statement of units manufactured to date;
- g. a statement of units on order from the manufacturer;

RESERVE Plaintiff's right to amend the present proceedings, particularly with respect to the quantification of the damages once the full extent of distribution sales and revenues are known;

THE WHOLE with interest and any legal indemnity on a cumulative basis in accordance with the Laws of the United States of America;

**I declare under penalty of perjury under the Laws of the United States of America
that the foregoing is true and correct.**

DATED: May 28, 2003



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