

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF MICHIGAN

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WESTERN DISTRICT MICH  
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**BALDER OPTOELECTRONIC  
ELEMENTS AND MEASURING  
SYSTEMS, LTD.**

Teslova ulica 30  
1000 Ljubljana  
SI-Solvenia

Plaintiff

v.

**JACKSON PRODUCTS, INC.**

5801 Safety Drive, N.E.  
Belmont, MI 49306

Defendant.

Judge:

Case No:

1:06 CV 0191

**COMPLAINT**  
(Jury Demand Endorsed Hereon)

**Nature of the Action**

1. This is an action for declaratory judgment under 28 U.S.C.A. § 2201 and 2202, adjudging United States Letters Patents Nos. 5,208,688 ("the '688 patent") and 5,751,258 ("the '258 patent") not infringed by plaintiff, invalid and unenforceable.

**Jurisdiction and Venue**

2. This Court has jurisdiction under 28 U.S.C.A. § 1338.
3. Venue is proper under 28 U.S.C.A. § 1391(b) and (c).

**The Parties**

4. Upon information and belief, Defendant, Jackson Products Company (“Jackson Products”), as assignee, is the owner of United States Letters Patent No. 5,208,688, entitled “Eye Protection Device for Welding Helmets,” issued May 4, 1993, and of United States Letters Patent No. 5,751,258, entitled “Liquid Crystal Lens Driver Electronics for Eye Protection, High Speed Shuttering with Consistent Performance,” issued on May 12, 1998.

5. Plaintiff, Balder Optoelectronic Elements and Measuring Systems, Ltd. (“Balder”), has been and is at present manufacturing a line of auto-darkening filter lenses that have been designated as model nos. FMP BM 10 and FMP BV 913 by, and are being sold for placement within welding helmets, as well as within welding helmets, within this judicial district through, Balder’s independent distributor within the United States, Fibre-Metal Products Co., Inc. (“Fibre-Metal”), a Delaware corporation having a principal place of business located in Concordville, Pennsylvania.

6. Balder’s line of auto-darkening filter lenses have not infringed and do not now infringe either the ‘688 patent or the ‘258 patent.

7. Jackson Products has given Balder formal written notice of its charges of infringement of the ‘688 and the ‘258 patents by Fibre-Metal through its sale of Balder’s auto-darkening filter lenses within the United States, both for placement within welding helmets, as well as within welding helmets.

8. Jackson Products has charged Fibre-Metal with infringement of the ‘688 and the ‘258 patents by the sale of auto-darkening filter lenses manufactured by Balder, both for placement within welding helmets, as well as within welding helmets, bringing

suit against Fibre-Metal, the same being Civil Action No. 1:05CV0590 in the United States District Court for the Western District of Michigan.

9. Balder denies infringement of the '688 and '258 patents as alleged by Jackson Products, and asserts that it is entitled to have its auto-darkening filter lenses sold through by Fibre-Metal and any other different or additional distributors within the United States without interference by Jackson Products.

10. By reason of the foregoing, an actual controversy has arisen and exists between Balder and Jackson Products as to the alleged infringement by the sale of auto-darkening filter lenses manufactured by Balder by distributors within the United States, and as to the validity of the '688 and '258 patents.

11. The '688 and '258 patents, and each of them, are invalid and void for the reasons stated below:

(a) Prior to the alleged inventions by the applicants for the Letters Patent-in-suit, or more than one year prior to the dates of the applications therefor, the alleged inventions were patented or described in printed publications in the United States or in foreign countries.

(b) The applicants were not the original or first or sole inventors or discoverers of the alleged inventions purporting to be patented by them, but the same had previously been devised by others.

(c) Prior to the alleged inventions by the applicants, the alleged inventions had been known to or used by others in the United States.

(d) For more than one year prior to the filing of the patent applications in the United States, the alleged inventions, or all material or substantial part or parts thereof,

had been in public use or on sale in this country.

(e) The alleged inventions of the patents were described in patents granted on applications for patents of others filed in the United States before the alleged inventions thereof by the applicants here involved.

(f) Prior to the alleged inventions by the applicants, the alleged inventions were made in this country by others who had not abandoned, suppressed, or concealed them.

(g) The differences between the patented subject matters and the prior art are such that the subject matters as a whole would have been obvious, at the time the alleged inventions were made, to a person having ordinary skill in the art to which such subject matters pertained, and such subject matters did not involve patentable inventions.

(h) The patent specifications fail to contain written descriptions of the alleged inventions, and of the manner and process of making and using them, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which they pertain, or with which they are most clearly connected, to make and use the same, and fail to set forth the best mode contemplated by the inventors of carrying out their alleged inventions.

(i) The claims set forth in the patents are vague and indefinite and fail to particularly point out or distinctly claim the subject matter that the applicants regard as their invention.

(j) If such patents are construed to cover the articles made, used, or sold by Balder, the patents are invalid in view of the prior art.

(k) In view of the prior state of the art and the language of the claims of the patents, and by reason of the proceedings had or taken in the United States Patent and

Trademark Office in the prosecution of the related patent applications, Jackson Products is estopped from maintaining that the claims of the patents or any of them have such scope as to cover or embrace any articles that Balder makes and Fibre-Metal has sold within the United States.

(l) The applications for the patents were knowingly, willfully, with deceptive intention, and without error made in the names of other than the true inventors.

(m) By acts of commission and/or omission by the applicants, their assignees and/or their attorneys, the duty of candor and good faith imposed upon all those associated with the filing and prosecution of a patent application under 37 C.F.R. § 1.56(a) was breached during the prosecution of the applications that lead to the issuance of '258 and '688 patents, including, by way of example only, by (i) the failure to properly bring material prior art, U.S. Letters Patent No. 5,347,383 ("the '383 patent"), to the attention of the Patent Examiner during the prosecution of the '258 patent even though one of the inventors of the '258 patent was an inventor of the '383 patent; (ii) the making of arguments and statements to the Patent Office during the prosecution of the '258 patent that could not have been made had the Patent Office been made aware of the '383 patent; (iii) the failure to bring material prior art, U.S. Letters Patent No. 5,074,647 ("the '647 patent"), to the attention of the Patent Examiner during the prosecution of the '688 patent even though two of the inventors of the '688 patent were inventors of the '647 patent; and (iv) the making of arguments and statements to the Patent Office during the prosecution of the '688 patent that could not have been made had the Patent Office been made aware of the '647 patent.

12. Furthermore, Jackson Products has barred itself from relief for alleged

infringement of either the '688 or the '258 patents and has subjected itself to claims for damages and profits by its unfair competitive and monopolistic activities and by creating a monopoly in the trade by threats and litigation against Balder's distributor, Fibre-Metal, and others in the product industry.

13. As a result of Jackson Products' unfair competition and monopolistic activities, Balder is faced with the alternative of ceasing distribution of its auto-darkening filter lenses within the United States or defending expensive and unwarranted patent litigation.

14. Unless Jackson Products is enjoined therefrom, it will continue to assert that Balder's distributor, Fibre-Metal, and/or any other or additional distributors licensed by Balder, are infringing Jackson Products' '688 and '258 patents by selling auto-darkening filter lenses manufactured by Balder and will continue to interfere with Balder's business with respect thereto.

**WHEREFORE**, Balder requests that:

A. This Court grant and enter a judgment or decree declaring that United States Letters Patent Nos. 5,208,688 and 5,751,258 are not infringed by the auto-darkening filter lenses made by Balder and sold by Fibre-Metal, and/or that they are invalid and void;

B. This Court enter a judgment or decree that it is the right of Balder's distributor, Fibre-Metal, and/or any other or additional distributors of Balder's auto-darkening filter lenses, to sell such auto-darkening filter lenses without any threat or other interference whatsoever against Fibre-Metal and/or any other or additional distributors of Balder's auto-darkening filter lens by Jackson Products, based on or arising out of the ownership

of the patents-in-suit or any interest therein;

C. This Court enter a judgment and decree that Letters Patent Nos. 5,208,688 and 5,751,258 are unenforceable against Balder's distributor, Fibre-Metal, and/or any other or additional distributor of Balder's auto-darkening filter lenses;

D. Jackson Products be enjoined pending the final adjudication of this action, and permanently thereafter, from prosecuting or bringing or threatening to bring any action against any buyers, sellers, or users of auto-darkening filter lenses for alleged infringement of Jackson Products' patent rights under the patents-in-suit by the sale or use of Balder's auto-darkening filter lenses;

E. Jackson Products, its officers, agents, employees, and attorneys, be enjoined pending the final adjudication of this action, and permanently thereafter, from charging or asserting that either the sale or use of auto-darkening filter lenses manufactured by Balder is in violation of or infringes Jackson Products' alleged patent rights under the patents-in-suit;

F. The costs of this action be assessed against Jackson Products;

G. Balder be awarded damages, including lost profits to Balder, such damages to be trebled; and

H. Balder have such other and further relief as is just, including reasonable attorney fees, this being an exceptional case.

#### **Jury Demand**

Balder demands a jury as to all issues triable thereto as a matter of law.

Respectfully submitted,

Dated: March 15, 2006

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