

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

WATERS INDUSTRIES, INC., an Illinois corporation,)	Civil Action No. <u>10-1865</u>
)	
Plaintiff,)	The Honorable _____
)	
v.)	Magistrate Judge _____
)	
THE GERSON COMPANY, a Missouri corporation,)	COMPLAINT
)	
Defendant.)	JURY TRIAL DEMANDED
)	

Plaintiff, Waters Industries, Inc. (“Waters Industries”) complains against Defendant, The Gerson Company (“Gerson”), as follows:

THE PARTIES

1. Waters Industries is a corporation incorporated under the laws of the State of Illinois with its principal place of business at 213 West Main Street, West Dundee, Illinois. Waters Industries’ wholly owned Panther Vision division designs and sells a variety of hands free LED task lighting products for consumers and businesses, including lighted eyeglasses.

2. Upon information and belief, Gerson is a company organized under the laws of the State of Missouri with its principal place of business at 1450 South Lone Elm Road, Olathe, Kansas 66061-7256. Upon information and belief, Gerson by itself and/or through one or more entities owned, controlled or otherwise affiliated with Gerson conducts business in Illinois and in this District including, without limitation, promoting, distributing and selling a variety of consumer products in this District.

JURISDICTION AND VENUE

3. This is an action for patent infringement arising under the Patent Laws of the United States, 35 U.S.C. §1 *et seq.* This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§1331 and 1338(a).

4. Venue lies in this District pursuant to 28 U.S.C. §§1391(b), 1391(c) and 1400(b) because the Defendant is subject to personal jurisdiction in this District, has regularly conducted business in this District and/or has committed acts of infringement in this District.

FIRST CAUSE OF ACTION – INFRINGEMENT OF ‘695 PATENT

5. On September 2, 2003, U.S. Patent No. 6,612,695 (“the ‘695 patent”) entitled, “LIGHTED READING GLASSES,” was duly and legally issued to Michael Waters on an application filed on November 7, 2001. Waters Industries currently owns all right, title and interest in and to the ‘695 patent. A copy of the ‘695 patent is appended as Exhibit A.

6. Defendant, by itself and/or through its subsidiaries, affiliates, and/or agents has been, and is, infringing the ‘695 patent by making, using, offering to sell, selling and/or importing the LED lighted eyeglasses shown in Exhibit E incorporating the inventions patented in the ‘695 patent within the United States and within this District; and by contributing to the infringement by others and/or by inducing others to infringe the ‘695 patent. Unless enjoined by the Court, Defendant will continue to infringe, contribute to the infringement of and/or induce the infringement of the ‘695 patent.

7. The Defendant’s direct infringement of the ‘695 patent, and/or inducement of or contribution to the infringement of others, has injured Waters Industries, and Waters Industries is entitled to recover damages adequate to compensate for such infringement pursuant to 35 U.S.C. §284.

8. Waters Industries has provided Defendant written notice of the '695 patent and the alleged infringement, but, upon information and belief, Defendant has continued its infringement notwithstanding its actual knowledge thereof and the lack of an objectively reasonable good faith basis to believe that its activities do not infringe any valid claim of the '695 patent. Defendant's infringement of the '695 patent has been willful and deliberate.

9. The infringement of the '695 patent by the Defendant will continue to injure Waters Industries unless the Court enters an injunction prohibiting further infringement of the '695 patent.

SECOND CAUSE OF ACTION – INFRINGEMENT OF '416 PATENT

10. On March 8, 2005, U.S. Patent No. 6,863,416 ("the '416 patent") entitled, "LIGHTING DEVICE" was duly and legally issued to Michael Waters on an application filed on April 29, 2003, which has legal priority back to an application filed on November 7, 2001. Waters Industries currently owns all right, title and interest in and to the '416 patent. A copy of the '416 patent is appended as Exhibit B.

11. Defendant, by itself and/or through its subsidiaries, affiliates, and/or agents has been, and is, infringing the '416 patent by making, using, offering to sell, selling and/or importing the LED lighted eyeglasses shown in Exhibit E incorporating the inventions patented in the '416 patent within the United States and within this District; and by contributing to the infringement by others and/or by inducing others to infringe the '416 patent. Unless enjoined by the Court, Defendant will continue to infringe, contribute to the infringement of and/or induce the infringement of the '416 patent.

12. The Defendant's direct infringement of the '416 patent, and/or inducement of or contribution to the infringement of others, has injured Waters Industries, and Waters Industries is entitled to recover damages adequate to compensate for such infringement pursuant to 35 U.S.C. §284.

13. Waters Industries has provided Defendant written notice of the '416 patent and the alleged infringement, but, upon information and belief, Defendant has continued its infringement notwithstanding its actual knowledge thereof and the lack of an objectively reasonable good faith basis to believe that its activities do not infringe any valid claim of the '416 patent. Defendant's infringement of the '416 patent has been willful and deliberate.

14. The infringement of the '416 patent by the Defendant will continue to injure Waters Industries unless the Court enters an injunction prohibiting further infringement of the '416 patent.

THIRD CAUSE OF ACTION – INFRINGEMENT OF '670 PATENT

15. On September 12, 2006, U.S. Patent No. 7,104,670 (“the '670 patent”) entitled, “LIGHTING DEVICE” was duly and legally issued to Michael Waters on an application filed on February 11, 2005, which has legal priority back to an application filed on November 7, 2001. Waters Industries currently owns all right, title and interest in and to the '670 patent. A copy of the '670 patent is appended as Exhibit C.

16. Defendant, by itself and/or through its subsidiaries, affiliates, and/or agents has been, and is, infringing the '670 patent by making, using, offering to sell, selling and/or importing the LED lighted eyeglasses shown in Exhibit E incorporating the inventions patented in the '670 patent within the United States and within this District; and by contributing to the infringement by others and/or by inducing others to infringe the '670 patent. Unless enjoined by the Court, Defendant will continue to infringe, contribute to the infringement of and/or induce the infringement of the '670 patent.

17. The Defendant's direct infringement of the '670 patent, and/or inducement of or contribution to the infringement of others, has injured Waters Industries, and Waters Industries is entitled to recover damages adequate to compensate for such infringement pursuant to 35 U.S.C. §284.

18. Waters Industries has given Defendant written notice of the '670 patent and the alleged infringement, but, upon information and belief, Defendant has continued its infringement notwithstanding its actual knowledge thereof and the lack of an objectively reasonable good faith basis to believe that its activities do not infringe any valid claim of the '670 patent. Defendant's infringement of the '670 patent has been willful and deliberate.

19. The infringement of the '670 patent by the Defendant will continue to injure Waters Industries unless the Court enters an injunction prohibiting further infringement of the '670 patent.

FOURTH CAUSE OF ACTION – INFRINGEMENT OF '664 PATENT

20. On May 27, 2008, U.S. Patent No. 7,377,664 ("the '664 patent") entitled, "LIGHTING DEVICE" was duly and legally issued to Michael Waters on an application filed on June 19, 2006, which has legal priority back to an application filed on November 7, 2001. Waters Industries currently owns all right, title and interest in and to the '664 patent. A copy of the '664 patent is appended as Exhibit D.

21. Defendant, by itself and/or through its subsidiaries, affiliates, and/or agents has been, and is, infringing the '664 patent by making, using, offering to sell, selling and/or importing the LED lighted eyeglasses shown in Exhibit E incorporating the inventions patented in the '664 patent within the United States and within this District; and by contributing to the infringement by others and/or by inducing others to infringe the '664 patent. Unless enjoined by the Court, Defendant will continue to infringe, contribute to the infringement of and/or induce the infringement of the '664 patent.

22. The Defendant's direct infringement of the '664 patent, and/or inducement of or contribution to the infringement of others, has injured Waters Industries, and Waters Industries is entitled to recover damages adequate to compensate for such infringement pursuant to 35 U.S.C. §284.

23. Waters Industries has given Defendant written notice of the '664 patent and the alleged infringement, but, upon information and belief, Defendant has continued its infringement notwithstanding its actual knowledge thereof and the lack of an objectively reasonable good faith basis to believe that its activities do not infringe any valid claim of the '664 patent. Defendant's infringement of the '664 patent has been willful and deliberate.

24. The infringement of the '664 patent by the Defendant will continue to injure Waters Industries unless the Court enters an injunction prohibiting further infringement of the '664 patent.

PRAYER FOR RELIEF

WHEREFORE, Waters Industries prays for:

1. Judgment that the '695 patent, the '416 patent, the 670 patent, and the '664 patent are each valid, enforceable, and infringed by the Defendant;
2. Judgment that the Defendant's acts of patent infringement are willful;
3. A preliminary and permanent injunction enjoining the Defendant, its officers, agents, servants, employees, subsidiaries and affiliated companies, and those persons acting in active concert or participation therewith, from engaging in the aforesaid unlawful acts of patent infringement;
4. An award of damages arising out of the Defendant's acts of patent infringement, together with pre-judgment and post-judgment interest;
5. Judgment that the damages so adjudged against the Defendant be trebled in accordance with 35 U.S.C. §284;
6. An award of Waters Industries' attorneys fees, costs and expenses incurred in this action in accordance with 35 U.S.C. §285; and
7. Such other and further relief as the Court may deem just and proper.

JURY DEMAND

Waters Industries demands trial by jury of all issues triable of right by a jury.

Respectfully submitted,

Date: March 24, 2010

/s/Timothy P. Maloney

Timothy P. Maloney

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