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11 Attorneys for Plaintiff P&L Industries, Inc.

12
13 IN THE UNITED STATES DISTRICT COURT
14 FOR THE DISTRICT OF ARIZONA

15 P&L INDUSTRIES, INC.,
16 an Arizona corporation,

17 Plaintiff,

18 v.

19 SELLMARK CORPORATION, a Texas
20 corporation,

21 Defendant.

No.

**COMPLAINT FOR PATENT
INFRINGEMENT**

(Jury Trial Requested)

22 Plaintiff P&L Industries, Inc. (“P&L”) for its Complaint alleges against Sellmark
23 Corporation (“Sellmark”):

24 1. P&L is a corporation organized under the laws of the State of Arizona and
25 having a place of business at 101 Airpark Road, Cottonwood, Arizona, United States
26 86326.

27 2. On information and belief, Sellmark is a Texas corporation having its
28 principal place of business at 2201 Heritage Parkway, Mansfield, TX 76063.

3. P&L is the assignee of United States Patent No. 6,421,947 (the “‘947
Patent”) entitled “AXIS ALIGNMENT APPARATUS.”

4. P&L has the right to sue for the relief sought herein, including, without
limitation, injunctive relief and monetary damages.

5. A true and correct copy of the ‘947 Patent is attached hereto as Exhibit 1.

1 6. A true and correct copy of a website page from the United States Patent and
2 Trademark Office website showing the assignment of the '947 Patent to P&L is attached
3 hereto as Exhibit 2.

4 7. P&L is in the business of, among other things, selling and offering to sell
5 laser boresighters in Arizona and throughout the United States.

6 8. Upon information and belief, Sellmark has imported into the United States,
7 offered for sale, and sold laser boresighters to The Sportsman's Guide, Inc.
8 ("Sportsman's"), having a place of business at 411 Farwell Avenue, South St. Paul, MN
9 55075.

10 9. Upon information and belief, at least some of the laser boresighters
11 imported, offered for sale, and sold by Sellmark to Sportsman's are resold by
12 Sportsman's under the name "Guide Gear Universal Laser Boresighter."

13 10. A true and correct copy of a catalog ad from Sportsman's promoting the
14 Sellmark boresighter (hereafter, "Sellmark's boresighter") is attached hereto as Exhibit 3.

15 11. A true and correct copy of label from one of Sellmark's boresighters is
16 attached hereto as Exhibit 4.

17 12. The label on Sellmark's boresighter identifies the distributor as Sellmark.

18 13. Sportsman's offers Sellmark's boresighters for sale in Sportsman's catalog.

19 14. Sportsman's catalog is distributed in Arizona.

20 15. On information and belief, Sportsman's sells Sellmark's boresighters in
21 Arizona.

22 16. Sellmark is engaged in activity directly infringing at least claims 1-8, 15,
23 and 16-18 of the '947 Patent at least by importing, selling and/or offering to sell
24 boresighters as claimed in the '947 Patent.

25 **NATURE OF ACTION, JURISDICTION AND VENUE**

26 17. This is a patent infringement action arising under the patent laws of the
27 United States, 35 U.S.C. §§ 101, *et. seq.*, including 35 U.S.C. §§ 271, 281, 283 and 284.

28 18. Sellmark has engaged in activity that infringes the '947 Patent.

1 19. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331
2 and 1338.

3 20. This Court has personal jurisdiction over Sellmark, and venue is proper in
4 this judicial District pursuant to 28 U.S.C. §§ 1391 and 1400, because at least some of the
5 acts complained of herein occurred in this District. On information and belief, Sellmark
6 has introduced its boresighters that infringe the '947 Patent into the stream of commerce
7 with knowledge or the reasonable expectation that said boresighters would be sold or
8 offered for sale in Arizona. Furthermore, prior to selling and offering for sale at least
9 some of the boresighters Sellmark sold to Sportsman's, Sellmark was aware of the '947
10 Patent, that the '947 Patent is owned by P&L, and that P&L is located in Arizona.

11 21. Sellmark's boresighters are offered for sale in Sportsman's catalogs.

12 22. Sportsman's catalogs are distributed to Arizona residents.

13 23. Sellmark has intentionally and expressly directed its infringing activities to
14 an entity located in this District.

15 **FACTUAL ALLEGATIONS COMMON TO ALL COUNTS**

16 **Background**

17 24. P&L produces in Arizona boresighters falling within the scope of the '947
18 Patent.

19 25. P&L sells and offers to sell boresighters falling within the scope of the '947
20 Patent in Arizona and throughout much of the United States.

21 26. P&L's boresighters fit into the bore of a firearm and project a laser beam,
22 allowing optical sights on a firearm to be calibrated to the bore of the gun.

23 27. P&L sells its boresighters to Sportsman's.

24 28. P&L has learned that Sellmark imports, offers to sell and sells boresighters
25 to Sportsman's.

26 29. On information and belief, the boresighters sold by Sellmark to
27 Sportsman's are manufactured in China and imported into the United States.
28

1 30. Upon information and belief, Sellmark had actual knowledge of P&L’s
2 laser boresighters prior to Sellmark importing its boresighters into the United States.

3 31. Sellmark had actual knowledge of the existence of the ‘947 Patent prior to
4 offering sell and selling at least some of its boresighters in the United States.

5 32. Upon information and belief, Sellmark had actual knowledge of the ‘947
6 Patent at least as a result of a cease and desist letter sent by P&L’s attorneys to
7 Sportsman’s on May 11, 2011.

8 33. A true and correct copy of the May 11, 2011 letter is attached hereto as
9 Exhibit 5.

10 34. Upon information and belief, Sellmark had actual knowledge of the ‘947
11 Patent at least as a result of a series of emails sent by P&L’s attorneys to Sellmark’s
12 attorneys between June 9, 2011 and August 23, 2011.

13 35. Sellmark’s attorneys responded to the emails sent by P&L’s attorneys via
14 email on at least August 11, 2011 and August 23, 2011.

15 36. True and correct copies of the emails sent by P&L’s attorneys between June
16 9, 2001 and August 23, and the emails sent by Sellmark’s attorneys to P&L’s attorneys
17 on August 11, 2011 and August 23, 2011 are attached hereto as collective Exhibit 6.

18 37. On August 23, 2011 P&L’s attorneys discussed Sellmark’s infringement of
19 the ‘947 Patent via teleconference with Sellmark’s attorneys.

20 38. On August 23, 2011, P&L’s attorneys sent a follow-up email to Sellmark’s
21 attorneys in an attempt to settle this matter.

22 39. A true and correct copy of the email referenced in the preceding paragraph
23 is included in collective Exhibit 6.

24 40. Sellmark’s attorneys never responded to the August 23, 2011 email.

25 41. Sellmark’s boresighter includes an angled surface that is positioned in the
26 bore of a gun barrel, and has an end that is positioned outside of the bore, and an opposite
27 end that is positioned inside of the bore.

28 42. Sellmark’s boresighter includes an angled surface that contacts the end of

1 the gun muzzle when Sellmark's boresighter is positioned in a gun barrel.

2 43. Sellmark's boresighter includes an adapter that can be attached to an end of
3 the boresighter.

4 44. The bore adapter of Sellmark's boresighter is positioned in the bore of a
5 gun when the end of boresighter to which the adapter is attached is positioned in the bore
6 of the gun.

7 45. The bore adapter of Sellmark's boresighter has a variable diameter.

8 46. Sellmark's boresighter includes a light source.

9 47. The light source of Sellmark's boresighter can emit a beam of laser light.

10 48. When Sellmark's boresighter emits a beam of laser light, the beam is
11 aligned with the longitudinal axis of the body of Sellmark's boresighter.

12 49. Sellmark's boresighter includes a bore adapter that includes deformable
13 members.

14 50. Sellmark's boresighter has a one-piece body.

15 51. Sellmark's boresighter includes a body that has a first diameter at one end
16 and a second diameter, which is less than the first diameter, at the opposite end.

17 52. Sellmark's boresighter has a tapered section between its two ends.

18 53. Sellmark's boresighter is sold with a plurality of bore adapters.

19 54. The deforming members of the bore adapter of Sellmark's boresighter splay
20 outwardly when the bore adapter is attached to Sellmark's boresighter.

21 55. The bore adapter of Sellmark's boresighter includes a ring to receive a
22 screw.

23 56. The bore adapter of Sellmark's boresighter is attached to an end of
24 Sellmark's boresighter by a screw.

25 57. The deformable members of the bore adapter of Sellmark's boresighter are
26 axially attached around the ring of the bore adapter.

27 58. Sellmark's boresighter has a body that has a longitudinal axis.

28 59. Sellmark's boresighter includes a power source connected to a light source.

1 60. Sellmark's boresighter includes a switch to connect a power source to a
2 light source.

3 61. Sellmark's boresighter includes a cavity that houses the power source.

4 62. The body of Sellmark's boresighter includes an opening to expose a switch.

5 63. The switch of Sellmark's boresighter has a cylindrical shape.

6 64. The switch of Sellmark's boresighter has a diameter.

7 65. Sellmark's boresighter has a cavity and a switch in the cavity.

8 66. The diameter of the switch of Sellmark's boresighter is less than the
9 diameter of the cavity of Sellmark's boresighter.

10 67. The switch of Sellmark's boresighter has an axis substantially aligned along
11 the longitudinal axis of the body of the boresighter.

12 68. The switch of Sellmark's boresighter is rotatable to connect a power source
13 to a light source.

14 69. The switch of Sellmark's boresighter includes an outside surface.

15 70. The outside surface of the switch of Sellmark's boresighter is radially
16 disposed around the longitudinal axis of the switch.

17 71. The switch of Sellmark's boresighter has a first conductive area and a cam.

18 72. The first cavity of Sellmark's boresighter has a second surface, radially
19 disposed around the body axis, having a second conductive area and a channel to receive
20 the switch cam, wherein the switch cam cooperates with the second surface channel to
21 connect the first and second conductive areas.

22 73. The body of Sellmark's boresighter includes a conductive path through the
23 light source.

24 74. The power source of Sellmark's boresighter includes at least one battery
25 housed in the switch's battery cavity.

26 75. The light source for Sellmark's boresighter is a laser.

27 76. The tapered body section of Sellmark's boresighter engages the gun muzzle
28 when the laser boresighter is inserted into the bore of a gun.

1 77. Sellmark's boresighter includes a body section designed to extend at least
2 partially into the bore of a gun barrel.

3 78. The body section of Sellmark's boresighter that extends into the bore of a
4 gun barrel includes a section designed to contact the bore.

5 **COUNT I**

6 **Patent Infringement**

7 79. P&L incorporates as fully restated herein each of the allegations and
8 averments in the preceding paragraphs.

9 80. Sellmark has imported, offered to sell, and sold within the United States
10 boresighters that directly infringe the '947 Patent.

11 81. On information and belief, Sellmark's actions were done with knowledge
12 of the '947 patent and knowledge that its boresighters infringed the '947 patent.

13 82. P&L has no adequate remedy at law against Sellmark's acts. Unless
14 Sellmark is enjoined from its unlawful actions, P&L will continue to suffer irreparable
15 harm.

16 **WHEREFORE**, P&L demands judgment:

- 17 1. Declaring that the '947 is valid;
- 18 2. Declaring that Sellmark has infringed and is infringing the '947 Patent;
- 19 3. Enjoining and restraining Sellmark and its representatives, agents, servants,
20 successors, assigns, employees, and all those in privity or active concert and participation
21 with Sellmark, from directly infringing the '947 Patent, or inducing or contributing to the
22 infringement of the '947 Patent;
- 23 4. Requiring Sellmark to compensate P&L adequately for the damages caused
24 by its actions together with interests and costs;
- 25 5. Holding that if Sellmark's infringement is found to be willful, P&L's
26 damages be trebled pursuant to 35 U.S.C. § 284;
- 27 6. Holding that, if this case is found to be willful, this case be found to be
28 exceptional and awarding P&L its reasonable attorneys' fees and expenses against

1 Sellmark pursuant to 35 U.S.C. § 285;

2 7. Assessing costs, other expenses and such other and further relief as the
3 Court may deem just and proper; and

4 8. Any additional remedy that the Court deems just.

5 DATED this 11th day of January, 2012.

6 SNELL & WILMER L.L.P.

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DEMAND FOR JURY TRIAL

Pursuant to Fed. Rule Civ. Proc. 38(b), P&L Industries, Inc. hereby demands a jury trial on all issues raised by the Complaint herein and triable by right to a jury.

DATED this 11th day of January, 2012.

s/ David E. Rogers
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