

12 CIV 0578

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

<p>CANON INC.,</p> <p style="text-align: right;">Plaintiff,</p> <p style="text-align: center;">v.</p> <p>IJSS INC.,</p> <p style="text-align: right;">Defendant.</p>
--

Case No.:

JURY TRIAL DEMAND



COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff Canon Inc. ("Plaintiff" or "Canon"), for its Complaint against Defendant IJSS Inc. ("Defendant" or "IJSS"), hereby alleges as follows:

Related Action

1. This action is related to an action being filed concurrently in the U.S. International Trade Commission, *In the Matter of Certain Toner Cartridges and Components Thereof* (the "ITC Proceeding"), in that (a) the Plaintiff in this action is a Complainant in the ITC proceeding; (b) the patents-in-suit in this action are the same as the asserted patents in the ITC proceeding; (c) the Defendant named in this action is named as a Respondent in the ITC Proceeding; and (d) as to the named Defendant in this action, the accused products in this action include all of the accused products in the ITC Proceeding. Canon is concurrently filing similar complaints in this Court against all other Respondents in the ITC Proceeding not named in this action.

The Parties

2. Canon is a corporation duly organized and existing under the laws of Japan. Its principal place of business is located at 30-2, Shimomaruko 3-chome, Ohta-ku, Tokyo 146-8501, Japan. Canon's wholly-owned subsidiary, Canon U.S.A., Inc., maintains its principal place of business in Lake Success, New York.

3. On information and belief, IJSS is a corporation organized and existing under the laws of the State of California, with its principal place of business located at 6380 Wilshire Boulevard, Suite 1018, Los Angeles, California 90048, and is doing business under the assumed names of at least TonerZone.com and InkJetSuperstore.com. On information and belief, IJSS is also doing business at 5660 Bandini Boulevard, Bell, California 90201. On information and belief, IJSS conducts activities via the Internet at least as *www.inkjetsuperstore.com* and *www.tonerzone.com*.

Jurisdiction and Venue

4. This is an action for patent infringement arising 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).

5. This Court has personal jurisdiction over Defendant under at least N.Y. C.P.L.R. § 302(a)(1) in that Defendant has, directly or through intermediaries, committed acts within New York giving rise to this action and/or has established minimum contacts with New York such that the exercise of jurisdiction would not offend traditional notions of fair play and justice.

6. Venue is proper under 28 U.S.C. §§ 1391(b) and (c), and 28 U.S.C. § 1400(b).

Canon's Patents-in-Suit

7. On May 11, 1999, United States Patent No. 5,903,803 ("the '803 patent"), entitled "Process Cartridge, Electrophotographic Image Forming Apparatus, Driving Force Transmission Part, And Electrophotographic Photosensitive Drum," duly and legally issued, having Toshiharu Kawai, Kazushi Watanabe and Yoshihiro Ito as inventors. Canon is the owner by assignment of the '803 patent. A true copy of the '803 patent is attached hereto as Exhibit 1.

8. On October 3, 2000, United States Patent No. 6,128,454 ("the '454 patent"), entitled "Process Cartridge, Electrophotographic Image Forming Apparatus, Driving Force Transmission Part, And Electrophotographic Photosensitive Drum," duly and legally issued, having Toshiharu Kawai, Kazushi Watanabe and Yoshihiro Ito as inventors. Canon is the owner by assignment of the '454 patent. A true copy of the '454 patent is attached hereto as Exhibit 2.

Defendant's Infringing Activities

9. On information and belief, Defendant is engaged in the business of importing, selling, offering to sell and/or using replacement toner cartridges (containing photosensitive drums) for use in Canon and Hewlett-Packard ("HP") brand laser beam printers and other laser printer machines, which toner cartridges (and the photosensitive drums contained therein) are covered by one or more claims of each of the '803 and '454 patents.

First Cause of Action: Infringement of U.S. Patent No. 5,903,803

10. Canon incorporates by reference each and every allegation of paragraphs 1 through 9 of this Complaint, as though set forth here in their entirety.

11. Canon is the sole owner of the entire right, title and interest in and to the '803 patent, including the right to sue and recover for any and all infringements thereof.

12. Defendant is directly infringing the '803 patent by importing, selling, offering to sell and/or using toner cartridges that purportedly are substitutable for one or more Canon/HP toner cartridge models, including, without limitation, Canon Nos. 104, 106, 306, 706, FX-6, FX-7, FX-8, FX-9, FX-10, L50, S3, and, X25, and HP Nos. C4096A, C4127A/X, C4129X, C7115A/X, C8061A/X, C8543A/X, CB435A, CB436A, CC364A/X, CE278A, CE285A, Q1338A/X, Q1339A, Q2610A, Q2612A/X, Q2613A/X, Q2624A/X, Q5942A/X, Q5945A/X, Q5949A/X, Q6511A/X, Q7516A, Q7551A/X, Q7553A/X and Q7570A. The accused toner cartridges include but are not limited to those sold in packaging bearing the following model designation: CE278A. Each of the foregoing toner cartridges is covered by one or more claims of the '803 patent, and each further includes a photosensitive drum that is separately covered by one or more claims of '803 patent. Hereafter, the covered toner cartridges are referred to as "Accused Cartridges," and the photosensitive drums contained therein are referred to as "Accused Drums."

13. On information and belief, Defendant sells and/or offers to sell Accused Cartridges and Accused Drums via the Internet in the United States, including to New York residents, using one or more websites, including, without limitation: *www.inkjetsuperstore.com* and *www.tonerzone.com*.

14. Defendant is also indirectly infringing the '803 patent by inducing and/or contributing to the direct infringement of the '803 patent by end users of the Accused Cartridges and the Accused Drums. On information and belief, prior to the filing of this Complaint, Defendant was aware of the '803 patent and of its infringement thereof, or, alternatively, Defendant was willfully blind as to the existence of the '803 patent and its infringement thereof. At the very latest, Defendant will be given notice of its infringement of the '803 patent upon the

filing and service of this Complaint, and the substantially simultaneous filing of a complaint initiating the ITC Proceeding. Further, on information and belief, Defendant knowingly induces end users to use Accused Cartridges and Accused Drums, thereby inducing infringement of the '803 patent. On information and belief, Defendant also contributes to infringement of the '803 patent. In particular, the Accused Cartridges and the Accused Drums are specially adapted for an infringing use, and they are not staple articles of commerce suitable for substantial non-infringing use.

15. Defendant's acts complained of herein have damaged and will continue to damage Canon irreparably. Canon has no adequate remedy at law for these wrongs and injuries. Canon is therefore entitled to preliminary and permanent injunctions restraining and enjoining Defendant from further infringing the claims of the '803 patent.

16. By reason of Defendant's infringing activities, Canon has suffered, and will continue to suffer, substantial damages in an amount to be determined at trial.

17. On information and belief, Defendant knew or should have known of the objectively high likelihood that its actions constituted infringement of the '803 patent, but nonetheless has continued its infringing activities. Defendant's infringement, therefore, is and has been willful, and this case is exceptional under 35 U.S.C. § 285.

Second Cause of Action: Infringement of U.S. Patent No. 6,128,454

18. Canon incorporates by reference each and every allegation of paragraphs 1 through 17 of this Complaint, as though set forth here in their entirety.

19. Canon is the sole owner of the entire right, title and interest in and to the '454 patent, including the right to sue and recover for any and all infringements thereof.

20. Defendant is directly infringing the '454 patent by importing, selling, offering to sell and/or using toner cartridges (including photosensitive drums) covered by one or more claims of the '454 patent, including, without limitation, at least the Accused Cartridges and the Accused Drums.

21. Defendant is also indirectly infringing the '454 patent by inducing and/or contributing to the direct infringement of the '454 patent by end users of the Accused Cartridges and the Accused Drums. On information and belief, prior to the filing of this Complaint, Defendant was aware of the '454 patent and of its infringement thereof, or, alternatively, Defendant was willfully blind as to the existence of the '454 patent and its infringement thereof. At the very latest, Defendant will be given notice of its infringement of the '454 patent upon the filing and service of this Complaint, and the substantially simultaneous filing of a complaint initiating the ITC Proceeding. Further, on information and belief, Defendant knowingly induces end users to use the Accused Cartridges and the Accused Drums, thereby inducing infringement of the '454 patent. On information and belief, Defendant also contributes to infringement of the '454 patent. In particular, the Accused Cartridges and the Accused Drums are specially adapted for an infringing use, and they are not staple articles of commerce suitable for substantial non-infringing use.

22. Defendant's acts complained of herein have damaged and will continue to damage Canon irreparably. Canon has no adequate remedy at law for these wrongs and injuries. Canon is therefore entitled to preliminary and permanent injunctions restraining and enjoining Defendant from further infringing the claims of the '454 patent.

23. By reason of Defendant's infringing activities, Canon has suffered, and will continue to suffer, substantial damages in an amount to be determined at trial.

24. On information and belief, Defendant knew or should have known of the objectively high likelihood that its actions constituted infringement of the '454 patent, but nonetheless have continued its infringing activities. Defendant's infringement, therefore, is and has been willful, and this case is exceptional under 35 U.S.C. § 285.

Prayer for Relief

WHEREFORE, Canon respectfully requests the Court to enter judgment as follows:

A. That Defendant has directly infringed, contributorily infringed and induced others to infringe the '803 and '454 patents;

B. That such infringement has been and is willful;

C. That Defendant and its subsidiaries, affiliates, officers, agents, servants, employees, attorneys, successors, and assigns, and all other persons and organizations in active concert or participation with them, be preliminarily and permanently enjoined from further acts of direct infringement, contributory infringement, or inducement of infringement of the '803 and '454 patents;

D. That Defendant be ordered to pay Canon its damages caused by its infringement of the '803 and '454 patents, including without limitation lost profits and/or a reasonable royalty, and that such damages be trebled, together with interest thereon;

E. That this case be declared exceptional pursuant to 35 U.S.C. § 285 and that Canon be awarded its reasonable attorneys' fees and costs; and

F. That Canon be granted such other and additional relief as the Court deems just and proper.

Jury Demand

Canon hereby demands a jury trial as to all issues so triable.

Respectfully submitted,

Dated: January 23, 2012



Nicholas M. Cannella (NC9543)
Michael P. Sandonato (MS4278)
Anna Y. Huang (AH3552)
Robert J. Czarnecki, Jr. (RC2728)
Michael A. Fuerch (MF1028)
FITZPATRICK, CELLA, HARPER & SCINTO
1290 Avenue of the Americas
New York, New York 10104-3800
Tel: (212) 218-2100
Fax: (212) 218-2200
E-mail: ncannella@fchs.com, msandonato@fchs.com,
ahuang@fchs.com, rczarnecki@fchs.com,
mfuerch@fchs.com

Of Counsel:

Edmund J. Haughey
Stephen E. Belisle
Seth E. Boeshore
FITZPATRICK, CELLA, HARPER & SCINTO
975 F Street, NW
Washington, DC 20004-1462
Tel: (202) 530-1010
Fax: (202) 530-1055
E-mail: ehaughey@fchs.com, sbelisle@fchs.com,
sboeshore@fchs.com

Attorneys for Plaintiff Canon Inc.