

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

FILED
U.S. DISTRICT COURT
INDIANAPOLIS DIVISION
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SOUTHERN DISTRICT
OF INDIANA
LAURA A. BRIGGS
CLERK

BUZTRONICS, INC.,

Plaintiff,

v.

TOY INVESTMENTS, INC., d/b/a
TOYSMITH,

Defendant.

Cause No. _____

1 : 12 -cv- 0396 RLY -MJD

COMPLAINT

Plaintiff Buztronics, Inc. ("Buztronics"), by counsel, for its Complaint against Toy Investments, Inc. d/b/a Toysmith ("Toysmith"), alleges and states as follows:

NATURE OF ACTION, JURISDICTION AND VENUE

1. This action seeks a declaratory judgment and injunctive relief concerning certain patents owned by Toysmith.
2. Buztronics is an Indiana corporation incorporated under the laws of the State of Indiana with its principal place of business in Marion County, Indiana.
3. Toysmith is a Washington corporation incorporated under the laws of the State of Washington but transacting business within the State of Indiana.
4. This is a claim for declaratory judgment under 28 U.S.C. §§ 2201 and 2202 seeking a final judgment that Buztronics has not infringed Toysmith's United States patents identified below.

5. Buztronics has operations in the State of Indiana. Buztronics is in the advertising speciality industry and retail industry and designs, manufacturers, markets, distributes and sells products including products incorporating illuminating features.

6. Toysmith does business in the State of Indiana and elsewhere under the name of Toysmith and other fictitious names. Toysmith has sent letters threatening legal action for patent infringement to Buztronics in this judicial district.

7. Buztronics and Toysmith compete in interstate commerce in the markets for specialty promotional products and electronic novelty items as well as related sub markets.

8. Jurisdiction is based on 28 U.S.C. §§ 1331, 1332, 2201 and 2202.

9. Venue properly lies within this judicial district and division pursuant to 28 U.S.C. §§ 1391(b) and (c).

THE PATENTS-IN-SUIT AND DEFENDANTS' THREATS OF INFRINGEMENT

10. The patents at issue in this matter include U.S. Patent No. 6,685,582 issued on February 3, 2004, U.S. Patent No. 6,971,963 issued on December 6, 2005 and U.S. Patent No. 7,833,115 issued on November 16, 2010 (collectively "Patents-in-Suit").

11. By various items of correspondence sent to Buztronics and its counsel, Toysmith has represented to Buztronics that it is the owner of the Patents-in-Suit and has accused Buztronics of infringement of Toysmith's patent rights.

12. Toysmith's allegations alleging infringement of the Patents-in-Suit has presented a substantial controversy between the parties who have adverse legal interest of sufficient immediacy and reality toward issuance of a declaratory judgment as to Buztronics' non-infringement and invalidity of the Patents-in-Suit.

13. Buztronics has not infringed directly or indirectly any valid claim of the Patents-in-Suit.

**COUNT 1 – DECLARATORY JUDGMENT OF
INVALIDITY OF THE PATENTS-IN-SUIT**

14. Buztronics, by counsel, hereby repeats and incorporates by reference the allegations contained in paragraphs 1 through 13 inclusive.

15. Count 1 is an action under 28 U.S.C. § 2201 seeking a declaratory judgment that the Patents-in-Suit are invalid.

16. Upon information and belief, one or more claims of the Patents-in-Suit are invalid under 35 U.S.C. §§ 102, 103 and/or 112.

17. WHEREFORE, Buztronics is entitled to a declaratory judgment that the Patents-in-Suit are invalid under 35 U.S.C. §§ 102, 103 and/or 112.

18. This case is exceptional as defined pursuant to 35 U.S.C. § 285.

**COUNT 2 – DECLARATORY JUDGMENT OF
NON-INFRINGEMENT OF THE PATENTS-IN-SUIT**

19. Buztronics, by counsel, hereby repeats and incorporates by reference the allegations contained in paragraphs 1 through 18 inclusive.

20. Count 2 is an action under 28 U.S.C. § 2201 seeking a declaratory judgment that Buztronics has not infringed any valid claim of the Patents-in-Suit.

21. The conduct of Toysmith has presented a substantial controversy between the parties who have adverse legal interests of sufficient immediacy and reality to warrant issuance of a declaratory judgment as to Plaintiff's non-infringement of any valid claim on the Patents-in-Suit.

22. WHEREFORE, Buztronics is entitled to a declaratory judgment that it does not directly or indirectly infringe any valid claim of the Patents-in-Suit, whether under a theory of literal infringement or infringement under the doctrine of equivalents.

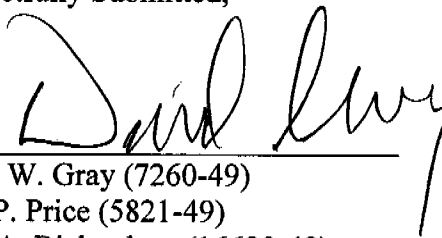
23. This case is exceptional as defined pursuant to 35 U.S.C. § 285.

WHEREFORE, Plaintiff asks this Court to enter judgment against Defendants and in favor of Buztronics on all counts, grant the declaratory relief sought, finding that the case is an exceptional one as defined pursuant to 35 U.S.C. § 285 and awarding Buztronics its attorney fees and costs and granting such further additional relief as may be appropriate in the premises.

CLAIM TO RIGHT TO TRIAL BY JURY

Buztronics hereby respectfully claims its right to trial by jury on all claims and issues that may be tried to a jury under applicable law.

Respectfully Submitted,



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