

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

_____)	
POLARIS INDUSTRIES INC.)	Court File No.
)	
Plaintiff,)	
)	
v.)	<u>COMPLAINT</u>
)	
BRP US Inc.; and)	(Jury Trial Demanded)
Bombardier Recreational Products Inc.)	
)	
Defendants.)	
_____)	

COMPLAINT

Plaintiff, Polaris Industries Inc., for its Complaint against Defendants states:

THE PARTIES

1. Plaintiff, Polaris Industries Inc., is a Delaware corporation having its principal place of business at 2100 Highway 55, Medina, Minnesota 55340 (“Plaintiff” or “Polaris”). Polaris is a citizen and resident of Minnesota. Polaris is an industry leader in snowmobiles, motorcycles, all-terrain vehicles, and side-by-side off road vehicles. Polaris was founded in Roseau, Minnesota and has been producing and innovating snowmobiles since the 1950s.

2. Defendant BRP US Inc. (“BRP US”) is a Delaware corporation, having its principal place of business at 1010 Science Drive, Sturtevant, WI 53177. BRP US is registered to do business in the State of Minnesota and has a registered agent, CT Corporation System Inc., having a registered office address at 100 S. 5th St., #1075, Minneapolis, Minnesota, 55402. Records at the Minnesota Secretary of State’s office list

Jose Boisjoli as Chief Executive Officer of BRP US. BRP US imports, designs, develops, manufactures, markets, and distributes motorized recreational vehicles in the United States, including the snowmobiles accused of infringing Polaris's patents. BRP US has numerous dealers in this district that offer for sale and sell the snowmobiles accused of infringement.

3. Defendant Bombardier Recreational Products Inc. ("BRP") is a Canadian corporation, having a principal place of business at 726 St. Joseph St., Valcourt, Quebec, CAN J0E 2L0. Upon information and belief, Mr. Jose Boisjoli is also the Chief Executive Officer of Bombardier Recreational Products Inc.

4. BRP imports, designs, develops, manufactures, markets, and distributes motorized recreational vehicles in the United States and internationally, including the snowmobiles accused of infringing Polaris's patents.

5. BRP imports the snowmobiles accused of infringement into the United States and has numerous dealers in this district that offer for sale and sell the snowmobiles accused of infringement.

6. Upon information and belief, Defendant BRP US is a wholly owned subsidiary of Defendant BRP. Defendants BRP US and BRP may be collectively referred to as "Defendants."

JURISDICTION AND VENUE

7. This is a claim of patent infringement arising under the Acts of Congress relating to patents, 35 U.S.C. §§ 271; 281-285. This Court has exclusive jurisdiction over Plaintiff's patent infringement claims pursuant to 28 U.S.C. §§ 1331 and 1338(a).

8. Personal jurisdiction over Defendants and venue are proper in this district under 28 U.S.C. § 1391 and 1400(b). Defendants have imported, marketed, offered for sale, and, upon information and belief, sold their accused products in the District of Minnesota. The Defendants are residents of Minnesota and the events giving rise to Polaris's claims arose in this district.

FACTS

9. Polaris is a leading designer, manufacturer and marketer of recreational vehicles such as snowmobiles, motorcycles and off road vehicles, such as all-terrain vehicles and side-by-side all-terrain vehicles. The first Polaris snowmobile was built in 1954 in Roseau, Minnesota. Since that time, Polaris has continued to innovate. Polaris subsequently successfully developed many new improvements to the snowmobile including rear suspension improvements.

10. Traditionally, there were two types of snowmobile rear suspensions: coupled and uncoupled. However, both suffered from a common problem: "bottoming out." The term "bottoming out" refers to a condition in which the suspension is fully compressed, such as when traveling over large bumps or during high-performance riding. "Bottoming out" the suspension can cause mechanical wear and damage, as well as discomfort to the rider who may receive a jarring force when the suspension "bottoms out."

11. Polaris began working on a solution to the problem. On February 24, 2006, Timothy Giese of Polaris filed a provisional patent application on a new rear suspension technology called progressive rate suspension. Polaris's progressive rate suspension

increases the resistance of the suspension (i.e., it gets stiffer) the further it is compressed. In other words, as the new suspension gets closer to “bottoming out” the new technology stiffens the suspension making it less likely to “bottom out” than in traditional rear suspensions.

12. On December 21, 2010, U.S. Patent No. 7,854,285 (“’285 patent”) was issued by the U.S. Patent and Trademark Office. A copy of the ’285 patent is attached hereto as Exhibit A.

13. Before the ’285 patent issued, on December 15, 2010, Polaris filed a second patent application on its new progressive rate suspension technology. On April 10, 2012, U.S. Patent No. 8,151,923 (“’923 patent”) was issued by the U.S. Patent and Trademark Office. A copy of the ’923 patent is attached hereto as Exhibit B.

14. In February 2011, after the ’285 patent had issued, Defendants introduced a “new” progressive rate suspension called rMotion. Upon information and belief, Defendants initially incorporated rMotion into the following 2012 model year snowmobiles: MX Z X and MX Z X-RS.

15. Polaris contacted Defendants in March 2011 and informed them of the ’285 patent, the pending application that eventually became the ’923 patent and asked Defendants to stop using, offering for sale or selling any snowmobiles having the rMotion rear suspension.

16. Polaris contacted Defendants again in August 2011 about the two snowmobiles being marketed with the rMotion suspension.

17. Instead of stopping, Defendants expanded the number of their snowmobiles that incorporate rMotion for model year 2013. Defendants heavily promote the importance of the rMotion progressive rate rear suspension to sales of the snowmobiles that include this technology. For example, in one of Defendants' marketing brochures for the MZ Z X Defendants specifically tout rMotion: "rMotion rear suspension. No other skid offers as much capability, comfort or adjustability. And with the most progressive motion ratio in the industry, you won't notice little ripples and won't feel the big bumps."

18. Despite Polaris's efforts to get Defendants to stop marketing, importing and selling snowmobiles having the rMotion suspension, Defendants are now selling, offering for sale, and importing into the United States (including in this district) several snowmobile models having the rMotion suspension, which infringes both of Polaris's patents.

19. Polaris has not authorized Defendants under any of its patents or patent applications.

CLAIM I

PATENT INFRINGEMENT

20. Polaris repeats the allegations of paragraphs 1-19 of this Complaint.

21. On December 21, 2010, United States Patent No. 7,854,285 entitled Suspension Architecture For A Snowmobile was duly and legally issued to Polaris as assignee of the inventor Timothy Giese. Polaris is the owner of the entire right, title and interest in and to the '285 patent and has been and still is the owner thereof.

22. Defendants have each made, used, sold, offered for sale, or imported the MX Z X, MX Z X-RS, and numerous other snowmobiles having the rMotion rear suspension, which infringes Polaris's '285 patent.

23. Defendants have each also induced others, such as dealers, to infringe the '285 patent by encouraging and promoting the use, offer for sale or sale of Defendants' snowmobiles having the infringing rMotion rear suspension.

24. Defendants are aware of the '285 patent, and have been aware of the '285 patent during the period of infringement, and know that encouraging and promoting Defendants' customers, such as dealers, to use, offer for sale or sell Defendants' snowmobiles having the infringing rMotion rear suspension induce Defendants' customers to directly infringe the '285 patent. Defendants' knowledge of the '285 patent combined with its encouragement and promotion of the use, offer for sale or sale of Defendants' snowmobiles having the infringing rMotion rear suspension demonstrate that Defendants intended to induce their customers to infringe the '285 patent.

25. Plaintiff has complied with the notice provision of the patent statutes.

26. Defendants have had actual knowledge of the '285 patent since at least March 2011, and its infringement of this patent has been and continues to be willful and deliberate. By reason of Defendants' willful infringement, Polaris is entitled to recover actual damages, treble damages, attorneys' fees, and the costs of this litigation pursuant to 35 U.S.C. §§ 284 and 285 and injunctive relief pursuant to 35 U.S.C. §283.

27. Polaris has been damaged by Defendants' infringement of the '285 patent and will continue to be damaged in the future unless Defendants are permanently enjoined from infringing and inducing the infringement of said patent.

28. Polaris has also suffered monetary damages caused by Defendants' infringement in an amount to be proven at trial.

CLAIM II

PATENT INFRINGEMENT

29. Polaris repeats the allegations of paragraphs 1-28 of this Complaint.

30. On April 10, 2012, United States Patent No. 8,151,923 entitled Suspension Architecture For A Snowmobile was duly and legally issued to Polaris as assignee of the inventor Timothy Giese. Polaris is the owner of the entire right, title and interest in and to the '923 patent and has been and still is the owner thereof.

31. Defendants have each made, used, sold, offered for sale, or imported the MX Z X, MX Z X-RS, and numerous other snowmobiles having the rMotion rear suspension, which infringes Polaris's '923 patent.

32. Defendants have each also induced others, such as dealers, to infringe the '923 patent by encouraging and promoting the use, offer for sale or sale of Defendants' snowmobiles having the infringing rMotion rear suspension.

33. Defendants are aware of the '923 patent, and have been aware of the '923 patent during the period of infringement, and know that encouraging and promoting Defendants' customers, such as dealers, to use, offer for sale or sell Defendants' snowmobiles having the infringing rMotion rear suspension induce Defendants'

customers to directly infringe the '923 patent. Defendants' knowledge of the '923 patent combined with its encouragement and promotion of the use, offer for sale or sale of Defendants' snowmobiles having the infringing rMotion rear suspension demonstrate that Defendants intended to induce their customers to infringe the '923 patent.

34. Plaintiff has complied with the notice provision of the patent statutes.

35. Defendants have had actual knowledge of the '923 patent since at least April 2012 and its infringement of this patent has been and continues to be willful and deliberate. By reason of Defendants' willful infringement, Polaris is entitled to recover actual damages, treble damages, attorneys' fees, and the costs of this litigation pursuant to 35 U.S.C. §§ 284 and 285 and injunctive relief pursuant to 35 U.S.C. §283.

36. Polaris has been damaged by Defendants' infringement of the '923 patent and will continue to be damaged in the future unless Defendants are permanently enjoined from infringing and inducing the infringement of said patent.

37. Polaris has also suffered monetary damages caused by Defendants' infringement in an amount to be proven at trial.

JURY DEMAND

38. Polaris respectfully requests a jury trial for this matter.

WHEREFORE, the Plaintiff, Polaris Industries Inc., prays that the Court enter an order and judgment as follows:

A. that each Defendant has infringed (directly and by inducement) United States Patent No. 7,854,285;

- B. that each Defendant has infringed (directly and by inducement) United States Patent No. 8,151,923;
- C. preliminarily and permanently enjoining and restraining the Defendants, their directors, members, officers, agents, servants, employees, subsidiaries, affiliates, and all persons in active concert or participation with, through, or under them, at first during the pendency of this action and thereafter perpetually, from infringing and inducing infringement of United States Patent Nos. 7,854,285 and 8,151,923;
- D. that each Defendant, within thirty (30) days after service of notice of entry of judgment or issuance of an injunction pursuant thereto, file with the Court and serve upon Polaris's counsel a written report under oath setting forth details of the manner in which each Defendant has complied with the Court's order;
- E. awarding Polaris damages under 35 U.S.C. §§ 154 and 284, including treble damages for willful infringement;
- F. awarding Polaris its attorneys fees as provided by 35 U.S.C. § 285; and
- G. awarding Plaintiff such other relief as the Court may deem just and proper.

Polaris Industries Inc.

Date: June 13, 2012

By Counsel

s/Anthony R. Zeuli

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