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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

HOYT A. FLEMING,)	
)	Case No. _____
Plaintiff,)	
v.)	
)	COMPLAINT FOR PATENT
COBRA ELECTRONICS CORPORATION)	INFRINGEMENT
AND THE WHISTLER GROUP, INC.)	
)	DEMAND FOR JURY TRIAL
Defendants.)	
)	

Plaintiff Hoyt A. Fleming (“Fleming”) brings this action for infringement of U.S. Patent Numbers RE39,038 (“the ’038 patent”), RE40,653 (“the ’653 patent”), and RE41,905 (“the ’905 patent”). All allegations are made upon information and belief.

THE PARTIES

1. Fleming is an individual and resident of the State of Idaho.
2. Defendant Cobra Electronics Corporation (“Cobra”) is a Delaware corporation doing business at 6500 W. Cortland Street, Chicago, Illinois 60707.
3. Cobra, directly and through its authorized retailers, has sold and/or has offered for sale GPS-enabled radar detectors, including at least one or more of the XRS 9950G, XRS 9860G, XRS 9960G, XRS 9970G, XRS R10G, and SLR 650G, or the XRS 979, XRS 999, XRS 9845,

XRS 9945, XRS 9955, XRS 9965, XRS 9990, and XRS R8 when Cobra's optional GPS Locator is purchased, to customers and/or prospective customers in this District. These products will hereafter collectively be referred to as "the accused Cobra GPS-enabled products".

4. Cobra, directly and through its authorized retailers, has sold and/or has offered for sale compass-enabled radar detectors, including at least one or more of the XRS 970, XRS 979, XRS 999, XRS 9645, XRS 9745, XRS 9970, XRS 9845, XRS 9945, XRS 9955, XRS 9965, XRS 9990, XRS R8, XRS 9950G, XRS 9860G, XRS 9960G, XRS 9970G, XRS R10G, and SLR 600. These products will hereafter collectively be referred to as "the accused Cobra compass-enabled products".

5. Defendant The Whistler Group, Inc. ("Whistler") is an Arkansas company doing business at 3604 Wishing String Road, Bentonville, Arkansas 72712.

6. Whistler, directly and through its authorized retailers, has sold and/or has offered for sale compass-enabled radar detectors, including at least one or more of the Pro-78SE, XTR-475, XTR-540, XTR-575, XTR-580, XTR-590, XTR-590G, XTR-690, XTR-690SE, XTR-695, and XTR-695SE to customers and/or prospective customers in this District. These products will hereafter collectively be referred to as "the accused Whistler compass-enabled products".

JURISDICTION AND VENUE

7. This is an action for patent infringement arising under the Patent Laws of the United States, particularly 35 U.S.C. §§ 271 and 281–285. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331, 1332, and 1338.

8. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391(b), 1391(c), and 1400(b).

BACKGROUND

9. On March 28, 2006, the United States Patent and Trademark Office issued the '038

patent. A true and correct copy of the '038 patent is attached as Exhibit 1.

10. On March 10, 2009, the United States Patent and Trademark Office issued the '653 patent. A true and correct copy of the '653 patent is attached as Exhibit 2.

11. On November 2, 2010, the United States Patent and Trademark Office issued the '905 patent. A true and correct copy of the '905 patent is attached as Exhibit 3.

12. Fleming has licensed the '038, '653, and '905 patents to others. Each licensee is contractually required to mark, and has marked, its products with the licensed patents, thereby providing Cobra and Whistler at least constructive notice of the '038, '653, and '905 patents.

13. On March 10, 2009, Fleming sued Escort, Inc. ("Escort") and Beltronics USA, Inc. ("Beltronics") for infringement of the '038 and '653 patents.

14. On December 14, 2011, the Court ruled on summary judgment that Escort's Passport 9500i, Passport 9500ix, and Passport iQ, and Beltronics' GX65 infringe claims 18, 45, 47, and 48 in the '038 patent.

15. On July 3, 2012, a jury found that Escort and Beltronics directly infringe claims 1, 3, 5, 6, 7, 25, 26, 27, and 28 in the '038 patent and claims 22, 24, 31, 32, 33, 38, and 41 in the '653 patent.

16. On July 3, 2012, a jury found that Escort and Beltronics contributed to the infringement of claims 1, 3, 5, 6, 7, 25, and 28 in the '038 patent and claims 22, 24, 31, 32, and 33 in the '653 patent.

17. On July 3, 2012, a jury found certain claims in the '038 and '653 patents not invalid in view of certain alleged prior art.

18. During prosecution of the '905 patent, Fleming cited to the U.S. Patent Office all alleged prior art Escort or Beltronics had identified to Fleming.

COUNT ONE—INFRINGEMENT OF THE '038 PATENT

19. Fleming re-alleges and incorporates by reference paragraphs 1 – 18 above.

20. Fleming is the owner of all right, title, and interest in the '038 patent.

21. As demonstrated by Exhibit 4, Cobra has infringed and continues to infringe claims 1, 2, 3, 5, 6, 8, 18, 26, 27, 28, 29, 30, and 45 in the '038 patent under 35 U.S.C. § 271(a) by making, using, offering to sell, or selling in the United States, and/or by importing into the United States, without authorization, the accused Cobra GPS-enabled products.

22. Cobra has induced and continues to induce infringement of claims 1, 2, 3, 5, 6, 8, 18, 26, 27, 28, 29, 30, and 45 in the '038 patent under 35 U.S.C. § 271(b). Cobra is and has been aware of the '038 patent, and has intentionally taken action it knew would result, and has resulted, in direct infringement by others of claims 1, 2, 3, 5, 6, 8, 18, 26, 27, 28, 29, 30, and 45 in the '038 patent. For example, Cobra has and continues to sell the accused Cobra GPS-enabled products, as well as supply owner's/user's manuals, website explanations, product brochures, advertising, and/or other literature that teach, encourage, and otherwise induce infringement of claims 1, 2, 3, 5, 6, 8, 18, 26, 27, 28, 29, 30, and 45 in the '038 patent. The fact that users/purchasers of the accused Cobra GPS-enabled products actually use those products in an infringing manner can be inferred from Cobra's sale of the accused Cobra GPS-enabled products in combination with the above-described materials and activities that teach, encourage, and otherwise induce the users'/purchasers' direct infringement of claims 1, 2, 3, 5, 6, 8, 18, 26, 27, 28, 29, 30, and 45 in the '038 patent.

23. Cobra has contributed to and continues to contribute to infringement of claims 1, 2, 3, 5, 6, 8, 18, 26, 27, 28, 29, 30, and 45 in the '038 patent under 35 U.S.C. § 271(c). Cobra has and continues to offer to sell and to sell the accused Cobra GPS-enabled products knowing them to

be especially made or especially adapted for use in infringement of claims 1, 2, 3, 5, 6, 8, 18, 26, 27, 28, 29, 30, and 45 in the '038 patent, and that such products are not staple articles of commerce suitable for substantial non-infringing use.

24. As a result of Cobra's infringement of the '038 patent, Fleming has been damaged and will continue to be damaged unless such infringement is preliminarily and permanently enjoined by this Court.

25. Pursuant to 35 U.S.C. § 284, Fleming is entitled to damages adequate to compensate for him for Cobra's infringement, including, inter alia, a reasonable royalty.

26. Cobra's infringement of the '038 patent has been and is willful.

COUNT TWO—INFRINGEMENT OF THE '653 PATENT

27. Fleming re-alleges and incorporates by reference paragraphs 1 – 26 above.

28. Fleming is the owner of all right, title, and interest in the '653 patent.

29. As demonstrated by Exhibit 5, Cobra has infringed and continues to infringe claims 22, 23, 24, 25, 26, 30, 34, 36, 37, 38, 39, 40, 41, 42, 44, 46, 47, 49, and 50 in the '653 patent under 35 U.S.C. § 271(a) by making, using, offering to sell, or selling in the United States, and/or by importing into the United States, without authorization, the accused Cobra GPS-enabled products.

30. Cobra has induced and continues to induce infringement of claims 22, 23, 24, 25, 26, 30, 34, 36, 37, 38, 39, 40, 41, 42, 44, 46, 47, 49, and 50 in the '653 patent under 35 U.S.C. § 271(b). Cobra is and has been aware of the '653 patent, and has intentionally taken action it knew would result, and has resulted, in direct infringement by others of claims 22, 23, 24, 25, 26, 30, 34, 36, 37, 38, 39, 40, 41, 42, 44, 46, 47, 49, and 50 in the '653 patent. For example, Cobra has and continues to sell the accused Cobra GPS-enabled products, as well as supply owner's/user's

manuals, website explanations, product brochures, advertising, and/or other literature that teach, encourage, and otherwise induce infringement of claims 22, 23, 24, 25, 26, 30, 34, 36, 37, 38, 39, 40, 41, 42, 44, 46, 47, 49, and 50 in the '653 patent. The fact that users/purchasers of the accused Cobra GPS-enabled products actually use those products in an infringing manner can be inferred from Cobra's sale of the accused Cobra GPS-enabled products in combination with the above-described materials and activities that teach, encourage, and otherwise induce the users'/purchasers' direct infringement of claims 22, 23, 24, 25, 26, 30, 34, 36, 37, 38, 39, 40, 41, 42, 44, 46, 47, 49, and 50 in the '653 patent.

31. Cobra has contributed to and continues to contribute to infringement of claims 22, 23, 24, 25, 26, 30, 34, 36, 37, 38, 39, 40, 41, 42, 44, 46, 47, 49, and 50 in the '653 patent under 35 U.S.C. § 271(c). Cobra has and continues to offer to sell and to sell the accused Cobra GPS-enabled products knowing them to be especially made or especially adapted for use in infringement of claims 22, 23, 24, 25, 26, 30, 34, 36, 37, 38, 39, 40, 41, 42, 44, 46, 47, 49, and 50 in the '653 patent, and that such products are not staple articles of commerce suitable for substantial non-infringing use.

32. As a result of Cobra's infringement of the '653 patent, Fleming has been damaged and will continue to be damaged unless such infringement is preliminarily and permanently enjoined by this Court.

33. Pursuant to 35 U.S.C. § 284, Fleming is entitled to damages adequate to compensate him for Cobra's infringement, including, inter alia, a reasonable royalty.

34. Cobra's infringement of the '653 patent has been and is willful.

COUNT THREE—INFRINGEMENT OF THE '905 PATENT

35. Fleming re-alleges and incorporates by reference paragraphs 1 – 34 above.

36. Fleming is the owner of all right, title, and interest in the '905 patent.

37. As demonstrated by Exhibit 6, Cobra has infringed and continues to infringe claims 22-48 and 50 in the '905 patent under 35 U.S.C. § 271(a) by making, using, offering to sell, or selling in the United States, and/or by importing into the United States, without authorization, the accused Cobra GPS-enabled products.

38. As demonstrated by Exhibit 7, Cobra has infringed and continues to infringe claims 22-23, 36, 38, and 50 in the '905 patent under 35 U.S.C. § 271(a) by making, using, offering to sell, or selling in the United States, and/or by importing into the United States, without authorization, the accused Cobra compass-enabled products.

39. Cobra has induced and continues to induce infringement of claims 22-48 and 50 in the '905 patent under 35 U.S.C. § 271(b). Cobra is and has been aware of the '905 patent and has intentionally taken action it knew would result, and has resulted, in direct infringement by others of claims 22-48 and 50 in the '905 patent. For example, Cobra has and continues to sell the accused Cobra GPS-enabled and compass-enabled products, as well as supply owner's/user's manuals, website explanations, product brochures, advertising, and/or other literature that teach, encourage, and otherwise induce infringement of claims 22-48 and 50 in the '905 patent. The fact that users/purchasers of the accused Cobra GPS-enabled and compass-enabled products actually use those products in an infringing manner can be inferred from the circumstances of Cobra's sale of those products in combination with the above-described materials and activities that teach, encourage, and otherwise induce the users'/purchasers' direct infringement of claims 22-48 and 50 in the '905 patent.

40. Cobra has contributed to and continues to contribute to infringement of claims 22-48 and 50 in the '905 patent under 35 U.S.C. § 271(c). Cobra has and continues to offer to sell and to

sell the accused Cobra GPS-enabled and compass-enabled products knowing them to be especially made or especially adapted for use in infringement of claims 22-48 and 50 in the '905 patent, and that such products are not staple articles of commerce suitable for substantial non-infringing use.

41. As demonstrated by Exhibit 8, Whistler has infringed and continues to infringe claims 22, 23, 36, 38, and 50 in the '905 patent under 35 U.S.C. § 271(a) by making, using, offering to sell, or selling in the United States, and/or by importing into the United States, without authorization, the accused Whistler compass-enabled products.

42. As a result of Cobra's and Whistler's infringement of the '905 patent, Fleming has been damaged and will continue to be damaged unless such infringement is preliminarily and permanently enjoined by this Court.

43. Pursuant to 35 U.S.C. § 284, Fleming is entitled to damages adequate to compensate him for Cobra's and Whistler's infringement, including, inter alia, a reasonable royalty.

44. Cobra's infringement of the '905 patent has been and is willful.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Fleming prays that the Court enter a judgment against defendants as follows:

A. A decree that Cobra has infringed the '038 patent, the '653 patent, and the '905 patent, and that Whistler has infringed the '905 patent;

B. A preliminary and permanent injunction restraining each defendant, its officers, directors, agents, employees, representatives, distributors, customers, servants, attorneys and all persons in active concert or participation with them from further acts of infringement of the '038 patent, the '653 patent, and/or the '905 patent;

- C. An award of damages against each defendant sufficient to compensate Mr. Fleming for each defendant's infringement of the '038 patent, the '653 patent, and/or the '905 patent in an amount not less than a reasonable royalty;
- D. An award of treble the damages;
- E. An award of prejudgment interest from the date of each act of infringement of the '038 patent, the '653 patent, and/or the '905 patent by each defendant to the day a damages judgment is entered, and a further award of post-judgment interest continuing until such judgment is paid;
- F. An award of reasonable attorneys' fees against each defendant and Fleming's costs of suit against each defendant; and
- G. Such other and further relief as this Court deems just and appropriate.

JURY TRIAL DEMANDED

Fleming demands a jury trial against defendants on all triable issues.

August 3, 2012

Respectfully Submitted

/s/

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