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3:03-CV-00535 PULSE ENGINEERING V. REGAL ELECTRONICS

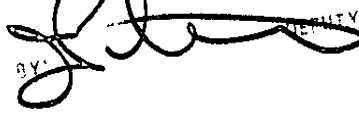
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CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIABY: 

Frederick S. Berretta (State Bar No. 144,757)
 Jeffrey A. Birchak (State Bar No. 214,206)
 KNOBBE, MARTENS, OLSON & BEAR, LLP
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 San Diego, CA 92101
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Attorneys for Plaintiff
 PULSE ENGINEERING, INC.

IN THE UNITED STATES DISTRICT COURT
 FOR THE SOUTHERN DISTRICT OF CALIFORNIA

PULSE ENGINEERING, INC.,
 a Delaware corporation,

Plaintiff,

v.

REGAL ELECTRONICS, INC.,
 a California corporation,

Defendant.

Civil Action No.:

'03 CV 0535 W JFS

COMPLAINT FOR DECLARATORY
 JUDGMENT OF:

(1) NONINFRINGEMENT OF U.S.
 PATENT NO. 6,171,152; AND

(2) INVALIDITY OF U.S. PATENT NO.
 6,171,152

Plaintiff PULSE ENGINEERING, INC. ("Pulse") hereby complains of Defendant
 REGAL ELECTRONICS, INC. ("Regal") and alleges as follows:

JURISDICTION AND VENUE

1. This is an action arising under the Declaratory Judgment Act, 28 U.S.C. §§
 2201 and 2202, and the Patent Laws of the United States, based upon an actual justicible
 controversy between the parties, to declare that Pulse is free to continue to make, use, sell,
 offer to sell, and import all of its electronic connector products, particularly the "PulseJack"
 brand of RJ series connectors, alleged by Regal to infringe the asserted patent rights of Regal.
 The Court has jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a).

2. Venue is proper in this judicial district under 28 U.S.C. § 1391(b) and (c).

THE PARTIES

3. Plaintiff Pulse is a Delaware corporation with a principal place of business located at 12220 World Trade Drive, San Diego, California, 92128.

4. Plaintiff is informed and believes, and thereon alleges, that Defendant Regal is a California corporation with a principal place of business located at 1141 North Fair Oaks Avenue, Sunnyvale, California, 94089, and that Regal does business and sells products in this judicial district.

5. By letters from Regal's counsel dated December 2, 2002, February 18, 2003, and March 11, 2003, Regal accused Pulse, and particularly Pulse's "PulseJack" brand of RJ series of connectors, of infringing Regal's U.S. Patent No. 6,171,152 ("the '152 patent").

CLAIMS FOR RELIEF

I. FIRST CLAIM FOR RELIEF

(Declaration of Patent Noninfringement)

6. Pulse incorporates by reference and realleges each of the allegations set forth in paragraphs 1 through 5 of this Complaint.

7. As Pulse understands the asserted claims of the '152 patent, to the extent that they can be understood, the '152 patent is not infringed by any products made, used, sold, offered for sale, or imported by Pulse.

8. Regal has asserted the '152 patent against Pulse, and thus declaratory relief is both appropriate and necessary to establish that the '152 patent is not infringed by Pulse.

II. SECOND CLAIM FOR RELIEF

(Declaration of Patent Invalidity)

9. Pulse incorporates by reference and realleges each of the allegations set forth in paragraphs 1 through 8 of this Complaint.

10. Pulse is informed and believes, and thereon alleges, that the '152 patent is invalid under 35 U.S.C. §§ 102, 103, and 112 for one or more of the following reasons:

A. The invention claimed is not novel for one or more of the reasons set forth in 35 U.S.C. § 102;

1 B. The invention claimed would have been obvious to one of ordinary
2 skill in the art at the time the invention was made under 35 U.S.C. § 103;

3 C. The specification and claims of the '152 patent do not comply with one
4 or more of the requirements of 35 U.S.C. § 112.

5 11. Regal has asserted the '152 patent against Pulse, and thus declaratory relief is
6 both appropriate and necessary to establish that the '152 patent is invalid and thus cannot be
7 asserted against Pulse.

8 **DEMAND FOR JUDGMENT**

9 WHEREFORE Pulse prays for judgment against Regal as follows:

10 A. That a judgment be entered that the manufacture, use, sale, offer for sale, and
11 importation of any and all of the products of Pulse have not infringed and do not infringe any
12 claim of U.S. Patent No. 6,171,152;

13 B. That a judgment be entered declaring that the claims of U.S. Patent No.
14 6,171,152 are invalid, and thus without force or effect against Pulse, and its officers, agents,
15 servants, and employees;

16 C. That Pulse has a lawful right to make, use, sell, offer for sale, and import any
17 and all of its electronic connector products, particularly the "PulseJack" brand of RJ series
18 connectors;

19 D. That Regal and its agents, representatives, attorneys, and those persons in
20 active concert or participation with any of such persons who receive actual notice thereof, be
21 permanently enjoined from initiating patent infringement litigation against, or threatening
22 Pulse, or any of its customers, dealers, or suppliers, or any prospective or present sellers,
23 dealers, distributors, or customers of Pulse with patent infringement litigation, or charging
24 any of them either aurally or in writing with infringement of the patent in suit or any other
25 patents held by Regal pertaining to electronic connector products;

26 E. That this case be found exceptional under 35 U.S.C. § 285 because Regal has
27 asserted the '152 patent knowing that it is not infringed and/or is invalid, and that Pulse is
28 therefore entitled to recover its attorney fees;

1 F. That Pulse be awarded costs, attorney fees, and other relief, both legal and
2 equitable, to which it may be justly entitled; and

3 G. That Pulse be awarded such other and further relief as is deemed just and
4 proper by the Court.

5 Respectfully submitted,

6 KNOBBE, MARTENS, OLSON & BEAR, LLP

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9 Dated: March 17, 2003

By: 

10 Frederick S. Berretta
11 Jeffrey A. Birchak

12 Attorneys for Plaintiff
13 PULSE ENGINEERING, INC.

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The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE SECOND PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

PULSE ENGINEERING, INC., a Delaware corporation

DEFENDANTS

REGAL ELECTRONICS, INC., a California corporation

03 MAR 17 1993
CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF San Diego
(EXCEPT IN U.S. PLAINTIFF CASES) BY:

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT Santa Clara
(IN U.S. PLAINTIFF CASES ONLY)

DEPUTY
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

Knobbe, Martens, Olson & Bear, LLP
550 West "C" Street
Suite 1200
San Diego, CA 92101
619-235-8550

ATTORNEYS (IF KNOWN)

'03 ev 0535 W JFS

II. BASIS OF JURISDICTION (PLACE AN "X" IN ONE BOX ONLY)

- ☐ 1 U.S. Government Plaintiff
☐ 2 U.S. Government Defendant
☒ 3 Federal Question (U.S. Government Not a Party)
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN "X" IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

- | | PT | DEF | | PT | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY.)

This is an action arising under the Declaratory Judgment Act 28 Sections 2201 & 2202 and the Patent Laws of the United States.

V. NATURE OF SUIT (PLACE AN "X" IN ONE BOX ONLY)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Medical Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Rel. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input checked="" type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (13958) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reappointment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions

VI. ORIGIN

(PLACE AN "X" IN ONE BOX ONLY)

- ☒ 1 Original Proceeding
☐ 2 Removal from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from another district (specify)
☐ 6 Multidistrict Litigation
☐ 7 Appeal to District Judge from Magistrate Judgment

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION DEMAND \$
UNDER F.R.C.P. 23

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ YES ☐ NO

VIII. RELATED CASE(S) IF ANY (See instructions):

JUDGE

Docket Number

DATE

SIGNATURE OF ATTORNEY OF RECORD

March 17, 2003

Frederick S. Berretta