

Robert A. Huntsman
law2010@huntsmanlg.com
ISB #5345
HUNTSMAN LAW GROUP, PLLC
10400 W. Overland Road, #174
Boise, ID 83709

Telephone Number: (208) 860-4379
Facsimile Number: (208) 362-3723

Attorney for the Plaintiff

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

REKLUSE MOTOR SPORTS, INC., an
Idaho corporation,
Plaintiff,

vs.

DRUSSEL WILFLEY DESIGN, LLC, a
Colorado Limited Liability Company,

Defendant.

Case No.

**COMPLAINT FOR DECLARATORY
JUDGMENT OF INVALIDITY**

Plaintiff Rekluse further brings an action for a declaration of invalidity of U.S. Patent Number 7,810,624 (the '624 patent.)

THE PARTIES

1. Plaintiff Rekluse Motor Sports, Inc. (hereafter "Rekluse") is an Idaho Corporation with its principal place of business at 110 E 43rd Street, Garden City, Idaho.
2. Defendant Drussel Wilfley Design, LLC. (hereafter "DWD"), is a limited liability company organized under the laws of Colorado, having a place of business at 7350 East Progress Place, Denver, Colorado 80201.

JURISDICTION AND VENUE

3. This Court has personal jurisdiction of the Defendant because Defendant transacts business in the state of Idaho, sells, and continues to offer for sale its products in the State of Idaho.

4. On information and belief Defendant DWD owns the entire interest in the '624 patent which issued on October 12, 2010.

5. Defendant DWD has previously sued Plaintiff Rekluse for patent infringement for related patents involving highly related technology, and that lawsuit has not been resolved.

6. Defendant DWD received its issued '624 patent using an expedited procedure at the United States Patent and Trademark wherein much of the searching and analysis of prior art normally done by the Examiner at the U.S. Patent and Trademark Office is instead done by the Applicant.

7. Rekluse has reasonable apprehension for suit for patent infringement by DWD.

8. By reason of the pending litigation an actual and justiciable controversy between the parties has arisen within the meaning of 28 U.S.C. §§ 2201 and 2202.

9. Venue in this district is proper under 28 U.S.C. § 1391(c) and § 1400(b).

BACKGROUND

10. On October 10, 2010, the United States Patent and Trademark issued U.S. Patent No. 7,810,624 to Alan Overton which, according the first page of the '624 patent, has been assigned to DWD. A true copy of the '624 patent is attached as Exhibit 1.

COUNT ONE – DECLARATION OF INVALIDITY OF U.S. PATENT NUMBER

7,810,624

11. Plaintiff realleges and incorporates by reference paragraphs 1-10 above.

12. Each claim of the '624 patent is invalid because the patent and alleged invention therein fails to comply with the requirements of 35 U.S.C. §§ 101 et. seq., including, but not limited to, 35 U.S.C. §§ 101, 102, 103 and 112.

13. Each claim of the '624 patent is invalid and unenforcable because the patent was fraudulently obtained due to inequitable conduct on the part the prosecuting attorney Mr. Michael Cantina.

14. Each claim of the '624 patent is invalid and unenforcable because the patent was fraudulently obtained due to inequitable conduct on the part the Applicant Alan Overton.

15. Each claim of the '624 patent is invalid and unenforcable because the patent was fraudulently obtained due to inequitable conduct on the part the prosecuting Michael Wilfley, the CEO of assignee DWD.

**COUNT TWO – DECLARATION OF INEQUITABLE CONDUCT IN THE
PROSECUTION OF U.S. PATENT NUMBER 7,810,624**

16. Plaintiff realleges and incorporates by reference paragraphs 1-15 above.

17. Defendant DWD petitioned and was granted a request to expedite the application of the patent that issued as the '624 patent.

18. DWD CEO Michael Wilfley, '624 patent applicant Alan Overton, and DWD patent attorney of record for the '624 patent Mr. Michael Cantina had a heightened responsibility to disclose and explain all known applicable prior art to facilitate expedited prosecution of its application.

19. Mr. Wilfley, Mr. Overton, and Mr. Cantina failed to property characterize relevant prior art during the prosecution of the '624 patent with the intent to deceive the United States Patent and Trademark Office and did indeed deceive the office.

20. DWD and Rekluse are fierce competitors in the arena of automatic motorcycles clutches. The parties are involved in multiple lawsuits in Federal Courts in Idaho and Colorado regarding each other's products and intellectual property, including patents issued to both parties, and because of the protracted litigation Mr. Wilfley, Mr. Overton, and Mr. Cantina are very familiar with Rekluse's issued patents and published patent applications.

21. Each claim of the '624 patent is invalid because Mr. Wilfley, Mr. Overton, and Mr. Cantina, collectively and individually, unlawfully engaged in inequitable conduct in the acquisition of the '624 patent by misrepresenting Rekluse's previously issued patent, U.S. Pat No. 6,957,730 (the '730 patent) that covers identical technology.

22. Each claim of the '624 patent is invalid because Mr. Wilfley, Mr. Overton, and Mr. Cantina, collectively and individually, unlawfully engaged in inequitable conduct in the acquisition of the '624 patent by misrepresenting Rekluse's previously published patent application 2009/0242351 (the '351 patent application) that covers identical technology.

23. Each claim of the '624 patent is invalid because Mr. Wilfley, Mr. Overton, and Mr. Cantina, collectively and individually, unlawfully engaged in inequitable conduct in the acquisition of the '624 patent by misrepresenting Rekluse's previously published patent application 2008/0308380 (the '380 patent application) that covers identical technology.

24. On information and belief, in the patent application for the '624 patent, the Applicant Alan Overton, through counsel Mr. Cantina, with the knowledge of Mr. Wilfley in the accelerated examination support document (hereafter "the AESD") made numerous false statements and characterizations regarding Rekluse's issued patents and published patent applications with the intent to deceive the U.S Patent and Trademark Office and in fact did

deceive the U.S Patent and Trademark Office by knowingly mischaracterizing disabling prior art.

25. All false statements made by the Applicant are attributable to Mr. Wilfley, Mr. Overton, and Mr. Cantina.

26. In the AESD, page 7, paragraph 5 the Applicant falsely stated:

"With respect to claim 1, [the '351 patent application] does NOT disclose a plurality of first clutch plates positioned within the clutch basket, each of the plurality of first clutch plates having a plurality of teeth for engaging with a corresponding teeth engaging slot of the plurality of teeth engaging slots of the clutch basket, each of the plurality of first clutch plates comprising a non-metal material."

27. The Applicant's false statement above is contradicted by paragraph [0028] of the '351 patent application which does in fact disclose the limitation as recited in Claim 1 of the '624 patent.

28. In the AESD, page 7, paragraph 6 the Applicant falsely stated:

"With respect to claim 1, [the '351 patent application] does NOT disclose a plurality of second clutch plates positioned within the clutch basket, each of the plurality second clutch plates having a plurality of radially inwardly extending teeth, each of the plurality of radially inwardly extending teeth engaging with a corresponding radial slot of the plurality of slots of the cylindrical wall of the hub, each of the plurality of second clutch plates composed of a metal material."

29. The Applicant's false statement above is contradicted by paragraph [0028] of the '351 patent application which does in fact disclose the limitation as recited in Claim 1 of the '624 patent.

30. In the AESD, page 8, paragraph 2 the Applicant falsely stated:

"With respect to claim 1, [the '351 patent application] does NOT disclose a dynamic expansion ring assembly positioned substantially in a middle of the clutch basket."

31. The Applicant's false statement above is contradicted by paragraph [0030] of the '351 patent application which does in fact disclose the limitation as recited in Claim 1 of the '624 patent.

32. In the AESD, page 8, paragraph 2 the Applicant falsely stated:

"[The '351 patent application] does NOT disclose the first cam ring portion comprising a plurality of cam receiving portions, a plurality of external teeth and a plurality of cam faces, the second ring portion comprising a plurality of indented cam faces, wherein each of the plurality of external teeth engage with a corresponding teeth engaging slot of the plurality of teeth engaging slots of the clutch basket, wherein the plurality of cam members are capable of moving inward and outward in the each of the plurality of cam receiving portions."

33. The Applicant's false statement above is contradicted by paragraph [0019] of the provisional patent application of the '351 patent application from which the '351 patent application derives its priority dates and is included by reference in the '351 patent application.

34. In the AESD, page 9, paragraph 1 the Applicant falsely stated:

"With respect to claim 1, [the '351 patent application] does NOT disclose a gap present between the cover plate and an end plate of the plurality of first clutch plates when the engine is at an idle speed and each of the plurality of cam members is positioned radially inward in the dynamic expansion ring assembly, and the gap is not present when the engine is operating faster than idle and each of the plurality of cam members is positioned radially outward in the dynamic expansion ring assembly by centrifugal force."

35. The Applicant's false statement above is contradicted by paragraphs [0010], [0014], and [0019] of the provisional patent application from which the '351 patent application derives its priority dates and is included by reference in the '351 patent application and which does in fact disclose the limitation as recited in Claim 1 of the '624 patent.

36. In the AESD, page 10, paragraph 5 the Applicant falsely stated:

"With respect to claim 1, [the '380 patent application] does NOT disclose a plurality of first clutch plates positioned within the clutch basket, each of the plurality of first clutch plates having a plurality of teeth for engaging with a corresponding teeth engaging slot of the plurality of teeth engaging slots of the clutch basket, each of the plurality of first clutch plates comprising a non-metal material."

37. The Applicant's false statement above is contradicted by paragraph [0042] of the '380 patent application which does in fact disclose the limitation as recited in Claim 1 of the '624 patent.

38. In the AESD, page 10, paragraph 6 the Applicant falsely stated:

“With respect to claim 1, [the ‘380 patent application] does NOT disclose a plurality of second clutch plates positioned within the clutch basket, each of the plurality second clutch plates having a plurality of radially inwardly extending teeth, each of the plurality of radially inwardly extending teeth engaging with a corresponding radial slot of the plurality of slots of the cylindrical wall of the hub, each of the plurality of second clutch plates composed of a metal material.”

39. The Applicant’s false statement above is contradicted by paragraph [0042] of the ‘380 patent application which does in fact disclose the limitation as recited in Claim 1 of the ‘624 patent.

40. In the AESD, page 16, paragraph 5 the Applicant falsely stated:

"With respect to claim 1 [the ‘730 patent] does NOT disclose a plurality of first clutch plates positioned within the clutch basket, each of the plurality of first clutch plates having a plurality of teeth for engaging with a corresponding teeth engaging slot of the plurality of teeth engaging slots of the clutch basket, each of the plurality of first clutch plates comprising a non-metal material.”

41. The Applicant’s false statement above is contradicted by Figure 1A and the text at column 3, line 51 of the ‘730 patent which does in fact disclose the limitation as recited in Claim 1 of the ‘624 patent.

42. In the AESD, page 16, paragraph 5 the Applicant falsely stated:

“With respect to claim 1, 1 [the ‘730 patent] does NOT disclose a plurality of second clutch plates positioned within the clutch basket, each of the plurality second clutch plates having a plurality of radially inwardly extending teeth, each

of the plurality of radially inwardly extending teeth engaging with a corresponding radial slot of the plurality of slots of the cylindrical wall of the hub, each of the plurality of second clutch plates composed of a metal material.”

43. The Applicant’s false statement above is contradicted by Figure 1A and the text at column 3, line 51 of the ‘730 patent which does in fact disclose the limitation as recited in Claim 1 of the ‘624 patent.

44. In the AESD at page 28 the Applicant falsely stated:

“Specifically, [the ‘351 patent application] does not disclose a plurality of first clutch plates positioned within the clutch basket with each of the first clutch plates having a plurality of teeth for engaging with a corresponding teeth engaging slot of the plurality of teeth engaging slots of the clutch basket, and each of the first clutch plates comprising a nonmetal material.”

45. The Applicant’s false statement above is contradicted by paragraph [0028] of the ‘351 patent application which does in fact disclose the limitation as recited in Claim 1 of the ‘624 patent.

46. In the AESD at page 28 the Applicant falsely stated:

“Specifically, [the ‘351 patent application] does not disclose a plurality of second clutch plates positioned within the clutch basket with each of the second clutch plates having a plurality of radially inwardly extending teeth, each of the plurality of radially inwardly extending teeth engaging with a corresponding radial slot of the plurality of slots of the cylindrical wall of the hub, and each of the second clutch plates composed of a metal material.”

47. The Applicant's false statement above is contradicted by paragraph [0028] of the '351 patent application which does in fact disclose the limitation as recited in Claim 1 of the '624 patent.

48. In the AESD at page 28 the Applicant falsely stated:

“Specifically, [the '351 patent application] does not disclose a dynamic expansion ring assembly positioned substantially in a middle of the clutch basket. . .”

49. The Applicant's false statement above is contradicted by paragraph [0030] of the '351 patent application which does in fact disclose the limitation as recited in Claim 1 of the '624 patent.

50. In the AESD at page 28 the Applicant falsely stated:

“Specifically, [the '380 patent application] does not disclose . . . a first cam ring portion comprising a plurality of cam receiving portions, a plurality of external teeth and a plurality of cam faces, and a second ring portion comprising a plurality of indented cam faces, wherein each of the external teeth engage with a corresponding teeth engaging slot of the plurality of teeth engaging slots of the clutch basket, and wherein the plurality of cam members are capable of moving inward and outward in the each of the plurality of cam receiving portions. “

51. The Applicant's false statement above is contradicted by paragraph [0019] of the provisional patent application of the '351 patent application from which the '351 patent application derives its priority dates and is included by reference in the '351 patent application and which does in fact disclose the limitation as recited in Claim 1 of the '624 patent.

52. In the AESD at page 28 the Applicant falsely stated:

“Specifically, [the ‘351 patent application] does not disclose the dynamic expansion ring assembly imparting substantially equal expansion forces in opposite directions away from the dynamic expansion ring assembly and against the plurality of first clutch plates and the plurality of second clutch plates to urge into clutching engagement.”

53. The Applicant’s false statement above is contradicted by the teachings of the ‘351 patent application which does in fact disclose the limitation as recited in Claim 1 of the ‘624 patent.

54. In the AESD at page 28 the Applicant falsely stated:

“Specifically, [the ‘351 patent application] does not disclose a gap present between the cover plate and an end plate of the plurality of first clutch plates when the engine is at an idle speed and each of the plurality of cam members is positioned radially inward in the dynamic expansion ring assembly, and the gap is not present when the engine is operating faster than idle and each of the plurality of cam members is positioned radially outward in the dynamic expansion ring assembly by centrifugal force. Thus, [the ‘351 patent application] does not anticipate claim 1.”

55. The Applicant’s false statement above is contradicted by paragraphs [0010], [0014], and [0019] of the provisional patent application from which the ‘351 patent application derives its priority dates and is included by reference in the ‘351 patent application and which does in fact disclose the limitation as recited in Claim 1 of the ‘624 patent.

56. In the AESD, beginning at page 35 the Applicant falsely stated:

"Further as shown in the images set forth below, the clutch mechanism of the Present Invention is structurally different than the clutch mechanisms of the

references deemed most closely related ([the '351 patent application, the '380 patent application, and the '730 patent]. . .)."

57. The Applicant's false statement above is contradicted by figures 7 and 8 of the provisional patent application of the '351 patent application from which the '351 patent application derives its priority dates and is included by reference in the '351 patent application and which does in fact disclose the limitation as recited in Claim 1 of the '624 patent.

58. In the AESD, beginning at page 44 the Applicant falsely stated:

" . . . the references deemed most closely related (([the '351 patent application, the '380 patent application, and the '730 patent]. . .), all fail to anticipate the claim of the Present Invention under 35 U.S.C. §102(a)-(g) at least because none of these references discloses each and every limitation of the claim of the Present Invention. (MPEP 2131)."

59. The Applicant's false statement above is contradicted by the '351 patent application which does in fact disclose every limitation as recited in Claim 1 of the '624 patent.

60. In the AESD, beginning at page 46 the Applicant falsely stated:

"[the '351 patent application, the '380 patent application, and the '730 patent] all fail to disclose a dynamic expansion ring assembly positioned substantially in a middle of the clutch basket . . ."

61. The Applicant's false statement above is contradicted by paragraph [0030] of the '351 patent application which does in fact disclose the limitation as recited in Claim 1 of the '624 patent.

62. In the AESD, beginning at page 46 the Applicant falsely stated:

“[the ‘351 patent application, the ‘380 patent application, and the ‘730 patent] all fail to disclose . . . a first cam ring portion comprising a plurality of cam receiving portions, a plurality of external teeth and a plurality of cam faces, and a second ring portion comprising a plurality of indented cam faces, wherein each of the external teeth engage with a corresponding teeth engaging slot of the plurality of teeth engaging slots of the clutch basket, and wherein the plurality of cam members are capable of moving inward and outward in the each of the plurality of cam receiving portions as claimed.”

63. The Applicant’s false statement above is contradicted by paragraph [0019] of the provisional patent application of the ‘351 patent application from which the ‘351 patent application derives its priority dates and is included by reference in the ‘351 patent application and which does in fact disclose the limitation as recited in Claim 1 of the ‘624 patent.

64. In the AESD, beginning at page 46 the Applicant falsely stated:

“[the ‘351 patent application, the ‘380 patent application, and the ‘730 patent] all fail to disclose the dynamic expansion ring assembly imparting substantially equal expansion forces in opposite directions away from the dynamic expansion ring assembly and against the plurality of first clutch plates and the plurality of second clutch plates to urge into clutching engagement.”

65. The Applicant’s false statement above is contradicted by the ‘351 patent application which does in fact inherently disclose the limitation as recited in Claim 1 of the ‘624 patent.

66. In the AESD, beginning at page 46 the Applicant falsely stated:

[the '351 patent application, the '380 patent application, and the '730 patent] all fail to disclose a gap present between the cover plate and an end plate of the plurality of first clutch plates when the engine is at an idle speed and each of the plurality of cam members is positioned radially inward in the dynamic expansion ring assembly, and the gap is not present when the engine is operating faster than idle and each of the plurality of cam members is positioned radially outward in the dynamic expansion ring assembly by centrifugal force.”

67. The Applicant’s false statement above is contradicted by paragraphs [0010], [0014], and [0019] of the provisional patent application from which the '351 patent application derives its priority dates and is included by reference in the '351 patent application and which does in fact disclose the limitation as recited in Claim 1 of the '624 patent.

68. If not for one or more of the Applicant’s false statements made before the United States Patent and Trademark Office during the prosecution of the '624 patent, Claim 1 of the '624 patent would not have been granted.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray that the Court enter a judgment against Defendants as follows:

- A. A finding of inequitable conduct by Mr. Cantina;
- B. A finding of inequitable conduct by Mr. Overton;
- C. A finding of inequitable conduct by Mr. Wilfley;
- D. A decree and declaration that the claims of the '624 patent are invalid due to inequitable conduct;
- E. A decree and declaration that the claims of the '624 patent are unenforceable due to inequitable conduct;

- F. A finding that this case is exceptional;
- G. An award of treble damages and attorneys fees pursuant to 35 U.S.C. § 284;
- H. Such other and further relief authorized by statute or deemed just and appropriate by this Court.

Dated this 1st day of November, 2010.

HUNTSMAN LAW GROUP, PLLC

By /s/Robert A. Huntsman
Robert A. Huntsman
Attorney for Plaintiff