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ORIGINAL

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

U.S. DISTRICT COURT NORTHERN DISTRICT OF TEXAS
FILED
MAY 31 2000
NANCY DOHERTY, CLERK
By _____ Deputy

GEMMY INDUSTRIES CORP.,	§
Plaintiff,	§
	§
v.	§
	§
VIC'S NOVELTY, INC.,	§
Defendant.	§

CIVIL ACTION NO.

3 - 0 0 C V 1 1 5 2 - P

COMPLAINT FOR DECLARATORY JUDGMENT

Plaintiff Gemmy Industries Corp. (hereinafter "Gemmy") files this Complaint and cause of action against Defendant Vic's Novelty, Inc. (hereinafter "Defendant") and respectfully states as follows:

JURISDICTION AND VENUE

1. This is an action for declaratory judgment of patent non-infringement and patent invalidity arising under 28 U.S.C. §2201 and 35 U.S.C. §1 et seq. This Court has jurisdiction of this action under 28 U.S.C. §§1331, 1338 and 2201(a), and 35 U.S.C. §1 et seq. Venue is proper in this district under 28 U.S.C. §1391.

THE PARTIES

2. Plaintiff Gemmy Industries Corp. is a corporation organized under the laws of the State of Texas with its principal place of business in Dallas, Texas. Plaintiff has been and is doing business in this district. Plaintiff sells certain novelty products in this district and elsewhere.

3. Plaintiff is informed and believes and on that basis alleges that Defendant Vic's Novelty, Inc. is organized and existing under the laws of California. Plaintiff is informed and believes and on that basis alleges that defendant has done and is doing business in this district and the acts complained of occurred in this district.

4. In a letter sent to Plaintiff Gemmy Industries Corp. at its Texas address, Defendant's licensee asserted claims under the patent laws and made threat of patent infringement. Upon information and belief, defendant is the owner of U.S. Patent No. 4,775,351 and claimed patent infringement under this patent.

5. Plaintiff is in apprehension of suit for patent infringement by Defendant and such threatened action casts a cloud over Plaintiff's business.

**COUNT I
REQUEST FOR DECLARATORY JUDGMENT**

6. Plaintiff realleges each and every allegation set forth in paragraphs 1 through 5 above as if fully set forth herein.

7. An actual justiciable controversy exists between the parties regarding whether a claim exists for infringement of U.S. Patent No. 4,775,351 under 35 U.S.C. §271 *et seq.* Defendant's agents and licensee has threatened Gemmy with a claim of patent infringement and demanded that Gemmy stop importing and selling certain novelty products.

8. Plaintiff seeks to have the Court declare the rights, status and legal relationship of the parties under one or more federal statutes.

9. Plaintiff requests that the Court enter a declaratory judgment in its favor declaring that (a) Gemmy does not infringe any valid patent rights of Defendant; (b) Defendant does not have any valid patent rights to exclude the sale of any goods or services; and (c) Defendant has not been injured by any conduct of Gemmy in connection with its sales of the product.

RELIEF REQUESTED

WHEREFORE, Gemmy Industries Corp. prays for the following relief:

1. That the Court declare that Gemmy is not in violation of any valid patent rights of Defendant;

2. Plaintiff be granted all costs of this action including attorneys fees, together with such other and further relief as justice may require.

Respectfully Submitted,



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ATTORNEYS FOR PLAINTIFF,
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