

ORIGINAL

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS DALLAS DIVISION

FOSSIL, INC., and BOIT, INC.,

Plaintiffs,

v.

WAL-MART STORES, INC., AMERITIME CORPORATION, and TIMEX CORPORATION

Defendants.

§ CIVIL ACTION NO. 3 03CV1671G
§
§ JURY TRIAL DEMANDED
§
§ District Judge: A. Joe Fish
§ Magistrate Judge: Jeff Kaplan

PLAINTIFFS FOSSIL, INC. AND BOIT, INC.'S FIRST AMENDED ORIGINAL COMPLAINT

Plaintiffs, Fossil, Inc. and Boit, Inc. ("Fossil" and "Boit" or "Plaintiffs"), for their claims against Defendants, Wal-Mart Stores, Inc., Ameritime Corporation, and Timex Corporation ("Wal-Mart," "Ameritime," and "Timex" or collectively "Defendants"), make and file their First Amended Original Complaint and allege as follows:

I.

JURISDICTION AND VENUE

1. Plaintiffs, Fossil and Boit, file this action against Defendants, Wal-Mart, Ameritime, and Timex for patent infringement under the patent laws of the United States, 35 U.S.C. § 1, et. seq. This Court has subject matter jurisdiction over this patent infringement action under 28 U.S.C. §§ 1331 and 1338(a).

2. On information and belief, the Defendant Wal-Mart regularly conducts business in this judicial district, has offered to sell, is presently selling, and has sold infringing products in this judicial district and is subject to personal jurisdiction in this judicial district.

3. On information and belief, the Defendant Ameritime regularly conducts business in this judicial district, has offered to sell, is presently selling, and has sold infringing products in this judicial district and is subject to personal jurisdiction in this judicial district.

4. On information and belief, the Defendant Timex regularly conducts business in this judicial district, has offered to sell, is presently selling, and has sold infringing products in this judicial district and is subject to personal jurisdiction in this judicial district.

5. Venue is proper under 28 U.S.C. §§ 1391 (b), (c) and 1400(b).

## II.

### THE PARTIES

6. Plaintiff Fossil is a Texas corporation with its principal place of business at 2280 N. Greenville Ave., Richardson, Texas 75082.

7. Plaintiff Boit is California Corporation with its principal place of business at 8749 La Mesa Blvd. #228, La Mesa, California 91941.

8. On information and belief, Defendant Wal-Mart is an Arkansas corporation with its principal place of business at 702 Southwest Eighth Street, Bentonville, Arkansas 72716. It may be served by serving its registered agent for service of process, Corporation Service Company, 800 Brazos Street, Austin, Texas 78701.

9. On information and belief, Defendant Ameritime is an Arkansas corporation with its principal place of business at P.O. Box 2740, Little Rock, Arkansas 72203.

10. On information and belief, Defendant Timex is a Delaware corporation with its principal place of business at 555 Christian Road, Middlebury, Connecticut 06762. It may be served by serving its registered agent for service of process, United States Corporation Company, 800 Brazos Street, Austin, Texas 78701.

### III.

#### BACKGROUND

11. On June 3, 1997, United States Patent No. 5,636,185 (the “‘185 Patent”) for a Dynamically Changing Liquid Crystal Display Timekeeping Apparatus issued to Boit of San Diego, California, by assignment from the inventors. The ‘185 Patent has since been exclusively licensed to Fossil. A copy of the ‘185 Patent is attached as Exhibit A.

12. On November 30, 1999, United States Patent No. 5,995,456 (the “‘456 Patent”) for a Dynamically Changing Liquid Crystal Display Timekeeping Apparatus issued to Boit, Inc. of San Diego, Cal., by assignment from the inventors. The ‘456 Patent has since been exclusively licensed to Fossil. A copy of the ‘456 Patent is attached as Exhibit B.

IV.

**COUNT #1 -- INFRINGEMENT OF THE '185 PATENT**

13. Plaintiffs reallege and incorporate by reference the allegations in Paragraphs 1-12 above.

14. On information and belief, during the term of the '185 Patent and without authority from Fossil or Boit, the Defendants Ameritime and Timex have made, used, offered to sell and/or sold within the United States or have imported into the United States certain watches with a flashing liquid crystal display that infringe, alone or in combination, one or more claims of the '185 Patent. One of Ameritime's and/or Timex's infringing watches is identified as SOHO Flashing Watches.

15. On information and belief, during the term of the '185 Patent and without authority from Fossil or Boit, the Defendant Wal-Mart has offered to sell and/or sold within the United States or has imported into the United States certain watches, specifically the Ameritime SOHO flashing watches, that infringe, alone or in combination, one or more claims of the '185 Patent.

**COUNT #2 -- INFRINGEMENT OF THE '456 PATENT**

16. Plaintiffs reallege and incorporate by reference the allegations in Paragraphs 1-15 above.

17. On information and belief, during the term of the '456 Patent and without authority from Fossil or Boit, the Defendants Ameritime and Timex have made, used, offered to sell and/or sold within the United States or have imported into the United States certain watches with flashing liquid crystal displays that infringe, alone or in combination, one or more claims of

the '456 Patent. One of Ameritime's and/or Timex's infringing watches is identified as SOHO Flashing Watches.

18. On information and belief, during the term of the '456 Patent and without authority from Fossil or Boit, the Defendant Wal-Mart has offered to sell and/or sold within the United States or has imported into the United States certain watches, specifically the Ameritime SOHO Flashing Watches, that infringe, alone or in combination, one or more claims of the '456 Patent.

**COUNT #3 – CONTRIBUTORY INFRINGEMENT OF '185 PATENT**

19. Plaintiffs reallege and incorporate by reference the allegations in Paragraphs 1-18 above.

20. On information and belief, during the term of the '185 Patent and without authority from Fossil or Boit, the Defendants Ameritime and Timex have contributorily infringed one or more claims of the '185 Patent by offering to sell or selling within the United States or importing into the United States certain liquid crystal displays. Such displays comprise a component of a patented apparatus covered by one or more claims of the '185 Patent, are known by the Defendants Ameritime and Timex to be especially made or especially adapted for use in a watch that would infringe the '185 Patent, and are not staple articles or commodities of commerce suitable for substantial non-infringing uses.

**COUNT #4 – CONTRIBUTORY INFRINGEMENT OF '456 PATENT**

21. Plaintiffs reallege and incorporate by reference the allegations in Paragraphs 1-20 above.

22. On information and belief, during the term of the '456 Patent and without authority from Fossil or Boit, the Defendants Ameritime and Timex have contributorily infringed one or more claims of the '456 Patent by offering to sell or selling within the United States or

importing into the United States certain liquid crystal displays. Such displays comprise a component of a patented apparatus covered by one or more claims of the '456 Patent, are known by the Defendants Ameritime and Timex to be especially made or especially adapted for use in an infringement of the '456 Patent, and are not staple articles or commodities of commerce suitable for substantial non-infringing uses.

**COUNT #5 – WILLFUL INFRINGEMENT OF '185 PATENT**

23. Plaintiffs reallege and incorporate by reference the allegations in Paragraphs 1-22 above.

24. On information and belief, Defendants Ameritime and Timex have had actual or constructive knowledge of the '185 Patent since approximately its date of issue and have pursued their knowing and willful infringement thereof in flagrant disregard of Plaintiffs' rights arising thereunder.

25. On information and belief, Defendant Wal-Mart has had actual or constructive knowledge of the '185 Patent since approximately its date of issue and has pursued its knowing and willful infringement thereof in flagrant disregard of Plaintiffs' rights arising thereunder.

26. Defendants' infringement has caused Plaintiffs to suffer damages and has caused and/or will cause Plaintiffs to suffer irreparable injury for which Plaintiffs have no adequate remedy at law. Because of Defendants' infringement, Plaintiffs have been irreparably harmed and have suffered impairment of the value of their patent rights. Moreover, Plaintiffs will continue to suffer irreparable harm unless Defendants Ameritime, Timex, and Wal-Mart are restrained from infringing the claims of the '185 Patent.

**COUNT #6 – WILLFUL INFRINGEMENT OF '456 PATENT**

27. Plaintiffs reallege and incorporate by reference the allegations in Paragraphs 1-26 above.

28. On information and belief, Defendants Ameritime and Timex have had actual or constructive knowledge of the '456 Patent since approximately its date of issue and have pursued their knowing and willful infringement thereof in flagrant disregard of Plaintiffs' rights arising thereunder.

29. On information and belief, Defendant Wal-Mart has had actual or constructive knowledge of the '456 Patent since approximately its date of issue and has pursued its knowing and willful infringement thereof in flagrant disregard of Plaintiffs' rights arising thereunder.

30. Defendants' infringement has caused Plaintiffs to suffer damages and has caused and/or will cause Plaintiffs to suffer irreparable injury for which Plaintiffs have no adequate remedy at law. Because of Defendants' infringement, Plaintiffs have been irreparably harmed and have suffered impairment of the value of their patent rights. Moreover, Plaintiffs will continue to suffer irreparable harm unless Defendants Ameritime, Timex and Wal-Mart are restrained from infringing the claims of the '456 Patent.

**V.**

**JURY DEMAND**

31. Plaintiffs hereby request and demand a trial by jury.

**VI.**

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs Fossil and Boit pray that the Court enter judgment, as follows:

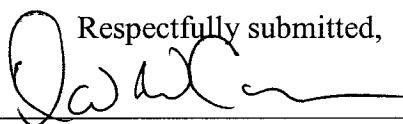
- A. That the Court declare the '185 Patent is valid, enforceable, and infringed by Defendants.
- B. That the Court declare the '456 Patent is valid, enforceable, and infringed by Defendants.

- C. That the Defendants and all of their officers, agents, affiliates, servants, and employees, and all other persons in active concert or participation with them, be temporarily, preliminarily, and permanently enjoined from infringing, inducing infringement, and/or contributing to the infringement of the '185 Patent by importing, making, using, offering to sell, or selling products which embody the inventions claimed in said patent, or imitations thereof;
- D. That the Defendants and all of their officers, agents, affiliates, servants, and employees, and all other persons in active concert or participation with them, be temporarily, preliminarily, and permanently enjoined from infringing, inducing infringement, and/or contributing to the infringement of the '456 Patent by importing, making, using, offering to sell, or selling products which embody the inventions claimed in said patent, or imitations thereof;
- E. That Plaintiffs be awarded under 35 U.S.C. § 284, an amount to be proved at trial, damages adequate to compensate it for Defendants' infringement of the '185 Patent;
- F. That Plaintiffs be awarded under 35 U.S.C. § 284, in an amount to be proved at trial, damages adequate to compensate it for Defendants' infringement of the '456 Patent;
- G. That Plaintiffs be awarded their costs and prejudgment interest on their damages, as provided for by 35 U.S.C. § 284;



- H. That the Court determine this action to be an exceptional case and award Plaintiffs their reasonable attorney fees, as provided for by 35 U.S.C. § 285;
- I. That the Defendants be ordered to make a written report within a reasonable period, to be filed with the Court, detailing the manner of their compliance with the requested injunction; and,
- J. That Plaintiffs be granted such other and further relief as the Court determines is just and proper.

Dated: August 1, 2003

Respectfully submitted,  


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David W. Carstens  
Texas Bar No. 03906900  
Scott L. Harper  
Texas Bar No. 00795038  
CARSTENS, YEE & CAHOON, L.L.P.  
13760 Noel Road, Suite 900  
Dallas, Texas 75240  
(972) 367-2001; (972) 367-2002 (fax)  
**Counsel for Fossil, Inc. and Boit, Inc.**