

JS 44
(Rev. 3/99)

CIVIL COVER SHEET

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 REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Fossil, Inc. and Boit, Inc.

DEFENDANTS

Wal-Mart Stores, Inc. and Ameritme Corporation

3 03 CV 1671 G

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF Dallas County, Texas
(EXCEPT IN U.S. PLAINTIFF CASES)

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT Benton County, Arkansas
(IN U.S. PLAINTIFF CASES ONLY)

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

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

David W. Carstens; Carstens, Yee & Cahoon, L.L.P.;
PO Box 802334; Dallas, Texas 75380; (972) 367-2001

ATTORNEYS (IF KNOWN)

JUL 23 2003

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

- 1 U.S. Government Plaintiff
- 3 Federal Question (U.S. Government Not a Party)
- 2 U.S. Government Defendant
- 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)

- | | | | | | |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| | PTF | DEF | | PTF | 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. 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	<input type="checkbox"/> 362 Personal Injury — Med. 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"/> 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	<input type="checkbox"/> 400 State Reapportionment <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
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence HABEAS CORPUS: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	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. Ret. Inc. Security Act	SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395f) <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

V. ORIGIN

(PLACE AN "X" IN ONE BOX ONLY)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 another district (specify)
- 6 Multidistrict Litigation
- 7 Magistrate Judgment

Appeal to District Judge from

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

35 U.S.C. § 1, et seq. - Patent Infringement

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

Injunctive Relief and Damages

CHECK YES only if demanded in complaint:

JURY DEMAND: YES NO

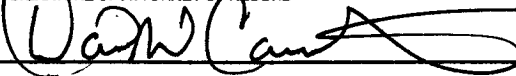
VIII. RELATED CASE(S) IF ANY (See instructions):

JUDGE

DOCKET NUMBER

DATE
July 23, 2003

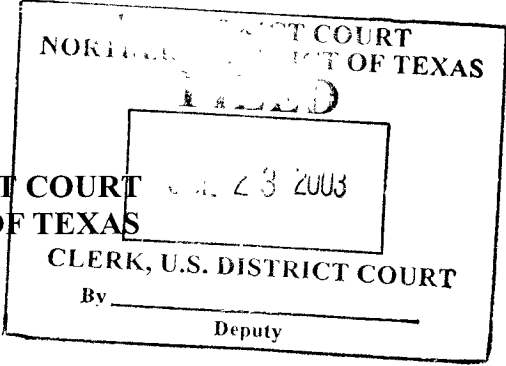
SIGNATURE OF ATTORNEY OF RECORD



FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING FFP _____ JUDGE _____ MAG. JUDGE _____

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., and
AMERITIME CORPORATION

Defendants.

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CIVIL ACTION NO.

JURY TRIAL DEMANDED

**PLAINTIFFS FOSSIL, INC. AND BOIT, INC.'S
ORIGINAL COMPLAINT**

Plaintiffs, Fossil, Inc. and Boit, Inc. ("Fossil" and "Boit" or "Plaintiffs"), for their claims against Defendants, Wal-Mart Stores, Inc. and Ameritime Corporation ("Wal-Mart" and "Ameritime" or "Defendants") allege as follows:

I.

JURISDICTION AND VENUE

1. Plaintiffs, Fossil and Boit, file this action against Defendants, Wal-Mart and Ameritime, 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. Venue is proper under 28 U.S.C. §§ 1391 (b), (c) and 1400(b).

II.

THE PARTIES

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

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

7. 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.

8. 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.

III.

BACKGROUND

9. 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.

10. 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

11. Plaintiffs reallege and incorporate by reference the allegations in Paragraphs 1-10 above.

12. On information and belief, during the term of the ‘185 Patent and without authority from Fossil or Boit, the Defendant Ameritime has made, used, offered to sell and/or sold within the United States or has 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 infringing watches is identified as SOHO Flashing Watches.

13. 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

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

15. On information and belief, during the term of the '456 Patent and without authority from Fossil or Boit, the Defendant Ameritime has made, used, offered to sell and/or sold within the United States or has 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 infringing watches is identified as SOHO Flashing Watches.

16. 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

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

18. On information and belief, during the term of the '185 Patent and without authority from Fossil or Boit, the Defendant Ameritime has contributorily infringed one or more claims of the '185 Patent by offering to sell or selling within the United State 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, is known by the Defendant

Ameritime 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

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

20. On information and belief, during the term of the '456 Patent and without authority from Fossil or Boit, the Defendant Ameritime has contributorily infringed one or more claims of the '456 Patent by offering to sell or selling within the United State 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, is known by the Defendant Ameritime 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

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

22. On information and belief, Defendant Ameritime 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.

23. 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.

24. Defendant's 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 Defendant's 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 Defendant Ameritime is restrained from infringing the claims of the '185 Patent.

COUNT #6 – WILLFUL INFRINGEMENT OF '456 PATENT

25. Plaintiffs reallege and incorporate by reference the allegations in Paragraphs 1-24 above.

26. On information and belief, Defendant Ameritime 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.

27. 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.

28. Defendant's 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 Defendant's 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 Defendant Ameritime is restrained from infringing the claims of the '456 Patent.

V.

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: July 23, 2003

Respectfully submitted,



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Scott L. Harper
Texas Bar No. 00795038
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