

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

JOHN MCCRORY, an Individual,

Plaintiff,

v.

PACKIT, LLC, a California Limited Liability
Company,

Defendant.

Civil Action No. 3:11-cv-50355

Judge: Hon. John W. Darrah

Magistrate Judge: Michael T. Mason

Jury Trial Requested

SECOND AMENDED COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff, John McCrory (“Plaintiff” or “McCrory”) complains against Defendant, Packit, LLC (“Defendant” or “Packit”), as follows:

NATURE OF THE ACTION

1. This is a civil action seeking damages for patent infringement under the patent laws of the United States, 35 U.S.C. §101 *et seq.*, as a result of Packit’s selling, offering to sell, making, having made and/or importing into the United States goods that infringe U.S. Patent No. 7,302,810 (“the ‘810 Patent”) attached as Exhibit A.

THE PARTIES

2. Plaintiff is an individual with a business address of 111 Erick St., Suite #123, Crystal Lake, IL 60014.

3. On information and belief, Defendant is a limited liability company incorporated under the laws of the State of California with its principal place of business located at 2659 Townsgate Road., #119, Westlake Village, CA 91361.

JURISDICTION AND VENUE

4. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 (federal question) and 1338(a) (patents).

5. This Court has personal jurisdiction over this action pursuant to the Illinois Long Arm Statute, 735 ILCS 5/2-209(a)(1)-(2) and (c) because, among other things, Packit transacts business in this judicial district, at least by offering to sell, selling and advertising its coolers at least through the internet in such a way as to reach customers in Illinois and this district.

6. Venue is proper under 28 U.S.C. §1391(b), (c), and 1400(b) because Packit is subject to personal jurisdiction in this district, and a substantial part of the events giving rise to the claim occurred here.

COUNT I – PATENT INFRINGEMENT

7. Plaintiff realleges and incorporates by reference the allegations contained in the paragraphs 1-6 as if fully set forth herein.

8. The ‘810 Patent titled “Quilted Cooler with Insulating Gel Liner,” was issued by the United States Patent and Trademark Office on December 4, 2007.

9. Plaintiff is the owner of all rights, title and interest in and to the ‘810 Patent.

10. On information and belief, Packit had actual knowledge of the ‘810 Patent at least as early as April 12, 2010.

11. On information and belief, Packit had constructive knowledge of the ‘810 Patent at least before 2010 through markings.

12. Without permission or license from Plaintiff, Packit has and continues to sell and offer for sale portable personal lunch bag-style coolers (the “accused devices”).

13. The accused devices have been sold under the trademark PACKITTM FREEZE + GO.

14. The accused devices are portable, personal, lunch bag-style coolers for keeping items cool when placed inside the cooler.

15. Packit has and continues to infringe the '810 Patent by its activities in the United States including, among other things, manufacture, use, importation, sale and/or offer for sale products that infringe the patent-in-suit.

16. Packit's activity with regard to the accused device is a violation of 35 U.S.C. §271(a).

17. Packit was given notice of its potential infringement of the '810 Patent in a letter from Plaintiff to Packit dated June 29, 2011, and in a subsequent letter from Plaintiff's counsel to counsel for Packit dated October 17, 2011, as prescribed by 35 U.S.C. §287(a). As a consequence, Packit's infringement has been willful and deliberate.

18. Packit's acts of infringement have caused and continue to cause damage to Plaintiff and Plaintiff is entitled to recover from Packit the damages sustained by Plaintiff as a result of Packit's wrongful acts in an amount subject to proof at trial. Packit's infringement of Plaintiff's exclusive rights under the '810 Patent will continue to damage Plaintiff's business, causing irreparable harm, for which there is no adequate remedy at law, unless it is enjoined by the Court.

19. Upon information and belief, Plaintiff's acts of infringement of the '810 Patent have been willful and deliberate, rendering this an exceptional case and entitling Plaintiff to recover treble damages and attorneys' fees pursuant to 35 U.S.C. §§ 284 and 285.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully request that this Court enter judgment against the Defendant and grant of the following relief:

- A. Judgment that the '810 patent is valid, enforceable, and infringed by Packit;
- B. A preliminary and permanent injunction enjoining Packit, its officers, agents, servants, employees, and those persons acting in concert or participation with Packit from infringing, inducing infringement of, or contributorily infringing the '810 Patent;
- C. An award of damages arising out of the infringement of the '810 Patent by Packit, together with interest;
- D. Judgment that damages so adjudged be trebled in accordance with 35 U.S.C. § 284;
- E. Judgment that Plaintiff be awarded its attorneys' fees, costs, and expenses incurred in this action in accordance with 35 U.S.C. § 285; and
- F. Such other and further relief as the Court may deem just and proper.

JURY DEMAND

Plaintiff demands trial by jury of all issues triable of right by a jury.

DATED: April 10, 2012

Respectfully Submitted,

/s/Edward L. Bishop

Edward L. Bishop

ebishop@bishoppatents.com

Nicholas S. Lee

nlee@bishoppatents.com

Monique A. Morneault

mmorneault@bishoppatents.com

BISHOP & DIEHL, LTD.

1750 E. Golf Rd., Suite 390

Schaumburg, IL 60173

Tel: (847) 925-9123

Fax: (847) 925-9124

Attorneys for Plaintiff John McCrory.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system on April 10, 2012. Any other counsel of record will be served by electronic mail and/or first class mail.

/s/Edward L. Bishop
Edward L. Bishop