

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

EOS GmbH Electro Optical Systems,
Plaintiff,

v.

Phenix Systems, and
Additive Manufacturing Technologies, Inc.,
Defendants.

Civil Action No. 12-cv-1582

Judge Joan B. Gottschall

Magistrate Judge Susan E. Cox

**FIRST AMENDED COMPLAINT
FOR PATENT INFRINGEMENT AND DAMAGES**

Plaintiff EOS GmbH Electro Optical Systems, by and through its attorneys, complains and alleges against Phenix Systems and Additive Manufacturing Technologies, Inc. (“Defendants”) as follows:

THE PARTIES

1. Plaintiff EOS GmbH Electro Optical Systems (“EOS”) is a German company having its principal place of business at Robert-Stirling-Ring 1, D-82152 Krailling Munich, Germany.

2. Defendant Phenix Systems (“Phenix”) is a French company having its principal place of business at Parc Européen d'Entreprises, Rue Richard Wagner, 63200 Riom, France. EOS is advised and believes, and on that basis alleges, that Phenix transacts business within the State of Illinois and in this judicial district, and has committed acts of patent infringement as hereinafter set forth within the State of Illinois and in this judicial district. Such business

includes, on information and belief, Phenix's ownership and operation of Defendant Additive Manufacturing Technologies, Inc. ("AMT") within this judicial district.

3. Defendant AMT is a Delaware Corporation having its principle place of business at 1201 Oakton Street, Suite #1, Elk Grove Village, Illinois 60007, which is within this judicial district.

JURISDICTION AND VENUE

4. This is a civil action for patent infringement arising under the patent laws of the United States, Title 35, United States Code. This Court has jurisdiction under 35 U.S.C. §§ 271, *et seq.*, and 28 U.S.C. §§ 1331 and 1338.

5. Personal jurisdiction exists generally over Phenix because Phenix has minimum contacts with this forum as a result of business regularly conducted within the State of Illinois and within this district, and, on information and belief, specifically as a result of, at least, committing patent infringement as alleged herein within Illinois and this district through and with AMT.

6. Personal jurisdiction exists generally over AMT because AMT has minimum contacts with this forum as a result of its physical business presence in this judicial district and business regularly conducted within the State of Illinois and within this district, and, on information and belief, specifically as a result of, at least, committing patent infringement as alleged herein within Illinois and this district.

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

THE PATENTS-IN-SUIT

8. Plaintiff EOS is the owner of United States Patent No. 5,753,274 (“the ’274 Patent”), entitled “Apparatus for Producing a Three-Dimensional Object,” which was duly and legally issued by the United States Patent and Trademark Office on May 19, 1998. A copy of the ’274 patent is attached hereto as Exhibit A.

9. Plaintiff EOS is the owner of United States Patent No. 6,042,774 (“the ’774 Patent”), entitled “Method for Producing a Three-Dimensional Object,” which was duly and legally issued by the United States Patent and Trademark Office on March 28, 2000. A copy of the ’774 Patent is attached hereto as Exhibit B.

FACTS

10. EOS is a world leader in layerwise prototyping and manufacture of three-dimensional objects, particularly through the use of laser sintering. Laser-sintering is an additive layer manufacturing technology and a key technology for e-Manufacturing. It enables fast, flexible, and cost-effective production of products, patterns, or tools directly from electronic data.

11. According to Phenix’s webpage (<http://www.phenix-systems.com/en/phenix-systems>), Phenix designs, manufactures, and markets powder bed additive manufacturing equipment. The parts are directly created from three-dimensional perception in CAD software.

12. According to Phenix’s webpage, AMT is a subsidiary of Phenix Systems group. AMT is stated to be the exclusive distributor of Phenix’s products for North America including CAD/CAM software and materials. AMT’s technical center is located in Elk Grove Village, and

is stated to be equipped with the whole range of laser sintering systems: PXL, PXM, PXS, and PXS Dental.

13. On information and belief, Phenix causes its infringing equipment to be shipped to AMT within this judicial district, where the infringing equipment is used, demonstrated, offered for sale, and sold.

14. Phenix has offered to sell an infringing machine to the University of Toledo, located in Toledo, Ohio.

15. An infringing Phenix machine is located at a GE facility in Niskayuna, New York.

16. An infringing Phenix machine was demonstrated at the Chicago Dental Society Midwinter Meeting in Chicago, Illinois, which took place February 23-25, 2012.

17. On or about July 28, 2011, representatives of EOS sent a letter to Phenix, advising Phenix of the EOS patent portfolio, including the patents asserted in this action.

COUNT I
INFRINGEMENT OF THE '274 PATENT

18. EOS repeats and realleges each of the allegations of paragraphs 1 through 14 as if set forth fully herein.

19. By its conduct, Defendants are directly infringing, inducing others to infringe, and contributing to infringement of the '274 Patent in violation of 35 U.S.C. § 271.

20. On information and belief, Defendants had actual notice of the existence of the '274 Patent, and despite such notice, have continued to engage in acts of infringement of the '274 Patent. Defendants' continued acts of infringement have been, and will continue to be, wanton and willful.

21. Defendants' infringing activities have damaged and continue to damage EOS. Upon information and belief, Defendants will continue to infringe the '274 Patent, causing irreparable harm to EOS unless enjoined by this Court.

COUNT II
INFRINGEMENT OF THE '774 PATENT

22. EOS repeats and realleges each of the allegations of paragraphs 1 through 14 as if set forth fully herein.

23. By its conduct, Defendants are directly infringing, inducing others to infringe, and contributing to infringement of the '774 Patent in violation of 35 U.S.C. § 271.

24. On information and belief, Defendants had actual notice of the existence of the '774 Patent, and despite such notice, have continued to engage in acts of infringement of the '774 Patent. Defendants' continued acts of infringement have been, and will continue to be, wanton and willful.

25. Defendants' infringing activities have damaged and continue to damage EOS. Upon information and belief, Defendants will continue to infringe the '774 Patent, causing irreparable harm to EOS unless enjoined by this Court.

PRAYER FOR RELIEF

WHEREFORE, plaintiff EOS prays for relief against Defendants as follows:

A. That the '274 and '774 Patents ("the EOS Patents") be adjudged infringed by Defendants and that the infringement be held to be willful;

B. That EOS be awarded compensatory damages for past infringement of the EOS Patents by Defendants in an amount no less than a reasonable royalty, in a sum to be determined

at trial, and that said damages be trebled in view of the willful and deliberate nature of the infringement;

C. That Defendants, their officers, agents, servants, employees and attorneys, and other persons in active concert or participation with Defendants be preliminarily and permanently enjoined from further infringement of the EOS Patents;

D. That Defendants be ordered to destroy all infringing products and systems in their possession;

E. That this case be declared an exceptional case under 35 U.S.C. § 285 as to Defendants, and that EOS be awarded its attorney fees incurred in this action;

F. For an award of EOS's costs of this action, any applicable interest on the award and other charges to the maximum extent permitted; and

G. For such other further relief as the Court deems just and proper under the circumstances.

Respectfully submitted,

EOS GmbH Electro Optical Systems,

Date: April 13, 2012

s/ Brandon J. Kennedy

Michael H. Baniak (ID No. 6191091)

Christina L. Brown (ID No. 6281536)

Lisa M. Schoedel (ID No. 6279700)

Brandon J. Kennedy (ID No. 6306310)

McDonnell Boehnen Hulbert & Berghoff LLP

300 South Wacker Drive

Chicago, Illinois 60606

(312) 913-0001 Telephone

(312) 913-0002 Facsimile

Attorneys for Plaintiff

EOS GmbH Electro Optical Systems