

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK**

PHILIP A. PECORINO, *a New York resident*,
ALDO MEDAGLIA, *a New York resident*, and
SHEWARD & SON & SONS d/b/a VISIONART,
a California corporation,

Plaintiffs,

v.

VUTEC CORPORATION, *a Florida corporation*, and
FARRALANE LIGHTING AUDIO AND VIDEO
SYSTEMS INC., *a New York corporation*,

Defendants.

Civil Action No. 2:11-cv-06312

ECF Case

JURY TRIAL DEMANDED

FIRST AMENDED COMPLAINT

Plaintiffs Philip A. Pecorino, Aldo Medaglia, and Sheward & Son & Sons d/b/a Visionart (“Visionart”) for its first amended complaint against Defendant Vutec Corporation (“Vutec”) and Defendant Farralane Lighting Audio and Video Systems Inc. (“Farralane”) as follows:

NATURE OF THIS ACTION

1. Plaintiffs Philip A. Pecorino, Aldo Medaglia, and Visionart bring this action against Defendants Vutec and Farralane for infringement of U.S. Patent No. 5,264,765 (“the ‘765 Patent”) under the Patent Laws of the United States, 35 U.S.C. § 101 *et seq.*

THE PARTIES

2. Plaintiff Philip A. Pecorino is a resident of the State of New York, specifically this district, residing at 11 Wayaawi Avenue, Bayville, NY 11709-1008, and is an inventor and co-owner of the ‘765 Patent

3. Plaintiff Aldo Medaglia is a resident of the State of New York, specifically this district, residing at 370 Elm Drive, Roslyn, NY 11576, and is an inventor and co-owner the '765 Patent.

4. Plaintiff Visionart is a corporation duly organized and existing under the laws of the State of California and having its principal place of business at 3000 Airway Avenue, Costa Mesa, CA 92626, and is the exclusive licensee under the '765 patent.

5. Upon information and belief, Defendant Farralane is a corporation organized and existing under the laws of the State of New York, specifically this district, with its principal place of business at 300 Route 109, Farmingdale, New York, 11735.

6. Upon information and belief, Defendant Vutec is a corporation organized and existing under the laws of the State of Florida, with its principal place of business at 2741 N.E. 4th Avenue, Pompano Beach, Florida 33064.

JURISDICTION AND VENUE

7. This is an action for patent infringement arising under the Patent Laws of the United States (Title 35 of the United States Code). This Court has subject matter jurisdiction of the federal claims alleged herein pursuant to 28 U.S.C. §§ 1331 and 1338(a).

8. This Court has personal jurisdiction over Defendant Farralane, which is domiciled in this district.

9. This Court has personal jurisdiction over Defendant Vutec pursuant to New York's long-arm statute, C.P.L.R. § 302, in that, upon information and belief, Defendant Vutec, by itself or through its agents, regularly solicits, transacts, and engages in business and supplies goods in New York, including the Eastern District of New York; and has caused Plaintiff's injuries alleged herein from its acts within or directed toward New York and the Eastern District

of New York. Accordingly, venue is proper in this district pursuant to 28 U.S.C, §§ 1391(b-c) and 1400(b).

FACTS COMMON TO ALL COUNTS

A. The Patent-In-Suit

10. On November 23, 1993, the ‘765 Patent was duly and legally issued to inventors Philip A. Pecorino and Aldo Medaglia for an invention entitled “VIDEO DISPLAY SCREEN COVER.” A copy of the ‘765 Patent is attached as **Exhibit A**.

11. On October 17, 2005, inventors Philip Pecorino and Aldo Medaglia entered into an agreement with Visionart granting Visionart an exclusive license under the ‘765 Patent effective as of January 1, 2005.

12. At least as early as August 2005, the ‘765 Patent was called to the attention of Defendant Vutec by Plaintiffs as being infringed by Vutec’s ArtScreen products.

13. On May 15, 2007, inventors Philip Pecorino and Aldo Medaglia and licensee Visionart brought suit against Audio Command Systems, Inc.; Audtek Associates Incorporated; Media Decor, LLC.; and Vutec Corporation in this Court. *See* Case 2:07-cv-01997-LDW-EBT.

14. On November 14, 2007, the 2007 suit was dismissed without prejudice so that the inventors Pecorino and Medaglia could engage in a Re-examination of the claims of the ‘765 Patent before the U.S. Patent and Trademark Office (Re-examination Request No. 90/010,133).

15. On January 12, 2010, a Re-examination Certificate was issued by the U.S. Patent and Trademark Office which confirmed the patentability of claims 1-16 and expanded the scope of the ‘765 Patent to encompass nine (9) additional patent claims. Vutec was notified of the issuance of the Re-examination Certificate soon after it issued. A copy of the Re-examination Certificate is attached as **Exhibit B**.

16. Plaintiffs presently are, and have been at all times relevant to this lawsuit, either separately or collectively, the owners of all right, title, and interest in and to the ‘765 Patent.

17. At all times relevant to this lawsuit, Plaintiffs have complied with the marking requirements of 35 U.S.C. § 287.

18. A video display screen cover as defined by the ‘765 Patent is a device designed to cover and uncover flat panel displays, including, but not limited to, flat panel televisions.

B. Defendant Vutec and Its Infringing Activities

19. Upon information and belief, Defendant Vutec has been manufacturing, advertising, using (as well as providing instructions for how to use), distributing, licensing, leasing, offering for sale and/or selling video display screen cover products in this District, throughout the United States, and abroad. Such video display screens have been distributed and offered for sale and sold in this District through Defendant Farralane and others. These Vutec products are marketed by Vutec as “ArtScreen” products (hereinafter the “ArtScreen products”). A copy of Defendant Vutec’s advertisement for, and instructions for how to use, its ArtScreen products as it appeared on Defendant Vutec’s website as of December 19, 2012, is attached as **Exhibit C.**

20. Upon information and belief, Defendant Vutec has intentionally encouraged and induced the use and sales of its ArtScreen products by Farralane and others, knowing the same to be an infringement of the ‘765 Patent. Defendant Vutec has provided Defendant Farralane and others with advertisements, detailed explanations, instructions and information as to the installation, arrangement, applications and uses of its ArtScreen products such that Defendant Farralane and others, as well as their customers, infringe the ‘765 Patent.

21. Upon information and belief, Defendant Vutec has offered to sell and sold to Defendant Farralane and others its ArtScreen products that have been adapted to cover or

uncover the screen of flat panel televisions, which ArtScreen products and televisions operate in response to one or more signals from a single remote control device. Such ArtScreen products are covered by at least one claim of the '765 Patent, so they have no substantial non-infringing use and they are not a staple article of commerce. Further, they are a material part of the television/ArtScreen combination covered by at least one claim of the '765 Patent.

22. Upon information and belief, Defendant Vutec's herein described activities have been with knowledge of the '765 Patent and Plaintiffs' patent rights therein.

C. Defendant Farralane and Its Infringing Activities

23. Upon information and belief, Defendant Farralane has been advertising, distributing, using, leasing, offering for sale and/or selling the ArtScreen products in this District, and throughout the United States.

24. Upon information and belief, the ArtScreen products advertised, distributed, used, leased, offered for sale and/or sold by Defendant Farralane are manufactured or supplied by Defendant Vutec.

25. Upon information and belief, Defendant Farralane has intentionally encouraged and induced the use of ArtScreen products by its customers, knowing the same to be an infringement of the '765 Patent. Defendant Farralane has provided its customers with advertisements, instructions and information as to the installation, arrangement, applications and uses of ArtScreen products such that their customers infringe the '765 Patent.

26. Upon information and belief, Defendant Farralane has offered to sell and sold to its customers ArtScreen products that have been adapted to cover or uncover the screen of flat panel televisions, which ArtScreen products and televisions operate in response to one or more signals from a single remote control device. Such ArtScreen products are covered by at least one claim of the '765 Patent, so they have no substantial non-infringing use and they are not a staple

article of commerce. Further, they are a material part of the television/ArtScreen combination covered by at least one claim of the '765 Patent.

27. Upon information and belief, Defendant Farralane's herein described activities have been with knowledge of the '765 Patent and Plaintiffs' patent rights therein.

COUNT I
DEFENDANTS' INFRINGEMENT OF THE '765 PATENT

28. Plaintiffs repeat and reallege each of the allegations in paragraphs 1 through 27 as if fully set forth herein.

29. Upon information and belief, Defendants Vutec and Farralane have directly infringed one or more claims of the '765 Patent in direct violation of 35 U.S.C. § 271(a) by manufacturing, distributing, licensing, leasing, offering for sale and/or selling Defendant Vutec's ArtScreen products without the authority of Plaintiffs.

30. Upon information and belief, Defendants Vutec and Farralane have induced infringement of one or more claims of the '765 Patent, in direct violation of 35 U.S.C. § 271(b), by Vutec providing Farralane and others, and Farralane providing its customers, with advertisements, instructions and information as to the installation, arrangement, applications and uses of ArtScreen products such that their customers infringe the '765 Patent. Defendants' advertisements, instructions and information as to the installation, arrangement, applications and uses of Defendant Vutec's ArtScreen products to third parties within this District as well as others throughout the United States, has been with the specific intent to encourage and induce infringement of the '765 Patent and Plaintiffs' patent rights therein. At a minimum, Defendant Vutec specifically intended to supply its ArtScreen products to Defendant Farralane for use and distribution to the public at large knowing that Farralane's and Farralane's customer's use of the ArtScreen products constituted infringement of the '765 Patent.

31. Upon information and belief, Defendants Vutec and Farralane have contributed to the infringement of one or more claims of the '765 Patent, in direct violation of 35 U.S.C. § 271(c), by offering for sale and/or selling Defendant Vutec's ArtScreen products as a component for use with a television wherein both respond to a signal from a single remote control device, which constitute a patented combination. Such ArtScreen products are covered by at least one claim of the '765 Patent, and thus are not staple articles of commerce having substantially non-infringing uses. They are sold by Defendant Vutec to Farralane and other third parties within this District as well as others throughout the United States, with the intent that they be resold or used in combination with televisions in violation of at least one of the claims of the '765 Patent. Further, Defendants Vutec and Farralane were aware at the time of aforesaid conduct that the ArtScreen products were an infringement of the '765 Patent and the sale or use of the ArtScreen products in combination with a television that operated with a single common remote control was also an infringement of the '765 Patent.

32. Farralane sells ArtScreen covers to its customers with the intent that those ArtScreen covers be used by Farralane's customers as a component with television sets, wherein the ArtScreen covers and the televisions respond to a single remote control device as a combination covered by one or more claims of the '75 Patent. As a result Farralane has contributed to the infringement of one or more claims of the '765 Patent, in direct violation of 35 U.S.C. § 271(c).

33. Upon information and belief, Defendants' infringement has been willful, wanton, and deliberate, and in knowing and flagrant disregards of the '765 Patent and Plaintiffs' patent rights therein.

34. Plaintiffs have been damaged and harmed by Defendants' infringement.

35. Plaintiffs have no adequate remedy at law.

PRAYER FOR RELIEF

Plaintiffs respectfully pray that:

- A. This Court enter judgment for Plaintiffs;
- B. This Court declare that Defendants have infringed the '765 Patent;
- C. This Court require Defendants Vutec and Farralane to account for and pay over to Plaintiffs all damages sustained by Plaintiffs as a result of its patent infringement, including, but not limited to, a reasonable royalty and/or lost profits due by reason of its infringement, such reasonable royalty and/or lost profits to be based on lost sales of video display screen covers;
- D. This Court award Plaintiffs treble damages under 35 U.S.C. § 284 as a result of Defendants' willful patent infringement;
- E. This Court declare this case to be exceptional under 35 U.S.C. § 285 and award Plaintiffs their attorneys' fees;
- F. Defendants Vutec and Farralane be required to pay to Plaintiffs all of their costs and disbursements in this action, including attorneys fees; and
- G. This Court declare that Plaintiffs are entitled to such other and further relief as the Court may deem just, proper, appropriate, and equitable.

DEMAND FOR JURY TRIAL

Pursuant to Fed. R. Civ. P. 38(b), Plaintiffs demand a trial by jury on all issues triable of right, or operation of law.

Dated: December 20, 2012

Respectfully Submitted,

LEASON ELLIS LLP



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