

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

WEST BEND CONTAINER, INC.

Plaintiff,

v.

Civil Action No. 2:13-cv-959

SORENSEN RESEARCH AND
DEVELOPMENT TRUST,

Defendant.

COMPLAINT

Plaintiff West Bend Container, Inc. (“WBC”) by its attorneys, for its complaint against defendant Sorensen Research and Development Trust (“Sorensen”) alleges:

NATURE OF ACTION

1. This is an action for declaratory judgment relating to a claim of patent infringement arising under the Patent Laws of the United States, Title 35 United States Code.

PARTIES

2. WBC is a Wisconsin company headquartered in this District at 910 Rusco Drive, West Bend, Wisconsin.

3. Upon information and belief, Sorensen is a trust organized according to California law with a principal office at 7040 Avenida Encinas, Suite 104-277, Carlsbad, California. Sorensen purports to be the owner of U.S. Patent 6,960,316 (“the ‘316 patent”), and, upon information and belief, does not practice the invention claimed in the ‘316 patent.

JURISDICTION AND VENUE

4. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338.

5. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391 and 1400.

6. This Court has personal jurisdiction over Sorensen consistent with the principles underlying the U.S. Constitution and Wis. Stat. § 801.05 because Sorensen sent demand letters to WBC (via WBC's counsel Boyle Fredrickson, S.C.), which is located in this District, creating in WBC a reasonable apprehension of suit by Sorensen and because any injury caused to WBC occurred in this District.

BASIS FOR DECLARATORY RELIEF

7. WBC is one of the leading manufacturers of stock and custom wet wipe packaging in the U.S.

8. Prior to June 4, 2013, Sorensen sent threatening letters to various customers of WBC asserting that those customers were infringing the '316 patent by selling lids they had purchased from WBC.

9. On June 4, 2013, WBC notified Sorensen via letter that all future communications relating to WBC products and the '316 patent should be directed to WBC and not WBC's customers.

10. Sorensen responded by letter on June 17, 2013, asking WBC to enter into a tolling agreement that would toll the six year limitation on recovery of damages set forth in 35 U.S.C. § 286. Sorensen also asserted that "there is no valid reason to further delay judicial resolution of this matter" if WBC refused to enter into the tolling agreement or to provide Sorensen with

information about the manufacturing process used to make the accused lids. WBC declined to enter into the tolling agreement.

11. On June 25, 2013, WBC sent a letter to Sorensen's counsel explaining why the WBC method of manufacturing lids does not infringe the '316 patent. WBC also offered to send Sorensen additional information, i.e., photos and a video of the process, and invited someone from Sorensen to personally inspect the process, provided that Sorensen agreed to a confidentiality agreement.

12. On July 10, 2013, Sorensen sent WBC a letter that did not address the substantive points raised in WBC's letter, nor did it address the proposed confidentiality agreement.

13. On July 17, 2013, WBC followed up with a letter pointing out the puzzling nature of Sorensen's previous correspondence and reiterating its willingness to disclose its process under a confidentiality agreement.

14. Sorensen responded by providing a draft confidentiality agreement. After minor modifications, Sorensen and WBC entered into the confidentiality agreement.

15. On August 1, 2013, WBC forwarded photos and a video depicting the molding process used to make the WBC lids.

16. On August 14, 2013, Sorensen sent a letter asserting that the photos and videos "illustrate[] an infringing process." Sorensen further threatened that it "is committed to protecting its intellectual property through all available legal means." Sorensen further characterized its settlement offer as a "pre-litigation royalty rate." Finally, even though WBC explained the manufacturing process does not infringe the '316 patent, Sorensen asked WBC to provide "any substantial, factual, and documented reason why Sorensen R&D should not

proceed to make [WBC] the subject of Sorensen R&D's next lawsuit for infringement of the '316 patent."

17. As a result of the manufacturing and sales activities of WBC with respect to its lids and Sorensen's repeated accusations of infringement, there is an actual case or controversy between WBC and Sorensen within the meaning of 28 U.S.C. § 2201 concerning the '316 patent.

COUNT I – DECLARATORY JUDGMENT OF NON-INFRINGEMENT

18. The manufacturing process used to make the WBC lids does not meet the properly interpreted limitations of any claim of the '316 patent, and therefore does not infringe the '316 patent.

19. Accordingly, WBC seeks a declaratory judgment that the WBC process does not infringe the '316 patent.

COUNT II – DECLARATORY JUDGMENT OF INVALIDITY

20. In the alternative, if interpreted in a manner that encompasses the manufacturing process used to make the WBC lid, the claims of the '316 patent are invalid and should not have been issued by the United States Patent and Trademark Office.

21. Accordingly, WBC seeks declaratory judgment that the '316 patent is invalid.

REQUEST FOR RELIEF

WHEREFORE, plaintiff WBC demands that judgment be entered in its favor and against Sorensen as follows:

- A. Adjudging that WBC has not infringed, and that the manufacturing process used to make the WBC lids does not infringe, U.S. Patent 6,960,316;
- B. Adjudging that U.S. Patent 6,960,316 is invalid;
- C. Awarding WBC the reasonable attorneys' fees and costs of this action; and
- D. Granting such other and further relief as the court deems appropriate.

JURY DEMAND

Plaintiff WBC demands a jury for all factual issues not admitted by the defendants.

Dated: August 26, 2013

s/Michael T. Griggs

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