

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

MICHAEL WRIGHT
Plaintiff,

V.

**E-SYSTEMS LLC, dba TRICPLATE,
COVERTGLASS.COM, LLC,
SMART TINT, INC.,
PRIVACY TECHNOLOGY CORP.,
THE LASER JAMMER STORE,
AUTO AGENDA, LLC, and
BOB HASTINGS, dba GHOSTPLATE**
Defendants.

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Case No. 3:12-cv-04715-K

DEMAND for JURY TRIAL

PLAINTIFF'S SECOND AMENDED PETITION for PATENT INFRINGEMENT

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES MICHEAL WRIGHT, plaintiff herein, and files this Second Amended Petition as invited by the Court in its Order issued January 8, 2014 [Dkt. #26] to amend current defendants and sufficiently allege standing and causes of action.

I. PARTIES

1. Plaintiff **MICHEAL WRIGHT** is a citizen of Illinois who resides at 4701 E. 870th Rd Casey, IL 62420.
2. Defendant **E-SYSTEMS LLC**, dba **TRICPLATE.COM ("TRICPLATE")**, is a foreign limited-liability company headquartered and registered in Nevada, and may be served via its registered agent **EASTBIZCOM, INC.**, at 5348 Vegas Drive, Las Vegas 89108 NV.

3. Defendant **COVERTGLASS.COM, LLC ("COVERTGLASS")** is a foreign limited-liability company headquartered in Wyoming, and may be served via its registered agent, Raymond Allen, 2101 S 4th St, Cheyenne, WY 82001.

4. Defendant **PRIVACY TECHNOLOGY CORPORATION ("PTC")** is a corporation located in New York, and may be served via its registered agent, United States Corporation Agents, Inc., 7014 13th Avenue, Suite 202, Brooklyn, New York, 11228.

5. Other defendants named in the case previously have been dismissed.

II. JURISDICTION AND VENUE

6. This is an action for patent infringement arising under the patent laws of the United States. Title 35, United States Code. This Court has exclusive subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 (federal question) and 1338(a) (diversity).

7. This Court has personal jurisdiction over the defendants because each had conducted, and does conduct, business within the Northern District of Texas. As set forth in this Complaint, each of the defendants operates one or more electronic catalogs and Internet advertising that are accessible from within the State of Texas and the Northern District of Texas.

8. As further set forth in this Complaint on information and belief, each defendant has contributed to, and induced, acts of infringement within the State of Texas and the Northern District of Texas. Each of the defendants, directly, or through intermediaries, ships, distributes, offers for sale, sells, and advertises its products and/or services in the United States, including within the State of Texas and the Northern District of Texas, as shown below.

III. FACTS

A. Patent Ownership

9. The United States Patent and Trademark Office issued patents 6,556,337 on April 29, 2003, and 6,714,340 on March 30, 2004 (collectively, “the patents in suit”), to plaintiff, after full and fair examinations. The patents in suit are enforceable, and pursuant to 35 U.S.C. § 282, carry a statutory presumption of validity. True and correct copies of the patents in suit are attached as Exhibit E and Exhibit F, respectively.

10. The patents in suit were issued to plaintiff for the invention of a license plate cover that obfuscates the content on a license plate during vehicle exhibitions.

11. Plaintiff filed for the patents and has always owned the patents in suit, including the period of the defendants’ infringing acts, and still owns the patents in suit. Plaintiff has not assigned the patents in suit, or any rights concerning the patents in suit to any other party.

12. Plaintiff has manufactured license plate covers in lots of 100, and while in production, has complied with the statutory requirement of placing a notice of the Letters Patent on all the license plate covers employing the invention disclosed in the patents in suit.

13. Plaintiff has given the defendants written notice of the infringement, by either letter as described in the following section, or by a copy of Plaintiff’s Original Petition before filing.

14. Plaintiff has struggled to develop his business because defendants’ have dominated the market with substandard parts and used volume sales to create barriers for plaintiff to be successful, though he is the only the rightful manufacturer of products employing the patents.

B. Defendants' Infringing and Contributory Actions.

15. Each of the defendants manufactures, sells, or distributes devices that infringe on Claim 1 and other claims of the patents in suit, as follows.

16. **TRICPLATE** has infringed and is still infringing the patents in suit by making, selling, and using license plate covers that embody the patented invention. Plaintiff sent a letter to **TRICPLATE** about June 28, 2011, demanding that it cease selling products covered by the patents in suit. The letter is attached as Exhibit A, which is a true and correct copy of the letter sent to **TRICPLATE**, and which is incorporated herein.

17. **TRICPLATE** denied infringement when it responded to plaintiff's letter with irrelevant argument as shown in Exhibit G, which it received in August 22, 2011 (though the letter itself is undated). The **TRICPLATE** letter demonstrates that defendants had no intention of changing its behavior, with the clear implication that it would continue with the sale of its products undaunted by the patents in suit unless enjoined by this Court.

18. Exhibit B is a true and correct copy of the **TRICPLATE** website, located at the URL <http://www.tricplate.com>, where it also mentions the use of retailers and wholesalers used to distribute its products. As shown on page 2 of Exhibit B, **TRICPLATE** discusses its manufacturing techniques, the details for which it could not provide unless it was either the manufacturer, or specifying the production of the product, and in either case, **TRICPLATE** is claiming to be the manufacturer.

19. Exhibit H is a true and correct copy of the Facebook page of **TRICPLATE**, located at <https://www.facebook.com/pages/Tricplatecom/173978678667>, in which **TRICPLATE** has shared a video created by Team Wu, a motorsports competitive team, in which Team Wu has

installed an infringing license plate cover, and shown it in operation in the video. This video was posted on July 11, 2010 and remains today on **TRICPLATE**'s Facebook page, showing that **TRICPLATE** continues to encourage other parties to infringe the patents in suit.

20. **TRICPLATE** shows many pictures of its products employing the invention as described in the patents in suit, and all of those uses involve license plate covers which are activated by the user. There is no indication of any alternative use that is not infringing; every picture of their products employing the invention is infringing; there are no substantial non-infringing uses of the disclosed invention shown.

21. Even if **TRICPLATE** at one time was not aware of the patents in suit, it cannot claim ignorance after its response to plaintiff's letter, sent in September 2011.

22. Similarly, plaintiff sent a demand letter on September 19, 2011, to **COVERTGLASS** regarding the infringing products, because **COVERTGLASS** was infringing the patents in suit by making, selling, and using license plate covers that embody the patented invention. A true copy of the letter sent by plaintiff to **COVERTGLASS** is attached as Exhibit C and incorporated by reference here.

23. **COVERTGLASS** did not respond to plaintiff's letter, but cannot claim ignorance of plaintiff's claims after receiving it. Plaintiff also sent **COVERTGLASS** a copy of his Original Petition before filing it, asking it to waive service.

24. **COVERTGLASS** appears to have ceased its open advertising in late 2013, as its website, www.covertglass.com, has only a marker. However, it was still in operation in mid-2013. Exhibit E is a true and correct copy of pages taken by their website in 2012.

25. While in operation, **COVERTGLASS** falsely claimed to sell patented products, and is therefore liable for false marking pursuant to 11 USC 292(b) due to marking an unpatented article with intent to deceive the public. **COVERTGLASS's** false marking forced plaintiff to seek an explanation of the claimed patents, and causes an unknown number of would-be customers to purchase from **COVERTGLASS** before plaintiff's patent issued. In this way, plaintiff has suffered competitive injury.

26. Plaintiff has manufactured license plate covers that embody claims from the patents in suit, sells these license plate covers, and competes with plaintiffs in the market for obfuscating license plate covers. **COVERTGLASS.COM** intended to deceive the public when it illegally claimed that it had a patent pending on its website when no such patent application can be located, and as a competitor to plaintiff, customers from around the world could come to this site and buy the infringing products, damaging plaintiff by causing him to lose sales by the false marking of **COVERTGLASS**.

27. **PTC** has infringed the patents in suit by making, selling, and using license plate covers that embody the patented invention, and the defendant will continue to do so unless enjoined by this court. Exhibit G is a true and correct copy of the home page of its website, which shows its interest in obtaining dealers to sell infringing product. Plaintiff sent a copy of his Original Petition to PTC, seeking to avoid suit and to obtain waiver of service, thus giving PTC notice of plaintiff's infringement claims.

28. **PTC** falsely claims to sell patented products, and is therefore liable for false marking pursuant to 11 USC 292(b) due to marking an unpatented article with intent to deceive the public and that false marking has caused plaintiff competitive injury. Plaintiff has manufactured license

plate covers that embody claims from the patents, sells these license plate covers, and competes with defendants in the market for obfuscating license plate covers.

29. PTC intended to deceive the public when it attempted to, and sold, license plate covers which were unpatented, even though its advertising said its products were patented. PTC further damaged plaintiff by infringing on the patents in suit through various avenues such as its own website and online retailers such as Ebay where customers from around the world can come to buy its products.

IV. CLAIM - WILLFUL INFRINGEMENT OF THE PATENTS

30. Each defendant is infringing the patents in suit directly, and knowingly induced infringement, and possessed specific intent to encourage another's infringement.

31. Defendants are infringing the patents in suit directly, knowingly and jointly with other entities by, without authority, making, using, selling, and offering for sale in the United States, including the Northern District of Texas, their respective electronic catalogs, which electronic catalogs embody the patented inventions claimed in the Patent.

32. Each defendant is actively, intentionally, or knowingly inducing or contributing to infringement of the patents in suit by others, including agents, distributors, and actual and prospective customers who access defendants' online electronic catalogs and sales documentation.

33. Defendants are infringing the patents in suit directly, knew the combination for which its components were especially made was both patented and infringing, and the defendants' components have no substantial non-infringing use. Defendants knew their products infringed when they manufactured the license plate covers which infringe on patents in suit and further

attempted to and sold the infringing products through various online media, dealers, and the components in each license plate cover have no substantial non-infringing uses.

34. Each defendants is infringing the patents in suit literally.

35. Each defendant is infringing the patents in suit under the doctrine of equivalents.

36. Plaintiff's remedy by civil action for infringement is provided by 35 U.S.C. § 281.

37. Infringement of the patents in suit by defendants is willful and deliberate, making this case exceptional pursuant to 35 U.S.C. § 285 and justifying treble damages by 35 U.S.C. § 284.

38. Prior to the filing of this action, plaintiff complied with 35 U.S.C. § 287.

39. Plaintiff has complied with the statutory requirement of placing a notice of the Letters Patent on all license plate covers it manufactures and sells and has given defendants written notice of the infringement.

40. Plaintiff has been harmed by the actions of defendants' infringing acts.

V. CLAIM - FALSE MARKING

41. Based on the facts detailed *supra* and incorporated into this claim, defendants **PTC** and **COVERTGLASS** have violated 35 U.S.C. § 292(a), entitled "False Marking", in that they used the word "patent" to describe their unpatented articles in advertising on their website with intent to deceive the public, as their products are not patented.

42. Defendants **PTC** and **COVERTGLASS** caused damages to plaintiff due to the false marking, as those products were able to win business which plaintiff should have received.

43. Pursuant to 35 U.S.C. §292(a) and (b), **PTC** and **COVERTGLASS** are liable for competitive injury to plaintiff, who ostensibly lost sales opportunities due to the false marking.

VI. CLAIM - ATTORNEY'S FEES

44. Based on the facts detailed supra and incorporated into this claim, Plaintiff believes this case to be an exceptional case for which it is entitled attorney's fees pursuant to 35 U.S.C. § 285.

VII. PRAYER FOR RELIEF

45. **WHEREFORE**, Plaintiff respectfully prays that defendants be cited to appear and answer herein and that, upon a final hearing of the cause, judgment be entered for the plaintiff against defendants, awarding the following:

- a. An adjudication that the patents in suit are valid;
- b. An adjudication that each of the defendants have infringed the patents in suit;
- c. A permanent injunction against the defendants, enjoining them, their respective directors, officers, agents, employees, successors, subsidiaries, assigns, and all persons acting in privity, concert, or participation with the defendants, from making, using, selling, or offering for sale in the United States, or importing into the United States, any and all products and/or services embodying the patented inventions claimed in the Patent;
- d. Damages for infringement of the patents in suit pursuant to 35 U.S.C. §§ 281, 284;
- e. Enhanced damages for willful infringement, pursuant to 35 U.S.C. § 284;
- f. Pre-judgment and post-judgment interest at the highest legal maximum rate;
- g. A declaration that this case is exceptional under 35 U.S.C. § 285, and an award to plaintiff for its reasonable and necessary attorney's fees, pursuant to 35 U.S.C. § 285;
- h. Payment of costs of suit herein incurred pursuant to, *inter alia*, 35 U.S.C. § 297(b)(1);
- i. Other relief to which plaintiff may be entitled at law or in equity, whether pled or unpled.

JURY DEMAND - Plaintiff requests trial by jury of all claims.

Dated: February 4, 2014

Respectfully submitted,

s/Warren Norred
Warren Norred, TX Bar 24045094
Norred Law, PLLC
200 E. Abram, Suite 300, Arlington, TX 76010
817-704-3984 o; 817-549-0161 f
Attorney for Plaintiff
wnorred@norredlaw.com

CERTIFICATE OF CONFERENCE - As no defendants have answered the Original Petition in this suit, no conference was conducted.

s/Warren Norred
Warren Norred, TX Bar 24045094

CERTIFICATE OF SERVICE - As no defendant has answered the Original Petition, and this amendment makes no new claims, but is filed only to standing and further add details to which no defendant has excepted, no additional service is necessary.

s/Warren Norred
Warren Norred, TX Bar 24045094

EXHIBITS ATTACHED:

- A) Letter sent to Tricplate
- B) Excerpt of Tricplate website
- C) Excerpt of CovertGlass.com's Internet materials
- D) Excerpt of Privacy Technology Corporation's Internet materials
- E) Patent 6,556,337
- F) Patent 6,714,340
- G) E-Systems Letter
- H) Tricplate Facebook Page