

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN**

NOUIS TECHNOLOGIES, INC.,
A MINNESOTA CORPORATION,

Plaintiff,

v.

POLARIS INDUSTRIES, INC.,
A DELAWARE CORPORATION,

POLARIS INDUSTRIES, INC.,
A MINNESOTA CORPORATION, AND

POLARIS INDUSTRIES MANUFACTUR-
ING, LLC,
A MINNESOTA LIMITED LIABILITY COMPANY,

Defendants.

Trial by Jury Demanded

Case No. 14-CV-233

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff, Nouis Technologies, Inc., by its attorneys, hereby complains as herein recited:

The Parties

1. Plaintiff, Nouis Technologies, Inc. (“Nouis Tech”) is a Minnesota Corporation with its principal place of business located in the city of Little Falls, Minnesota.

2. Defendant, Polaris Industries, Inc. (“PI-Del”) is, on information and belief, a corporation established under the laws of the State of Delaware, with a registered office located at 100 S. 5th Street, #1075, Minneapolis, Minnesota 55402.

3. On information and belief, PI-Del maintains an office located at 2100 Highway 55, Medina, Minnesota 55340.

4. Defendant, Polaris Industries, Inc. is, on information and belief, a corporation established under the laws of the State of Minnesota, with its principal place of business located at 2100 Highway 55, Medina, Minnesota 55340.

5. Defendant, Polaris Industries Manufacturing, LLC (“PI-Man.”) is, on information and belief, a limited liability company established under the laws of the State of Minnesota, with its principal place of business located at 2100 Highway 55, Medina, Minnesota 55340.

6. Defendants are collectively referred to as “Polaris” or “the Polaris Defendants” hereinafter.

Jurisdiction and Venue

7. This Court has jurisdiction over the subject matter of this action under 28 U.S.C. §1331 and 1338(a) as this case arises under the Patent Laws of the United States, 35 U.S.C. § 1 et seq.

8. On information and belief, Defendants maintain a manufacturing plant located in Osceola, Wisconsin. *See* Polaris Osceola, Wisconsin, attached hereto as Exh. A. On information and belief, “Osceola houses multiple engineering and manufacturing functions,” including “Power Train Design and Engine Assembly for all product lines.” *See* Exh. A.

9. PI-Del is registered to do business in Wisconsin.

10. PI-Man is registered to do business in Wisconsin.

11. Venue properly lies in the Western District of Wisconsin pursuant to 28 U.S.C. § 1391(b), (c), and (d) because a substantial part of the events giving rise to these claims occurred in the District, and a number of key witnesses reside in, or close to, the District. In addition,

venue properly lies in this district pursuant to 28 U.S.C. § 1400(b) as the Polaris defendants either reside in this district or acts of infringement have occurred in this district.

Nouis Technologies

12. On October 2, 1999, Inventors Randy Gene Nouis (“Randy Nouis”) and Cynthia Lynn Nouis (“Cindy Nouis”) (collectively “the Nouis”) filed an application for patent directed to a Flyweight System.

13. The aforementioned application duly and properly issued from the United States Patent & Trademark Office as U.S. Pat. No. 6,346,056 (“the ‘056 patent”) on February 12, 2002. A true and correct copy of the ‘056 patent as issued is attached hereto as Exh. B. All right, title and interest in the ‘056 patent has been assigned to Nouis Tech.

14. The ‘056 patent is the result of pioneering research and development conducted by the Nouis in the field of flyweights and clutches for recreational vehicles.

15. Randy Nouis is a well-regarded expert on recreational vehicles and power train design of recreational vehicles. Several of his articles on recreational vehicles have been published in respected industry journals. For example, in September 1998, Snow Tech Magazine published “Quiet Pipes – More Power.” Attached hereto as Exh. C. In September 2000, Snow Tech Magazine published “What Secrets Have Ski-Doo & Polaris Kept From Us For Years?” Attached hereto as Exh. D. In September 2001, Snow Tech Magazine published “Inside Clutch Tuning: Tune the Primary or the Secondary?” Attached hereto as Exh. E. In September 2002, Snow Tech Magazine published “Down Shifting.” Attached hereto as Exh. F. In November 2003, Snow Tech Magazine published “Dual Pivot Point Clutch Weights.” Attached hereto as Exh. G. In December 2008, Snow Tech Magazine published “The TRA Center Roller Arm.” Attached hereto as Exh. H.

16. In particular, the '056 patent is the result of the Nouises study conducted in or around 1998 of clutches and flyweights that had been used in recreational vehicles for approximately 30 years, and how those same weights could be modified to improve primary clutch performance. The results of this study were first published in SnowTech magazine on or about September 1999. *See* "The 'Heel Clicker'" Attached hereto as Exh. I.

17. The Nouises determined that the addition of mass to a particular region of a flyweight created a flyweight with an asymmetrical rotational inertia ("J"), thereby resulting in greater belt squeezing force, especially at low RPMs.

18. Examples of flyweights constructed in prior art configurations can be found in, for example, "Olav Aaen's Clutch Tuning Handbook," 2004. For example, Exh. J depicts a listing of COMET CAM ARMS, available as of approximately 2003, illustrating a variety of prior art flyweights. Exh. K depicts a listing of POLARIS flyweights as of 2003. Exh. L depicts a listing of YAMAHA flyweights. None of these flyweights incorporate the inventive features of the '056 patent.

19. The following series of images depicts three prior art flyweights. In particular, from the left, the flyweights are a Polaris 20-62 flyweight, a Comet A-23, and a Yamaha 8DN-20.



20. In particular, with respect to all three prior art flyweights pictured above there is no concentration of mass supplementing the flyweight in the 60 degree wide sector called out in

the photographs above between the 60 degree line and the 120 degree line shown on the blocks on which the weights are suspended.

21. The technology developed by the Nouises received substantial attention in the recreational vehicle community. In particular, shortly after its commercial release, Snow Tech Magazine published an in-depth study of the Heel Clicker flyweight. Snow Tech published “The ‘Heel Clicker’ A Flyweight Plus Design.” *See* Exh. I. In addition, Snow Tech published a half-page article titled “Flyweight-Plus/Heel Clicker Increases Track Horsepower,” attached hereto as Exh. M, and a single page article titled “Field Testing of the ‘Flyweight-Plus’ Design.” Attached hereto as Exh. N.

22. Starting in 1999 the Nouises began manufacturing and offering Heel Clicker Clutch Kits for sale through Super Torquer Systems, Inc. *See* Advertisement, attached hereto as Exh. O. These clutch kits embody the technology of the ‘056 patent. The kits sold quickly with sales of more than \$2,000,000 in the first four seasons of business.

23. The Heel Clicker Clutch Kit is still a strong seller.

24. All of the Heel Clicker Clutch Kits that have been sold have been properly marked with either “Patent Pending,” for those kits that were manufactured and sold prior to the issuance of the ‘056 patent or with “U.S. Patent # 6,346,056.” *See* Exh. P.

The Polaris Defendants

25. The Polaris Defendants are in the business of designing, engineering, manufacturing, and selling recreational vehicles, including All Terrain Vehicles (“ATVs”), Utility Task Vehicles (“UTVs”), Snowmobiles, and other recreational vehicles.

26. Flyweights are incorporated into primary clutch units that form part of Polaris's Continuously Variable Transmission ("CVT"). A primary clutch unit is attached to the vehicle's crankshaft, and operates in response to changes in power from the crankshaft.

27. A typical primary clutch will employ three or more flyweights. As the primary clutch is rotated, the flyweights pivot within the primary clutch. This serves to force a moveable sheath of the primary clutch along its center shaft toward a stationary sheath of the primary clutch.

28. When rotated, the primary clutch applies pressure to a belt that transmits power to a secondary clutch unit.

29. Polaris recognized the advantages of the technology embodied in the '056 patent early on. In particular, starting in or around 2008, Polaris assigned a part number to clutches especially made to utilize the performance of the Heel Clicker flyweights. This part number is 1322746.

30. Since model year 2008, certain racing snowmobiles made by Polaris have utilized the special Heel Clicker Clutch. These racing snowmobiles are available to snowmobile racers.

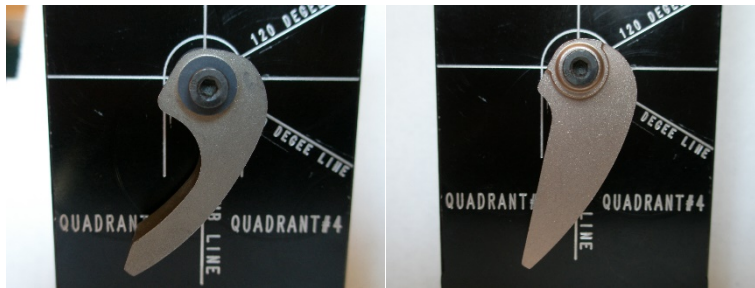
31. While the racing snowmobiles are available to racers, the Heel Clicker Clutch is available to the general public through Polaris's partner Wahl Bros. Racing Inc as well as any Polaris dealer.

32. Starting in model year 2009 (calendar year 2008), Polaris changed the configuration of its flyweights. In particular, Polaris began adding mass adjacent to the head of its flyweights in the exact configuration called for in the '056 patent thereby forming a supplemental mass or shoulder.

33. Depicted below is a picture depicting on the left a Polaris S-55 flyweight, which is a conventional fly weight for use in Polaris ATV and UTV applications as of approximately 2008, and on the right, a Polaris 26-61 flyweight, which is used in Polaris's newer UTVs.



34. The design of the 26-61 flyweight is visibly different than the earlier S-55 flyweight. As seen in the following pictures of Polaris 26 and 27 series flyweights, Polaris has added weight in the exact configuration protected by the '056 patent. In particular, these weights incorporate mass supplementing the flyweight in the 60 degree wide sector called out in the photographs below between the 60 degree line and the 120 degree line.



35. These weights are used in a number of Polaris recreational vehicles. For example, the Polaris 26-series flyweights are used in the Polaris 900 & 1000 series of UTVs. The Polaris 27-series flyweights are, on information and belief, used in various military vehicles made by Polaris.

36. Polaris made these changes to procure the primary advantages of the Heel Clicker flyweight, including the application of a higher belt squeezing force at low shift ratios, and to improve low speed maneuverability of its vehicles.

37. Polaris uses CVTs in various recreational vehicles, including snow mobiles, ATVs, and UTVs. Since 1985, Polaris has used the P-85 clutch in its snow mobiles. Since 1990 until recently, Polaris used the P-90 clutch in its ATVs and UTVs.

38. Recently, Polaris has released an updated clutch for use in certain ATVs and UTVs. This clutch has been modified to accommodate the Polaris flyweights incorporating the improvements of the '056 patent. An example of a modified clutch is Polaris part number 1322971.

39. The Nouises reached out to Polaris about its infringement of the '056 patent on or about June of 2013.

40. On October 11, 2013, counsel for Polaris responded to the Nouises allegations of infringement by arguing that the '056 patent was invalid. *See* Letter from Eric Groen, attached hereto as Exh. Q.

41. The Nouises obtained legal counsel on the infringement issue, and on or about December 27, 2013, counsel for Nouis Tech rebutted Polaris's allegations that the '056 patent is invalid and reached out to counsel for Polaris regarding Polaris's infringement of the '056 patent. *See* Letter from Sherinian, attached hereto as Exh. R.

42. Polaris has not made any written response to this letter.

COUNT 1
Infringement of U.S. Pat. No. 6,346,056

43. Plaintiff incorporates by reference and realleges each and every allegation contained in Paragraphs 1 through 42.

44. On information and belief, Polaris now sells numerous ATVs and UTVs that utilize clutches incorporating modified flyweights. These flyweights and clutches infringe the '056 patent.

45. On information and belief, Polaris has infringed and continues to infringe the '056 patent. The infringing acts include, but are not necessarily limited to, making, having made, offering for sale, selling and distributing Infringing Products.

46. On information and belief, Polaris also induces and/or contributes to infringement of the '056 patent by its customers and/or partners, as well as its manufacturers.

47. For example, Polaris provides clutches and flyweights to its customers. These flyweights can be incorporated into primary clutch units by its customers.

48. Polaris provides documentation teaching and encouraging its customers to install primary clutch units into ATVs and UTVs.

49. Polaris provides documentation teaching and encouraging its customers to install flyweights into primary clutch units.

50. Polaris's acts of infringement have caused damage to Nouis Tech. Under 35 U.S.C. § 284, Nouis Tech is entitled to recover no less than a reasonable royalty from Polaris.

51. In addition, Nouis Tech is entitled to recover lost profits corresponding to at least part of the sales that Polaris's infringing units have procured.

52. Polaris's infringement of Nouis Tech's exclusive rights under the '056 patent will continue to damage Nouis Tech causing irreparable harm, for which there is no adequate remedy of law, unless enjoined by this Court under 35 U.S.C. § 283.

53. On information and belief, Polaris had knowledge of the '056 patent. In particular, Polaris has used Heel Clicker Clutch Kits for its racing teams, and each such Heel Clicker

Clutch Kit was marked as practicing the '056 patent. In addition, Polaris created a special clutch designed to optimize the performance of the Heel Clicker Clutch Kit.

54. Therefore, on information and belief, Polaris's infringement of the '056 patent was willful.

WHEREFORE, Plaintiff, Nouis Technologies, Inc., prays that this Court enter judgment in favor of Plaintiff and against Defendants finding that Defendants have infringed the claims of U.S. Pat. Nos. 6,346,056 and Ordering as follows:

- A. U.S. Pat. No. 6,346,056 is good and valid in law;
- B. The Defendants have and continue to infringe the '056 patent;
- C. The Defendants and their respective directors, officers, employees, agents, subsidiaries, parents, attorneys, and all persons acting in concert, on behalf of, in joint venture, or in partnership with the Defendants be preliminary and permanently enjoined under 35 U.S.C. § 283 against any further acts of infringement;
- D. For a judgment that this cause is "exceptional" in the sense of 35 U.S.C. § 285 and that Nouis Tech is entitled to an award of its reasonable attorneys' fees in the prosecution of this action;
- E. For an award of damages adequate to compensate Nouis Tech for the past infringement of the patents-in-suit, together with interest and costs as fixed by the Court;
- F. For a judgment that Defendants' infringement of the '056 patent was willful, and for enhanced damages pursuant to Defendants' willful infringement;
- G. That the Court grants all other relief as is reasonable to remedy Defendants' wrongful acts by any mean, either at law or in equity.

Demand for Jury Trial

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, plaintiff Nouis Technologies, Inc. hereby demands a jury trial on all issues triable by jury.

NOUIS TECHNOLOGIES, INC.

Date: March 28, 2014

By: /s/ Konrad Sherinian
An attorney for plaintiff

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