

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

**AERIELLE TECHNOLOGIES, INC.
and AERIELLE, INC.**

Plaintiffs,

v.

PROCARE INTERNATIONAL, INC.

Defendants.

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**CASE NO. 2:08-cv-284
JURY**

PLAINTIFFS' ORIGINAL COMPLAINT

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW Aerielle Technologies, Inc. and Aerielle, Inc., and files this their Original Complaint against the above-captioned defendant and in support thereof would respectfully show the Court as follows:

I. PARTIES

1. Plaintiffs Aerielle Technologies, Inc. and Aerielle, Inc. (collectively "Aerielle" or "Plaintiffs") are corporations organized under the laws of the state of California, with their principal place of business at 190 S. Whisman Road, Bldg. B, Mountain View, CA 94041. Aerielle, is a consumer electronics designer whose products include wireless accessories for portable mobile audio devices such as I-Pod, MP3/4 players, and related products.

2. Defendant Procure International, Inc. ("PROCARE") is a Taiwanese corporation with its principal place of business at 5F, 88 Jhou Zih St., Neihs District, Taipei, Taiwan, 114. PROCARE may be served with summons a copy of this complaint by serving it by international registered mail, return receipt requested, at its principal place of business at 5F, 88 Jhou Zih St., Neihs District, Taipei, Taiwan, 114.

II. JURISDICTION AND VENUE

3. This is an action for patent infringement arising under the Patent Laws of the United States, 35 U.S.C. § 1, et seq.

4. Subject matter jurisdiction is proper in this Court under 28 U.S.C. §§1331 and 1338(a).

5. This Court has personal jurisdiction over PROCARE because, among other things, PROCARE regularly does business in this judicial district and because PROCARE has established minimum contacts with the forum and the exercise of jurisdiction over PROCARE will not offend traditional notions of fair play and substantial justice. On information and belief, PROCARE places infringing products into the stream of commerce with the reasonable expectation and/or knowledge that the actual or potential ultimate purchasers and users are located throughout the United States, including within this judicial district. On information and belief, PROCARE has voluntarily conducted business and solicited customers in the State of Texas, including in this judicial district. On information and belief, PROCARE sells, advertises, markets and distributes infringing products throughout this judicial district. PROCARE has committed and continues to commit acts of patent infringement in this judicial district.

6. Venue is proper in this judicial district under 28 U.S.C. §1391(b-d) and 1400(b).

III. THE PATENTS-IN-SUIT

7. PROCARE has infringed and continues to infringe at least two Aerielle patents. United States Patent No. 6,671,494 (“the ‘494 Patent”), entitled “Small, Battery Operated RF Transmitter for Portable Audio Devices for Use with Headphones With RF Receiver,” was duly and legally issued by the United States Patent and Trademark Office to John James on December 30, 2003. A copy of the ‘494 Patent is attached hereto as Exhibit A. United States Patent No. 5,771,441 (“the ‘441 Patent”), entitled “Small, Battery Operated RF Transmitter for Portable Audio Devices for Use

With Headphones With RF Receiver,” was duly and legally issued by the United States Patent and Trademark Office to John E. Alstatt on June 23, 1998. A copy of the ‘441 Patent is attached hereto as Exhibit B. The claims of infringement against PROCARE on the ‘494 Patent and ‘441 Patent are asserted in the alternative to the extent they conflict.

8. The ‘441 Patent and the ‘494 Patent have been assigned to Aerielle who is their current owner with full rights to sue and recover damages and otherwise enforce the ‘441 Patent and the ‘494 Patent.

9. The ‘441 Patent and the ‘494 Patent are valid and enforceable.

COUNT 1 – INFRINGEMENT OF ‘494 PATENT

10. PROCARE has infringed, and is still infringing, literally and/or under the doctrine of equivalents, one or more claims of the ‘494 Patent in at least this State and District by making, using, offering to sell, selling, and/or importing products that infringe one or more of the claims of the ‘494 Patent.

11. PROCARE has also contributed to and/or induced, and continues to contribute to and/or induce, the infringement of one or more claims of the ‘494 Patent, in at least this State and District.

12. On information and belief, PROCARE’s infringement of one or more claims of the ‘494 Patent has taken place, with full knowledge of the ‘494 Patent and has been, and continues to be, willful, deliberate, and intentional.

13. PROCARE’s infringement and/or inducement of infringement and/or contributory infringement of one or more claims of the ‘494 Patent has injured Aerielle, and Aerielle is entitled to recover damages adequate to compensate it for PROCARE’s infringement, which in no event can be less than a reasonable royalty.

14. PROCARE has caused Aerielle substantial damage and irreparable injury by its infringement and/or inducement of infringement and/or contributory infringement of one or more claims of the '494 Patent, and Aerielle will continue to suffer damage and irreparable injury unless and until the infringement of PROCARE is enjoined by this Court.

COUNT 2 – INFRINGEMENT OF '441 PATENT

15. PROCARE has infringed, and is still infringing, literally and/or under the doctrine of equivalents, one or more claims of the '441 Patent in at least this State and District by making, using, offering to sell, selling, and/or importing products that infringe one or more of the claims of the '441 Patent.

16. PROCARE has also contributed to and/or induced, and continues to contribute to and/or induce, the infringement of one or more claims of the '441 Patent, in at least this State and District.

17. On information and belief, PROCARE's infringement of one or more claims of the '441 Patent has taken place, with full knowledge of the '441 Patent and has been, and continues to be, willful, deliberate, and intentional.

18. PROCARE's infringement and/or inducement of infringement and/or contributory infringement of one or more claims of the '441 Patent has injured Aerielle, and Aerielle is entitled to recover damages adequate to compensate it for PROCARE's infringement, which in no event can be less than a reasonable royalty.

19. PROCARE has caused Aerielle substantial damage and irreparable injury by its infringement and/or inducement of infringement and/or contributory infringement of one or more claims of the '441 Patent, and Aerielle will continue to suffer damage and irreparable injury unless and until the infringement of PROCARE is enjoined by this Court.

IV. PRAYER

20. WHEREFORE, Plaintiff Aerielle respectfully requests that:

- A. Defendant PROCARE be summoned to appear and answer;
- B. Plaintiffs be granted judgment against Defendant;
- C. The Court enter a judgment that PROCARE has infringed, contributorily infringed, and/or induced the infringement of the '494 Patent and the '441 Patent, and continues to infringe, contribute to the infringement of, and/or induce the infringement of the '494 Patent and the '441 Patent;
- D. The Court enter a judgment that PROCARE's infringement of the '494 Patent and the '441 Patent was willful and continues to be willful;
- E. The Court enter permanent injunction enjoining PROCARE, its officers, directors, servants, consultants, managers, employees, agents, attorneys, successors, assigns, affiliates, subsidiaries, and all persons in active concert or participation with any of them, from infringement, contributory infringement, and inducement of infringement of the '494 Patent and the '441 Patent, including but not limited to making, using, offering to sell, selling, or importing any products that infringe, literally or under the doctrine of equivalents, the '494 Patent and the '441 Patent;
- F. The Court enter an award to Aerielle of all damages adequate to compensate Aerielle for PROCARE's infringement, contributory infringement, and/or inducement of infringement, such damages to be determined by a jury and, if necessary, an accounting of all damages;
- G. The Court award pre-judgment and post-judgment interest as allowed by law;
- H. The Court enter an award of increased damages in an amount not less than three times the amount of damages awarded to Aerielle for PROCARE's willful infringement of the '494 Patent and the '441 Patent;
- I. The Court enter a declaration that this is an exceptional case under 35 U.S.C. §285 and enter an award of the reasonable attorney's fees, costs, and expenses incurred by Aerielle in this action; and
- J. The Court grant Plaintiffs such further relief to which Plaintiffs may show themselves justly entitled.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Michael C. Smith", written over a horizontal line.

Michael C. Smith

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