

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN
MILWAUKEE DIVISION**

**ILLUMINATION MANAGEMENT
SOLUTIONS, INC.,**

Plaintiff,

v.

RUUD LIGHTING, INC.,

Defendant.

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Civil Action No.: 2:11-cv-00034-JPS

JURY TRIAL DEMANDED

**IMS' FIRST AMENDED COMPLAINT FOR PATENT INFRINGEMENT
AND CIVIL CONSPIRACY**

Plaintiff Illumination Management Solutions, Inc. (hereinafter "IMS"), for its First Amended Complaint against defendant Ruud Lighting Inc. (hereinafter "RLI"), alleges as follows:

THE PARTIES

1. Plaintiff IMS is a California corporation having a principal place of business at 18242 McDermott West, Suite J, Irvine, CA 92614-4779. IMS is a global technology leader specializing in the design and manufacture of high performance Light Emitting Diode ("LED") devices and apparatus utilizing LED devices.

2. Defendant RLI is a Wisconsin corporation having a principal place of business at 9201 Washington Avenue, Racine Wisconsin.

Jurisdiction and Venue

3. This is an action for patent infringement arising under the patent laws of the United States, Title 35 of the United States Code and for civil conspiracy. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1332 and 1338.

4. Defendant RLI is conducting business on a systematic and continuous basis within the United States, including within the state of Wisconsin, and in this judicial district.

5. Defendant RLI makes, imports, uses, offers to sell, and/or sells within the United States products including products which infringe the patents at issue in this action. RLI's products are targeted to customers, such as lighting distributors and re-sellers, that sell and ship products all over the world, including into the state of Wisconsin and this District. Defendant RLI reasonably expects that its products will be sold into the state of Wisconsin and into this District.

6. Defendant RLI is subject to personal jurisdiction in this judicial district because it has established minimum contacts with the forum, such that the exercise of jurisdiction would not offend traditional notions of fair play and substantial justice and has committed acts of infringement in this judicial district.

7. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391(b) and (c) and 1400(b).

COUNT ONE
Infringement of U.S. Patent No. 7,674,018

8. Each of the foregoing paragraphs is incorporated by reference.

9. IMS is the assignee and owner of all right, title, and interest in United States Patent No. 7,674,018 entitled "LED Device for Wide Beam Generation" ("the '018 Patent"). The '018 Patent was duly and legally reissued on March 9, 2010, by the United States Patent and Trademark Office. A true and correct copy of the '018 Patent is attached hereto as Exhibit A.

10. Defendant RLI has been and is now infringing, actively inducing infringement, and/or is liable for contributory infringement of the '018 Patent pursuant to 35 U.S.C. § 271.

11. The infringing products, which are used to practice the claims of the '018 Patent, are known by defendant RLI to be especially made or adapted for use in an infringement of the '018 Patent, and are not staple articles or commodities of commerce suitable for substantial non-infringing uses.

12. Defendant RLI's past and continued acts of infringement of the '018 Patent have injured IMS and thus IMS is entitled to recover compensatory damages for the infringement in an amount subject to proof at trial.

13. Defendant RLI's infringement of IMS's exclusive rights under the '018 Patent will continue to damage IMS's business, causing irreparable injury to IMS, for which there is no adequate remedy at law, unless RLI is enjoined by this Court from further infringement.

14. At all times relevant to this action, Cooper Lighting has complied with 35 U.S.C. § 287 with respect to the '018 Patent.

15. RLI has had actual knowledge of the '018 Patent and its infringement is willful and deliberate, entitling IMS to enhanced damages under 35 U.S.C. § 284 and to attorney's fees and costs incurred prosecuting this action under 35 U.S.C. § 285. The factual allegations in this paragraph will likely have evidentiary support after a reasonable opportunity for further investigation or discovery.

COUNT TWO
Civil Conspiracy¹

16. Each of the foregoing paragraphs is incorporated by reference.

17. From approximately early 2006 until at least late 2007, Alan J. Ruud served as a Director of IMS. RLI was aware of Mr. Alan Ruud's status as a Director of IMS during this period.

18. At all relevant times described herein, and the entire time for which Alan Ruud was a director of IMS, Alan Ruud was a fiduciary with respect to IMS and, therefore, owned IMS all the duties of the exercise of skill, prudence, loyalty and diligence of a fiduciary and was obligated to perform in accordance with the responsibilities of trust and confidence reposed in a fiduciary acting in that capacity.

¹ IMS brought this conspiracy claim in its original complaint. *See* Dkt. No. 1. IMS believed that it had reached agreement with RLI's former counsel to seek to combine all the conspiracy claims in this action with those that were filed in California against Alan and Christopher Ruud. *See Illumination Management Solutions Inc v. Alan Ruud et al*, Case No. 2:10-cv-01120-RTR (Eastern District of Wisconsin–Milwaukee Division) (before transfer the action was *Illumination Management Solutions Inc v. Alan Ruud et al*, Case No. 8:10-cv-00797-JST-AN (Central District of California–Southern Division)). Pursuant to that agreement, the parties in Case No. 2:10-cv-01120-RTR filed a joint stipulation allowing for the filing of an amended complaint which added the conspiracy claim that was previously filed in this Court to Case No. 2:10-cv-01120-RTR. After this stipulation was filed and pursuant to the Parties' agreement, on September 29, 2011, IMS filed its motion to sever and transfer the conspiracy claim in this action (then pending in Texas) to the action which was then pending in California. *See* Dkt. No. 27. On December 17, 2010, the Texas Court denied the motion as moot after this action and the action in California were both transferred to Wisconsin. IMS is unaware at this time of a factual basis that would support a limitations defense. RLI has not answered or otherwise responded in this action or the action pending in Judge Randa's court, so IMS does not know whether RLI might assert as an affirmative defense any particular statute of limitations defense. Therefore, while IMS does not know of any possible claim of limitations, out of an abundance of caution, IMS wants to ensure that any assessment of limitations will be made from the date on which IMS brought its conspiracy claims in this suit. IMS sought a stipulation from RLI that would resolve this issue without the Court's involvement, but the Parties were unable to reach an stipulation. IMS will again seek to transfer and consolidate only the conspiracy claim with Case No. 2:10-cv-01120-RTR. RLI has indicated that it will not oppose such a motion.

19. At all relevant times described herein, and the entire time for which Alan Ruud was a director of IMS, IMS relied upon the fiduciary relationship which existed between IMS and Alan Ruud and made disclosures of business, legal, technical and other confidential information to Alan Ruud in reliance of this duty.

20. During the time that Mr. Alan Ruud was a Director of IMS, RLI and Alan Ruud entered into a conspiracy to wrongfully, and without cause, have Alan Ruud breach his fiduciary obligations to IMS.

21. Among the acts performed by Alan Ruud and RLI in furtherance of this conspiracy was the misuse, by Alan Ruud and RLI, of information obtained by Alan Ruud by virtue of his position with IMS.

22. Among the further acts performed by Alan Ruud and RLI in furtherance of this conspiracy was the misuse, by Alan Ruud and RLI, of information obtained by Alan Ruud by virtue of his position with IMS to prepare and file patent applications and ultimately obtain patents that were assigned of record to RLI, with the intention of restricting IMS in its development of business and business opportunities.

23. As a result of the conspiracy between Alan Ruud and RLI, Alan Ruud breached his fiduciary obligations to IMS.

24. As a proximate result of Alan Ruud's breach of his fiduciary duties to IMS, and as a result of the conspiracy between Alan Ruud and RLI, IMS has suffered damages.

25. All conditions precedent to bring this suit have occurred.

COUNT THREE
Infringement of U.S. Patent No. 7,993,036

26. Each of the foregoing paragraphs is incorporated by reference.

27. IMS is the assignee and owner of all right, title, and interest in United States Patent No. 7,993,036 entitled “LED Device for Wide Beam Generation” (“the ‘036 Patent”). The ‘036 Patent was duly and legally reissued on August 9, 2011, by the United States Patent and Trademark Office. A true and correct copy of the ‘036 Patent is attached hereto as Exhibit B.

28. Defendant RLI has been and is now infringing, actively inducing infringement, and/or is liable for contributory infringement of the ‘036 Patent pursuant to 35 U.S.C. § 271.

29. The infringing products, which are used to practice the claims of the ‘036 Patent, are known by defendant RLI to be especially made or adapted for use in an infringement of the ‘036 Patent, and are not staple articles or commodities of commerce suitable for substantial non-infringing uses.

30. Defendant RLI’s past and continued acts of infringement of the ‘036 Patent have injured IMS and thus IMS is entitled to recover compensatory damages for the infringement in an amount subject to proof at trial.

31. Defendant RLI’s infringement of IMS’s exclusive rights under the ‘036 Patent will continue to damage IMS’s business, causing irreparable injury to IMS, for which there is no adequate remedy at law, unless RLI is enjoined by this Court from further infringement.

32. At all times relevant to this action, Cooper Lighting has complied with 35 U.S.C. § 287 with respect to the ‘036 Patent.

33. RLI has had actual knowledge of the ‘036 Patent and its infringement is willful and deliberate, entitling IMS to enhanced damages under 35 U.S.C. § 284 and to attorney’s fees

and costs incurred prosecuting this action under 35 U.S.C. § 285. The factual allegations in this paragraph will likely have evidentiary support after a reasonable opportunity for further investigation or discovery.

PRAYER FOR RELIEF

Wherefore, IMS respectfully requests that the Court:

- A. order trial by jury on all issues so triable;
- B. render judgment finding that RLI has infringed the '018 Patent and '036 Patent;
- C. find that RLI's infringement of the '018 Patent and '036 Patent is willful;
- D. issue preliminary and permanent injunctions preventing RLI, and those in active concert or participation with RLI, from further infringement, inducement of infringement, or contributory infringement of the '018 Patent and '036 Patent;
- E. award treble damages pursuant to 35 U.S.C. § 284;
- F. render judgment finding that RLI's conduct was unlawful;
- G. award compensatory damages in an amount to be determined at trial;
- H. award exemplary damages;
- I. award interest as allowed by law;
- J. declare this case is exceptional pursuant to 35 U.S.C. § 285, award the costs and reasonable attorney fees incurred in connection with this action;
- K. order Ruud Lighting to transfer to IMS any interest assigned to Ruud Lighting by Alan Ruud in any patent applications or patents filed during, or as a result of, Alan Ruud's fiduciary relationship with IMS that relate to the business of IMS; and
- L. grant such other and further relief as the Court and the jury deem just and proper.

Date: January 6, 2012

Respectfully submitted,

By s/ Bruce J. Cannon

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