

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

Exacto, Inc., an Illinois corporation,

Plaintiff,

v.

Platte Chemical Company, a Nebraska corporation

Defendants

Case No.:12-900

Judge: (not yet assigned)

JURY DEMANDED

**COMPLAINT FOR DECLARATORY JUDGMENT
NONINFRINGEMENT AND INVALIDITY OF UNITED STATES PATENT**

PARTIES AND BACKGROUND

1. Plaintiff Exacto, Inc. ("Exacto") is an Illinois corporation with its principal place of business at 200 Old Factory Rd Sharon , Wisconsin 53585.

2. On information and belief, Defendant Platte Chemical Company ("Platte") is incorporated in Nebraska and has its principal place of business at 3005 Rocky Mountain Ave. Loveland, CO 80538.

3. Platte is the owner and assignee of U.S. Patent 6,797,673 (Exhibit A) (the "673 Patent").

4. On August 10, 2012 (Exhibit B), Platte's counsel sent a letter to Exacto asserting that certain products sold by Exacto, including Exacto's SYNTHEX[®] L 750 adjuvant, "are covered by one or more claims of" the '673 Patent.

5. Also on August 10, 2012 (Exhibit C), Platte's counsel sent another letter to one of Exacto's customers, United Suppliers, Inc. ("United") of Eldora, Iowa, asserting that certain products sold by Exacto to United, and re-sold by United, including United's TRANSLATE adjuvant, "are covered by one or more claims of" the '673 Patent.

6. The letters from Platte to Exacto and United also demanded that they stop selling the accused products, and provide Platte with an accounting of sales of the accused products.

JURISDICTION AND VENUE

7. This action arises under the Patent Laws of the United States, 35 U.S.C. § 1, et seq., and under the Federal Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202.

8. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1338(a), 2201 and 2202.

9. This action is filed to resolve an actual controversy between the parties hereto.

10. Platte's conduct towards Exacto and its customer, United, establishes that a real and substantial dispute exists between the parties regarding Platte's allegations and demands.

11. This dispute is both definite and concrete and admits of specific relief through a declaration by this Court.

12. As set forth in succeeding paragraphs herein, there is a conflict of asserted rights among the parties and an actual controversy exists between Exacto and Platte with respect to the infringement, validity and scope of the '673 Patent.

13. On information and belief, Platte's allegations of infringement is intended to affect Exacto's business in this district by forcing Exacto to source certain accused adjuvant products only from Platte.

14. There is an immediate, real, and substantial controversy between the parties because Platte has alleged that Exacto and United infringe the '673 Patent and Exacto disputes this claim.

Count I - Declaration of Noninfringement of the '673 Patent

15. Exacto does not infringe any valid claim of the '673 Patent.

Count II - Declaration of Invalidity of the '673 Patent

16. The '673 Patent is invalid for failure to comply with the requirements of 35 U.S.C. § 112, and for failure to meet the requirements of 35 U.S.C. § 102 and/or § 103 and/or is otherwise invalid or unenforceable.

Prayer for Relief

Exacto requests judgment that:

1. Exacto has not directly infringed, willfully infringed, induced infringement, or contributorily infringed the '673 Patent;
2. The '673 Patent is invalid or unenforceable;
3. Platte, and those in active concert of participation with Platte who receive actual notice thereof, are permanently enjoined from initiating patent infringement litigation against Exacto, or threatening Exacto, or any of its customers, dealers, licensees, subsidiaries, parents, agents, servants, or employees, or any prospective or present sellers, dealers, licensees, distributors, customers, or users of Exacto's products or services, with patent infringement litigation based on any of the '673 Patent, or charging any of them with infringement of any of the '673 Patent;
4. A judgment awarding damages to Exacto for its costs, disbursements, and attorneys' fees incurred in prosecuting this action, with interest, including damages for an exceptional case, pursuant to 35 U.S.C. § 285 and otherwise according to law; and for such other relief as the Court may deem just, equitable, and proper.

DEMAND FOR JURY

Exacto requests that all issues triable by a jury be so tried in this case.

Dated: September 4, 2012

BAKER & McKENZIE LLP

BAKER & McKENZIE
300 E. Randolph Street
Chicago, IL 60601
(312) 861-8608

/s/ David I. Roche
David I. Roche
Daniel J. O'Connor
Attorneys for Plaintiff, Exacto, Inc.