

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT ARKANSAS

OCT 04 2012

JAMES W. McCORMACK, CLERK
By: _____

PLAINTIFF _____ DEP. CLERK

PerfectVision Manufacturing, Inc,

v.

Case No. 4:12cv623-JLH

John Mezzalingua Associates, Inc.
d/b/a PPC

This case assigned to District Judge _____
and to Magistrate _____
DEFENDANT _____

COMPLAINT FOR DECLARATORY JUDGMENT OF NON-INFRINGEMENT

COMES NOW PerfectVision Manufacturing, Inc. ("PerfectVision"), by and through its attorneys, the Davidson Law Firm, and for its Complaint for Declaratory Judgment states as follows:

PARTIES

1. Plaintiff, PerfectVision, is a corporation organized and existing under the laws of the State of Arkansas and has its principal place of business in North Little Rock, Arkansas.
2. PerfectVision was founded in North Little Rock in 1979 and employs approximately 250 people in this Judicial District.
3. PerfectVision designs, manufactures and sells coaxial cable, connectors, meters, accessories, and other leading-edge products.
4. By combining innovative engineering and customer-focused principles, PerfectVision has grown to become a leader in the telecommunications industry.
5. Defendant, John Mezzalingua Associates, Inc. ("PPC"), while organized under Delaware laws, is a New York company. Its headquarters and principal place of business are located in East Syracuse, New York.

6. PPC markets and sells products extensively in this Judicial District and throughout the country.

BACKGROUND

7. On or about September 27, 2012, a telephone conversation occurred between Robert Chastain, CEO of PerfectVision, and John Mezzalingua, CEO of PPC, concerning the possibility of PerfectVision distributing a PPC continuity connector.

8. During this conversation, PerfectVision advised PPC that it had its own “continuity” connector. This connector is marketed and sold as PV6SL Signaloc (“the connector”).

9. PPC asserted that the connector purportedly infringed PPC’s continuity patents and PPC assured PerfectVision that PPC would pursue legal remedies against PerfectVision.

10. PPC threatened that whether the connector actually infringed or not was immaterial because either way PerfectVision “would lose.”

11. PPC further threatened PerfectVision by alleging the Continuation In Part (CIP) application process under the Patent Act constituted a “license to steal” and that PPC intended to incorporate PerfectVision’s specific continuity solution into one of its pending applications and claim it as a PPC invention.

12. PPC’s assertions and threats were directed at a resident of this Judicial District and constitute illegal attempts to restrict free, fair and open trade and competition.

13. PPC has extensive dealings within the State of Arkansas and this Judicial District, including but not limited to attempting to secure PerfectVision as a distributor in part with threats of patent infringement, as detailed above, as well as other agreements with Arkansas

residents for the sale and distribution of PPC's products. PPC's contacts with this Judicial District give rise to this dispute and are also continuous and systematic in nature.

JURISDICTION AND VENUE

14. This Complaint seeks declaratory relief and arises under the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, and the patent laws of the United States, 35 U.S.C. § 1 et seq.

15. This Court has jurisdiction of the claims by virtue of 28 U.S.C. §§ 1331 and 1338(a).

16. Venue is proper in this District under 28 U.S.C. §§ 1391(b) and 1400(b).

NATURE OF THE ACTION

17. This is a declaratory judgment action seeking a judicial determination that PerfectVision does not infringe any valid or enforceable claim of PPC's continuity patents, United States Patent Nos. 8,192,237 ("237 Patent"); 7,845,976 ("976 Patent"); 7,950,958 ("958 Patent"); 8,075,338 ("338 Patent"); 8,157,589 ("589 Patent"); and 8,167,646 ("646 Patent") (collectively "Patents-in-Suit").

18. PPC is the owner of the 237 Patent entitled "Coaxial cable connector having electrical continuity member" which issued on June 5, 2012. A true and correct copy of the 237 Patent is attached hereto as Exhibit A.

19. PPC is the owner of the 976 Patent entitled "Connector having conductive member and method of use thereof" which issued on December 7, 2010. A true and correct copy of the 976 Patent is attached hereto as Exhibit B.

20. PPC is the owner of the 958 Patent entitled "Connector having conductive member and method of use thereof" which issued on May 31, 2011. A true and correct copy of the 958 Patent is attached hereto as Exhibit C.

21. PPC is the owner of the 338 Patent entitled "Connector having a constant contact post" which issued on December 13, 2011. A true and correct copy of the 338 Patent is attached hereto as Exhibit D.

22. PPC is the owner of the 589 Patent entitled "Connector having a conductively coated member and method of use thereof" which issued on April 17, 2012. A true and correct copy of the 589 Patent is attached hereto as Exhibit E.

23. PPC is the owner of the 646 Patent entitled "Connector having electrical continuity about an inner dielectric and method of and use thereof" which issued on May 1, 2012. A true and correct copy of the 646 Patent is attached hereto as Exhibit F.

COUNT I – DECLARATORY RELIEF REGARDING THE 237 PATENT

24. PerfectVision restates the allegations contained in Paragraphs 1-23 as if stated verbatim herein.

25. A controversy exists between PerfectVision and PPC regarding the non-infringement of the 237 Patent requiring this Court enter a declaration of rights.

26. PerfectVision contends that its making and offering to sell the connector does not infringe any valid and enforceable claim of the 237 Patent, nor would the use, sale or importation into the United States of the connector infringe on any valid and enforceable claim of the 237 Patent.

27. PerfectVision is entitled to a declaratory judgment that the manufacture, use, sale, offer for sale and/or importation into the United States of the connector does not and would not infringe on any valid and enforceable claims of the 237 Patent.

COUNT II – DECLARATORY RELIEF REGARDING THE 976 PATENT

28. PerfectVision restates the allegations contained in Paragraphs 1-27 as if stated verbatim herein.

29. A controversy exists between PerfectVision and PPC regarding the non-infringement of the 976 Patent requiring this Court enter a declaration of rights.

30. PerfectVision contends that its making and offering to sell of the connector does not infringe any valid and enforceable claim of the 976 Patent, nor would the use, sale or importation into the United States of the connector infringe on any valid and enforceable claim of the 976 Patent.

31. PerfectVision is entitled to a declaratory judgment that the manufacture, use, sale, offer for sale and/or importation into the United States of the connector does not and would not infringe on any valid and enforceable claims of the 976 Patent.

COUNT III – DECLARATORY RELIEF REGARDING THE 958 PATENT

32. PerfectVision restates the allegations contained in Paragraphs 1-31 as if stated verbatim herein.

33. A controversy exists between PerfectVision and PPC regarding the non-infringement of the 958 Patent requiring this Court enter a declaration of rights.

34. PerfectVision contends that its making and offering to sell of the connector does not infringe any valid and enforceable claim of the 958 Patent, nor would the use, sale or

importation into the United States of the connector infringe on any valid and enforceable claim of the 958 Patent.

35. PerfectVision is entitled to a declaratory judgment that the manufacture, use, sale, offer for sale and/or importation into the United States of the connector does not and would not infringe on any valid and enforceable claims of the 958 Patent.

COUNT IV – DECLARATORY RELIEF REGARDING THE 338 PATENT

36. PerfectVision restates the allegations contained in Paragraphs 1-35 as if stated verbatim herein.

37. A controversy exists between PerfectVision and PPC regarding the non-infringement of the 338 Patent requiring this Court enter a declaration of rights.

38. PerfectVision contends that its making and offering to sell of the connector does not infringe any valid and enforceable claim of the 338 Patent, nor would the use, sale or importation into the United States of the connector infringe on any valid and enforceable claim of the 338 Patent.

39. PerfectVision is entitled to a declaratory judgment that the manufacture, use, sale, offer for sale and/or importation into the United States of the connector does not and would not infringe on any valid and enforceable claims of the 338 Patent.

COUNT V – DECLARATORY RELIEF REGARDING THE 589 PATENT

40. PerfectVision restates the allegations contained in Paragraphs 1-39 as if stated verbatim herein.

41. A controversy exists between PerfectVision and PPC regarding the non-infringement of the 589 Patent requiring this Court enter a declaration of rights.

42. PerfectVision contends that its making and offering to sell of the connector does not infringe any valid and enforceable claim of the 589 Patent, nor would the use, sale or importation into the United States of the connector infringe on any valid and enforceable claim of the 589 Patent.

43. PerfectVision is entitled to a declaratory judgment that the manufacture, use, sale, offer for sale and/or importation into the United States of the connector does not and would not infringe on any valid and enforceable claims of the 589 Patent.

COUNT VI – DECLARATORY RELIEF REGARDING THE 646 PATENT

44. PerfectVision restates the allegations contained in Paragraphs 1-43 as if stated verbatim herein.

45. A controversy exists between PerfectVision and PPC regarding the non-infringement of the 646 Patent requiring this Court enter a declaration of rights.

46. PerfectVision contends that its making and offering to sell the connector does not infringe any valid and enforceable claim of the 646 Patent, nor would the use, sale or importation into the United States of the connector infringe on any valid and enforceable claim of the 646 Patent.

47. PerfectVision is entitled to a declaratory judgment that the manufacture, use, sale, offer for sale and/or importation into the United States of the connector does not and would not infringe on any valid and enforceable claims of the 646 Patent.

JURY DEMAND

48. Plaintiff requests a trial by jury on all issues so triable.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, PerfectVision prays this Honorable Court enter a judgment as follows:

1. A declaration that PerfectVision's manufacture, use, sale, offer for sale and/or importation into the United States of the connector does not and would not infringe on any valid and enforceable claims of the Patents-in-Suit;
2. For a injunction preventing PPC and any of its officers, agents, affiliates, successors or assigns from asserting or enforcing the Patents-in-Suit against PerfectVision or the connector;
3. A declaration that this case is an exceptional case and awarding PerfectVision its attorneys' fees, costs and expenses; and
4. For all other just and proper relief.

Respectfully Submitted,

By: 

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