

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

TIE DOWN, INC.,

Plaintiff,

v.

DETHMERS MANUFACTURING
COMPANY,

Defendant.

Civil Action File No.

1:12-cv-04007-SCJ

JURY TRIAL DEMANDED

FIRST AMENDED COMPLAINT FOR DECLARATORY JUDGMENT

COMES NOW Plaintiff Tie Down, Inc. (“Tie Down”), by and through its undersigned counsel, and hereby states its Complaint for Declaratory Judgment against Defendant Dethmers Manufacturing Company, a/k/a “Demco” (hereinafter “Defendant” or “Dethmers”), as follows:

INTRODUCTION

1. This is an action for declaratory judgment of patent non-infringement and patent invalidity arising under the patent laws of the United States, Title 35, United States Code, to have this Honorable Court issue a judgment declaring that (a) Tie Down does not infringe U. S. Patent No. 7,690,673 (“the ‘673 patent”), entitled “Self-Latching Ball Clamp Coupler,” which patent is owned by Dethmers, and (b) the ‘673 patent is invalid. A true and correct copy of the ‘673 patent

entitled “Self-Latching Ball Clamp Coupler” is attached hereto as Exhibit A.

JURISDICTION AND VENUE

2. This is an action for declaratory judgment under 28 U.S.C. § 2201, *et seq.* This Court has subject matter jurisdiction over all causes of action set forth herein pursuant to 28 U.S.C. §§ 1331 and 1338(a) and because this action arises under the patent laws of the United States, 35 U.S.C. §§ 1 *et seq.*

3. Venue is proper in this judicial district and division pursuant to 28 U.S.C. §§1391(b) and (c) and 1400(b) in that Defendant has done business in this District, has accused Tie Down of infringing Defendant’s ‘673 patent in this District, and continues to allege the validity of its ‘673 patent and infringement of said patent by Tie Down in this District, which events give rise to the instant claim for declaratory judgment entitling Tie Down to relief.

4. The Court has personal jurisdiction over Defendant due to Defendant’s contacts with the State of Georgia arising from Defendant’s transacting and/or having transacted business in this District by among other things, offering its products and/or services to customers, affiliates, partners and/or retailers in this District, including but not limited to Mike’s Trailer Hitches in Riverdale, Georgia. Furthermore, Defendant has accused Tie Down of infringing the ‘673 patent in this District and has communicated and/or published said accusations in this District. Moreover,

Dethmers employs a nationwide system of distributors for its “Demco” products, regularly conducts business in Georgia, and has a general presence in Georgia. Therefore, Defendant has continuous and systematic contacts within this judicial district by way of such transactions and occurrences and/or has established sufficient minimum contacts with Georgia for this Court to have personal jurisdiction over Defendant.

PARTIES

5. Tie Down is a Georgia corporation having its principal place of business at 255 Villanova Drive, Atlanta, Georgia 30336. Tie Down and its predecessors have been manufacturing products for multiple categories of industry in the primary metals market since 1971. Tie Down produces and sells a variety of trailer hitch products for boat trailers and various other kinds of trailers.

6. Defendant Dethmers is an Iowa corporation having its principal place of business at 4010 320th Street, Boyden, Iowa 51234. Dethmers may be served with process at the office of its registered agent Daniel E. Dekoter at 315 9th Street, Sibley, Iowa 51249.

7. According to U. S. Patent and Trademark Office (“USPTO”) records, Defendant is the owner by assignment of all right and title to the ‘673 patent, having received such assignment from Jason Kraai, the inventor named on the face

of the '673 patent, on or about November 22, 2005. A true and correct copy of the USPTO query results for assignment of the '673 patent is attached hereto as Exhibit B.

COUNT ONE:
DECLARATORY JUDGMENT OF NON-INFRINGEMENT
OF THE '673 PATENT

8. Tie Down re-alleges and incorporates herein the allegations of paragraphs 1 through 7 of this Complaint as if fully set forth herein.

9. Defendant alleges and/or has alleged that Tie Down directly or indirectly infringes one or more claims of the '673 patent by manufacturing, selling or offering to sell its trailer hitch and integrated actuator products (Tie Down Models 660 ("Actuator"), 700 ("Brake Actuator"), and 800 ("Brake Actuator")) (hereafter "accused trailer hitch products")), which products are presently produced by Tie Down and which products Tie Down intends to continue manufacturing, selling and offering to sell. A true and correct copy of the accused and implicated Tie Down trailer hitch products is attached hereto as Exhibit C.

10. Specifically, on or about November 8, 2012, Defendant, through its executive vice president, Secretary and/or Treasurer Kevin Ten Haken, contacted Tie Down in Georgia and expressly and specifically:

(a) identified the '673 patent to Tie Down;

(b) alleged that Tie Down infringed at least three claims of the '673 patent by manufacturing, selling and/or offering to sell Tie Down's Model 700 trailer hitch product, among the other Tie Down accused trailer hitch products;

(c) demanded that Tie Down cease and desist its offering for sale of the accused trailer hitch products on account of the alleged infringement; and

(d) demonstrated Defendant's intent to enforce its '673 patent against Tie Down.

11. In addition, on or about February 9, 2012, Defendant expressly and specifically alleged to a third party, Rick Huddleston, an engineer for Ranger Boats, at a National Association of Trailer Manufacturers trade show (where both Tie Down and Defendant were displaying and demonstrating their products) that one or more of Tie Down's accused trailer hitch products infringed the '673 patent.

12. Defendant's conduct, including but not limited to the aforementioned allegations, has created a reasonable apprehension on the part of Tie Down that Defendant will initiate a patent infringement suit against Tie Down if Tie Down's manufacture, sale and/or offer of sale of its accused Model 660, 700 and 800 trailer hitch products continues.

5. Tie Down denies that it has directly or indirectly infringed the '673 patent and denies that it is presently directly or indirectly infringing the '673 patent, either literally or under the doctrine of equivalents.

14. Tie Down presently manufactures, sells, and offers to sell its accused Model 660, Model 700 and Model 800 trailer hitch products and intends to continue manufacturing, selling, and offering to sell these products into the future.

6. In view of Defendant's express allegations of patent infringement by Tie Down, and Tie Down's affirmative denial of same, there is an actual, real, definite, concrete, substantial, immediate and justiciable controversy between the parties.

16. Tie Down is entitled to a declaration by this Court that Tie Down has not directly or indirectly infringed the '673 patent and is not presently directly or indirectly infringing the '673 patent, either literally or under the doctrine of equivalents.

COUNT TWO:
DECLARATION OF INVALIDITY OF THE '673 PATENT

17. Tie Down re-alleges and incorporates herein the allegations of paragraphs 1 through 16 of this Complaint as if fully set forth herein.

18. Defendant alleges and/or has alleged that Tie Down directly or indirectly infringes one or more claim of the '673 patent, as specifically set forth in

paragraphs 9 through 12 above.

19. Tie Down is informed and believes that some or all of the claims of the '673 patent are invalid for failure to satisfy one or more of the conditions for patentability set forth in 35 U.S.C. § 101 *et seq.*, including but not limited to sections 101, 102, 103, and 112.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Tie Down prays that the Court enter judgment in its favor and against Defendant and issue an order comprising the following:

A. A declaration and entry of judgment that Tie Down has not and does not infringe any claim of the '673 patent;

B. A declaration and entry of judgment that the claims of the '673 patent are invalid;

C. A finding that this case is exceptional and a judgment awarding Tie Down its reasonable attorney fees and costs pursuant to 35 U.S.C. § 285; and

D. An award of any and all such additional relief to Tie Down as the Court may deem appropriate and just under the circumstances.

DEMAND FOR JURY TRIAL

Pursuant to Fed. R. Civ. P. 38(b), Plaintiff Tie Down hereby respectfully demands a trial by jury of all issues triable of right by a jury.

This 19th day of November, 2012.

Respectfully submitted,

/s/ George M. Thomas

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CERTIFICATE OF SERVICE

I hereby certify that on November 19, 2012 the foregoing FIRST AMENDED COMPLAINT FOR DECLARATORY JUDGMENT was electronically filed with the Clerk of Court using the Court's CM/ECF system, which will automatically send e-mail notification of such filing to all attorneys of record and will likewise be available electronically to any attorneys of record who subsequently appear in this matter.

/s/ Eric G. Maurer

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