

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

JERR-DAN CORPORATION, a Delaware
corporation, and JLG INDUSTRIES, INC., a
Pennsylvania corporation

Plaintiffs

v.

MILLER INDUSTRIES TOWING EQUIPMENT INC., a
Delaware corporation

Defendant

Case No.

Jury Trial Demanded

Plaintiffs' Complaint for Patent Infringement

Plaintiffs JERR-DAN CORPORATION ("Jerr-Dan") and JLG INDUSTRIES, INC. ("JLG"), by
its undersigned counsel, Cohen & Grigsby, P.C., and Nixon & Vanderhye P.C., complain of
Defendant MILLER INDUSTRIES TOWING EQUIPMENT INC., ("Miller") as follows:

The parties

1. Jerr-Dan is a Delaware corporation with a principal place of business at 1080
Hykes Road, Greencastle, Pennsylvania 17225 and JLG is a Pennsylvania corporation with a
principal place of business at 13712 Crayton Blvd., Hagerstown, Maryland 21742.

2. On information and belief, Miller is a Delaware corporation with a principal place
of business at 8503 Hilltop Drive, Ooltewah, Tennessee 37363. On information and belief,
Miller has appointed National Registered Agents, Inc., 160 Greentree Drive, Suite 101, Dover,
DE 19904 as its registered agent for service of process.

Jurisdiction and venue

3. This is a civil action for patent infringement arising under the United States patent statutes, 35 U.S.C. § 1 *et. seq.*

4. This Court has jurisdiction over the subject matter of this action under 28 U.S.C. §§ 1331 and 1338(a).

5. On information and belief, Miller has done and is doing business in the Commonwealth of Pennsylvania and in this judicial district, has purposefully availed itself of the privilege of conducting business in this judicial district, thereby invoking its benefits and protections, and has established sufficient minimum contacts with the Commonwealth of Pennsylvania such that it should reasonably and fairly anticipate being brought into court in Pennsylvania. Miller's website lists distributors in the Pennsylvania towns of Mercer and Oakdale. Miller also owns manufacturing facilities in Mercer and in Hermitage, Pennsylvania. The patent infringement claims alleged herein arise out of or result from one or more of the foregoing activities.

6. On information and belief, this Court has personal jurisdiction over Miller by virtue of its acts of direct and indirect patent infringement in this judicial district and by virtue of its transaction of business in Pennsylvania.

7. Venue is proper in this judicial district under 28 U.S.C. §§ 1391(b)-(c) and 1400(b) because Miller is subject to personal jurisdiction in and therefore resides in this judicial district.

Factual background

8. On March 22, 2011, the United States Patent and Trademark Office duly and legally issued United States Patent No. 7,909,561 ("the '561 patent"), entitled "Tow Truck with

Underlift Control," to Jeffrey L. Addleman and Bradley S. Kresge. The '561 patent is assigned to Jerr-Dan. A true and correct copy of the '561 Patent is attached hereto as Exhibit 1. Jerr-Dan has licensed JLG to practice the invention.

9. Miller advertises and markets trucks and loaders, such as the Vulcan Intruder and the Holmes 440-SL self-loader products, each with a "power tilt" system, on its website, www.millerind.com, and in printed publications. This website and the contained information regarding the power tilt system is freely accessible and available to anyone with an internet connection, including in Pennsylvania.

10. On information and belief, Miller instructs customers and potential customers, including in Pennsylvania, about the power tilt system and uses of the system, including infringing uses, through, among other things, its distribution of product information such as the 24/7 On Call magazine, which describes to readers the power tilt system in a manner that infringes at least one of the claims of the '561 patent.

Count 1: Infringement of the '561 patent

11. Jerr-Dan and JLG reallege and incorporate by reference paragraphs 1-10 of this Complaint as if fully set forth herein.

12. Miller has directly infringed and continues to directly infringe the '561 patent by, among other activities, making, using, offering to sell, and/or selling its power tilt system in the United States, in a manner which is covered by one or more claims of the '561 patent in violation of 35 U.S.C. § 271(a).

13. On information and belief, Miller has indirectly infringed and continues to indirectly infringe one or more claims of the '561 patent by actively inducing infringement of those claims by others in violation of 35 U.S.C. § 271(b). On information and belief, Miller has

performed the acts that constitute inducement of infringement with the knowledge or willful blindness that the acts induced thereby would constitute direct infringement by its customers.

14. On information and belief, Miller has also indirectly infringed and continues to indirectly infringe one or more claims of the '561 patent under 35 U.S.C. § 271(c) by selling and/or offering for sale products in the United States knowing that those products are especially made or especially adapted for use in direct infringements of the '561 patent by its customers, and knowing that those products are not a staple article or commodity of commerce suitable for substantial non-infringing use.

15. On information and belief, Miller's customers directly infringe the '561 patent by purchasing the power tilt system from Miller and subsequently engaging in infringing activity in violation of 35 U.S.C. § 271(a).

16. On information and belief, Miller has had actual and/or constructive knowledge of the existence of the '561 patent since prior to the filing of this Complaint and received further confirmatory notice as to the existence and its infringement of the '561 patent prior to service of this Complaint by Jerr-Dan and JLG at the addresses referenced herein, concurrently with this filing.

17. On information and belief, Miller's direct infringement of the '561 patent has been and continues to be willful in violation of 35 U.S.C. § 284 ¶ 2.

18. Miller's direct infringement has injured and continues to injure Jerr-Dan and JLG, and Jerr-Dan and JLG are entitled to recover damages adequate to compensate them for such infringement, but in no event less than a reasonable royalty.

19. Jerr-Dan and JLG have suffered irreparable injury for which there is no adequate remedy at law, and will continue to suffer such irreparable injury, unless Miller's infringements of the '561 patent are enjoined by this Court.

Demand for jury trial

Jerr-Dan and JLG hereby demand a jury trial on all issues so triable.

Prayer for relief

Wherefore, Jerr-Dan and JLG respectfully request that this Court enter judgment in its favor and grant the following relief:

A. A judgment that Miller has directly infringed, induced others to infringe, and/or committed acts of contributory infringement with regard to one or more claims of the '561 patent;

B. A permanent injunction enjoining Miller and its affiliates, subsidiaries, officers, directors, employees, agents, representatives, licensees, successors, assigns, servants and attorneys, and all those acting for any of them or on their behalf, or acting in concert with them, from further infringement of the '561 patent;

C. A judgment that Miller's infringement has been willful;

D. A judgment and order requiring Miller to pay Jerr-Dan and JLG damages adequate to fully compensate Jerr-Dan under 35 U.S.C. § 284, including supplemental damages for any continuing post-verdict infringement up until entry of the final judgment, with an accounting, as needed, and treble damages for willful infringement as provided by 35 U.S.C. § 284;

E. An award of attorneys' fees incurred in prosecuting this action, on the basis that this is an exceptional case;

F. A judgment and order requiring Miller to pay Jerr-Dan and JLG their costs and expenses incurred in this action, including all disbursements;

G. A judgment and order requiring Miller to pay Jerr-Dan and JLG pre-judgment and post-judgment interest on the damages awarded; and further relief as the Court may deem just and proper.

Date: January 15, 2013

Respectfully submitted,

COHEN & GRIGSBY, P.C.

By /s/ Frederick L. Tolhurst
Frederick L. Tolhurst, Esq.
Pa. ID No. 22040

625 Liberty Ave.
Pittsburgh, PA 15222
(412) 297-4900
ftolhurst@cohenlaw.com

Of counsel:

Robert A. Rowan
rar@nixonvan.com
Michael E. Crawford
mec@nixonvan.com
NIXON & VANDERHYE P.C.
901 N. Glebe Road
Arlington, Virginia 22203
Telephone: 703-816-4000
Facsimile: 703-816-4100

Counsel for Jerr-Dan Corporation, and JLG Industries, Inc.