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Attorneys for Plaintiff

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
PORTLAND DIVISION

SCALAR CORPORATION, a Japanese corporation,

Plaintiff,

v.

JAKKS PACIFIC, INC., a Delaware corporation,

Defendant.

CV 11 1057 SL
Case No. _____

COMPLAINT FOR PATENT INFRINGEMENT

DEMAND FOR JURY TRIAL

For its complaint, Plaintiff Scalar Corporation ("Scalar") alleges against Defendant JAKKS Pacific, Inc. ("JAKKS") as follows:

NATURE OF THE CASE

1. This is a civil suit for patent infringement under the patent laws of the United States, 35 U.S.C. §§ 1 et seq., and specifically under 35 U.S.C. §§ 271 and 281.

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THE PARTIES

2. Scalar is a Japanese corporation, with a principal place of business and a mailing address at San-Ei Building 1-22-2, 2nd Floor, Nishi-Shinjuku, Shinjuku-Ku, Tokyo 160-0023, Japan.

3. Upon information and belief, JAKKS is a Delaware corporation with a principal place of business and mailing address at 22619 Pacific Highway, Malibu, California 90265.

JURISDICTION AND VENUE

4. This Court has federal question jurisdiction under 28 U.S.C. §§ 1331 and 1338(a), because of the claim under 35 U.S.C. § 271 for patent infringement.

5. This Court has personal jurisdiction in this action because JAKKS conducts business in the state of Oregon in connection with the allegations of this lawsuit.

6. Venue is proper in this judicial district under 28 U.S.C. § 1391 and 1400.

THE ASSERTED PATENT

7. Plaintiff Scalar owns U.S. Patent No. 5,442,489 (“the ‘489 patent”), issued August 15, 1995.

8. The ‘489 patent covers handheld portable magnifiers. These magnifiers may be used, for example, for educational, scientific, or law enforcement purposes, and may display images on a display such as a computer monitor. The ‘489 patent is derived from a patent application that was filed in the U.S. Patent and Trademark Office (“USPTO”) on September 23, 1994. USPTO examined the application, determined that the claimed invention was novel and nonobvious, and awarded the ‘489 patent on August 15, 1995. A copy of this patent, as originally issued, is attached as Exhibit A.

9. On August 6, 2007, Scalar requested reexamination of various claims of the '489 patent from USPTO, based on prior art references uncovered during prosecution of the Korean and Japanese counterparts to the '489 patent. Specifically, Scalar requested reexamination of claims 1, 6, 7, 11, 16, 23 and 28 of the '489 patent in view of the newly uncovered references.

10. On March 30, 2010, USPTO issued an Ex Parte Reexamination Certificate, confirming the patentability of original claim 6, amended claims 1, 7, 11, 16, 19, 23 and 28, and newly presented claims 33-50. A copy of the Ex Parte Reexamination Certificate is attached as Exhibit B.

11. The reexamined '489 patent gives Scalar the right to exclude others from making, using, offering for sale, and selling the claimed invention within the United States, and from importing the claimed invention into the United States.

12. Since at least as early as September 12, 2006, Scalar has caused products covered by the '489 patent to be marked with U.S. Pat. No. 5,442,489, in compliance with 35 U.S.C. § 287.

THE INFRINGING PRODUCTS

13. JAKKS is making, using, offering for sale, selling, repairing and/or importing handheld portable magnifiers and teaching the use of such magnifiers, including, but not necessarily limited to, the "EyeClops Bionic Eye" and "EyeClops BioniCam" series of handheld portable magnifiers, all of which are covered by one or more claims of the reexamined '489 patent. These products include, among other features, an imaging system and a light source enclosed within a one-handed graspable case and configured to display an image on an associated monitor display. Copies of web pages offering the infringing JAKKS products for sale are attached as Exhibit C.

CAUSE OF ACTION – INFRINGEMENT OF THE ‘489 PATENT

14. JAKKS has infringed and is infringing the ‘489 patent by making, using, selling, offering to sell, repairing and/or importing handheld portable magnifiers under the name “EyeClops,” including, but not necessarily limited to, the “EyeClops Bionic Eye” and “EyeClops BioniCam” series, all of which are covered by one or more claims of the ‘489 patent, without authorization from Scalar.

15. Infringement by JAKKS has been and continues to be willful, with knowledge of the ‘489 patent and JAKKS’s infringement thereof, entitling plaintiffs to increased damages under 35 U.S.C. § 284 and to attorneys’ fees incurred in prosecuting this action under 35 U.S.C. § 285.

16. Scalar has suffered, and will continue to suffer, substantial damages in an amount to be proven at trial, through lost profits, lost sales and/or lost royalties, due to infringement of the ‘489 patent by JAKKS.

17. Scalar has suffered, and will continue to suffer, permanent and irreparable injury, for which Scalar has no adequate remedy at law.

18. Scalar is entitled to relief provided by 35 U.S.C. §§ 281, 283, 284, and 285.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Scalar Corporation prays for judgment as follows:

- A. That JAKKS has infringed, and is infringing, the ‘489 patent in violation of 35 U.S.C. § 271;
- B. That JAKKS’s infringement of the ‘489 patent is willful;
- C. That JAKKS be preliminarily and permanently enjoined against all acts of infringement of the ‘489 patent pursuant to 35 U.S.C. § 283;

D. That JAKKS be required to deliver to Scalar for destruction any and all articles in its possession and/or under its control that infringe the '489 patent, including, but not limited to, the "EyeClops Bionic Eye" and "EyeClops BioniCam" series, along with any associated packaging and advertisements;

E. That JAKKS be ordered to pay Scalar the damages that Scalar has suffered due to infringement of the '489 patent by JAKKS, together with interest thereon and costs pursuant to 35 U.S.C. § 284, including profits lost by plaintiffs as a result of infringement of the '489 patent; in any event plaintiffs shall be awarded no less than a reasonable royalty for the unauthorized manufacture and sale of the patented inventions by JAKKS;

F. That this case be declared exceptional pursuant to 35 U.S.C. § 285, due to willful infringement of the '489 patent by JAKKS, and that Scalar be awarded trebled damages and their reasonable attorneys' fees; and

G. That Scalar be awarded such other and further relief as the Court deems just and proper.

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DEMAND FOR JURY TRIAL

Plaintiff Scalar Corporation hereby demands a trial by jury.

DATED this 31st day of August, 2011.

Respectfully submitted,

KOLISCH HARTWELL, P.C.

By



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