

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

LAKESOUTH HOLDINGS, LLC,

Plaintiff,

v.

**WAL-MART STORES, INC. and
WAL-MART STORES TEXAS, LLC,**

Defendants.

§
§
§
§
§
§
§
§
§
§

Civil Action No. 3:14-cv-1877

Demand for Jury Trial

ORIGINAL COMPLAINT

Plaintiff LakeSouth Holdings, LLC (“LakeSouth”) files this Original Complaint for patent infringement against Wal-Mart Stores, Inc. (“Wal-Mart Stores”) and Wal-Mart Stores Texas, LLC (“Wal-Mart Stores Texas”) (collectively “Wal-Mart” or “Defendants”) and alleges the following:

The Parties

1. LakeSouth is a Delaware limited liability company with its principal place of business located at 1460 Main Street, Suite 244, Southlake, Texas 76092.

2. Upon information and belief, Defendant Wal-Mart Stores, Inc. is a Delaware corporation with its principal place of business at 702 SW 8th Street, Bentonville, Arkansas 72716. Wal-Mart Stores is registered to do business in Texas and it may be served with process by delivering a summons and a true and correct copy of this Complaint to its registered agent for receipt of service of process, CT Corporation System at 350 N St. Paul St., Suite 2900, Dallas, Texas 75201-4234.

3. Upon information and belief, Defendant Wal-Mart Stores Texas, LLC is a limited liability company organized and existing under the laws of the State of Delaware with its principal place of business at 702 SW 8th Street, Bentonville, Arkansas 72716. Wal-Mart Stores Texas is registered to do business in Texas and it may be served with process by delivering a summons and a true and correct copy of this Complaint to its registered agent for receipt of service of process, CT Corporation System at 350 N St. Paul St., Suite 2900, Dallas, Texas 75201-4234.

Jurisdiction and Venue

4. This action arises under the patent laws of the United States, 35 U.S.C. § 101 *et seq.*

5. This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1338(a).

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

7. Upon information and belief, Wal-Mart has and continues to conduct business within the State of Texas and within the Northern District of Texas.

8. This Court has personal jurisdiction over Wal-Mart.

9. Upon information and belief, Wal-Mart has infringed LakeSouth's patent within the State of Texas and within the Northern District of Texas.

The '713 Patent

10. Mr. Gregory G. Kuelbs is a Texas resident and a prolific inventor. Mr. Kuelbs is a named inventor on over 40 U.S. patents.

11. Mr. Kuelbs is the sole inventor of U.S. Patent No. 6,612,713 ("the '713 Patent") entitled "Umbrella Apparatus."

12. On September 2, 2003, the U.S. Patent and Trademark Office (“USPTO”) duly and legally issued the ’713 Patent.

13. On June 13, 2005, World Factory, Inc. sued Southern Sales & Marketing Group, Inc. (“Southern Sales”) for infringing the ’713 Patent in the United States District Court for the Northern District of Texas in a case styled *World Factory, Inc. v. Southern Sales & Marketing Group, Inc.*, Civil Action No. 4:05-cv-00373.

14. In response, Southern Sales challenged the validity of claims 1-5 of the ’713 Patent by filing a request for *inter partes* reexamination with the USPTO on August 12, 2005.

15. The USPTO then instituted *inter partes* reexamination no. 95/000,104 to reexamine the ’713 Patent.

16. In its request for *inter partes* reexamination, Southern Sales identified five different prior art references in an attempt to invalidate claims 1-5.

17. Complying with its duty of disclosure, World Factory also disclosed all of the potentially relevant prior art references that World Factory was aware of to the USPTO to ensure that the patent examiner had all of the necessary information to fully reexamine the ’713 Patent.

18. On January 12, 2011, the examiner found that many of the pending claims were indeed patentable.

19. Southern Sales then appealed the examiner’s decision to the Patent Trial and Appeal Board (“PTAB”).

20. In a decision dated January 10, 2013, the PTAB affirmed the examiner, holding that none of Southern Sales’ arguments had merit.

21. After an extensive and thorough *inter partes* reexamination proceeding, the USPTO issued a reexamination certificate on September 23, 2013.

22. A copy of the '713 Patent is attached as Exhibit A and is incorporated by reference, and a copy of the reexamination certificate is attached as Exhibit B and is incorporated by reference.

23. LakeSouth holds all substantial rights to the '713 Patent.

Wal-Mart's Accused Umbrellas

24. Upon information and belief, Wal-Mart makes, uses, offers to sell, sells, and/or imports various patio and outdoor umbrellas.

25. Wal-Mart's umbrellas are sold online through www.walmart.com and at Wal-Mart stores, including Wal-Mart stores in the Northern District of Texas.

26. Wal-Mart makes, uses, offers to sell, sells, and/or imports solar powered umbrellas that include lights and a solar panel ("the Accused Umbrellas"). For example, Wal-Mart offers for sale and sells Accused Umbrellas described as "9 Foot Solar Umbrella" under the Better Homes and Gardens label and identified as Art# BH-13-092-599-02.

27. Further discovery may reveal additional infringing products and/or models.

28. Upon information and belief, Wal-Mart's Accused Umbrellas are offered for sale and sold within the Northern District of Texas.

29. Wal-Mart has infringed and is still infringing the '713 Patent by making, using, offering to sell, selling, and/or importing the Accused Umbrellas.

30. Wal-Mart's infringement has harmed and will continue to harm LakeSouth.

31. Wal-Mart will continue to infringe the '713 Patent unless enjoined by this Court.

The '882 and '521 Patents

32. Mr. Kuelbs is the sole inventor of U.S. Patent Nos. 6,901,882 ("the '882 Patent") and 7,017,521 ("the '521 Patent"), each entitled "Solar Powered Bird Feeder."

33. On June 7, 2005, the USPTO duly and legally issued the '882 Patent.
34. A copy of the '882 Patent is attached as Exhibit C.
35. On March 28, 2006, the USPTO duly and legally issued the '521 Patent.
36. A copy of the '521 Patent is attached as Exhibit D.
37. LakeSouth holds all substantial rights to the '882 and '521 Patents.

Wal-Mart's Accused Bird Feeders

38. Upon information and belief, Wal-Mart makes, uses, offers to sell, sells, and/or imports various outdoor bird feeders.

39. Wal-Mart's bird feeders are sold online through www.walmart.com and at Wal-Mart stores, including Wal-Mart stores in the Northern District of Texas.

40. Wal-Mart makes, uses, offers to sell, sells, and/or imports solar powered bird feeders that include a lighting subsystem and a solar panel ("the Accused Bird Feeders"). For example, Wal-Mart offers for sale and sells an Accused Bird Feeder described as "Evergreen Flag & Garden Hummingbird Flutter Solar Bird Feeder," which is sold through www.walmart.com.

41. Further discovery may reveal additional infringing products and/or models.

42. Upon information and belief, Wal-Mart's Accused Bird Feeders are offered for sale and sold within the Northern District of Texas.

43. Wal-Mart has infringed and is still infringing the '882 and '521 Patents by making, using, offering to sell, selling, and/or importing the Accused Bird Feeders.

44. Wal-Mart's infringement has harmed and will continue to harm LakeSouth.

45. Wal-Mart will continue to infringe the '882 and '521 Patents unless enjoined by this Court.

Wal-Mart's Infringement Is Also Harming LakeSouth's Licensee

46. LakeSouth has provided World Factory, Inc. ("World Factory") a non-exclusive license to a number of patents, including the '713, '882, and '521 Patents.

47. World Factory is a Texas corporation with its principal place of business located in the Northern District of Texas at 542 Silicon Drive, Suite 101, Southlake, Texas.

48. World Factory sells a variety of products, including outdoor furnishings, lawn decorations, outdoor recreation products, bird feeders, and solar-powered umbrellas, throughout the United States and within the Northern District of Texas. For example, World Factory's products are available at Home Depot and Ace Hardware stores.

49. Wal-Mart's infringement is not only harming LakeSouth, but is also harming LakeSouth's licensee, World Factory.

50. Wal-Mart's infringement has harmed and will continue to harm World Factory unless enjoined by this Court.

Count I - Infringement Of The '713 Patent

51. LakeSouth repeats and realleges the allegations in the preceding paragraphs as though fully set forth herein.

52. Wal-Mart has infringed, contributed to the infringement of, and/or induced infringement of the '713 Patent by making, using, offering for sale, selling, and/or importing into the United States, or by intending that others make, use, offer for sale, sell, or import into the United States, products that are covered by one or more claims of the '713 Patent including, but not limited to, the Accused Umbrellas that include lights and a solar panel.

53. At least as early as the filing of this lawsuit, Wal-Mart was aware of the '713 Patent.

54. At least as early as the filing of this lawsuit, Wal-Mart was aware that its actions would cause infringement of the '713 Patent and acted with intent to encourage direct infringement of the '713 Patent.

55. Wal-Mart's infringement of the '713 Patent has damaged and will continue to damage LakeSouth.

56. Wal-Mart's infringement of the '713 Patent has damaged and will continue to damage LakeSouth's licensee World Factory.

Count II - Infringement Of The '882 Patent

57. LakeSouth repeats and realleges the allegations in the preceding paragraphs as though fully set forth herein.

58. Wal-Mart has infringed, contributed to the infringement of, and/or induced infringement of the '882 Patent by making, using, offering for sale, selling, and/or importing into the United States, or by intending that others make, use, offer for sale, sell, or import into the United States, products that are covered by one or more claims of the '882 Patent including, but not limited to, the Accused Bird Feeders that include a lighting subsystem and a solar panel.

59. At least as early as the filing of this lawsuit, Wal-Mart was aware of the '882 Patent.

60. At least as early as the filing of this lawsuit, Wal-Mart was aware that its actions would cause infringement of the '882 Patent and acted with intent to encourage direct infringement of the '882 Patent.

61. Wal-Mart's infringement of the '882 Patent has damaged and will continue to damage LakeSouth.

62. Wal-Mart's infringement of the '882 Patent has damaged and will continue to damage LakeSouth's licensee World Factory.

Count III - Infringement Of The '521 Patent

63. LakeSouth repeats and realleges the allegations in the preceding paragraphs as though fully set forth herein.

64. Wal-Mart has infringed, contributed to the infringement of, and/or induced infringement of the '521 Patent by making, using, offering for sale, selling, and/or importing into the United States, or by intending that others make, use, offer for sale, sell, or import into the United States, products that are covered by one or more claims of the '521 Patent including, but not limited to, the Accused Bird Feeders that include a lighting subsystem and a solar panel.

65. At least as early as the filing of this lawsuit, Wal-Mart was aware of the '521 Patent.

66. At least as early as the filing of this lawsuit, Wal-Mart was aware that its actions would cause infringement of the '521 Patent and acted with intent to encourage direct infringement of the '521 Patent.

67. Wal-Mart's infringement of the '521 Patent has damaged and will continue to damage LakeSouth.

68. Wal-Mart's infringement of the '521 Patent has damaged and will continue to damage LakeSouth's licensee World Factory.

DEMAND FOR JURY TRIAL

69. LakeSouth hereby demands a jury for all issues so triable.

PRAYER FOR RELIEF

LakeSouth respectfully requests that this Court enter judgment in its favor and grant the following relief:

- (a) Adjudge that Wal-Mart infringes the '713, '882, and '521 Patents;
- (b) Award LakeSouth damages in an amount adequate to compensate LakeSouth for Wal-Mart's infringement of the '713, '882, and '521 Patents, but in no event less than a reasonable royalty under 35 U.S.C. § 284;
- (c) Award LakeSouth pre-judgment and post-judgment interest to the full extent allowed under the law, as well as its costs;
- (d) Enter an order finding that this is an exceptional case and awarding LakeSouth its reasonable attorneys' fees pursuant to 35 U.S.C. § 285;
- (e) Enjoin Wal-Mart and all others in active concert with Wal-Mart from further infringement of the '713, '882, and '521 Patents; and
- (f) Award such other relief as the Court may deem appropriate and just under the circumstances.

Dated: May 22, 2014

Respectfully submitted,

KLEMCHUK KUBASTA LLP

/s/ Casey L. Griffith

Casey L. Griffith

Texas Bar No. 24036687

Austin S. Champion

Texas Bar No. 24065030

Michael C. Barbee

Texas Bar No. 24082656

8150 North Central Expressway, 10th Floor

Dallas, Texas 75206

Telephone: (214) 367-6000

Facsimile: (214) 367-6001

Casey.Griffith@kk-llp.com

Austin.Champion@kk-llp.com

Michael.Barbee@kk-llp.com

**ATTORNEYS FOR PLAINTIFF
LAKE SOUTH HOLDINGS, LLC**