

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

VARIDESK LLC

Plaintiff,

v.

BRUNSWICK CORP.

Defendant.

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CIVIL ACTION NO. 3:15CV3120

COMPLAINT FOR PATENT
INFRINGEMENT

JURY TRIAL DEMANDED

Plaintiff Varidesk LLC (“Varidesk”) files this complaint against Brunswick Corp. (“Brunswick” or “Defendant”) alleging on its own knowledge and on information and belief as follows:

PARTIES

1. Varidesk is a Texas limited liability corporation having its headquarters at 117 Wrangler Dr., Coppell, Texas 75019. Varidesk is a pioneer and leader in the field of height-adjustable desk technology.

2. Upon information and belief, Brunswick Corp. is a Delaware corporation with its headquarters at 1 North Field Court, Lake Forest, Illinois 60045. It can be served through its resident agent for service of process in Texas: Corporate Creations Network Inc., CT Corporation System, 1999 Bryan Street, Suite 900, Dallas, TX 75201-3136.

JURISDICTION AND VENUE

3. This is an action for patent infringement arising under the patent laws of the United States, Title 35 of the United States Code § 1, *et seq.*

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

5. Brunswick is subject to this Court's specific and general personal jurisdiction under due process and/or the Texas Long Arm Statute due at least to Brunswick's substantial business in this forum, including: (i) at least a portion of the infringements alleged herein; and (ii) regularly doing or soliciting business, engaging in other persistent courses of conduct, and/or deriving substantial revenue from goods and services provided to individuals in Texas and in this District.

6. Venue is appropriate in this District pursuant to 28 U.S.C. §§ 1391(b) and (c), and/or 28 U.S.C. § 1400(b). Upon information and belief, Brunswick has transacted business in this District and has committed acts of patent infringement in this District.

VARIDESK'S PATENT

7. On August 25, 2015, United States Patent No. 9,113,703 ("the '703 patent") was duly and legally issued by the United States Patent and Trademark Office for an invention titled "Adjustable Desk Platform." A copy of the '703 patent is attached hereto as Exhibit A.

8. Varidesk is the owner by assignment of the '703 patent with all substantive rights in and to that patent, including the sole and exclusive right to prosecute this action and enforce the '703 patent against infringers, and to collect damages for all relevant times.

9. By way of a general description, the '703 patent relates to height-adjustable desk structures and assemblies.

BRUNSWICK'S INFRINGING PRODUCTS

10. Upon information and belief, Brunswick, through its Life Fitness division, is in the business of developing, manufacturing and selling height-adjustable desks.

11. Upon information and belief, Brunswick has made, used, imported, provided, supplied, distributed, sold, and/or offered for sale certain height-adjustable desks, including at least the following height-adjustable desk model: INMOVMENT ELEVATE DESKTOP DT2 (“the accused products”).

12. The accused products practice each and every limitation of at least one claim of the ’703 patent.

13. Upon information and belief, Brunswick is knowingly and willfully directly infringing the ’703 patent by offering to sell and selling the accused products in the United States, including within this judicial district.

COUNT I – PATENT INFRINGEMENT OF THE ’703 PATENT

14. Varidesk restates and incorporates by reference paragraphs 1 through 13 as if stated fully herein.

15. In violation of 35 U.S.C. § 271, Brunswick has, literally and under the doctrine of equivalents, infringed the ’703 patent and still is, literally and under the doctrine of equivalents, infringing the ’703 patent, by, among other things, making, using, offering for sale, and/or selling the accused products and will continue to do so unless such infringing activities are enjoined by this Court.

16. Brunswick has knowledge of the ’703 patent at least as of the date when it was notified of the filing of this action.

17. Varidesk will be substantially and irreparably harmed if Brunswick’s infringement of the ’703 patent is not enjoined. Varidesk does not have an adequate remedy at law.

18. Varidesk is entitled to recover from Brunswick the damages sustained as a result of Brunswick’s infringing acts.

JURY DEMAND

Varidesk hereby requests a trial by jury on all issues so triable.

PRAYER FOR RELIEF

Varidesk requests that the Court find in its favor and against Brunswick and that the Court grant Varidesk the following relief:

- a. Judgment be entered that Brunswick has infringed one or more claims of the '703 patent, literally and/or under the doctrine of equivalents;
- b. Judgment be entered that Brunswick's infringement of the '703 patent was willful;
- c. An accounting be had for the damages resulting from Brunswick's infringement of the '703 patent, including, without limitation, lost profits caused by Brunswick's infringing activities and/or a reasonable royalty for the infringement, and that the damages so ascertained be trebled and awarded together with interests and costs;
- d. Judgment be entered that this is an exceptional case, and that Varidesk is entitled to its reasonable attorneys' fees and costs in accordance with 35 U.S.C. § 285;
- e. An injunction be issued, restraining and enjoining Brunswick and its respective officers, directors, agents, servants, affiliates, employees, divisions, branches, subsidiaries, parents, and all others acting in privity or in concert with them, from engaging in the commercial manufacture, use, offer for sale, or sale within the United States, or importation into the United States, of products infringing the '703 patent; and
- f. The Court award such other and further relief as the Court may deem just and proper under the circumstances.

Dated: September 25, 2015

Respectfully submitted,

By: /s/ Michael C. Smith.

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Counsel for Plaintiff Varidesk LLC

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Varidesk, LLC

(b) County of Residence of First Listed Plaintiff **Dallas**
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Michael C. Smith, Siebman, Burg, Phillips & Smith, LLP, 4949 Hedgcoxe Rd., Suite 230, Plano, Texas 75024

DEFENDANTS

Brunswick Corp.

County of Residence of First Listed Defendant
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
- 3 Federal Question (U.S. Government Not a Party)
- 2 U.S. Government Defendant
- 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

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|-----------------------------------------|---------------------------------------|----------------------------|---------------------------------------------------------------|----------------------------|---------------------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input checked="" type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395f) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutional of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from Another District (specify)
- 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
35 U.S.C. 271

Brief description of cause:
Patent Infringement

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$

CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED PENDING OR CLOSED CASE(S) IF ANY (See instructions):

JUDGE

DOCKET NUMBER

DATE: 09/25/2015 SIGNATURE OF ATTORNEY OF RECORD: 

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