

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

ELECTRO SCIENTIFIC INDUSTRIES, INC., an
Oregon corporation,

Plaintiff,

v.

FOSSIL GROUP, INC., a Delaware corporation
and MISFIT, INC., a Delaware corporation,

Defendants.

CIVIL ACTION NO. _____

JURY TRIAL DEMANDED

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff Electro Scientific Industries, Inc. (“ESI”) files this Complaint against Defendants Fossil Group, Inc. (“Fossil”) and Misfit, Inc. (“Misfit”) (collectively “Defendants”) and alleges as follows:

NATURE OF THE ACTION

This is a patent infringement case brought by ESI pursuant to the Patent Laws of the United States, 35 U.S.C. § 1, et seq. against Defendants for making, using, selling, offering to sell, and importing the “Shine” family of personal activity monitor products (“the Infringing Products”) that infringe one or more claims of at least one patent owned by ESI.

THE PARTIES

2. Plaintiff ESI is an Oregon corporation with its principal place of business in Portland, Oregon.

3. Defendant Fossil is a Delaware corporation with its principal place of business in Richardson, Texas and may be served by and through its registered agent, The Corporation Trust Company, located at Corporation Trust Center, 1209 Orange Street, Wilmington, DE 19801.

4. On information and belief, Defendant Misfit (aka Misfit Wearables Corp.) is a Delaware corporation with its principal place of business in Burlingame, California and is a wholly-owned subsidiary of Defendant Fossil. Alternatively, on information and belief, Misfit, Inc. no longer has a separate corporate existence, and Defendant Fossil is the successor by merger to Misfit, Inc. . Misfit may be served by and through its registered agent, The Corporation Trust Company, located at Corporation Trust Center, 1209 Orange Street, Wilmington, DE 19801.

JURISDICTION AND VENUE

5. This action arises under the United States Patent Act, 35 U.S.C. § 1, *et seq.* The Court has subject matter jurisdiction over such claims pursuant to 28 U.S.C. §§ 1331 and 1338(a).

6. The Court has personal jurisdiction over the Defendants, and venue in this Judicial District is proper under 28 U.S.C. §§ 1391(b) and (c), and/or 1400(b).

7. Defendants have their principal place of business in Richardson, Texas and have committed acts of infringement in Texas, including in this District. Defendants have advertised, marketed, and sold the Infringing Products in Texas and shipped the Infringing Products into Texas. Defendants have also knowingly and intentionally placed the Infringing Products into the stream of commerce for sale in Texas by its customers, distributors, and resellers.

PLAINTIFF AND ITS RIGHTS

8. Founded in 1944 and headquartered in Portland, Oregon, ESI is a world leader in innovative, laser-based manufacturing solutions for the microtechnology industry. ESI's systems enable precise engineering and testing of micron to submicron features in semiconductors, LEDs, multi-layer ceramic capacitors (MLCCs), printed circuit boards (PCBs), flex circuits and passive

components. Specifically, ESI manufactures laser-based micromachining tools used on various substrates and materials to singulate or produce features in these substrates and vision-based tools for rapid and detailed inspection and verification of these substrates.

9. ESI's innovations in the fields of laser-based manufacturing solutions have been recognized by the United States Patent and Trademark Office ("USPTO") through the issuance of numerous patents, including the Patents-in-Suit.

The Patents-in-Suit

10. On March 12, 2013, the USPTO duly and lawfully issued United States Patent No. 8,394,301 ("the '301 Patent"), entitled "Process for Forming Panel With an Optically Transmissive Portion and Products Related Thereto." ESI is the assignee and sole owner of the '301 Patent, a true and correct copy of which is attached hereto as Exhibit 1.

11. The '301 Patent issued from United States Patent Application No. 11/742,862, which was filed at the USPTO on May 12, 2007 and claims priority to provisional patent application no. 60/810,380, filed on June 2, 2006.

12. On February 14, 2017, the USPTO duly and lawfully issued United States Patent No. 9,568,167 ("the '167 Patent"), entitled "Products with a Patterned Light-Transmissive Portion." ESI is the assignee and sole owner of the '167 Patent, a true and correct copy of which is attached hereto as Exhibit 2.

13. The '167 Patent issued from United States Patent Application No. 13/797,891, which was filed at the USPTO on March 12, 2013 and claims priority to provisional patent application no. 60/810,380, filed on June 2, 2006.

DEFENDANT AND ITS UNLAWFUL ACTIVITIES

14. Defendants have been making, using, selling, offering to sell, and importing the Infringing Products. Defendants' conduct involving the Infringing Products have occurred in interstate commerce, including in this District.

15. At no time have Defendants had any express or implied authorization, license, or permission to practice the inventions claimed in ESI's Patents-in-Suit.

COUNT I
INFRINGEMENT OF THE '301 PATENT

16. ESI repeats and realleges each allegation above as if fully set forth herein.

17. Defendants have been making the Infringing Products in a manner that has infringed and infringes one or more claims of the '301 Patent.

18. Defendants have been using methods claimed in one or more claims of the '301 Patent, to manufacture the Infringing Products, thereby infringing the '301 Patent.

19. Upon information and belief, Defendants have been manufacturing the Infringing Products outside the United States in accordance with the '301 Patent and importing into the United States, selling within the United States, offering to sell within the United States, and/or using within the United States the Infringing Products, thereby infringing one or more claims of the '301 Patent.

20. Defendants have been infringing directly one or more claims of the '301 Patent. Defendants' infringement has been literal and under the doctrine of equivalents.

21. Defendants' patent infringement has been willful with full knowledge of the '301 Patent and ESI's rights therein.

22. Defendants' infringement of the '301 Patent has caused and, unless restrained and enjoined, will continue to cause irreparable harm to ESI that cannot be adequately quantified or compensated by monetary damages alone and for which there is no adequate remedy at law. ESI is

entitled to preliminary and permanent injunctive relief preventing Defendants from continuing to infringe the '301 Patent.

23. As a direct and proximate result of Defendants' patent infringement of the '301 Patent, ESI is entitled to recover actual damages in an amount to be proven at trial, but in no event less than a reasonable royalty.

24. Defendants' conduct as alleged herein constitutes an exceptional case under 35 U.S.C. § 285, entitling ESI to the attorneys' fees and costs incurred in this action.

COUNT II
INFRINGEMENT OF THE '167 PATENT

25. ESI repeats and realleges each allegation above as if fully set forth herein.

26. Defendants have been making, using, selling, and offering to sell the Infringing Products, which infringe one or more claims of the '167 Patent.

27. Defendants have been infringing directly one or more claims of the '167 Patent in the United States, including in this District. Defendants' infringement has been literal and under the doctrine of equivalents.

28. Defendants have been knowingly contributing to the infringement of one or more claims of the '167 Patent by others, including, by way of illustration and not limitation, wholesalers, retailers, and consumers who have sold and/or used the Infringing Products in this District and elsewhere.

29. Defendants' continued infringement of the '167 Patent since the filing of this Complaint has been willful with full knowledge of the '167 Patent and ESI's rights therein.

30. Defendants' infringement of the '167 Patent has caused, and unless restrained and enjoined, will continue to cause irreparable harm to ESI that cannot be adequately quantified or compensated by monetary damages alone and for which there is no adequate remedy at law. ESI is

entitled to preliminary and permanent injunctive relief preventing Defendants from continuing to infringe the '167 Patent.

31. As a direct and proximate result of Defendants' patent infringement, ESI is entitled to recover actual damages in an amount to be proven at trial, but in no event less than a reasonable royalty.

32. Defendants' conduct as alleged herein constitutes an exceptional case under 35 U.S.C. § 285, entitling ESI to the attorneys' fees and costs incurred in this action.

PRAYER FOR RELIEF

WHEREFORE, ESI prays for judgment as follows:

1. That the Court issue an injunction against Defendants, their officers, directors, affiliates, subsidiaries, agents, servants, employees, attorneys, and all persons and entities in active concert, privity, or participation with any of them ("enjoined parties") as follows:

- a. restraining and enjoining, preliminarily and permanently, any direct, indirect, or joint infringement of the Patents-in-Suit; and
- b. requiring that Defendants provide written notice of the injunction to all enjoined parties.

2. That Defendants be ordered to compensate ESI for Defendants' patent infringement, including actual damages of no less than a reasonable royalty.

3. That the Court hold that Defendants have willfully infringed and treble the awarded damages as provided by governing law.

4. That Defendants be ordered to pay ESI's attorneys' fees and costs as provided by governing law.

5. That Defendants be ordered to pay ESI pre- and post-judgment interest on all sums awarded.

6. That ESI be awarded such other and further relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

ESI demands a trial by jury as to all issues so triable.

Dated: May 29, 2018

By: */s/ Joseph F. Cleveland, Jr.*

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