

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

ESCORT, INC.,	§	
	§	CIVIL ACTION NO. 1:07-cv-852
Plaintiff,	§	
	§	
V.	§	JUDGE MICHAEL R. BARRETT
	§	
COBRA ELECTRONICS CORPORATION,	§	
	§	
Defendant.	§	JURY TRIAL DEMANDED

ANSWER AND COUNTERCLAIM OF DEFENDANT COBRA ELECTRONICS CORPORATION

Cobra Electronics Corporation (hereinafter “Cobra”), Defendant, files this Answer to the Complaint of Plaintiff Escort, Inc. (hereinafter “Escort”), as follows:

1. Cobra is without sufficient information to admit or deny the allegations of Paragraph 1 of the Complaint and on that basis denies such allegations.
2. Cobra admits that it is organized pursuant to the laws of Delaware and that its principal place of business is in Chicago, Illinois. While Cobra denies committing acts of infringement and denies that Escort is entitled to any relief, Cobra does not contest personal jurisdiction or venue in this case. Cobra denies the remaining allegations of Paragraph 2 of the Complaint.
3. Cobra admits that Escort purports to sue for patent infringement, but denies liability therefor. Cobra does not contest subject matter jurisdiction in this case. Cobra denies the remaining allegations in Paragraph 3 of the Complaint.

4. Cobra denies that it has committed any acts of infringement but does not contest personal jurisdiction. Cobra denies the remaining allegations of Paragraph 4 of the Complaint.

5. Cobra does not contest venue in this case. Cobra denies that venue is proper pursuant to 28 U.S.C. §1400(b) because, inter alia, it has not committed any acts of infringement.

6. Cobra is without sufficient information to admit or deny the allegations of Paragraph 6 of the Complaint and on that basis denies such allegations.

7. Cobra is without sufficient information to admit or deny the allegations of Paragraph 7 of the Complaint and on that basis denies such allegations.

8. Cobra admits that the "XRS-R9G" is a Cobra product but denies that the XRS-R9G infringes any claim of the '905 patent. Cobra is without sufficient information to admit or deny the allegations of Paragraph 8 of the Complaint and on that basis denies such allegations.

9. Cobra realleges and incorporates herein the allegations of paragraphs 1 through 8 of this Answer as if fully set forth herein.

10. Cobra denies the allegations of paragraph 10 of the Complaint.

11. Cobra denies the allegations in Paragraph 11 of the Complaint.

12. Cobra denies the allegations in Paragraph 12 of the Complaint.

AFFIRMATIVE DEFENSES

First Affirmative Defense

25. Cobra has not infringed and does not infringe, induce infringement, or contribute to infringement of any claim of the '905 patent, whether literally or under the doctrine of equivalents.

Second Affirmative Defense

26. On information and belief, the claims of the '905 patent are void, invalid and unenforceable because, among other things, they fail to meet the conditions for patentability set forth in 35 U.S.C. § 1 et seq., including, but not limited to §§ 101, 102, 103, and 112.

Third Affirmative Defense

27. Escort is estopped by representations or actions taken during the prosecution of the '905 patent under the doctrine of prosecution history estoppel.

Fourth Affirmative Defense

28. On information and belief, Escort's claims for patent infringement are limited and/or barred in whole or in part by the provisions of 35 U.S.C. § 287.

Fifth Affirmative Defense

30. On information and belief, Escort's claims for patent infringement are limited and/or barred in whole or in part by laches, equitable estoppel and/or unclean hands.

Sixth Affirmative Defense

31. The Complaint fails to state a claim upon which relief can be granted.

Prayer on Complaint

WHEREFORE, Cobra denies that Escort is entitled to any of the relief it requests and demands judgment that Escort take nothing on its claims, that Cobra be granted judgment on all claims and affirmative defenses, that the claims of United States Patent No. 6,670,905 are invalid, unenforceable, and not infringed by Cobra, that the Court declare this to be an exceptional case under 35 U.S.C. § 285 and award Cobra its costs and reasonable attorneys fees incurred in this action, and that Cobra be awarded such other and further relief to which it may show itself justly entitled.

Counterclaims of Cobra Electronics Corporation

32. Counter-Plaintiff Cobra Electronics Corporation, as and for its counterclaims against Escort, Counter-Defendant, alleges as follows:

33. Cobra repeats and realleges the allegations in Paragraph 1-32.

34. Cobra is a Delaware corporation with its principal place of business at 6500 W. Cortland, Chicago, Illinois 60607.

35. On information and belief, Counter-Defendant Escort is an Illinois corporation with its principal place of business at 5440 West Chester Road, West Chester, Ohio 45069. Escort may be served by serving its counsel of record in this cause, Wood, Herron & Evans LLP, 441 Vine St., 2700 Carew Tower, Cincinnati, OH 45202.

36. Cobra's counterclaims comprise an action for declaratory relief and an action for patent infringement under the patent laws of the United States, 35 U.S.C. § 1 et seq. This Court has jurisdiction over the subject matter of this counterclaim under 28 U.S.C. §§ 1331, 1338(a) and 2201 et seq. Venue in this district is proper based on 28 U.S.C. §§ 1391(b), 1391(c), and 1400(b).

37. Escort alleges that it has the right to enforce United States Patent No. 6,670,905, that the claims of the '905 patent are valid and enforceable, and that Cobra has infringed the claims of the '905 patent. Cobra contends, *inter alia*, that the claims of the '905 patent are invalid, unenforceable, and not infringed.

38. By reason of the foregoing, there is an actual and present controversy between Cobra and Escort. A judicial declaration is necessary and appropriate at this time so that Cobra may ascertain its rights and duties with respect to activities that Escort alleges infringe the '905.

First Counterclaim

39. Cobra realleges Paragraphs 1 through 38 above.

40. By this first counterclaim, Cobra seeks a declaratory judgment that it has not committed any act of infringement, inducement to infringe, and/or contributory infringement of any claim of the '905 patent.

Second Counterclaim

41. Cobra realleges Paragraphs 1 through 40 above.

42. By this second counterclaim, Cobra seeks a declaratory judgment that the claims of the '905 patent are invalid, void, and/or unenforceable pursuant to, *inter alia*, 35 U.S.C. § 102, § 103, § 112, and the doctrine of estoppel.

Third Counterclaim

43. Cobra realleges Paragraphs 1 through 42 above.

44. By this third counterclaim, Cobra seeks a declaratory judgment that it has not done any act and is not proposing to do any act in violation of any rights validly belonging to Escort under the '905 patent.

Fourth Counterclaim

45. Cobra realleges Paragraphs 1 through 44 above.

46. On June 20, 2000, the United States Patent and Trademark Office issued United States Letters Patent No. 6,078,279, entitled "Electromagnetic Signal Detector With Mute Feature" ("the '279 patent"). A true and correct copy of the '279 patent is attached hereto as an exhibit.

47. Cobra holds all right, title and interest in and to the '279 patent with full rights to pursue recovery of royalties or damages for infringement of the '279 patent, including full rights to recover past and future damages.

48. On information and belief, Escort has made, used, offered for sale, imported, or sold a radar and laser detector product having the Model Number "Passport 9500i" which infringes at least one claim of the '279 patent. On information and belief, this radar and laser

detector has been and/or is being offered for sale and/or sold by Escort, its distributor(s), dealer(s), and/or its sales agent(s) within the geographic boundary of the Western Division of the United States District Court of the Southern District of Ohio.

49. Escort has infringed, contributed to the infringement, and/or induced others to infringe the '279 patent and, unless enjoined, will continue to do so by making, using, selling or offering for sale products that are claimed by the '279 patent and contributing to or inducing others to make, use, sell or offer for sale products claimed by the '279 patent without license or permission from Cobra.

50. On information and belief, the acts of infringement complained of herein are being carried out willfully and with full knowledge by Escort of the '279 patent.

51. As a result of Escort's actions, Cobra has suffered and continues to suffer substantial injury, including irreparable injury, which will result in damages to Cobra, including loss of sale and profits, which Cobra would have made but for the acts of infringement by Escort, unless Escort is preliminarily and permanently enjoined from infringing the '279 patent.

Prayer On Counterclaim

WHEREFORE, Cobra requests that judgment on Cobra's counterclaims be entered in its favor, as follows:

- A. That a judgment be entered that Escort has infringed the '279 patent
- B. That Escort, its agents, sales representatives, servants and employees, associates, attorneys, parents, successors and assigns, and any and all persons or entities acting at, through,

under or in active concert or participation with it, be enjoined and restrained preliminarily and permanently from infringing the '279 patent

C. That a judgment be entered that Escort be required to pay over to Cobra all damages sustained by Cobra due to Escort's acts of infringement, including inter alia lost profits and/or a reasonable royalty, and that such damages be trebled pursuant to 35 U.S.C. § 284 for the willful acts of infringement complained of herein;

D. That Cobra be awarded its costs and prejudgment and postjudgment interest on all damages;

E. A declaratory judgment that the claims of the '905 patents are invalid, void, and unenforceable;

F. A declaratory judgment that Cobra does not, has not, and is not proposing to infringe the claims of the '905;

G. A declaration that this case is exceptional and that Cobra be awarded its costs and expenses, including reasonable attorneys fees, incurred in having to defend against Escort's allegations and prosecute its counterclaims; and

H. That Cobra be granted such other and further relief as the Court may deem just and proper.

JURY DEMAND

Cobra Electronics Corporation demands a trial by jury on all issues raised that are triable by jury.

Respectfully submitted,

/s/ Stephen J. Butler

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(TO BE ADMITTED PRO HAC VICE)

CERTIFICATE OF SERVICE

I hereby certify that on November 6, 2007, a copy of the foregoing was filed electronically. Notice of this filing will be sent to all parties by operation of the court's electronic filing system. Parties may access this filing through the Court's system.

/s/ Stephen J. Butler