

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA**

LIGHTING SCIENCE GROUP
CORPORATION,

Plaintiff,

v.

S E L S, INC.

Defendant

Civil Action No. 6:16-cv-679-orl-37TBS

JURY TRIAL DEMANDED

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff Lighting Science Group Corporation, through its attorneys, alleges the following:

PARTIES

1. Plaintiff Lighting Science Group Corporation (“LSG”) is a corporation organized and existing under the laws of Delaware, with its principle place of business at 1830 Penn Street, Melbourne, Florida, 32901.

2. Upon information and belief, Defendant S E L S, Inc. (“SELS”) is a company organized and existing under the laws of North Carolina but does business throughout the United States, including Florida.

JURISDICTION AND VENUE

3. This is a claim for patent infringement and arises under the patent laws of the United States, Title 35 of the United States Code. This Court has jurisdiction over the subject matter of this claim under 28 U.S.C. §§ 1331 and 1338(a).

4. This Court has personal jurisdiction over Defendant because Defendant is

transacting business within this District and has committed acts and, on information and belief, will continue to commit acts within this District giving rise to this action, including offering to sell and selling infringing products and/or placing infringing products, directly or through intermediaries (including distributors, retailers, and others), into the stream of commerce in such a way as to reach customers in this District. Defendant has purposefully and voluntarily sold one or more of its infringing products with the expectation that they will be purchased by consumers in this District. These infringing products have been and continue to be purchased by consumers in this District. Defendant has committed acts of patent infringement within the United States and more particularly, within this District.

5. Venue is proper in this District under 28 U.S.C. §§ 1391(b) and 1400(b).

COUNT I
(Infringement of U.S. Patent No. 8,201,968)

6. Plaintiff repeats and re-alleges Paragraphs 1-5 as though fully set forth herein.

7. Plaintiff is the owner by assignment of United States Patent No. 8,201,968, entitled “Low Profile Light,” which was duly and legally issued by the United States Patent and Trademark Office (“USPTO”) on June 19, 2012 (the “’968 Patent”). A true and correct copy of the ‘968 Patent is attached hereto as Exhibit A.

8. The ‘968 Patent is valid and enforceable and Plaintiff has the full right to recover for past infringement damages and the right to recover future royalties, damages and income.

9. To the extent any marking or notice was required by 35 U.S.C. § 287, Plaintiff, and all predecessors in interest and/or implied or express licensees of the ‘968 Patent, if any, have complied with the marking requirements of 35 U.S.C. § 287 by placing a notice of the ‘968 Patent

on all goods made, offered for sale, sold, and/or imported into the United States that embody one or more claims of that patent and/or providing actual or constructive notice to Defendant.

10. Upon information and belief, Defendant has infringed and will continue to infringe at least Claim 1 of the '968 Patent by, among other activities, making, using, selling or offering to sell in or importing into the United States its LED Down Light DL-4IN-CW and DL-4IN-WW products. Defendant is liable for direct infringement, either literally or under the doctrine of equivalents, as well as indirect infringement by way of inducement and or contributory infringement of the '968 Patent pursuant to 35 U.S.C. § 271 (a), (b), (c), and/or (f).

11. Upon information and belief, Defendant has been and is continuing to induce infringement of the '968 Patent under 35 U.S.C. § 271(b) and contributes to infringement of the '968 Patent under 35 U.S.C. § 271(c), in conjunction with such act of making, using, offering for sale, and or importing into the United States, without authority, products that fall within the scope of one or more claims of the '968 Patent. Such infringement occurs directly by the distributors, retailers, resellers, customers, users and or licensees of the infringing products. The infringing products have no substantial non-infringing uses.

12. Plaintiff has at no time either expressly or impliedly licensed Defendant to practice the '968 Patent.

13. Defendant's infringement has injured Plaintiff, and Plaintiff is entitled to recover damages adequate to compensate it for such infringement.

14. Defendant's acts of infringement are willful, warranting the assessment of increased damages pursuant to 35 U.S.C. § 284, and warrant a finding that this is an exceptional case, pursuant to 35 U.S.C. § 285.

15. Defendant's infringing activities have injured and will continue to injure Plaintiff,

unless and until this Court enters an injunction prohibiting further infringement and, specifically, enjoining further manufacture, use, sale, importation, and/or offer for sale of products that come within the scope of the claims of the '968 Patent.

COUNT II
(Infringement of U.S. Patent No. 8,672,518)

16. Plaintiff repeats and re-alleges Paragraphs 1-5 as though fully set forth herein.

17. Plaintiff is the owner by assignment of United States Patent No. 8,672,518 entitled "Low Profile Light And Accessory Kit For The Same," which was duly and legally issued by the USPTO on March 3, 2015 (the "'518 Patent"). A true and correct copy of the '518 Patent is attached hereto as Exhibit B.

18. The '518 Patent is valid and enforceable and Plaintiff has the full right to recover for past infringement damages and the right to recover future royalties, damages and income.

19. To the extent any marking or notice was required by 35 U.S.C. § 287, Plaintiff, and all predecessors in interest and/or implied or express licensees of the '518 Patent, if any, have complied with the marking requirements of 35 U.S.C. § 287 by placing a notice of the '518 Patent on all goods made, offered for sale, sold, and/or imported into the United States that embody one or more claims of that patent and/or providing actual or constructive notice to Defendant.

20. Upon information and belief, Defendant has infringed and will continue to infringe at least Claim 1 of the '518 Patent by, among other activities, making, using, selling or offering to sell in or importing into the United States its LED Down Light DL-4IN-CW, DL-4IN-WW, SELS-RD4-9W-XXE, and SELS-RD6-11W-XXE products. Defendant is liable for direct infringement, either literally or under the doctrine of equivalents, as well as indirect infringement by way of

inducement and or contributory infringement of the '518 Patent pursuant to 35 U.S.C. § 271 (a), (b), (c), and/or (f).

21. Upon information and belief, Defendant has been and is continuing to induce infringement of the '518 Patent under 35 U.S.C. § 271(b) and contributes to infringement of the '518 Patent under 35 U.S.C. § 271(c), in conjunction with such act of making, using, offering for sale, and or importing into the United States, without authority, products that fall within the scope of one or more claims of the '518 Patent. Such infringement occurs directly by the distributors, retailers, resellers, customers, users and or licensees of the infringing products. The infringing products have no substantial non-infringing uses.

22. Plaintiff has at no time either expressly or impliedly licensed Defendant to practice the '518 Patent.

23. Defendant's infringement has injured Plaintiff, and Plaintiff is entitled to recover damages adequate to compensate it for such infringement.

24. Upon information and belief, Defendant's acts of infringement are willful, warranting the assessment of increased damages pursuant to 35 U.S.C. § 284, and warrant a finding that this is an exceptional case, pursuant to 35 U.S.C. § 285.

25. Defendant's infringing activities have injured and will continue to injure Plaintiff, unless and until this Court enters an injunction prohibiting further infringement and, specifically, enjoining further manufacture, use, sale, importation, and/or offer for sale of products that come within the scope of the claims of the '518 Patent.

COUNT III
(Infringement of U.S. Patent No. 8,967,844)

26. Plaintiff repeats and re-alleges Paragraphs 1-5 as though fully set forth herein.

27. Plaintiff is the owner by assignment of United States Patent No. 8,967,844 entitled “Low Profile Light And Accessory Kit For The Same,” which was duly and legally issued by the USPTO on March 3, 2015 (the “‘844 Patent”). A true and correct copy of the ‘844 Patent is attached hereto as Exhibit C.

28. The ‘844 Patent is valid and enforceable and Plaintiff has the full right to recover for past infringement damages and the right to recover future royalties, damages and income.

29. To the extent any marking or notice was required by 35 U.S.C. § 287, Plaintiff, and all predecessors in interest and/or implied or express licensees of the ‘844 Patent, if any, have complied with the marking requirements of 35 U.S.C. § 287 by placing a notice of the ‘844 Patent on all goods made, offered for sale, sold, and/or imported into the United States that embody one or more claims of that patent and/or providing actual or constructive notice to Defendant.

30. Upon information and belief, Defendant has infringed and will continue to infringe at least Claim 1 of the ‘844 Patent by, among other activities, making, using, selling or offering to sell in or importing into the United States its LED Down Light DL-4IN-CW, DL-4IN-WW, and SELS-RD6-11W-XXE products and Claims 1 and 24 of the ‘844 Patent by, among other activities, making, using, selling or offering to sell in or importing into the United States its SELS-RD4-9W-XXE product. Defendant is liable for direct infringement, either literally or under the doctrine of equivalents, as well as indirect infringement by way of inducement and or contributory infringement of the ‘844 Patent pursuant to 35 U.S.C. § 271 (a), (b), (c), and/or (f).

31. Upon information and belief, Defendant has been and is continuing to induce

infringement of the '844 Patent under 35 U.S.C. § 271(b) and contributes to infringement of the '844 Patent under 35 U.S.C. § 271(c), in conjunction with such act of making, using, offering for sale, and or importing into the United States, without authority, products that fall within the scope of one or more claims of the '844 Patent. Such infringement occurs directly by the distributors, retailers, resellers, customers, users and or licensees of the infringing products. The infringing products have no substantial non-infringing uses.

32. Plaintiff has at no time either expressly or impliedly licensed Defendant to practice the '844 Patent.

33. Defendant's infringement has injured Plaintiff, and Plaintiff is entitled to recover damages adequate to compensate it for such infringement.

34. Defendant's acts of infringement are willful, warranting the assessment of increased damages pursuant to 35 U.S.C. § 284, and warrant a finding that this is an exceptional case, pursuant to 35 U.S.C. § 285.

35. Defendant's infringing activities have injured and will continue to injure Plaintiff, unless and until this Court enters an injunction prohibiting further infringement and, specifically, enjoining further manufacture, use, sale, importation, and/or offer for sale of products that come within the scope of the claims of the '844 Patent.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully asks this Court to enter judgment against Defendant and against its respective subsidiaries, successors, parents, affiliates, offices, directors, agents, servants, and employees, and all persons in privity or active concert or participation with Defendant, granting the following relief:

- A. the entry of judgment in favor of Plaintiff and against Defendant;
- B. a preliminary injunction prohibiting further infringement of each of the '968 Patent, the '518 Patent, and the '844 Patent by Defendant, their agents, employees, representatives, successors and assigns and those acting in privity or in concert with them;
- C. a permanent injunction prohibiting further infringement of each of the '968 Patent, the '518 Patent, and the '844 Patent by Defendant, their agents, employees, representatives, successors and assigns and those acting in privity or in concert with them;
- D. an award of actual damages against Defendant for damages arising from the infringement of each of the '968 Patent, the '518 Patent, and the '844 Patent, including treble damages for willful infringement, pursuant to 35 U.S.C. § 284;
- E. an award of damages against Defendant for pre-judgment and post-judgment interest on the damages awarded, including an award of prejudgment interest, pursuant to 35 U.S.C. § 284, from the date of each act of infringement of the '968 Patent, the '518 Patent, and the '844 Patent by Defendant to the day a damages judgment is entered and a further award of post-judgment interest, pursuant to 28 U.S.C. § 1961, continuing until such judgment is paid, at the maximum rate allowed by law;
- F. the entry of judgment that this case is exceptional, and award treble damages, attorney fees, and the costs of this action, pursuant to 35 U.S.C. § 285;
- G. in the event a final injunction is not granted, a compulsory ongoing royalty; and

H. such other relief to which Plaintiff is entitled under law, and any other and further relief that this Court or a jury may deem just and proper.

JURY DEMAND

Pursuant to Fed. R. Civ. P. 38(b), Plaintiff demands a trial by jury on all issues so triable.

/s/Mark F. Warzecha

Mark F. Warzecha

Florida Bar No. 95779

WIDERMANN MALEK PLLC

1990 W. New Haven Ave., Ste. 201

Melbourne, Florida 32904

Tel. (321) 255-2332

Fax (321) 255-2351

MFW@USLegalTeam.com