

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

EAGLE INDUSTRIES UNLIMITED, INC., a)	
Missouri corporation,)	
)	
Plaintiffs)	No.
)	
vs.)	JURY TRIAL DEMANDED
)	
BLACKHAWK INDUSTRIES, INC., a)	
Virginia corporation, BLACKHAWK)	
INDUSTRIES PRODUCTS GROUP)	
UNLIMITED, LLC, a Virginia limited liability)	
company, and ABC, LLC d/b/a BLACKHAWK)	
PRODUCTS GROUP, LLC, and)	
BLACKHAWK PRODUCTS GROUP, an)	
unknown limited liability company,)	
)	
Defendants.)	

COMPLAINT

COMES NOW plaintiff Eagle industries Unlimited, Inc. (“Eagle” or “Plaintiff”), by and through its undersigned counsel, and for its complaint against defendants Blackhawk Industries, Inc. and Blackhawk Industries Products Group Unlimited, LLC, a Virginia limited liability company, and ABC, LLC, d/b/a Blackhawk Products Group, LLC and Blackhawk Products Group, an unknown limited liability company (collectively “Blackhawk” or “Defendants”), states as follows:

PARTIES

1. Plaintiff Eagle is a Missouri corporation with its principal place of business in Fenton, Missouri. Eagle designs, develops, manufactures and sells state-of-the art military and law-enforcement-personnel tactical vests and load-bearing equipment designed to assist users to more efficiently and safely carry and use weapons, communication, medical and safety equipment.

2. Upon information and belief, defendant Blackhawk Industries, Inc. (“BII”) is a Virginia corporation with its principal place of business in Norfolk, Virginia. Upon information and belief, defendant BII makes, uses and sells, among other things, tactical vests and related components in direct competition with Eagle.

3. Upon information and belief, defendant Blackhawk Industries Products Group Unlimited, LLC (“BIPGU”) is a Virginia limited liability company with its principal place of business in Norfolk, Virginia. Upon information and belief, defendant BII is a member of defendant BIPGU. Upon information and belief, defendant BIPGU makes, uses and sells, among other things, tactical vests and related components in direct competition with Eagle.

4. Defendant ABC, LLC is a limited liability company of unknown origin but is believed to do business as Blackhawk Products Group, LLC and Blackhawk Products Group (referred to herein as “BPG”). It is believed that BPG maintains its principal place of business in Norfolk, Virginia, and is an affiliated limited liability company of either or both BII and BIPGU. Upon information and belief, defendant BPG, either individually or in active concert with defendants BII and/or BIPGU, makes, offers and sells, among other things, tactical vests and related components in direct competition with Eagle. Eagle will amend its complaint to correct the designation of ABC, LLC as soon as its true identity is determined.

5. Upon information and belief, defendant BPG is the registrant of and owns and/or operates (either individually or in active concert with defendants BII and/or BIPGU) the website found at <http://blackhawk.com>, and thereon offers and sells, among other things, tactical vests and related components in direct competition with Eagle.

6. Upon information and belief, Defendants have transacted and continues to transact business in this judicial district.

JURISDICTION AND VENUE

7. This Court has jurisdiction of this action under 28 U.S.C. §§ 1331 and 1338(a), this being an action arising under the patent laws of the United States, Title 35, United States Code, in particular 35 U.S.C. § 101, *et seq.*

8. Venue in this judicial district is proper based upon 28 U.S.C. §§ 1391(c), and 1400(b).

9. On or about July 17, 2007, United States Patent No. 7,243,376 (the “‘376 Patent” or “Patent-in-Suit”), entitled CUT AWAY VEST was duly and legally issued to Matthew A. Johnson with Eagle Industries Unlimited, Inc. noted as the sole assignee. A true and correct copy of the ‘376 Patent is attached hereto as Exhibit A and incorporated herein by reference.

10. The ‘376 Patent was based on an application filed with the United States Patent and Trademark Office on April 6, 2006, and which was published on May 17, 2007, as U.S. Patent Application Publication No. 2007/0107109A1 (the “‘109 Publication”), a true and correct copy of which is attached hereto as Exhibit B.

11. Upon investigation, the Defendants, collectively or in concert with one another, manufacture, offer for sale and sells tactical vests that infringe one or more of the claims of the ‘376 Patent, including those identified by Defendants as the Blackhawk S.T.R.I.K.E. vests, in this judicial district and elsewhere in interstate commerce, including via the Internet from the website located at <http://blackhawk.com>. A true and correct copy of Defendants’ website available for viewing on or about August 14, 2007, is attached hereto as Exhibit C.

COUNT I
(Patent Infringement)

12. Eagle incorporates the allegations of paragraphs 1 through 11 as if fully set forth herein.

13. Upon information and belief, Defendants, individually and/or in concert with one another, have in the past and are still infringing one or more of the claims of the '376 Patent by manufacturing, selling and/or offering for sale, within the United States, cut away vests that embody the invention claimed in the '376 Patent, or by contributing to or inducing infringement of those claims, in violation of 35 U.S.C. § 271. A true and correct copy of photographs of the infringing devices are attached hereto as Exhibit C and incorporated herein by reference.

14. Upon information and belief, Defendants had actual knowledge of the '376 Patent and/or the '109 Publication prior to manufacturing, selling and/or offering for sale the infringing devices.

15. Plaintiff designs, produces, sells, and/or offers for sale tactical cut away vests that embody the claimed inventions of the '570 Patent.

16. Plaintiff has provided Defendant Blackhawk Products Group, LLC with notice of the '109 Publication and of Defendant's potential infringement of the same. Despite this notice, Defendant continues to infringe, either directly, contributorily or by inducing others to infringe, the '376 Patent.

17. Defendants have no license from Plaintiff but have nonetheless deliberately, knowingly and willfully infringed the '376 Patent, thereby causing irreparable harm and damage to Plaintiff, which damage should be trebled pursuant to 35 U.S.C. § 284.

18. The acts of Defendants constitute willful infringement making this cause an exceptional case within the provisions of 35 U.S.C. § 285, thereby entitling Plaintiff to recover its attorneys' fees upon prevailing in this action.

19. By reason of Defendants' infringement of the '376 Patent, Plaintiff has been and will continue to be seriously damaged and irreparably harmed unless Defendants are enjoined

from further infringing the '376 Patent and Plaintiff is adequately compensated for such infringement by this Court pursuant to the provisions of 35 U.S.C. §§ 283 and 284.

WHEREFORE, plaintiff Eagle Industries Unlimited, Inc. prays:

(a) That Defendants and their principals, officers, employees, servants, agents, representatives, distributors, attorneys and persons, firms or corporations under their control or in active concert or participation with Defendant be preliminarily and permanently enjoined by and restrained from infringing the '376 Patent, or inducing or contributing to the infringement of the patent-in-suit;

(b) For an order that Defendants deliver to Plaintiff any and all of their products that infringe any of the claims of the '376 Patent, pursuant to 35 U.S.C. § 283, and impounding all cut away vests that infringe the claims of the '376 Patent in Defendants' possession or under its control;

(c) For a judgment that Defendants have infringed and are presently infringing one or more of the claims of the patent-in-suit by the manufacture, use sale and/or offer for sale of the infringing products;

(d) For an accounting of all damages resulting from such infringement including an accounting of all profits derived from use of the accused infringing devices, and for an award of up to three (3) times the amount of damages found and assessed pursuant to 35 U.S.C. § 284;

(e) For an award to Plaintiff of all costs, interest and reasonable attorneys' fees pursuant to 35 U.S.C. §§ 284 and 285; and

(f) For such other and further relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiff demands a jury trial on all issues so triable in this case.

Respectfully submitted,

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