

Susan D. Pitchford, OSB No. 980911

Email: sdp@chernofflaw.com

CHERNOFF VILHAUER LLP

601 SW Second Avenue, Suite 1600

Portland, OR 97204

Telephone: (503) 227-5631

Facsimile: (503) 228-4373

Attorneys for Plaintiff Cyber Acoustics, LLC

UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

PORTLAND DIVISION

CYBER ACOUSTICS, LLC,

Civil Case No.: 3:13-cv-01144

Plaintiff,

**COMPLAINT FOR
PATENT INFRINGEMENT**

v.

DEMAND FOR JURY TRIAL

BELKIN INTERNATIONAL, INC.

PATENT CASE

Defendant.

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff, Cyber Acoustics, LLC (“Cyber Acoustics” or “Plaintiff”), by and through its undersigned counsel, states and alleges for its Complaint against Defendant, Belkin International, Inc. (“Belkin” or “Defendant”), as follows:

PARTIES

1. Plaintiff Cyber Acoustics is a limited liability company organized under the laws of the State of Washington, having its principal place of business at 3109 NE 109th Avenue, Vancouver, Washington 98682.

2. Upon information and belief, defendant Belkin is a corporation organized and existing under the laws of the State of Delaware, having its principal place of business at 12045 East Waterfront Drive, Playa Vista, California 90094.

3. Upon information and belief, Belkin does business throughout the United States and does business within the judicial district, including the use, sale and offer for sale of Belkin tablet covers that infringe U.S. Patent No. 8,281, 924 (“the ‘924 Patent”).

JURISDICTION AND VENUE

4. This is a civil action for patent infringement arising under the Patent Laws of the United States, including 35 U.S.C. §§ 101, *et seq.*

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

6. Upon information and belief, this Court has personal jurisdiction over Belkin because Defendant does business in this judicial district, including the sale and offer for sale of the infringing products.

7. Venue is proper in this judicial district under 28 U.S.C. §§ 1391(b) and 1400(b). This judicial district provides the closest venue to Cyber Acoustics’ principal place of business.

FACTUAL BACKGROUND

8. The ‘924 Patent is entitled, “Cover for Portable Electronic Device,” and was duly and properly issued by the United States Patent Office on October 9, 2012. A true and correct copy of the ‘924 Patent is attached hereto as **Exhibit A**.

9. The named inventor of the ‘924 Patent, Joseph Westrup, assigned all right, title and interest in the ‘924 Patent to Cyber Acoustics. A true and correct copy of the Patent Assignment Abstract of Title is attached hereto as **Exhibit B**.

10. A Petition for a Certificate of Correction to correct the inventorship of the '924 Patent was filed with the United States Patent and Trademark Office on July 9, 2013. The petition seeks to add Steven Murphy, Kwong Chi Kei and Lui Suen Yuen as inventors of the '924 Patent. A true and correct copy of the Petition is attached hereto as **Exhibit C**.

11. Each inventor listed in the Petition to correct the inventorship of the '924 Patent, Steven Murphy, Kwong Chi Kei and Lui Suen Yuen, has assigned all right, title, and interest in the '924 Patent to Cyber Acoustics, including the right to sue for and recover for past infringement of the '924 Patent. The assignment was executed on July 2, 2013. A true and correct copy of the Assignment is attached hereto as **Exhibit D**.

12. Cyber Acoustics is the sole owner of the entire right, title, and interest in the '924 Patent, including the right to recover past and future damages for any and all infringement thereof.

13. Cyber Acoustics has sold and continues to sell a number of products covered by the '924 Patent, directly or through distributors, in the United States, including several models of tablet covers.

14. In the fall of 2010, prior to issuance of the '924 Patent, Cyber Acoustics began marking these tablet covers with "Patent Pending." In the fall of 2012, after issuance of the '924 Patent, Cyber Acoustics changed the marking on those products from "Patent Pending" to include the number of the '924 Patent. For example, a true and correct copy of the packaging of Cyber Acoustics IMC-7BK tablet cover product is attached hereto as **Exhibit E**. Exhibit E illustrates the "U.S. Patent 8,281,924" marking.

15. Belkin imports, makes, uses, offers for sale, and/or sells tablet covers, including but not limited to products having the part numbers F7N008 and F8N747, that infringe one or

more claims of the '924 Patent.

16. Belkin further depicts, markets, and offers for sale the infringing products through its website, www.belkin.com/us, and via resellers of its products throughout the United States. True and correct copies of webpages from the Belkin website for the tablet covers F7N008 and F8N747 are attached hereto as **Exhibit F**.

17. Belkin's infringing products and Cyber Acoustics' patented products are sold through the same channels of distribution. A true and correct copy of an Office Depot® webpage is attached hereto as **Exhibit G**. Exhibit E illustrates that both Belkin and Cyber Acoustics' tablet cover products are sold in the same market and through the same distribution channels.

18. Upon information and belief, before institution of this lawsuit, Belkin had knowledge of the '924 Patent and Cyber Acoustics' covered products, by virtue of Cyber Acoustics' product marking of products sold in the same channels of distribution as the infringing products.

19. Despite this knowledge, and continuing after institution of this action, on information and belief, Belkin has continued to import, make, use, offer for sale, and/or sell infringement products with knowledge of the '924 Patent.

20. Upon information and belief, Belkin has engaged, and continues to engage in its acts of infringement, willfully, with full knowledge of the '924 Patent, and with an intent to infringe and cause others to infringe the '924 Patent.

Count I

Infringement of the '924 Patent under 35 U.S.C. § 271

21. Cyber Acoustics incorporates by reference paragraphs 1 through 13 as though fully set forth herein.

22. Upon information and belief, Belkin has infringed, contributorially infringed, and/or induced others to infringe at least one claim of the '924 Patent by offering for sale or selling to customers within this judicial district and elsewhere in the United States, or importing into the United States within the term of the '924 Patent, products that embody the invention of the '924 Patent. These acts are without right, license, or permission of Cyber Acoustics.

23. Belkin's actions as described herein constitute infringement of at least one claim of the '924 patent in violation of 35 U.S.C. §§ 271 and 281-285.

24. Upon information and belief, Belkin specifically has knowledge of the '924 Patent, knowledge of infringement of the '924 Patent by others, including, without limitation, its customers, and/or intends to induce others to infringe the '924 Patent through its offer for sale and sale of the infringing products to resellers and customers of the products.

25. Cyber Acoustics has been damaged and continues to be damaged by Belkin's infringement, contributory, and/or inducement of infringement of the '924 patent and has been and will continue to be irreparably harmed if Belkin's infringing activities are not enjoined. Cyber Acoustics has no adequate remedy at law.

26. Upon information and belief, these infringing activities have been willful, wanton, and deliberate and are causing substantial and irreparable damage to Cyber Acoustics.

27. This case is exceptional within the meaning of 35 U.S.C. § 285, and Cyber Acoustics is entitled to an award of reasonable attorneys' fees.

DEMAND FOR JURY TRIAL

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiff Cyber Acoustics hereby demands a trial by jury on all issues so triable.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, Cyber Acoustics, respectfully prays for judgment against Defendant Belkin as follows:

- A. A judgment preliminary and permanently enjoining Belkin and any person acting in concert or cooperation with it from further infringing the '924 Patent;
- B. A judgment that Belkin has infringed the '924 Patent;
- C. An award equal to the damages suffered by Cyber Acoustics resulting from Belkin's infringement of the '924 Patent, including interest and costs;
- D. Enhanced damages in accordance with the provisions of 35 U.S.C. § 284 due to Belkin's willful infringement;
- E. A finding that this case is exceptional under the provisions of 35 U.S.C. § 285;
- F. An award to Cyber Acoustics of its reasonable attorneys' fees pursuant to 35 U.S.C. § 285; and
- G. That Cyber Acoustics be granted such other and further relief as the Court deems just and proper.

Dated: July 9, 2013

Respectfully submitted,

CHERNOFF VILHAUER LLP

/s/ Susan D. Pitchford

Susan D. Pitchford, OSB No. 980911

Telephone: (503) 227-5631

Of Attorneys for Plaintiff