

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

totes ISOTONER CORPORATION	:	Case No.: 1:13-cv-821
9655 International Blvd.	:	
Cincinnati, Ohio 45246-5658	:	
	:	
Plaintiff,	:	
	:	
v.	:	COMPLAINT FOR
	:	DECLARATORY JUDGMENT
	:	OF NONINFRINGEMENT
THE ECHO DESIGN GROUP, INC.	:	
10 East 40 th Street	:	
New York, New York 10016	:	
	:	
Defendant.	:	JURY DEMANDED

Plaintiff totes Isotoner Corporation, by counsel, brings this action against Defendant The Echo Design Group, Inc. for a declaratory judgment of patent non-infringement and/or invalidity, and alleges as follows:

NATURE OF THE CASE

1. This is an action for declaratory judgment arising under the patent laws of the United States, Title 35 of the United States Code, and 28 U.S.C. § 2201(a).

PARTIES

2. Plaintiff totes Isotoner Corporation (“totes”) is an Ohio corporation having its headquarters at 9655 International Boulevard, Cincinnati, Ohio 45246-5658. totes and its predecessor companies have been associated with quality gloves and slippers for decades. Founded as a glove manufacturer in 1910, Isotoner merged with the totes Company in 1997 to form the totes Isotoner Corporation.

3. On information and belief, Defendant The Echo Design Group, Inc. (“Echo”) is a New York corporation, with its principal place of business at 10 East 40th Street, New York, New York 10016.

JURISDICTION AND VENUE

5. This Court has exclusive jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1338(a), and 28 U.S.C. § 2201(a).

6. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391(b) and (c) and S.D. Ohio LR 82.1.

SUBSTANTIAL CONTROVERSY

7. United States Patent 8,528,117, entitled “Gloves for Touchscreen Use,” was issued on September 10, 2013 (“the ‘117 patent”). On its face, it identifies Echo as the assignee of the ‘117 patent. A copy of the ‘117 patent is appended hereto as Exhibit A.

8. On October 25, 2013, Echo, through its counsel, sent a threat letter to FTP Designs LLC d/b/a Pistil Designs (“Pistil”) accusing Pistil of infringing the claims of the ‘117 patent by selling the “Gossip Glove that is touchscreen compatible” (“the Accused Gloves”). A copy of the letter is attached hereto as Exhibit B.

9. In the letter, Echo stated that it had filed suit for patent infringement against Pistil in the Southern District of New York (“the New York Case”). A copy of the complaint is attached hereto as Exhibit C.

10. Despite its stated promise not to serve the complaint in the New York Case “for the next ten business days” (which would have included through Nov. 8, 2013) Echo served the complaint on Pistil on November 5, 2013.

11. Pistil is a customer of totes, which supplied the Accused Gloves to Pistil. As a result, totes is defending its customer

12. As the supplier, totes has more information about the manufacture and construction of the Accused Gloves than does Pistil.

13. totes also has a greater interest in defending the Accused Gloves from Echo's wrongful charges of infringement, at least in part because totes provides similar gloves to other customers.

14. As evidenced by the complaint filed against totes's customer in the New York Case, there is an actual controversy between totes and Echo, with respect to the non-infringement, invalidity and unenforceability of the '117 patent, and Echo's alleged right to assert the '117 patent against Pistil, totes, or any other of totes's customers and obtain relief therefrom. As a result, totes and Pistil have adverse legal interests of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

THE ACCUSED GLOVES DO NOT INFRINGE

15. Each of the claims of the '117 patent require, among other things, "said finger tip portions of said thumb and index finger [be] oversewn with a conductive thread."

16. The Accused Gloves are entirely missing such "portions of said thumb and index finger oversewn with a conductive thread" to the extent the claim limitation can be understood.

17. In addition, the claims of the '117 patent are invalid at least for the reason that they are each anticipated or rendered obvious by totes's own pending patent application, which is entitled to a priority date of August 5, 2009, more than 10 months before the earliest filing date of the '117 patent.

18. On information and belief, totes invented the invention described and claimed in its patent application before Echo conceived of its claimed glove and so, Echo's patent claims are invalid.

19. The Accused Gloves do not infringe any valid claim of the '117 patent.

20. Absent a declaration of non-infringement, invalidity and unenforceability, Echo will continue to wrongfully assert the '117 patent against Pistil, and totes, and thereby cause Pistil and totes irreparable injury and damages.

WHEREFORE, totes requests that the Court order:

1. the entry of a judgment declaring that the Accused Gloves, and thus totes and its customer Pistil, have not infringed and are not infringing the '117 patent;
2. the entry of a judgment declaring that the '117 patent is invalid or unenforceable;
3. an award of its attorney fees (35 U.S.C. § 285);
4. an award of its costs; and
5. all other and further relief as may be just and equitable.

JURY DEMAND

totes hereby demands trial by jury for all issues in this action triable of right by jury.

Respectfully submitted,

s/ Ann G. Schoen _____

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