

UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND

NACRE AS,)	
)	
Plaintiff,)	
)	
v.)	Civil Case No.8:07-cv-02676-AW
)	
SILYNX COMMUNICATIONS, INC., <i>et al.</i> ,)	
)	
Defendants.)	

SILYNX COMMUNICATIONS, INC.’S ANSWER, AFFIRMATIVE DEFENSES AND COUNTERCLAIMS

Defendant Silynx Communications, Inc. (“Silynx”), by and through its undersigned attorneys, answers the Complaint of Plaintiff Nacre AS (“Nacre”) as follows:

1. Silynx is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 1, and therefore denies them.
2. Silynx admits that it is incorporated in Delaware, with its principal place of business in Rockville, Maryland. Silynx is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 2, and therefore denies them.
3. Silynx admits the allegations of paragraph 3.
4. Silynx admits that Plaintiff’s Complaint purports to allege claims for patent and trademark infringement and purports to allege that this Court has jurisdiction over such claims. Except as specifically admitted, Silynx denies the allegations of paragraph 4.

5. Silynx admits that Plaintiff's Complaint purports to allege that this Court has personal jurisdiction over Defendants and that venue is proper in this district. Except as specifically admitted, Silynx denies the allegations of paragraph 5.

6. Silynx denies the allegations of paragraph 6.

COUNT I

7. Silynx incorporates by reference its answers to paragraphs 1 through 6 as if fully set forth herein.

8. Silynx is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 8, and therefore denies the same, except admits that Plaintiff attaches what it purports to be a copy of a registration with the U.S. Patent and Trademark Office ("PTO") for a QUIETPRO trademark as Exhibit 1 to the Complaint.

9. Silynx is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 9, and therefore denies them.

10. Silynx denies the allegations of paragraph 10, except admits that it uses the mark QuietOpsTM in connection with a hearing protection communication system in the United States.

11. Silynx is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 11, and therefore denies them.

12. Silynx denies the allegations of paragraph 12, except admits that Plaintiff attaches what it purports to be an application for federal trademark registration as Exhibit 2 to the Complaint.

13. Silynx denies the allegations of paragraph 13.

14. Silynx denies the allegations of paragraph 14.

15. Silynx denies the allegations of paragraph 15.

COUNT II

16. Silynx incorporates by reference its answers to paragraphs 1 through 15 as if fully set forth herein.

17. Silynx denies the allegations of paragraph 17, except admits that Plaintiff attaches what it purports to be a copy of the '195 patent as Exhibit 3 to the Complaint.

18. Silynx denies the allegations of paragraph 18.

19. Silynx denies the allegations of paragraph 19.

20. Silynx denies the allegations of paragraph 20.

21. Silynx denies the allegations of paragraph 21.

COUNT III

22. Silynx incorporates by reference its answers to paragraphs 1 through 21 as if fully set forth herein.

23. Silynx denies the allegations of paragraph 23, except admits that Plaintiff attaches what it purports to be a copy of the '524 patent as Exhibit 4 to the Complaint.

24. Silynx denies the allegations of paragraph 24.

25. Silynx denies the allegations of paragraph 25.

26. Silynx denies the allegations of paragraph 26.

27. Silynx denies the allegations of paragraph 27.

FIRST AFFIRMATIVE DEFENSE

28. The Complaint, and each purported claim asserted, fails to state any claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

29. Plaintiff's Complaint, and each purported claim asserted, is barred by the doctrine of laches.

THIRD AFFIRMATIVE DEFENSE

30. Plaintiff's Complaint, and each purported claim asserted, is barred by the doctrine of estoppel.

FOURTH AFFIRMATIVE DEFENSE

31. Plaintiff's Complaint, and each purported claim asserted, is barred by the doctrine of unclean hands.

FIFTH AFFIRMATIVE DEFENSE

32. Plaintiff's Complaint, and each purported claim asserted, is barred by the doctrine of waiver.

SIXTH AFFIRMATIVE DEFENSE

33. Silynx has not, and does not, willfully or otherwise, infringe, contribute to the infringement of, or actively induce others to infringe any claim of U.S. Patent No. 7,039,195 ("the '195 patent") or No. 6,567,524 ("the '524 patent") either literally or under the doctrine of equivalents.

SEVENTH AFFIRMATIVE DEFENSE

34. The '195 and '524 patents are invalid for failure to meet one or more of the requirements for patentability, including without limitation those requirements set forth in 35 U.S.C. §§ 101, 102, 103, and 112, and no claim of the '195 or '524 patent can be validly construed to cover any Silynx Product.

EIGHTH AFFIRMATIVE DEFENSE

35. The '195 and '524 patents are unenforceable because one or more individuals involved in patent prosecution intentionally failed to disclose to the U.S. Patent Office material prior art of which the inventors were aware. In particular, those involved in patent prosecution failed to disclose to the U.S. Patent and Trademark Office at least one publication by one of the inventors entitled "Active Noise Reduction In An Ear Terminal" given on March 18, 1999 at the Technical University of Berlin as part of the 137th Regular Meeting of the Acoustical Society of America 2nd Convention of the European Acoustics Association: Forum Acusticum 99 integrating the 25th German Acoustics DAGA Conference.

NINTH AFFIRMATIVE DEFENSE

36. Plaintiff's claims for damages and an injunction as a result of the alleged patent infringement are barred in whole or in part by operation of applicable statutes, including 35 U.S.C. § 287.

TENTH AFFIRMATIVE DEFENSE

37. Silynx is immune from Plaintiff's patent infringement claims under 28 U.S.C. § 1498 in whole or in part by virtue of manufacture and sale of products to the United States Government with the Government's authorization and consent.

ELEVENTH AFFIRMATIVE DEFENSE

38. Silynx's use of QuietOps™ for a hearing protection product does not infringe Nacre's QUIETPRO® trademark.

TWELVETH AFFIRMATIVE DEFENSE

39. Nacre does not have a valid trademark right in the QUIETPRO® mark, either at common law or through its federal registration number 3152987, because of a failure to comply with one or more

requirements of 15 U.S.C. §§ 1051 *et seq.* and a failure to use of the mark in the United States prior to use by others in connection with similar goods and services.

COUNTERCLAIMS

Silynx Communications, Inc. (“Silynx”) for its counterclaims alleges, on knowledge as to itself and otherwise upon information and belief, as follows:

1. Silynx is a Delaware corporation having its principal place of business at 9901 Belward Campus Drive, Suite 150, Rockville, MD 20850.
2. Counterclaim defendant Nacre AS (“Nacre”) purports to be a Norwegian corporation with its principal place of business in Trondheim, Norway.
3. These counterclaims seek declarations, pursuant to 28 U.S.C. §§ 2201 and 2202, of non-infringement, invalidity and/or unenforceability in connection with a certain trademark and certain patents described more fully below that have been asserted by Nacre against Silynx.
4. This Court has jurisdiction over these counterclaims pursuant to 15 U.S.C. §§ 1051, *et seq.*, 35 U.S.C. §§ 1, *et seq.*, as well as pursuant to 28 U.S.C. §§ 1331, 1338(a).
5. Venue is proper in this Judicial District pursuant to 28 U.S.C. §§ 1391(b) and 1400(b), including because Nacre transacts business in this forum and has voluntarily subjected itself to the jurisdiction of this Court.

FACTS

6. Nacre purports to be the owner of trademark QUIETPRO[®], registered with the United States Patent and Trademark Office, Reg. No. 3,152,982, Oct. 10, 2006. Nacre has commenced suit against Silynx alleging that Silynx’s use of the designation “QuietOps” in connection with hearing

protection headsets infringes Nacre's rights in the QUIETPRO[®] trademark. SilynX has denied such allegations and has asserted that the QUIETPRO[®] trademark is invalid.

7. Nacre purports to be the owner by assignment of all right, title, and interest in United States Patent No. 7,039,195 ("the '195 patent") and in United States Patent No. 6,567,524 ("the '524 patent"), and that SilynX has infringed each of such patents. SilynX has denied such allegations and has asserted that the '195 and '524 patents are neither valid nor enforceable.

8. There presently exists a substantial, actual, and continuing controversy between Nacre and SilynX as to the infringement, validity, and enforceability of the QUIETPRO[®] trademark and of the '195 and '524 patents.

COUNT I
Declaratory Judgment of Trademark Non-Infringement

9. SilynX repeats and re-alleges the allegations of paragraphs 1 through 8 of its Counterclaims, as if fully set forth herein.

10. Contrary to Nacre's allegations, SilynX has not, and does not, willfully or otherwise, infringe in any way rights of Nacre in the mark QUIETPRO[®].

11. Contrary to Nacre's allegations, the QUIETPRO[®] mark is invalid.

12. SilynX is entitled to a declaration that SilynX's use of the mark QuietOps[™] does not infringe Nacre's alleged rights in the QUIETPRO[®] mark, and that the QUIETPRO[®] mark is invalid.

COUNT II
Declaratory Judgment of Trademark Invalidity

13. SilynX repeats and re-alleges the allegations of paragraphs 1 through 12 as if fully set forth herein.

14. Nacre's alleged mark QUIETPRO[®], both at common law and pursuant to federal registration number 3152987, is invalid because of a failure to comply with one or more requirements of 15 U.S.C. §§ 1051 *et seq.* and a failure to use of the mark in the United States prior to use by others in connection with similar goods and services.

15. To resolve the legal and factual questions raised by Nacre, and to afford relief from the uncertainty and controversy that Nacre's accusations have caused, Silynx is entitled to declaratory judgment that Nacre's rights in the mark QUIETPRO[®] are invalid and to an order directing that the federal registration of the QUIETPRO[®] be cancelled by the U.S. Patent and Trademark Office.

COUNT III
Declaratory Judgment of Patent Non-Infringement

16. Silynx repeats and re-alleges the allegations of paragraphs 1 through 15 as if fully set forth herein.

17. Contrary to Nacre's allegations, Silynx has not, and does not, willfully or otherwise, infringe, contribute to the infringement of, or actively induce others to infringe any claim of the '195 or the '524 patent.

18. To resolve the legal and factual questions raised by Nacre, and to afford relief from the uncertainty and controversy that Nacre's accusations have caused, Silynx is entitled to a declaratory judgment that it does not infringe, willfully or otherwise, any claim of the '195 or '524 patents either literally or under the doctrine of equivalents.

COUNT IV
Declaratory Judgment of Patent Invalidity

19. Silynx repeats and re-alleges the allegations of paragraphs 1 through 18 as if fully set forth herein.

20. There exists an actual controversy as to the validity of the '195 and '524 patents.

21. The claims of the '195 and '524 patents are invalid for failure to comply with one or more sections of Title 35 of the United States Code, including, without limitation, 35 U.S.C. §§ 101, 102, 103 and/or 112.

22. To resolve the legal and factual questions raised by Nacre, and to afford relief from the uncertainty and controversy that Nacre's accusations have caused, SilynX is entitled to a declaratory judgment that the claims of the '195 and '524 patents are invalid.

COUNT V
Declaratory Judgment of Patent Unenforceability

23. SilynX repeats and re-alleges the allegations of paragraphs 1 through 22 as if fully set forth herein.

24. There exists an actual controversy as to the validity of the '195 and '524 patents.

25. The claims of the '195 and '524 patents are unenforceable for intentionally failing to disclose material prior art to the U.S. Patent and Trademark Office that the inventors were aware of. In particular, those involved in patent prosecution failed to disclose to the U.S. Patent and Trademark Office at least one publication by one of the inventors entitled "Active Noise Reduction In An Ear Terminal" given on March 18, 1999 at the Technical University of Berlin as part of the 137th Regular Meeting of the Acoustical Society of America 2nd Convention of the European Acoustics Association: Forum Acusticum 99 integrating the 25th German Acoustics DAGA Conference.

26. To resolve the legal and factual questions raised by Nacre, and to afford relief from the uncertainty and controversy that Nacre's accusations have caused, SilynX is entitled to a declaratory judgment that the claims of the '195 and '524 patents are unenforceable.

JURY DEMAND

27. Silynx demands a jury trial for all matters so triable.

PRAYER FOR RELIEF

WHEREFORE, Silynx prays for judgment and relief as follows:

- A. That Nacre take nothing as the result of its Complaint;
- B. That Nacre's claims be dismissed in their entirety;
- C. That judgment be rendered that Nacre is not entitled to the relief prayed for in its Complaint, or any relief whatsoever;
- D. A declaration that Silynx does not infringe the rights of Nacre in QUIETPRO®.
- E. A declaration that Nacre's rights in the mark QUEITPRO® are invalid and an Order canceling the QUIETPRO® registration;
- F. A declaration that Silynx does not infringe any claim of the '195 or '524 patent;
- G. A declaration that the '195 and '524 patents are invalid and/or unenforceable;
- H. An award to Silynx of its attorneys' fees pursuant to 35 U.S.C § 285 and 15 U.S.C. § 1117(a) because this is an exceptional case, and for costs of suit; and
- I. Such additional relief that the Court deems proper and just.

Respectfully submitted,

/s/ Paul J. Lambert

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Dated: November 28, 2007

Attorneys for Defendant
SILYNX COMMUNICATIONS, INC.

CERTIFICATE OF SERVICE

I hereby certify this 28th day of November, 2007, that Silynx Communications, Inc.'s Answer, Affirmative Defenses, and Counterclaims was served electronically upon the parties listed below:

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