

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

THE WALMAN OPTICAL COMPANY,
a Minnesota corporation,

Case No. _____

Plaintiff,

v.

QUEST OPTICAL INC.,
a Florida corporation,

and

JOAQUIN EDWARD DE ROJAS,
an individual,

Defendants.

COMPLAINT AND JURY DEMAND

Plaintiff The Walman Optical Company (“Walman”), for its
Complaint against Defendants Quest Optical Inc. (“Quest”) and Joaquin
Edward de Rojas, states and alleges as follows:

THE PARTIES

1. Walman is a Minnesota corporation with its principal place of
business at 801 12th Avenue North, Minneapolis, MN 55411.
2. Quest is a Florida corporation with its principal place of
business at 1101 Holland Drive, Boca Raton, FL 33481.

3. Upon information and belief, Joaquin Edward de Rojas is an individual residing 5970 Woodridge Curve, San Antonio, Texas, 78249.

JURISDICTION AND VENUE

4. This is an action for patent infringement arising under the patent laws of the United States, including 35 U.S.C. §§ 271 and 281-285 and for breach of contract for a Settlement Agreement governed by Minnesota law.

5. This Court has subject matter jurisdiction over this matter pursuant to 28 U.S.C. §§ 1331 and 1338(a). The Court also has diversity jurisdiction under 28 U.S.C. § 1332. The parties are citizens of different states, and the amount in controversy exceeds \$75,000, exclusive of interest and costs.

6. Venue is proper in this Court under 28 U.S.C. § 1391(a). Venue is also proper under 28 U.S.C. §§ 1391(b) and 1400(b) because Defendants are subject to personal jurisdiction in this judicial district and, on information and belief, have committed acts of infringement in this district. The contract at issue in this case also provides for exclusive jurisdiction in this district and consents to the jurisdiction of this Court.

FACTS

7. Walman is an independent ophthalmic company. Walman is the owner, by assignment, of United States Patent No. 6,100,313, entitled “UV-Curable Abrasion-Resistant Coating Composition” (the “’313 patent”).

8. Upon information and belief, Quest is merely the “alter ego” or “instrumentality” of its President, Joaquin Edward de Rojas.

9. For example, and without limitation, Mr. de Rojas sent an email to former sales representatives of Quest on August 29, 2011. In the email, Mr. de Rojas told the former sales representatives that each of them and the amount of money that Quest owes the individuals will be noted on a “very substantial” life insurance policy that Mr. de Rojas is taking out on himself.

10. In addition, upon information and belief, Quest has failed to observe appropriate corporate formalities.

11. On January 13, 2011, Walman filed an action for infringement of the ‘313 patent against Quest. The caption for that litigation is: *The Walman Optical Company v. Quest Optical, Inc.*, 11-CV-96 (PJS/JJG) (hereinafter “First Lawsuit”).

12. On August 26, 2011, Walman and Quest entered into a Settlement Agreement regarding the First Lawsuit. Mr. de Rojas signed

the Settlement Agreement for Quest. Pursuant to the Settlement Agreement, paragraph 4 of the Settlement Agreement is confidential.

13. Quest filed a stipulation in the First Lawsuit on August 29, 2011, dismissing its counterclaims in the First Lawsuit with prejudice. The Court Order dismissing the counterclaims with prejudice was entered on August 30, 2011.

14. Pursuant to a second August 29, 2011 stipulation, Quest admitted that its UVMP and UVRT products ("Infringing Products") infringe claims of the '313 patent and that the '313 Patent is valid and enforceable.

15. On August 31, 2011, the Court entered its Final Judgment and Permanent Injunction.

16. Pursuant to paragraph 3 of the Settlement Agreement, Quest was required to provide proof of service of its written notice of the Permanent Injunction to Walman within ten business days of August 31, 2011.

17. Quest failed to provide proof of service to Walman by September 15, 2011 of written notice of the Permanent Injunction on all of the individuals required to be served under the Permanent Injunction.

18. Between August 26, 2011 and September 7, 2011, Quest shipped one bottle of UVMP to Walman. Quest did not ship any bottles of UVRT to Walman during that period.

19. Upon information and belief, Mr. de Rojas and Quest, as alter egos, have continued to sell, ship, and/or transfer UVMP and UVRT to third-parties other than Walman.

20. The breach of the Settlement Agreement by Quest, and its alter ego Mr. de Rojas, has caused damages to Walman in an amount equal to at least \$250,000.

21. Paragraph 13 of the Settlement Agreement provides that Walman may recover its fees and costs, including attorney's fees, if it prevails in this litigation.

22. Quest and Mr. de Rojas have offered for sale and sold the Infringing Products, which Quest and Mr. de Rojas have admitted and stipulated infringe valid and enforceable claims of the '313 patent, within the United States.

23. Quest and Mr. de Rojas have induced others to engage in acts that infringe the '313 patent.

24. Walman is entitled to recover damages for infringement by Quest and Mr. de Rojas of the '313 patent.

COUNT I – BREACH OF CONTRACT

25. Walman and Quest entered into a Settlement Agreement, which is a valid and binding contract.

26. Quest and its alter ego, Mr. de Rojas, have breached at least paragraphs 3 and 4 of the Settlement Agreement.

27. As a result of the breach by of the Settlement Agreement by Quest and Mr. de Rojas, Walman has suffered damages in an amount not less than \$250,000, to be proven at trial.

COUNT II – INFRINGEMENT OF THE ‘313 PATENT

28. Quest and its alter ego, Mr. de Rojas, have infringed the ‘313 patent by manufacturing, selling, or offering to sell the Infringing Products in the United States.

29. Upon information and belief, Quest and Mr. de Rojas are further infringing the ‘313 patent by actively inducing others to infringe the ‘313 patent.

30. The infringement of the ‘313 patent by Quest and Mr. de Rojas has damaged Walman, and Walman will continue to be damaged in the future and will suffer further irreparable injury, for which Walman has no adequate remedy at law, unless Quest and Mr. de Rojas are preliminarily and permanently enjoined from infringing the ‘313 patent and inducing infringement of the patent.

31. Walman is entitled to at least a reasonable royalty for the infringement of the '313 patent by Quest and Mr. de Rojas pursuant to 35 U.S.C. § 284.

32. Upon information and belief, the infringement of the '313 patent by Quest and Mr. de Rojas has been willful, deliberate, and intentional.

PRAYER FOR RELIEF

WHEREFORE, Walman prays for judgment that:

A. Quest Optical Inc. and Mr. de Rojas have breached the Settlement Agreement;

B. Walman be awarded damages for breach of the Settlement Agreement in an amount not less than \$250,000 against Quest and Mr. de Rojas, jointly and severally;

C. Quest and Mr. de Rojas have infringed the '313 patent;

D. Mr. de Rojas and Quest and its officers, agents, servants, directors, employees, affiliated entities, and those persons in active concert or participation with any of them, be enjoined from continuing to import, manufacture, use, sell, or offer to sell the Accused Products;

E. An accounting be had for the profits and damages arising out of the infringement of the '313 patent by Quest and Mr. de Rojas;

F. Walman be awarded compensatory and exemplary damages, including treble damages for willful infringement as provided by 35 U.S.C. § 284, with interest, but not less than a reasonable royalty;

G. Walman be awarded its attorneys' fees, costs, and expenses in this action pursuant to the Settlement Agreement, 35 U.S.C. § 285, and Fed. R. Civ. P. 54;

H. Walman be awarded pre-judgment and post-judgment interest on its damages, as allowed by law; and

I. Walman be awarded such other relief as this Court may deem just, equitable, and proper.

DEMAND FOR JURY TRIAL

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Walman respectfully requests a trial by jury of all issues so triable.

Dated: September 16, 2011

s/ Darren B. Schwiebert
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