

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

ALTAIR ENGINEERING, INC.

Plaintiff,

Case No. _____

vs.

Hon. _____

LEDS AMERICA, INC.

JURY TRIAL

Defendant.

Thomas N. Young (P22656)
Christopher G. Darrow (P67196)
Young Basile Hanlon & MacFarlane P.C.
3001 W. Big Beaver Rd., Ste. 624
Troy, MI 48084-3107
(248) 649-3333

Attorneys for Plaintiff
Altair Engineering, Inc.

**COMPLAINT FOR PATENT INFRINGEMENT
AND DEMAND FOR JURY TRIAL**

Plaintiff Altair Engineering, Inc. submits this Complaint for Patent Infringement and Jury Demand against LEDs America, Inc.

PARTIES

1. Altair Engineering, Inc. is a Michigan corporation with a place of business at 1820 E. Big Beaver Rd., Troy, Michigan 48083, within this judicial district.

2. Plaintiff, Altair Engineering, Inc. is the owner by assignment of United States Patent Nos. 7,049,761 ('761 patent) and 7,510,299 ('299 patent) pertaining to LED based light tubes for providing lighting to, for example, offices, homes, and businesses. An accurate copy of the '761 patent is attached as Exhibit A. An accurate copy of the '299 patent is attached as Exhibit B.

3. Defendant LEDS America, Inc., based on information and belief, is a Florida corporation having a place of business at 112 Intracoastal Pointe Drive, Jupiter, FL 33477, and is in the business of *inter alia* importing or manufacturing, and selling LED based replacement light tubes for fluorescent type light fixtures.

JURISDICTION AND VENUE

4. This action arises under the patent laws of the United States, more specifically 35 U.S.C. § 271 *et seq.*

5. Subject matter jurisdiction in this Court is conferred by 28 U.S.C. §§ 1338(a) and 1331.

6. This Court has personal jurisdiction over Defendant and venue is proper under 28 U.S.C. § 1391(b) and (c) as Defendant has through the internet (e.g., www.ledsamerica.com) and otherwise offered for sale and sold products accused of infringing the '761 and '299 patents in this judicial district and throughout the country.

COUNT FOR PATENT INFRINGEMENT

7. Plaintiff incorporates the above allegations as if fully set forth herein.

8. The '761 and '299 patents were duly and legally issued to Altair Engineering, Inc. as the assignee of inventors Jos Timmermans, Jean C. Raymond and John Ivey. Altair Engineering, Inc. has the right to sue for and recover damages for infringement of the '761 and '299 patents.

9. On or about August of 2009, Altair initiated a reexamination proceeding pursuant to 35 U.S.C. § 302 within the United States Patent and Trademark Office ("USPTO") to confirm the validity of the '299 patent. On or about June 3, 2010, The USPTO upheld the validity of all the claims of the '299 patent and notified Altair that it intends to issue a reexamination certificate for the '299 patent.

10. Defendant has offered for sale LED based light tubes which infringe one or more of the claims of the '761 and '299 patents. Such products incorporate each and every limitation of at least some of the claims of each of the aforementioned '761 and '299 patents and, therefore, infringe said patents for the reason that Defendant's actions in making, offering for sale and selling such products are without right and authority of Plaintiff.

11. Defendant is currently manufacturing or importing, and selling a product called "LED-O T-8 Replacement Tube" that infringes the '761 and '299 patents. Exhibit C is an accurate printout from Defendant's web site which describes and shows Defendant's "LED-O T-8 Replacement Tube." Exhibit C also contains photographs of Defendant's "LED-O T-8 Replacement Tube."

12. On or about November 19, 2009, Altair notified Defendant through a letter sent to its President Joel Westermarck that Defendant was infringing the '761 and '299 patents by manufacturing or importing, and selling LED-based replacement light tubes. Altair demanded that Defendant cease and desist from manufacturing and selling its LED light tubes.

13. In response to Altair's letter, Defendant notified Altair that its products do not infringe the '761 and '299 patents because the products do not have an "end cap" as required by the claims of the patents, but rather have a "power supply." Defendant did not explain what it meant by the difference between a "power supply" and an "end cap."

14. Altair requested that Defendant explain how its definition of a "power supply" differed from the "end cap" called for in the '761 and '299 patents, but Defendant never explained this alleged difference.

15. On or about July 10, 2010, Altair's attorney Christopher G. Darrow ordered Defendant's "LED-O T-8 Replacement Tube" from the Defendant's web site www.ledsamerica.com. However, Defendant refused to deliver the product because, based on information and belief, Altair could then confirm Defendant's infringement of the '761 and '299 patents. Defendant later gave the excuse that it "had nothing to send." (Aug. 23, 2010 email from Westermarck to Darrow).

16. However, shortly after Defendant refused to deliver the "LED-O T-8 Replacement Tube" to Mr. Darrow, Altair had a third-party order the accused product to his home address, which Defendant timely delivered to the third-party on or about August 7, 2010.

17. Upon receiving the "LED-O T-8 Replacement Tube", Altair confirmed that what Defendant calls a "power supply" is a really just a big "end cap." In light of this confirmation, Altair again requested that Defendant explain how its definition of a "power supply" differed from the "end cap" called for in the '761 and '299 patents, but Defendant refused; specifically, Defendant's President Joel Westermarck wrote "It is not my job to educate you on technical terms." (Aug. 24, 2010 email from Westermarck to Darrow.)

18. Based on information and belief, in the approximately ten months between the time Altair notified Defendant of its infringement of the '761 and '299 patents in November of 2009 until the filing of this lawsuit, Defendant did not obtain a legal opinion from a patent attorney to determine whether or not it was infringing the '761 and '299 patents.

19. Defendant has willfully infringed the '761 and '299 patents by continuing to manufacture or import, offer for sale, and sell its LED based fluorescent tube replacement lights after being notified of its infringement of the '761 and '299 patents.

20. Altair Engineering, Inc. has been and will continue to be damaged by Defendant's activities as aforesaid in an amount which can only be determined through an accounting; Plaintiff is without an adequate remedy at law to prevent infringement.

PRAYER FOR RELIEF

Wherefore, Altair Engineering, Inc. prays for the following relief:

- A. A preliminary and permanent injunction against continued infringement of the '761 and '299 patents by Defendant and all persons in privity therewith;
- B. An accounting for and award of damages resulting from Defendant's sale, manufacture, and offer for sale of infringing products in the United States;
- C. If appropriate, an award of treble damages against the Defendant pursuant to 35 U.S.C. § 284 on account of Defendant's willful infringement of the '761 and '299 patents;
- D. An assessment of interest on the damages so computed;
- E. An award of Plaintiff's costs, expenses and attorney fees in the action (e.g., 35 U.S.C. § 285); and
- F. Such other and further relief as the Court deems appropriate.

DEMAND FOR JURY TRIAL

Altair Engineering, Inc. demands trial by jury as to all issues triable by jury in this case as a matter of right.

Respectfully submitted,

/s/Christopher G. Darrow
Thomas N. Young (P22656)
Christopher G. Darrow (P67196)
Young Basile Hanlon & MacFarlane P.C.
3001 W. Big Beaver Rd.
Suite 624
Troy, MI 48084
248.649.3333

Dated: August 26, 2010

Attorneys for Plaintiff