

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

IFLY HOLDINGS LLC,

Plaintiff ,

v.

INDOOR SKYDIVING GERMANY GMBH,

Defendant.

Civil Action No. _____

JURY TRIAL DEMANDED

ORIGINAL COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff iFLY Holdings LLC (“Plaintiff”), by and through its counsel, for its Complaint against Defendant Indoor Skydiving Germany GmbH (“Defendant” or “ISG”), hereby alleges as follows:

THE PARTIES

1. Plaintiff iFLY Holdings LLC is a limited liability company organized and under the laws of Delaware, having its principal place of business at 6034 West Courtyard Drive, Suite 135, Austin, Texas 78730.

2. Plaintiff owns United States Patent Nos. RE43,028 (the “’028 patent”) and 7,156,744 (the “’744 patent”) by assignment from the inventors, who are all current and/or former owners, employees, or consultants of Plaintiff and its predecessors.

3. On information and belief, Defendant Indoor Skydiving Germany GmbH is a limited liability company organized and existing under the laws of Germany and having its principal place of business at Am Wiesenbusch 2, D-45966 Gladbeck, Germany.

JURISDICTION AND VENUE

4. This is an action for patent infringement arising under the Patent laws of the United States, Title 35 of the United States Code. Jurisdiction and venue are proper based on inter alia 28 U.S.C. §§ 1331, 1338(a), 1391(b), 1391(c), 1400(b), 2201, 2202, and 35 U.S.C. § 271.

5. This Court has specific jurisdiction over Defendant because, on information and belief, a substantial part of the unlawful acts of Defendant, as hereinafter alleged, have been and will be carried out in whole or in part in the State of Texas.

6. On information and belief, Defendant ISG offered to sell and sold or will sell an infringing vertical wind tunnel device for manufacture and use in the United States to one or more Texas businesses, including: FliteShop Phoenix, LP, FliteShop PHX Genpar, LLC, and/or Armor Capital LLC.

7. On information and belief, FliteShop Phoenix, LP is a limited partnership organized under the laws of Texas, having its principal place of business at 2221 E. Continental Blvd., Suite 140, Southlake, Texas 76092. Max Reising, a Texas resident, is the registered agent for FliteShop Phoenix, LP.

8. On information and belief, FliteShop PHX Genpar, LLC is a limited liability company organized under the laws of Texas, having its principal place of business at 2221 E. Continental Blvd., Suite 140, Southlake, Texas 76092. Max Reising, a Texas resident, is the registered agent for FliteShop PHX Genpar, LLC.

9. On information and belief, Defendant Armor Capital LLC is a limited liability company organized under the laws of Texas, having its principal place of business at 2221 E.

Continental Blvd., Suite 140, Southlake, Texas 76092. Max Reising, a Texas resident, is the registered agent for Armor Capital LLC.

10. On information and belief, FliteShop Phoenix, LP, FliteShop PHX Genpar, LLC, and/or Armor Capital LLC (collectively “FliteShop”) submitted a proposal for construction of a vertical wind tunnel amusement device to the Salt River Pima-Maricopa Indian Community Council in Scottsdale, Arizona (the “Scottsdale Tunnel”) and publicized plans for that vertical wind tunnel amusement device.

11. On information and belief, the Scottsdale Tunnel was offered for sale and/or sold to FliteShop by Defendant ISG.

12. There is now an actual controversy between Defendant and Plaintiff as to whether Defendant infringed the '028 and '744 patents.

13. This Court has personal jurisdiction over Defendant ISG because, *inter alia*, Defendant ISG, on information and belief, has purposely availed itself of the benefits and protections of the laws of Texas such that it should reasonably anticipate being haled into court here; Defendant ISG has had sufficient contacts with the State of Texas such that this Court’s exercise of personal jurisdiction in no way offends traditional notions of fair play and justice, including, on information and belief, entering into a business relationship with one or more Texas businesses, offering to sell and negotiating sales to one or more Texas businesses for the purpose of constructing a multi-million dollar infringing vertical wind tunnel device in the United States. Thus, ISG is subject to specific jurisdiction in Texas.

BACKGROUND

14. Plaintiff, in cooperation with its predecessor and subsidiary companies (hereinafter collectively “iFLY”), has built and/or operates every recirculating vertical wind

tunnel constructed in the last twenty years in the United States. iFLY's patented designs launched a worldwide commercial revolution for vertical wind tunnel amusement devices.

15. From January 2007 until March 2008, Defendant ISG was in negotiations with iFLY to purchase a vertical wind tunnel for installation in Germany.

16. In March 2008, contract negotiations for purchasing and financing the vertical wind tunnel amusement device were finalized.

17. However, ISG abruptly backed out of the deal and began construction of its own wind tunnel, which was completed in March 2009.

18. By at least November, 2009, ISG began offering to sell and construct vertical wind tunnels for non-U.S. customers.

19. ISG has since completed construction of five vertical wind tunnel amusement devices outside of the United States, all employing a substantially similar design.

20. iFLY retained brokers to search for locations in the Phoenix area in which to install its vertical wind tunnels in 2013, selected multiple sites in Spring 2014 and secured two locations by Summer 2014.

21. On April 29, 2014, construction plans were announced for the first ISG-manufactured vertical wind tunnel amusement device to be installed in the United States: the "Odyssey in the Desert" development in Scottsdale, Arizona. On information and belief, prior to this date, ISG offered to sell its infringing vertical wind tunnel amusement device to FliteShop.

22. The planned FliteShop/ISG facility has not yet broken ground as of the date this complaint was filed.

23. If allowed to be constructed, the FliteShop/ISG vertical wind tunnel amusement device will infringe Plaintiff's patent rights and will be in direct competition with iFLY's patented vertical wind tunnels.

FIRST CLAIM FOR RELIEF: '028 PATENT

24. Plaintiff realleges paragraphs 1-23, above, as if set forth specifically herein.

25. The '028 patent (copy attached as Exhibit A), entitled "Vertical Wind Tunnel Training Device," was reissued on December 13, 2011, to SkyVenture, LLC, upon assignment from the inventors William J. Kitchen and Michael Palmer. The '028 patent was subsequently assigned to iFLY Holdings LLC. The '028 patent is a reissue of U.S. Patent No. 6,083,110, issued on July 4, 2000. The '028 patent claims, *inter alia*, vertical wind tunnel amusement devices.

26. Plaintiff is the owner of the '028 patent.

27. On information and belief, Defendant ISG offered to sell one or more vertical wind tunnel amusement devices to Texas businesses FliteShop Phoenix, LP, FliteShop PHX Genpar, LLC, and/or Armor Capital LLC, with those devices to be manufactured and used in the United States.

28. The one or more vertical wind tunnel amusement devices Defendant ISG has offered to sell in the United States infringes one or more claims of the '028 patent.

29. On information and belief, Defendant ISG has sold or has contracted to sell one or more vertical wind tunnel amusement devices for installation and use in the United States to Texas businesses FliteShop Phoenix, LP, FliteShop PHX Genpar, LLC, and/or Armor Capital LLC.

30. The one or more vertical wind tunnel amusement devices Defendant ISG has sold, or has contracted to sell, in the United States will infringe one or more claims of the '028 patent.

31. On information and belief, Defendant offered for sale and/or sold or contracted to sell a vertical wind tunnel amusement device for installation in or around Scottsdale, Arizona.

32. On information and belief, FliteShop Phoenix, LP, FliteShop PHX Genpar, LLC, and/or Armor Capital LLC have submitted a proposal for construction of a vertical wind tunnel amusement device to the Salt River Pima-Maricopa Indian Community Council in Scottsdale, Arizona.

33. On April 29, 2014, FliteShop Phoenix, LP, FliteShop PHX Genpar, LLC, and/or Armor Capital LLC publicly announced via a FaceBook post that Jason Peters, Andy Malchiodi, Gary Schmit and Max Reising will be opening a vertical wind tunnel amusement device manufactured by ISG under the name FliteShop in Scottsdale Arizona, planning to open by summer of 2015.

34. In the July 2014 issue of Parachutist magazine, FliteShop Phoenix, LP, FliteShop PHX Genpar, LLC, and/or Armor Capital LLC publicly announced that Jason Peters, Andy Malchiodi, Gary Schmit and Max Reising formed an indoor skydiving company FliteShop, which is beginning construction of its first facility at the Odysea in the Desert development in Scottsdale, Arizona. The 6,000 square foot, climate-controlled facility will feature a 40-foot tall, 14-foot-wide flight chamber and will be manufactured by Defendant ISG based on an ISG design. The partners plan to open the doors in the summer of 2015.

35. On June 10, 2014, floor plans for the facility were posted on the FliteShop FaceBook page.

36. On information and belief, the above FliteShop floor plans depict a vertical wind-tunnel amusement facility design that is consistent with the designs of ISG's wind tunnel devices in operation in Europe.

37. In October 2014, the website www.fliteshop.com announced the partners in the project for the Odysea in the Desert development are Max Reising, Gary Schmit, Jason Peters, and Andy Malchiodi. The partners "are proud to introduce 'Indoor Skydiving Germany' (ISG) technology to the United States." The facility will be located in the Odysea in the Desert development in Scottsdale. The expected completion date will be summer 2015.

38. On October 21, 2014, a newscast on 3TV news in Phoenix, Arizona disclosed that FliteShop Phoenix, LP, FliteShop PHX Genpar, LLC, and/or Armor Capital LLC plans to open a skydiving simulator in the Talking Stick Entertainment District. Business partners Jason Peters and Gary Schmit announced FliteShop will "break ground in about a month or so" on the \$8.5 Million facility that will have "about a ten month build time."

39. The manufacture and use of the Scottsdale Tunnel and any other similar ISG vertical wind tunnel amusement device will infringe one or more claims of the '028 patent.

40. Defendant ISG's offer to sell the Scottsdale Tunnel and any other similar vertical wind tunnel amusement device constitutes an act of infringement of the '028 patent.

41. Defendant ISG's sale of the Scottsdale Tunnel and any other similar vertical wind tunnel amusement device also constitutes an act of infringement of the '028 patent.

42. Plaintiff will be substantially and irreparably harmed by the infringing activities described above unless those activities are precluded by this Court. Plaintiff has no adequate remedy at law.

SECOND CLAIM FOR RELIEF: '744 PATENT

43. Plaintiff realleges paragraphs 1-42, above, as if set forth specifically herein.

44. The '744 patent (copy attached as Exhibit B), entitled "Recirculating Vertical Wind Tunnel Skydiving Simulator," was issued on January 2, 2007, to SkyVenture, LLC, upon assignment from the inventors N. Alan Metni, William J. Kitchen, Kenneth Mort, Charles Eastlake, and Michael Palmer. The '744 patent was subsequently assigned to iFLY Holdings LLC. The '744 patent claims, inter alia, vertical wind tunnel amusement devices.

45. Plaintiff is the owner of the '744 patent.

46. The manufacture and use of the Scottsdale Tunnel and any other similar ISG vertical wind tunnel amusement device will infringe one or more claims of the '744 patent.

47. Defendant ISG's offer to sell the Scottsdale Tunnel and any other similar vertical wind tunnel amusement device constitutes an act of infringement of the '744 patent.

48. Defendant ISG's sale of the Scottsdale Tunnel and any other similar vertical wind tunnel amusement device also constitutes an act of infringement of the '744 patent.

49. Plaintiff will be substantially and irreparably harmed by the infringing activities described above unless those activities are precluded by this Court. Plaintiff has no adequate remedy at law.

WILLFUL INFRINGEMENT

50. Plaintiff realleges paragraphs 1-49, above, as if set forth specifically herein.

51. Defendant ISG and iFLY have been competitors since ISG opened its first facility in 2009, in Bottrop, Germany.

52. As early as 2007, Defendant ISG has known of iFLY's U.S. and European patent rights related to vertical wind-tunnel amusement devices.

53. The draft purchase and license agreements, edited by both ISG and iFLY in 2007-2008, defined “Intellectual Property” to include rights in U.S. Patent No. 6,083,110, the patent from which the ’028 patent reissued, and rights in U.S. Patent Application No. 10/909,088, the application from which the ’744 patent issued.

54. On information and belief, Defendant ISG was aware of the ’028 and ’744 patents before it offered to sell and/or sold an infringing vertical wind tunnel amusement device in the United States.

55. On information and belief, Defendant ISG offered to sell and/or sold an infringing vertical wind tunnel amusement device in the United States despite an objectively high likelihood that its actions constituted infringement of the valid and enforceable ’028 and ’744 patents.

56. On information and belief, Defendant ISG knew of or should have known of the objectively high likelihood that its actions constituted infringement of the valid and enforceable ’028 and ’744 patents.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests the Court enter judgment against Defendant granting the following relief:

- (a) A declaration that Defendant has infringed each of the ’028 and ’744 patents;
- (b) A permanent injunction prohibiting Defendant and its officers, directors, agents, servants, employees, affiliates, divisions, branches, subsidiaries, parents and all others acting in concert or privity with Defendant from selling, offering to sell or making vertical wind tunnel amusement devices in the United States that infringe any claims of the ’028 and ’744 patents;

- (c) An award of damages arising out of Defendant's infringement of the '028 and '744 patents, including enhanced damages pursuant to 35 U.S.C. § 284, together with prejudgment and post-judgment interest, in an amount to be determined at trial;
- (d) A judgment that Defendant's infringement has been willful and deliberate;
- (e) A judgment that Plaintiff is entitled to discretionary enhancement of its damages and other relief provided by 35 U.S.C. § 284;
- (f) A finding that this case is exceptional and an award to Plaintiff of its attorneys' fees and costs as provided under 35 U.S.C. § 285;
- (g) Such other and further relief that Plaintiff is entitled to in law and in equity, and any other and further relief that this Court or a jury may deem just and proper.

JURY DEMAND

Plaintiff demands a trial by jury on all issues presented in this Complaint.

Dated: November 26, 2014

Respectfully submitted,

By: /s/ Harry L. Gillam, Jr. _____

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