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17 TORREY PINES LOGIC, INC.

18 UNITED STATES DISTRICT COURT
19 SOUTHERN DISTRICT OF CALIFORNIA

20
21 TORREY PINES LOGIC, INC.,
22 Plaintiff,
23 v.
24 GUNWERKS, LLC
25 Defendant.

Case No.: '19CV2195 GPC JLB

**COMPLAINT FOR DECLARATORY
JUDGMENT FOR CORRECTION
OF INVENTORSHIP AND
INTENTIONAL INTERFERECE
WITH A CONTRACTUAL
RELATIONSHIP**

1 Plaintiff Torrey Pines Logic, Inc. (“Torrey Pines”) files its Complaint for
2 Declaratory Judgment for Correction of Inventorship and Intentional Interference with a
3 Contractual Relationship against Defendant Gunwerks, LLC (“Gunwerks”), and states as
4 follows:

5 **THE PARTIES**

6 1. Plaintiff Torrey Pines is a California corporation with its principal place of
7 business at 10505 Roselle Street, #100, San Diego, California 92121.

8 2. On information and belief, Defendant Gunwerks is a Wyoming company
9 with its principal place of business at 2301 Lt. Childers Street, Cody, Wyoming 82414.

10 **NATURE OF THE CASE**

11 3. This is an action for declaratory judgment pursuant to the Federal
12 Declaratory Judgments Act, 28 U.S.C. §§ 2201–2202, and Rule 57 of the Federal Rules
13 of Civil Procedure.

14 4. Torrey Pines requests that this Court, under 35 U.S.C § 256, order a
15 correction of inventorship of U.S. Patent No. 10,480,901 (“’901 Patent”), adding the
16 name of Mr. Forrest Babcock (“Babcock”) to the list of named inventors.

17 5. Torrey Pines further requests that this Court establish ownership rights for
18 Torrey Pines to the ’901 Patent due to the correction of inventorship (by virtue of Mr.
19 Babcock having previously assigned his rights and interests in U.S. Patent App. No.
20 15/581,244 (“’244 Application”) to Torrey Pines).

21 6. Torrey Pines also requests this Court to hold Gunwerks liable for intentional
22 interference with contractual relationships under California law.

23 **JURISDICTION AND VENUE**

24 7. This Court has subject matter jurisdiction over Torrey Pines’ request for a
25 declaratory judgment under 28 U.S.C. §§ 2201 and 2202. This action arises under the
26 patent laws of the United States, 35 U.S.C. §§ 100 et seq., which are within the subject
27 matter jurisdiction of this Court under 28 U.S.C. §§ 1331 and 1338(a).

1 8. Gunwerks has removed a named inventor of the '901 Patent, and by doing
2 so, it has attempted to divest Torrey Pines from its rights and interests in this patent,
3 making Gunwerks the sole listed assignee of the entire right, title, and interest of the '901
4 Patent. Thus, an actual controversy exists between the parties regarding inventorship and
5 ownership of the '901 Patent.

6 9. This Court has general personal jurisdiction over Gunwerks because
7 Gunwerks does business in the state of California and in this district by selling its
8 products to residents of this district. For example, on information and belief, Gunwerks
9 owns and operates the website <https://www.gunwerks.com/>, through which it sells
10 products to residents of this district. Further, Gunwerks advertises specific dealers in
11 California that sell Gunwerks' products on its websites. *See*
12 <https://www.gunwerks.com/c/gseven-dealers>. In addition, Gunwerks provides on its
13 websites directions that are specifically directed to its California customers for a special
14 method of shipment to address California regulations. *See*
15 <https://www.gunwerks.com/store/ammo/gunwerks-ammo>.

16 10. Further, this Court has specific personal jurisdiction over Gunwerks because
17 Gunwerks performed activities directed to this district that form the basis of this suit. For
18 example, upon information and belief, at the direction or request of Gunwerks, Mr.
19 Babcock attempted to rescind his assignment agreement with Torrey Pines by sending a
20 letter to Torrey Pines' president, Leo Volfson, at 10505 Roselle Street, San Diego,
21 California 92121 (an address in this district). Further, by virtue of Gunwerks removing
22 Mr. Babcock's name as a named inventor of the '244 Application, Gunwerks has
23 attempted to divest Torrey Pines (a corporation formed under California law with its
24 principle place of business in this district) of its rights and interests in the '901 Patent.

25 11. Venue is proper in this Court under 28 U.S.C. § 1391 because a substantial
26 part of the events or omissions giving rise to the claims in this action occurred in this
27 district, as set forth in greater detail in the paragraphs above and below, and because
28 Gunwerks is subject to personal jurisdiction within this judicial district.

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2
3 **FATUAL BACKGROUND**

4 12. The '901 Patent issued on midnight (EST) of November 19, 2019, from the
5 '244 Application. When the '244 Application was filed, it named two individuals as
6 inventors: Mr. Christopher Ryan Thomas ("Thomas") and Mr. Forrest Babcock
7 ("Babcock"). Exhibit 1, at 8, 45, 48.

8 13. Mr. Thomas has executed a declaration providing certain details regarding
9 his and Mr. Babcock's respective contributions to the inventions in the allowed claims of
10 the '244 Application. Exhibit 2.

11 14. On June 21, 2018, Mr. Babcock assigned all of his rights in the '244
12 Application to Torrey Pines. A true and correct copy of that assignment has been attached
13 hereto as Exhibit 3.

14 15. On April 29, 2019, Gunwerks sent an email to Mr. Thomas asking him to
15 sign a declaration for an application data sheet related to the '244 Application. *See*
16 Exhibit 4. Only two days later, on May 1, 2019, counsel for Gunwerks, Mr. Bradley
17 Jensen, filed a substitute declaration with the United States Patent and Trademark Office
18 ("USPTO"). In the declaration, Gunwerks' president, Mr. Aaron Davidson, checked the
19 box that reads "inventor has refused to execute the oath or declaration under 37 CFR
20 1.63". Exhibit 5.

21 16. Contrary to the substitute declaration filed by Gunwerks, at no time did Mr.
22 Thomas ever refuse to sign a declaration. *See Ex. 6.*

23 17. Along with the substitute declaration, Gunwerks submitted an application
24 data sheet in which it removed Mr. Babcock as an inventor of the '244 Application.
25 Exhibit 7.

26 18. Further, on May 10, 2019, Gunwerks submitted a statement to the USPTO
27 claiming that Gunwerks is the assignee of the entire right, title, and interest in the '244
28 Application. Exhibit 8. As stated above, Mr. Babcock had previously assigned his interest

1 in this application to Torrey Pines. Thus, by removing Mr. Babcock as an inventor,
2 Gunwerks attempted to divest Torrey Pines of its right, title, and interest in the '244
3 Application.

4 19. Gunwerks received a Notice of Allowance in February 1, 2019. Ex. 9.
5 Gunwerks, through its counsel, subsequently filed a request to remove Mr. Babcock as an
6 inventor, without providing any explanation. *See* Ex. 7. In connection with removal of
7 Mr. Babcock as an inventor of the '244 Application, Gunwerks never conferred with Mr.
8 Thomas to determine what contributions to the inventions set forth in the allowed claims
9 that each of Mr. Thomas and Mr. Babcock provided.

10 20. On May 18, 2019, Mr. Thomas sent an email to Gunwerks, attaching a copy
11 of his signed declaration. Ex. 10. In his declaration, Mr. Thomas specifically noted that
12 “[he is] an original joint inventor along with Forrest Babcock, of a claimed invention in
13 the ['244] application.” Ex. 6. And in his letter, Mr. Thomas “request[ed] that a
14 correction to [Gunwerks'] misrepresentation be sent promptly to the patent office and that
15 [Mr. Davidson's] false substitute declaration be promptly withdrawn from the file.”
16 Exhibit 10.

17 21. On May 22, 2019, Torrey Pines sent Mr. Babcock a copy of the as-filed '244
18 Application and a copy of the claims as-allowed. On May 23, 2019, Mr. Babcock signed
19 an Inventor Declaration under 37 CFR 1.63 swearing under oath that he believed that he
20 was “an original joint inventor of a claimed invention in the application.” A true and
21 correct copy of Mr. Babcock's Inventor Declaration is attached hereto as Exhibit 11.

22 22. Upon information and belief, Mr. Babcock has worked for Gunwerks
23 throughout 2019.

24 23. On June 24, 2019, Torrey Pines received a letter dated June 19, 2019, from
25 Mr. Babcock asserting that he is not an inventor of any invention claimed in the '244
26 Application, although admitting that he worked with Mr. Thomas in 2012 to draw the
27 design of the invention described in the '244 Application. Exhibit 12. Further, in this
28 letter, Mr. Babcock attempted to rescind his assignment agreement with Torrey Pines.

1 *See Id.* Mr. Babcock’s June 24 letter was sent to Torrey Pines’ president, Leo Volfson, at
 2 10505 Roselle Street, San Diego, California 92121, upon information and belief, at the
 3 direction or request of Gunwerks or its counsel.

4 24. On June 27, 2019, Mr. Thomas sent to the USPTO his signed Inventor
 5 Declaration under 37 CFR 1.63 and a separate declaration detailing the circumstances
 6 involving the Substitute Statement and the representations contained therein. Exhibit 13.
 7 On July 8, 2019, the USPTO made this part of the file history of the ’244 Application.

8 25. The ’901 Patent issued at approximately midnight (EST) of November 19,
 9 2019, with only Mr. Thomas named as the inventor, and Gunwerks as the sole assignee of
 10 entire right, title, and interest in the patent. Attached is a screenshot of the ’901 Patent
 11 taken at 12:09 am (EST), November 19, 2019 from the USPTO website:

United States Patent	10,480,901
Thomas	November 19, 2019

Riflescope with feedback display and related methods

Abstract

A riflescope having a display that provides information to a user of the riflescope, along with related methods, is provided herein. In one embodiment, a riflescope includes an objective system and an ocular system, wherein a focal plane is defined between the objective system and the ocular system. A display system, comprising a display and a mirror, is positioned at a location between the focal plane and the ocular system. In one embodiment, the distance between the focal plane and the ocular system is equal to a sum of a distance between the display and the mirror and a distance between the mirror and the ocular system.

Inventors: Thomas; Christopher Ryan (Cody, WY)

Applicant:	Name	City	State	Country	Type
	Gunwerks, LLC	Cody	WY	US	

Assignee: GUNWERKS, LLC (Cody, WY)

Appl. No.: 15/581,244

Filed: April 28, 2017

24 Exhibit 14.

25 26. Based on the foregoing, and pursuant to 28 U.S.C. §§ 2201 and 2202, and 35
 26 U.S.C. §§ 256, 261, and 262, Torrey Pines seeks, and is entitled to, a declaratory
 27 judgment that Mr. Babcock is one of the inventors of the ’901 Patent, that Torrey Pines
 28

1 has rights and title to the '901 Patent, and that Gunwerks has no right to exclude Torrey
2 Pines from using the '901 Patent.

3 **COUNT 1**

4 **DECLARATORY JUDGMENT FOR CORRECTION OF INVENTORSHIP AND**
5 **DECLARATION OF OWNERSHIP OF THE '901 PATENT**

6 27. Torrey Pines repeats and re-alleges the paragraphs above as if fully set forth
7 herein.

8 28. The '901 Patent does not list Mr. Babcock as an inventor.

9 29. Mr. Babcock contributed in some significant manner to the conception of the
10 invention claimed in the '901 Patent, and did so before the filing of the '244 Application
11 which resulted in the '901 Patent.

12 30. Mr. Babcock is at a minimum a co-inventor of the '901 Patent.

13 31. Mr. Babcock was originally listed as an inventor in the '244 Application, but
14 was later removed as an inventor due to misrepresentations made by Gunwerks and its
15 attorneys to the USPTO.

16 32. Mr. Babcock had assigned all of his rights in the '244 Application to Torrey
17 Pines, and thus, by virtue of removing Mr. Babcock's name as an inventor, Gunwerks
18 attempted to divest Torrey Pines of its ownership interest in the '901 Patent.

19 33. Accordingly, a valid and justiciable controversy has arisen and exists
20 between Torrey Pines and Gunwerks as to the correct ownership of the '901 Patent.

21 34. Based on the foregoing, and pursuant to 28 U.S.C. §§ 2201 and 2202, Torrey
22 Pines seeks, and is entitled to, a declaratory judgment that it has an ownership interest in
23 the '901 Patent.

24 35. Because Mr. Babcock is at a minimum a co-inventor, this Court should issue
25 an order pursuant to 35 U.S.C. § 256 directing the Commissioner of Patents to add Mr.
26 Babcock as an inventor of the '901 Patent.

1 36. Further, because Mr. Babcock has previously assigned his rights to the '244
2 Application to Torrey Pines, this Court should confirm Torrey Pines' rights, title, and
3 interest in the '901 Patent due to the correction of inventorship.

4 **COUNT 2**

5 **INTENTIONAL INTERFERECE WITH A CONTRACTUAL RELATIONSHIP**

6 37. Torrey Pines repeats and re-alleges the paragraphs above as if fully set forth
7 herein.

8 38. Gunwerks' unlawful acts described above constitute intentional interference
9 with a contractual relationship under the common law of the State of California.

10 39. Torrey Pines had an existing agreement with Mr. Babcock in which Mr.
11 Babcock received \$1,000 for assigning his right, title, and interest in the '244 Application
12 to Torrey Pines.

13 40. Upon information and belief, Gunwerks knew about this agreement.

14 41. Upon information and belief, Gunwerks convinced Mr. Babcock to attempt
15 to rescind its agreement with Torrey Pines.

16 42. As a result, Mr. Babcock attempted to rescind its agreement with Torrey
17 Pines.

18 43. Upon information and belief, Gunwerks intended this result, or knew it was
19 likely.

20 44. Further, Gunwerks removed Mr. Babcock as a named inventor of the '244
21 Application.

22 45. As a result, Torrey Pines is not listed as an assignee of the '901 Patent.

23 46. Gunwerks' conduct was a substantial cause for the harm to Torrey Pines.

24 **JURY DEMAND**

25 Torrey Pines hereby requests a trial by jury on all issues so triable by right.

26 **PRAYER FOR RELIEF**

27 Torrey Pines requests that the Court find in its favor and against Gunwerks, and
28 that the Court grant Torrey Pines the following relief:

1 a. Judgment in Torrey Pines' favor on each count;

2 b. Order the Commissioner of Patents to correct the inventorship of the '901
3 Patent to name Forrest Babcock as a co-inventor of the patent;

4 c. Confirm Torrey Pines' right, title, and interest in the '901 Patent due to the
5 correction of inventorship;

6 d. That Torrey Pines recover from Gunwerks all damages, including, but not
7 limited to, punitive and exemplary damages, costs, expenses, and attorneys' fees;

8 e. That Torrey Pines be granted such other and further relief as the Court may
9 deem just and proper under the circumstances.

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1 Dated: November 18, 2019

FISH & RICHARDSON P.C.

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