

JUDGE ROMAN

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

IGUITAR, INC.,

Plaintiff,

-against-

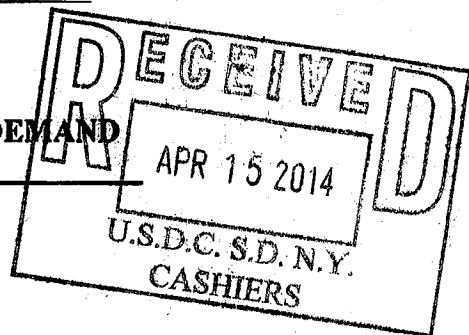
ARMADILLO DISTRIBUTION  
ENTERPRISES, INC.,

Defendant.

14 CV 2667  
Case No.

ECF Case

COMPLAINT AND DEMAND  
FOR JURY TRIAL



Plaintiff iGuitar, Inc. ("Plaintiff" or "iGuitar"), by and through its attorneys, Kheyfits & Maloney LLP, as and for its complaint against defendant Armadillo Distribution Enterprises, Inc. ("Defendant" or "Armadillo") alleges as follows:

**NATURE OF THE ACTION**

1. This is an action pursuant to the patent laws of the United States, 35 U.S.C. §§ 1, *et seq.*, for infringement by Defendant of one or more claims of U.S. Patent Nos. 7,241,948 and 7,563,977 ("the Patents-in-Suit").

**PARTIES**

2. Plaintiff iGuitar is a corporation duly formed and existing under the laws of the State of Delaware. iGuitar's principal place of business is located at 290 Main Street, Building #3, Cold Springs, New York.

3. Upon information and belief, Defendant Armadillo is a corporation formed and existing under the laws of the State of Florida, with its principal place of business located at 4924 W. Waters Avenue, Tampa, Florida.

**JURISDICTION AND VENUE**

4. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331

and 1338(a).

5. This Court has personal jurisdiction over Defendant pursuant to N.Y. C.P.L.R. §§ 301 and 302(a)(1)-(3). Upon information and belief, this Court has general jurisdiction over the Defendant based on its continuous and systematic conduct within New York, including, *inter alia*, Defendant's continuous contacts with New York such as offering for sale, selling and shipping stringed musical instruments to customers in New York, presence at trade shows and/or other events in New York, and travel to New York in connection with the marketing, sale and other business activities concerning stringed musical instruments.

6. Upon information and belief, this Court also has specific jurisdiction over Defendant based on, *inter alia*, the Defendant's acts of patent infringement alleged in this Complaint within the state of New York and elsewhere, causing injury within the state. Defendant's acts of patent infringement relevant to personal jurisdiction include but are not limited to the operation of interactive websites offering for sale in New York guitars that infringe the Patents-in-Suit, the completion of sales to customers in New York of infringing guitars and the shipment of infringing guitars to customers in New York.

7. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391(b), 1391(c) and 1400(b) because, *inter alia*, the Plaintiff's principal place of business is located in this judicial district, the Patents-in-Suit are assigned to the Plaintiff, Defendant committed acts of infringement within this judicial district and there existed personal jurisdiction over Defendant in this judicial district at the time this action was commenced.

#### **PATENTS-IN-SUIT**

8. On July 10, 2007, the United States Patent and Trademark Office duly and lawfully issued U.S. Patent No. 7,241,948 (the "948 Patent"), entitled "Stringed Musical

Instrument Device,” based upon an application filed by the inventor, Patrick G. Cummings. A true and correct copy of the '948 Patent is attached hereto as Exhibit A.

9. On July 21, 2009, the United States Patent and Trademark Office duly and lawfully issued U.S. Patent No. 7,563,977 (the “'977 Patent”), entitled “Stringed Musical Instrument Device,” based upon an application filed by the inventor, Patrick G. Cummings. A true and correct copy of the '977 Patent is attached hereto as Exhibit B.

10. The Patents-in-Suit generally relate to stringed musical instruments that function as a peripheral for a computer or computing device.

11. iGuitar is the owner of the Patents-in-Suit and has the right to sue and recover damages for infringement thereof.

#### **NOTICE**

12. The National Association of Musical Merchants (“NAMM”) organizes trade shows for the music products industry.

13. Upon information and belief, NAMM trade shows provide a forum where attendees can learn about innovations, products and technology related to music products, including guitars and stringed instruments.

14. iGuitar exhibited at NAMM trade shows held in or around January, 2005; July, 2005; January, 2006 and July, 2006 (collectively, the “NAMM Trade Shows”).

15. At each of the aforementioned NAMM Trade Shows, iGuitar exhibited guitars and/or stringed musical instruments made in accordance with one or more of the claims of the Patents-in-Suit or an application therefor.

16. At each of the aforementioned NAMM Trade Shows, iGuitar gave notice to attendees that the exhibited guitars and/or stringed musical instruments were covered by one or more claims of the Patents-in-Suit or an application therefor.

17. Upon information and belief, Defendant attended one or more of the NAMM Trade Shows.

18. Upon information and belief, by its attendance at one or more of the NAMM Trade Shows, Defendant received notice of the Patents-in-Suit or an application therefore and/or Defendant's infringement thereof.

19. Upon information and belief, certain publications are widely read by manufacturers of musical products, including guitar manufacturers such as Defendant. For example, *The Music Trades* is a monthly publication focused on the music industry. Upon information and belief, *The Music Trades* is widely read by manufacturers of guitars and stringed instruments including the Defendant.

20. Starting from approximately July, 2005, various publications including *The Music Trades* printed articles or other items describing the invention set forth in one or more of the Patents-in-Suit or an application therefor. For example, the July, 2005 issue of *The Music Trades* included a description of the invention set forth in one or more of the Patents-in-Suit or an application therefor.

21. Upon information and belief, by its reading of one or more of the publications describing the invention set forth in one or more of the Patents-in-Suit or an application therefore, including the descriptions contained in issues of *The Music Trades*, Defendant received notice of the Patents-in-Suit and/or Defendant's infringement thereof.

22. Upon information and belief, in connection with the design and/or manufacture of the infringing products at issue in this action, Defendant solicited bids, offers, samples and/or information from Fishman Transducers, Inc. ("Fishman") and B Band Ltd. ("B Band") for the manufacture and/or supply of analog-to-digital USB modules, or similar components, for use in stringed instruments.

23. Upon information and belief, at the time Defendant solicited bids, offers samples and/or information from Fishman, Fishman's analog-to-digital USB modules, or similar components, were authorized by iGuitar and marked with a patent marking notice designed to provide notice of one or more of the Patents-in-Suit in accordance with the United States Patent Statutes.

24. Upon information and belief, Defendant declined to purchase authorized analog-to-digital USB modules and, instead, purchased analog-to-digital USB modules from B Band that were not manufactured, offered for sale or sold with the authorization of iGuitar.

25. Accordingly, upon information and belief, by its receipt of bids, offers, samples and/or information from Fishman and selection of unauthorized analog-to-digital USB modules over modules authorized by iGuitar at that time, Defendant received notice of one or more of the Patents-in-Suit and/or Defendant's infringement thereof.

#### **FACTUAL ALLEGATIONS**

26. As referred to in this Complaint, and consistent with 35 U.S.C. § 100(c), the "United States" means "the United States of America, its territories and possessions."

27. Upon information and belief, Defendant makes, uses, offers for sale and/or sells guitars and/or stringed instruments made in accordance with one or more claims of the

Patents-in-Suit, including but not limited to claims 15 and 16 of the '948 Patent and claims 15 and 16 of the '977 Patent.

28. Upon information and belief the stringed musical instruments made, used, offered for sale and/or sold by Defendant and that infringe the Patents-in-Suit, include but are not limited to the Luna Guitar Heartsong series of guitars and Dean® Exhibition Ultra series of guitars. Upon information and belief, Defendant makes, uses, offers to sell and/or sells Luna Guitar Heartsong guitars and Dean® Exhibition Ultra guitars in the United States and/or imports those products into the United States.

29. Upon information and belief, Defendant actively and knowingly induces, directs, causes, and encourages others to make, use, sell, and/or offer to sell in the United States, and/or import into the United States stringed musical instruments that infringe the Patents-in-Suit by, *inter alia*, selling and/or supplying to resellers, wholesalers, retailers and/or customers stringed musical instruments made in accordance with one or more claims of the Patents-in-Suit, including but not limited to claims 15 and 16 and of the '948 Patent and claims 15 and 16 of the '977 Patent.

30. Upon information and belief, Defendant actively and knowingly induces, directs, causes, and encourages others to make, use, offer to sell and/or sell in the United States, and/or import into the United States stringed musical instruments that infringe one or more claims of that Patents-in-Suit by, *inter alia*, selling and/or supplying to resellers, wholesalers, retailers and/or customers analog-to-digital USB modules especially made and/or adapted for use in an infringement of one or more claims of the Patents-in-Suit, constituting a material part of the claims of the Patents-in-Suit, and not a staple article or commodity of commerce suitable for substantial noninfringing use.

31. Upon information and belief, Defendant contributes to infringement of one or more claims of the Patents-in-Suit by actively and knowingly offering to sell and/or selling in the United States, and/or importing into the United States analog-to-digital USB modules especially made and/or adapted for use in an infringement of one or more claims of the Patents-in-Suit, constituting a material part of the claims of the Patents-in-Suit, and not a staple article or commodity of commerce suitable for substantial noninfringing use.

**COUNT I: INFRINGEMENT OF THE PATENTS-IN-SUIT BY DEFENDANT**

32. Plaintiff incorporates, restates and realleges as if fully set forth herein each of the foregoing allegations in the preceding paragraphs.

33. Upon information and belief, Defendant has infringed one or more claims of the Patents-in-Suit pursuant to 35 U.S.C. § 271(a) by making, using, offering to sell, and/or selling in the United States, and/or importing into the United States guitars and/or stringed musical instruments made in accordance with one or more claims of the Patents-in-Suit. Upon information and belief, Defendant's infringement pursuant to 35 U.S.C. § 271(a) is ongoing.

34. Upon information and belief, Defendant has induced infringement of one or more claims of the Patents-in-Suit pursuant to 35 U.S.C. § 271(b), by actively and knowingly inducing, directing, causing, and encouraging resellers, wholesalers, retailers, and/or customers to make, use, offer to sell, and/or sell in the United States, and/or import into the United States guitars and/or stringed musical instruments made in accordance with one or more of the claims of the Patents-in-Suit. Upon information and belief, Defendant's inducement of infringement pursuant to 35 U.S.C. § 271(b) is ongoing.

35. Upon information and belief, Defendant has contributed to infringement of one or more claims of the Patents-in-Suit pursuant to 35 U.S.C. § 271(c), by actively and

knowingly offering to sell, and/or selling within the United States, and/or importing into the United States, to resellers, wholesalers, retailers, and/or customers, components and/or apparatus for use in practicing one or more claims of the Patents-in-Suit, constituting a material part of the claims of the Patents-in-Suit, knowing the components and/or apparatus to be especially made and/or especially adapted for use in an infringement of one or more of the claims of the Patents-in-Suit, and not a staple article or commodity of commerce suitable for substantial noninfringing use. Upon information and belief, Defendant's contributory infringement pursuant to 35 U.S.C. § 271(c) is ongoing.

36. Upon information and belief, Defendant has committed the foregoing infringing activities without license from iGuitar.

37. Upon information and belief, Defendant has committed the foregoing infringing activities with notice of the Patents-in-Suit.

38. Upon information and belief, Defendant knew the Patents-in-Suit existed while committing the foregoing infringing acts, thereby willfully, wantonly and deliberately infringing the Patents-in-Suit. iGuitar's damages should be trebled pursuant to 35 U.S.C. § 284 because of Defendant's willful infringement of the Patents-in-Suit.

39. Upon information and belief, the acts of infringement by Defendant have been with the knowledge of the Patents-in-Suit and are willful, wanton and deliberate, thus rendering this action "exceptional" within the meaning of 35 U.S.C. § 285 and entitling iGuitar to its reasonable attorney's fees and litigation expenses.

40. Upon information and belief, the acts of infringement by Defendant will continue unless enjoined by this Court.



41. iGuitar has been and will be irreparably harmed and damaged by the acts of infringement of the Patents-in-Suit by Defendant and has no adequate remedy at law.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff requests that a judgment be issued and entered against Defendant as follows:

- (a) Entry of judgment in favor of Plaintiff against the Defendant on all counts;
- (b) Entry of judgment declaring that Defendant has infringed the Patents-in-Suit;
- (c) Entry of judgment finding that Defendant's infringement of the Patents-in-Suit has been willful;
- (d) An order permanently enjoining Defendant together with its officers, directors, agents, servants, employees, and attorneys, and upon those persons in active concert or participation with them who receive actual notice of this order by personal service or otherwise, from infringing the Patents-in-Suit;
- (e) Award of compensatory damages adequate to compensate Plaintiff for Defendant's infringement of the Patents-in-Suit, but in no event less than a reasonable royalty trebled as provided by 35 U.S.C. § 284;
- (f) Plaintiff's reasonable fees for expert witnesses and attorneys, as provided by 35 U.S.C. § 285;
- (g) Plaintiff's costs;
- (h) Pre-judgment and post-judgment interest on Plaintiff's award; and
- (i) All such other and further relief as the Court deems just or equitable.

**DEMAND FOR JURY TRIAL**

Pursuant to Rule 38 of the Fed. R. Civ. Proc., Plaintiff hereby demands trial by jury in this action of all claims so triable.

Dated: New York, New York  
April 15, 2014

**KHEYFITS & MALONEY LLP**

By:   
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Dmitriy Kheyfits**

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*Attorneys for Plaintiff iGuitar, Inc.*