

EXHIBIT 4

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF KENTUCKY
(COVINGTON)**

STEVEN E. BYRNE,)	<u>ELECTRONICALLY FILED</u>
)	
Plaintiff,)	Judge Bertelsman
)	
v.)	Civil Action No. 2:04-cv-262-WOB
)	
THE BLACK & DECKER CORPORATION,)	
BLACK & DECKER INC. and)	
BLACK & DECKER (U.S.) INC.,)	JURY TRIAL DEMANDED
)	
Defendants.)	

ANSWER, AFFIRMATIVE DEFENSES AND COUNTERCLAIMS

Defendants, The Black & Decker Corporation, Black & Decker Inc. and Black & Decker (U.S.) Inc., respond to the Complaint filed by Plaintiff, Steven E. Byrne, as follows:

ANSWER

Nature of the Action

1. This is an action for patent infringement arising under the patent laws of the United States, Title 35, United States Code.

Answer:

Admitted.

The Parties

2. Plaintiff Steven R. Byrne is an individual residing at 10651 Big Bone Church Road, Union, Kentucky 41091 ("Byrne").

Answer:

Denied on the ground that Defendants lack sufficient information or belief as to the truth of the allegations.

3. Upon information and belief, defendant The Black & Decker Corporation ("Black & Decker") is a Maryland corporation having a principal place of business at 701 East Joppa Road,

Towson, Maryland 21286. Black & Decker does substantial business in the Commonwealth of Kentucky, including in this judicial district, and including the offer for sale and/or sale of the products accused to infringe Byrne's patent.

Answer:

Admitted that The Black & Decker Corporation is a Maryland corporation having a principal place of business at 701 East Joppa Road, Towson, Maryland 21286. Except as answered, the allegations are denied.

4. Upon information and belief, defendant Black & Decker Inc. ("BDI") is a Delaware corporation having a principal place of business at Drummond Plaza Office Park, 1207 Drummond Plaza, Newark, Delaware 19711. BDI is a wholly-owned subsidiary of Black & Decker, and does substantial business in the Commonwealth of Kentucky, including in this judicial district, and including the offer for sale and/or sale of the products accused to infringe Byrne's patents.

Answer:

Admitted that Black & Decker Inc. is a Delaware corporation having a principal place of business at 1207 Drummond Plaza, Newark, Delaware 19711, and that Black & Decker Inc. is a wholly-owned subsidiary of The Black & Decker Corporation. Except as answered, the allegations are denied.

5. Upon information and belief, defendant Black & Decker (U.S.) Inc. ("BDUSI") is a Maryland corporation having a principal place of business at 701 East Joppa Road, Towson, Maryland 21286. BDUSI is a wholly-owned subsidiary of Black & Decker, is registered to do business in the Commonwealth of Kentucky, and does substantial business in the Commonwealth of Kentucky, including in this judicial district, and including the offer for sale and/or sale of the products accused to infringe Byrne's patents.

Answer:

Admitted.

Jurisdiction

6. Federal question jurisdiction is conferred pursuant to 28 U.S.C. §§ 1331 and 1338(a).

Answer:

Admitted that this Court has subject matter jurisdiction under 28 U.S.C. § 1331 and 1338(a).

Except as answered, the allegations are denied.

Count I
Infringement of U.S. Letters Patent Reissue No. 34,815

7. On January 3, 1995, United States Letters Reissue Patent No. 34,815, entitled "Flexible Flail Trimmer with Combined Guide and Guard" (hereinafter "the '815 patent"), was duly and legally issued to Byrne, and Byrne is the owner of the '815 patent. A copy of the '815 patent is attached to this Complaint as Exhibit 1.

Answer:

Admitted that the '815 patent issued to Byrne as titled on January 3, 1995, and that a copy is attached to the Complaint as Exhibit 1. The remaining allegations are denied on the ground that Defendants lack sufficient information or belief as to the truth of the allegations.

8. Since the time the '815 patent issued, Byrne has marked the products that have been manufactured under the '815 patent in accordance with 35 U.S.C. § 287.

Answer:

Denied on the ground that Defendants lack sufficient information or belief as to the truth of the allegations.

9. Upon information and belief, Black & Decker, BDI and/or BDUSI have infringed and continue to infringe one or more claims of the '815 patent by their manufacture, use, offer for sale and sale of certain trimmers/edgers, including certain trimmers/edgers marketed by or for Black & Decker, BDI and/or BDUSI under the name "Grass Hog".

Answer:

Denied.

10. Upon information and belief, Black & Decker, BDI and/or BDUSI have actively induced others to directly infringe, and continue to actively induce others to directly infringe, one or more claims of the '815 patent by their offer for sale and sale of certain trimmers/edgers, including certain trimmers/edgers marketed by or for Black & Decker, BDI and/or BDUSI under the name "Grass Hog".

Answer:

Denied.

11. Upon information and belief, the acts of infringement complained of herein are being carried out willfully and with full knowledge by Black & Decker, BDI and BDUSI of the '815 patent.

Answer:

Denied.

12. As a result of the actions of Black & Decker, BDI and BDUSI, Byrne will suffer substantial injury, including irreparable injury, and Byrne has been damaged and will continue to be damaged unless Black & Decker, BDI and BDUSI are enjoined by this Court.

Answer:

Denied.

Count II
Infringement of U.S. Letters Patent No. 5,423,126

13. The allegations of paragraphs 1-12 are incorporated herein by reference as though fully set forth herein.

Answer:

Defendants answers to the allegations of paragraphs 1-12 are incorporated herein by reference as though fully set forth herein.

14. On June 13, 1995, United States Letters Patent No. 5,423,126, entitled "Flexible Flail Trimmer" (hereinafter "the '126 patent"), was duly and legally issued to Byrne, and Byrne is the owner of the '126 patent. A copy of the '126 patent is attached to this Complaint as Exhibit 2.

Answer:

Admitted that the '126 patent issued to Byrne as titled on June 13, 1995, and that a copy is attached to the Complaint as Exhibit 2. The remaining allegations are denied on the ground that Defendants lack sufficient information or belief as to the truth of the allegations.

15. Since the time the '126 patent issued, Byrne has marked the products that have been manufactured under the '126 patent in accordance with 35 U.S.C. § 287.

Answer:

Denied on the ground that Defendants lack sufficient information or belief as to the truth of the allegations.

16. Upon information and belief, Black & Decker, BDI and/or BDUSI have infringed and continue to infringe one or more claims of the '126 patent by their manufacture, use, offer for sale and sale of certain trimmers/edgers, including certain trimmers/edgers marketed by or for Black & Decker, BDI and/or BDUSI under the name "Grass Hog".

Answer:

Denied.

17. Upon information and belief, the acts of infringement complained of herein, are being carried out willfully and with full knowledge by Black & Decker, BDI and BDUSI of the '126 patent.

Answer:

Denied.

18. As a result of the actions of Black & Decker, BDI and BDUSI, Byrne will suffer substantial injury, including irreparable injury, and Byrne has been damaged and will continue to be damaged unless Black & Decker, BDI and BDUSI are enjoined by this Court.

Answer:

Denied.

AFFIRMATIVE DEFENSES

Defendants assert the following Affirmative Defenses and reserve the right to further amend their Answer as additional information becomes available:

1. Plaintiff's claims are barred by the doctrines of estoppel, laches, waiver and unclean hands.
2. Defendants do not infringe, have not infringed, and do not induce and have not induced infringement of, any claim of either the '815 or '126 patent, willfully or otherwise.
3. The claims of the '815 and '126 patents are invalid under one or more of the grounds specified in United States Code, Title 35, including failure to comply with the requirements of 35 U.S.C. §§ 101, 102, 103 and/or 112.
4. Defendants adopt and incorporate herein all affirmative defenses available pursuant to Federal Rule of Civil Procedure 8 (or any applicable statute or regulation), to the extent the facts known at this time would make any of said defenses available or facts developed in the future would make same available. No affirmative defense is waived.

COUNTERCLAIMS

Counterplaintiff, Black & Decker (U.S.) Inc. ("BDUSI"), alleges the following Counterclaims against Counterdefendant, Steven E. Byrne ("Byrne").

The Parties

1. Black & Decker (U.S.) Inc. is a Maryland corporation having a principal place of business at 701 East Joppa Road, Towson, Maryland 21286.
2. Upon information and belief, Steven R. Byrne is an individual residing at 10651 Big Bone Church Road, Union, Kentucky 41091.

Jurisdiction and Venue

3. By his Complaint alleging infringement of U.S. Patent Nos. Re. 34,815 (the "'815 patent") and 5,423,126 (the "'126 patent"), Byrne has submitted himself to the jurisdiction and venue of this Court and has created an actual controversy with BDUSI.

4. Each of BDUSI's Counterclaims sets forth a cause of action arising under the Federal Declaratory Judgment Act, 28 U.S.C. § 2201, and the patent laws of the United States, Title 35 of the United States Code. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1337(a), 1338(a), 2201 and 2202.

Count I

Declaratory Judgment of Noninfringement of the '815 Patent

5. BDUSI repeats and re-alleges the allegations of paragraphs 1-4 above as fully set forth herein.

6. BDUSI does not infringe, has not infringed, and does not induce and has not induced infringement of, the '815 patent, willfully or otherwise, under any theory, including literal infringement or infringement under the doctrine of equivalents.

7. No claim of the '815 patent relied upon by Byrne in his Complaint can validly be construed to cover any product used, sold, offered for sale or imported by BDUSI.

8. For each claim of the '815 patent asserted by Byrne to have been infringed by BDUSI, BDUSI requests a declaration that none of its products, including without limitation those sold under the name "Grass Hog," infringe any such claim of the '815 patent.

Count II

Declaratory Judgment of Invalidity of the '815 Patent

9. BDUSI repeats and re-alleges the allegations of paragraphs 1-8 above as if fully set forth herein.

10. The claims of the '815 patent are invalid under one or more of the grounds specified in United States Code, Title 35, including failure to comply with the requirements of 35 U.S.C. §§ 101, 102, 103 and/or 112.

11. BDUSI requests a declaration that each claim of the '815 patent asserted by Byrne is invalid.

Count III

Declaratory Judgment of Noninfringement of the '126 Patent

12. BDUSI repeats and re-alleges the allegations of paragraphs 1-11 above as fully set forth herein.

13. BDUSI does not infringe, has not infringed, and does not induce and has not induced infringement of, the '126 patent, willfully or otherwise, under any theory, including literal infringement or infringement under the doctrine of equivalents.

14. No claim of the '126 patent relied upon by Byrne in his Complaint can validly be construed to cover any product used, sold, offered for sale or imported by BDUSI.

15. For each claim of the '126 patent asserted by Byrne to have been infringed by BDUSI, BDUSI requests a declaration that none of its products, including without limitation those sold under the name "Grass Hog," infringe any such claim of the '126 patent.

Count IV

Declaratory Judgment of Invalidity of the '126 Patent

16. BDUSI repeats and re-alleges the allegations of paragraphs 1-15 above as if fully set forth herein.

17. The claims of the '126 patent are invalid under one or more of the grounds specified in United States Code, Title 35, including failure to comply with the requirements of 35 U.S.C. §§ 101, 102, 103 and/or 112.

18. BDUSI requests a declaration that each claim of the '126 patent asserted by Byrne is invalid.

PRAYER FOR RELIEF

WHEREFORE, Defendants request that they be granted the following relief:

- a. Entry of judgment against Byrne and in Defendants' favor on the Complaint brought by Byrne;
- b. Dismissal of the Counts of the Complaint, in their entirety, with prejudice;
- c. A declaration that the '815 patent is invalid;
- d. A declaration that Defendants do not infringe, have not infringed, and do not induce and have not induced infringement of, the '815 patent;
- e. A declaration that the '126 patent is invalid;
- f. A declaration that Defendants do not infringe, have not infringed, and do not induce and have not induced infringement of, the '126 patent;
- g. An award to Defendants of all remedies available under 35 U.S.C. § 285;
- h. An award to Defendants of their costs and attorneys' fees; and,

- i. Such other and further relief as this Court and/or a jury may deem proper and just.

JURY DEMAND

Defendants demand a trial by jury on all issues so triable.

Respectfully submitted,

/S/ DAVID B. SLOAN

DAVID B. SLOAN (KY 64870)
O'HARA, RUBERG, TAYLOR, SLOAN & SERGENT
25 Crestview Hills Mall Road, Suite 201
P. O. Box 17411
Covington, KY 41017-0411
Tel: (859) 331-2000
Fax: (859) 578.3365
email: dsloan@ortlaw.com
mohara@ortlaw.com
ATTORNEYS FOR DEFENDANTS

RAYMOND P. NIRO, JR.

Email: rnirojr@nshn.com

MATTHEW G. MCANDREWS

Email: mmcandrews@nshn.com

DINA M. HAYES

Email: hayes@nshn.com

CHRISTOPHER F. LANEY

Email: laney@nshn.com

NIRO, SCAVONE, HALLER & NIRO

181 West Madison, Suite 4600

Chicago, Illinois 60602-4515

Tele: (312) 236-0733

Fax: (312) 236-3137

**Attorneys for The Black & Decker Corporation, Black & Decker Inc.,
Black & Decker (U.S.) Inc.**

CERTIFICATION

I hereby certify that this 4TH day of March, 2005, a copy of the foregoing pleading was served upon the following attorneys by the Court's CM/ECF system:

Philip Taliaferro

Email: ptaliaferro@tmsck.com

Alice Gailey Keys

Email: akeys@tmsck.com

TALIAFERRO, MEHLING, SHIROONI,

CARRAN & KEYS

1005 Madison Avenue

Covington, Kentucky 41011-3113

/S/ DAVID B. SLOAN

DAVID B. SLOAN

O'HARA, RUBERG, TAYLOR, SLOAN & SERGENT

E:\DOCS\Byrne.bd\answer.cpt.wpd