

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO**

RUGGED CROSS HUNTING BLINDS, LLC,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 1:23-cv-02231
	)	
DBR FINANCE, INC.,	)	Honorable Judge J. Philip Calabrese
	)	
Defendant,	)	

**DEFENDANT DBR FINANCE, INC.’S ANSWER, AFFIRMATIVE DEFENSES
AND COUNTERCLAIMS TO PLAINTIFF’S SECOND AMENDED COMPLAINT**

Defendant DBR Finance, Inc. (“DBR”), through its undersigned attorneys, hereby answers Plaintiff Rugged Cross Hunting Blinds, LLC’s (“RCHB’s”) Second Amended Complaint for Patent Infringement (“Complaint”) as follows:

NATURE OF ACTION

1. This is a patent infringement action to stop FeraDyne¹ and DBR’s willful infringement of Plaintiff’s United States Patent No. 11,399,535 entitled “Camouflage Material, for a Hunting Blind” (hereinafter the “535” Patent”).

ANSWER: Denied.

PARTIES

2. Plaintiff, RCHB, is a limited liability company organized and existing under the laws of the State of Florida. RCHB maintains its principal place of business at 15206 Tilwood Place, Tampa, Florida 33618.

¹ DBR notes that for jurisdictional reasons, the litigation of Plaintiff against Defendant FeraDyne pending in Wisconsin Federal Court has been severed from the litigation against Defendant DBR now pending in this Court. Out of an abundance of caution DBR is responding to any allegation directed to FeraDyne, but only to state that DBR is without sufficient information to admit or deny.

ANSWER: DBR is without sufficient information to admit or deny.

3. Defendant, FeraDyne, is a limited liability company organized and existing under the laws of the state of Delaware and registered to do business in the State of Wisconsin. FeraDyne maintains places of business located at 101 Main Street and/or 1230 Poplar Avenue both in Superior, Wisconsin 54880.

ANSWER: DBR is without sufficient information to admit or deny.

4. Defendant, DBR is a corporation and existing under the laws of the state of Ohio. DBR and maintains a place of business located at 177 Reaser Court, Elyria, Ohio.

ANSWER: Admitted.

JURISDICTION AND VENUE

5. This case arises under the Patent Laws of the United States, 35 U.S.C. § 1 *et seq.*, including 35 U.S.C. §§ 271, 281, 283, 284, and 285.

ANSWER: Admitted.

6. As this action relates to patent infringement, this Court has original subject matter jurisdiction over this action under 28 U.S.C. §1331 and under 28 U.S.C. §1338(a).

ANSWER: Admitted.

7. This Court has personal jurisdiction over FeraDyne pursuant to Wisc. Stat. §801.05(1)(d) because FeraDyne has systematic and continuous business activities in the State of Wisconsin, and in this district. To that end, FeraDyne's principal place of business is located in this judicial district in the state of Wisconsin. In addition, and upon information and belief, FeraDyne manufactures, distributes, offers for sale, and/or sells products in this judicial district that infringe on at least one independent claim of the '535 patent.

ANSWER: DBR is without sufficient information to admit or deny.

8. This Court has personal jurisdiction over DBR pursuant to Wisc. Stat. §801.05(4)(d) because DBR sold products alleged to infringe the ‘535 Patent, and which products were or are used or consumed within Wisconsin, in the ordinary course of trade. To that end sold an inventory of the below referenced Rhino 180 hunting blinds to FeraDyne, which hunting blinds also serve as a basis for allegations of patent infringement against FeraDyne.

ANSWER: DBR admits that it sold an inventory of the Rhino 180 hunting blinds to FeraDyne. DBR denies all other allegations.

9. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1400(b) as to FeraDyne at least because FeraDyne is incorporated in this district and therefore “resides” in this district. In addition, upon information and belief, FeraDyne has committed acts of patent infringement in this district and has a regular and established place of business in this district.

ANSWER: DBR is without sufficient information to admit or deny.

10. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1400(b) as to DBR at least because DBR has committed acts of infringement within this district and upon information and belief has a regular and established place of business in this district. To that end, DBR sold an inventory of the below referenced Rhino 180 hunting blinds to FeraDyne, which hunting blinds also serve as a basis for allegations of patent infringement against FeraDyne. In addition, and upon information and belief DBR provides services and maintains contractual relationships related to FeraDyne manufacturing, offering for sale, marketing, and sale of products alleged to infringe the ‘535 Patent and DBR earns revenue from the operation of FeraDynes business in this district, and therefore has a regular and established place of business in this district.

ANSWER: DBR denies venue for DBR is proper in Wisconsin, but agrees that venue is proper in the State of Ohio.

FACTUAL BACKGROUND

11. RCHB realleges and incorporates by reference Paragraphs 1-10 of its Second Amended Complaint as if restated herein.

ANSWER: DBR realleges and incorporates by reference each and every response set forth in paragraphs 1-10 above as if fully set forth herein.

12. RCHB is the owner of all rights, title and interest in and to the '535 Patent, a copy of which is attached hereto as Exhibit A.

ANSWER: DBR is without sufficient information to admit or deny.

13. The owners of RCHB are brothers Mr. Christopher Seaton ("Chris") and Mr. Timothy Seaton ("Tim"), both of whom are first responders. Chris is a former detective for the Hillsborough County Florida Sheriff's Department, and Tim Seaton is a firefighter for Tampa Fire Rescue in the Tampa, Florida area.

ANSWER: DBR is without sufficient information to admit or deny.

14. In late 2015, Chris and Tim conceived of and reduced to practice the invention disclosed and claimed in the '535 Patent when they built a hunting blind for Chris's son. The hunting blind included a mesh material that was coated on one side with a camouflage print and coated with a dark color coating on another side facing an interior of the blind. The mesh material enabled a hunter to clearly see outside the blind, while game could not see into the interior of the blind.

ANSWER: DBR is without sufficient information to admit or deny.

15. Chris and Tim focused on developing a blind that was structurally sound and safe for Chris's son to hunt in and protect him from the outside environment, while including sufficient ventilation for the hot Florida weather. Chris and Tim decided to use aluminum frame members to

build a blind. To that end, Chris was familiar with banner mesh materials that he believed would snugly fit within the spline grooves of the frame members and obtained some mesh material to install as panels for a blind.

ANSWER: DBR is without sufficient information to admit or deny.

16. The mesh material was coated on what would be an exterior side of the blind with a camouflage print. The other side (what would be the interior) was not coated and left white. Unfortunately, the coating of the camouflage leaked through the apertures of the mesh and created a coated mesh that was difficult to see through. Chris then tried coating the exterior with the same camouflage print and coated the interior side with black ink. The results were extremely surprising and unexpected. The coated mesh material allowed a clear view of the exterior from inside the blind; however, one viewing from the exterior could not make out or see what or who was on the other side of the mesh material.

ANSWER: DBR is without sufficient information to admit or deny.

17. Chris and Tim knew they had something really special, so they decided to form the company, Rugged Cross Hunting Blinds, LLC, in October of 2015. RCHB then built another blind and displayed the blind at the 2016 National Wild Turkey Federation (NWTF) in February 2016. The mesh material was met with rave reviews as evidenced by the comments from Josh Honeycutt of Realtree, which are set forth in Exhibit B.

ANSWER: DBR is without sufficient information to admit or deny.

18. The Realtree article includes the heading “Awesome Gear From an Awesome Convention” over a photo of the RCHB Austin blind displayed at the NWTF Convention. As described by Realtree, “The camo material is completely see-through from the inside, but it prevents anyone--or anything--on the outside from seeing in.” See Exhibit B.

ANSWER: DBR is without sufficient information to admit or deny.

19. While attending the NWTF convention, Mr. Jason Harris of Bushnell Holdings, Inc. d/b/a Primos approached the Seaton's and expressed his excitement about the mesh material. Mr. Harris also mentioned that his employer, Primos, would be very interested in talking with the Seaton's about a business relationship that would involve Primos and the developing products that incorporated the novel mesh material of the RCHB hunting blind.

ANSWER: DBR denies that the alleged mesh material is novel. DBR is without sufficient information to admit or deny the remaining allegations.

20. On February 29, 2016, Chris and Tim filed a provisional application, U.S. Provisional Application No. 62/301,007 (hereinafter the "'007" provisional patent application) disclosing their invention.

ANSWER: DBR admits that U.S. Provisional Application No. 62/301,007 was filed on February 29, 2016. DBR denies all other allegations.

21. On June, 11, 2021 RCHB filed a continuation patent application, U.S. Application U.S. Patent Application No. 17/345,981 (the "'981 application"), claiming priority to U.S. Patent Application No. 16/988,843, which issued as U.S. Patent No. 10,765,108, and which claimed priority to the '007 provisional patent application.

ANSWER: Admitted.

22. The '981 application issued as the '535 Patent on August 2, 2022.

ANSWER: Admitted.

23. In 2017, RCHB granted Primos a license to make and sell products, including pop-up hunting blinds, that incorporated the RCHB novel mesh material. In 2018, Primos introduced its SURROUNDVIEW hunting blinds which were met with rave reviews.

ANSWER: DBR denies that the alleged mesh material is novel. DBR is without sufficient information to admit or deny the remaining allegations.

24. Primos' sales of hunting blinds, such as the SURROUNDVIEW blinds including the novel mesh material, were successful through 2018 and into or through 2019, until other suppliers, started marketing and selling hunting blinds with the claimed mesh material.

ANSWER: DBR denies that the alleged mesh material is novel. DBR is without sufficient information to admit or deny the remaining allegations.

25. The success of the SURROUNDVIEW hunting blind with the RCHB novel mesh material is evidenced by the fact that Primos introduced its SURROUNDVIEW (SIC) blinds in a video at the 2018 Archery Trade Show. The video was also published on Primos' Hunting Facebook, Instagram and YouTube. The video amassed over four (4) million impressions. Over the following two plus years hundreds of videos, photographs, media articles and user generated content was shared touting the performance and success of RCHB's novel mesh material.

ANSWER: DBR denies that the alleged mesh material is novel. DBR is without sufficient information to admit or deny the remaining allegations.

26. Further evidence of commercial success of the claimed invention of the '535 Patent is set forth in industry articles that provide extremely positive reviews of the Primos SURROUNDVIEW hunting blinds that incorporated the RCHB novel mesh material. These articles tout the same feature of a hunter having a clear field of view of the exterior of a blind, while at the same time game cannot see a hunter who is inside the blind. Copies of four (4) such articles are attached hereto as Exhibits C, D, E, and F.

ANSWER: DBR denies that the alleged mesh material is novel. DBR is without sufficient information to admit or deny the remaining allegations.

27. The first of these articles, (see, Exhibit C) was posted on December 27, 2018 by American Hunter in which NRA Publications announced the winners of the 2019 Golden Bullseye Awards. The American Hunter's 2019 Golden Bullseye Awards included the Primos Double Bull SURROUNDVIEW 360 blind, which won the "Gear of the Year Award." The article even lists the qualifications considered to win such an award including:

- Recently introduced and available to consumers prior to the selection of the Golden Bullseye Awards;
- Used/tested by a staff member or regular contributor to the magazine and/or affiliated media;
- Reliable in the field, meeting or exceeding the evaluator's expectations;
- Innovative in design and function;
- Readily perceived as a value to the purchaser; and
- Styled in a manner befitting the shooting and hunting industry and, perhaps more importantly, its enthusiasts.

ANSWER: DBR denies that the alleged mesh material is novel. DBR is without sufficient information to admit or deny the remaining allegations.

28. With respect to Exhibit D, the SURROUNDVIEW 360 blind the author of the Grand View Outdoors article dated January 18, 2018 provides: "I hate the word game-changer but I simply can't think of a better description for the Primos' new SurroundView hunting blinds." The article further describes the blinds: "You have to see it to believe it...You feel so exposed, but you're not. You can see them. They can't see you."

29. **ANSWER:** DBR denies that the alleged mesh material is novel. DBR is without sufficient information to admit or deny the remaining allegations. The Deer & Deer Hunting article

of Exhibit E and dated July 17, 2018, describes the SurroundView blinds as “revolutionary” and further states: “Primos touts the SurroundView as the ‘Blind Without a Blind Spot’” – and it truly is.”

ANSWER: DBR denies that the alleged mesh material is novel. DBR is without sufficient information to admit or deny the remaining allegations.

30. The GRITR Outdoors blog, posted March 7, 2018, of Exhibit F in reference to the Primos SurroundView 360° notes: “This blind has received more attention in the Bowhunting and hunting world than any other produce since its release at ATA in January. The one-way see-through walls allow the hunter inside the blind to have an unobstructed 180° view of the surroundings.”

ANSWER: DBR denies that the alleged mesh material is novel. DBR is without sufficient information to admit or deny the remaining allegations.

31. In 2020, competitors of Primos, such as Outdoor Product Innovations, Inc. d/b/a Rhino Blinds, now known as DBR, (hereinafter “DBR or OPI”), started making and selling products that incorporated the RCHB novel mesh material. DBR introduced its Rhino 180 hunting blind in late 2020. Attached as Exhibit G is an article, from the publication Inside Archery, including page 35 referring to OPI (now DBR) and the Rhino 180 hunting blind, which is reproduced below:

Another factor that has greatly contributed to Rhino Blinds’ success in recent years is the company’s approach to product innovation. For instance, just look at the Rhino 180 See Through Blind, which uses a revolutionary mesh material that allows hunters to see out without game seeing in. (emphasis added).

“We launched the Rhino 180 See Through Blind towards the end of 2020 and It just took off like wildfire,” Danny Reaser said, “Our customers even ended up generating some organically viral content on social media. TikTok was getting more popular around that time, and our customers were posting videos of the “Houdini effect” by

showing what the blind looked like on the outside and then taking the camera inside to reveal what the one-way mesh can really do. There was one video that even reached about 1.4 million views. That grew a lot of awareness of the product and people were just buying them left and right. The Rhino 180 See Through Blind also really captured the eyes of our dealers as something hot and new, and I believe every single one of our dealers is carrying it this year.” (emphasis added).

ANSWER: DBR denies that the alleged mesh material is novel. DBR admits that it was formerly known as Outdoor Products Innovations, Inc. DBR admits that it sold the Rhino 180 hunting blind. DBR denies all other allegations.

32. FeraDyne sells archery, hunting and outdoor industry products, including hunting blinds, for example the Rhino 180 hunting blind. On information and belief, in October 2022, FeraDyne acquired OPI, which, as referred to in paragraph 28 above, had been making and selling the Rhino 180 hunting blind since 2020.

ANSWER: DBR admits that it sold certain assets to Defendant FeraDyne including a certain inventory of Rhino 180 hunting blinds. DBR denies all other allegations.

33. Upon information and belief FeraDyne acquired all assets and liabilities of OPI.

ANSWER: DBR admits that it sold certain assets and certain liabilities to Defendant FeraDyne. DBR denies all other allegations.

34. On August 25, 2022, RCHB sent a letter to OPI alleging OPI infringed one or more claims of the ‘535 Patent by virtue of making and selling the Rhino 180 hunting blind.

ANSWER: DBR admits to receiving a letter from RCHB. DBR denies all other allegations.

35. In October 2022, RCHB received information that FeraDyne had acquired OPI.

ANSWER: DBR is without sufficient information to admit or deny.

36. Upon information and belief, in August of 2022, FeraDyne had actual knowledge of the '535 Patent and actual knowledge of RCHB's claim for patent infringement against OPI; however, FeraDyne turned a blind eye to RCHB's claim and acquired OPI.

ANSWER: DBR is without sufficient information to admit or deny.

37. On October 18, 2022, RCHB, through its attorneys, sent an email to FeraDyne and a package, via Federal Express, including the above-referenced August 25, 2022, correspondence.

ANSWER: DBR is without sufficient information to admit or deny.

38. Despite having received this information, FeraDyne intentionally and willfully ignored RCHB.

ANSWER: DBR is without sufficient information to admit or deny.

39. An attorney representing OPI has contacted the attorneys' for RCHB to discuss this matter; however, the parties including RCHB and OPI never had any meaningful discussions and were not able to reach a resolution.

ANSWER: DBR admits that there were attorney discussions between OPI and RCHB. DBR denies all other allegations.

40. On or about November 8, 2022, OPI changed its name to DBR Finance, Inc.

ANSWER: DBR admits that it was formerly known as OPI. DBR denies all other allegations.

41. Prior to this lawsuit being filed, neither FeraDyne or counsel representing FeraDyne has contacted RCHB or the attorneys representing RCHB about [...] [statement incomplete in original]

ANSWER: DBR is without sufficient information to admit or deny.

42. FeraDyne's and DBR's acts are causing, and unless restrained will continue to cause, damage and immediate irreparable harm to RCHB for which RCHB has no adequate remedy at law.

ANSWER: Denied.

43. RCHB has retained the undersigned law firm to represent it in this action for the wrongful conduct of FeraDyne and DBR and has agreed to pay said counsel a reasonable fee for these services.

ANSWER: DBR is without sufficient information to admit or deny.

COUNT I AS TO DEFENDANT, FERADYNE
ALLEGED PATENT INFRINGEMENT OF US PATENT NO. 11,399,535

44. Plaintiff repeats and makes a part hereof each and every allegation contained in paragraphs 1 through 43 of the Complaint as if restated herein.

ANSWER: DBR realleges and incorporates by reference each and every response set forth in paragraphs 1-43 above as if fully set forth herein.

45. The '535 Patent covers camouflage structures such as hunting blinds that incorporate a unique camouflage mesh material, or panels of mesh material, that is disclosed and claimed in the '535 Patent.

ANSWER: Denied.

46. A claim chart relative to claim 1 of the '535 Patent is attached as Exhibit H including Exhibits 1, 2 and 3, which are images of the infringing Rhino 180 blind that FeraDyne manufactures and sells. RCHB incorporates by references the statements of the claim chart as if stated herein.

ANSWER: DBR is without sufficient information to admit or deny.

47. As detailed in the attached claim chart, Exhibit H, relative to claim 1 of the '535 the Rhino 180 blind includes, either literally under the doctrine of equivalents, each and every element of claim 1 of the '535 Patent.

ANSWER: Denied.

48. FeraDyne, therefore, manufactures, promotes, advertises, imports, offers for sale, and/or sells within the United States and/or imports the Rhino 180 hunting blinds directly infringing at least Claim 1 of the '535 Patent either literally or under the doctrine of equivalents, in violation of 35 U.S.C. § 271(a).

ANSWER: DBR is without sufficient information to admit or deny.

49. FeraDyne's aforesaid activities have been without authority and/or license from RCHB and are considered intentional and willful.

ANSWER: DBR is without sufficient information to admit or deny.

50. RCHB is entitled to recover from FeraDyne the damages sustained by RCHB as a result of FeraDyne's wrongful acts in an amount subject to proof at trial, which, by law, cannot be less than a reasonable royalty, together with interest and costs as fixed by this Court under 35 U.S.C. § 284.

ANSWER: DBR is without sufficient information to admit or deny.

51. FeraDyne had actual notice of the '535 Patent at least as early as August of 2022, and FeraDyne's infringement of RCHB's exclusive rights under the '535 Patent will continue to damage RCHB, causing irreparable harm for which there is no adequate remedy at law, unless enjoined by this Court.

ANSWER: DBR is without sufficient information to admit or deny.

COUNT II AS TO DEFENDANT, DBR
ALLEGED PATENT INFRINGEMENT OF US PATENT NO. 11,399,535

52. Plaintiff repeats and makes a part hereof each and every allegation contained in paragraphs 1 through 43 of the Complaint as if restated herein.

ANSWER: DBR realleges and incorporates by reference each and every response set forth in paragraphs 1-51 above as if fully set forth herein.

53. The '535 Patent covers camouflage structures such as hunting blinds that incorporate a unique camouflage mesh material, or panels of mesh material, that is disclosed and claimed in the '535 Patent.

ANSWER: Denied.

54. The claim chart of Exhibit H relative to claim 1 of the '535 Patent Exhibits 1, 2 and 3 include images of the infringing Rhino 180 blind that is identical to the hunting blinds DBR manufactured and sold. RCHB incorporates by reference the statements of the claim chart as if stated herein.

ANSWER: Denied.

55. As detailed in the attached claim chart, Exhibit H, relative to claim 1 of the '535 the Rhino 180 blind includes, either literally under the doctrine of equivalents, each and every element of claim 1 of the '535 Patent.

ANSWER: Denied.

56. DBR, therefore, manufactured, promoted, advertised, imported, offered for sale, and/or sold within the United States and/or imported the Rhino 180 hunting blinds directly infringing at least Claim 1 of the '535 Patent either literally or under the doctrine of equivalents, in violation of 35 U.S.C. § 271(a).

ANSWER: Denied.

57. DBR's aforesaid activities have been without authority and/or license from RCHB and are considered intentional and willful.

ANSWER: Denied.

58. RCHB is entitled to recover from DBR the damages sustained by RCHB as a result of DBR's wrongful acts in an amount subject to proof at trial, which, by law, cannot be less than a reasonable royalty, together with interest and costs as fixed by this Court under 35 U.S.C. § 284.

ANSWER: Denied.

59. DBR had actual notice of the '535 Patent at least as early as August of 2022, and DBR's infringement of RCHB's exclusive rights under the '535 Patent will continue to damage RCHB, causing irreparable harm for which there is no adequate remedy at law, unless enjoined by this Court.

ANSWER: Denied.

PRAYER FOR RELIEF

To the extent that any response is required, DBR denies that RCHB is entitled to any relief, judgment, or order with respect to DBR whatsoever. DBR specifically denies all of the allegations in subparagraphs (A) – (F) of RCHB's Prayer for Relief.

Further, any claim by Plaintiff for damages is limited under 35 U.S.C. § 287.

Further, Plaintiff is not entitled to an injunction with respect to the '535 patent under any theory because Plaintiff has not and will not suffer irreparable harm, Plaintiff does not practice the '535 patent, Plaintiff is not without adequate remedy at law, and/or public policy concerns weigh against any equitable relief.

Further, any claim by RCHB for increased damages due to alleged willful infringement of the '535 patent is improper as Plaintiff cannot show that DBR knew or should have known that its

actions constituted infringement of a valid claim of the '535 patent or otherwise meet the requirements for willful infringement.

DBR'S AFFIRMATIVE DEFENSES

Without admitting or acknowledging that it bears the burden of proof as to any of the defenses set forth herein, DBR alleges the following as affirmative defenses to the Complaint and the relief sought therein:

FIRST AFFIRMATIVE DEFENSE

Plaintiff's Complaint fails to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

DBR does not infringe, and has not infringed, any claim of the '535 patent, literally, directly, indirectly, contributorily, by way of inducement, and/or under the doctrine of equivalents.

THIRD AFFIRMATIVE DEFENSE

All of the claims of the '535 patent are invalid for failure to meet the requirements of the Patent Act, 35 U.S.C. § 1, *et seq.*, including, but not limited to, one or more of 35 U.S.C. §§ 101, 102, 103, and/or 112.

FOURTH AFFIRMATIVE DEFENSE

Plaintiff is barred, in whole or in part, under principles of equity, including laches, prosecution laches, acquiescence, implied license, waiver, estoppel, unclean hands, and/or any other equitable remedy. To that end, by reason of the proceedings in the U.S. Patent and Trademark Office during the prosecution of the application resulting in the issuance of the '535 patent, Plaintiff is estopped from claiming infringement by DBR of one or more claims of the '535 patent.

RESERVATION OF RIGHTS

DBR hereby gives notice that it intends to rely upon any other defense that may become available or appear during the discovery proceedings in this case and reserves the right to amend its Answer and Affirmative Defenses to assert any such defense.

DEMAND FOR JURY TRIAL

DBR requests a jury trial on all issues so triable.

DBR FINANCE, INC.’S COUNTERCLAIMS AGAINST RUGGED CROSS HUNTING BLINDS, LLC FOR A DECLARATION OF NON-INFRINGEMENT AND INVALIDITY

Pursuant to Rule 13 of the Federal Rules of Civil Procedure, DBR Finance, Inc. (“DBR”) asserts the following Counterclaims against Rugged Cross Hunting Blinds, LLC. (“RCHB” or “Plaintiff”). DBR reserves the right to amend to assert additional counterclaims which may be revealed during discovery.

NATURE AND BASIS OF ACTION

1. This is an action arising under the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, and the United States Patent Act, 35 U.S.C. § 1 *et seq.* DBR respectfully requests declarations that: (i) it does not infringe any valid, enforceable claim of U.S. Patent No. 11,399,535 (“the ’535 Patent”); and (ii) the claims of the ’535 Patent are invalid.

THE PARTIES

2. DBR is a corporation and existing under the laws of the state of Ohio. DBR and maintains a place of business located at 177 Reaser Court, Elyria, Ohio.

3. According to Plaintiff’s Complaint, RCHB, is a limited liability company organized and existing under the laws of the State of Florida. RCHB maintains its principal place of business at 15206 Tilwood Place, Tampa, Florida 33618.

JURISDICTION AND VENUE

4. Subject to DBR’s defenses and denials, this Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331, 1332, and 1338, and the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202. This Court also has supplemental jurisdiction over DBR’s Counterclaims under 28 U.S.C. § 1367.

5. Subject to DBR’s defenses and denials, and any request to seek transfer of venue under 28 U.S.C. § 1404(a), personal jurisdiction and venue are proper in this District under 28

U.S.C. §§ 1391(b), 1391(c), and 1400(b), because, among other reasons, Plaintiff has submitted to the venue of this Court by filing its Complaint here.

FACTUAL ALLEGATIONS

6. Upon information and belief, Plaintiff purports to be the owner by assignment of the '535 Patent.

7. DBR does not infringe directly or indirectly, by inducement or by contribution, any valid, enforceable claim of the '535 Patent.

8. Upon information and belief, all claims of the '535 Patent are invalid for failure to meet the requirements of the Patent Act, 35 U.S.C. § 1 *et seq.*, including, but not limited to, 35 U.S.C. §§ 101, 102, 103, and/or 112.

9. Prior to September 27, 2022, DBR sold the Rhino 180 Hunting Blind to Walmart.

10. On September 27, 2022 Plaintiff sent a letter to Mr. John Kinton of the Walmart Legal Department demanding that Walmart cease and desist “further selling” the Rhino 180 Hunting Blind on the basis that the product infringed the '535 Patent. A true and correct copy of Plaintiff's September 27, 2022 Letter to Walmart is attached as **Exhibit 1** and incorporated by reference.

11. Since Plaintiff sent its letter DBR has lost sales and other business opportunities.

FIRST COUNTERCLAIM
(Declaratory Judgment of Non-Infringement)

12. DBR realleges and reincorporates the allegations of Paragraphs 1 through 11, inclusive, of its Counterclaims as if set forth here in full.

13. DBR has not infringed and does not directly or indirectly infringe (such as by inducement or contributory infringement) any valid and enforceable claim of the '535 Patent and has not otherwise committed any acts of patent infringement in violation of 35 U.S.C. § 271.

14. An actual case and controversy exist between DBR and Plaintiff based on Plaintiff having filed the Complaint against DBR alleging infringement of the '535 Patent.

15. DBR has been injured and damaged by Plaintiff's lawsuit.

16. DBR therefore seeks a declaration that it has not infringed, and does not directly or indirectly infringe, literally or under the doctrine of equivalents, any valid and enforceable claim of the '535 Patent.

SECOND COUNTERCLAIM
(Declaratory Judgment of Invalidity)

17. DBR realleges and reincorporates the allegations of Paragraphs 1 through 16, inclusive, of its Counterclaims as if set forth here in full.

18. The claims of the '535 Patent are invalid for failing to meet the conditions for patentability in 35 U.S.C. § 1 *et seq.*, including §§ 101, 102, 103, and/or 112.

19. An actual controversy exists between DBR and Plaintiff based on Plaintiff having filed the Complaint against DBR alleging infringement of the '535 Patent.

20. DBR has been injured and damaged by Plaintiff's lawsuit.

21. DBR therefore seeks a declaration that the '535 Patent is invalid for failing to meet the conditions for patentability in 35 U.S.C. § 1 *et seq.*

THIRD COUNTERCLAIM
(Tortious Interference with Contract)

22. DBR realleges and reincorporates the allegations of Paragraphs 1 through 21, inclusive, of its Counterclaims as if set forth here in full.

23. Prior to September 27, 2022, DBR had a contractual relationship with Walmart whereby it sold DBR's products on its websites and physical stores, nationwide.

24. Plaintiff is aware of these relationships, as evidenced by the cease and desist letter Plaintiff sent to Walmart. See Exhibit 1.

25. By sending demand letters to DBR's retailers, Plaintiff knowingly and intentionally interfered with DBR's contracts and relationships with its retailers.

26. Upon information and belief, the claims made by RCBH against Walmart were objectively baseless because the '585 Patent is invalid and unenforceable.

27. Upon information and belief, RCHB knew or should have known that the '585 Patent was invalid and unenforceable.

28. RCHB's cease and desist letter to Walmart resulted in DBR losing sales and other business opportunities.

29. As a result of Plaintiff's tortious interference, DBR suffered damages.

PRAYER FOR RELIEF

WHEREFORE, DBR respectfully requests a judgment against Plaintiff as follows:

- A. that the Court dismiss with prejudice Plaintiff's Complaint;
- B. that the Court deny Plaintiff any relief against DBR;
- C. that the Court enter a judgment that the '535 Patent is invalid and/or unenforceable;
- D. that the Court enter a judgment that DBR does not infringe any claim of the '535 Patent;
- E. that the Court enter a judgment that RCHB tortiously interfered with DBR's contracts;
- F. that the Court declare this is an exceptional case under 35 U.S.C. § 285 and award DBR its costs and attorneys' fees; and
- G. that the Court award DBR any and all other relief to which it may be entitled, or which the Court deems just and proper.

JURY DEMAND

DBR requests a trial by jury on all issues so triable.

Dated: December 1, 2023

Respectfully submitted,

By: /s/ Dennis J. Abdelnour

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CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system on December 1, 2023.

/s/ Dennis J. Abdelnour

Attorney for DBR Finance, Inc.