

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION**

**GPS INDUSTRIES LLC**

**Plaintiff,**

**vs.**

**DENNCO, INC.,**

**Defendant.**

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**Case No. 1:12-cv-00332**

**Jury Demanded**

**PLAINTIFF'S COMPLAINT FOR  
PATENT INFRINGEMENT AND DEMAND FOR JURY TRIAL**

GPS Industries, LLC files this Original Complaint for Patent Infringement and Demand for Jury Trial against Dennco, Inc., and alleges as follows:

**THE PARTIES**

1. GPS Industries, LLC ("GPSi") is a Delaware limited liability company with a place of business located at 8500 N. MOPAC, Suite 502, Austin, Travis County, Texas 78759. GPSi manufactures, sells, and services GPS-based, golf course management and information systems.

2. Dennco, Inc. ("DENNCO") is a New Hampshire corporation with a principal place of business at 21 Northwestern Drive, Salem, New Hampshire 03079. DENNCO does business in Texas, including business within this judicial district. DENNCO may be served with process by serving its registered agent, James J. Dennesen, located at 21 Northwestern Drive, Salem, New Hampshire 03079.

## THE PATENTS

### Patent No. 5,438,518

3. On August 1, 1995, U.S. Patent No. 5,438,518, entitled “Player Positioning and Distance Finding System” (“the ‘518 patent”) was duly and legally issued. A true and correct copy of the ‘518 is attached as **Exhibit A**.

4. On or about October 27, 2008, a reexamination of the ‘518 patent by the United States Patent and Trademark Office (“PTO”) was requested by a third party. The PTO granted the request for reexamination and commenced the reexamination of the ‘518 patent.

5. On or about October 6, 2010, the reexamination proceedings concluded with the PTO issuing a Notice of Intent to Issue a Reexamination Certificate confirming that all claims of the ‘518 patent that were subject of the reexamination were determined to be patentable as amended.

6. On January 18, 2011, the PTO issued Ex Parte Reexamination Certificate (7989<sup>th</sup>) for U.S. Patent No. 5,438,518, entitled “Player Positioning and Distance Finding System.” A true and correct copy of the Ex Parte Reexamination Certificate (along with a Certificate of Correction) is attached as **Exhibit B**.

7. Pursuant to 35 U.S.C. § 282, the ‘518 patent is presumed valid.

8. GPSi is the owner by assignment of the ‘518 patent and has all substantial rights in and to the ‘518 patent, including the right to sue and collect damages for past, present, and future infringement of the ‘518 patent.

9. The ‘518 patent generally relates to methods and systems for GPS-based golf course distance measuring and tracking.

**Patent No. 6,263,279**

10. On July 17, 2001, U.S. Patent No. 6,263,279, entitled “Memory for GPS-Based Golf Distancing System” (“the ‘279 patent”) was duly and legally issued. A true and correct copy of the ‘279 is attached as **Exhibit C**.

11. Pursuant to 35 U.S.C. § 282, the ‘279 patent is presumed valid.

12. GPSi is the owner by assignment of the ‘279 patent and has all substantial rights in and to the ‘279 patent, including the right to sue and collect damages for past, present, and future infringement of the ‘279 patent.

13. The ‘279 patent generally relates to a system for GPS-based golf course distance measuring and tracking.

**JURISDICTION & VENUE**

14. This action arises under the patent laws of the United States, Title 35 United States Code, particularly §§ 271 and 281.

15. This Court has jurisdiction over the claim for patent infringement under 28 U.S.C. § 1338(a). Venue is proper in this Court under Title 28 United States Code §§ 1391(b) and (c) and 1400(b).

16. DENNCO, upon information and belief, transacts business in this district by using, selling or offering to sell products as described and claimed in the ‘518 and ‘279 patents and/or by conducting other business in this judicial district sufficient to render it subject to jurisdiction in this district.

## **COUNT 1 – PATENT INFRINGEMENT**

### **Dennco, Inc.’s Infringement of the ‘518 and ‘279 Patents**

17. DENNCO has infringed and continues to directly infringe, either literally or by equivalents, the ‘518 and ‘279 patents by making, using, selling, offering to sell, leasing, importing and/or exporting GPS-based range finders, and contributing to and or inducing infringement of one or more claims of the ‘518 and ‘279 patent.

18. Upon information and belief, DENNCO sells GPS-based range finders in the United States on behalf of Sonostar, Inc., a Taiwanese corporation, an original design manufacturer of sports technology hardware and software, including GPS-based range finders and golf training aids under the trade name of “Sonocaddie,” including the Sonocaddie V500, the Sonocaddie V300+, and the Sonocaddie V300.

19. The DENNCO products that infringe the ‘518 and ‘279 patents include, but are not limited to, “Sonocaddie” rangefinders such as the V500, the V300+, and the V300 (collectively referred to herein as the “DENNCO Rangefinder Systems”).

20. In addition to its direct infringement of the ‘518 and ‘279 patents, DENNCO has infringed and continues to infringe, either literally or by equivalents, the ‘518 and ‘279 patents by actively inducing direct infringement by end-users who purchase and use the aforementioned DENNCO Rangefinder Systems.

21. Upon information and belief, DENNCO had actual knowledge of the ‘518 and ‘279 patents prior to the filing of this complaint through Sonostar, Inc., and/or its now bankrupt distributor, SkyShot USA Inc., the latter of which was sued for infringement of the ‘518 patent on or about May 10, 2010. *GPS Industries, LLC v. Bushnell Corporation, et al.*, Case No. 1:11-

cv-00385-LY, in the United States District Court for the Western District of Texas, Austin Division.

22. Since becoming aware of at least the ‘518 and ‘279 patents, DENNCO has continued to intentionally, actively, and knowingly both advertise about and sell, or offer to sell, the DENNCO Rangefinder Systems at least through its own website, <http://denncobrand.com/>, which links to Sonostar, Inc.’s website, <http://sonocaddie.com/>.

23. Since becoming aware of at least the ‘518 and ‘279 patents, DENNECO’s said advertising and sales have intentionally, actively, and knowingly contained and continue to contain instructions, directions, suggestions, and/or invitations that intentionally, actively, and knowingly invite, entice, lead on, influence, prevail on, move by persuasion, cause, and/or influence the public, DENNCO’s distributors, DENNCO’s retailers, DENNCO’s website users, customers, and/or end users to make, use, sell, and/or offer to sell the DENNCO Rangefinder Systems, and/or use the DENNCO Rangefinder Systems to practice the inventions claimed in the ‘518 and ‘279 patents, and thus directly infringe these patents, either literally or by equivalents.

24. Since becoming aware of the ‘518 and ‘279 patents, DENNCO was willfully blind, knew, or should have known that its distributors, retailers, website users, customers, and/or end users’ acts relative to making, using, selling, and/or offering to sell the DENNCO Rangefinder Systems, and/or using the DENNCO Rangefinder Systems to practice the inventions claimed in the ‘518 and ‘279 patents, directly infringe these patents, either literally or by equivalents. For these reasons, DENNCO is liable for inducing infringement of the ‘518 and ‘279 patents.

25. The DENNCO Rangefinder Systems and the components thereof sold, made, operated, and/or serviced by DENNCO constitute a material part of the inventions claimed in the

‘518 and ‘279 patents and are not staple articles or commodities of commerce suitable for substantial non-infringing use.

26. Since becoming aware of the ‘518 and ‘279 patents, DENNCO was willfully blind, knew, or should have known that the DENNCO Rangefinder Systems and the components thereof were especially made and/or especially adapted for use in infringing the ‘518 and ‘279 patents.

27. Since becoming aware of the ‘518 and ‘279 patents, DENNCO was willfully blind, knew, or should have known that the DENNCO Rangefinder Systems and the components thereof were not a staple article or commodity of commerce suitable for substantial noninfringing use.

28. By selling, offering to sell, or importing into the United States the DENNCO Rangefinder Systems and the components thereof, DENNCO has contributed to the infringement of distributors, retailers, customers, and/or end-users who sell, offer for sale, purchase, make, and/or use the DENNCO Rangefinder Systems to practice the inventions claimed in the ‘518 and ‘279 patents, and thus directly infringe these patents, either literally or by the doctrine of equivalents.

29. DENNCO knew or should have known that its actions would induce or contribute to the direct infringement, either literally or by equivalents, of the ‘518 and ‘279 patents by end users who use the aforementioned DENNCO Rangefinder Systems.

30. Upon information and belief, DENNCO provides continuing support services to end-users with the intent of enabling them to practice the methods claimed in the ‘518 patent without a license.

31. By making, using, selling, offering to sell, leasing, importing and/or exporting the DENNCO Rangefinder Systems, DENNCO has infringed and continues to infringe, either directly (literally or by equivalents) or indirectly (by inducing infringement or contributory infringement, either literally or by equivalents), at least claims 1, 33, and 41 of the '518 patent and at least claim 3 of the '279 patent.

32. DENNCO infringes the '518 and '279 patents either literally or under the doctrine of equivalents.

### **DAMAGES**

33. The infringement of the '518 and '279 patents as alleged above has injured, and continues to injure, GPSi, and GPSi thus is entitled to recover damages adequate to compensate for DENNCO's infringement, which in no event can be less than a reasonable royalty.

### **PRAYER FOR RELIEF**

WHEREFORE, GPSi prays for the following relief:

1. For entry of judgment that:
  - A. DENNCO has infringed one or more claims of the '518 and '279 patents;
  - B. DENNCO account for and pay to GPSi all damages caused by the infringement of the '518 and '279 patents, which by statute can be no less than a reasonable royalty;
  - C. GPSi be granted pre-judgment and post-judgment interest on the damages caused to it by reason of DENNCO's infringement of the '518 and '279 patents;
  - D. DENNCO be required to account to GPSi for all gains and profits derived by defendant from the described infringing acts.
  - E. GPSi be granted its attorneys' fees in this action;

- F. That costs be awarded to GPSi; and
- G. That GPSi be granted such other and further relief that is just and proper under the circumstances.

**DEMAND FOR JURY TRIAL**

GPSi demands a jury trial on all claims and issues so triable.

April 11, 2012

Respectfully Submitted,

s/ Stephen W. Abbott

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