

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

**DOGLEG RIGHT PARTNERS, LP AND
DOGLEG RIGHT CORPORATION,**

Plaintiffs,

v.

TAYLORMADE GOLF COMPANY, INC.,

Defendant.

Civil Action No. 2:07-CV-533-TJW/CE

**TAYLOR MADE’S ANSWER TO COMPLAINT FOR PATENT
INFRINGEMENT; AFFIRMATIVE DEFENSES; AND
COUNTERCLAIMS**

ANSWER TO COMPLAINT

In response to the COMPLAINT dated December 7, 2007 (“Complaint”), filed by Plaintiffs Dogleg Right Partners, LP and Dogleg Right Corporation (collectively, “Dogleg”), Defendant Taylor Made Golf Company, Inc. (“Taylor Made”), misnamed TaylorMade Golf Company, Inc. in the Complaint, admits, denies, and avers as follows:

NATURE OF THE ACTION

1. In response to paragraph 1 of the Complaint, Taylor Made admits that the Complaint purports to state a civil action for patent infringement, but denies that Taylor Made has any liability for alleged patent infringement. Except as so admitted, Taylor Made denies the averments of paragraph 1 of the Complaint.

THE PARTIES

2. In response to paragraph 2 of the Complaint, Taylor Made admits that Plaintiff Dogleg Right Partners, LP is a Texas limited partnership. Taylor Made is without knowledge or information sufficient to form a belief as to the truth of the remaining averments in paragraph 2 of the Complaint and, therefore, denies such averments.

3. In response to paragraph 3 of the Complaint, Taylor Made admits that Plaintiff Dogleg Right Corporation is a Texas corporation. Taylor Made is without knowledge or information sufficient to form a belief as to the truth of the remaining averments in paragraph 3 of the Complaint and, therefore, denies such averments.

4. Taylor Made admits that it is a Delaware corporation having a place of business in Carlsbad, California, and that William Reimus is its registered agent. Except as so admitted, Taylor Made denies the averments of paragraph 4 of the Complaint.

JURISDICTION AND VENUE

5. In response to paragraph 5 of the Complaint, Taylor Made admits that the Complaint purports to state a civil action for patent infringement arising under the laws of the United States relating to patents, 35 U.S.C. § 101 *et seq.*, but denies that Taylor Made has any liability for alleged patent infringement.

6. Taylor Made admits the averments of paragraph 6 of the Complaint.

7. In response to paragraph 7 of the Complaint, Taylor Made admits that it is subject to personal jurisdiction in this judicial district. Except as so admitted, Taylor Made denies the averments of paragraph 7 of the Complaint.

8. In response to paragraph 8 of the Complaint, Taylor Made admits that venue is proper in this judicial district. Except as so admitted, Taylor Made denies the averments of paragraph 8 of the Complaint.

THE '169 PATENT AND '852 PATENT

9. In response to paragraph 9 of the Complaint, Taylor Made admits that U.S. Patent No. 7,189,169 (“the '169 patent”) is entitled “Customizable Center-of-Gravity Golf Club Head,” that the '169 patent was issued by the United States Patent and Trademark Office on March 13, 2007, and that a copy of the '169 patent is attached as Exhibit A to the Complaint, but denies that the '169 patent was duly and legally issued. Taylor Made is without knowledge or information sufficient to form a belief as to the truth of the remaining averments of paragraph 9 of the Complaint and, therefore, denies such averments.

10. In response to paragraph 10 of the Complaint, Taylor Made admits that U.S. Patent No. 7,004,852 (“the '852 patent”) is entitled “Customizable Center-of-Gravity Golf Club Head,” that the '852 patent was issued by the United States Patent and Trademark Office on February 28, 2006, and that a copy of the '852 patent is attached as Exhibit B to the Complaint, but denies that the '852 patent was duly and legally issued. Taylor Made is without knowledge or information sufficient to form a belief as to the truth of the remaining averments of paragraph 10 of the Complaint and, therefore, denies such averments.

COUNT 1:

INFRINGEMENT OF THE '169 PATENT BY TAYLOR MADE

11. In response to paragraph 11 of the Complaint, Taylor Made incorporates by reference each and every response contained in paragraphs 1-10 above as though fully set forth herein.

12. Taylor Made denies the averments of paragraph 12 of the Complaint.

13. Taylor Made denies the averments of paragraph 13 of the Complaint.

14. Taylor Made denies the averments of paragraph 14 of the Complaint.

15. Taylor Made denies the averments of paragraph 15 of the Complaint.

16. Taylor Made denies the averments of paragraph 16 of the Complaint.

17. Taylor Made denies the averments of paragraph 17 of the Complaint.

COUNT 2:

INFRINGEMENT OF THE '852 PATENT BY TAYLOR MADE

18. In response to paragraph 18 of the Complaint, Taylor Made incorporates by reference each and every response contained in paragraphs 1-10 above as though fully set forth herein.

19. Taylor Made denies the averments of paragraph 19 of the Complaint.

20. Taylor Made denies the averments of paragraph 20 of the Complaint.

21. Taylor Made denies the averments of paragraph 21 of the Complaint.

22. Taylor Made denies the averments of paragraph 22 of the Complaint.

23. Taylor Made denies the averments of paragraph 23 of the Complaint.

24. Taylor Made denies the averments of paragraph 24 of the Complaint.

PRAYER

25. Taylor Made denies that Dogleg is entitled to judgment or to any of the relief requested in paragraphs “a” through “h” of the prayer for relief in the Complaint.

AFFIRMATIVE DEFENSES

First Affirmative Defense

26. Taylor Made has not infringed any valid claim of the '169 patent or the '852 patent (collectively, the “Patents-in-Suit”), either literally or under the doctrine of equivalents, has not induced infringement of any valid claim of the Patents-in-Suit, and has not committed acts constituting contributory infringement of any valid claim of the Patents-in-Suit.

Second Affirmative Defense

27. Each and every claim of the Patents-in-Suit that Dogleg avers has been infringed by Taylor Made is invalid and/or unenforceable under one or more provisions of the Patent Laws of the United States, including without limitation, 35 U.S.C. §§ 102, 103, and 112.

COUNTERCLAIM FOR DECLARATORY RELIEF

Counter-Claimant Taylor Made Golf Company (“Taylor Made”) for its counterclaim against Counter-Defendants Dogleg Right Partners, LP and Dogleg Right Corporation (collectively, “Dogleg”), avers as follows:

THE PARTIES

28. Taylor Made Golf Company, Inc. is a corporation organized under the laws of Delaware, with a place of business in Carlsbad, California.

29. On information and belief, Dogleg Right Partners, LP is a limited partnership organized under the laws of Texas.

30. On information and belief, Dogleg Right Corporation is a corporation organized under the laws of Texas.

JURISDICTION

31. This Court has supplemental jurisdiction over this counterclaim pursuant to 28 U.S.C. §§ 1367, 2201, and 2202. This counterclaim seeks a declaration of non-infringement and/or invalidity of U.S. Patent No. 7,189,169 (“the '169 patent”) and U.S. Patent No. 7,004,852 (“the '852 patent”).

32. In a COMPLAINT dated December 7, 2007 (“Complaint”), Counter-Defendants aver, among other things, that Counter-Defendant Dogleg Right Corporation is the assignee of the '169 patent and the '852 patent; that Counter-Defendant Dogleg Right Partners, LP is the exclusive licensee of the '169 patent and the '852 patent; and that Counter-Claimant Taylor Made has infringed, has induced others to infringe, and/or has committed acts of contributory infringement of one or more claims of the '169 patent and the '852 patent by making, using, offering for sale, and/or selling golf club products embodying the patented inventions.

33. On information and belief, Counter-Defendants Dogleg's averments of infringement in the Complaint are directed at one or more Taylor Made golf clubs using Taylor Made's movable weight technology, including for example the TaylorMade r7 Quad driver as depicted in Exhibit A attached hereto.

34. Counter-Claimant Taylor Made denies liability for alleged infringement of the '169 patent and the '852 patent.

35. Accordingly, there is an actual and justiciable controversy between Counter-Claimant Taylor Made and Counter-Defendants Dogleg as set forth hereinabove.

FIRST COUNT:
DECLARATION OF NON-INFRINGEMENT AND
INVALIDITY OF U.S. PATENT NO. 7,189,169

36. Counter-Claimant Taylor Made repeats and realleges each and every allegation contained in paragraphs 28-35 above as though fully set forth herein.

37. Taylor Made has not infringed any valid claim of the '169 patent, either literally or under the doctrine of equivalents, has not induced infringement of any valid claim of the '169 patent, and has not committed acts constituting contributory infringement of any valid claim of the '169 patent.

38. Upon information and belief, each and every claim of the '169 patent that Dogleg avers has been infringed by Taylor Made is invalid under one or more provisions of the Patent Laws, including, without limitation, 35 U.S.C. §§ 102, 103, and 112.

39. A judicial declaration that Taylor Made's activities and products have not resulted in infringement of any valid claim of the '169 patent is necessary and appropriate so that Taylor Made can ascertain its rights and duties with respect to designing, developing, manufacturing, importing, using, selling, and offering to sell its products.

SECOND COUNT:
DECLARATION OF NON-INFRINGEMENT AND
INVALIDITY OF U.S. PATENT NO. 7,004,852

40. Counter-Claimant Taylor Made repeats and realleges each and every allegation contained in paragraphs 28-35 above as though fully set forth herein.

41. Taylor Made has not infringed any valid claim of the '852 patent, either literally or under the doctrine of equivalents, has not induced infringement of any valid claim of the '852 patent, and has not committed acts constituting contributory infringement of any valid claim of the '852 patent.

42. Upon information and belief, each and every claim of the '852 patent that Dogleg avers has been infringed by Taylor Made is invalid under one or more provisions of the Patent Laws, including, without limitation, 35 U.S.C. §§ 102, 103, and 112.

43. A judicial declaration that Taylor Made's activities and products have not resulted in infringement of any valid claim of the '852 patent is necessary and appropriate so that Taylor Made can ascertain its rights and duties with respect to designing, developing, manufacturing, importing, using, selling, and offering to sell its products.

PRAYER

WHEREFORE, Taylor Made prays for the following:

- a. Dismissal with prejudice of Dogleg's Complaint and all claims for relief therein and entry of an order denying Dogleg any relief in this action;
- b. Entry of a declaratory judgment adjudging that Taylor Made has not infringed any valid claim of U.S. Patent Nos. 7,189,169 and 7,004,852;
- c. Entry of a declaratory judgment adjudging that each and every claim of U.S. Patent Nos. 7,189,169 and 7,004,852 that Dogleg avers has been infringed by Taylor Made is invalid;
- d. An injunction permanently enjoining and restraining Dogleg and its officers, agents, subsidiaries, partners, servants, employees, and attorneys, and those persons in active concert or participation with them from asserting, enforcing, or threatening or attempting

to enforce U.S. Patent Nos. 7,189,169 and 7,004,852 against Taylor Made and its distributors and customers;

- f. A declaration that this action is an exceptional case and an award to Taylor Made of its attorneys' fees and expenses pursuant to 35 U.S.C. § 285;
- g. An award to Taylor Made of its costs of suit; and
- h. A grant to Taylor Made of such other relief as the Court may deem just and proper.

Dated: January 25, 2008

Respectfully submitted,

By: /s/ John F. Bufe
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***Attorneys for Defendant and Counter-Claimant
Taylor Made Golf Company, Inc.***

CERTIFICATE OF SERVICE

I hereby certify that all counsel of record who have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system per Local Rule CV-5(a)(3) on January 25, 2008. Any other counsel of record will be served by first class mail on this same date.

/s/ John F. Bufe
John F. Bufe