

PATENT ASSIGNMENT

Electronic Version v1.1
 Stylesheet Version v1.1

SUBMISSION TYPE:	NEW ASSIGNMENT
------------------	----------------

NATURE OF CONVEYANCE:	LIEN
-----------------------	------

CONVEYING PARTY DATA	
Name	Execution Date
Onsport LLC d/b/a Stratos	01/19/2007

RECEIVING PARTY DATA	
Name:	Specialized Bicycle Components, Inc.
Street Address:	15130 Concord Circle
City:	Morgan Hill
State/Country:	CALIFORNIA
Postal Code:	95037

PROPERTY NUMBERS Total: 8	
Property Type	Number
Patent Number:	4958706
Patent Number:	5332068
Patent Number:	5462140
Patent Number:	5598903
Patent Number:	5823305
Patent Number:	5954167
Patent Number:	6119830
Patent Number:	6253889

CORRESPONDENCE DATA	
Fax Number:	(949)760-9502
<i>Correspondence will be sent via US Mail when the fax attempt is unsuccessful.</i>	
Phone:	9497600404
Email:	efiling@kmob.com
Correspondent Name:	Knobbe Martens Olson & Bear
Address Line 1:	2040 Main Street
Address Line 2:	Fourteenth Floor

CH \$320.00 4958706

Address Line 4: Irvine, CALIFORNIA 92614

ATTORNEY DOCKET NUMBER:

SPECBIC.165IS

NAME OF SUBMITTER:

Edward A. Schlatter

Total Attachments: 8

source=Onsport_Lien_001#page1.tif

source=Onsport_Lien_001#page2.tif

source=Onsport_Lien_001#page3.tif

source=Onsport_Lien_001#page4.tif

source=Onsport_Lien_001#page5.tif

source=Onsport_Lien_001#page6.tif

source=Onsport_Lien_001#page7.tif

source=Onsport_Lien_001#page8.tif

NOTICE OF JUDGMENT LIEN

FOLLOW INSTRUCTIONS CAREFULLY (front and back of form)

A. NAME & PHONE OF FILER'S CONTACT (optional)

Michael K. Friedland, Esq. (949) 721-6303

B. SEND ACKNOWLEDGMENT TO: (NAME AND ADDRESS)

Michael K. Friedland, Esq.
KNOBBE, MARTENS, OLSON & BEAR, LLP
2040 Main Street
Fourteenth Floor
Irvine, CA 92614

THIS SPACE FOR FILING OFFICE USE ONLY

1. JUDGMENT DEBTOR'S EXACT LEGAL NAME - Insert only one name, either 1a or 1b. Do not abbreviate or combine names.

1a. ORGANIZATION'S NAME

ONSPORT, LLC d/b/a STRATOS

1b. INDIVIDUAL'S LAST NAME

FIRST NAME

MIDDLE NAME

SUFFIX

1c. MAILING ADDRESS

109 SOUTH QUARANTINA STREET

CITY

SANTA BARBARA

STATE

CA

POSTAL CODE

93103

COUNTRY

US

2. JUDGMENT CREDITOR'S NAME - Do not abbreviate or combine names.

2a. ORGANIZATION'S NAME

SPECIALIZED BICYCLE COMPONENTS, INC.

2b. INDIVIDUAL'S LAST NAME

FIRST NAME

MIDDLE

SUFFIX

2c. MAILING ADDRESS

15130 CONCORD CIRCLE

CITY

MORGAN HILL

STATE

CA

POSTAL CODE

95037

COUNTRY

US

3. ALL PROPERTY SUBJECT TO ENFORCEMENT OF A MONEY JUDGMENT AGAINST THE JUDGMENT DEBTOR TO WHICH A JUDGMENT LIEN ON PERSONAL PROPERTY MAY ATTACH UNDER SECTION 697.530 OF THE CODE OF CIVIL PROCEDURE IS SUBJECT TO THIS JUDGMENT LIEN.

A. Title of court where judgment was entered: UNITED STATES DISTRICT COURT FOR THE CENTRAL

DISTRICT OF CALIFORNIA, WESTERN DIVISION

B. Title of the action: SPECIALIZED BICYCLE COMPONENTS, INC. v ONSPORT LLC dba STRATOS

C. Number of this action: CV 05-00486 DDP (PJWx)

D. Date judgment was entered: JANUARY 18, 2007

E. Date of subsequent renewals of judgment (if any): NONE

F. Amount required to satisfy judgment at date of this notice: \$ 192,660.00

G. Date of this notice: JANUARY 19, 2007

4. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct:

SIGNATURE - SEE INSTRUCTION NO. 4

Dated: JANUARY 19, 2007

(If not indicated, use same as date in item 3G.)

FOR: KNOBBE, MARTENS, OLSON & BEAR, LLP

ENTERED
CLERK, U.S. DISTRICT COURT
JAN 18 2007
CENTRAL DISTRICT OF CALIFORNIA
BY *[Signature]* DEPUTY

✓ Priority
✓ Send
✓ Clsd
✓ Enter
NO JS-5/JS-6
JS-2/JS-3
Scan Only

SCANNED

THIS CONSTITUTES NOTICE OF ENTRY
AS REQUIRED BY FRCP, RULE 77(d).

FILED
CLERK, U.S. DISTRICT COURT
JAN 17 2007
CENTRAL DISTRICT OF CALIFORNIA
BY *[Signature]* DEPUTY

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

[Handwritten scribble]

11 SPECIALIZED BICYCLE) Case No. CV 05-00486 DDP (PJWx)
12 COMPONENTS, INC., a)
13 California corporation,) ORDER RE: ORDER SUPPLEMENTING
14 Plaintiff,) AND AMENDING DEFAULT JUDGMENT
15 v.) [Motion filed on November 9,
16 ONSPORT, LLC, a California) 2006]
17 limited liability company)
18 d/b/a STRATOS,)
19 Defendants.)

20 This matter comes before the Court on the plaintiff's motion
21 for judgment against the defendant. After reviewing the materials
22 submitted by the parties and conducting an evidentiary hearing, the
23 Court grants the motion and adopts the following order.

24 **I. BACKGROUND**

25 The dispute in this case involves the plaintiff Specialized
26 Bicycle Components, Inc.'s allegations that the defendant, OnSport,
27 LLC, infringed on United States Patent Number 6,722,678
28 ("the '678 patent"). The '678 patent describes a type of

118

1 bicycle suspension assembly. On December 29, 2004 and January 14,
2 2005, the plaintiff sent letters to the defendant asserting that
3 the defendant's TRX shock absorber and ID cartridge were infringing
4 the '678 patent. On January 20, 2005, the plaintiff filed a
5 complaint alleging that the defendant was infringing on the '678
6 patent.

7 Pursuant to court order, the plaintiff filed an amended
8 complaint on May 25, 2006 to add a claim for infringement of U.S.
9 Patent No. 6,991,076 ("the '076 patent"). Counsel for the
10 defendant withdrew shortly thereafter. Accordingly, the Court
11 stayed this case for 30 days and instructed the defendant to retain
12 new counsel to prepare its answer.

13 On June 26, 2006, the plaintiff received a document signed by
14 Mr. Mete that claimed to be the defendant's answer. Mr. Mete is
15 neither a party to the lawsuit nor an attorney.

16 On July 31, 2006, the plaintiff filed a request for entry of
17 default judgment. The Court granted the plaintiff's request and
18 ordered the defendant to comply with the injunctions described in
19 its order. However, the Court postponed determining the
20 appropriate amount of damages and attorney fees until it could hold
21 an evidentiary hearing on those issues.

22 On November 9, 2006, the plaintiff filed this motion for
23 judgment, including damages, interest, costs, and attorney fees.
24 Then, in the week before the hearing was scheduled, the defendant
25 filed an opposition to the plaintiff's motion and a request for new
26 counsel. In light of this development, the Court delayed the
27 hearing for one week to give the plaintiff the opportunity to
28 respond.

1 The Court conducted an evidentiary hearing on these issues on
2 December 18, 2006.

3
4 **II. DISCUSSION**

5 The plaintiff is seeking treble statutory damages, post-
6 judgment interest, costs, and attorney fees.¹ The Court addresses
7 these requests in turn.

8 1. Statutory Damages

9 Title 35 U.S.C. section 284 states that "[u]pon finding for
10 the claimant the court shall award the claimant damages adequate to
11 compensate for the infringement, but in no event less than a
12 reasonable royalty for the use made of the invention by the
13 infringer, together with interest and costs as fixed by the court."
14 35 U.S.C. § 284 (2006). "[W]hen the damages are not found by a
15 jury, the court shall assess them. In either event the court may
16 increase the damages up to three times the amount found or
17 assessed." Id. The Court may receive expert testimony as an aid
18 to the determination of damages or of what royalty would be
19 reasonable under the circumstances. Id.

20 At the evidentiary hearing, the Court heard testimony from the
21 plaintiff's expert regarding the appropriate amount of damages.
22 The plaintiff's expert testified regarding the fifteen factors
23 relevant to the determination of the amount of a reasonable royalty
24 for a patent license. See Georgia-Pacific v. United States Plywood
25 Corp., 318 F.Supp. 1116, 1120 (S.D.N.Y.1970), modified and aff'd,

26
27 ¹ At the evidentiary hearing, the plaintiff waived its
28 request for pre-judgment interest and specified that it is only
seeking post-judgment interest from the defendant.

1 446 F.2d 295 (2d Cir.1971). Based on his calculations, he
2 concluded that a reasonable royalty rate would be 27%. In his
3 opinion, this was the amount "that Specialized and OnSport would
4 have agreed upon if both had been reasonably and voluntarily trying
5 to reach an agreement." (Pl's. Ex. 5.)

6 The Court also heard testimony from the president of OnSport,
7 Michael Mete. Mr. Mete represented that he had worked in the
8 bicycle industry for several years and was familiar with standard
9 royalty rates. He testified that a typical royalty rate for the
10 type of patent at issue would be closer to 2%-6%.

11 After considering the conflicting testimony presented at the
12 hearing, the expert's credentials, his relative inexperience in
13 calculating patent royalty rates in the bicycle industry, and the
14 Georgia-Pacific factors, the Court determines that the appropriate
15 royalty rate is 10%. Applying this rate to the total sales of the
16 infringing product, which amounted to \$56,750, the Court determines
17 that the plaintiff's damages are \$5675. (Summary of Damages
18 Calculation, Pl's. Ex. 3.)

19 The plaintiff has requested that its damages be trebled,
20 pursuant to 35 U.S.C. § 284. The Court awards treble damages;
21 thus, the total damages amount is \$17,205.

22 2. Interest

23 35 U.S.C. § 284 provides that upon finding for the claimant,
24 the court shall award damages, together with interest as fixed by
25 the court. At the hearing, the plaintiff waived its request for
26 pre-judgment interest and specified that it is only seeking post-
27 judgment interest from the defendant. Therefore, the Court awards
28 post-judgment interest at the legal rate.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

3. Costs

The plaintiff requested costs of suit and submitted a Bill of Costs pursuant to Local Rule 54-3. On November 30, 2006, costs were taxed by the Clerk of Court in the amount of \$635 in favor the plaintiff. The Court affirms this award of costs.

4. Attorney Fees

In exceptional cases, the Court may award reasonable attorney fees to the prevailing party. 35 U.S.C. § 285 (2006). The Court has broad discretion in the criteria by which it determines whether to award attorney fees. As the Federal Circuit has held, the "[c]riteria for declaring a case exceptional include willful infringement, bad faith, litigation misconduct, and unprofessional behavior." nCube Corp. v. SeaChange Int'l, Inc., 436 F.3d 1317, 1319 (Fed. Cir. 2006). Brooktree Corp. v. Advanced Mirco Devices, Inc., 977 F.2d 1555, 1582 (Fed. Cir. 1992). There is a general requirement that some willfulness must exist on the part of the losing party before attorney's fees are to be awarded. Cf. Packwood v. Briggs & Stratton Corp., 99 F. Supp. 803 (D. Del. 1951), cert. den. 344 U.S. 844 (1952).

The defendant has argued that this case is not "exceptional" because the infringement was not willful. However, when this Court entered default against the defendant, the substantive allegations of infringement and validity were deemed admitted as true. TeleVideo Systems, Inc. v. Heidenthal, 826 F.2d 915, 917-18 (9th Cir. 1987). Therefore, the Court must find that the defendant's infringement was willful in accordance with the allegations made in the amended complaint.

///

1 Moreover, the plaintiff has presented substantial evidence of
2 the defendant's litigation misconduct, including the defendant's
3 filing of frivolous papers and motions, its failure to obtain new
4 counsel pursuant to the Court's deadline, and its failure to
5 respond to the plaintiff's discovery requests. (Mot. 2-3.) It is
6 the Court's understanding that much of the defendant's lack of
7 professionalism can be explained by the fact that Mr. Mete, who is
8 not an attorney, attempted to represent OnSport himself. However,
9 the Court specifically ordered Mr. Mete to retain counsel, and he
10 had ample time to do so. OnSport's litigation conduct does not
11 weigh in its favor.

12 Accordingly, the Court finds that this is an "exceptional
13 case" within the meaning of 35 U.S.C. § 285 and that the plaintiff
14 should be awarded its reasonable attorney fees. In this case, the
15 plaintiff has requested \$274,000 in attorney fees, representing
16 approximately 680 hours of attorney time at a rate varying between
17 \$250 per hour and \$545 per hour. The plaintiff has also requested
18 148 hours of paralegal and staff time assisting attorneys at rates
19 between \$55 per hour and \$175 per hour. (Friedland Decl. ¶ 3.)
20 The Court has reviewed the plaintiff's billing invoices, which list
21 the total amount of time billed on this case, as well as the total
22 amount of time spent on each of the motions. (Ton Decl., Ex. 4.)
23 On the invoice which lists the total time billed, 22 people are
24 listed. Several of these individuals do not appear on the invoices
25 that list the work completed for each motion. If the time billed
26 for the individual motions is added, the total amounts to
27 approximately \$62,000. The Court understands that certain
28 individuals only worked on this case for short periods of time, and

1 that some of the work completed would not appear on the plaintiff's
2 "motion" invoices. However, the plaintiff's request for \$274,000
3 in attorney fees for a case in which the actual, non-trebled
4 damages are \$5,675, and the amount billed for motions is \$62,000,
5 is unreasonable. Accordingly, the Court awards attorney fees in
6 the amount of \$175,000, based on its review of the plaintiff's
7 invoices.

8
9 **III. CONCLUSION**

10 For the foregoing reasons, the Court grants the motion and
11 awards a total of \$192,660 to the plaintiff as follows:


12 The Court finds that, in accordance with the Georgia-Pacific
13 factors, the reasonable royalty rate is 10%; thus, the damages are
14 \$5,675. Trebling this amount, the plaintiff is hereby awarded
15 \$17,025 in damages.

16 The Court awards the plaintiff \$175,000 in attorney fees and
17 affirms the award of \$635 in costs of suit.

18 The Court notes that post-judgment interest shall apply to
19 these damages.

20
21 IT IS SO ORDERED.

22
23 Dated: 1-17-07


DEAN D. PREGERSON
United States District Judge