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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF INDIANA  
SOUTH BEND DIVISION

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STEPHEN D. HUNT, CLERK  
U.S. DISTRICT COURT  
FOR THE NORTHERN DISTRICT  
OF INDIANA

DA-LITE SCREEN COMPANY, INC., )  
an Indiana corporation, )  
 )  
Plaintiff, )

v. )

BAKER & DANIELS LLP, a limited )  
liability partnership, )  
 )  
Defendant. )

Case No.: 3:08CV 468

JURY TRIAL DEMANDED

Pat. # 6,111,694  
6,137,629

COMPLAINT

Plaintiff Da-Lite Screen Company, Inc. ("Da-Lite" or the "Company") hereby files its Complaint against Defendant Baker & Daniels LLP ("Baker").

NATURE OF THE ACTION

1. This is an action for legal malpractice arising out of Baker's failure to properly advise Da-Lite that Baker, Da-Lite's long-time intellectual property counsel, could not ethically simultaneously represent Da-Lite and Da-Lite's primary competitor Draper Inc. ("Draper") in patent infringement matters and Baker's failure to timely advise Da-Lite concerning the issuance of certain patents to Draper as it had agreed to do. These failures enabled Draper (with Baker acting as Draper's counsel) to blindside Da-Lite with a patent infringement litigation that was brought against Da-Lite pursuant to the patent laws of the United States, 35 U.S.C. § 1 *et seq.* Da-Lite seeks to recover the legal fees and costs incurred to defend that litigation and other damages that would not have occurred but for Baker's professional negligence.

## JURISDICTION AND VENUE

2. This Court has exclusive subject matter jurisdiction over the subject matter of this complaint pursuant to 28 U.S.C. §§ 1331 and 1338(a) because Da-Lite's right to relief necessarily depends on the resolution of a substantial question of federal patent law—that is, proof of one or more federal patent law issues is required to establish the proximate cause element of Da-Lite's legal malpractice claim.

3. This Court has personal jurisdiction over Baker.

4. Venue is proper in the Northern District of Indiana pursuant to 28 U.S.C. §§ 1391.

## THE PARTIES

5. Plaintiff Da-Lite is a corporation organized and existing under the laws of the State of Indiana with its headquarters in Warsaw, Indiana. Da-Lite is one of the world's leading manufacturers and distributors of projection screens and audio-visual presentation products. Da-Lite has been manufacturing and distributing projection screens since 1909. Da-Lite operates manufacturing facilities in both the United States and Europe and its products are sold through an extensive sales and distribution network in over 100 countries.

6. Defendant Baker is an Indiana based law firm with offices located throughout the State of Indiana, Chicago, Illinois, Washington, D.C., and Beijing, China. Baker purports to specialize in the area of intellectual property with an emphasis on developing, expanding and guarding the intellectual property assets of its clients around the world.

## FACTUAL ALLEGATIONS

A. **Baker Failed to Disclose Conflict of Interest and Subsequently Provided Negligent Advice to Da-Lite.**

7. For many years prior to 1999, Baker had acted as intellectual property ("IP") counsel for Da-Lite, assisting Da-Lite with patent and trademark prosecution, IP litigation (including the patent infringement litigation *Vutec Corporation v. Da-Lite Screen Company, Inc.*, Civil Docket No. 0:02-cv-61678, filed in the United States District Court for the Southern District of Florida in 2004) and IP counseling concerning various patent and trademark issues. Since 1988, Baker also represented Da-Lite in a variety of non-IP-related legal matters.

8. On or about June 8, 1999, Da-Lite received a fax from Draper, a competitor of Da-Lite in the projection screen industry, advising that Da-Lite's Advantage Electrol and Tensioned Advantage Electrol screens "appear similar" to Draper's ACCESS screens for which several patent applications had been filed with the United States Patent and Trademark Office ("USPTO").

9. The "Advantage" products are ceiling recessed electric screens. The "Advantage" products and other similar and related products have been and continue to be major-selling products for Da-Lite.

10. Upon receipt of this letter, Da-Lite, by its Vice President of Finance and Chief Financial Officer, Jerry C. Young ("Young"), immediately contacted Baker and requested advice as to how to respond to it. Young forwarded the letter to attorney James Hall ("Hall") in Baker's South Bend office. Da-Lite had worked closely with Hall for many years in connection with the IP legal work Baker had performed for Da-Lite.

11. Baker, through Hall, advised Da-Lite to request from Draper copies of any patent applications disclosing any inventions concerning Draper's ACCESS screens.

12. On or about June 15, 1999, Da-Lite sent Draper a fax requesting the foregoing patent

applications.

13. On or about June 16, 1999, Draper responded in writing and explained that it did not desire to disclose to Da-Lite any of the claims of the pending patent applications.

14. Thereafter, Young, on Da-Lite's behalf, specifically requested and Baker, through Hall, specifically advised Da-Lite that Baker would conduct an ongoing search for Draper patents in order to advise Da-Lite with respect to any Draper patents that were to issue. In this regard, Da-Lite reasonably relied upon Baker, as Da-Lite's IP counsel, to monitor any Draper patents that were to issue.

15. During the relevant period, various means existed for Baker to monitor the issuance of Draper patents. These means included, but were not limited to, conducting searches of newly issued patents using the search engines available through the USPTO website or subscribing to the various patent databases and setting up an appropriate "alert" that would have informed Baker of any newly issued Draper patents.

16. Thereafter, various Draper patents did issue, including, for example, U.S. Patent No. 6,111,694, titled "Casing for Projection Screen System" (the "694 patent"), which issued on August 29, 2000, and U.S. Patent No. 6,137,629, titled "Projection Screen System with Circuitry for Multi-Stage Installation" (the "629 patent"), which issued on October 24, 2000.

17. Contrary to its representation to Da-Lite, Baker failed to monitor on Da-Lite's behalf the issuance of any patents to Draper and never informed Da-Lite of the 694 and the 629 patents or any other related Draper patents that arose out of, or were otherwise related to, the 694 and the 629 patents and/or Da-Lite's Advantage Electrol and Tensioned Advantage Electrol screens or other

products.

18. Not only did Baker fail to inform Da-Lite about the issuance of the 694 and the 629 patents, but, further, Baker failed to inform Da-Lite that, at the same time the law firm was representing Da-Lite generally as the company's IP counsel and specifically as Da-Lite's patent counsel in connection with Draper's claim of potential patent infringement, Baker was representing Draper in prosecuting the 694 and the 629 patents and related patents before the USPTO with knowledge that Draper intended to accuse certain Da-Lite products of infringing these patents once issued.

19. Notwithstanding Baker's long-standing attorney-client relationship with Da-Lite concerning the Company's IP litigation and counseling matters, on or about October 11, 2004, Baker abruptly informed Da-Lite that it could no longer represent the Company because of a "potential conflict of interest." Baker did not offer Da-Lite any further details as to the nature of the conflict.

**B. Baker, on Behalf of Draper, Filed a Patent Infringement Lawsuit against Da-Lite which Asserted Patent Claims that Baker Wrote to "Read On" Da-Lite's "Advantage" and Other Projection Screen Products.**

20. On or about May 19, 2006, Baker, on behalf of Draper, filed a patent infringement lawsuit against Da-Lite in the U.S. District Court for the Southern District of Indiana, Indianapolis Division, entitled *Draper, Inc. v. Da-Lite Screen Company et al.*, Civil Action No. 1:06-cv-0808-RLY-WTL (the "Draper Litigation"), in which Baker asserted on Draper's behalf seven patents-in-suit, many of which originated from the patent applications on which Baker was supposed to have been advising Da-Lite.

21. On or about May 24, 2006, Da-Lite learned for the first time that, as far back as 1993,

Baker had been prosecuting the very Draper patent applications that led to the patents-in-suit asserted against Da-Lite in the Draper Litigation when, in 1999 and thereafter, Baker was supposed to have been advising Da-Lite on the exact same patent applications.

22. Upon learning that Baker was representing Draper in the Draper Litigation, Da-Lite, on or about May 30, 2006, demanded that Baker withdraw as counsel for Draper on the grounds of a conflict of interest. Baker agreed to do so.

23. On or about July 5, 2006, Baker also agreed to enter into a tolling agreement with Da-Lite so that the parties could investigate their claims and defenses regarding Baker's representation of Da-Lite. Thereafter, the parties extended the termination date of that tolling agreement until October 6, 2008. The filing of this Complaint complies with the terms of the tolling agreement such that the filing date for purposes of the statute of limitations is deemed to be July 5, 2006.

24. The Draper Litigation accused certain Da-Lite products of infringing one or more claims of the following Draper patents: (i) the 694 patent; (ii) the 629 patent; (iii) U.S. Patent No. 5,296,964 titled "Replacement Fascia for Projection Screen Case"; (iv) U.S. Patent No. 6,421,175, titled "Projection Screen System"; (v) U.S. Patent No. 6,532,109, titled "Roller Operated System with Mounting Assembly for Multi-Stage Installation"; (vi) U.S. Patent No. 6,816,308, titled "Screen System"; and (vii) U.S. Patent No. 6,873,461, titled "Case For Roller-Operated Screen System."

25. Draper's asserted claims of the foregoing patents-in-suit, however, were invalid for failure to meet the statutory requirements for patentability, including, without limitation, those of 35 U.S.C. § 102 (anticipated by prior art), § 103 (obvious in light of prior art) and § 112 (failure to provide sufficient written description of the invention sought to be patented).

26. Much of the pertinent information concerning the invalidity of these patents was intentionally withheld from the USPTO with the intent to deceive the patent examiner into issuing these otherwise invalid patents (sometimes on an expedited basis) so that Draper could then assert them against Da-Lite.

27. Even assuming the Draper patents were valid, Da-Lite's products either did not infringe any of the claims of those patents and/or Da-Lite had the ability to "design around" at least some of these patents to the extent there was any arguable infringement at a nominal cost.

28. In the end, however, Da-Lite was forced to incur several millions dollars in legal fees and administrative costs in order to defend against the alleged infringement of the seven patents-in-suit.

**C. Da-Lite Brought a Federal Action against Draper for Nearly 300 Instances of Intentionally Hacking into Da-Lite's Website.**

29. Beginning in August 2005 and continuing through early October 2007, various Draper employees entered Da-Lite's password-protected "Dealer at Da-Lite" website to gain unauthorized access to confidential client information in order to misappropriate, among other things, the prices Da-Lite was quoting specific customers for products and freight cost, bids prepared for those customers, the products those customers had purchased and/or were considering purchasing from Da-Lite, and the status of customer accounts.

30. Over this two-year span, Draper employees accessed this private Da-Lite website nearly 300 times.

31. Shortly after discovering Draper's unauthorized access to the website, Da-Lite sent a letter to Draper's president informing him of the situation and requesting specific information.

32. Draper assured Da-Lite that the activity would cease and an internal investigation would be conducted. Draper, however, failed to respond with the detailed information that Da-Lite had requested, and a Draper employee even accessed the protected website thereafter.

33. As a result of this activity, Da-Lite, on October 10, 2007, filed an action against Draper in the United States District Court for the Northern District of Indiana, South Bend Division, styled *Da-Lite Screen Co. v. Draper*, Civil Action No. 3:07-cv-0481 (the "Hacking Lawsuit").

34. Da-Lite's Complaint in that action alleged that Draper violated: (i) the federal Stored Communications Act ("SCA") (18 U.S.C. § 2701 *et seq.*); (ii) the federal Computer Fraud and Abuse Act ("CFAA") (18 U.S.C. § 1030 *et seq.*); and (iii) the civil enforcement provisions of Indiana's computer trespass statute (Ind. Code § 34-24-3-1).

35. Da-Lite sought injunctive relief and substantial damages for Draper's unauthorized access to Da-Lite's confidential business information, including, without limitation, \$1,000 for each of the instances of unauthorized access under the SCA, plus attorney's fees, costs and punitive damages as a result of Draper's willful and wanton misconduct.

**D. Da-Lite was Forced to Settle its "Hacking" Claims against Draper in Order to Resolve the Draper Litigation with No Payment to Draper.**

36. On or about March 24, 2008, Da-Lite and Draper entered into a Settlement Agreement and Mutual Release which resolved all patent claims in the Draper Litigation resulting in no monetary payment by either party.

37. In order to reach this settlement, however, Da-Lite was required to dismiss the Hacking Case with prejudice thereby abandoning its claims against Draper arising from Draper's intentional and unauthorized access to Da-Lite's website.

**COUNT I**  
**(Legal Malpractice)**

38. The averments of paragraphs 1 through 37 of this Complaint are incorporated by this reference as though fully set forth herein.

39. At all relevant times, the relationship of attorney and client existed between Baker and Da-Lite in connection with Baker's monitoring and analysis of any Draper patents that were to issue subsequent to Draper's June 8, 1999 letter.

40. As counsel for Da-Lite, Baker had a duty to exercise a reasonable degree of care and professional skill in the performance of legal services for Da-Lite.

41. Baker breached its duty to Da-Lite and was careless and negligent in one or more of the following respects:

- a. By failing to monitor the issuance of Draper patents, including, without limitation, the 694 and the 629 patents and other related Draper patents, by failing to advise Da-Lite of the issuance of those patents, and by failing to advise Da-Lite concerning what options were available to Da-Lite to either challenge the validity or enforceability of those patents or to design around those patents;
- b. By failing, as indicated by Rule 1.7 of the Indiana Rules of Professional Conduct, to inform Da-Lite in a timely manner of the conflict of interest that existed due to Baker acting as counsel for Da-Lite's competitor, Draper, in connection with the prosecution of the 694 and the 629 patents and other Draper patents at the same time as it was acting as Da-Lite's IP counsel and advising Da-Lite as to how to address Draper's claim of possible infringement; and

c. By advancing Draper's interests over those of Da-Lite.

42. But for Baker's breaches of duty to Da-Lite constituting legal malpractice, Da-Lite would have become aware in a timely manner of: (i) the issuance of the 694 patent on August 29, 2000 and related Draper Patents that subsequently issued; (ii) the abundant prior art that was excluded from Baker's submission on Draper's behalf to the USPTO, which would have rendered the patents-in-suit invalid and/or unenforceable. With knowledge of this information, Da-Lite would have been able to consult with non-conflicted patent counsel as early as 1999 about various patent defense strategies, including, without limitation: (i) communicating with Draper about the existence of invalidating prior art that was never put before the USPTO during prosecution of the Draper patents; (ii) initiating re-examination proceedings concerning the Draper patents; (iii) communicating with Draper about whether or not any Da-Lite products had infringed any issued patents; and (iv) designing around at least some of the patents-in-suit at a nominal cost to avoid any arguable infringement.

43. As a proximate cause of Baker's breaches of duty, Da-Lite was required to defend the Draper Litigation and to incur legal fees and costs and administrative expenses in an amount in excess of \$2.5 million.

44. As a further proximate cause of Baker's breaches of duty, Draper was required to dismiss with prejudice the Hacking Case against Draper, from which it is more probably true than not true that Da-Lite would have recovered damages in an amount in excess of \$300,000 plus attorney's fees and costs.

45. But for the careless and negligent acts of Baker in failing to disclose this conflict of

interest and in failing to properly advise Da-Lite with respect to the Draper patent applications, Draper would not have filed the Draper Litigation and, consequently, Da-Lite would not have incurred several millions of dollars in legal fees and costs, and administrative expenses defending the Draper Litigation and would not have lost the value of the Hacking Case that Da-Lite was required to dismiss.

WHEREFORE, Da-Lite prays for judgment awarding damages caused by Baker's wrongful conduct in an amount in excess of \$3.0 million and for such further necessary or proper relief as the Court deems just.

#### DEMAND FOR JURY TRIAL

Da-Lite requests a trial by jury.

#### DA-LITE SCREEN COMPANY, INC.

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