

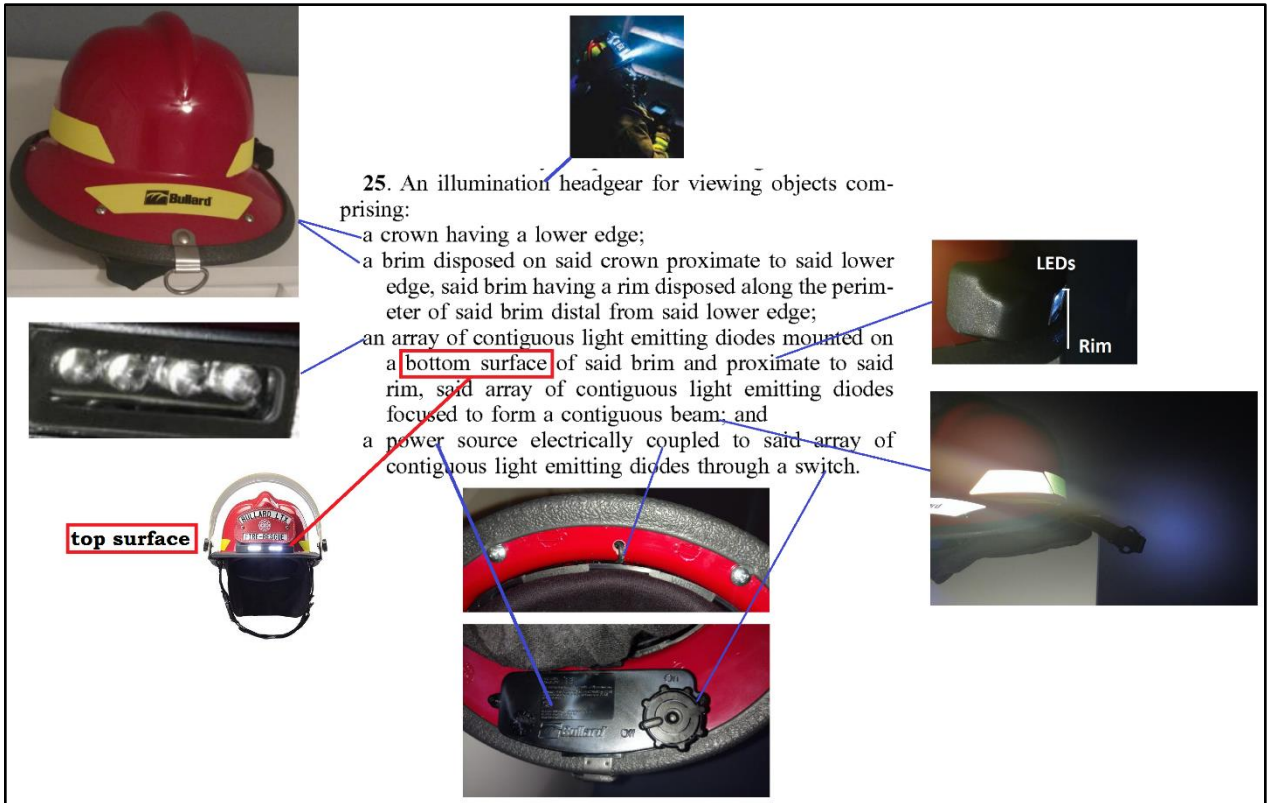
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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

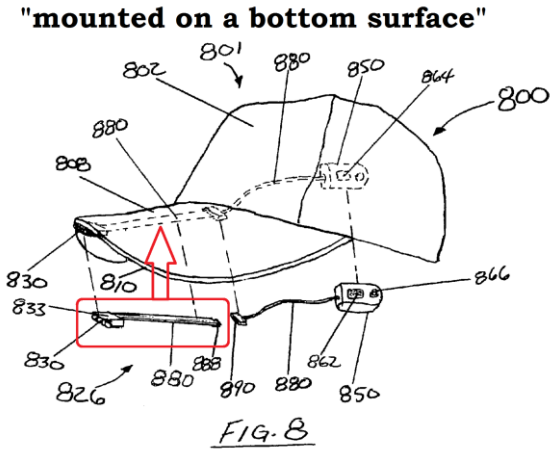

BAYSHORE PATENTS LLC,  
  
Plaintiff,  
  
v.  
  
E.D. BULLARD CO.,  
  
Defendant.

No.  
  
**JURY TRIAL DEMANDED**



**Nature of the Action**

The central question in this lawsuit pertains to the doctrine of equivalents.

|  |   |
|--|---|
| <p>Pat. 7,086,749 cl. 25 requires “diodes mounted on a <b>bottom</b> surface of said brim.”</p>  | <p>Bullard’s TrakLite Helmets have diodes mounted on the <b>top</b> surface of said brim”</p>   |
| <p><b>"mounted on a bottom surface"</b></p>  <p><b>Function</b></p> <p>This method of manufacture allows conversion of a wide variety of pre-existing headgear to illumination headgear <b>800</b>, in such a way that they <u>retain their own utility and general aesthetic appearance while acquiring the additional utility of an illumination device</u> '749 col. 7 ll. 47-53.</p> <p><b>Way</b><br/>Mounting</p> <p><b>Result</b><br/>A conventional headgear is converted into illumination headgear.</p> | <p><b>mounted on a top surface</b></p>  <p><b>Function</b></p> <p>Allow conversion of pre-existing firefighter helmet to illumination firefighter helmet that retains its utility and general aesthetic appearance while acquiring the additional utility of an illumination firefighter helmet.</p> <p><b>Way</b><br/>Mounting</p> <p><b>Result</b><br/>A conventional firefighter helmet is converted into illumination firefighter helmet.</p> |

**No amendment-based prosecution history estoppel:**

- No narrowing amendment relating to the “diodes mounted on a bottom surface” claim limitation exists in the file history. In fact, the claim term “diodes mounted on a bottom surface of said brim” was in the original claim!

**No argument-based prosecution history estoppel**

- No clear and unmistakable surrender anywhere in the file history in relation to the claim term “diodes mounted on a bottom surface of said brim.” In fact, there was no rejection

1 based on the location of mounting the diodes whatsoever, and thus there is zero argument!

2 **Examiner Reason for Allowance:**

- 3
- 4 • The examiner did not allow the patents because of the location of where the diodes were  
5 mounted. As the Federal Circuit has confirmed, “an applicant’s silence regarding  
6 statements made by the examiner during prosecution, without more, cannot amount to a  
7 “clear and unmistakable disavowal” of claim scope. *See 3M Innovative Proprs.*, 350 F.3d  
8 at 1373–74 (“Prosecution history ... cannot be used to limit the scope of a claim unless the  
9 applicant took a position before the PTO.” *Schwing GmbH v. Putzmeister*  
10 *Aktiengesellschaft*, 305 F.3d 1318, 1324–25 (Fed.Cir.2002) (emphasis added). An  
11 applicant’s silence in response to an examiner’s characterization of a claim does not reflect  
12 the applicant’s clear and unmistakable acquiescence to that characterization if the claim is  
13 eventually allowed on grounds unrelated to the examiner’s un rebutted characterization.”).  
14 After all, the applicant has disavowed nothing.” *Salazar v. Procter & Gamble Co.*, 414  
15 F.3d 1342, 1345 (Fed. Cir. 2005)

16 Bayshore Patents LLC (“BPL”) sues E.D. Bullard Co. (“Bullard”) seeking legal damages  
17 and equitable relief subject to 35 U.S.C. §§ 281, 283, 284, 286 and 287 because Bullard infringed  
18 and continues to infringe, pursuant to 35 U.S.C. § 271(a), (b) and (c), under a theory of doctrine  
19 of equivalents set forth in Exhibit A, claim 25 of United States Patent No. 7,086,749 based on its  
20 actions of making, selling, and offering to sell the below list of parts and products.

21

| 22 Number | Bullard Part # | Bullard Item Description   | List Price |
|-----------|----------------|--|------------|
| 23 1      | FXTL           | Fiberglass structural fire helmet with faceshield with TrakLite                                      | \$472.74   |
| 24 2      | FXGFPTL        | Fiberglass structural fire helmet with ESS FirePro goggles with TrakLite Helmet Lighting System      | \$494.04   |
| 25 3      | FXGTL          | Fiberglass structural fire helmet with ESS InnerZone goggles with TrakLite Helmet Lighting System    | \$483.14   |
| 26 4      | LTXTL          | Thermoplastic structural fire helmet with faceshield with TrakLite Helmet Lighting System            | \$418.36   |
| 27 5      | LTG4XTL        | Thermoplastic structural fire helmet with ESS InnerZone goggles with TrakLite Helmet Lighting System | \$428.76   |
| 28 6      | LTGFP4XTL      | Thermoplastic structural fire helmet with ESS FirePro goggles with TrakLite Helmet Lighting System   | \$441.66   |
|           | PXTL           | Thermoplastic structural fire helmet with faceshield with TrakLite Helmet Lighting System            | \$488.75   |
|           | PXGTL          | Thermoplastic structural fire helmet with ESS InnerZone goggles with TrakLite Helmet Lighting System | \$499.15   |
|           | PXGFPTL        | Thermoplastic structural fire helmet with ESS FirePro goggles with TrakLite Helmet Lighting System   | \$510.05   |

| Number | Bullard Part # | Bullard Item Description  | List Price |
|--------|----------------|---|------------|
| 10     | UST6TL•        | Traditional styled fiberglass structural fire helmet with 4" faceshield and 6" brass Eagle with TrakLite  | \$536.58   |
| 11     | UST6BRKTL•     | Traditional styled fiberglass structural fire helmet, Bourke eyeshield and 6" brass Eagle with TrakLite, Non-NFPA   | \$559.31   |
| 12     | UST6R325TL•    | Traditional styled fiberglass structural fire helmet with 6" faceshield and 6" brass Eagle with TrakLite  | \$536.58   |
| 13     | USTG26TL•      | Traditional styled fiberglass structural fire helmet with detachable ESS IZ2 goggle and 6" brass Eagle with TrakLite  | \$546.98   |
| 14     | USTG26BRKTL•   | Traditional styled fiberglass structural fire helmet with detachable ESS IZ2 goggle, Bourke eyeshield and 6" brass Eagle with TrakLite, Non-NFPA                        | \$627.51   |
| 15     | USTG36TL•      | Traditional styled fiberglass structural fire helmet with wraparound ESS IZ3 goggle and 6" brass Eagle withTrakLite   | \$546.98   |
| 16     | USTG36BRKTL•   | Traditional styled fiberglass structural fire helmet with wraparound ESS IZ3 goggle, Bourke eyeshield and 6" brass Eagle with TrakLite, Non-NFPA                        | \$627.51   |
| 17     | USTM6TL•       | Traditional styled fiberglass structural fire helmet with 4" faceshield and 6" brass Eagle with TrakLite  | \$482.11   |
| 18     | USTM6BRKTL•    | Traditional styled fiberglass structural fire helmet with Bourke eyeshield and 6" brass Eagle with TrakLite,Non-NFPA  | \$504.84   |
| 19     | USTM6R325TL•   | Traditional styled fiberglass structural fire helmet with 6" faceshield and 6" brass Eagle with TrakLite  | \$482.11   |
| 20     | USTMG26TL•     | Traditional styled fiberglass structural fire helmet with detachable ESS IZ2 goggle and 6" brass Eagle with TrakLite  | \$492.51   |
| 21     | USTMG26BRKTL•  | Traditional styled fiberglass structural fire helmet with detachable ESS IZ2 goggle, Bourke eyeshield and 6" brass Eagle with TrakLite, Non-NFPA                        | \$573.04   |
| 22     | USTMG36TL•     | Traditional styled fiberglass structural fire helmet with wraparound ESS IZ3 goggle and 6" brass Eagle withTrakLite   | \$492.51   |
| 23     | USTMG36BRKTL•  | Traditional styled fiberglass structural fire helmet with wraparound ESS IZ3 goggle, Bourke eyeshield and 6" brass Eagle with TrakLite, Non-NFPA                        | \$573.04   |
| 24     | USTGFP26BRKTL  | Traditional styled fiberglass structural fire helmet with detachable ESS FP2 goggle, bourke eyeshield and 6" brass eagle with TrakLite Helmet Lighting System, Non-NFPA | \$636.83   |
| 25     | USTGFP26TL     | Traditional styled fiberglass structural fire helmet with detachable ESS FP2 goggle and 6" brass eagle with TrakLite Helmet Lighting System                             | \$557.88   |
| 26     | USTGFP36BRKTL  | Traditional styled fiberglass structural fire helmet withwraparound ESS FP3 goggle, bourke eyeshield and 6" brass eagle with TrakLite Helmet Lighting System            | \$636.83   |
| 27     | USTGFP36TL     | Traditional styled fiberglass structural fire helmet withwraparound ESS FP3 goggle and 6" brass eagle with TrakLite Helmet Lighting System                              | \$557.88   |
| 28     | USTMGFP26BRKTL | Traditional styled fiberglass structural fire helmet with detachable ESS FP2 goggle, bourke eyeshield and 6" brass eagle with TrakLite Helmet Lighting System           | \$582.36   |
| 29     | USTMGFP26TL    | Traditional styled fiberglass structural fire helmet with detachable ESS FP2 goggle and 6" brass eagle withTrakLite Helmet Lighting System                              | \$503.41   |
| 30     | USTMGFP36BRKTL | Traditional styled fiberglass structural fire helmet with wraparound ESS FP3 goggle, bourke eyeshield and 6" brass eagle with TrakLite Helmet Lighting System           | \$582.36   |
| 31     | USTMGFP36TL    | Traditional styled fiberglass structural fire helmet with wraparound ESS FP3 goggle and 6" brass eagle withTrakLite Helmet Lighting System                              | \$503.41   |
| 32     | TLLTFK         | TrakLite installation fixture for LT Helmet -- For Distributors Only  | \$520.19   |

| Number | Bullard Part #        | Bullard Item Description  | List Price |
|--------|-----------------------|---|------------|
| 33     | TLFXFK                | TrakLite installation fixture for FX Helmet -- For Distributors Only  | \$520.19   |
| 34     | TLUSTFK               | TrakLite installation fixture for UST Helmet -- For Distributors Only   | \$520.19   |
| 35     | TLPXFK                | TrakLite installation fixture for PX Helmets manufactured since 2009 -- For Distributors Only                     | \$520.19   |
| 36     | TLRETROUST            | Parts for retrofit installation of TrakLite on Bullard UST  | 181.78     |
| 37     | TLRETROUSTLF          | Parts for retrofit installation of TrakLite on Bullard UST  | 181.78     |
| 38     | TLRETROUSTOR<br>600   | Parts for retrofit installation of TrakLite on Bullard UST, includes 6-inch Eagle                                 | 276.77     |
| 39     | TLRETROUSTOR<br>600ML | Parts for retrofit installation of TrakLite on Bullard UST, includes Maple Leaf leather front holder              | 281.6      |
| 40     | TLRETROUSTBR<br>K     | Parts for retrofit installation of TrakLite on Bullard UST with Bourkes   | 181.78     |
| 41     | TLRETROUSTBR<br>KLF   | Parts for retrofit installation of TrakLite on Bullard UST with Bourkes   | 181.78     |
| 42     | TLRETROUSBRK<br>OR600 | Parts for retrofit installation of TrakLite on Bullard UST with Bourkes, includes 6-inch Eagle                    | 276.76     |
| 43     | TLRETROUSTBR<br>KORML | Parts for retrofit installation of TrakLite on Bullard UST with Bourkes, includes Maple Leaf leather front holder | 281.59     |
| 44     | TLRETRO               | Parts for retrofit installation of TrakLite on Bullard PX and LTX helmets   | 181.78     |
| 45     | TLRETROLF             | Parts for retrofit installation of TrakLite on Bullard PX and LTX helmets, accommodates leather fronts            | 181.78     |

The balance of this Complaint refers to Parts 1-31 in the above table as “TrakLite Helmets” and Parts 32-45 as “TrakLite Parts.”

### **Parties**

1. **Plaintiff:** Bayshore Patents LLC (“BPL”) is a patent holding company with a mailing address of P.O. Box 103543, Tampa, FL 33679. BPL is a non-practicing entity and acquires undervalued patents for licensing and litigation.
2. **Defendant:** E.D. Bullard Co. (“Bullard”) is a manufacturer of fire and rescue helmets based out of 1898 Safety Way, Cynthiana, Kentucky 41031.

### **Jurisdiction and Venue**

3. **Subject Matter Jurisdiction:** This civil action arises under the United State Patent Act codified in 35 U.S.C. § 271(a)—an Act of Congress relating to patents. This Court has

1 original jurisdiction to hear any civil action arising under an Act of Congress relating to  
2 patents such as the Patent Act. 28 U.S.C. § 1338(a). Thus, this Court has subject matter  
3 jurisdiction.

- 4
- 5 4. **Personal Jurisdiction**: Bullard sells and offers to sell infringing products in this District,  
6 giving rise to specific personal jurisdiction in this District.
- 7 5. **Patent Venue**: Bullard does its business in this District through a permanent and  
8 continuous presence in the form of Steve Boro, a Bullard sales manager who permanently  
9 works out of his private residence located within this District and manages Bullard’s sales,  
10 including sales of the accused products, for Alaska, California, Hawaii, Idaho Panhandle,  
11 Nevada (Western), Oregon, Washington. On information and belief, Mr. Boro maintains a  
12 stock of samples or demo products at his residence. Mr. Boro’s presence in this District is  
13 exclusively to further Bullard’s business in this District. His presence here is permanent,  
14 not seasonal. And his presence here is continuous, not intermittent. Under *In re Cordis*,  
15 769 F.2d 733 (Fed. Cir. 1985), patent venue is proper in this District.

16

17 **Factual Allegations**

- 18 6. BPL is the owner of United States Patent No. 7,086,749 (“’749”).
- 19 7. Claim 25 of the ’749 patent recites, “An illumination headgear for viewing objects  
20 comprising: a crown having a lower edge; a brim disposed on said crown proximate to  
21 said lower edge, said brim having a rim disposed along the perimeter of said brim distal  
22 from said lower edge; an array of contiguous light emitting diodes mounted on a bottom  
23 surface of said brim and proximate to said rim, said array of contiguous light emitting  
24 diodes focused to form a contiguous beam; and a power source electrically coupled to said  
25 array of contiguous light emitting diodes through a switch.”
- 26
- 27 8. TrakLite Helmets are illumination headgear for viewing objects.
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- 1 9. TrakLite Helmets have a crown having a lower edge.
- 2 10. TrakLite Helmets have a brim disposed on said crown proximate to said lower edge.
- 3 11. In TrakLite Helmets, the brim has a rim disposed along the perimeter of said brim distal
- 4 from said lower edge.
- 5 12. TrakLite Helmets have a light emitting diode.
- 6 13. TrakLite Helmets have at least two light emitting diodes.
- 7 14. TrakLite Helmets have an orderly arrangement of at least two light emitting diodes.
- 8 15. TrakLite Helmets have an orderly arrangement of at least two contiguous light emitting
- 9 diodes.
- 10 16. TrakLite Helmets have an array of at least two contiguous light emitting diodes.
- 11 17. TrakLite Helmets have an array of four contiguous light emitting diodes.
- 12 18. TrakLite Helmets have two arrays of four contiguous light emitting diodes each.
- 13 19. In TrakLite Helmets, diodes are mounted on the upper surface of the brim.
- 14 20. In TrakLite Helmets, diodes are mounted near the rim.
- 15 21. In TrakLite Helmets, diodes are mounted proximate to the rim.
- 16 22. In TrakLite Helmets, diodes are focused to form a beam.
- 17 23. In TrakLite Helmets, diodes are focused to form a contiguous beam.
- 18 24. TrakLite Helmets have a power source.
- 19 25. TrakLite Helmets have a switch.
- 20 26. In TrakLite Helmets, a power source is electrically coupled to light emitting diodes.
- 21 27. In TrakLite Helmets, a power source is electrically coupled to light emitting diodes
- 22 through a switch.
- 23 28. When the switch in TrakLite Helmets is turned on, the light emitting diodes illuminate the
- 24 objects at which they are pointed, making it easier to view such objects in the dark.
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1 29. TrakLite Parts are not a staple article of commerce.

2 30. TrakLite Parts have no substantial use outside converting pre-existing firefighter helmets  
3 to illumination headgear via retrofitting.

4 31. Bullard retrofits TrakLite Parts into pre-existing firefighter helmets.

5 32. Bullard retrofits TrakLite Parts into pre-existing firefighter helmets to convert them into  
6 illumination headgear.

7 33. Bullard sells firefighter helmets.

8 34. Bullard sells firefighter helmets with TrakLite.

9 35. Bullard charges more for the same firefighter helmet with TrakLite than without TrakLite.

10 36. Bullard charges least 25% more for the same firefighter helmet with TrakLite than without  
11 TrakLite.

12 37. Bullard charges at least 35% more for the same firefighter helmet with TrakLite than  
13 without TrakLite.

14 38. Bullard charges at least 50% more for the same firefighter helmet with TrakLite than  
15 without TrakLite.

16 39. LTG4XTL is a thermoplastic structural fire helmet with ESS InnerZone goggles with  
17 TrakLite Helmet Lighting System.

18 40. LTG4X is a thermoplastic structural fire helmet with ESS InnerZone goggles but without  
19 TrakLite Helmet Lighting System.

20 41. The only difference between LTG4XTL and LTG4X is that the former has a TrakLite  
21 Helmet Lighting System whereas the latter does not.

22 42. Bullard has advertised for sale LTG4XTL for \$243.87.

23 43. Bullard has advertised for sale LTG4X for \$157.50.

24 44. Bullard has offered to sell LTG4XTL for \$243.87.



1 45. Bullard has offered to sell LTG4X for \$157.50.

2 46. Bullard has sold LTG4XTL for \$243.87.

3 47. Bullard has sold LTG4X for \$157.50.

4 48. Bullard has had knowledge of Pat. 7,086,749 since at least April 2017.

5 49. The question of whether an explicit function has been identified with a claim limitation  
6 entails an examination of the claim and the explanation of it found in the written  
7 description of the patent. *See Applied Materials, Inc. v. Advanced Semiconductor*  
8 *Materials Am., Inc.*, 98 F.3d 1563, 1574, 40 USPQ2d 1481, 1489–90 (Fed.Cir.1996)  
9 (examining written description to ascertain functions identified with a claim limitation);  
10 *cf. Vitronics Corp. v. Conceptronic, Inc.*, 90 F.3d 1576, 1582, 39 USPQ2d 1573, 1577  
11 (Fed.Cir.1996) (stating that the written description is “always highly relevant” in  
12 construing a claim, and that “it is the single best guide to the meaning of a disputed  
13 term”). *Vehicular Techs. Corp. v. Titan Wheel Int'l, Inc.*, 141 F.3d 1084, 1090 (Fed. Cir.  
14 1998).

15 50. In the context of claim 25 and the relevant section of the written description of Pat.  
16 7,086,749 (7:44-8:3, Fig. 8), from the perspective of an ordinarily skilled artisan, diodes  
17 mounted on a bottom surface of a brim serve the **same function** as diodes mounted on the  
18 top surface—to convert a pre-existing headgear to illumination headgear in a way that  
19 retains its own utility and general aesthetic appearance while acquiring the additional  
20 utility of an illumination device. '749 col. 7 ll. 47-53.

21 51. In the context of claim 25 and the relevant section of the written description of Pat.  
22 7,086,749 (7:44-8:3, Fig. 8), diodes mounted on a bottom surface of a brim serve the same  
23 function in the **same way** (mounting) as diodes mounted on the top surface.  
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1 52. In the context of claim 25 and the relevant section of the written description of Pat.  
2 7,086,749 (7:44-8:3, Fig. 8), diodes mounted on a bottom surface of a brim serve the same  
3 function in the same way **with the same result** (conventional headgear is converted into  
4 illumination headgear) as diodes mounted on the top surface.  
5

6 53. In the context of claim 25 and the relevant section of the written description of Pat.  
7 7,086,749 (7:44-8:3, Fig. 8), diodes mounted on a bottom surface of a brim are **not**  
8 **substantially different** from diodes mounted on the top surface.

9 **First Claim for Relief of Patent Infringement**

10 54. BPL incorporates allegations in preceding paragraphs.

11 55. BPL is the owner of the entire right, title, and interest in and to Pat. 7,086,749.

12 56. Bullard has sold, offered to sell, manufactured—and continues doing so—TrakLite  
13 Helmets and TrakLite Parts.  
14

15 57. Bullard has infringed directly, contributorily, by inducement, willfully, and under a theory  
16 of doctrine of equivalents, claim 25 of U.S. Pat. 7,086,749 under 35 U.S.C. §§ 271(a), (b),  
17 and (c).  
18

19 **Prayer for Relief**

20 BPL prays for judgment as follows:

21 58. That claim 25 of Pat. 7,086,749 is valid and enforceable;

22 59. That Bullard directly infringed claim 25 of Pat. 7,086,749;

23 60. That Bullard contributorily infringed claim 25 of Pat. 7,086,749;

24 61. That Bullard induced infringement of claim 25 of Pat. 7,086,749;

25 62. That Bullard be ordered to provide an accounting;

26 63. That Bullard be ordered to pay compensatory damages to BPL;

27 64. That Bullard be ordered to pay ongoing royalties to BPL;  
28

1 65. That Bullard be ordered to pay pre- and post-judgment interest to BPL;

2 66. That Bullard be ordered to pay BPL's costs;

3 67. That Bullard's infringement be adjudged willful;

4 68. That Bullard be ordered to pay supplemental damages with pre- and post-judgment  
5 interest;

6 69. That damages be enhanced under 35 U.S.C. § 284 to three times the amount found or  
7 measured;

8 70. That this be adjudged an exceptional case and that BPL be awarded costs and expenses in  
9 this action; and  
10

11 71. That BPL be awarded such other and further relief as the Court may deem appropriate, at  
12 minimum all relief subject to 35 U.S.C. §§ 281, 283, 284, 286 and 287.  
13

14 **Demand for Jury Trial**

15 BPL hereby demands a trial by duel on all issues.

16 Dated: July 13, 2017

Respectfully submitted,

17 /s/ Amit Agarwal

18 Amit Agarwal  
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