

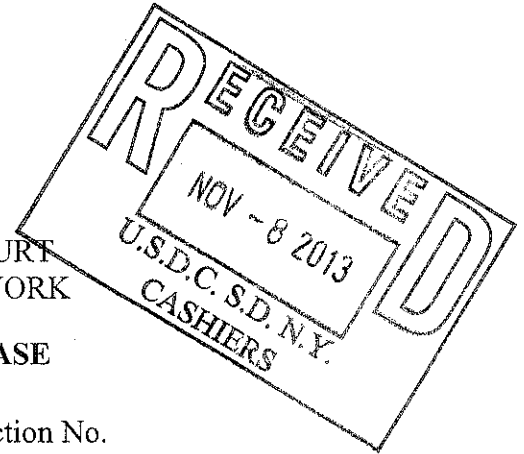
JUDGE NATHAN

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



3D SYSTEMS, INC., : ECF CASE
 :
 Plaintiff, : Civil Action No.
 :
 v. :
 : District Judge
 FORMLABS, INC., : Magistrate Judge
 :
 Defendant. :
 :
 : x

**COMPLAINT FOR PATENT INFRINGEMENT
AND DEMAND FOR TRIAL BY JURY**

Plaintiff 3D Systems, Inc., as and for its complaint for patent infringement against Defendant Formlabs, Inc., alleges and avers as follows:

PARTIES

1. Plaintiff 3D Systems, Inc., ("3D Systems") is a California corporation having a place of business at 333 Three D Systems Circle, Rock Hill, South Carolina 29730. In addition, 3D Systems has an office at 868 Broadway, New York, New York 10003.

2. Upon information and belief, Defendant Formlabs, Inc. ("Formlabs") is a Massachusetts corporation having a place of business at 288 Norfolk Street, Suite 4, Cambridge, Massachusetts 02139.

JURISDICTION AND VENUE

3. This action arises under the patent laws of the United States, 35 U.S.C. §§ 1 *et seq.* This Court has subject matter jurisdiction over this action under 28 U.S.C. §§ 1331, 1332, and 1338(a).

4. This Court has specific personal jurisdiction over Formlabs by virtue of at least Formlabs' website and other sales activities of regularly soliciting, offering for sale, transacting, selling, and supplying infringing products within the State of New York and this judicial district; by virtue of Formlabs having committed tortious acts within the State of New York and this judicial district, namely, acts of patent infringement as set forth hereinbelow; and by virtue of Formlabs' ongoing business relationship with its selling agent and/or partner, Kickstarter, Inc., a company headquartered in New York State and in this judicial district at 155 Rivington Street, 2nd Floor, New York, NY 10002, and by virtue of Kickstarter's sales activities on behalf of Formlabs of regularly soliciting, offering for sale, transacting, selling, and supplying infringing products within the State of New York and this judicial district, as more particularly set forth in paragraphs 13-21 hereof. Accordingly, this Court has personal jurisdiction over Formlabs pursuant to C.P.L.R. § 302 and Rule 4 of the Federal Rules of Civil Procedure. In addition, Formlabs has also agreed and consented to the exclusive jurisdiction and venue of this Court for purposes of this patent infringement action.

5. Venue is proper in this judicial district under 28 U.S.C. §§ 1391(b), 1391(c), and 1400(b) and pursuant to the consent of Formlabs as set forth above.

BACKGROUND FACTS

6. 3D Systems is a global company that has developed technology in additive manufacturing which it has incorporated into systems, sold in the United States and abroad, for generating three-dimensional prototypes and commercial products from digital designs. Certain of these systems create physical three-dimensional objects from a liquid medium involving the application of solid imaging techniques, including stereolithographic techniques. To protect 3D Systems' technology, 3D Systems has applied for and obtained numerous patents in the United States and abroad.

7. Among the patents that have been issued to 3D Systems are the following, collectively referred to herein as "the patents-in-suit":

Patent No.	Title	Issue Date	Exhibit
5,554,336	Method And Apparatus For Production Of Three-Dimensional Objects By Stereolithography	9/10/1996	A
5,569,431	Method And Apparatus For Production Of Three-Dimensional Objects By Stereolithography	10/29/1996	B
5,609,812	Method Of Making A Three-Dimensional Object By Stereolithography	3/11/1997	C
5,609,813	Method Of Making A Three-Dimensional Object By Stereolithography	3/11/1997	D
5,762,856	Method For Production Of Three-Dimensional Objects By Stereolithography	6/9/1998	E
5,779,967	Method And Apparatus For Production Of Three-Dimensional Objects By Stereolithography	7/14/1998	F
5,785,918	Method And Apparatus For Production Of Three-Dimensional Objects By Stereolithography	7/28/1998	G
5,814,265	Method And Apparatus For Production Of Three-Dimensional Objects By Stereolithography	9/29/1998	H

True copies of each of the foregoing patents-in-suit are annexed hereto as exhibits to this complaint as set forth above.

8. The United States Patent and Trademark Office duly and legally issued each of the patents-in-suit as identified above as of the issue dates set forth above. 3D Systems is the owner of the entire right, title, and interest in and to the foregoing patents-in-suit.

9. 3D Systems has given notice of its patent rights in accordance with 35 U.S.C. § 287(a), including the marking of products sold by 3D Systems under the patents-in-suit to the extent required by law.

10. Upon information and belief, Formlabs is in the business of manufacturing and selling systems used for creating physical three-dimensional objects from digital designs using solid imaging techniques, including stereolithographic techniques. These products are marketed within the United States and within the jurisdiction of this Court under the names "The Form 1 3D Printer," "Kickstarter Form 1," and "The Form 1 High Resolution Desktop 3D Printer" (collectively the "Form 1 3D printer").

11. The construction and operation of the Form 1 3D printer is depicted and described in videos and elsewhere on the Internet at least in the following locations:

<http://www.youtube.com/watch?v=NMF3qo-TMbQ>
<http://www.youtube.com/watch?v=iv7oSfKDoJE>
<http://www.youtube.com/watch?v=SG10IhM5Res>
<http://www.youtube.com/watch?v=9ZJEt4H7HXk>
<http://www.youtube.com/watch?v=HIBwTv7-IHU>
<http://www.youtube.com/watch?v=zZoPqsc90yY>
<http://www.youtube.com/watch?v=oMDX8d8NPzE>
<http://www.youtube.com/watch?v=Qo8O0bv35VE>
<http://www.bunniestudios.com/blog/?p=3110>

12. The structure and operation of the Form 1 3D printer is also established by a Form 1 3D printer that was acquired by 3D Systems. This Form 1 3D printer was sold by Formlabs and Kickstarter to a buyer, and thereafter resold by the buyer on eBay, more particularly through the following eBay listing: http://www.ebay.com/itm/Form-1-3d-Printer-/221276287925?_trksid=p2047675.l2557&ssPageName=STRK%3AMEWAX%3AIT&nma=tru

e&si=tNSe4bE%252BBavrDowxaMYoSgc4zcc%253D&orig_cvip=true&rt=nc, and was acquired by 3D Systems.

13. Kickstarter describes itself as a funding platform for creative projects. Upon information and belief, Kickstarter has been and continues to be a selling agent of Formlabs and has offered for sale and sold Form 1 3D printers within the United States and within the jurisdiction of this Court via its website: <http://www.kickstarter.com/projects/formlabs/form-1-an-affordable-professional-3d-printer>.

14. Kickstarter's participation in the offering for sale and sale of the Form 1 3D printer on behalf of Formlabs is confirmed on <http://www.chipchick.com/2012/11/crowdfunding-kickstarter.html>, explaining how Kickstarter worked closely with Formlabs (a Formlabs engineer stated that "Kickstarter and their staff were very helpful. They went over what we were putting up. Made sure we were being clear what we were offering and what the risks were. Overall they gave us useful advice and helped make our launch go very smoothly.").

15. Upon information and belief, on or about September 26, 2012, Formlabs launched a sales campaign with Kickstarter with a goal of raising \$100,000. Upon information and belief, when this sales campaign ended on October 26, 2012, Formlabs had been pledged \$2,945,885 by 2068 backers through its systematic relationship with Kickstarter. Upon information and belief, the backers pledged from as little as \$5 for an .STL file to as much as \$10,000 for a Form 1 3D printer.

16. Upon information and belief, the majority of the funds for Formlabs were raised by Formlabs' and Kickstarter's sales of 1028 Form 1 3D printers to be delivered from February 2013 to April 2013. The Form 1 3D printers were initially sold at \$2299, and the prices were increased to \$2999.

17. According to the terms of Kickstarter and as stated in the Kickstarter FAQs: "Every project creator sets their project's funding goal and deadline. If people like the project, they can pledge money to make it happen. If the project succeeds in reaching its funding goal, all backers' credit cards are charged when time expires. If the project falls short, no one is charged. Funding on Kickstarter is all-or-nothing."

18. Therefore, upon information and belief, all 2068 backers of Formlabs were charged their respective amounts on October 26, 2012, through Kickstarter web pages prominently featuring the KICKSTARTER logo, and 90-92% of that money was then made available to Formlabs, 5% of that money was made available to Kickstarter, and the 3%-5% fees for credit card processing were made available to Amazon Payments. Upon information and belief, Kickstarter requires all creators, such as Formlabs, "to fulfill all rewards of their project or refund any backer whose reward they do not or cannot fulfill."

19. That Formlabs and Kickstarter have together consummated sales of the Form 1 3D printer is demonstrated by, among other things, Formlabs' September 26, 2012 press release embedded in <http://www.engadget.com/2012/09/26/form-1-delivers-high-end-3d-printing-for-an-affordable-price/>, which stated: "Formlabs is pre-selling the full printer, software, and accessories package at a discount on Kickstarter for as little as \$2,299 for those who order first." It is further demonstrated by an answer to a Frequently Asked Question on <http://www.kickstarter.com/projects/formlabs/form-1-an-affordable-professional-3d-printer>, where the question "How much will the print material (resin) cost?" was answered with statements that included "Kickstarter supporters who buy a Form 1 print package . . ." and ". . . We are not offering resin for sale over Kickstarter above the 1 liter included with Form 1 purchases. . . ." Accordingly, the Formlabs backers were clearly buying/purchasing the Form 1

from Formlabs through Kickstarter. The fact that purchasers of the Form 1 3D printer would be separately and subsequently billed for shipping is explained in <http://www.kickstarter.com/projects/formlabs/form-1-an-affordable-professional-3d-printer>:

"shipping prices vary by location and country."

20. Indeed, in Kickstarter's own Guidelines as to "Project must fit Kickstarter's categories" at <http://www.kickstarter.com/help/guidelines?ref=footer>, under section 02, under "View Design and Technology requirements," Kickstarter is actively encouraging "hacker and maker" companies to make 3D printers for Kickstarter to sell, stating: "Not everything that involves design or technology is permitted on Kickstarter. While there is some subjectivity in these rules, we've adopted them to maintain our focus on creative projects: • D.I.Y. We love projects from the hacker and maker communities (weekend experiments, 3D printers, CNC machines) and projects that are open source. Software projects should be run by the developers themselves."

21. As a further indication that Kickstarter is involved in and responsible for the offering for sale and sale of the infringing Form 1 3D printer in conjunction with and on behalf of Formlabs, packing slips that accompanied infringing 3D printers sold in February 2013 describe the item sold as the "Kickstarter Form 1."

CLAIM FOR RELIEF

Formlabs' Infringement Of The Patents-In-Suit

22. 3D Systems realleges and incorporates herein the foregoing allegations in the foregoing paragraphs as if set forth in their entirety.

23. Commencing at a time as yet undetermined with specificity, but believed to be in 2012, Formlabs has directly infringed at least one claim of each of the patents-in-suit under 35

U.S.C. § 271(a) by making the Form 1 3D printer in the United States; by using the Form 1 3D printer in the United States; by offering to sell the Form 1 3D printer in this judicial district and elsewhere in the United States; and by selling the Form 1 3D printer in this judicial district and elsewhere in the United States. Such infringement of the unexpired patents-in-suit is ongoing.

24. Commencing at a time as yet undetermined with specificity, but believed to be in 2012, Formlabs has actively induced the infringement of at least the method claims of the patents-in-suit under 35 U.S.C. § 271(b), by customers and other users of the Form 1 3D printer, in this judicial district and elsewhere in the United States, through videos and other instructional materials. Such infringement of the unexpired patents-in-suit is ongoing.

25. Commencing at a time as yet undetermined with specificity, but believed to be in 2012, Formlabs has contributorily infringed the patents-in-suit under 35 U.S.C. § 271(c) by offering to sell, within this judicial district and elsewhere in the United States, the Form 1 3D printer, which constitutes at least a component of a patented machine, manufacture, combination, or composition, or a material or apparatus for use in practicing a patented process, constituting at least a material part of the invention, knowing the same to be especially made or especially adapted for use in infringement of the patents-in-suit, such items not constituting a staple article or commodity of commerce suitable for substantial noninfringing use. Such infringement of the unexpired patents-in-suit is ongoing.

26. Upon information and belief, Formlabs has had knowledge of the patents-in-suit and had a specific intent to cause infringement of the patents-in-suit since the filing of a patent infringement suit by 3D Systems against Formlabs and Kickstarter in November 2012, or at least

during the pendency of that action, or, at a minimum, for the period going forward from the receipt by Formlabs of the present complaint.

27. Upon information and belief, at all pertinent times, Formlabs had specific intent to infringe, induce the infringement, and/or contributorily infringe the patents-in-suit by virtue of its actual knowledge of the patents-in-suit and/or at least its willful blindness to the existence of the unexpired patents-in-suit.

28. Upon information and belief, at all pertinent times, Formlabs subjectively believed that there was high probability that there were one or more patents of 3D Systems that covered its Form 1 3D printer and/or its use and took deliberate acts to avoid learning of this fact by at least having evaluated 3D Systems' patent portfolio and finding applicable patents that have expired, but willfully blinding itself to 3D Systems' patents that have not expired.

29. Upon information and belief, at all pertinent times, to the extent the patents-in-suit were not known by Formlabs, Formlabs attempted to deliberately shield itself from learning of the patents-in-suit while it was aware of 3D Systems' patented stereolithography machines, as demonstrated by many articles on the Internet about Formlabs' release of the Form 1 3D printer as having negative implications for 3D Systems, including <http://www.benzinga.com/analyst-ratings/analyst-color/12/09/2939278/jp-morgan-formlabs-release-could-be-negative-for-3d-syst#ixzz2CghpiVv6> reporting on JP Morgan's published report on 3D Systems that commented on potential negative implications for 3D Systems as a result of Formlabs' new 3D printer.

30. Upon information and belief, at all pertinent times, Formlabs also deliberately shielded itself from learning of 3D Systems' patents-in-suit when it knew, as is well known in the industry of converting digital designs into three-dimensional objects, that 3D Systems was the pioneer of stereolithography technology and has a significant patent portfolio covering numerous

different aspects of stereolithographic methods and apparatus, including patents like the patents-in-suit, and that 3D Systems has previously asserted its patents in patent infringement lawsuits against companies that use stereolithography technology that infringe upon 3D Systems' patents.

31. The fact that it is and was at all pertinent times well known in the industry that 3D Systems' patents would apply to Formlabs' Form 1 3D printer is shown from reviews of the Form 1 3D printer that Formlabs knew or should have known about, including a September 27, 2012 review from the website SolidSmack.com, <http://solidsmack.com/cad-design-news/form-1-by-formlabs-launches-on-kickstarter/>, that stated: "Utilizing Stereolithography (yet avoiding the patents, apparently), the Form 1 is capable of high quality 3D prints."

32. Additional evidence that 3D Systems was at all pertinent times well known in the industry as the owner of patents relating to stereolithography is provided in a September 26, 2012 review of the Form 1 3D printer from the website 3D Printing News and Trends, http://3dprintingreviews.blogspot.com/2012_09_01_archive.html, which stated "Note — Patents in this area are owned by 3D Systems Inc. There is a simplicity and beauty to the technique which could be easy to replicate. Have patents expired? Have FormLabs licensed any required IP, or have they found a new approach which can itself be protected by new patents?"

33. As further evidence of Formlabs' knowledge of, or its willful blindness to, 3D Systems' patents, including the patents-in-suit, at all pertinent times, upon information and belief, one of the co-founders of Formlabs, Maxim Lobovsky, stated on September 27, 2012 at <http://techcrunch.com/2012/09/27/3d-printer-form-1-gets-6x-its-100k-funding-goal-on-kickstarter-in-one-day/> that "The second factor [in bringing down the cost of the 3D printer] was the expiration of a few patents, meaning that the team didn't need to pay high licensing fees to

get this product to market." Upon information and belief, Mr. Lobovsky was referring to the expiration of a number of pioneering patents owned by 3D Systems that would have covered the Form 1 3D printer if not expired.

34. Upon information and belief, still further evidence of Formlabs' knowledge of, or its willful blindness to, 3D Systems' unexpired patents covering its Form 1 3D printer is an article indicating Formlabs' awareness of 3D Systems' stereolithography patents, in which Formlabs' Lead Engineer, Ian Ferguson, was asked, "What factors attribute to the lower cost of the printer?" to which he responded, "There are three main factors. First, certain patents have expired relating to the Stereolithography process." <http://solidsmack.com/fabricationbehind-the-design-the-formlabs-form-1-3d-printer/>.

35. The foregoing acts of patent infringement by Formlabs have been willful and deliberate and have caused, and unless enjoined by this Court, will continue to cause, immediate and irreparable injury and damage to 3D Systems, and will continue to do so unless enjoined by this Court, and 3D Systems has no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, 3D Systems prays for the following relief and an entry of judgment from this Court:

- A. Holding and declaring that the patents-in-suit were duly and legally issued, are valid, and are enforceable;
- B. Holding and declaring that Formlabs has directly infringed one or more of the claims of the patents-in-suit;
- C. Holding and declaring that Formlabs has actively induced infringement and contributorily infringed the patents-in-suit;

D. Holding that Formlabs has willfully infringed one or more claims of the patents-in-suit;

E. Finding that this action is an "exceptional" case within the meaning of 35 U.S.C. § 285, and awarding 3D Systems its reasonable attorney fees and expenses;

F. Preliminarily and permanently enjoining Formlabs and their respective officers, agents, servants, employees, attorneys, and those persons in active concert or participation with them who receive actual notice of the order from committing further acts of infringement;

G. Awarding damages to 3D Systems and trebling such damages under 35 U.S.C. § 284;

H. Awarding costs to 3D Systems; and

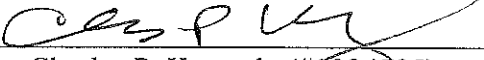
I. Such other relief as this Court deems necessary and just.

JURY DEMAND

Pursuant to Fed. R. Civ. P. 38(b), plaintiff 3D Systems hereby demands a trial by jury on all issues so triable.

Respectfully submitted,
LERNER, DAVID, LITTENBERG,
KRUMHOLZ & MENTLIK, LLP
Attorneys for Plaintiff 3D Systems, Inc.

Date: November 8, 2013

By: 
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CERTIFICATION PURSUANT TO LOCAL CIVIL RULE 1.6(a)

The undersigned hereby certifies, pursuant to Local Civil Rule 1.6(a), that with respect to the eight U.S. patents in controversy herein, neither Plaintiff nor Plaintiff's attorney is aware of any other action besides the present action pending in any court, or of any pending arbitration or administrative proceeding, to which this matter is subject. Plaintiff notes that a previous patent infringement action was filed by Plaintiff against Formlabs, Inc. and Kickstarter, Inc. on November 11, 2012, in the District of South Carolina, Civil No. 012-cv-03323-TLW, which related to a different U.S. Patent, namely U.S. Patent No. 5,597,520, but Plaintiff has filed a notice of voluntary dismissal of such action.

Date: November 8, 2013

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