

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

MAGPUL INDUSTRIES, CORP.,

Plaintiff,

v.

GIBBENS ENGINEERING GROUP, LLC
a/k/a GIBBZ ARMS,

Defendant.

Civil Action No. 1:16-cv-00270-SS

JURY TRIAL REQUESTED

**AMENDED COMPLAINT FOR PATENT INFRINGEMENT
AND DECLARATORY JUDGMENT OF NON-INFRINGEMENT**

PARTIES

1. Plaintiff Magpul Industries, Corp. (“Plaintiff” or “Magpul”) is a Delaware corporation with its headquarters in Austin, Texas. Plaintiff’s business consists primarily of the design, manufacture, and sale of products that are used as accessories to firearms.

2. Among other things, Magpul has developed M-LOK®, which is a modular locking mounting system for attaching accessories to firearms. Magpul’s M-LOK system features, among other things, a custom, cammed T-Nut. Magpul’s M-LOK system has been released as a free licensed platform that can be implemented by firearm accessory manufacturers provided that they agree to certain basic license terms (hereinafter “M-LOK Licensees”).

3. Upon information and belief, Defendant Gibbens Engineering Group, LLC *a/k/a* Gibbz Arms (“Defendant” or “Gibbz Arms”) is an Arizona limited liability company with a place of business at 1660 N. Rosemount Ste. 105, Mesa, Arizona 85205. Defendant operates under the Arizona registered trade name Gibbz Arms.

JURISDICTION AND VENUE

4. This Court has subject matter jurisdiction of this action under 28 U.S.C. §1331 and §1338(a) in that it arises under the United States Patent Laws.

5. Gibbz Arms is subject to this Court's specific personal jurisdiction because it conducts business in this Judicial District, has committed the acts complained of in this Judicial District, and has caused injury to Plaintiff within this Judicial District by virtue of the acts of patent infringement that are described herein.

6. Additionally, Gibbz Arms is subject to this Court's specific personal jurisdiction because of the intended and actual effects of making accusations of patent infringement implicating Magpul and third-party M-LOK Licensees. Those assertions have caused an effect on Magpul within this Judicial District by virtue of the actions that are described herein.

7. Venue is proper in this Judicial District pursuant to 28 U.S.C. §§1391 and 1400(b). Gibbz Arms is transacting, doing, and/or soliciting business, and committing acts of patent infringement in this Judicial District and elsewhere in the United States.

8. Additionally, venue is proper in this Judicial District because Gibbz Arms is directing accusations of patent infringement towards Magpul in this Judicial District and against third-party M-LOK Licensees in this Judicial District and elsewhere in the United States.

GIBBZ ARMS' ACCESSORY RAILS AND HANDGUARDS INFRINGE MAGPUL'S M-LOK PATENTS

9. Gibbz Arms' infringing products include, but are not necessarily limited to, the 4, 5-, 6-, and 10-Slot Accessory Rail (collectively the "Accused Rails").¹

10. Gibbz Arms' infringing products include, but are not necessarily limited to, the Ultra Lite Free Float Hand Guard – 10.25", 11.375", 13.375", and 15.5", the Lite Free Float

¹ See, e.g., Gibbz Arms, Products, Small Parts <https://gibbzarms.com/product-category/small-parts/> (last visited Mar. 14, 2016).

Hand Guard – 7.125”, 9.25”, 10.25”, 11.375”, 13.375”, and 15.5”, and the Standard Free Float Hand Guard – 9.25”, 10.25”, 11.375”, 13.375”, and 15.5” (collectively the “Accused Handguards”).²

11. The Accused Products are comprised of Accused Rails and the Accused Handguards.

12. The Accused Rails have at least one through hole.

13. The Accused Rails have a threaded elongated fastener with a flanged end that can removably engage the through hole.

14. The Accused Rails have a second fastener, a t-nut, with at least a pair of straight edges.

15. One of the straight edges of the t-nut limits the t-nut’s rotation to approximately a quarter turn.

16. The second fastener of the Accused Rails is mated to the threaded region of the elongated fastener.

17. The Accused Rails have a plurality of slot protrusions shaped to at least partially pass through an elongated slot in the firearm.

18. The Accused Handguards provide multiple elongated slots in the wall of the firearm.

19. The Accused Rails are inserted into the Accused Handguards by orientating the t-nut’s longitudinal axis parallel to the elongated slot’s longitudinal axis and then passing the t-nut through the elongated slot.

20. The Accused Rails are held onto the Accused Handguards by rotating the

² See, e.g., Gibbz Arms, Products, Hand Guards <https://gibbzarms.com/product-category/g4-hand-guards/> (last visited Mar. 14, 2016).

elongated fastener, which in turn rotates the t-nut about a quarter turn, such that the longitudinal axis of the t-nut is no longer parallel relative to the longitudinal axis of the elongated slot and cannot rotate further, then continuing the elongated fastener's rotation to tighten the accessory rail.

GIBBZ ARMS ACCUSES MAGPUL OF DESIGN PATENT INFRINGEMENT

21. On or about August 7, 2015, an attorney representing Mr. Kevin Gibbens sent a letter to Richard Fitzpatrick, Magpul's Founder and current President. On information and belief, Kevin Gibbens is the founder and current managing principal of Gibbz Arms, and the letter was sent on Gibbz Arms' behalf. Gibbz Arms' letter identified a pending Gibbz Arms design patent application and accused the custom T-Nut used with Magpul's M-LOK system of "infringing" on its intellectual property rights. (Hereinafter, the "August 7th letter").

22. Specifically, the August 7th letter claimed that Magpul's M-LOK T-Nut design was "virtually identical to key features of [the Gibbz Arms] invention" and that it "reads on" its pending design patent application. The letter noted that Gibbz Arms would take legal action against Magpul based on its offering for sale, displaying, and selling products when its application became an issued patent.

23. When Gibbz Arms sent the August 7th letter, its only pending patent application was the application that eventually issued as U.S. Patent No. D751,661 (the 'D661 Patent). On September 15, 2015, Gibbz Arms' counsel provided Magpul with this design patent application's filing receipt and pertinent drawings from this design patent, which were directed towards an ornamental design for a T-Nut, as further support for Gibbz Arms' infringement accusations based on Magpul's M-LOK T-Nut design.

24. On February 29, 2015, shortly before issuance of the 'D661 Patent, Gibbz Arms

issued a press release announcing “Licensing Opportunities” and purporting to put the public on notice as to its alleged intellectual property rights (hereinafter “February Press Release”). The February Press Release referenced Gibbz Arms’ pending utility and design patent applications as covering its new “GAMA” systems for attaching accessories to firearms.

25. Gibbz Arms’ February Press Release implied that Magpul and its M-LOK Licensees would need to enter into a “Gibbz Arms License Agreement” to continue using the M-LOK system. While Gibbz Arms’ February Press Release did not specifically identify Magpul and its M-LOK Licensees by name, the fact that they were being accused of infringement was readily apparent to Magpul and others within the firearms accessory industry.

26. Beginning on March 1, 2015, Gibbz Arms began sending letters to Magpul’s M-LOK Licensees, which set out an “opportunity” to enter into a license agreement. These letters claimed that Gibbz Arms had multiple pending patent applications over its technology, which would include the application that resulted in the ’D661 Patent. The letters include a threat to enforce Gibbz Arms’ patent rights against M-LOK Licensees upon issuance of Gibbz Arms patents unless negotiations for a license had already begun. And the letters specifically identified Magpul’s M-LOK system by name.

FIRST CLAIM FOR RELIEF

(Infringement of the ’236 Patent)

27. Plaintiff incorporates by reference and realleges each of the allegations set forth in paragraphs 1-26 above.

28. On January 6, 2015, U.S. Patent No. 8,925,236 B1 (the ’236 Patent), entitled Firearm Accessory Mounting Interface, was issued for an improved firearm accessory mounting interface.

29. The '236 Patent describes and claims a firearm accessory mounting interface comprised of three main parts: a first elongated fastener (*e.g.*, a screw), a second fastener (*e.g.*, a t-nut), and an elongated slot.

30. Plaintiff has owned the '236 Patent throughout the period of Gibbz Arms' infringing acts and still owns this patent.

31. On or before October 19, 2015, Plaintiff provided Gibbz Arms with actual notice of the '236 Patent and Gibbz Arms' infringement of same.

32. Since October 19, 2015, if not earlier, Gibbz Arms' patent infringement has been committed willfully and with full knowledge of the '236 Patent.

33. Paragraphs 12 to 20 identify elements found in the Accused Products that establish infringement of at least claim 13 of the '236 Patent.

34. Gibbz Arms has willfully infringed and is still infringing at least claim 13 of the '236 Patent by making, selling, and using the firearm accessory mounting interface that embodies the patented invention, and Gibbz Arms will continue to do so unless enjoined by this Court.

35. Gibbz Arms' Accused Rails and Accused Handguards infringe other claims of the '236 Patent, and Plaintiff will provide claim charts as necessary.

36. Plaintiff has complied with the statutory marking requirements of 35 U.S.C. § 271.

SECOND CLAIM FOR RELIEF

(Infringement of the '209 Patent)

37. Plaintiff incorporates by reference and realleges each of the allegations set forth in paragraphs 1-36 above.

38. On January 19, 2016, U.S. Patent No. 9,239,209 B2 (the '209 Patent), entitled Firearm Accessory Mounting Interface, was issued for an improved firearm accessory mounting interface.

39. The '209 Patent describes and claims a firearm accessory mounting interface comprised of three main parts: a first elongated fastener (*e.g.*, a screw), a second fastener (*e.g.*, a t-nut), and an elongated slot.

40. Plaintiff has owned the '209 Patent throughout the period of Gibbz Arms' infringing acts and still owns this patent.

41. Paragraphs 12 to 20 identify elements found in the Accused Products that establish infringement of at least claim 11 of the '209 Patent.

42. Gibbz Arms has infringed and is still infringing at least claim 11 of the '209 Patent by making, selling, and using the firearm accessory mounting interface that embodies the patented invention, and Gibbz Arms will continue to do so unless enjoined by this Court.

43. Gibbz Arms' Accused Rails and Accused Handguards infringe other claims of the '209 Patent, and Plaintiff will provide claim charts as necessary.

44. Plaintiff has complied with the statutory marking requirements of 35 U.S.C. § 271.

THIRD CLAIM FOR RELIEF

(Infringement of the '210 Patent)

45. Plaintiff incorporates by reference and realleges each of the allegations set forth in paragraphs 1-44 above.

46. On January 19, 2016, U.S. Patent No. 9,239,210 B2 (the '210 Patent), entitled Firearm Accessory Mounting Interface, was issued for an improved firearm accessory mounting interface.

47. The '210 Patent describes and claims a firearm accessory mounting interface comprised of three main parts: a first elongated fastener (*e.g.*, a screw), a second fastener (*e.g.*, a t-nut), and an elongated slot.

48. Plaintiff has owned the '210 Patent throughout the period of Gibbz Arms' infringing acts and still owns this patent.

49. Paragraphs 12 to 20 identify elements found in the Accused Products that establish infringement of at least claim 1 of the '210 Patent.

50. Gibbz Arms has infringed and is still infringing at least claim 1 of the '210 Patent by making, selling, and using the firearm accessory mounting interface that embodies the patented invention, and Gibbz Arms will continue to do so unless enjoined by this Court.

51. Gibbz Arms' Accused Rails and Accused Handguards infringe other claims of the '210 Patent, and Plaintiff will provide claim charts as necessary.

52. Plaintiff has complied with the statutory marking requirements of 35 U.S.C. §271.

FOURTH CLAIM FOR RELIEF

(Declaratory Judgment of Non-Infringement of the 'D661 Patent)

53. Plaintiff incorporates by reference and realleges each of the allegations set forth in

paragraphs 1-52, above.

54. On March 15, 2016, the 'D661 Patent, entitled Weapon Handguard, was issued for the ornamental design for a left-handed T-nut.

55. Upon information and belief, the inventors of the 'D661 Patent assigned all rights, title, and interests in the 'D661 Patent to Gibbz Arms.

56. Gibbz Arms has alleged that the M-LOK T-Nut Replacement Set infringes on the design shown in the design patent application that became the 'D661 Patent. The T-Nut in Magpul's M-LOK T-Nut Replacement Set is also the same T-Nut that Magpul offers and uses throughout the M-LOK system.

57. Gibbz Arms has threatened enforcement of its patent rights in the 'D661 Patent's design against Magpul and its third-party M-LOK Licensees. Paragraphs 21 to 26 describe accusations, assertions, claims, and threats that Gibbz Arms has directed towards Magpul and its M-LOK Licensees that have resulted in Magpul's harm, including costs incurred in responding publicly and legally to the claim that Magpul's M-LOK T-Nut infringes on Gibbz Arms' patented design.

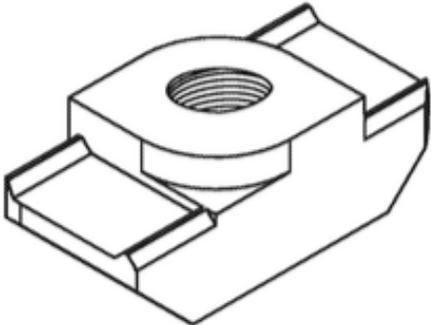
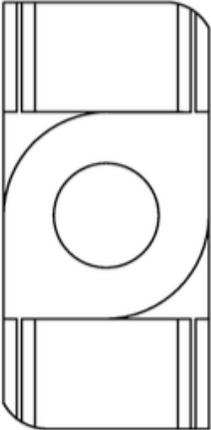
58. Magpul seeks a declaration that making, using, selling, offering for sale, and/or importing of the M-LOK T-Nut, or any component of the M-LOK system, by Magpul and its M-LOK Licensees, does not infringe the 'D661 Patent, directly or indirectly, literally or under the doctrine of equivalents.

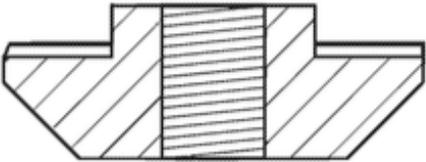
59. The 'D661 Patent covers the very specific appearance and ornamental features of a stylized left-handed T-Nut. And the right-handed T-Nut used with the M-LOK system is dramatically different in appearance from the T-Nut shown in the Gibbz Arms design patent. In addition to being a left-handed nut, the Gibbz Arms design has sharply raised edges along the top

of the nut’s “wings” and a base with a narrowing triangular shape.

60. These stylized features are glaringly absent from the T-Nut used with the M-LOK system. Accordingly, an ordinary observer would not conclude that the two designs are “substantially the same,” which is a necessary prerequisite for establishing infringement of a design patent. And, as such, Magpul is entitled to judgment declaring that the M-LOK T-Nut does not infringe.

61. The side-by-side comparison of the ’D661 Patent’s T-Nut and Magpul’s M-LOK T-Nut below shows additional differences that establish non-infringement.

The ’D661 Patent	The M-LOK T-Nut
 <p data-bbox="423 1220 578 1272">FIG. 5</p>	
 <p data-bbox="415 1814 542 1866">FIG. 6</p>	

The 'D661 Patent	The M-LOK T-Nut
 <p data-bbox="391 520 542 569">FIG. 8</p>	

DEMAND FOR JURY TRIAL

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Magpul demands a trial by jury of any and all issues on which a trial by jury is available under applicable law.

REQUEST FOR RELIEF

Therefore, Plaintiff requests for judgment:

1. That Gibbz Arms has infringed the '236, '209, and '210 Patents;
2. That Gibbz Arms has knowingly and willfully infringed the '236 Patent;
3. That Plaintiff be awarded damages for patent infringement according to proof and ordering that such damages be multiplied up to treble their amount;
4. Preliminarily and permanently enjoining Gibbz Arms and all others acting in concert with Gibbz Arms from making, using, selling, or offering to sell the infringing firearm accessory mounting interface or any other product that infringes the '236, '209, and '210 Patents without permission or license from Plaintiff;
5. That Gibbz Arms be ordered to deliver up to Plaintiff all products infringing the '236, '209, and '210 Patents within its ownership, possession, or control for destruction by

Plaintiff;

6. That the making, using, selling, offering for sale, and/or importing of the M-LOK T-Nut, or any component of the M-LOK system, does not infringe the 'D661 Patent, directly or indirectly, literally or under the doctrine of equivalents;

7. That the Court declare this to be an exceptional case pursuant to 35 U.S.C. § 285, and award reasonable attorney's fees;

8. That Plaintiff be awarded its costs of suit, and pre- and post-judgment interest on any money judgment; and

9. For such other relief as the Court deems proper.

Dated: March 15, 2016

Respectfully submitted,

By: /s/ Brian E. Mitchell

Brian E. Mitchell

Brian E. Mitchell (CA SBN: 190095)

Admitted Pro Hac Vice

Marcel F. De Armas (CA SBN: 289282)

Admitted Pro Hac Vice

MITCHELL + COMPANY

4 Embarcadero Center, Suite 1400

San Francisco, CA 94111

Telephone: (415) 766-3515

Facsimile: (415) 402-0058

Email: brian.mitchell@mcolawoffices.com

mdearmas@mcolawoffices.com

Bill Cobb (SBN: 00796372)

Cobb & Counsel

401 Congress Ave., Suite 1540

Austin, TX 78701

Telephone: (512) 693-7570

Facsimile: (512) 687-3432

Email: bill@cobbxcounsel.com

Attorneys for Plaintiff

MAGPUL INDUSTRIES, CORP.

CERTIFICATE OF SERVICE

I hereby certify that on the 15th day of March 2016, I electronically filed the foregoing Amended Complaint for Patent Infringement and Declaratory Judgment of Non-Infringement with the Clerk of the Court using the CM/ECF system. Because no counsel for Defendant has appeared in this case, however, I further certify that on March 15, 2016, a paper copy is being provided via Certified Mail, Return Receipt Requested to the following address pursuant to FED. R. CIV. P. 5:

Gibbens Engineering Group, LLC a/k/a Gibbz Arms
1660 N. Rosemount, Suite 105
Mesa, Arizona 85205

By: /s/ Marcel F. De Armas
Marcel F. De Armas