

Christopher Lewis, OSB #003079

Email: clewis@schwabe.com

Devon Zastrow Newman, OSB #014627

Email: dnewman@schwabe.com

SCHWABE, WILLIAMSON, & WYATT

1211 SW Fifth Avenue, Suite 1900

Portland, Oregon 97204-3735

Telephone: 503-222-9981

Facsimile: 503-796-2900

William A. Brewer III

Email: wab@bickelbrewer.com

Michael J. Collins

Email: mjc@bickelbrewer.com

Farooq A. Tayab

Email: fat@bickelbrewer.com

BICKEL & BREWER

4800 Comerica Bank Tower

1717 Main Street

Dallas, Texas 75201-4612

Telephone: 214-653-4000

Facsimile: 214-653-1015

Attorney(s) for Plaintiff FLIR Systems, Inc.

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

PORTLAND DIVISION

FLIR SYSTEMS, INC., an Oregon
corporation,

Plaintiff,

vs.

THOMAS L. GAMBARO, an individual;
MOTIONLESS KEYBOARD COMPANY, an
Oregon corporation,

Defendants.

Case No. CV 10-0231-BR

MEMORANDUM OF LAW IN
SUPPORT OF PLAINTIFF'S MOTION
TO STRIKE DEFENDANT
MOTIONLESS KEYBOARD
COMPANY'S ANSWER, DEFENSES
AND COUNTERCLAIM(S) TO
PLAINTIFF'S ORIGINAL COMPLAINT

Plaintiff FLIR Systems, Inc. (“FLIR”) files this Memorandum of Law in Support of its Motion to Strike Defendant Motionless Keyboard Company’s “Answer, Defenses, & Counterclaims To FLIR Complaint” (the “Answer”), as follows:

I.

FACTUAL BACKGROUND

On March 1, 2010, FLIR filed its Complaint For Declaratory Judgment Of Non-Infringement And Invalidity Of Patent (the “Complaint”) against Thomas Gambaro (“Gambaro”) and Motionless Keyboard Company (“MKC”) (jointly, “Defendants”), seeking declaratory relief based on Defendants’ threats to sue FLIR based on erroneous allegations that certain FLIR products infringe United States Patent No. 5,332,322 (the “322 Patent”). On April 8, 2010, Defendant Gambaro – a non-lawyer – filed the Answer on behalf of himself and MKC *pro se*. Defendant MKC – an Oregon corporation – is not represented by counsel of record in this litigation.

II.

ARGUMENTS AND AUTHORITIES

A corporation can appear in federal court only through counsel of record.¹ Unlike individuals, corporations are artificial entities created by the law, which cannot appear personally in an action, but must make appearances through agents.² Corporate agents who appear on

¹ 28 U.S.C. § 1654 (“In all courts of the United States the parties may plead and conduct their own cases personally or by counsel as, by the rules of such courts, respectively, are permitted to manage and conduct causes therein.”); LR 83-9(b) (“A party represented by an attorney cannot appear or act except through the attorney. Unless otherwise specifically provided by law or Court order, a corporation may appear or act only through an attorney.”).

² See *In re America W. Airlines*, 40 F.3d 1058, 1059 (9th Cir. 1994) (per curiam).

behalf of corporations in federal courts must be attorneys and not directors, officers or shareholders of the corporation.³

Defendant Gambaro has admitted in his Answer that “he is a significant shareholder of MKC.”⁴ Defendant Gambaro has not signed as an attorney. Therefore, pursuant to this Court’s Local Rule 83-9(b), he may not represent the interests of MKC in this action.⁵ Accordingly, this Court should strike defendant MKC’s Answer because it was not filed by counsel and instead it was filed by defendant Gambaro who is not an attorney.

³ *Id.*

⁴ Answer, ¶ 4.

⁵ *See Charlton v. Hall*, 2009 U.S. Dist. LEXIS 28938, 2009 WL 928690 (D. Or. 2009) (Court struck multiple documents filed by *pro se* petitioner pursuant to L.R. 83-9(b)).

III.

CONCLUSION

FLIR respectfully requests that the Court enter an order striking MKC's Answer and granting FLIR all other appropriate relief.

Dated: April 29, 2010

By: s/ Christopher Lewis
Christopher Lewis, OSB #00379
Email: clewis@schwabe.com
Devon Zastrow Newman, OSB #014627
Email: dnewman@schwabe.com
SCHWABE, WILLIAMSON, & WYATT
1211 SW Fifth Avenue
Portland, Oregon 97204-3735
Telephone: 503-222-9981
Facsimile: 503-796-2900

BICKEL & BREWER
William A. Brewer III, Texas State Bar No.
02967035
wab@bickelbrewer.com
Michael J. Collins, Texas State Bar No. 785493
mjc@bickelbrewer.com
Farooq A. Tayab, Texas State Bar No. 24063028
fat@bickelbrewer.com
4800 Comerica Bank Tower
1717 Main Street
Dallas, Texas 75201-4612
Telephone: (214) 653-4000
Facsimile: (214) 653-1015

Attorneys for Plaintiff FLIR Systems, Inc.

CERTIFICATE OF SERVICE

The undersigned certifies that on this 29th day of April, 2010, a true and correct copy of the foregoing document was served via first class mail, postage prepaid, as follows:

Mr. Thomas Gambaro
and
Motionless Keyboard Company
P.O. Box 14741
Portland, Oregon 97293-0741

s/ Christopher Lewis
Christopher Lewis