

## Shooting, Hunting, and Outdoor Industries IP Update

This is the March 2011 installment of Sutherland's "Shooting, Hunting, and Outdoor Industries IP Update." These updates are intended to inform our readers about intellectual property (IP) developments in the shooting, hunting, and outdoor industries. If the information provided herein is of interest, or if additional information is desired, please contact us.

### Halfway There: The U.S. Senate Passes Patent Reform Legislation

On March 8, 2011, the U.S. Senate approved, by a vote of 95-5, long-awaited patent reform legislation. The legislation, known as S.23 "The America Invents Act," now heads to the U.S. House of Representatives, where further revisions by the U.S. House Judiciary Committee are expected. Major changes to the U.S. patent law sought by the legislation are conversion of the U.S. from a "first-to-invent" system to a "first-to-file" system, consistent with most other countries' patent laws, new requirements for false patent marking lawsuits, and new proceedings to challenge a patent's validity. A coalition of relatively large corporations supported passage of the legislation. However, many smaller entities, including the non-profit lobbying organization, Gun Owners of America, opposed the legislation, indicating that larger companies could take advantage of a "first-to-file" system due to their larger economic resources.

(Source: [S.23](#))

### Firearm Distributor Donates Internet Domains to National Shooting Sports Foundation

ISSC-Austria, an Austrian importer and distributor of pistols and rifles, announced it has transferred ownership of two registered domain names, [www.modernsportingrifle.com](http://www.modernsportingrifle.com) and [www.modernsportingrifle.org](http://www.modernsportingrifle.org), to the National Shooting Sports Foundation (NSSF). ISSC-Austria had registered these domain names as part of its own marketing campaign for its ISSC MSR MK22 rifles. Since 2009, the NSSF has promoted the use of the terms "Modern Sporting Rifle" and "MSR" in connection with its national media campaign to promote the image of AR-15 style rifles, and to correct widespread misperceptions among gun owners and non-gun owners about AR-15-style rifles. In separate press releases, the NSSF and ISSC-Austria announced the donation of the two domain names to the NSSF to support the joint efforts of the parties to promote and educate consumers. While the NSSF and ISSC-Austria ultimately cooperated in this instance, this demonstrates that companies should promptly pursue domain name registrations for certain commercially valuable trademarks, trade names, and other designations of origin important to their businesses.

(Source: The Shooting Wire)

### Ammunition Company Asserts Patent Against U.S. Department of Defense

Liberty Ammunition LLC (Liberty) has asserted U.S. Patent No. 7,748,325 against the U.S. Department of Defense (DOD) in the U.S. Court of Federal Claims. The patent relates to a high-performance bullet having nose and tail portions that separate when the bullet hits a target. Liberty claims that its patent covers its T3 main battle rifle rounds. The filed complaint also alleges that the DOD violated three

© 2011 Sutherland Asbill & Brennan LLP. All Rights Reserved.

This communication is for general informational purposes only and is not intended to constitute legal advice or a recommended course of action in any given situation. This communication is not intended to be, and should not be, relied upon by the recipient in making decisions of a legal nature with respect to the issues discussed herein. The recipient is encouraged to consult independent counsel before making any decisions or taking any action concerning the matters in this communication. This communication does not create an attorney-client relationship between Sutherland and the recipient.

1



mutual nondisclosure agreements that the parties entered into between February 2005 and January 2006. The U.S. Court of Federal Claims case number is 1:11-cv-84.

(Source: Law360)

## Companies Sued for False Patent Marking of Cartridge Loaders

Butler Creek Corporation (Butler Creek) and Bushnell Inc. (Bushnell) have been sued by GHJ Holdings, LLC (GHJ) for false patent marking in the U.S. District Court for the Eastern District of Texas. GHJ's complaint alleges that Butler Creek and Bushnell improperly marked cartridge loaders with U.S. Patent No. 4,739,572 ("the '572 Patent"), which relates to a method and apparatus for orienting and loading rim-fire cartridges. The '572 Patent expired on April 26, 2000, for failure to pay maintenance fees. This case is a reminder of the importance of patent marking review. Companies selling patented products should periodically review the patent markings to insure that relevant patent numbers of non-expired patents are used, and to remove any expired patent numbers. Under federal law, potential liability for false marking can be up to \$500 per falsely marked product. The U.S. District Court for the Eastern District of Texas case number is 5:11-cv-00060.

(Source: RFC Express)

## Streamlight Targets Longhorn Tactical for Patent Infringement

On February 17, 2011, Streamlight, Inc., a manufacturer of lighting products, filed a patent infringement suit in the U.S. District Court for the Eastern District of Pennsylvania against a competitor, Longhorn Tactical, LLC. Four patents were alleged to be infringed, including U.S. Patent Nos. 7,188,978 and 7,614,760; and U.S. Design Patent Nos. D543,446 and D548,385. Each of the four patents covers different utility or design components of a mountable light for a firearm rail system. The court case number is 2:11-cv-01152-AB.

(Source: RFC Express)



*If you have questions about any of these developments, please feel free to contact any of the attorneys listed below or the Sutherland attorney with whom you regularly work.*

Christopher J. Chan	404.853.8049	<a href="mailto:chris.chan@sutherland.com">chris.chan@sutherland.com</a>
Malvern U. Griffin, III	404.853.8233	<a href="mailto:griff.griffin@sutherland.com">griff.griffin@sutherland.com</a>
David E. Wigley	404.853.8072	<a href="mailto:david.wigley@sutherland.com">david.wigley@sutherland.com</a>