

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS**

JAMES BOYLE,

Plaintiff,

v.

BLACK & DECKER (U.S.) INC. and THE
BLACK & DECKER CORPORATION,

Defendants

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Case No.

JURY TRIAL DEMANDED

PLAINTIFF’S COMPLAINT AND JURY DEMAND

Plaintiff JAMES BOYLE hereby files the instant Complaint against Defendants BLACK & DECKER (U.S.) INC. and THE BLACK & DECKER CORPORATION and states as follows:

PARTIES

1. Plaintiff James Boyle is a citizen and resident of Illinois, who lives at 15367 Natalie Drive. Oak Forest, Illinois 60452.
2. Defendant Black and Decker (U.S.) Inc. is a Maryland corporation maintaining its principal place of business at 701 E. Joppa Road, Towson, Maryland 21286.
3. Defendant The Black & Decker Corporation is a Maryland corporation maintaining its principal place of business at 701 E. Joppa Road, Towson, Maryland 21286.

JURISDICTION AND VENUE

4. This Court has jurisdiction over the parties and subject matter pursuant to 28 U.S.C. Section 1332. The amount in controversy exceeds \$75,000 exclusive of interest and costs. The Court has jurisdiction over Defendants because, at all relevant times, they designed, manufactured, sold, distributed, promoted and place into the stream of commerce in Illinois numerous power tools including table saws. Defendants also conducted business in the State of

Illinois and the causes of action asserted herein arose from and are connected to purposeful acts taken by Defendants in Illinois. Defendants' contacts with Illinois were continuous and systematic. Venue is proper in this Court because Plaintiff resides in this District and the incident that is the basis of this Complaint occurred in this District.

FACTS

5. This suit arises out of the serious and permanent personal injuries suffered by Plaintiff due to the wrongful conduct of Defendants in designing, manufacturing, distributing and selling a DeWalt table saw, Model DW745, serial number 201026-CT064907 (the "DeWalt Saw").

6. For many years technology has been available that would have eliminated or reduced Plaintiff's injury. Such technology, known as SawStop, stops the spinning saw blade almost instantly upon contact with human skin.

7. In or around November 2000, at a meeting of the Power Tool Institute ("PTI") of which Defendants were members, Defendants were made aware of flesh-sensing technology that stops a spinning table saw blade almost instantly upon contact with human skin. At the time of the meeting, Stephen Gass, the inventor of the SawStop technology, offered to make the technology available to Defendants through a licensing agreement. The technology was feasible for incorporation into the DeWalt Saw.

8. Defendants, and other table saw manufacturers, failed to pursue a license of the available SawStop technology or to incorporate similar technology into the DeWalt Saw. As a result, the DeWalt Saw had no flesh-detecting technology or other similar technology that would stop a spinning saw blade upon contact with human skin. Because it lacked such technology, the DeWalt Saw was unreasonably dangerous as designed and manufactured.

9. On or about April 12, 2015, while using the DeWalt Saw in the reasonable, foreseeable and intended manner, Plaintiff suffered severe and permanent personal injuries caused by contact between his left thumb and the saw's rotating blade. At the time of his injury, Plaintiff was acting reasonably and was exercising all due care for his own safety.

CAUSES OF ACTION

FIRST CAUSE OF ACTION -- STRICT PRODUCT LIABILITY

10. Plaintiff re-alleges Paragraphs 1 through 9 and incorporates them herein by reference.

11. Defendants are liable under the theory of product liability as set forth in §§402A and 402B of the Restatement of Torts 2d. Defendants at all times material hereto engaged in the business of designing, manufacturing, assembling, selling, marketing, and/or supplying the DeWalt Saw. The DeWalt Saw was in a defective condition at the time that it was designed, manufactured, sold, and/or marketed by Defendants and at the time it left Defendants' possession. The DeWalt Saw was expected to and reached Plaintiff without any substantial change in its condition and the DeWalt Saw was in the possession of Defendants at the time the defect occurred.

12. The condition of the DeWalt Saw made it unreasonably dangerous for its intended use. Plaintiff was a user of the DeWalt Saw and was unaware of the defect and used the DeWalt Saw in a reasonable, foreseeable and intended manner. The injury suffered by Plaintiff was the exact type of injury that can be caused by a defective table saw.

13. The DeWalt Saw failed to perform as safely as an ordinary consumer, such as Plaintiff, would expect when used in an intended or reasonably foreseeable manner. The benefits of the design of the DeWalt Saw do not outweigh the risk of danger inherent in such design.

Moreover, Defendants could have provided a safer alternative design into the DeWalt Saw. Such a safer alternative design existed at the time the DeWalt Saw was manufactured, and it would not have substantially impaired the DeWalt Saw's utility. Such safer alternative design was economically and technologically feasible at the time the product left the control of Defendants by the application of existing or reasonably achievable scientific knowledge. The DeWalt Saw's defective design was a proximate cause of Plaintiff's injuries and damages.

14. The defective condition of the DeWalt Saw was a legal cause and proximate cause of Plaintiff's injury and of his resulting physical pain, mental anguish, physical disfigurement, physical impairment, medical care and treatment, lost wages and loss of his ability to engage in usual and normal activities.

15. For these reasons, Defendants are strictly liable under Illinois product liability law without regard to proof of negligence or gross negligence.

SECOND CAUSE OF ACTION -- NEGLIGENCE

16. Plaintiff re-alleges the consistent allegations in Paragraphs 1 through 9 and incorporates them herein by reference.

17. Defendants had a duty to exercise reasonable care in the design, manufacture, marketing, testing, approval, application for approval, inspection, sale and distribution of the DeWalt Saw into the stream of commerce.

18. Defendants failed to exercise ordinary, and deviated from the then-existing standards of care, in the design, manufacture, marketing, testing, inspection, sale and/or distribution of the DeWalt Saw into interstate commerce. Thus, Defendants were negligent in all of these areas.

19. As a direct and proximate cause of the failure to exercise due care and of the breach of the standard of care, the plaintiff was injured as described with particularity above and suffered physical pain, mental anguish, physical disfigurement, physical impairment, medical care and treatment, lost wages and the loss of his ability to engage in usual and normal activities.

20. Had Defendants exercised due care and complied with the standard of care, the Plaintiff would not have been injured as set forth above.

THIRD CAUSE OF ACTION -- BREACH OF IMPLIED WARRANTY OF FITNESS

21. Plaintiff re-alleges the consistent allegations in Paragraphs 1 through 9 and incorporates them herein by reference.

22. Defendants had reason to know that the particular purpose for which the DeWalt Saw was to be used. Defendants had reason to know that the buyer or supplier was relying on the skill and judgment of Defendants to select or furnish suitable products. The product supplied by Defendants was unfit for the particular purpose for which it was purchased. This lack of fitness for the product's purpose was a legal cause and proximate cause of Plaintiff's injury and of his resulting physical pain, mental anguish, physical disfigurement, physical impairment, medical care and treatment, lost wages and loss of his ability to engage in usual and normal activities. Defendants are liable to Plaintiff for breach of the implied warranty of fitness.

DAMAGES

23. The wrongful acts of Defendants set forth above were a legal cause of Plaintiff's injuries and damages. Plaintiff seeks all actual damages available under Illinois law including, without limitation: (a) damages for physical pain, mental anguish, physical disfigurement, and physical impairment; (b) damages for medical care and treatment; (c) damages for lost wages;

and (d) damages for Plaintiff's ability to engage in usual and normal activities; and (e) other damages as provided by law.

31. All conditions precedent to Plaintiff's recovery under the foregoing claims have been performed, have occurred or have been excused.

WHEREFORE, Plaintiff prays that the Court enter judgment against Defendants for the damages set forth herein as well as pre-judgment and post-judgment interest and costs of suit and that the Court grant Plaintiff such other and further relief to which she may be justly entitled.

Respectfully submitted,

/s/ Eric D. Pearson

Eric D. Pearson, Esq.

Illinois ARDC No. 6315124

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JS 44 (Rev. 3/13)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

<p>I. (a) PLAINTIFFS</p> <p>JAMES BOYLE</p> <p>(b) County of Residence of First Listed Plaintiff <u>Cook, IL</u> <i>(EXCEPT IN U.S. PLAINTIFF CASES)</i></p> <p>(c) Attorneys <i>(Firm Name, Address, and Telephone Number)</i></p> <p>Eric D. Pearson, Heygood Orr & Pearson, 2331 W. Northwest Hwy, 2nd Floor, Dallas, TX 75220</p>	<p>DEFENDANTS</p> <p>BLACK & DECKER (U.S.) INC. and THE BLACK & DECKER CORPORATION</p> <p>County of Residence of First Listed Defendant <u>Baltimore, MD</u> <i>(IN U.S. PLAINTIFF CASES ONLY)</i></p> <p>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.</p> <p>Attorneys <i>(If Known)</i></p>
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<p>II. BASIS OF JURISDICTION <i>(Place an "X" in One Box Only)</i></p> <p>1 U.S. Government Plaintiff <input type="checkbox"/> 3 Federal Question <input type="checkbox"/> <i>(U.S. Government Not a Party)</i></p> <p>2 U.S. Government Defendant <input type="checkbox"/> 4 Diversity <input checked="" type="checkbox"/> <i>(Indicate Citizenship of Parties in Item III)</i></p>	<p>III. CITIZENSHIP OF PRINCIPAL PARTIES <i>(Place an "X" in One Box for Plaintiff and One Box for Defendant)</i> <i>(For Diversity Cases Only)</i></p> <table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td></td> <td>PTF</td> <td>DEF</td> <td></td> <td>PTF</td> <td>DEF</td> </tr> <tr> <td>Citizen of This State</td> <td><input checked="" type="checkbox"/> 1</td> <td><input type="checkbox"/></td> <td>Incorporated or Principal Place of Business In This State</td> <td><input type="checkbox"/> 4</td> <td><input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td><input type="checkbox"/> 2</td> <td><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business In Another State</td> <td><input type="checkbox"/> 5</td> <td><input checked="" type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td><input type="checkbox"/> 3</td> <td><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td><input type="checkbox"/> 6</td> <td><input type="checkbox"/> 6</td> </tr> </table>		PTF	DEF		PTF	DEF	Citizen of This State	<input checked="" type="checkbox"/> 1	<input type="checkbox"/>	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input checked="" type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
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IV. NATURE OF SUIT *(Place an "X" in One Box Only)*

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<p>PERSONAL INJURY</p> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <p>PERSONAL PROPERTY</p> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <p>PROPERTY RIGHTS</p> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark
<p>REAL PROPERTY</p> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<p>CIVIL RIGHTS</p> <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities Employment <input type="checkbox"/> 446 Amer. w/Disabilities Other <input type="checkbox"/> 448 Education	<p>LABOR</p> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act	<p>SOCIAL SECURITY</p> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
	<p>PRISONER PETITIONS</p> <input type="checkbox"/> 510 Motions to Vacate Sentence <p>Habeas Corpus:</p> <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	<p>IMMIGRATION</p> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee (Prisoner Petition) <input type="checkbox"/> 465 Other Immigration Actions	<p>FEDERAL TAX SUITS</p> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	

V. ORIGIN *(Place an "X" in One Box Only)*

1 Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 Transferred from Another District *(specify)* 6 Multidistrict Litigation

<p>VI. CAUSE OF ACTION <i>(Enter U.S. Civil Statute under which you are filing and write a brief statement of cause.)</i></p> <p>28 U.S.C. Section 1332; Plaintiff was injured by defective table saw manufactured and sold by Defendants.</p>	<p>VII. Previous Bankruptcy Matters <i>(For nature of suit 422 and 423, enter the case number and judge for any associated bankruptcy matter previously adjudicated by a judge of this Court. Use a separate attachment if necessary.)</i></p>
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VIII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. **DEMAND \$** _____ CHECK YES only if demanded in complaint: **JURY DEMAND:** Yes No

IX. RELATED CASE(S) IF ANY *(See instructions):* JUDGE _____ DOCKET NUMBER _____

X. This case (check one box) Is not a refiling of a previously dismissed action is a refiling of case number _____ previously dismissed by Judge _____

DATE **04/10/2015** SIGNATURE OF ATTORNEY OF RECORD **/s/ Eric D. Pearson**