

The Honorable Ronald B. Leighton

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

**U.S.N.R./KOCKUMS CANCAR
COMPANY**, a Canadian corporation,

Plaintiff,

v.

**RAPTOR INTEGRATION
INCORPORATED**; a Canadian corporation,
MACHINAGE PICHE, INC., a Canadian
corporation, and **TIMOTHY MOSHER**, a
Canadian citizen

Defendants.

Case No. 3:11-cv-05935-RBL

SECOND AMENDED COMPLAINT
FOR PATENT INFRINGEMENT,
TRADE SECRET MISAPPROPRIATION
AND BREACH OF CONTRACT

JURY DEMANDED ON ALL ISSUES

Plaintiff U.S.N.R. Kockums Cancar Company (“USNR”) hereby submits its Second Amended Complaint against Defendants Raptor Integration Incorporated (“Raptor”), Machinage Piché, Inc. (“Piché”), and Timothy Mosher (“Mosher”):

I. NATURE OF CLAIMS

1. USNR seeks injunctive and monetary relief against Defendants Piché, Raptor and Mosher for infringement of its U.S. Patent No. 5,911,302 (“302 Patent”) in violation of 35 U.S.C. §§ 271, 281, 283-285.

2. USNR also seeks injunctive and monetary relief against Defendants Mosher and Raptor for trade secret misappropriation in violation of the Washington Uniform Trade Secrets Act, RCW 19.108.010 et seq.

SECOND AMENDED COMPLAINT - 1
3:11-CV-05935-RBL

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1 3. USNR additionally seeks damages against Defendant Mosher for breach of
2 contract in violation of common law.

3 **II. THE PARTIES**

4 4. Plaintiff USNR is a Canadian corporation having a principal place of business
5 in British Columbia, Canada, including a physical location in Salmon Arm. USNR is a
6 wholly owned company of U.S. Natural Resources, Inc., which is headquartered in
7 Woodland, Washington. USNR uses the mailing address of U.S. Natural Resources, Inc.’s
8 corporate headquarters, 8000 NE Parkway Drive, Suite 100, Vancouver, Washington 98662
9 as its address for registration of patents owned by USNR.

10 5. On information and belief, Defendant Raptor is a Canadian corporation
11 having a principal place of business in Salmon Arm, British Columbia, Canada.

12 6. On information and belief, Defendant Piché is a Canadian corporation having
13 a principal place of business at 414 3e Rue, Daveluyville, Quebec, G0Z1C0, Canada.

14 7. On information and belief, Mosher is a Canadian citizen residing and working
15 in or near Salmon Arm, British Columbia, Canada.

16 **III. JURISDICTION AND VENUE**

17 8. This action arises under the United States patent laws, namely 35 U.S.C.
18 § 271 et seq., the Washington Uniform Trade Secrets Act, RCW 19.108.010 et seq., and
19 common law.

20 9. This Court has original subject matter jurisdiction over the federal claims
21 asserted in this Complaint pursuant to 28 U.S.C. §§ 1331 and 1338. This Court has
22 supplemental jurisdiction over related state claims for trade secret misappropriation and
23 breach of contract pursuant to 28 U.S.C. § 1338(b) because these claims derive from a
24 common nucleus of operative facts pursuant to the doctrine of supplemental jurisdiction
25 under 28 U.S.C. § 1367, and the claims are joined with substantial and related claims under
26 federal patent law, over which this Court has original jurisdiction.

1 10. This Court has personal jurisdiction over Piché because, on information and
2 belief, Piché makes a product that infringes USNR’s ‘302 Patent and has purposefully
3 directed activities at residents of this forum by offering to sell, through its advertised partner
4 and agent Raptor, the infringing product to a resident of this district in Longview,
5 Washington. USNR’s claim for infringement of the ‘302 Patent arises directly out of this
6 activity. Further supportive of personal jurisdiction in this case is the fact that Piché, an alien
7 corporation, has, on information and belief, sold product elsewhere in the United States.

8 11. This Court has personal jurisdiction over Raptor because, on information and
9 belief, Raptor has, through its agent Mosher, appeared in this district and offered to sell a
10 product covered by the ‘302 Patent to a resident of this district in Longview, Washington.
11 USNR’s claim for infringement of the ‘302 Patent arises directly out of this activity.

12 12. This Court has personal jurisdiction over Mosher because, on information and
13 belief, Mosher has appeared in the district and offered products covered by the ‘302 Patent
14 for sale to a resident of this district in Longview, Washington.

15 13. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391(d), as
16 all Defendants are aliens.

17 **IV. FACTS COMMON TO ALL CLAIMS**

18 **Plaintiff USNR/Kockums Cancar**

19 14. Plaintiff USNR’s parent company, U.S. Natural Resources, Inc., is a world
20 leader in lumber-handling equipment, with products ranging from single machines to
21 complete turnkey solutions for wood processors in the plywood and panel, solid wood and
22 engineered wood sectors. U.S. Natural Resources, Inc.’s innovative products are protected
23 by hundreds of patents in the U.S. and around the world.

24 15. Plaintiff USNR is wholly owned by U.S. Natural Resources, Inc. USNR is a
25 manufacturer and distributor of sawmill equipment, and a product innovator. USNR holds
26 all right, title and interest in the ‘302 Patent, which is entitled “Circulating Paddle Board

1 Positioning Apparatus.” The ‘302 Patent was issued June 15, 1999, and all maintenance fees
2 for the ‘302 Patent have been paid. A copy of the ‘302 Patent is attached to this Complaint
3 as Exhibit 1. The ‘302 Patent is generally directed to an innovation in lumber processing,
4 consisting of a board positioning device used to accurately position selected boards
5 lengthwise and process the boards through the trimmer at a high rate of speed, without
6 substantial board slippage, bounce, or collapse of the boards’ weak ends. Boards trimmed
7 using the invention of the ‘302 patent are consistently accurate and optimally trimmed.

8 16. USNR acquired the ‘302 Patent when it purchased all of the assets of Coe
9 Newnes McGehee, Inc. (“Newnes”) in 2008, as expressly provided in the purchase
10 agreement.

11 17. Newnes had been in the business of designing, manufacturing and selling
12 machinery, equipment, computer systems, parts, solutions and services to customers in the
13 forest products industry. Newnes was a product innovator and took all reasonable steps
14 necessary to protect its confidential information, which included trade secrets relating to the
15 creation of its products and the proprietary software used to operate its products. For
16 example, Newnes required its employees to execute confidentiality agreements protecting all
17 of Newnes’ confidential and trade secret information during and after their employment at
18 Newnes. In addition, Newnes sold its products subject to confidentiality agreements with the
19 purchaser. For those Newnes products requiring software-driven operation control, Newnes
20 sold the products with a software license limited to the purchaser alone.

21 18. In April of 2005 Newnes sold a Stud Length Planermill System (the “Planer
22 System”) to Caffall Bros. Forest Products, Inc. (“Caffall”). The Planer System contains
23 multiple components forming a 300-ft. “line” for processing and finishing lumber. The
24 Planer System is controlled by PLC Communication Software, which operates the trimming
25 and optimizing functions of the line. The PLC software operates via a graphical user
26 interface run on a stand-alone computer terminal connected to the line.

1 duty to maintain under his Agreement with Newnes. Moreover, the confidential information
2 known to Mosher about the PLC Program was Newnes' trade secrets that Mosher had reason
3 to know were trade secrets and that he acquired under circumstances giving rise to a duty to
4 maintain their secrecy. Under the Agreement and Washington trade secrets law, Mosher was
5 required to maintain this information and trade secrets belonging to Newnes as confidential
6 and not disclose or use this information or these trade secrets outside of Newnes.

7 22. Mosher was the Project Manager for the Planer System Newnes sold to
8 Caffall, as reflected on page 1 of the sales contract (Exhibit 2). As Project Manager, Mosher
9 had specific knowledge of all terms of the sales proposal and resulting contract. Mosher
10 served as a resource for persons who had questions about the contract.

11 23. Mosher had specific knowledge that the contract between Newnes and Caffall
12 protected all information related to the Planer System, including the PLC program, and that
13 this information was designated by the contract as a Vendor Secret not to be disclosed to or
14 used by another. Furthermore, Mosher knew that Newnes retained all rights to the PLC
15 Program and that any modifications to the software, including decompiling, disassembling,
16 or reverse engineering, were an express violation of the limited software license granted by
17 Newnes to Caffall (Exhibit 2).

18 24. Because USNR expressly acquired all of Newnes' rights in the Agreement as
19 part of USNR's purchase of Newnes, USNR holds all of Newnes' rights in the Agreement
20 with Mosher, as expressly provided in the Agreement.

21 **Defendant Piché**

22 25. On information and belief, Piché is a manufacturer and/or supplier of
23 automated technology, including lumber processing technology and related products. On
24 information and belief, Piché maintains a corporate office in Quebec, Canada.

25 26. Piché operates a website <http://www.Pichéinc.com/p-Accueil>, through which
26 it advertises products, including board positioning fences. On information and belief, Piché

1 has made or makes board positioning fences advertised or sold under the names Positioning
2 Fence or Positioning Fence (4 Axis).

3 27. On information and belief, at all relevant times Piché has known about the
4 '302 Patent. This allegation is based on: (i) the fact that the Positioning Fence and the
5 Positioning Fence (4 Axis) are near exact copies of the system disclosed in the '302 Patent
6 and could only have been created after study of the '302 Patent; and (ii) in recent responses
7 to USNR's discovery requests, Piché has objected to discovery requests (e.g., Request for
8 Production No. 47) that could have revealed such knowledge of the '302 Patent. At the time
9 the Positioning Fence and the Positioning Fence (4 Axis) were offered for sale to Simpson
10 Lumber, Mosher and Hughes had been working closely with Piché and, on information and
11 belief, had actual knowledge of the '302 Patent and could have shared with Piché the
12 existence of the '302 Patent.

13 28. Piché sells products into the United States. Piché's website lists Raptor as its
14 partner. A true copy of a screen capture of Piché's website from November 2011 is attached
15 to the Complaint as Exhibit 4. On information and belief, Piché offers its products for sale in
16 the western United States directly and through the assistance of its agent, Raptor.

17 **Defendant Raptor**

18 29. On information and belief, Raptor is a supplier of automated technology,
19 including lumber processing technology. On information and belief, Raptor maintains a
20 corporate office in Salmon Arm, Canada.

21 30. On information and belief, each of Raptor's four founding members/owners,
22 Tim Mosher, Darren Ross, Kevin Bushell, and Tom Hughes, was formerly employed by
23 Newnes. Raptor operates a website, <http://www.raptorint.ca>, through which it advertises the
24 ability of its founders, including Mosher, to provide leading-edge solutions for customers
25 around the globe. Raptor's website advertises that one or more of its founders achieved roles
26 of distinction and were entrusted with high-level responsibilities while employed at Newnes.

1 A true copy of a screen capture of Raptor's "About Us" web site page from November 2011
2 is attached to the Complaint as Exhibit 5.

3 31. On information and belief, while employed at Newnes, Tim Mosher and
4 Thomas Hughes each had actual knowledge of the '302 Patent. Therefore, at all relevant
5 times at issue, Mosher and Raptor had actual knowledge of the '302 Patent.

6 32. Raptor is the western agent for Defendant Piché, and works with Piché to
7 develop products and to offer those products for sale to customers in the United States,
8 including in this district. Raptor's website states "Raptor has agreed to supply the control
9 systems for the equipment Piché, Inc. delivers in western Canada & USA." A true copy of a
10 screen capture of Raptor's "Sawmill Equipment" web site page from November 2011,
11 reflecting this statement, is attached to the Complaint as Exhibit 6.

12 33. In or around August 2010, Raptor purchased a board positioning fence
13 product from Piché, and sold the product to Raptor's customer in the United States. Upon
14 information and belief, that product was substantially similar or identical to either the
15 Positioning Fence or the Positioning Fence (4 Axis) shown on Raptor's website:
16 <http://www.raptorint.ca/Piché.aspx> or comprised a material component of the invention
17 disclosed in the '302 Patent. On information and belief, this board positioning system was
18 sold to and installed in California at the Trinity River mill.

19 **Simpson Lumber**

20 34. Upon information and belief, Simpson Lumber Company, LLC ("Simpson")
21 purchased Caffall Bros. Forest Products, Inc. in or around late 2006. Accordingly, Simpson
22 now owns and operates the Planer System sold by Newnes to Caffall.

23 35. In or around October 2011, USNR met with Simpson at the Longview,
24 Washington mill regarding Simpson's need for a new board positioning fence. During the
25 visit between USNR's salesperson and Simpson's Project Engineer, Jerry Enslow, USNR
26

1 offered to sell USNR's Multi-Trak board positioning fence to Simpson. The Multi-Trak
2 fence is covered by the '302 Patent.

3 36. On information and belief, Mosher has also consulted with Simpson,
4 including identifying parts of Simpson's current board positioning system that need
5 replacing.

6 37. On information and belief, around early October of 2011, Mosher, acting as
7 an agent of Raptor and Piché, offered to sell a board positioning fence product to Simpson,
8 along with a PLC controller and PLC program necessary to operate the fence. On
9 information and belief, the board positioning fence that Raptor offered to sell is substantially
10 similar or identical to either the Positioning Fence or the Positioning Fence (4 Axis) shown
11 on Raptor's website: <http://www.raptorint.ca/Piché.aspx> or comprised a material component
12 of the invention disclosed in the '302 Patent. On information and belief, Piché has
13 manufactured the Positioning Fence or Positioning Fence (4 Axis), using control systems
14 created by Raptor.

15 38. On information and belief: During Mosher's visit to or discussions with
16 Simpson, Mosher disclosed Newnes' confidential information to Enslow to dissuade
17 Simpson from purchasing USNR's Multi-Trak fence. Specifically, Mosher disclosed
18 confidential information regarding the operation of USNR's (formerly Newnes') PLC
19 program, in an attempt to convince Enslow that Raptor/Piché's products were more suitable
20 for Simpson's needs. The information disclosed to Enslow was confidential information
21 Mosher obtained by virtue of his employment at Newnes, and was not known to persons
22 outside Newnes. In addition, the confidential information was a trade secret belonging to
23 USNR/Newnes. Mosher's disclosure of USNR/Newnes' confidential information was an
24 express violation of his duties under the Agreement and a willful and malicious
25 misappropriation of USNR/Newnes' trade secret information.

**V. FIRST CLAIM FOR RELIEF (Against All Defendants)
(Infringement of U.S. Patent. No. 5,911,302)**

39. USNR restates and realleges all paragraphs above as if fully set forth herein.

40. Raptor has sold at least one board positioning fence product to a customer in the United States, which fence is substantially similar to or identical to the Positioning Fence or Positioning Fence (4 Axis). The sale of this fence infringes claims 1-4 of the '302 Patent under 35 USC § 271 directly, under the doctrine of equivalents, or alternatively, indirectly because the fence is a material component of the invention disclosed in the '302 Patent.

41. Upon information and belief, Raptor and Mosher sold this fence with knowledge of USNR's '302 Patent, with the intention that Raptor's customers would infringe the claims of the '302 Patent by using the fence. Raptor's sale contributorily infringed the '302 Patent and through the sale, Raptor induced its customer, Trinity River Mill, to directly infringe the '302 Patent.

42. Raptor, Piché and Mosher have offered to sell the Positioning Fence or the Positioning Fence (4 Axis) board positioning fence product to Simpson in Longview, Washington. On information and belief, both of these products infringe claims 1-4 of USNR's '302 Patent in violation of 35 U.S.C. § 271(a). Alternatively, on information and belief, Raptor, Mosher, Hughes and Piché knew of USNR's '302 Patent and knew that this offer for sale would contributorily infringe claims 1-4 of the '302 Patent in violation of 35 U.S.C. § 271(c). USNR has been damaged by this offer for sale of an infringing product.

43. USNR is entitled to recover its reasonable attorneys' fees and costs pursuant to 35 U.S.C. § 285, to the extent the Court finds this case to be exceptional.

**VI. SECOND CLAIM FOR RELIEF (Against Raptor and Mosher)
(Trade Secret Misappropriation in Violation of RCW 19.108.010 et seq.)**

44. USNR restates and realleges all paragraphs above as if fully set forth herein.

1 45. Certain detailed information about USNR/Newnes' PLC computer program
2 constitutes trade secrets under RCW 19.108.10.

3 46. Mosher willfully and wantonly misappropriated USNR/Newnes' trade secrets
4 by, among other acts, using and disclosing such trade secrets when he had a duty to maintain
5 the secrecy and limit the use of the trade secrets.

6 47. USNR has been harmed by Mosher's disclosure and use of USNR's trade
7 secrets in the public domain and use of those trade secrets to compete with USNR. USNR is
8 entitled to injunctive relief as stated in RCW 19.108.020.

9 48. USNR is also entitled to damages, both actual and exemplary, and attorneys'
10 fees, for Mosher's willful and malicious misappropriation of trade secrets, as stated in
11 RCW 19.108.030 and 19.108.040.

12 **VII. THIRD CLAIM FOR RELIEF (Against Mosher)**
13 **(Breach of Confidentiality and Non-Competition Agreement)**

14 49. USNR restates and realleges the allegations set forth in all paragraphs above
15 as if fully set forth herein.

16 50. On or before April 25, 2007, Mosher entered into a Confidentiality and Non-
17 Competition Agreement with Newnes.

18 51. USNR purchased Newnes and holds all rights and benefits formerly belonging
19 to Newnes, including the rights and benefits of Mosher's Confidentiality and Non-
20 Competition Agreement.

21 52. As described above, Mosher materially breached the Confidentiality and Non-
22 Competition Agreement.

23 53. USNR and its predecessor Newnes have performed all conditions to be
24 performed on their part under the Confidentiality and Non-Competition Agreement, except
25 for those excused by Mosher's nonperformance.
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1 54. USNR has suffered damages resulting from Mosher’s breach of the
2 Confidentiality and Non-Competition Agreement, including, but not limited to, actual,
3 compensatory and incidental damages, including loss of business goodwill, and disclosure
4 and misuse of proprietary information and trade secrets. If Mosher’s actions are not
5 enjoined, USNR is likely to imminently suffer further injury.

6 55. In addition to damages, USNR is entitled to injunctive relief under the terms
7 of the Confidentiality and Non-Competition Agreement. If Mosher’s actions are not
8 enjoined, USNR is likely to imminently suffer further injury, for which damages will not be
9 an adequate remedy.

10 **VIII. PRAYER FOR RELIEF**

11 Plaintiff USNR respectfully requests that this Court grant the following relief against
12 Defendants Piché, Raptor, and Mosher:

13 A. That Piché, its officers, agents, servants, subsidiaries, successors, employees,
14 associates, attorneys, and assigns, and all persons acting for, in privity with, by, through or
15 under it be temporarily and/or preliminarily enjoined and restrained, at first during pendency
16 of this action and, thereafter permanently, from making, using, importing, selling, or offering
17 to sell products that infringe the claims of USNR’s ‘302 Patent;

18 B. That Raptor, its officers, agents, servants, subsidiaries, successors, employees,
19 associates, attorneys, and assigns, and all persons acting for, in privity with, by, through or
20 under it be temporarily and/or preliminarily enjoined and restrained, at first during pendency
21 of this action and, thereafter, permanently from making, using, importing, selling, or offering
22 to sell products that infringe the claims of USNR’s ‘302 Patent;

23 C. That Mosher, his agents, servants, associates, attorneys, and assigns, and all
24 persons acting for, in privity with, by, through or under him be temporarily and/or
25 preliminarily enjoined and restrained, at first during pendency of this action and, thereafter,
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1 permanently from making, using, importing, selling, or offering to sell products that infringe
2 the claims of USNR's '302 Patent;

3 D. That a judgment, order, or award of damages be entered adequate to
4 compensate USNR for Defendants' infringement of the '302 Patent, in no event less than a
5 reasonable royalty, together with prejudgment interest from the date infringement of the '302
6 Patent began;

7 E. That Mosher, his agents, servants, associates, attorneys, and assigns, and all
8 persons acting for, in privity with, by, through or under him, be temporarily and/or
9 preliminarily enjoined and restrained, at first during pendency of this action and, thereafter,
10 permanently from disclosing or using USNR/Newnes trade secrets;

11 F. That Mosher, his agents, servants, associates, attorneys, and assigns, and all
12 persons acting for, in privity with, by, through or under him, be temporarily and/or
13 preliminarily enjoined and restrained, at first during pendency of this action and, thereafter,
14 permanently from disclosing or using USNR/Newnes' Confidential Information in violation
15 of the Confidentiality and Non-Competition Agreement he entered into with Newnes;

16 G. That USNR be awarded reasonable attorneys' fees and costs pursuant to
17 35 U.S.C. § 284, together with prejudgment interest;

18 H. That USNR be awarded actual and exemplary damages and reasonable
19 attorneys' fees pursuant to RCW 19.108.030 and 19.108.040.

20 I. That Defendants, within thirty days after service of judgment with notice of
21 entry thereof upon it, be required to file with the Court and serve upon USNR a written
22 report under oath, and with penalty of perjury, setting forth in detail the manner in which
23 each Defendant has complied with the obligations set forth above; and

24 J. That USNR be awarded such other and further relief as the Court may deem
25 necessary.

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IX. JURY DEMAND

USNR demands a jury on all claims, defenses, and issues so triable.

Dated this 1st day of May, 2013.

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing SECOND AMENDED COMPLAINT was served on the following counsel of record via the court’s ECF system, in accordance with the Federal Rules of Civil Procedure, on the 1st day of May, 2013.

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Of Attorneys for Defendants Raptor
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Of Attorneys for Defendant Machinage
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s/ Devon Zastrow Newman
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