

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

A.L.M. HOLDING CO.,)	
ERGON ASPHALT & EMULSIONS, INC., and)	
MEADWESTVACO CORP.,)	
)	Civil Action No. _____
Plaintiffs,)	
)	
v.)	
)	JURY TRIAL DEMANDED
ARR-MAZ CUSTOM CHEMICALS, INC.,)	
)	
Defendant.)	
)	

COMPLAINT

Plaintiffs A.L.M. Holding Co. (“A.L.M.”), Ergon Asphalt & Emulsions, Inc. (“Ergon”), and MeadWestvaco Corp. (“MWV”) (collectively “Plaintiffs”), for their Complaint against Defendants Arr-Maz Custom Chemicals, Inc. (“ArrMaz”), allege as follows:

Parties

1. A.L.M. Holding Co. is a Wisconsin corporation with a principal place of business at 920 10th Avenue North, Onalaska, Wisconsin 54650.

2. Ergon Asphalt & Emulsions, Inc. is a Mississippi corporation with a principal place of business at 2829 Lakeland Drive, Jackson, Mississippi 39232.

3. MeadWestvaco Corp. is a Delaware corporation with a principal place of business at 501 South 5th Street, Richmond, Virginia 23219.

4. Arr-Maz Custom Chemicals, Inc. is a corporation duly organized and existing under the laws of Delaware. On information and belief, ArrMaz has its principal place of business at 4800 State Road 60 East, Mulberry, FL 33860. ArrMaz is in the business of manufacturing, marketing, selling, and distributing lubricating additives for asphalt binders.

Nature of the Action

5. This is an action for infringement of U.S. Patent No. 7,815,725 (“the ‘725 Patent”) and U.S. Patent No. 7,981,466 (“the ‘466 Patent”) brought by Plaintiffs against ArrMaz.

Jurisdiction and Venue

6. This action arises under the patent laws of the United States, 35 U.S.C. § 1 *et seq.*

7. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

8. This Court has personal jurisdiction over ArrMaz because it is incorporated in Delaware.

9. Venue is proper in this District under 28 U.S.C. §§ 1391 and 1400(b) because this action is a civil action for patent infringement and ArrMaz resides in this District.

U.S. Patent No. 7,815,725

10. On October 19, 2010, the United States Patent and Trademark Office (“USPTO”) duly and legally issued U.S. Patent No. 7,815,725 entitled “Warm Asphalt Binder Compositions Containing Lubricating Agents.”

11. On April 1, 2013, and following extensive examination by the USPTO in two consolidated reexaminations which had been separately filed by third-party requestors including ArrMaz, the USPTO affirmed the patentability of the ‘725 Patent, as amended, and issued a reexamination certificate for the patent. A copy of the patent with reexamination certificate is attached hereto as Exhibit A.

12. The ‘725 Patent generally covers warm mix asphalt paving compositions containing lubricating additives.

13. A.L.M. and Ergon are joint owners of all right, title, and interest in and to the ‘725 Patent.

14. MWV is the exclusive licensee of the ‘725 Patent.

15. The ‘725 Patent is valid and enforceable.

U.S. Patent No. 7,981,466

16. On July 19, 2011, the USPTO duly and legally issued U.S. Patent No. 7,981,466 entitled “Warm Mix Asphalt Binder Compositions Containing Lubricating Additives.” A copy of the patent is attached hereto as Exhibit B.

17. The ‘466 Patent generally covers methods relating to warm mix asphalt paving compositions containing lubricating additives.

18. A.L.M. and Ergon are joint owners of all right, title, and interest in and to the ‘466 Patent.

19. MWV is the exclusive licensee of the ‘466 Patent.

20. The ‘466 Patent is valid and enforceable.

ALLEGATIONS COMMON TO ALL COUNTS

21. ArrMaz makes, uses, markets, sells, and/or distributes lubricating additives, including at least AD-here® LOF 65-00 with CECABASE™ RT 945, to produce warm mix asphalt paving compositions.

22. On June 8, 2011, ArrMaz filed a Request for Ex Parte Reexamination of the ‘725 Patent with the USPTO, listed as Control No. 90/011,731. The application that issued as the ‘466 Patent is a divisional of the application that issued as the ‘725 Patent. Further, on or about March 5, 2012, ArrMaz engaged in discussions with MWV regarding a potential sublicensing

agreement from MWV to ArrMaz of patents and patent applications including the '725 and '466 Patents.

23. Based on at least the foregoing filings, meetings, and communications, ArrMaz has knowledge of the '725 and '466 Patents and the warm mix asphalt paving compositions and methods claimed in those patents.

24. ArrMaz actively encourages users of its lubricating additives, including AD-here® LOF 65-00 with CECABASE™ RT 945, to use those additives in warm mix asphalt paving compositions. For example, ArrMaz publishes a brochure on its website that promotes the advantages of AD-here® LOF 65-00 with CECABASE™ RT 945 for use in warm mix asphalt paving compositions. These advantages include AD-here® LOF 65-00 with CECABASE™ RT 945's utility in reducing asphalt production and compaction temperatures. A copy of that brochure, which is available from ArrMaz's website, is attached as Exhibit C.

25. In addition, ArrMaz publishes articles describing the successful application of those additives in warm mix asphalt paving compositions. In those articles, ArrMaz promotes the use of its lubricating additives, including at least AD-here® LOF 65-00 with CECABASE™ RT 945, to reduce production and compaction temperatures in warm mix asphalt paving compositions. An example from ArrMaz's website, entitled "Project Profile: Warm Mix Additive, Palm Beach Co., FL," is attached as Exhibit D. An additional example from ArrMaz's website, entitled "Project Profile: AD-here Mix Additive, Fort Worth, TX," is attached as Exhibit E. A further example from ArrMaz's website, entitled "Project Profile: AD-here Mix Additive, Missouri Projects," is attached as Exhibit F.

26. On information and belief, pursuant to ArrMaz's instructions and direction, ArrMaz customer Community Asphalt Corporation ("Community Asphalt") uses AD-here®

LOF 65-00 with CECABASE™ RT 945 as a lubricating additive in warm mix asphalt paving compositions. Attached as Exhibit D is an article linked from the ArrMaz website describing Community Asphalt's use of AD-here® LOF 65-00 with CECABASE™ RT 945 in warm mix asphalt paving compositions in a paving project in Palm Beach County, Florida.

27. On information and belief, pursuant to ArrMaz's instructions and direction, ArrMaz customer Lionmark Construction Company (d/b/a Missouri Petroleum Products Company) ("Lionmark") uses AD-here® LOF 65-00 with CECABASE™ RT 945 as a lubricating additive in warm mix asphalt paving compositions. Attached as Exhibit F is an article linked from the ArrMaz website describing Lionmark's use of AD-here® LOF 65-00 with CECABASE™ RT 945 in warm mix asphalt paving compositions in a paving project in St. Louis County, Missouri.

COUNT I: ARRMZ'S INFRINGEMENT OF THE '725 PATENT

28. Plaintiffs repeat the allegations of paragraphs 1-27 above as if fully set forth herein.

29. ArrMaz has directly infringed and continues to directly infringe one or more claims of the '725 Patent, literally or under the doctrine of equivalents, by making, using, offering for sale, and/or selling warm mix asphalt paving compositions that embody the patented invention.

30. In addition to its own direct infringement, ArrMaz has indirectly infringed and continues to indirectly infringe one or more claims of the '725 Patent by inducing third parties to infringe the '725 Patent and by contributorily infringing the '725 Patent.

31. Through at least its communications to the consuming public, including marketing materials, press releases, and user instructions, ArrMaz has actively induced and

continues to actively induce others to directly infringe one or more claims of the ‘725 Patent. Specifically, ArrMaz has actively encouraged and instructed others, including but not limited to Community Asphalt and Lionmark, to use its lubricating additives in a manner that infringes the ‘725 Patent. On information and belief, ArrMaz knows that the encouraged acts constitute infringement of the ‘725 Patent. On information and belief, ArrMaz acts with the specific intent that others will use the products in an infringing manner.

32. On information and belief, the users of ArrMaz’s lubricating additives, including but not limited to Community Asphalt and Lionmark, have used and continue to use the lubricating additives, including AD-here® LOF 65-00 with CECABASE™ RT 945, to produce warm mix asphalt paving compositions in a manner that infringes the ‘725 Patent.

33. ArrMaz contributorily infringes one or more claims of the ‘725 Patent by selling and offering to sell lubricating additives, including AD-here® LOF 65-00 with CECABASE™ RT 945, that are material to making the compositions claimed in the ‘725 Patent, are especially made or adapted for use in making those compositions, and that have no substantial non-infringing use.

34. ArrMaz’s infringement of the ‘725 Patent is willful.

35. ArrMaz will continue to infringe the ‘725 Patent unless enjoined by this Court.

36. Plaintiffs have been and continue to be damaged by ArrMaz’s infringement of the ‘725 Patent in an amount to be determined at trial.

37. Plaintiffs have suffered irreparable injury for which there is no adequate remedy at law and will continue to suffer such irreparable injury unless ArrMaz’s infringement of the ‘725 Patent is enjoined by this Court.

38. ArrMaz's infringement of the '725 Patent is exceptional and entitles Plaintiffs to recover the attorneys' fees and costs incurred in prosecuting this action under 35 U.S.C. § 285.

COUNT II: ARMAZ'S INFRINGEMENT OF THE '466 PATENT

39. Plaintiffs repeat the allegations of paragraphs 1-38 above as if fully set forth herein.

40. ArrMaz has directly infringed and continues to directly infringe the '466 Patent, literally or under the doctrine of equivalents, by using methods relating to warm mix asphalt paving compositions in a manner that practices each step of one or more processes claimed in the '466 Patent.

41. In addition to its own direct infringement, ArrMaz has indirectly infringed and continues to indirectly infringe one or more claims of the '466 Patent by inducing third parties to infringe the '466 Patent and by contributorily infringing the '466 Patent.

42. Through at least its communications to the consuming public, ArrMaz has actively induced and continues to actively induce others to infringe the '466 Patent. ArrMaz has actively encouraged and instructed others, including Community Asphalt and Lionmark, to use its lubricating additives to practice methods that infringe the '466 Patent. On information and belief, ArrMaz knows that the encouraged acts constitute infringement of the '466 Patent. On information and belief, ArrMaz acts with the specific intent that others will use the products in an infringing manner.

43. On information and belief, ArrMaz's customers, including but not limited to Community Asphalt and Lionmark, directly infringe the '466 Patent by using ArrMaz's lubricating additives to practice methods that infringe the '466 Patent.

44. ArrMaz contributorily infringes the ‘466 Patent by selling and offering to sell lubricating additives, including AD-here® LOF 65-00 with CECABASE™ RT 945, that are material to methods relating to warm mix asphalt paving compositions as claimed in the ‘466 Patent, are especially made or adapted for using methods relating to warm mix asphalt paving compositions as claimed in the ‘466 Patent, and that have no substantial non-infringing use.

45. ArrMaz’s infringement of the ‘466 Patent is willful.

46. ArrMaz will continue to infringe the ‘466 Patent unless enjoined by this Court.

47. Plaintiffs have been and continue to be damaged by ArrMaz’s infringement of the ‘466 Patent in an amount to be determined at trial.

48. Plaintiffs have suffered irreparable injury for which there is no adequate remedy at law and will continue to suffer such irreparable injury unless ArrMaz’s infringement of the ‘466 Patent is enjoined by this Court.

49. ArrMaz’s infringement of the ‘466 Patent is exceptional and entitles Plaintiffs to attorneys’ fees and costs incurred in prosecuting this action under 35 U.S.C. § 285.

Prayer for Relief

WHEREFORE, Plaintiffs request the Court to enter judgment for them and against ArrMaz holding that:

- A. ArrMaz infringes the ‘725 and ‘466 Patents;
- B. ArrMaz’s infringement of the ‘725 and ‘466 Patents is willful;
- C. ArrMaz induces others to directly infringe the ‘725 and ‘466 Patents;
- D. ArrMaz contributorily infringes the ‘725 and ‘466 Patents;
- E. ArrMaz, its officers, agents, employees, and those persons in active concert or participation with it or any of them, and its successors and assigns, be permanently enjoined

from direct infringement, inducement of infringement, and contributory infringement of the ‘725 Patent, including but not limited to an injunction against making, using, selling, and/or offering for sale within the United States, and/or importing into the United States, any products and/or services that infringe the ‘725 Patent;

F. ArrMaz, its officers, agents, employees, and those persons in active concert or participation with it or any of them, and its successors and assigns, be permanently enjoined from direct infringement, inducement of infringement, and contributory infringement of the ‘466 Patent, including but not limited to an injunction against practicing any process that infringes the ‘466 Patent;

G. Plaintiffs be awarded royalty and lost-profit based damages adequate to compensate them for ArrMaz’s direct and indirect infringement of the ‘725 and ‘466 Patents;

H. Plaintiffs be awarded treble damages and pre-judgment and post-judgment interest at the maximum rate allowed by law;

I. This case be declared exceptional within the meaning of 35 U.S.C. § 285 and that Plaintiffs be awarded reasonable attorneys’ fees, costs, and expenses incurred in connection with this action; and

J. Plaintiffs be awarded such other and further relief as this Court deems just and proper.

JURY DEMAND

Plaintiffs hereby assert their right to, and hereby demand, a trial by jury pursuant to Rule 38 of the Federal Rules of Civil Procedure.

Dated: June 14, 2013

Respectfully submitted,

/s/ Francis DiGiovanni

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