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7 and ASETEK A/S

8
9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA
11 SAN FRANCISCO DIVISION
12

13 ASETEK HOLDINGS, INC. and ASETEK A/S,

14 Plaintiffs/Counterclaim-
15 Defendants,

16 v.

17 COOLIT SYSTEMS INC.,

18 Defendant/Counterclaim-
19 Plaintiff.

CASE NO. 3:12-CV-04498-EMC

**SECOND AMENDED COMPLAINT FOR
PATENT INFRINGEMENT**

DEMAND FOR JURY TRIAL

1 COMES NOW Plaintiffs Asetek A/S and Asetek Holdings, Inc. (collectively “Asetek”), by
2 and through their attorneys, and for their Complaint against CoolIT Systems Inc. (“CoolIT” or
3 “Defendant”), state as follows:

4 **Nature of the Action**

5 1. This Complaint seeks judgment that CoolIT has infringed and continues to infringe
6 Asetek’s U.S. Patent Nos. 8,240,362 (“the ’362 patent”) and 8,245,764 (“the ’764 patent”)
7 (collectively, “the Patents-in-Suit”). The Patents-in-Suit relate to a cooling system and cooling
8 method for a computer system. A true and accurate copy of the ’362 patent is attached hereto as
9 Exhibit A. A true and accurate copy of the ’764 patent is attached hereto as Exhibit B.

10 **The Parties**

11 2. Plaintiff Asetek A/S is a corporation organized and existing under the laws of
12 Denmark, and has its principal place of business at Saltumvej 27, DK-9700 Broenderslev, Denmark.
13 Asetek A/S is the owner of the Patents-in-Suit.

14 3. Plaintiff Asetek Holdings, Inc. is a corporation organized and existing under the
15 laws of Delaware. Asetek Holdings, Inc. is a subsidiary of Asetek A/S and its principal place of
16 business is 5285 Hellyer Avenue, Suite 110, San Jose, California 95138.

17 4. Upon information and belief, Defendant CoolIT is a corporation operating and
18 existing under the laws of Canada with its principal place of business at 3920 29th Street NE,
19 Calgary, Alberta, Canada T1Y 6B6.

20 **Jurisdiction**

21 5. This Court has subject matter jurisdiction over this complaint pursuant to 28 U.S.C.
22 §§ 1331 and 1338(a), and under the patent laws of the United States, 35 U.S.C. § 1, *et seq.*

23 6. This Court has personal jurisdiction over CoolIT because CoolIT infringes the
24 Patents-in-Suit in the United States, in California, and in this judicial district. CoolIT maintains a
25 website via which it promotes and offers to sell its infringing products to customers, including
26 customers in the United States, in California, and in this judicial district. Among other things, upon
27 information and belief, CoolIT offers to sell and sells its infringing products to Corsair Components,
28 Inc. and Corsair Memory, Inc. (collectively “Corsair”) for importation, promotion, sales, and

1 distribution to end users throughout the United States, including in California and in this judicial
2 district. Corsair's principal place of business is in Fremont, California, in this judicial district.
3 CoolIT's website identifies Corsair as a "proud retailer of CoolIT's liquid cooling solutions."
4 CoolIT claims on its website to have a "retail partnership" with Corsair, and further states that "[d]ue
5 to our partnership with Corsair for the retail market, please visit the Corsair website for any direct
6 retail sales inquiries." Upon information and belief, CoolIT has entered into one or more contracts
7 with Corsair for the promotion, importation, offers for sale, sale, and distribution of CoolIT
8 products, including products that infringe the Patent-in-Suit, to end users in the United States
9 (including California and this judicial district). Upon information and belief, CoolIT derives
10 substantial revenue from its sales of infringing products to Corsair in California and this judicial
11 district, and CoolIT purposefully avails itself of the privilege of conducting activities in California,
12 thus invoking the benefits and protections of the laws of California.

13 Facts

14 7. Asetek is the world leading provider of CPU and GPU liquid cooling systems for
15 thermal and acoustic management. Asetek's solutions are used by leading original equipment
16 manufacturers ("OEM") servicing the gaming, workstation and performance PC markets. Asetek
17 filed U.S. provisional patent application 60/517,924 covering integrated liquid cooling in 2003, and
18 in 2006, the company made a strategic decision to shift its focus to providing water-based cooling
19 solutions for the OEM market and introduced the first fully assembled, factory-sealed liquid cooling
20 system. In addition to being designed for manufacturing and providing up to 50,000 hours of
21 maintenance-free operation, Asetek shattered liquid cooling's price barriers. Asetek is now the
22 vendor of choice for CPU cooling in factory overclocked gaming systems, serving Dell Alienware,
23 Acer and multiple leading gaming system providers.

24 8. Asetek is also active in the workstation market, supplying liquid cooling for HP's
25 Z400 and Z800 workstations and several tier 2 workstation suppliers. "Quiet computing" and
26 reliability are the principle drivers for superior thermal management within the workstation market.
27 Liquid cooling delivers both by moving heat to a location where it can be exhausted directly from
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1 the chassis using modest air flow velocities, reducing internal chassis temperatures and lowering
2 system noise.

3 9. Asetek is addressing the server market with its new low profile integrated pump and
4 cold plate CPU cooler. The low profile pump is sized perfectly to fit in 1U rack servers. The
5 company's heat exchanger technology for servers is derived from solutions the company has
6 developed for all-in-one and notebook PCs. Within the server market the key benefits of water-
7 based cooling are enabling increased thermal density and energy savings.

8 10. CoolIT identifies itself a "leading supplier of reliable and customizable liquid cooling
9 solutions for computers." Upon information and belief, CoolIT is an OEM and manufactures (or has
10 manufactured), offers to sell, and sells at least the H60, H80/H80(i), and H100/H100(i) liquid
11 cooling products that infringe the Patents-in-Suit. Upon information and belief, CoolIT offers to sell
12 and sells at least the H60, H80/H80(i), and H100/H100(i) products to, at least, Corsair in the United
13 States, and Corsair then offers to sell and sells them to end users in the United States, in California,
14 and in this judicial district. Upon information and belief, CoolIT's claimed "partner" Corsair has
15 demonstrated these CoolIT products at trade shows within the United States, and has sent out
16 product samples to potential customers within the United States. Upon information and belief,
17 CoolIT has also offered to sell and sold the same H60, H80/H80(i), and H100/H100(i) product
18 configurations to other resellers/customers in the United States under different names or product
19 numbers that also infringe the Patents-in-Suit. For purposes of this complaint, those products are
20 referred to herein as the H60, H80/H80(i), and H100/H100(i).

21 11. Upon information and belief, CoolIT is also offering to sell and is selling cooling
22 products that infringe the Patents-in-Suit to additional customers in the United States, including
23 resellers who then offer to sell and sell them to end users in the United States. Such products
24 include, but are not limited to, CoolIT's H60, H80/H80(i), H100/H100(i), ECO II, ECO II-1U 1C,
25 ECO II-1U 2C, ECO II-2U 1C, RACK DCLC, and ECO ALC products (and variants thereof), all but
26 one of which CoolIT advertises on its website. Such resellers include, but are not limited to,
27 International Computer Concepts ("ICC"), which, upon information and belief, is based in Lake
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1 Zurich, Illinois, and has formed a partnership with CoolIT to utilize CoolIT's ECO II-2U cooling
2 product in its Vega series lines, which ICC has offered to sell on its website.

3 12. Upon information and belief, CoolIT has also offered to sell and sold its infringing
4 products to AVADirect Custom Computers (www.avadirect.com), which is located near Cleveland,
5 Ohio, and which has offered to sell CoolIT's ECO ALC to end users in the United States.

6 13. Upon information and belief, CoolIT has also offered to sell and sold its infringing
7 products to modDIY.com, which is located in Hong Kong and which has offered to sell CoolIT's
8 ECO ALC to end users in the United States through its website.

9 14. U.S. Patent Application No. 12/826,768 ("the '768 application") issued as the '362
10 patent on August 14, 2012. CoolIT has admitted that it had actual knowledge of the '768 application
11 by June 19, 2012. CoolIT has admitted that on or around July 2, 2012, it had actual knowledge that
12 the PTO allowed the pending claims of the '768 application. CoolIT has admitted that before
13 August 14, 2012, it had actual knowledge that the PTO had allowed the pending claims of the '768
14 application and issued an Issue Notification in the '768 application. CoolIT has admitted that on
15 August 14, 2012, it had actual knowledge that the '362 patent issued.

16 15. U.S. Patent Application No. 13/269,234 ("the '234 application") issued as the '764
17 patent on August 21, 2012. CoolIT has admitted it had actual knowledge of the '234 application by
18 June 25, 2012. CoolIT has admitted that before August 21, 2012, it had actual knowledge that the
19 PTO had allowed the pending claims of the '234 application and issued an Issue Notification in the
20 '234 application. CoolIT has admitted that on August 21, 2012, it had actual knowledge that the
21 '764 patent issued.

22 16. On or about July 24, 2012, a facsimile containing several references alleged to be
23 material to the patentability of the claims in the '768 and '234 applications was sent anonymously to
24 Asetek's patent counsel. The document was prepared and sent by CoolIT's attorney or agent.

25 17. Despite its knowledge of the pending patent applications and the issuance of the
26 Patents-in-Suit, CoolIT has continued to offer for sale and sell its infringing products to customers in
27 the United States.

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1 **COUNT I**

2 **Patent Infringement of U.S. Patent No. 8,240,362**

3 18. Plaintiffs incorporate by reference each and every allegation set forth in paragraphs 1
4 through 17 of this Complaint as if fully set forth and restated herein.

5 19. The '362 patent entitled "Cooling System for a Computer System" was duly and
6 legally issued by the PTO on August 14, 2012. Asetek is the sole and exclusive owner of the '362
7 patent. CoolIT, without authority or consent of Asetek, has been and continues to offer to sell and
8 sell in the United States products that infringe the '362 patent, including but not limited to the H60,
9 H80/H80(i), H100/H100(i), ECO II, ECO II-1U 1C, ECO II-1U 2C, and ECO II-2U 1C cooling
10 products (and variants thereof). Thus, CoolIT has directly infringed and continues to directly
11 infringe the '362 patent.

12 20. At least as of August 14, 2012, CoolIT had actual knowledge that the '362 patent
13 issued and, upon information and belief, has induced and continues to induce direct infringement of
14 the '362 patent by aiding and abetting infringement by customers in the United States, including but
15 not limited to customers of the H60, H80/H80(i), H100/H100(i), ECO II, ECO II-1U 1C, ECO II-1U
16 2C, and ECO II-2U 1C cooling products (and variants thereof). CoolIT has intentionally taken
17 action that has actually induced and continues to induce direct infringement by customers in the
18 United States, and has known that the acts it has been and is causing infringe the '362 patent. These
19 acts include, but are not limited to, CoolIT's promotion on its website and its sales of infringing
20 products to companies such as ICC for the promotion, offers to sell, and sales of CoolIT's cooling
21 products in the United States.

22 21. At least as of August 14, 2012, CoolIT had actual knowledge of the '362 patent and
23 has contributed and continues to contribute to direct infringement of the '362 patent by supplying an
24 important (material) component of the infringing products and method to customers such as ICC in
25 the United States, including but not limited to the H60, H80/H80(i), and H100/H100(i), ECO II,
26 ECO II-1U 1C, ECO II-1U 2C, and ECO II-2U 1C cooling products (and variants thereof), which
27 are not common components suitable for non-infringing use. CoolIT supplies the components with
28 knowledge of the '362 patent and knowledge that the components were especially made or adapted

1 for use in an infringing manner, and that customers and end users directly infringe the '362 patent in
2 the United States.

3 22. CoolIT had actual knowledge of the '768 application (which issued as the '362
4 patent) by June 19, 2012. On or around July 2, 2012, CoolIT had actual knowledge that the PTO
5 allowed the pending claims of the '768 application. Before August 14, 2012, CoolIT had actual
6 knowledge that the PTO had allowed the pending claims of the '768 application and issued an Issue
7 Notification in the '768 application. On August 14, 2012, CoolIT had actual knowledge that the
8 '362 patent issued. Despite this knowledge, on information and belief, CoolIT continued its
9 infringing activities despite an objectively high likelihood that its activities constituted infringement
10 of a valid patent, and this risk was either known or so obvious that it should have been known to
11 CoolIT. Thus, on information and belief, CoolIT's infringement has been, and continues to be,
12 willful and deliberate.

13 23. CoolIT's infringement of the '362 patent has caused and continues to cause damages
14 and irreparable harm to Plaintiffs.

15 COUNT II

16 Patent Infringement of U.S. Patent No. 8,245,764

17 24. Plaintiffs incorporate by reference each and every allegation set forth in paragraphs 1
18 through 23 of this Complaint as if fully set forth and restated herein.

19 25. The '764 patent entitled "Cooling System for a Computer System" was duly and
20 legally issued by the PTO on August 21, 2012. Asetek is the sole and exclusive owner of the '764
21 patent. CoolIT, without authority or consent of Asetek, has been and continues to offer to sell and
22 sell in the United States products that infringe the '764 patent, including but not limited to the H60,
23 H80/H80(i), H100/H100(i), ECO II, ECO II-1U 1C, ECO II-1U 2C, ECO II-2U 1C, RACK DCLC,
24 and ECO ALC cooling products (and variants thereof). Thus, CoolIT has directly infringed and
25 continues to directly infringe the '764 patent.

26 26. At least as of August 21, 2012, CoolIT had actual knowledge that the '764 patent
27 issued and, upon information and belief, has induced and continues to induce direct infringement of
28 the '764 patent by aiding and abetting infringement by customers in the United States, including but

1 not limited to customers of the H60, H80/H80(i), H100/H100(i), ECO II, ECO II-1U 1C, ECO II-1U
2 2C, ECO II-2U 1C, RACK DCLC, and ECO ALC cooling products (and variants thereof). CoolIT
3 has intentionally taken action that has actually induced and continues to induce direct infringement
4 by customers and end users in the United States, and has known that the acts it has been causing
5 would infringe the '764 patent. These acts include, but are not limited to, CoolIT's promotion on its
6 website and its sales to companies such as ICC, AVADirect Custom Computers, and modDIY.com
7 for the promotion, offers to sell, and sales of CoolIT's cooling products to customers and end users
8 in the United States.

9 27. At least as of August 21, 2012, CoolIT had actual knowledge of the '764 patent and
10 has contributed and continues to contribute to direct infringement of the '764 patent by supplying an
11 important (material) component of the infringing products and method to customers such as ICC and
12 AVADirect Custom Computers in the United States, including but not limited to the H60,
13 H80/H80(i), H100/H100(i), ECO II, ECO II-1U 1C, ECO II-1U 2C, ECO II-2U 1C, RACK DCLC,
14 and ECO ALC cooling products (and variants thereof), which are not common components suitable
15 for non-infringing use. CoolIT supplies the components with knowledge of the '764 patent and
16 knowledge that the components were especially made or adapted for use in an infringing manner,
17 and that customers and end users directly infringe the '764 patent in the United States.

18 28. CoolIT had actual knowledge of the '234 application (which issued as the '764
19 patent) by June 25, 2012. Before August 21, 2012, CoolIT had actual knowledge that the PTO had
20 allowed the pending claims of the '234 application and issued an Issue Notification in the '234
21 application. On August 21, 2012, CoolIT had actual knowledge that the '764 patent issued. Despite
22 this knowledge, on information and belief, CoolIT continued its infringing activities despite an
23 objectively high likelihood that its activities constituted infringement of a valid patent, and this risk
24 was either known or so obvious that it should have been known to CoolIT. Thus, on information and
25 belief, CoolIT's infringement has been, and continues to be, willful and deliberate.

26 29. CoolIT's infringement of the '764 patent has caused and continues to cause damages
27 and irreparable harm to Plaintiffs.

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PRAYER

WHEREFORE, Plaintiffs respectfully pray that the Court enter judgment in their favor and award the following relief against CoolIT:

- A. A judgment in favor of Plaintiffs that CoolIT has infringed (directly, contributorily, and by inducement) the Patents-in-Suit;
- B. A judgment in favor of Plaintiffs that CoolIT’s infringement of the Patents-in-Suit has been willful;
- C. Preliminarily and permanently enjoin CoolIT and its officers, directors, employees, agents, licensees, representatives, affiliates, related companies, servants, successors and assigns, and any and all persons acting in privity or in concert with any of them, from further infringing upon the Patents-in-Suit;
- D. Award Plaintiffs actual damages pursuant to 35 U.S.C. § 284, in an amount to be determined at trial, as a result of CoolIT’s infringement of the Patents-in-Suit;
- E. Order that damages for infringement of the Patents-in-Suit be trebled as provided for by 35 U.S.C. § 284 for CoolIT’s willful infringement of the Patents-in-Suit;
- F. Find this to be an exceptional case and award Plaintiffs their costs and attorney’s fees under 35 U.S.C. § 285; and
- G. Award and grant Plaintiffs such other and further relief as the Court deems just and proper under the circumstances.

DEMAND FOR JURY TRIAL

Plaintiffs demand a jury trial on all matters triable to a jury.

Dated: May __, 2013

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, LLP

By: _____
Robert F. McCauley
Attorneys for Plaintiffs/Counterclaim Defendants
Asetek A/S and Asetek Holdings, Inc.