

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

BORGWARNER INC.,)	
)	
Plaintiff,)	
)	Civil Action No.: 13-CV-10793
v.)	
)	Honorable Bernard A. Friedman
PIERBURG US, LLC, PIERBURG)	
GmbH, and KSPG AG,)	
)	
Defendants.)	
_____)	

AMENDED COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiff, BORGWARNER INC., hereby complains, through its counsel, of Defendants, PIERBURG US, LLC, PIERBURG GmbH, and KSPG AG, as follows:

THE PARTIES

A. THE PLAINTIFF

1. BorgWarner Inc. ("BorgWarner") is a corporation organized and existing under the laws of the State of Delaware, having a principal place of business at 3850 Hamlin Road, Auburn Hills, Michigan 48326 and is doing business in this District.

2. BorgWarner is the owner by assignment of United States Patent No. 5,527,149 (the "'149 Patent") which issued on June 18, 1996, for an invention entitled "Extended Range Regenerative Pump With Modified Impeller and/or Housing." (Copy attached as Exhibit A.)

3. The patentability of all 36 claims in the '149 patent was confirmed by the United States Patent Office on September 7, 2010. (Copy of the Reexamination Certificate attached as Exhibit B.)

4. BorgWarner is the owner by assignment of United States Patent No. 6,422,808 (the "'808 patent"), which issued on July 23, 2002, for an invention entitled "Regenerative Pump Housing Vanes and Side Channels Particularly Shaped To Direct Fluid Flow." (Copy attached as Exhibit C.)

5. The patentability of all 19 claims in the '808 patent was confirmed by the United States Patent Office on June 22, 2010. (Copy attached as Exhibit D.)

6. BorgWarner manufactures and sells a variety of automotive products including, but not limited to, parts and components for automobile and other vehicle exhaust systems, including regenerative air pumps. BorgWarner marks its regenerative air pumps with the '149 and '808 patent numbers.

B. THE DEFENDANTS

7. Defendant Pierburg US, LLC ("Pierburg US") is a corporation organized and existing under the laws of the State of South Carolina, and has places of business at 5 South Chase St., Fountain Inn, South Carolina 29644 and at 975 South Opdyke road, Auburn Hills, Michigan 48326. Pierburg US is also licensed to do business in Michigan.

8. Upon information and belief, Pierburg US has advertised, imported, manufactured, offered for sale, sold, tested and/or used automotive parts and components, including regenerative air pumps, which infringe the '149 and '808 patents.

9. Defendant Pierburg GmbH ("Pierburg Germany") is an entity formed in Germany under German laws, and which has a place of business or Alfred-Pierburg-Str. 1, 41460 Neuss, Germany. Pierburg Germany also operates out of the facilities of Pierburg US.

10. Pierburg Germany has manufactured, offered for sale and sold regenerative air pumps which infringe the '149 and '808 patents, knowing that the air pumps will be installed in vehicles which will be sold in the United States.

11. Defendant KSPG AG ("KSPG") is, upon information and belief, a German company formed under German laws. KSPG has a place of business in the United States at 975 South Opdyke Road, Auburn Hills, Michigan 48326 and a place of business in Germany at Karl-Schmidt-Strasse, 74172 Neckarsulm, Germany.

12. KSPG's (a/k/a Kolbenschmidt Pierburg Group) operates out of facilities in the United States of Pierburg US and Pierburg Germany. KSPG has imported, tested, offered for sale and sold in the United States regenerative air pumps which infringe the '149 and '808 patents.

13. Pierburg US, Pierburg Germany, and KSPG (collectively "Pierburg" or the Defendants") call their infringing air pump products by one or more of the following names: "Secondary Air Pumps", "Side Channel Pumps", and "Compact Air Pumps" (called "Infringing Products").

14. Infringing Products made, imported, offered for sale and sold in the United States are one of the components installed on at least the Audi A8 automobiles which are on sale and are being sold in the United States and in this District.

15. The Defendants produce on-line and print advertising, as well as catalogs and brochures, which describe and market the Infringing Products. The Defendants also make accessible on-line articles and brochures which describe the Infringing Products and promote the benefits, advantages, performance and features of the Infringing Products.

JURISDICTION AND VENUE

16. This is a civil action arising under 35 U.S.C. § 101 et. seq. for patent infringement.

17. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 and 1338(a) because this is a civil action for patent infringement and arises under the patent laws of the United States.

18. Venue is proper in this District because a substantial part of the events giving rise to the underlying claims are situated in, or are taking part within, this District as provided in 28 U.S.C. §§ 1391(c) and 1400(b). Venue is also proper in this District under 28 U.S.C. §1391(d).

COUNT I – PATENT INFRINGEMENT
U.S. PATENT NO. 5,527,149

19. BorgWarner hereby realleges the allegations contained in Paragraphs 1-18 of the Complaint as though fully set forth herein.

20. This action arises under the United States Patent Laws, Title 35, United States Code.

21. Upon information and belief, Pierburg US, in violation of §271(a), has directly infringed, and is currently directly infringing, the '149 patent through the importation, using, offering for sale and selling Infringing Products in the U.S., including in this District.

22. In violation of 35 U.S.C. §271(c), Pierburg Germany knowingly contributorily infringes the '149 patent through the manufacturing, offering for sale and selling Infringing Products for installation on automobiles which are sold in the United States and in this District.

23. In violation of 35 U.S.C. §271(b), Pierburg Germany knowingly induces infringement of the '149 patent through the manufacturing, offering for sale and selling Infringing Products for installation on automobiles which are sold in the United States and in this District.

24. Direct infringement of the '149 patent as a result of the inducement and contributory infringement by Pierburg Germany takes place in this District, and in other places in the United States, by the importation, sale, offering for sale, and use of vehicles in the United States incorporating Infringing Products supplied by Pierburg Germany.

25. In violation of 35 U.S.C. §271(c), KSPG knowingly contributorily infringes the '149 patent through the manufacturing, offering for sale and selling Infringing Products for installation on automobiles which are sold in the United States and in this District.

26. In violation of 35 U.S.C. §271(b), KSPG knowingly induces infringement of the '149 patent through the manufacturing, offering for sale and selling Infringing Products for installation on automobiles which are sold in the United States and in this District.

27. Direct infringement of the '149 patent as a result of the inducement and contributory infringement by KSPG takes place in this District, and in other places in the United States, by the importation, sale, offering for sale, and use of vehicles in the United States incorporating Infringing Products supplied by KSPG.

28. Marketing and sales literature produced by the Defendants and distributed throughout this District and other places in the United States, depict the Infringing Products and promote the benefits, advantages, performance and features of the Infringing Products.

29. The infringement by the Defendants, individually and collectively, of the '149 patent has been and is continuing to be willful. The Defendants willfully infringed the '149 patent at least in part by manufacturing, offering to sell, selling, using and importing air pumps knowing they infringed the patent. The Defendants' claims that they independently developed the accused air pumps without knowledge of the '149 patent are objectively baseless. The fact that the accused air pumps include the claimed features of the '149 patent, and the fact that the Defendants deny copying or knowing about the '149 patent are too unbelievable to be accurate and constitute willfulness. Moreover, the fact that the Defendants changed the design and structure of their previous air pumps to the present version in order to compete with the Plaintiff's patented air pumps also shows intent to infringe. The fact that the Defendants have not asserted any objectively reasonable arguments in support of their invalidity and non-infringement arguments also demonstrates an intent to

willfully infringe. Other facts and documents in support of the willfulness claim will be elicited by Plaintiff during discovery.

30. The claims of the '149 patent were validly issued by the U.S. Patent Office and are valid and enforceable. The results of Reexamination proceedings in the United States Patent Office confirmed the invention and patentability and all of the claims of the '149 patent.

31. Unless preliminarily and then permanently enjoined, the Defendant, individually and collectively, will continue their unlawful and willful infringement of the claims of the '149 patent.

32. Plaintiff is being damaged by the infringing acts of the Defendants, individually and collectively, in amounts yet to be determined.

COUNT II – PATENT INFRINGEMENT
U.S. PATENT NO. 6,422,808

33. BorgWarner hereby realleges the allegations contained in Paragraphs 1-32 of the Complaint as though fully set forth herein.

34. This action arises under the United States Patent Laws, Title 35, United States Code.

35. Upon information and belief, Pierburg US, in violation of §271(a), has directly infringed, and is currently directly infringing, the '808 patent through the importation, using, offering for sale and selling Infringing Products in the U.S., including in this District.

36. In violation of 35 U.S.C. §271(c), Pierburg Germany knowingly contributorily infringes the '808 patent through the manufacturing, offering for sale and selling Infringing Products for installation on automobiles which are sold in the United States and in this District.

37. In violation of 35 U.S.C. §271(b), Pierburg Germany knowingly induces infringement of the '808 patent through the manufacturing, offering for sale and selling Infringing Products for installation on automobiles which are sold in the United States and in this District.

38. Direct infringement of the '808 patent as a result of the inducement and contributory infringement by Pierburg Germany takes place in this District, and in other places in the United States, by the importation, sale, offering for sale, and use of vehicles in the United States incorporating Infringing Products supplied by Pierburg Germany.

39. In violation of 35 U.S.C. §271(c), KSPG knowingly contributorily infringes the '808 patent through the manufacturing, offering for sale and selling Infringing Products for installation on automobiles which are sold in the United States and in this District.

40. In violation of 35 U.S.C. §271(b), KSPG knowingly induces infringement of the '808 patent through the manufacturing, offering for sale and selling Infringing Products for installation on automobiles which are sold in the United States and in this District.

41. Direct infringement of the '808 patent as a result of the inducement and contributory infringement by KSPG takes place in this District, and in other places in the United States, by the importation, sale, offering for sale, and use of vehicles in the United States incorporating Infringing Products supplied by KSPG.

42. Marketing and sales literature produced by the Defendants and distributed throughout this District and other places in the United States, depict the Infringing Products and promote the benefits, advantages, performance and features of the Infringing Products.

43. The infringement by the Defendants, individually and collectively, of the '808 patent has been and is continuing to be willful. The Defendants willfully infringed the '808 patent at least in part by manufacturing, offering to sell, selling, using and importing air pumps knowing they infringed the '808 patent. The Defendants' claims that they independently developed the accused air pumps without knowledge of the '808 patent are objectively baseless. The fact that the accused air pumps include the claimed features of the '808 patent, and the fact that the Defendants deny copying or knowing about the patents-in-suit are too unbelievable to be accurate and constitute willfulness. Moreover, the fact that the Defendants changed the design and structure of their previous air pumps to the present version in order to compete with the Plaintiff's patented air pumps also shows intent to infringe. The fact that the Defendants have not asserted any objectively reasonable arguments in support of their invalidity and non-infringement arguments also demonstrates an

intent to willfully infringe. Other facts and documents in support of the willfulness claim will be elicited by Plaintiff during discovery.

44. The claims of the '808 patent were validly issued by the U.S. Patent Office and are valid and enforceable. The results of the Reexamination proceedings in the United States Patent Office confirmed the invention and patentability and all of the claims of the '808 patent.

45. Unless preliminarily and then permanently enjoined, the Defendant, individually and collectively, will continue their unlawful and willful infringement of the claims of the '808 patent.

46. Plaintiff is being damaged by the infringing acts of the Defendants, individually and collectively, in amounts yet to be determined.

RELIEF REQUESTED

WHEREFORE, Plaintiff, BorgWarner Inc., demands judgment as follows:

A. That this Court preliminarily and permanently enjoin Defendants Pierburg US, Pierburg Germany and KSPG, individually and collectively, from further infringement of U.S. Patent Nos. 5,527,149 and 6,422,808;

B. That this Court find that Defendants Pierburg US, Pierburg Germany and KSPG, individually and collectively, and those in privity therewith, have contributorily infringed U.S. Patent Nos. 5,527,149 and 6,422,808;

C. That this Court found that Defendants Pierburg US, Pierburg Germany and KSPG, individually and collectively, and those in privity therewith, have actively induced infringement of U.S. Patent Nos. 5,527,149 and 6,422,808;

D. That this Court award BorgWarner compensatory damages and prejudgment interest thereof for the infringing acts by Defendants Pierburg US, Pierburg Germany and KSPG, individually and collectively.

E. That this Court find that the infringement by Defendants Pierburg US, Pierburg Germany and KSPG, individually and collectively, has been willful and award BorgWarner treble damages pursuant to 35 U.S.C. §284.

F. That this Court declare this case exceptional pursuant to 35 U.S.C. §285 and award BorgWarner its reasonable attorneys fees; and

G. That this Court award BorgWarner its costs, expenses and such other relief as is deemed just and equitable.

DEMAND FOR JURY TRIAL

Plaintiff demands a jury trial on all issues so triable.

Respectfully submitted,

By: /s/Thomas E. Donohue
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Dated: August 11, 2013

CERTIFICATE OF SERVICE

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I certify that on this 11th day of August, 2013, the following:

AMENDED COMPLAINT AND DEMAND FOR JURY TRIAL

was filed with the Clerk of the Court using the ECF system which will send notification to all counsel of record.

/s/Thomas E. Donohue

Thomas E. Donohue