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FILED

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

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ROBERT J. KOVICH
U.S. DISTRICT COURT
FOR THE NORTHERN DISTRICT
OF INDIANA

NIBCO INC.,
a corporation,

Plaintiff,

v.

Civil Action No. 3:13 CV 879

VALVULAS ARCO, S.A.,
a corporation,

Defendant.

COMPLAINT FOR DECLARATORY JUDGMENT

Plaintiff, NIBCO INC. (hereinafter "Plaintiff" or "NIBCO"), by and through its undersigned attorneys, for its Declaratory Judgment Complaint against Defendant Valvulas Arco, S.A. (hereinafter "Defendant" or "Arco"), alleges as follows:

THE PARTIES

1. NIBCO is a corporation organized and existing under and by virtue of the laws of the state of Indiana and has its principal place of business at 1516 Middlebury Street, Elkhart, Indiana 46516.

2. Upon information and belief, Arco is a corporation organized and existing under and by virtue of the laws of Spain and has its principal place of business at Avda del Cid, 8, 46134 Foyos (Valencia) Spain.

NATURE OF ACTION

3. This is an action for declaratory judgment arising under the patent laws of the United States, 35 U.S.C. § 101 *et seq.*, for a declaration that U.S. Design Patent Nos. 429,518

(the '518 patent; Ex. A), 429,519 (the '519 patent; Ex. B), 429,520 (the '520 patent; Ex. C), 438,595 (the '595 patent; Ex. D), and 479,307 (the '307 patent; Ex. E) (collectively, the "patents in suit") are not infringed by any product sold by NIBCO and are invalid.

JURISDICTION AND VENUE

4. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338 with respect to the claims arising under the Patent Act, 35 U.S.C. § 101, *et seq.*, and pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201, *et seq.*

5. There is complete diversity between NIBCO and Arco and the amount in controversy exceeds \$75,000.00 exclusive of interest and costs. Therefore, this Court also has subject matter jurisdiction over this action under 28 U.S.C. § 1332.

6. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391 and 1400 because a substantial part of the events giving rise in the claims occurred in this District, and Arco is subject to personal jurisdiction in this judicial District based upon, among other things, its business transactions within this District.

7. Upon information and belief, there is personal jurisdiction over Arco since Arco is doing business within this State and judicial District, transacts business within this State and judicial District, derives substantial revenue from intra-state and inter-state commerce, and is otherwise within the jurisdiction of this Court.

8. Upon information and belief, there is personal jurisdiction over Arco by reason of the assertions made against NIBCO in this District, namely, the allegation that NIBCO infringes the patents in suit. Arco sent letters dated April 22, 2013, and August 16, 2013, alleging that NIBCO infringes the patents in suit.

9. In view of the foregoing allegations that NIBCO is allegedly infringing the patents in suit, it is NIBCO's intention at the present time to continue to conduct its business and activities which are now being asserted as infringing the patents in suit. See, e.g., Exhibit F. NIBCO's denial of the allegations show that there has been and now is an actual controversy between NIBCO and Arco regarding the non-infringement and invalidity of the patents in suit.

FACTUAL BACKGROUND

10. From about 2002 to 2008, Arco manufactured and sold to NIBCO shut off valves of the type involved in this dispute under a Supply Agreement effective as of July 1, 2002.

11. On or about the year 2008, NIBCO discontinued purchasing shut off valves from Arco and terminated the Supply Agreement.

12. On information and belief, at no time has Arco fixed upon its shut off valves notice of any of the patents in suit.

13. At no time during the shut off valve supply relationship between Arco and NIBCO was there any mention of any of the patents in suit.

14. On information and belief, Arco continues to manufacture shut off valves and sells such shut off valves in the United States and in this District.

15. NIBCO now has other shut off valves manufactured for itself and sells such shut off valves throughout the United States and in this District.

16. On or about May 3, 2013, NIBCO received a copy of a letter dated April 22, 2013, from Arco asserting and alleging that NIBCO's sale of these other shut off valves (Model Nos. 7120A, 7125A, 7140A, 7145A, 7150A, 7155A, 7170A, and 7175A) (the "Accused Products") constituted infringement of the patents in suit.

COUNT I
DECLARATORY JUDGMENT OF NON-INFRINGEMENT

17. NIBCO repeats and re-alleges each allegation in paragraphs 1-16 of this Complaint as if set forth fully herein.

18. An actual controversy has arisen and now exists between NIBCO and Arco concerning whether NIBCO's Accused Products infringe the patents in suit.

19. NIBCO has not infringed and does not infringe the claims of the patents in suit. For example, most, if not all, of the features shown in the claims are functional. To the extent that any purely ornamental features do exist, the appearance of the alleged ornamental features of the Accused Products would not be substantially similar to an ordinary observer.

20. In particular, the manufacture, importation, use, offer for sale, and/or sale in the United States of the Accused Products do not infringe, either literally or under the doctrine of equivalents, the single claim in each of the patents in suit.

21. NIBCO does not contribute to the infringement of, or induce others to infringe, the single claim in each of the patents in suit, nor has it ever done so.

22. By virtue of the foregoing, NIBCO desires a judicial determination of the parties' rights and duties with respect to the patents in suit.

23. A judicial declaration is necessary and appropriate at this time so that the parties may proceed in accordance with their respective rights as determined by the Court.

24. This is an exceptional case which entitles NIBCO to an award of reasonable attorney fees under 35 U.S.C. § 285.

COUNT II
DECLARATORY JUDGMENT OF INVALIDITY OF THE PATENTS IN SUIT

25. NIBCO repeats and re-alleges each allegation in paragraphs 1-24 of this Complaint as if set forth fully herein.

26. An actual controversy has arisen and now exists between NIBCO and Arco concerning whether the patents in suit are invalid.

27. Upon information and belief, the single claim of each of the patents in suit is invalid for failing to comply with one or more of the conditions and requirements of the patent laws, including, but not limited to 35 U.S.C. §§ 101, 102, 103, 112, and/or 171 and/or the rules, regulations, and laws pertaining thereto. For example, most, if not all of the features shown in the single claim of each of the patents in suit are functional. To the extent that any purely ornamental features exist, those ornamental features are anticipated or obvious to a designer of ordinary skill who designs valves.

28. By virtue of the foregoing, NIBCO desires a judicial determination of the parties' rights and duties with respect to the patents in suit.

29. A judicial declaration is necessary and appropriate at this time so that the parties may proceed in accordance with their respective rights as determined by the Court.

30. This is an exceptional case which entitled NIBCO to an award of reasonable attorney fees under 35 U.S.C. § 285.

WHEREFORE, NIBCO prays for the following relief against Arco:

A. for a declaration and judgment declaring that the patents in suit are not infringed by NIBCO or any of NIBCO's products;

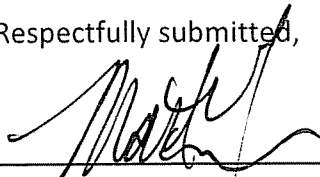
B. for a declaration and judgment declaring that the patents in suit are invalid;

C. for a declaration and judgment declaring this case to be exceptional under 35 U.S.C. § 285;

D. for an award to NIBCO of its costs, expenses, and reasonable attorney fees as permitted by law; and

E. for an award to NIBCO for such other and further relief as the Court may deem just and proper.

Respectfully submitted,



Dated: August 23, 2013

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