

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

ALTRONIC, LLC,)	
)	
Plaintiff)	CASE NO. 4:12-cv-02981-JRA
)	
vs.)	JUDGE JOHN R. ADAMS
)	
JASON GREEN, et al.,)	
)	
Defendants.)	

PLAINTIFF ALTRONIC, LLC'S SECOND AMENDED COMPLAINT

Now comes Plaintiff, Altronic, LLC ("Altronic") and for its claims against Defendants, states as follows:

PRELIMINARY ALLEGATIONS

1. Plaintiff, Altronic, LLC is a limited liability company, organized and existing under the laws of the State of Ohio with its principal place of business in Trumbull County, Ohio. Altronic is the successor in interest to Altronic, Inc. (a defunct Ohio corporation) and Altronic Controls, Inc. (a defunct Texas corporation), relative to agreements with Defendants herein.
2. Defendant, Jason Green, is an individual residing in the State of Florida, who executed a Consultant Agreement under the date of January 1, 2008, a copy of which is attached hereto and incorporated herein as Exhibit A.
3. Defendant, Jason Green, is the named inventor of U.S. Patent Nos. 6,250,260 and 6,543,395.
4. Defendant, Gaseous Fuel Systems Corp. ("GFS") is a corporation organized and existing under the laws of the State of Florida. Defendant GFS is the successor in interest to Gas

Technologies, Inc. under an Amendment to Asset Purchase Agreement of May 20, 2005, attached hereto as Exhibit B.

5. Gas Technologies, Inc. was the original assignee of U.S. Patent Numbers 6,250,260 and 6,543,395, which patents were assigned from Jason Green.

6. Gas Technologies, Inc. assigned U.S. Patent Numbers 6,250,260 and 6,543,395 to Altronic Controls, Inc., a predecessor in interest of Altronic, LLC.

7. Altronic, LLC is the owner of U.S. Patent Numbers 6,250,260 and 6,543,395.

8. This is a cause of action for patent infringement that arises under the patent laws of the United States, Title 35 of the United States Code, for breach of contract and for an accounting. Subject matter jurisdiction is proper under 28 U.S.C. §§ 1331, 1332, 1338 and 1367.

9. This Court has personal jurisdiction over the parties at least by virtue of: Defendant GFS' Internet business activities in this judicial district and elsewhere in the state of Ohio, by virtue of Defendant GFS' acts of infringement in Ohio and in this district, and by virtue of Defendant Jason Green's business activities in this judicial district.

10. Venue is proper in this judicial district under 28 U.S.C. §§ 1391(b), 1391(c) and 1400(b) at least by virtue of: Defendant GFS' Internet business activities in this judicial district and elsewhere in the state of Ohio, by virtue of Defendant GFS' acts of infringement in Ohio and in this district, and by virtue of Defendant Jason Green's business activities in this judicial district.

FIRST CLAIM

11. The allegations of the preceding paragraphs are incorporated as if fully set forth herein.

12. Defendant, Jason Green, is currently an officer and employee of Defendant, GFS. GFS is currently offering sales of bi-fuel conversion products to the stationary natural gas engine market. This is a breach of Green's covenant not to compete, as contained in his Consultant Agreement of January 1, 2008, specifically Article VI. Under the terms of Defendant Green's Consultant Agreement, Altronic is entitled to a temporary restraining order, and a preliminary and permanent injunction, prohibiting Jason Green from competing with Altronic for a period of five years, from the date of his termination as a consultant. Such termination occurred on December 31, 2011.

13. Employment of Jason Green by Defendant, GFS, will result in irreparable injury to Altronic, which will be difficult to calculate monetarily.

14. Altronic is entitled to a preliminary and permanent injunction prohibiting Jason Green from competing with it, contrary to the terms of his Consultant Agreement.

15. The restrictions placed upon Jason Green by his Consultant Agreement are reasonable and therefore enforceable under Ohio law.

16. Altronic has sustained monetary losses as a proximate result of Defendant Green's breach of his Consultant Agreement.

SECOND CLAIM

17. The allegations of the preceding paragraphs are incorporated as if fully set forth herein.

18. In May, 2005, Altronic contracted with Gas Technologies, Inc. (GTI) and executed an exclusive license to GTI to utilize multiple patents relating to the use of natural gas in a specified "Field of Use". The Exclusive Patent License Agreement between Altronic and GTI defines "Field of Use" as follows:

" 'Field of Use' means use with diesel engines installed in a land vehicle and arranged to provide motive power to said vehicle".

19. Altronic specifically retained all rights to the use of patents and improvements outside of the "Field of Use".

20. GFS is currently competing unfairly with Altronic, in that it is offering for sale products that are outside the "Field of Use" granted under its License Agreement with Altronic. Specifically, GFS is marketing stationary applications of Bi-fuel technology, which are outside of the "Field of Use" granted in the Exclusive Patent License Agreement.

21. The actions of GFS constitute a breach of its agreement with Altronic as set forth in the Amendment to Asset Purchase Agreement of May 20, 2005 and the Exclusive Patent License Agreement incorporated therein as Exhibit A.

22. As a result of the contractual breach by GFS, Altronic has sustained damages including lost profits, lost sales and loss of goodwill and will continue to sustain such damages into the future.

23. The damages to Altronic are irreparable and difficult to calculate to a reasonable certainty. Altronic is therefore entitled to a temporary and permanent injunction, prohibiting GFS from violating the terms of its License Agreement by marketing Bi-fuel technology in applications, which it had agreed not to.

THIRD CLAIM

24. The allegations of the preceding paragraphs are incorporated as if fully set forth herein.

25. The Exclusive Patent License Agreement between Altronic and GTI, contains the following language:

"Article 6 - - IMPROVEMENTS

6.01 If either or both of LICENSEE or LICENSOR make Improvements, patented or unpatented, the Parties agree that each will have an exclusive right to make, have made, use, sell, or offer for sale the Improvements as follows:
LICENSEE in the Field of Use and LICENSOR outside of the Field of Use."

26. As successor in interest to GTI, GFS has failed to advise or otherwise communicate with Altronic relative to improvements in stationary power applications, which is outside of the "Field of Use." An example of such an improvement is the EVO SP System for stationary applications detailed on the GFS website.

27. Altronic is entitled to an accounting for this material and is entitled to access all material currently held by GFS relative to improvements outside the "Field of Use."

FOURTH CLAIM

28. The allegations of the preceding paragraphs are incorporated as if fully set forth herein.

29. Defendant GFS is making, using, selling or offering for sale one or more systems or products that infringe one or more claims of U.S. Patent Numbers 6,250,260 and 6,543,395.

30. One of the inventions described in the '260 patent may be found in claim one which states:

A system for modifying diesel powered electric generators so as to be operated either in a full diesel fuel mode or a gas-diesel fuel mode, at substantially equivalent operating efficiencies, said system comprising:

a gas control sub-system designed to control the amount of gas supplied to a driving engine of the generator while being operated in the gas-diesel fuel mode,

a diesel control sub-system designed to control the amount of diesel fuel supplied to the driving engine while being operated in the gas-diesel fuel mode,

an electronic control sub-system designed to regulate operation of pre-determined components of the gas control sub-system and the diesel control sub-system, and

the gas control sub-system, the diesel control sub-system and the electronic control sub-system being collectively interdependent so as to allow a change of operation of the generator between the full diesel fuel mode and the gas-diesel fuel mode without generator power output being interrupted; and

the gas control sub-system structured to permit the amount of gas supplied to the driving engine to be determined in response to the load requirements of the driving engine, and at least said gas control sub-system operating independently from a governor of the diesel engine; and

said electronic control sub-system further structured to determine load levels through the monitoring of the driving engine's manifold air pressure.

31. One of the inventions described in the '395 patent may be found in claim one

which states:

A bi-fuel control system for modifying diesel engines so as to be operated either in a full diesel fuel mode or a bi-fuel mode, at substantially equivalent operating efficiencies, said system comprising:

a gas control sub-system structured to control an amount of gas supplied to the diesel engine while being operated in the bi-fuel mode;

an electronic control sub-system structured to regulate operation of pre-determined components of said gas control sub-system;

said gas control sub-system and said electronic control sub-system being cooperatively disposed with one another to achieve a change of operation of the diesel engine between the full diesel fuel mode and the bi-fuel mode without engine output being interrupted; and

said gas control sub-system further structured to determine the amount of gas supplied to the diesel engine in response to the load requirements of the diesel engine and independently from a governor of the diesel engine.

32. Defendant GFS is making, using, selling or offering for sale a bi-fuel control system commercially known as the EVO-SP system.

33. Defendant GFS' EVO-SP system modifies diesel powered electric generators such that the generator can be operated either in a full diesel fuel mode or a gas-diesel fuel mode, at substantially equivalent operating efficiencies.

34. Defendant GFS' EVO-SP system includes a gas control sub-system that controls the amount of gas supplied to a driving engine of a generator while being operated in a gas-diesel fuel mode.

35. Defendant GFS' EVO-SP system includes a diesel control sub-system that controls the amount of diesel fuel supplied to a driving engine while operated in a gas-diesel fuel mode.

36. Defendant GFS' EVO-SP system includes an electronic control sub-system that regulates operation of pre-determined components of the gas control sub-system and the diesel control sub-system.

37. Defendant GFS' EVO-SP system is configured such that the gas control sub-system, the diesel control sub-system, and the electronic control sub-system are collectively interdependent so as to allow a change of operation of the generator between a full diesel fuel mode and a gas-diesel fuel mode without interruption of generator power output.

38. The gas control sub-system in Defendant GFS' EVO-SP system is structured to permit the amount of gas supplied to the driving engine to be determined in response to load requirements of the driving engine.

39. The gas control sub-system in Defendant GFS' EVO-SP system operates independently from a governor of the diesel engine.

40. The electronic control sub-system in Defendant GFS' EVO-SP system is structured to determine load levels through monitoring of the driving engine's manifold air pressure.

41. Defendant GFS' EVO-SP system also modifies diesel engines such that the engine can be operated in either a full diesel fuel mode or a bi-fuel mode, at substantially equivalent operating efficiencies.

42. Defendant GFS' EVO-SP system includes a gas control sub-system that controls the amount of gas supplied to the diesel engine while being operated in a gas-diesel fuel mode.

43. Defendant GFS' EVO-SP system includes an electronic control sub-system that regulates operation of pre-determined components of the gas control sub-system.

44. Defendant GFS' EVO-SP system is configured such that the gas control sub-system and the electronic control sub-system are collectively disposed with one another to achieve a change of operation of the diesel engine between a full diesel fuel mode and a gas-diesel fuel mode without interruption of generator power output.

45. The gas control sub-system in Defendant GFS' EVO-SP system is structured to permit the amount of gas supplied to the diesel engine to be determined in response to load requirements of the driving engine.

46. Defendant GFS' EVO-SP system infringes one or more of the claims of U.S. Patent Numbers 6,250,260 and 6,543,395.

47. Defendant GFS by making, using, selling and offering for sale the EVO-SP system infringes one or more of the claims of U.S. Patent Numbers 6,250,260 and 6,543,395.

48. As a former owner, assignor and licensee of the U.S. Patent Numbers 6,250,260 and 6,543,395, Defendant GFS was aware of U.S. Patent Numbers 6,250,260 and 6,543,395.

49. Defendant GFS does not have a license to make, use, sell or offer for sale its EVO-SP system.

50. Defendant GFS' EVO-SP system is described in attached Exhibits C through K.

51. Exhibit C is a true and accurate copy of a portion of Defendant GFS' website, www.gfs-corp.com, which describes the EVO-SP system components.

52. Exhibit D is a true and accurate copy of a portion of Defendant GFS' website, www.gfs-corp.com, which describes various applications for bi-fuel generator conversion using the EVO-SP system.

53. Exhibit E is a true and accurate copy of a portion of Defendant GFS' website, www.gfs-corp.com, which provides a technology overview of the EVO-SP system.

54. Exhibit F is a true and accurate copy of a portion of Defendant GFS' website, www.gfs-corp.com, which describes installation of the EVO-SP system..

55. Exhibit G is a true and accurate copy of a portion of Defendant GFS' website, www.gfs-corp.com, which describes how the EVO-SP system extends runtime.

56. Exhibit H is a true and accurate copy of a portion of Defendant GFS' website, www.gfs-corp.com, which introduces the EVO-SP system.

57. Exhibit I is a true and accurate copy of a brochure available on Defendant GFS' website, www.gfs-corp.com, about the EVO-SP system.

58. Exhibit J is a true and accurate copy of a portion of Defendant GFS' website providing answers to the most common questions about diesel engine conversions using the EVO-SP system.

59. Exhibit K is a true and accurate copy of a brochure published by GFS about the EVO-SP system.

60. Defendant GFS has knowledge that the claims of U.S. Patent Numbers 6,250,260 and 6,543,395 read on its EVO-SP system as that system is described in Exhibits C through K.

61. Defendant GFS has knowledge that the installation of the EVO-SP system on a diesel engine or diesel generator constitutes an infringement of the '260 and/or '395 Patents.

62. Defendant GFS is advertising an infringing use, and/or instructing customers to use the EVO-SP system in an infringing manner, namely, by installing the EVO-SP system on diesel engines and/or diesel generators.

63. By making, using, selling and offering for sale the EVO-SP system to third party owners of diesel engines and diesel generators, GFS is inducing infringement because GFS has knowledge that installation of the EVO-SP system would constitute infringement one or more claims of the '260 and/or '395 patents.

64. By making, using, selling and offering for sale the EVO-SP system to third party owners of diesel engines and diesel generators and because they have knowledge of the '260 and '395 Patents and the way infringement could occur, GFS is intending that their customers infringe the '260 and/or '395 Patents, GFS is inducing infringement because GFS has knowledge that installation of the EVO-SP system would constitute infringement one or more claims of the '260 and/or '395 patents.

65. By making, using, selling and offering for sale the EVO-SP system, GFS intends to cause third party's to infringe the '260 and/or '395 Patents when the EVO-SP system is installed.

66. GFS induces infringement of the '260 and/or '395 Patents when it makes, uses, sell, offers to sell or installs the EVO-SP system.

67. GFS knows that the installation of an EVO-SP system on its customer's diesel engines and/or diesel generators constitutes infringement.

68. The combination of the EVO-SP system with a diesel engine or diesel generator includes a sub-system comprised of components that control the amount of diesel fuel supplied to the diesel engine, or diesel generator, when operated in bi-fuel mode.

69. Defendant's EVO-SP system is a component of an infringing product, i.e. a bi-fuel diesel engine or generator, and the EVO-SP system is especially made or adapted for use in an infringing manner when installed on a diesel engine or diesel generator.

70. Defendant GFS has knowledge that there are no substantial non-infringing uses for the EVO-SP system.

71. There is no substantial non-infringing use for the EVO-SP system.

72. The combination for which the EVO-SP System was specifically designed for is an infringement of one or more claims of the '260 and/or '395 Patents.

73. GFS is liable for contributory infringement because it makes, uses, sells, and/or offers for sale the EVO-SP system which is a component of a bi-fuel diesel engine or bi-fuel diesel generator and GFS knows that the EVO-SP system is especially made for and used in an infringing manner.

74. Despite Defendant GFS' knowledge of infringement, they continue to infringe.

75. Defendant GFS' infringement of U.S. Patent Numbers 6,250,260 and 6,543,395 is, and has been, willful.

76. Unless enjoined, Plaintiff Altronic will suffer irreparable harm due to Defendant GFS' continued infringement.

77. Plaintiff Altronic is suffering damages as a result of Defendant GFS' infringement.

RELIEF

WHEREFORE, Altronic demands judgment against Defendants as follows:

1. a preliminary and permanent injunction against Jason Green and GFS prohibiting them from engaging in conduct which is in violation of their respective agreements with Altronic;
2. that GFS provide an accounting to Altronic reflecting the sale of all Bi-fuel technology to third parties outside of the "Field of Use" set forth in the Exclusive Patent License Agreement of May 2005;
3. for a judgment jointly and severally against Defendants in an amount reflecting damages sustained by Altronic, proximately caused by the actions of Defendants in violation of their respective agreements with Altronic, currently unknown but believed to be in excess of \$25,000;
4. that GFS provide an accounting to Altronic reflecting any and all Improvements outside of its "Field of Use" as set forth in the Exclusive Patent License Agreement in effect between the parties;
5. that Defendant GFS be found to infringe, directly and/or indirectly, U.S. Patent Nos. 6,250,260 and 6,543,395;
6. that this Court find this case "exceptional" pursuant to 35 U.S.C. §285;
7. that this Court award attorney fees pursuant to 35 U.S.C. §285;
8. that, pursuant to 35 U.S.C. §283, Defendant GFS, its officers, directors, agents, assigns, and employees, and all others acting in concert or participation with them or under their authority be permanently enjoined from making, using, offering to sell, and selling infringing

products and from otherwise infringing, contributing to infringement, and actively inducing infringement of U.S. Patent Nos. 6,250,260 and 6,543,395;

9. for an accounting of damages to Altronic arising from Defendant GFS' acts of infringement, the damages including lost profits, but in no event less than a reasonable royalty to be paid by Defendant as a result of Defendants' infringing activities;

10. for an award to Altronic of three times the actual damages and lost profits or royalties so determined by the accounting, together with interest and costs as provided for under 35 U.S.C. §284; and

11. such other and further relief as the Court deems just and proper.

JURY DEMAND

Altronic hereby demands a trial by jury on all issues so triable.

Respectfully submitted,

/s/ F. Michael Speed, Jr.

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CERTIFICATE OF SERVICE

I hereby certify that on April 19, 2013, the foregoing was filed electronically. Notice of this filing will be sent to all parties by operation of the Court's Electronic Filing System.

/s/ F. Michael Speed, Jr.

F. Michael Speed, Jr.