

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
DES MOINES DIVISION**

KINZE MANUFACTURING, INC. an)	
Iowa corporation,)	
<i>Plaintiff,</i>)	
)	
v.)	Case No.: 4:14-cv-00126
)	Judge:
HORSCH, L.L.C., a South Dakota limited)	
liability company, HORSCH)	
MASCHINEN GMBH, a German)	
corporation, and HARPER INDUSTRIES,)	
INC., a Kansas corporation,)	
<i>Defendants.</i>)	

COMPLAINT AND JURY DEMAND

Plaintiff, KINZE MANUFACTURING, INC. (“Kinze”), by and for its Complaint against Defendants, HORSCH, L.L.C. (“Horsch LLC”), HORSCH MASCHINEN GMBH (“Horsch GMBH”), and HARPER INDUSTRIES, INC. (“Harper”) (together (“Defendants”), states as follows:

INTRODUCTION

1. This is an action for patent infringement committed by Defendants, individually and collectively, via the manufacture, use, import, sale, and/or offer for sale of one or more models of the Horsch “Maestro” seed planter with the so-named “Seed on Demand” system (hereinafter the “Accused Products”), or essential components thereof, in and into the United States, in violation of Kinze’s exclusive patent rights. Through this action, Kinze seeks injunctive and monetary relief.

PARTIES AND JURISDICTION

2. Plaintiff, Kinze, is an Iowa corporation with its principal place of business in Williamsburg, Iowa. Kinze is a nationally known manufacturer and seller of major agricultural implements, including row crop planters.

3. Defendant Horsch LLC is a South Dakota limited liability company. Upon information and belief, Horsch LLC's membership is comprised of Horsch GMBH, Harper, and third-party Kory Anderson, an individual.

4. Defendant Horsch GMBH is a German corporation.

5. Defendant Harper is a Kansas corporation.

6. This Court has personal jurisdiction over the Defendants because a substantial number of Defendants' acts and omissions giving rise to this suit have been committed in or directed at and affected the Southern District of Iowa, including, but not limited to, the sale and/or offering for sale of the Accused Products within the Southern District of Iowa.

7. This Court also has general jurisdiction over the Defendants because of their continued and substantial business connections to the State of Iowa. For example, both the Horsch website (www.horsch2.com) and the Harper Industries website (www.deweze.com) list several authorized dealership locations for their products in the Southern District of Iowa.

8. Venue is appropriate in this judicial district pursuant to 28 U.S.C. § 1391, because a substantial part of the events giving rise to this suit have occurred in this district, and because each of the defendants is a "resident" of this district pursuant to 28 U.S.C. § 1391(c)(2).

THE PATENT-IN-SUIT AND UNDERLYING TECHNOLOGY

9. Kinze is the lawful assignee of U.S. Patent No. 8,448,585 (the "585 Patent"), filed July 2, 2010, published July 7, 2011, and issued May 28, 2013. A true and correct copy of

the '585 Patent is attached hereto as Exhibit A. The '585 Patent claims priority to U.S. Provisional Patent Application No. 61/222,792, filed July 2, 2009.

10. The '585 Patent generally describes an air-based seed distribution device, or "entrainer," intended for row crop planters utilizing what is known as a "bulk-fill" seed distribution system.

11. A row crop planter is an agricultural implement, which is hauled by a tractor, and includes, for each row of crops desired to be planted simultaneously, a row unit, each equipped with a seed meter for dispensing seeds at regular intervals in conjunction with the forward motion of the tractor.

12. In conventional row crop planters, each row unit contains a separate hopper, which the farmer manually fills with seed prior to planting. Seeds fall directly from each hopper into the seed meter via gravity until no seed is left in the hopper. Filling each hopper is time consuming and care must be taken to fill each hopper with the same quantity of seed.

13. More sophisticated row crop planters have a bulk-fill seed distribution system. In this configuration, all of the seed is loaded into one or more single central hoppers which supply seeds to multiple row units/meters as needed, without the need for individual hoppers. This saves a farmer substantial time and effort, and makes bulk-fill systems very popular and more competitive than conventional seed supply methods.

14. Kinze manufactures and sells numerous row crop planters covered by one or more claims of the '585 Patent, including, for example, the Kinze 3600, 3660, 3700, and 4900 series of planters with the bulk-fill option. Kinze's patented planters with the bulk-fill option form a core part of Kinze's yearly sales and enhance Kinze's hard-earned reputation as a leading innovator of modern agricultural technology.

15. Kinze engages in virtual marking of the 3600, 3660, 3700, and 4900 series of planters, pursuant to 35 U.S.C. § 287(a), by labeling these planters with the address of an Internet website, <http://www.kinze.com/patents.aspx>, which identifies these planters as being covered by the '585 Patent, among others.

THE ACCUSED PRODUCTS AND DEFENDANTS' ACTIONS

16. The Accused Products are bulk-fill row crop planters, and/or components thereof, including those marketed under the "Maestro SW" name, which contain the so-named "Seed on Demand" system and include air entrainment devices that meet all of the limitations of one or more claims of the '585 Patent.

17. In January 2014, Kinze first obtained a Horsch "Seed on Demand distributor" (the "Horsch Device") which, on information and belief, is exemplary of the Accused Products, from an authorized Horsch dealer in the United States.

18. Kinze was informed at the time of purchase that the Horsch Device, or components thereof, needed to be ordered from Horsch GMBH in Germany.

19. The Horsch Device meets all limitations of numerous, if not all, of the claims of the '585 Patent, including, without limitation, claims 22 and 35, and all claims upon which claims 22 and 35 are dependent.

20. The Horsch Device has strikingly detailed physical similarities to Kinze's commercial air entrainer device covered by the '585 Patent, many of which are related to claimed features of the '585 Patent, as illustrated by the following non-limiting examples:

- a. Both the Kinze air entrainer and the Horsch Device utilize an air bypass channel coupled to an air input channel, which assists in preventing excess accumulation of seed in the seed chambers of the air entrainer and the seed tubes feeding the individual seed meters.

- b. Both the Kinze air entrainer and the Horsch Device utilize an air permeable floor. The air permeable floors of both devices are composed of a metal surface with a dense array of holes of substantially identical sizes as between the two devices.
- c. Both the Kinze air entrainer and the Horsch Device utilize an inclined sidewall positioned at substantially identical angles relative to the air permeable floor as between the two devices.
- d. Both the Kinze air entrainer and the Horsch Device utilize a base assembly pivotally connected to the main assembly, such that the base assembly can be moved rotationally downward and away from the sidewall in order to clean out the seed chamber.
- e. Both the Kinze air entrainer and the Horsch Device include virtually the same metal gate, insertable underneath the bulk hopper, to allow cleanout of the seed chambers of the entrainer while the hopper is full.

21. The Horsch Device is made largely of welded metal, which, while more expensive to manufacture in large quantities, can be brought to market faster, and with less initial cost, than injection molded plastic. This suggests that the designers and manufacturers of the Accused Products desired to make a product to compete with Kinze's as quickly as possible, and that the Accused Products were not independently designed as part of a standard evolutionary development process.

22. Based upon the foregoing information and belief, one or more of the Defendants obtained, studied, and intentionally copied Kinze's patented air entrainment device in order to design and create the Accused Products.

23. Upon information and belief, Defendant Horsch LLC sells and offers for sale the Accused Products in the United States. Furthermore, upon information and belief, Defendant Horsch LLC tested and contributed to the design of the Accused Products in the United States. For example, Horsch GMBH's website, located at www.horsch2.com, states that Horsch LLC's Andover, South Dakota location is a "Research and Development facility for testing prototype machines."

24. Upon information and belief, Defendant Harper is the primary manufacturer of the Accused Products in the United States. For example, Horsch GMBH's website, located at www.horsch2.com, states Harper "is the entity responsible for production of a variety of Horsch products in North America including the Maestro planter...." In addition, Harper's website, located at <http://www.deweze.com/horsch.html>, states that Harper "now proudly produces Horsch tillage *and seeding equipment*. Horsch produces some of the fastest and most efficient tillage *and seeding equipment* on the market." (Emphasis added.)

25. Upon information and belief, Defendant Horsch GMBH imports essential components of the Accused Products into the United States, which are not staples of commerce, and whose sole function is to be used in the Accused Products, with knowledge that the Accused Products infringe the '585 Patent.

26. Based upon Kinze's marking of planters covered by the '585 Patent, Kinze is informed and believes that one or more of the Defendants acted with actual knowledge of the '585 Patent and of an objectively unreasonable risk that their actions infringed the '585 Patent, and thus have wilfully infringed the '585 Patent.

**COUNT I
DIRECT PATENT INFRINGEMENT
(AS TO ALL DEFENDANTS)**

27. Paragraphs 1 through 26, above, are incorporated by reference as if fully set forth herein.

28. The Defendants, individually and/or collectively make, use, import, sell, and/or offer to sell products in the United States which infringe one or more claims of the '585 Patent.

29. As a direct and proximate result of Defendants' acts of direct infringement, Kinze has suffered damages in an amount to be proven at trial, but no less than a reasonable royalty.

30. As a further direct and proximate result of Defendants' acts of direct infringement, Kinze has suffered or is likely to suffer irreparable harm, including loss of market share and loss of goodwill, for which monetary damages are inadequate.

31. Upon information and belief, Defendants' acts of direct infringement have been willful.

WHEREFORE, Kinze prays this Honorable Court enter judgment in favor of Kinze and against the Defendants, finding the Defendants' infringement willful, awarding money damages to be determined at trial, preliminary and permanent injunctive relief barring Defendants from committing further acts of infringement, enhanced damages, attorneys' fees based upon an exceptional case finding, and any and all other legal and equitable relief to which Kinze is entitled under the law.

**COUNT II
CONTRIBUTORY INFRINGEMENT
(AS TO HORSCH GMBH)**

32. Paragraphs 1 through 26, above, are incorporated by reference as if fully set forth herein.

33. This count is pled in the alternative to Count I in the event Horsch GMBH is found not to be a direct infringer of the '585 Patent.

34. Upon information and belief, Horsch GMBH supplies essential components of the Accused Product to Horsch LLC and/or Harper, which are not staples of commerce, and have no substantial use other than in the Accused Products which infringe the '585 Patent, with knowledge that the Accused Product infringe the '585 Patent.

35. Horsch GMBH is therefore liable for contributory patent infringement pursuant to 35 U.S.C. § 271(c).

36. As a direct and proximate result of Horsch GMBH's acts of contributory infringement, Kinze has suffered damages in an amount to be proven at trial, but no less than a reasonable royalty.

37. As a further direct and proximate result of Horsch GMBH's acts of contributory infringement, Kinze has suffered or is likely to suffer irreparable harm, including loss of market share and loss of goodwill, for which monetary damages are inadequate.

38. Upon information and belief, Horsch GMBH's acts of contributory infringement have been willful.

WHEREFORE, Kinze prays this Honorable Court enter judgment in favor of Kinze and against Horsch GMBH, finding the Defendant's infringement willful, awarding money damages to be determined at trial, preliminary and permanent injunctive relief barring Defendants from committing further acts of infringement, enhanced damages, attorneys' fees based upon an exceptional case finding, and any and all other legal and equitable relief to which Kinze is entitled under the law.

**COUNT III
INDUCEMENT OF INFRINGEMENT
(AS TO ALL DEFENDANTS)**

39. Paragraphs 1 through 26, above, are incorporated by reference as if fully set forth herein.

40. This count is pled in the alternative to Count I and is asserted against one or more of the Defendants to the extent that they are found not to be a direct infringer of the '585 Patent.

41. Upon information and belief, Horsch GMBH, Horsch LLC and Harper, as business partners and affiliates, actively induce one another to make, use, import, sell, and offer to sell the Accused Products in the United States, with knowledge that the Accused Product infringes the '585 Patent.

42. Defendants are therefore liable for inducement of infringement pursuant to 35 U.S.C. § 271(b).

43. As a direct and proximate result of the Defendants' acts of inducement of infringement, Kinze has suffered damages in an amount to be proven at trial, but no less than a reasonable royalty.

44. As a further direct and proximate result of Defendants' acts of inducement of infringement, Kinze has suffered or is likely to suffer irreparable harm, including loss of market share and loss of goodwill, for which monetary damages are inadequate.

45. Upon information and belief, Defendants' acts of inducement of infringement have been willful.

WHEREFORE, Kinze prays this Honorable Court enter judgment in favor of Kinze and against Defendants, finding the Defendants' infringement willful, awarding money damages to be determined at trial, preliminary and permanent injunctive relief barring Defendants from committing further acts of infringement, enhanced damages, attorneys' fees based upon an

exceptional case finding, and any and all other legal and equitable relief to which Kinze is entitled under the law.

JURY DEMAND

Kinze hereby demands a trial by jury on all issues triable to a jury.

Respectfully submitted,

/s/ Jeffrey D. Harty

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