

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

WORLDWIDE OILFIELD MACHINE, INC.	§	
	§	CASE NO. 4:13-cv-03123
Plaintiff,	§	
	§	
V.	§	COMPLAINT FOR
	§	PATENT INFRINGEMENT
	§	
AMERIFORGE GROUP, INC.	§	
D/B/A AFGLOBAL CORPORATION	§	
	§	(JURY TRIAL DEMANDED)
Defendant.	§	

SECOND AMENDED COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff, Worldwide Oilfield Machine, Inc. (“WOM”) files this Second Amended Complaint against Defendant Ameriforge Group, Inc. d/b/a AFGlobal Corporation a/k/a AF Global Corporation (“Ameriforge”) and alleges as follows:

I. NATURE OF THE SUIT

1. This is a claim for patent infringement arising under the patent laws of the United States, Title 35 of the United States Code.

II. THE PARTIES

2. Plaintiff Worldwide Oilfield Machine, Inc. is a Texas corporation with its principal place of business located in Houston, Texas.

3. Defendant Ameriforge Group, Inc. d/b/a AFGlobal Corporation a/k/a AF Global Corporation is a Texas corporation with its principal place of business located at 945 Bunker Hill Road, Suite 500, Houston, Texas 77024. Ameriforge can be served by its registered agent, Corporation Service Company d/b/a CSC – Lawyers Incorporating Service Company, 211 E. 7th Street, Suite 620, Austin, Texas 78701-3218. Defendant has appeared and answered.

III. JURISDICTION AND VENUE

4. This action arises under the patent laws of the United States, Title 35 of the United States Code. The Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a). Defendant is subject to this Court's specific and general personal jurisdiction, due at least to its substantial business in this forum, including at least a portion of the infringements alleged herein. Without limitation, on information and belief, within this state the Defendant has made and used the patented invention and has infringed the Plaintiff's patent with the device and/or methods identified below. Defendant is subject to the Court's general jurisdiction by reason of its presence within the State of Texas and regularly doing or soliciting business, engaging in other persistent courses of conduct, and deriving substantial revenue from goods and services provided to persons or entities in Texas.

5. Venue is proper in this Court under 28 U.S.C. §§ 1391 and 1400(b). Without limitation, on information and belief, within this district the defendant has engaged in the infringing acts identified in this Complaint. In addition, Defendant is a corporation which has an established place of business in this judicial district. Finally, the owner of the patent resides in the Southern District of Texas.

IV. INFRINGEMENT OF U.S. PATENT NO. 6,601,650

6. Plaintiff is the owner by assignment of United States Patent No. 6,601,650 B2 (the "**650 Patent**") entitled "Method and Apparatus for Replacing BOP with Gate Valve". WOM owns all rights related to the '650 Patent including all rights to recover for past and future acts of patent infringement. The '650 Patent was duly and legally issued on August 5, 2003. Plaintiff owned the patent throughout the period of the defendant's infringing acts and still owns

the patent. A true and correct copy of the '650 Patent is attached hereto as Exhibit "A" and incorporated herein for all purposes.

7. On information and belief, Defendant Ameriforge has been and/or is now directly infringing the '650 Patent by making, using, selling, and/or offering for sale devices and/or methods that embody the patented invention, and the Defendant will continue to do so unless enjoined by this court.

8. On information and belief, Defendant Ameriforge has used a gate valve, such as the "AFG Subsea Shearing Gate Valve", mounted to a wellbore casing, for controlling fluid and cutting tubing. On information and belief, Ameriforge's conduct infringes method claims 1, 2, and 5 and apparatus claims 14, 16, 18, and 19 of the '650 Patent.

9. On information and belief, Defendant Ameriforge has measured force necessary to cut a tubular within a gate valve such as the "AFG Subsea Shearing Gate Valve". On information and belief, Ameriforge's conduct infringes method claims 6, 7, and 8 and apparatus claims 14, 16, 18, and 19 of the '650 Patent.

10. On information and belief, Defendant Ameriforge has used a gate valve, such as the "AFG Subsea Shearing Gate Valve", for cutting a pipe within a wellbore such that said pipe is pushed away from a gate within said gate valve. On information and belief, Ameriforge's conduct infringes method claims 9, 10, 12, and 13 and apparatus claims 14, 16, 18, and 19 of the '650 Patent.

11. On information and belief, Defendant Ameriforge is understood to be making, using, selling, and/or offering for sale, the "AFG Subsea Shearing Gate Valve". On information and belief, Ameriforge's conduct infringes apparatus claims 14, 16, 18, and 19 of the '650

Patent. Defendant Ameriforge is thus liable for infringement of the '650 Patent pursuant to 35 U.S.C. § 271.

12. Without limiting the allegations above, Ameriforge is understood to have offered an infringing shearing gate valve for sale in an email communication to a customer, or potential customer, of Defendant. That communication occurred on or about March 18, 2014. Additionally, that communication indicated that Defendant had begun testing of its infringing shearing gate valve. This infringing offer for sale was made with awareness of Plaintiff's patent, Defendant's infringing design and constitutes willful infringement.

V. INFRINGEMENT OF U.S. PATENT NO. 6,684,897

13. Plaintiff is the owner by assignment of United States Patent No. 6,684,897 (the "**897 Patent**") entitled "Valve Actuator and Method". WOM owns all rights related to the '897 Patent including all rights to recover for past and future acts of patent infringement. The '897 patent was duly and legally issued on February 3, 2004. Plaintiff owned the patent throughout the period of the defendant's infringing acts and still owns the patent. A true and correct copy of the '897 patent is attached hereto as Exhibit "B" and incorporated herein for all purposes.

14. On information and belief, Defendant Ameriforge has been and/or is now directly infringing the '897 Patent by making, using, selling, and/or offering for sale devices and/or methods that embody the patented invention, and the defendant will continue to do so unless enjoined by this court.

15. On information and belief, Defendant Ameriforge has employed a process of assembling a pre-loaded valve actuator that infringes method claim 7 and apparatus claim 12 of the '897 Patent.

16. On information and belief, Defendant Ameriforge is understood to be making, using, selling, and/or offering for sale, an actuator that infringes apparatus claim 12 of the '897 Patent. Defendant Ameriforge is thus liable for infringement of the '897 Patent pursuant to 35 U.S.C. § 271.

VI. DECLARATORY JUDGMENT OF INFRINGEMENT

17. In the alternative, Plaintiff seeks a declaratory judgment of infringement. Defendant has demonstrated that it is developing a shearing gate valve, Defendant has communicated the design of an infringing shearing gate valve to potential customers, and Defendant acknowledges that it has contracted for the design, development and construction of a shearing gate valve. Defendant acknowledges that a third-party has manufactured components on behalf of Defendant at a time *after* this case was filed. As discussed above, Defendant has also attempted to commercialize an infringing product by offering it for sale.

18. Defendant has established that it has taken action toward making, selling, and using an infringing product, and Defendant has demonstrated a refusal to change the course of its actions when faced with this lawsuit. *Lang v. Pac. Marine & Supply Co., Ltd.*, 895 F.2d 761, 764 (Fed. Cir. 1990) (“If the controversy requirement is met by a sufficient allegation of immediacy and reality, we see no reason why a patentee should be unable to seek a declaration of infringement against a future infringer when a future infringer is able to maintain a declaratory judgment action for noninfringement under the same circumstances.”); *Lang v. Swath Ocean Sys., Inc.*, 895 F.2d 761, 764 (Fed. Cir. 1990). *See also MedImmune, Inc. v. Genentech, Inc.*, 127 S. Ct. 764, 770-72 (2007) (applying traditional declaratory judgment analysis to patent dispute).

VII. DAMAGES

19. The allegations above are incorporated by reference as if fully set forth herein. As a result of Defendant's infringement of the '650 patent, WOM has suffered monetary damages that are compensable under 35 U.S.C. § 284 in an amount yet to be determined, but which, by law, can be no less than a reasonable royalty.

20. As discussed above, Defendant has committed at least one act of willful infringement of the '650 patent. Defendant's willful conduct occurred after suit was filed when Defendant was clearly aware of Plaintiff's patent. Nevertheless, Defendant willfully disregarded Plaintiff's patent rights and offered the infringing shearing gate valve for sale. Plaintiff seeks increased damages pursuant to 35 U.S.C. § 284 and attorneys' fees pursuant to 35 U.S.C. § 285.

21. To the extent that additional facts are learned in discovery indicating additional willful infringement of the '650 Patent and '897 Patent, Plaintiff reserves the right to request such a finding at time of trial. To the extent that facts learned in discovery establishes Defendant's conduct as exceptional within the meaning of 35 U.S.C. § 285, Plaintiff reserves the right to request that the Court enter an order finding that this is an exceptional case and seeks recovery of its reasonable attorneys' fees and expenses.

VIII. INJUNCTIVE RELIEF

22. Defendant will continue to infringe the '650 Patent and the '897 Patent unless enjoined by this Court. Plaintiff therefore requests that this Court enter an order under 35 U.S.C. § 283 preliminarily and permanently enjoining Defendant from continuing to make, use, sell or offer for sale the products and/or methods infringing the '650 Patent and the '897 Patent.

IX. DEMAND FOR JURY TRIAL

23. WOM hereby respectfully demands a trial by Jury in accordance with Federal Rule of Civil Procedure 38.

X. EXCEPTIONAL CASE & RESERVATION OF RIGHTS

24. Defendant has refused to participate in discovery. Despite being served with approximately 100 requests for production and being served with valid requests for electronic communications (e-mail), Defendant has produced only twenty-five (25) pages of internal records and zero (0) records in response to Plaintiff's valid e-mail requests. Additionally, Plaintiff has served document and e-mail requests on third-parties, but these third-parties (with assistance from Defendant) have also refused to produce a single record in response to Plaintiff's requests. Such tactics establish this as an exceptional case pursuant to 35 U.S.C. § 285. Furthermore, Plaintiff retains all right to later-amend its pleadings once Plaintiff has compelled production of the withheld records.

PRAYER FOR RELIEF

WOM respectfully requests that this Court enter:

- a. A judgment in favor of WOM that the '650 Patent and the '897 Patent are valid and that Defendant has directly infringed the '650 Patent and the '897 Patent;
- b. A judgment that Defendant's infringement is and has been willful and/or objectively reckless;
- c. A permanent injunction enjoining Defendant, and its officers, directors, agents, servants, affiliates, employees, divisions, branches, subsidiaries, parents, and all others acting in active concert therewith from infringing the '650 Patent and the '897 Patent;

- d. A judgment and order requiring Defendant to pay WOM its damages, costs, expenses, and prejudgment and post-judgment interest for Defendant's infringement of the '650 Patent and the '897 Patent as provided under 35 U.S.C. § 284;
- e. An award to WOM for increased damages as provided under 35 U.S.C. § 284;
- f. A judgment and order finding that this is an exceptional case within the meaning of 35 U.S.C. § 285 and awarding to WOM its reasonable attorneys' fees; and
- g. Such other and further relief as the Court deems just and proper.

Respectfully submitted,

HIRSCH & WESTHEIMER, P.C.

By: /s/ Aaron E. Homer

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**ATTORNEYS FOR PLAINTIFF
WORLDWIDE OILFIELD MACHINE, INC.**

CERTIFICATE OF SERVICE

Pursuant to the Federal Rules of Civil Procedure, I hereby certify that on this 15th day of August, 2014, a true and correct copy of the foregoing document was served via the Court's CM/ECF system in compliance with Local Rule 5.1 to the following:

Charles B. Walker, Jr.
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Via ECF

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/s/ Aaron E. Homer

Aaron E. Homer