

Bernard S. Moore, OSB #843051
moore@fdfirm.com
Alicia M. Wilson, OSB #103397
willson@fdfirm.com
FROHNMAYER, DEATHERAGE, JAMIESON,
MOORE, ARMOSINO & McGOVERN, P.C.
2592 East Barnett Road
Medford, Oregon 97504-8345
Telephone: 541-779-2333
Facsimile: 541-779-6379
Of Attorneys for Plaintiff

Of Counsel for Plaintiff
Thomas J. Leach, Minn. Reg. #311844
tleach@merchantgould.com
(Admitted Pro Hac Vice)
John T. Winemiller, Tenn. Reg. #021084
jwinemiller@merchantgould.com
(Admitted Pro Hac Vice)
Paige S. Stradley, Minn. Reg. #393432
pstradley@merchantgould.com
(Admitted Pro Hac Vice)
MERCHANT & GOULD P.C.
80 South 8th Street, Suite 3200
Minneapolis, Minnesota 55402-2215
Telephone: 612-332-5300
Facsimile: 612-332-9081

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

MEDFORD DIVISION

DRI-STEEM CORPORATION,
Plaintiff,

v.
NEP, INC., dba NEPTRONIC, and
NATIONAL ENVIRONMENTAL
PRODUCTS LTD.,
Defendants.

Case No. 1:14-cv-00194-CL

SECOND AMENDED COMPLAINT
PATENT INFRINGEMENT

JURY TRIAL DEMANDED

Plaintiff, Dri-Steem Corporation (“Dri-Steem” or “Plaintiff”), for its Second Amended Complaint against Defendants NEP, Inc., d.b.a. Neptronic (“NEP”) and National Environmental Products Ltd. (“National”) (collectively “Defendants”), alleges as follows:

PARTIES

1.

Plaintiff, Dri-Steem, is a Minnesota corporation organized and existing under the laws of Minnesota and has a principal place of business at 14949 Technology Drive, Eden Prairie, Minnesota 55344. Dri-Steem designs and manufactures humidification systems.

2.

Upon information and belief, NEP is a corporation organized and existing under the laws of Florida and has a principal place of business at 216 Eastside Road, Jacksonville, Oregon 97530.

3.

Upon information and belief, National is a corporation organized and existing under the laws of Canada and has a principal place of business at 400 Lebeau Blvd., Montreal, Quebec, Canada H4N 1R6.

JURISDICTION AND VENUE

4.

This is a claim of patent infringement arising under the Acts of Congress relating to patents, 35 U.S.C. §§ 271, 281-285.

5.

This Court has jurisdiction under 28 U.S.C. §§ 1331 and 1338(a).

6.

Personal jurisdiction over Defendants and venue are proper in this District under 28 U.S.C. § 1391. Upon information and belief, NEP has imported, made, used, offered for sale, and/or sold in the United States a steam dispersion apparatus and/or system that infringe the patents-in-suit, including but not limited to, the SKD-Direct Steam Injection Humidifiers, including the Multi-Steam™ HDR model High-Efficiency Insulated Steam Distributor with Re-Evaporator (hereinafter “accused products”). Upon information and belief, NEP is the wholly owned subsidiary of National, and NEP’s principal place of business is located at 216 Eastside Road, Jacksonville, Oregon, 97530. Upon information and belief, National has exported into the United States, used, marketed, offered for sale, and/or sold the accused products in the United States. Upon further information and belief, at least a portion of the events giving rise to Dri-Steem’s claims arose in this District.

FACTUAL ALLEGATIONS

7.

Dri-Steem is a leading designer and manufacturer of humidification systems, including humidification systems for commercial, health care, industrial, and process-critical applications. Dri-Steem has been innovating for over 45 years, researching and developing improved methods for adding moisture to air with precise control.

8.

National is a designer, manufacturer, and distributor of products for the HVAC industry. Its product line includes intelligent controls, electric actuators, actuated valves, humidifiers and electric heaters.

9.

Upon information and belief, NEP has been importing into the United States, making, using, offering for sale, or selling the accused products, which infringe Plaintiff's patents. A brochure showing the accused products and their operation is attached as Exhibit A.

10.

Upon information and belief, National has been exporting into the United States, making, using, offering for sale, or selling the accused products, which infringe Plaintiff's patents. (See Ex. A.)

11.

On February 8, 2013, Dri-Steem's counsel sent Defendants, through Mr. Zev Kopel, Mr. Louis Strauss, and Mr. Jason Strauss, Directors of NEP, a letter informing them of then pending U.S. Patent Application Publication Number 2009/0121367 ("the '367 Patent Application") (now U.S. Patent No. 8,534,645). The letter included an attachment of U.S. Patent Application Publication Number 2009/0121367 and specifically informed Defendants that their SKD-Direct Steam Humidifier appeared to include an internal heat exchanger for re-boiling condensate from the manifold of the humidifier. One copy of the February 8, 2013 letter is attached as Exhibit B. Defendants never responded to the February 8, 2013 letter.

FIRST CLAIM FOR RELIEF

(Patent Infringement Of The '645 Patent)

12.

Dri-Steem repeats the allegations of paragraphs 1-11 of this Complaint.

13.

On September 17, 2013, United States Patent No. 8,534,645 entitled HEAT EXCHANGER FOR REMOVAL OF CONDENSATE FROM A STEAM DISPERSION SYSTEM (“the ‘645 patent”) was duly and legally issued to Dri-Steem as assignee of the inventors. Dri-Steem is the owner of the entire right, title and interest in and to the ‘645 patent and has been and still is the owner thereof. The ‘645 patent is attached as Exhibit C.

14.

Defendants have made, used, offered for sale, sold and/or imported/exported into the United States humidification systems, including the accused products, which infringe claims of the ‘645 patent. Defendants continue to make, use, offer for sale, sell, and/or import/export into the United States humidification systems, including the accused products, which infringe claims of the ‘645 patent.

15.

Defendants indirectly infringe claims of the ‘645 patent by contributing to infringement by others, such as resellers and end users, in accordance with 35 U.S.C. § 271(c) in this District and elsewhere in the United States. Specifically, Defendants have contributed to, and continue to contribute to, the infringement of claims of the ‘645 patent by selling and offering for sale the accused products knowing their resale and use directly infringe claims of the ‘645 patent.

16.

Defendants have had actual knowledge of the ‘645 patent since at least the filing of the original Complaint on February 5, 2014. (Dkt. 1.) Moreover, upon information and belief, Defendants have been made aware of the ‘367 Patent Application (now the ‘645

patent) by Dri-Steem's February 8, 2013 letter. Upon information and belief, Defendants had actual knowledge of the '645 patent since on or shortly thereafter its issuance on September 17, 2013. The letters sent on February 8, 2013, provided notice of the '367 Patent Application and allowed it to be tracked until it matured into the '645 patent. Upon information and belief, Defendants track patents owned by their competitors, including Dri-Steem. Upon information and belief, Defendants are aware of the '645 patent, have been aware of the '645 patent during the period of infringement, and made and sold the accused products knowing that their resale or their use infringes claims of the '645 patent.

17.

The accused products comprise a material part of the claimed inventions of the '645 patent and are especially made for use in a system, to perform a method, and/or as part of an apparatus that infringe claims of the '645 patent. Defendants' instructions and advertising show the accused products infringe or are used as part of a steam dispersion system or apparatus that infringes claims of the '645 patent. The accused products have no substantial non-infringing uses. Accordingly, Defendants make, use, offer to sell, sell, and/or import/export the accused products for use in practicing the inventions claimed in the '645 patent, constituting a material part of the invention, knowing the same to be especially made or especially adapted for use in infringement of such patent, and not a staple article or commodity of commerce suitable for substantial non-infringing use.

18.

Defendants' customers directly infringe claims of the '645 patent by using the accused products that embody the inventions claimed in the '645 patent. Upon information and belief Defendants have sold the accused products and the end users' use of the accused products directly infringes claims of the '645 patent. Defendants know that their customers use, and indeed they instruct customers to use, the accused products in a manner that directly infringes claims of the '645 patent. For example, Defendants specifically instruct their users to connect the accused products to a steam source, such as a boiler. (See Ex. A.)

19.

Defendants indirectly infringe claims of the '645 patent by inducing infringement by others, such as resellers and end users, in accordance with 35 U.S.C. § 271(b) in this District and elsewhere in the United States. Specifically, Defendants have induced, and continue to induce, infringement of claims of the '645 patent by selling the accused products to customers knowing that their use infringes claims of the '645 patent. Defendants have encouraged and continue to encourage customers, through their instructions and advertising, to use the accused products in a manner that infringes claims of the '645 patent. For example, Defendants specifically instruct their users to connect the accused products to a steam source, such as a boiler. (See Ex. A.)

20.

Upon information and belief, Defendants are and have been aware of the '645 patent and know or are willfully blind that their sale, instructions for use, and/or advertising of the accused products induce customers to directly infringe claims of the

'645 patent. Upon information and belief, Defendants' prior knowledge of the '645 patent, combined with Defendants' sale, instructions for use, and/or advertisements of the accused products in a manner specified by the '645 patent, demonstrate that Defendants specifically intended to induce their customers to infringe claims of the '645 patent.

21.

When using the accused products as directed by Defendants, customers directly infringe claims of the '645 patent.

22.

Dri-Steem has complied with the notice provision of the patent statutes by at least the filing of the original Complaint, dated February 5, 2014.

23.

Upon information and belief, Defendants have been made aware of the '367 Patent Application (now the '645 patent) by Dri-Steem's February 8, 2013 letter. Upon information and belief, Defendants track patents owned by competitors, including Dri-Steem. Upon information and belief, Defendants monitored when the '367 Patent Application issued into the '645 patent. Upon information and belief, Defendants were aware of the '645 patent before the filing of the original Complaint. Thus, Defendants' infringement of this patent is and continues to be willful and deliberate. Alternatively, Defendants have had actual knowledge of the '645 patent since at least the date of the original Complaint, February 5, 2014, and their infringement of this patent is and continues to be willful and deliberate.

24.

Dri-Steem has been damaged by Defendants' infringement of the '645 patent and will continue to be damaged in the future unless Defendants are permanently enjoined from infringing the '645 patent.

SECOND CLAIM FOR RELIEF

(Patent Infringement Of The '021 Patent)

25.

Dri-Steem repeats the allegations of paragraphs 1-24 of this Complaint.

26.

On February 4, 2014, United States Patent No. 8,641,021 entitled HEAT EXCHANGER FOR REMOVAL OF CONDENSATE FROM A STEAM DISPERSION SYSTEM ("the '021 patent") was duly and legally issued to Dri-Steem as assignee of the inventors. Dri-Steem is the owner of the entire right, title and interest in and to the '021 patent and has been and still is the owner thereof. The '021 patent is attached as Exhibit D.

27.

Defendants have made, used, offered for sale, sold and/or imported/exported into the United States humidification systems, including the accused products, which infringe claims of the '021 patent. Defendants continue to make, use, offer for sale, sell, and/or import/export into the United States humidification systems, including the accused products, which infringe claims of the '021 patent.

28.

Defendants indirectly infringe claims of the '021 patent by contributing to infringement by others, such as resellers and end users, in accordance with 35 U.S.C. §

271(c) in this District and elsewhere in the United States. Specifically, Defendants have contributed to, and continue to contribute to, the infringement of the '021 patent by selling and offering for sale the accused products knowing their resale and use directly infringe claims of the '021 patent.

29.

Defendants have had actual knowledge of the '021 patent since at least the filing of the original Complaint on February 5, 2014. (Dkt. 1.) Upon information and belief, Defendants are aware of the '021 patent, have been aware of the '021 patent during the period of infringement, and made and sold the accused products knowing that their resale or their use infringes claims of the '021 patent.

30.

The accused products comprise a material part of the claimed inventions of the '021 patent and are especially made for use in a system that infringes claims of the '021 patent. Defendants' instructions and advertising show the accused products infringe or are used in a steam dispersion system that infringes claims of the '021 patent. The accused products have no substantial non-infringing uses. Accordingly, Defendants make, use, offer to sell, sell, and/or import/export the accused products for use in practicing the inventions claimed in the '021 patent, constituting a material part of the invention, knowing the same to be especially made or especially adapted for use in infringement of such patent, and not a staple article or commodity of commerce suitable for substantial non-infringing use.

31.

Defendants' customers directly infringe claims of the '021 patent by using the accused products that embody the inventions claimed in the '021 patent. Upon information and belief, Defendants have sold the accused products and the end users' use of the accused products directly infringes claims of the '021 patent. Defendants know that their customers use, and indeed they instruct customers to use, the accused products in a manner that directly infringes claims of the '021 patent. For example, Defendants specifically instruct their users to connect the accused products to a steam source, such as a boiler. (See Ex. A.)

32.

Defendants indirectly infringe claims of the '021 patent by inducing infringement by others, such as resellers and end users, in accordance with 35 U.S.C. § 271(b) in this District and elsewhere in the United States. Specifically, Defendants have induced, and continue to induce, infringement of claims of the '021 patent by selling the accused products to customers knowing that their use infringes claims of the '021 patent. Defendants have encouraged and continue to encourage customers, through their instructions and advertising, to use the accused products in a manner that infringes claims of the '021 patent. For example, Defendants specifically instruct their users to connect the accused products to a steam source, such as a boiler. (See Ex. A.)

33.

Upon information and belief, Defendants are and have been aware of the '021 patent and know or are willfully blind that their sale, instructions for use, and/or advertising of the accused products induce customers to directly infringe claims of the

'021 patent. Defendants' knowledge of the '021 patent, combined with Defendants' sale, instructions for use, and/or advertisements of the accused products in a manner specified by the '021 patent, demonstrate that Defendants specifically intended to induce their customers to infringe claims of the '021 patent.

34.

When using the accused products as directed by Defendants, customers directly infringe claims of the '021 patent.

35.

Dri-Steem has complied with the notice provision of the patent statutes by at least the filing of the original Complaint, dated February 5, 2014.

36.

Defendants have had actual knowledge of the '021 patent since at least the date of the original Complaint, February 5, 2014, and their infringement of this patent is and continues to be willful and deliberate.

37.

Dri-Steem has been damaged by Defendants' infringement of the '021 patent and will continue to be damaged in the future unless Defendants are permanently enjoined from infringing the '021 patent.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands that all issues be determined by jury.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiff, Dri-Steem Corporation, prays that the Court enter an order and judgment as follows:

1. That Defendants have directly and/or indirectly infringed U.S. Patent No. 8,534,645 and U.S. Patent No. 8,641,021 and are jointly and severally liable for such infringement and/or, without limitation, any and all damages, fees, costs, awards, and/or sanctions;

2. Permanently enjoining and restraining Defendants, their officers, directors, agents, servants, employees, attorneys and all others acting under or through them, directly or indirectly, from infringing U.S. Patent No. 8,534,645 and U.S. Patent No. 8,641,021;

3. Requiring Defendants pay damages under 35 U.S.C. § 284, including treble damages for willful infringement as provided by 35 U.S.C. § 284, with interest;

4. Finding this case exceptional and directing Defendants to pay the costs of this action (including all disbursements) and attorney fees as provided by 35 U.S.C. § 285, with interest; and

5. Awarding Dri-Steem such other and further relief as this Court may deem just and equitable.

DATED this 17th day of October, 2014.

FROHNMAYER, DEATHERAGE, JAMIESON,
MOORE, ARMOSINO & McGOVERN, P.C.

By: s/ Bernard S. Moore
Bernard S. Moore, OSB #843051
Of Attorneys for Plaintiff
Trial Attorney

MERCHANT & GOULD P.C.
Thomas J. Leach, Minn. Reg. #311844
John T. Winemiller, Tenn. Reg. #021084
Paige S. Stradley, Minn. Reg. #393432
Of Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing **SECOND AMENDED COMPLAINT** upon:

David B. Paradis
Brophy Schmor LLP
201 W. Main St., Fl. 5
Medford, OR 97501-2744
Fax: 541-772-7123
Email: dparadis@brophylegal.com

Robert C. Kain
Darren Spielman
Kain & Associates
900 S.E. 3rd Ave., Ste. 205
Fort Lauderdale, FL 33316-1118
Fax: 954-768-0158
Email: rkain@complexip.com

- ☒ by automatic electronic transmission via the Court's Case Management and Electronic Case Filing practice.
- ☐ by mailing to said attorney a copy thereof, certified by me as such, contained in a sealed envelope, with postage paid, addressed to said attorney at said attorney's last known address and deposited in the post office at Medford, Oregon, on the date set forth below.
- ☐ by hand-delivering and leaving a copy thereof at said attorney's office with said attorney's clerk therein, or with a person apparently in charge thereof, at the office address noted above on the date set forth below.
- ☐ by faxing to said attorney a copy thereof, certified by me as such, during normal office hours, addressed to said attorney at said attorney's last known facsimile number as indicated above. Proof of such transmission is attached hereto.
- ☐ by sending a full, true, and correct copy thereof via overnight courier in a sealed, prepaid envelope, addressed to said attorney as shown above, at the last known office address of the attorney on the date set forth below.

Dated this 17th day of October, 2014.

s/ Bernard S. Moore
Bernard S. Moore, OSB #843051
Of Attorneys for Plaintiff