

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

VALMET, INC.,	)	
	)	
	)	
Plaintiff,	)	Civil Action No. 1:14-cv-0908-TCB
	)	
v.	)	
	)	
ANDRITZ (USA) INC.,	)	
	)	
Defendant.	)	
_____	)	

**REDACTED FIRST AMENDED COMPLAINT FOR PATENT  
INFRINGEMENT AND BREACH OF CONTRACT**

COMES NOW Plaintiff Valmet, Inc. (herein “Valmet” or “Plaintiff”) and for its Complaint against Defendant Andritz (USA), Inc. (herein “Andritz” or “Defendant”), states as follows:

**PRELIMINARY STATEMENT**

1. Plaintiff brings this action under 35 U.S.C. § 271 for Defendant’s infringement of United States Patent No. 6,176,898 (the “898 patent”), which is owned by Valmet. Plaintiff also brings this action against Defendant’s breach of a confidential Settlement and License Agreement between the Plaintiff and

Defendant executed on November 26, 2007 (the “2007 Settlement Agreement”). Accordingly, the Plaintiff seeks, among other relief, a permanent injunction under 35 U.S.C. § 283 to prevent Defendant from importing, making, using, offering to sell, and selling within the United States any products that infringe Plaintiff’s 898 patent; damages in the form of lost profits and/or a reasonable royalty; treble damages under 35 U.S.C. §§ 284 and 285; damages as a result of the breach of the 2007 Settlement Agreement, and the reasonable attorney’s fees and costs incurred in prosecuting this action, including prejudgment interest.

### **PARTIES**

2. Plaintiff Valmet is a corporation organized and existing under the laws of the state of Delaware with its principal place of business at 2900 Courtyards Drive, Norcross, Georgia 30071.

3. Upon information and belief, Defendant Andritz is a corporation organized and existing under the laws of the state of Delaware with its principal place of business at 1115 Northmeadow Parkway, Roswell, Georgia 30076-3857. Upon information and belief, Defendant can be served with process through service upon its management at the same address.

**JURISDICTION AND VENUE**

4. This Court has jurisdiction over the subject matter of this action pursuant to the provisions of 28 U.S.C. §§ 1331 and 1338.

5. This Court has personal jurisdiction over the Defendant because, upon information and belief, Defendant transacts business in Georgia, maintains a registered agent in Georgia, and maintains a principal place of business in the Northern District of Georgia.

6. Upon information and belief, a substantial part of the unlawful acts and violations hereinafter described have occurred and are occurring within the Northern District of Georgia. Therefore, venue is appropriate in this Court pursuant to the provisions of 28 U.S.C. §§ 1391 and 1400(b).

**FACTS COMMON TO ALL COUNTS**

7. The allegations of Paragraphs 1 to 6 are incorporated by reference and re-alleged as if fully set forth herein.

8. On January 23, 2001, the 898 patent for a “Method and System for Collecting and Handling Dust in a Papermachine Environment” was duly and legally issued. The 898 patent has been at all times since the date of issue valid and enforceable. A true and correct copy of the 898 patent is attached as Exhibit A.

9. Valmet is the owner by assignment of all right, title, and interest in the 898 patent.

10. The 898 patent is directed to a process and system for the handling of dust in a papermaking machine environment that includes a collector configured to draw-in and wet-scrub dust-laden air.

11. In September of 2006, Andritz began delivery of a 15F paper making machine (the “15F Machine”) to Proctor & Gamble Company at its facility in Green Bay, Wisconsin, which included a wet dust collector.

12. On June 27, 2007, Valmet, then operating under the name Metso Paper USA, Inc., sent demand letters to Andritz’s parent Andritz AG in which Valmet alleged that the design of the wet-dust collector (herein “Accused Design”) of the 15F Machine delivered to Proctor & Gamble Company infringed one or more claims of the 898 patent.

13. On July 19, 2007, Andritz filed, but did not serve, a lawsuit in this Court, styled *Andritz Inc. v. Metso Paper USA, Inc.*, Civil Action No. 1:06-cv-1674 (herein “the 2007 Action”), seeking a declaratory judgment that the 15F Machine did not infringe the 898 patent.

14. On November 26, 2007, Valmet and Andritz entered into the 2007 Settlement Agreement, **REDACTED - CONFIDENTIAL**

**REDACTED - CONFIDENTIAL**

In the 2007 Settlement Agreement,

**REDACTED - CONFIDENTIAL**

A true and correct copy of the confidential 2007 Settlement Agreement and drawings of the Accused Design are attached as Exhibit B, filed under seal.

15. Upon information and belief, without permission or license from the Plaintiff, Defendant is importing into the United States, manufacturing, having manufactured by a third party, using, selling, and/or offering for sale in the United States a wet dust collector configured to draw-in and wet-scrub dust-laden air for use in a papermaking machine environment under the mark PRIMEDUSTEX W (the “Accused Dust Collector”) and has been doing so since at least 2012. A true and correct copy of a brochure distributed by the Defendant illustrating the Accused Dust Collector is attached as Exhibit C.

**PLAINTIFFS’ CLAIM FOR INFRINGEMENT OF THE 898 PATENT**

16. The allegations set forth in paragraphs 1 through 15 are incorporated by reference and re-alleged as if fully set forth herein.

17. By importing into the United States, manufacturing, having manufactured by a third party, selling and/or offering to sell the Accused Dust

Collector in the United States, Defendant has directly infringed at least Claim 11 of the 898 patent under 35 U.S.C. § 271(a).

18. As indicated by the brochure, Exhibit C, Defendant is offering to sell the Accused Dust Collector to potential customers in the United States. Particularly, the brochure evidences Defendant's specific intent to induce potential customers to infringe at least Claims 1 and 10 of the 898 patent under 35 U.S.C. § 271(b) by incorporating the Accused Dust Collector into a papermaking machine.

19. As indicated by the brochure, Exhibit C, Defendant is offering to sell the Accused Dust Collector to potential customers in the United States. The brochure prepared by the Defendant evidences that the Defendant knew that (1) the Accused Dust Collector is especially made or especially adapted for use in infringing the 898 patent and that (2) the Accused Dust Collector is not a staple article or commodity of commerce suitable for non-infringing uses. Consequently, Defendant is liable as a contributory infringer under 35 U.S.C. § 271(c).

20. Upon information and belief, the acts of Defendant complained of herein have been committed intentionally and willfully and with knowledge of Plaintiff's rights in the 898 patent.

21. Defendant's acts of direct infringement, inducement of infringement, and contributory infringement have damaged and will continue to damage Plaintiff, and Plaintiff has no adequate remedy at law.

22. Upon information and belief, Defendant will not cease such tortious acts unless enjoined by this Court.

**PLAINTIFFS' CLAIM FOR BREACH OF CONTRACT**

23. The allegations set forth in paragraphs 1 through 22 are incorporated by reference and re-alleged as if fully set forth herein.

24. On November 26, 2007, Defendant executed the 2007 Settlement Agreement.

25. Paragraph 2 of the 2007 Settlement Agreement provides:

**REDACTED - CONFIDENTIAL**

26. Paragraph 8 of the 2007 Settlement Agreement defines the Accused Design as the following:

**REDACTED - CONFIDENTIAL**

27.

**REDACTED - CONFIDENTIAL**

28. Upon information and belief, the Defendant is manufacturing in the United States, importing to the United States, selling and/or offering to sell in the United States the Accused Dust Collector

**REDACTED - CONFIDENTIAL**

29. Such conduct by the Defendant constitutes a breach of the 2007 Settlement Agreement, and Plaintiff is being damaged by such breach.



WHEREFORE, Valmet prays for the following:

- (a) that judgment be entered in favor of Plaintiff and against Defendant;
- (b) that the Defendant, its subsidiaries and all affiliated companies, their officers, agents, servants, representatives, employees, attorneys, successors, assigns, heirs, and all person acting in concert or participation with them, be permanently enjoined from:

- (1) importing into the United States, manufacturing, having manufactured by a third party, using, selling, or offering to sell in the United States the Accused Dust Collector or any other device that directly infringes the 898 patent;

- (2) actively inducing any other person to infringe the 898 patent;

- (3) contributorily infringing the 898 patent; and

- (4) performing any further acts of infringement of the 898 patent;

- (c) that Plaintiff be awarded damages to compensate Plaintiff for the patent infringement that has occurred;

(d) that in the event that damages are awarded, Defendant be ordered to pay to Plaintiff three times the damages suffered by reason of the willful and intentional infringement of the 898 patent, as set forth in this Complaint;

(e) that the Court find this case to be exceptional under 35 U.S.C. § 285 and award Plaintiff its reasonable attorney fees for having to bring this action to preserve its rights in the 898 patent and enjoin Defendant's willful infringement of the 898 patent;

(f) that Defendant be ordered to pay to Plaintiff the damages Plaintiff sustained by virtue of Defendant's breach of the 2007 Settlement Agreement in an amount to be determined by an accounting of Defendant's sales of the Accused Dust Collectors;

(g) that Plaintiff be awarded its costs associated with bringing this action to preserve its rights in the 898 patent;

(h) that Plaintiff be awarded prejudgment interest;

(i) that Plaintiff be awarded compensatory damages against Defendant on Plaintiff's claims for breach of the 2007 Settlement Agreement by Defendant;

(j) that Defendant specifically perform the 2007 Settlement Agreement;  
and

(k) that Plaintiff be granted such other and further relief as this Court may deem just and proper.

Dated: July 1, 2014.

Respectfully submitted,

/s/Matthew P. Warezak  
Dale Lischer  
Georgia Bar No. 452027  
dlischer@sgrlaw.com  
Elizabeth G. Borland  
Georgia Bar No. 460313  
egborland@sgrlaw.com  
Matthew P. Warezak  
Georgia Bar No. 624484  
mwarezak@sgrlaw.com

SMITH, GAMBRELL & RUSSELL, LLP  
Suite 3100, The Promenade  
1230 Peachtree Street, N.E.  
Atlanta, Georgia 30309-3592  
Phone: (404) 815-3500  
Fax: (404) 815-3509

**CERTIFICATE OF COUNSEL**

Pursuant to Local Rule 5.1, counsel for the Plaintiff certifies that the font and point size, Times New Roman 14 point, used in this document, comply with Local Rule 5.1.

Counsel also certifies that the foregoing REDACTED FIRST AMENDED COMPLAINT FOR PATENT INFRINGEMENT AND BREACH OF CONTRACT was filed electronically via CM/ECF in the United States District for the Northern District of Georgia. Counsel certifies that the foregoing document is being served this day on Defendant via email and Fed-Ex Next Day service.

This 1st day of July, 2014.

/s/Matthew P. Warezak  
Matthew P. Warezak