

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

COMPRESSOR PRODUCTS
INTERNATIONAL LLC, a Texas limited
liability company,

Plaintiff,

vs.

GRACO INC., a Minnesota corporation,

Defendant.

Civil Action No. 4:12-cv-03008

JURY DEMANDED

FIRST AMENDED COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff Compressor Products International LLC, by and through counsel, alleges and complains against Defendant Graco Inc. as follows:

THE PARTIES

1. Plaintiff Compressor Products International LLC (“CPI” or “Plaintiff”) is a Texas limited liability company having its principal place of business at 4410 Greenbriar Drive, Stafford, Texas 77477. CPI designs, develops, manufactures, and markets engineered industrial products in the compression industry, including lubricator pumps.

2. Upon information and belief, Defendant Graco Inc. (“Graco” or “Defendant”) is a Minnesota corporation having a place of business at 88 11th Avenue NE Minneapolis, MN 55413-1894. Upon information and belief, Graco designs, develops, manufactures, and markets compressor lubrication products, such as lubricator pumps and lubricators, as well as spray

equipment for fluid handling in the construction, manufacturing, processing and maintenance industries.

JURISDICTION AND VENUE

3. This action is for patent infringement under 35 U.S.C. § 271. This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1338(a).

4. This Court has personal jurisdiction over Graco due to its infringing activities in the State of Texas, including the sale and/or offering for sale of infringing products within Texas and within this judicial district.

5. Venue is proper in the Southern District of Texas pursuant to 28 U.S.C. § 1391(b) at least because a substantial part of the events giving rise to the claims asserted in this complaint occurred in this judicial district.

GENERAL ALLEGATIONS

6. On September 2, 1997, U.S. Patent No. 5,662,023 (“the ‘023 patent”), entitled “Replaceable Cylinder Piston Assembly for a Lubricator Pump,” issued to Premier Lubrication Systems, Inc. A copy of the ‘023 patent is attached as Exhibit A.

7. CPI is the owner of all rights, title and interests in and to the ‘023 patent.

8. Upon information and belief, Graco makes, uses, sells, offers for sale, and/or imports a variety of compressor lubrication products including, but not limited to, lubricator pumps such as Graco’s Manzel GBL 7500, piston cylinders for use with lubricator pumps, and lubricators for use with lubricator pumps such as Graco’s Manzel MBL Box Lubricator. Representative images of Graco’s Manzel GBL 7500 lubricator pump are attached as Exhibit B. Representative images of Graco’s Manzel MBL Box Lubricator are included in Graco’s ILE

Buyer's Guide, attached as Exhibit C. Each of these compressor lubrication products infringes one or more claims of the '023 patent.

9. At no time has CPI given Graco permission, license, or authorization to use CPI's patented technology.

10. Graco's continued making, using, selling, offering for sale, and/or importing of CPI's patented technology has harmed, is harming, and will continue to cause irreparable harm to CPI and CPI's valuable patent rights and market.

FIRST CAUSE OF ACTION

(Patent Infringement Under 35 U.S.C. § 271(a))

11. CPI re-alleges and incorporates by this reference the preceding allegations of this Complaint.

12. Graco's actions as described above, and specifically Graco's unauthorized manufacture, use, sales, offers to sell, and/or importation of a variety of compressor lubrication products including, but not limited to, lubricator pumps such as Graco's Manzel GBL 7500, piston cylinders for use with lubricator pumps, and lubricators for use with lubricator pumps such as Graco's Manzel MBL Box Lubricator (collectively "the Accused Devices"), constitute infringement of the '023 patent under 35 U.S.C. § 271(a).

13. Graco's continued actions of making, using, offering for sale, selling and/or importing the Accused Devices has injured, is injuring, and will continue to cause irreparable injury to CPI if not preliminarily and permanently enjoined.

14. CPI is entitled to an injunction prohibiting Graco from further making, using, offering for sale, selling, and/or importing the Accused Devices without permission or license from CPI under 35 U.S.C. § 283.

15. Pursuant to 35 U.S.C. § 284, CPI is entitled to recover all damages adequate to compensate CPI for Graco's infringement under 35 U.S.C. § 271.

(Patent Infringement Under 35 U.S.C. § 271(b))

16. CPI re-alleges and incorporates by this reference the preceding allegations of this Complaint.

17. Graco is liable for infringement under 35 U.S.C. § 271(b) because it has actively induced the direct infringement of one or more of the claims of the '023 patent by end-users.

18. Graco has taken active steps to induce end-users to engage in direct infringement of the '023 patent. For example, Graco has provided instruction on the use of the Accused Devices, see e.g., Instructions - Modular Box Lubricator, attached as Exhibit D, and sold the Accused Devices to end-users along with instructions regarding the use of those devices.

19. End-users directly infringe one or more of the claims of the '023 patent by using the Accused Devices.

20. Graco had knowledge of the '023 patent and knowledge that the Accused Devices infringe the '023 patent at least as early as January 4, 2013. Upon belief, Graco actually had knowledge of CPI's allegation that the Accused Devices infringe the '023 patent soon after October 8, 2012, when CPI filed its original complaint against Graco alleging infringement of the '023 patent.

(Patent Infringement Under 35 U.S.C. § 271(c))

21. CPI re-alleges and incorporates by this reference the preceding allegations of this Complaint.

22. Graco is liable for infringement under 35 U.S.C. § 271(c) because it has contributed to the direct infringement of one or more of the claims of the '023 patent by end-users.

23. End-users directly infringe one or more of the claims of the '023 Patent by using the Accused Devices, as previously described.

24. Upon belief, Graco had knowledge of the '023 patent and that the Accused Devices infringe the claims of the '023 patent soon after CPI's complaint was filed on October 8, 2012, but at least as early as January 4, 2013, as previously described.

25. Graco has had knowledge that the Accused Devices were especially made or especially adapted for a use that infringes one or more claims of the '023 patent based on, among other things, communications between CPI and Graco.

26. The Accused Devices are components of a patented machine that constitute a material part of an apparatus meeting the limitations of one or more of the claims of the '023 patent, and are not a staple article or commodity of commerce suitable for substantial non-infringing use. The Accused Devices are suitable for use only in a manner that infringes one or more claims of the '023 patent.

Graco Infringement of the '023 Patent Has Been Willful

27. To the extent Graco has or continues to manufacture, use, offer to sell, sell, import, and/or induce the use of the Accused Devices following notice of the '023 patent, such

ongoing activities constitute willful infringement, making this an exceptional case entitling CPI to enhanced damages, attorneys' fees and costs incurred in this action, along with prejudgment interest under 35 U.S.C. §§ 284, 285.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that:

A. the Court preliminarily and permanently enjoin Defendant, its officers, directors, principals, agents, servants, employees, successors and assigns, and all others aiding, abetting, or acting in concert or active participation therewith, from making, using, selling, offering to sell, or inducing the use of the Accused Devices;

B. the Court enter judgment against Defendant for its infringement of the '023 patent under 35 U.S.C. § 271;

C. the Court order that Defendant account to Plaintiff for all sales, revenues, and profits derived from the Accused Devices, and that Defendant pay Plaintiff all compensatory damages to which Plaintiff is entitled by law, including without limitation lost profits, reasonable royalties, price erosion damages, and/or convoyed sales damages;

D. the Court award Plaintiff three times the damages found in accordance with subparagraph (c) above pursuant to 35 U.S.C. § 284;

E. the Court award Plaintiff, against Defendant, the costs and reasonable attorneys' fees and expenses incurred in this action pursuant to 35 U.S.C. § 285 and the equity powers of the Court;

F. the Court award Plaintiff prejudgment interest against Defendant on all sums allowed by law;

G. the Court award Plaintiff such other and further relief as the Court may deem just and proper.

JURY DEMAND

CPI demands that all claims or causes of action raised in this Complaint be tried by a jury to the fullest extent possible under the United States Constitution.

Dated March 29, 2013

Respectfully submitted,

/s/ Michael R. Henson

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**ATTORNEYS FOR PLAINTIFF,
COMPRESSOR PRODUCTS INTERNATIONAL LLC**

CERTIFICATE OF SERVICE

In accordance with Local Rule 5.3, I hereby certify that on the 29th day of March, 2013, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to counsel of record who have registered for ECF filing.

/s/ Michael R. Henson

Michael R. Henson