

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

|                                  |   |                                    |
|----------------------------------|---|------------------------------------|
| RED VALVE COMPANY, INC.,         | ) | Civil Action                       |
|                                  | ) |                                    |
| Plaintiff,                       | ) | No. 2:15-cv-00364-NBF              |
|                                  | ) |                                    |
| v.                               | ) | Judge Nora Barry Fischer           |
|                                  | ) |                                    |
| ARMADILLO AUTOMATION, INC.       | ) |                                    |
| <i>d/b/a</i> ONYX VALVE COMPANY, | ) | <b><u>Electronically Filed</u></b> |
|                                  | ) |                                    |
| Defendant.                       | ) |                                    |

**FIRST AMENDED COMPLAINT**

Plaintiff, RED VALVE COMPANY, INC. (“Red Valve”), by and through its counsel, avers the following in support of its First Amended Complaint against Defendant, ARMADILLO AUTOMATION, INC. *d/b/a* ONYX VALVE COMPANY (“Onyx”):

1. Red Valve is a Pennsylvania corporation having a principal place of business at 600 North Bell Avenue, Building 2, 2<sup>nd</sup> Floor, Carnegie, Pennsylvania 15106.
2. Upon information and belief, Defendant has a principal place of business at 835 Industrial Highway #4, Cinnaminson, New Jersey 08077.
3. This is a civil action for patent infringement arising under the patent laws of the United States and for tortious interference with prospective contractual relations arising under common law.

**PERSONAL JURISDICTION AND VENUE**

4. Personal Jurisdiction and Venue are proper in this district pursuant to 28 U.S.C. §§ 1391(b), 1391(c), and 1400(b).
5. Onyx has transacted business in this Commonwealth on a substantial and continuous basis and particularly in this judicial district.

6. Onyx has shipped equipment directly or indirectly into or through this Commonwealth and this judicial district.

7. Upon information and belief, Onyx has contracted to supply equipment in this Commonwealth and this judicial district.

8. Onyx has caused harm in this judicial district by its acts of patent infringement and tortious interference outside of this judicial district.

9. Onyx has previously consented to this Court retaining jurisdiction over it in an unrelated action between the parties. (*See* C.A. No. 06-0734 W.D.Pa, Lancaster, J., Dkt. 11.)

**COUNT I**  
**(Patent Infringement in Violation of 35 U.S.C. § 271)**

10. Red Valve repeats and re-alleges the averments contained in paragraphs 1 through 9 of this First Amended Complaint as if fully stated herein.

11. This is a claim for the infringement of United States Patent No. 7,104,279 (“the ‘279 Patent”) entitled, “Method and Apparatus for Preventing Stagnation in Fluid Reservoirs,” a true and correct copy of which is attached as Exhibit A hereto.

12. The ‘279 Patent discloses a system for preventing stagnation in fluid reservoirs including, *inter alia*, an inlet/outlet conduit, a manifold, at least one inlet check valve, and at least one outlet check valve.

13. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

14. Venue is proper in this District under 28 U.S.C. §§ 1391 and 1400(b).

15. On information and belief, Armadillo Automation, Inc. operates a division under the assumed name “Onyx Valve Company.”

16. Onyx operates a website at [www.onyxvalve.com](http://www.onyxvalve.com). Onyx depicts certain of its valves used in a potable water storage tank mixing system on its website. (*See* Exhibit B, attached hereto.)

17. Onyx has obtained NSF certification of certain of its valves, so that Onyx may promote the valves for use in potable water mixing systems, such as the system claimed in the ‘279 Patent. (*See* Exhibit C hereto.)

18. Such NSF certified valves are especially adapted for use in potable water mixing systems as they are certified for use as drinking water system components.

19. The inlet and outlet check valves represent a material part of a potable water mixing system of the type described and claimed in the ‘279 Patent.

20. On September 12, 2006, the ‘279 Patent (Exhibit A hereto) was duly and legally issued to Red Valve on an application filed by Spiros Raftis (now deceased) and Michael Duer on May 30, 2000. At all times subsequent to September 12, 2006, Red Valve has been, and is today, the owner of the entire right, title, and interest to the ‘279 Patent.

21. On November 6, 2006, Red Valve gave written notice to Onyx of the existence of the ‘279 Patent. Onyx has been aware of the ‘279 Patent since at least as early as this date.

22. On information and belief, customers of Onyx (including water storage tank contractors) have purchased and continue to purchase duckbill and wafer-type valves from Onyx. On information and belief, these customers have and continue to make, use, offer to sell and/or sell water distribution systems incorporating these valves that directly infringe the ‘279 Patent, both literally and under the doctrine of equivalents, in violation of 35 U.S.C. § 271(a).

23. In or around 2014, Onyx supplied valves for use in constructing a mixing system installed in a tank for potable water for the town of Hardwick, Vermont (the “Hardwick Job”).

24. The manifold and tank design set forth in the plans and specifications for the Hardwick Job, as published and built, constitute a potable water mixing system covered by at least claim 1 of Red Valve's '279 Patent.

25. In or around 2009, Onyx supplied valves for use in constructing a mixing system installed in a tank for potable water for the city of North Las Vegas, Nevada (the "North Las Vegas Job").

26. The manifold and tank design set forth in the plans and specifications for the North Las Vegas Job, as published and built, constitute a potable water mixing system covered by at least claim 1 of Red Valve's '279 Patent. (*See* drawing of water storage tank for the North Las Vegas Job, Exhibit I hereto.)

27. In or around 2013, Onyx supplied valves for installation in a 0.3.MG vertical tank for potable water mixing for the DeKalb County, Missouri PWSD No. 1 (the "DeKalb County Job").

28. The manifold and tank design set forth in the plans and specifications for the DeKalb County Job, as published and built, constitute a potable water mixing system covered by at least claim 14 of Red Valve's '279 Patent. (*See* drawing of water storage tank for the DeKalb County Job, Exhibit G hereto.)

29. Landmark Structures I, LP ("Landmark") is a tank building contractor based in Fort Worth, Texas.

30. Upon information and belief, in multiple instances, Onyx has supplied valves to Landmark for use in building potable water mixing systems in the United States that directly infringe at least one claim of Red Valve's '279 Patent (the "Landmark Jobs").

31. Upon information and belief, Onyx has actively induced and continues to actively induce this infringement without authority or license from Red Valve in violation of 35 U.S.C. § 271(b). On information and belief, Onyx has been and continues to actively induce this infringing activity by encouraging its customers to purchase and install duckbill and wafer-type valves in water distribution systems, knowing that such systems with such valves installed will directly infringe the '279 Patent. By encouraging its customers to purchase and install duckbill and wafer-type valves in water distribution systems knowing that such systems with such valves will directly infringe the '279 patent, Onyx specifically intends to cause direct infringement of the '279 patent.

32. Onyx has provided customer support and detailed submittals to water storage tank contractors to induce them to purchase Onyx check valves for use in infringing potable water tank mixing systems, including those infringing mixing systems identified above.

33. Onyx has promoted its valves for use with manifold mixing systems in water storage tanks of the type covered by the '279 Patent, via pipe tree and valve displays at trade shows and on its website. (*See Exhibits B and F hereto.*)

34. On information and belief, Onyx was aware that its valves were to be placed in a potable water mixing system according to the plans and specifications for the Hardwick Job before selling same to a contractor for installation on the job. Onyx was also aware that the contractor's construction using Onyx valves on the Hardwick Job would result in a system infringing the Red Valve '279 Patent. Despite knowledge that installation of its valves would result in direct infringement of the '279 Patent, Onyx encouraged the contractor to use its valves in this system with the specific intent to cause infringement of the '279 Patent.

35. On information and belief, Onyx was aware that its valves were to be placed in a potable water mixing system according to the plans and specifications for the North Las Vegas Job before selling same to a contractor for installation on the job. Onyx was also aware that the contractor's construction using Onyx valves on the North Las Vegas Job would result in a system infringing the Red Valve '279 Patent. Despite knowledge that installation of its valves would result in direct infringement of the '279 Patent, Onyx encouraged the contractor to use its valves in this system with the specific intent to cause infringement of the '279 Patent.

36. On information and belief, Onyx was aware that its valves were to be placed in a potable water mixing system according to the plans and specifications for the DeKalb County Job before selling same to a contractor for installation on the job. Onyx was also aware that the contractor's construction using Onyx valves on the DeKalb County Job would result in a system infringing the Red Valve '279 Patent. (*See* photo of manifold and valves installed in tank on DeKalb County Job, Exhibit H hereto.) Despite knowledge that installation of its valves would result in direct infringement of the '279 Patent, Onyx encouraged the contractor to use its valves in this system with the specific intent to cause infringement of the '279 Patent.

37. A July 2014 advertisement by Onyx promotes Onyx duckbill check valves for use in tank mixing (*See* Exhibit D hereto.)

38. Jim Campbell, V.P. Sales Onyx, made a promotional video at a WEFTEC trade show in New Orleans in October 2014, wherein he stated that, "now as of late" Onyx Valve duckbill check valves are being used in storage tank mixing systems, and that Onyx Valve has recently partnered with Landmark, so that Onyx Valve may supply check valves for use in mixing systems built by Landmark. (*See* video transcript, Exhibit E hereto.)

39. Onyx provides Landmark with customer support and detailed submittal packages in relation to the potable mixing systems being constructed by Landmark.

40. Prior to supplying check valves to Landmark, Onyx was aware of the design of the potable water mixing systems Landmark intended to construct using Onyx check valves.

41. Both prior to and during its partnership with Landmark, Onyx has encouraged Landmark to use Onyx check valves in constructing infringing potable water mixing systems. Despite knowledge that installation of its check valves would result in direct infringement of the '279 Patent, Onyx encouraged Landmark to use its check valves in these systems with the specific intent to cause infringement of the '279 Patent.

42. Red Valve provides the following notice concerning the '279 Patent on its bid proposals that are submitted to contractors responsible for installing mixing systems in potable water tanks:

**TIDEFLEX MIXING SYSTEM (TMS) PATENT NO. 7,104,279**

The Tideflex Mixing System (TMS) is a patented and proprietary technology. Acceptance of a Purchase Order by Tideflex Technologies shall issue site specific license agreement to purchase and install a Tideflex Mixing System and/or components thereof.

43. Contractors receiving the above notice are aware of the '279 Patent.

44. Landmark has received the above notice on numerous occasions.

45. Upon information and belief, Onyx has received and/or reviewed a Red Valve bid proposal containing this notice.

46. Contractors affiliated with the Hardwick Job, the North Las Vegas Job, and the DeKalb County Job received the above notice.

47. Upon information and belief, Onyx has and continues to offer to sell and sell its valves to contractors that are aware of the '279 Patent, including contractors that have received the above notice from Red Valve.

48. Upon information and belief, Onyx representatives have discussed the '279 Patent with contractors, including contractors that have received the above notice from Red Valve.

49. On information and belief, Onyx has encouraged contractors to disregard the '279 Patent and purchase valves from Onyx so that the Onyx valves can be used in constructing an infringing mixing system.

50. In 2011, the owner of Onyx, David Gardellin, was informed of the '279 Patent and its applicability to potable water mixing systems by an account manager at HD Supply, a distributor of valves and other industrial equipment components. On information and belief, Mr. Gardellin's reply was that the '279 Patent was not valid and that Onyx would "see Red Valve in court."

51. Texas Fluid Power owner, Frank Nizzi, of Kingwood, TX ("Nizzi") represents Onyx with respect to the sale of valves to be used in potable water storage tank mixing systems.

52. Nizzi, in the past, has been both a Red Valve sales manager and an outside Red Valve sales representative.

53. Nizzi is aware of the '279 Patent and its applicability to potable water mixing systems. On information and belief, Nizzi has accompanied Onyx officials on in-person visits to tank contractors, for the purpose of persuading the tank contractors to purchase Onyx valves instead of Red Valve valves, for installation in potable water storage tank mixing systems.

54. Nizzi has processed orders for Onyx valves from tank contractors including at least orders from Landmark, such valves to be used for purposes of constructing one or more



potable water storage tank mixing systems which, once constructed, would directly infringe the '279 Patent.

55. On information and belief, Onyx has been aware, or has remained willfully blind to the fact, that the installation of its valves in potable water mixing systems would result in a mixing system that directly infringed at least one claim of the '279 Patent. Despite this knowledge, Onyx has encouraged and continues to encourage its customers, including Landmark, to purchase and install Onyx check valves in these mixing systems, thus resulting in a direct infringement of the '279 Patent.

56. Onyx's activities and infringement of the '279 Patent have been and are willful and deliberate, constituting willful infringement of such United States patent under 35 U.S.C. § 285.

57. Red Valve has been irreparably damaged and will continue to be irreparably damaged by reason of Onyx's infringement of the '279 Patent unless this Court restrains the infringing acts of Onyx.

58. As a direct result of Onyx's infringing activities, Red Valve has suffered damages in an amount to be determined at trial.

**COUNT II**  
**(Tortious Interference with Prospective Contractual Relations)**

59. Red Valve repeats and re-alleges the averments contained in paragraphs 1 through 58 of this First Amended Complaint as if fully stated herein.

60. Onyx's conduct in connection with the sale of valves for use in potable water mixing systems that infringe the '279 Patent amounts to tortious interference with the prospective contractual relations of Red Valve.

61. This Court has jurisdiction over the subject matter of this count under the principles of supplemental jurisdiction pursuant to 28 U.S.C. § 1367 and diversity jurisdiction pursuant to 28 U.S.C. § 1332.

62. Venue is proper in this District under 28 U.S.C. §§ 1391(b).

63. Onyx has, through its sales and marketing efforts, sold check valves that were used in potable water mixing systems that infringe the '279 Patent.

64. On information and belief, Onyx's sales tactics have included misrepresenting the enforceability of the '279 Patent and the interchangeability of the Red Valve valves and the Onyx valves for use in infringing mixing systems.

65. Absent Onyx's sale of valves for use in these infringing mixing systems, there was a reasonable likelihood that Red Valve would have entered into a contract to supply the valves used in these systems.

66. Red Valve is a leading supplier of check valves for use in potable water mixing systems.

67. Red Valve actively markets its check valves for use in potable water mixing systems.

68. At the time Onyx sold check valves for use in potable water mixing systems that infringe the '279 Patent, Red Valve had an existing relationship with the third-party consulting engineers responsible for selecting the valves to be used in these systems, including at least the consulting engineers responsible for the Hardwick Job, the North Las Vegas Job, and the DeKalb County Job.

69. In the past, Red Valve has supplied valves to Landmark for use in potable water mixing systems.

70. Red Valve submitted a bid to sell its valves for use in the mixing systems installed in the Hardwick Job, the North Las Vegas Job, the DeKalb County Job, and infringing Landmark Jobs.

71. The initial plans for the Hardwick Job expressly identified Tideflex, or approved equal, inlet and outlet check valves to be used in the potable water mixing system.

72. Tideflex is a division of Red Valve.

73. The specification for the DeKalb County Job expressly identified Tideflex Technologies, PROCO, and approved equals as the approved manufacturers of the check valves to be used with the potable water mixing system.

74. Upon information and belief, the specifications for other infringing mixing systems for which Onyx has ultimately been the valve supplier have expressly identified Red Valve as the sole or one of few approved valve supplier.

75. Red Valve had a reasonable likelihood of forming a contractual relationship to sell its valves in connection with the Hardwick Job, the North Las Vegas Job, the DeKalb County Job, and the infringing Landmark Jobs.

76. Onyx is actively attempting to supply Onyx valves for use in a potable water mixing system in Madison, Wisconsin (the "Madison Job"). If this mixing system is built according to the plans and specifications as published, it will fall within the scope of at least one claim of the '279 Patent.

77. The specification for the Madison Job expressly identifies Red Valve as the approved manufacturer for the mixing system, including the valves to be used therewith.

78. In connection with the Madison Job, Landmark has submitted a substitution request asserting that a Landmark mixing system with Onyx valves is equal to the specified Red Valve mixing system with Red Valve valves.

79. Red Valve submitted a bid to sell its mixing system, including valves, into the Madison Job and is actively pursuing this contract. Onyx's interference has compromised Red Valve's ability to enter into this contract and has significantly reduced the chances that Red Valve will be awarded the contract.

80. Upon information and belief, Onyx was aware of Red Valve's efforts and/or intent to enter into a contract to sell its valves for use in potable water mixing systems that are covered by at least one claim of the '279 Patent, including those described above.

81. Upon information and belief, Onyx knew that, by selling its own valves for use in potable water mixing systems that are covered by at least one claim of the '279 Patent, Red Valve would be unable to sell its valves for use in these systems.

82. In attempting to sell and selling its valves for use in potable water mixing systems that infringe the '279 Patent, Onyx has and had the purpose and intent to harm Red Valve by preventing Red Valve from contracting to sell its valves for use in these systems.

83. In attempting to sell and selling its valves for use in potable water mixing systems that infringe the '279 Patent, Onyx caused, or is attempting to cause, the persons responsible for procuring valves for use in these mixing systems not to enter into a contract for such valves with Red Valve.

84. Onyx knowingly and willfully interfered with Red Valve's efforts to form contractual relationships by, on information and belief, misrepresenting the enforceability of the

‘279 patent and ultimately successfully selling and attempting to sell its own valves for use in potable water mixing systems that infringe the ‘279 Patent.

85. In attempting to sell and selling its valves for use in infringing potable water mixing systems, Onyx has unlawfully induced the direct infringement of the ‘279 Patent in violation of Red Valve’s exclusive rights under the ‘279 Patent, as discussed above in Count I.

86. Upon information and belief, in attempting to sell and selling its valves for use in infringing potable water mixing systems, Onyx has misrepresented or disregarded the validity and/or applicability of the ‘279 Patent, as discussed above in Count I.

87. Onyx’s actions in attempting to sell and selling its valves for use in potable water mixing systems that infringe the ‘279 Patent are not privileged or justified.

88. As a result of Onyx’s conduct, Red Valve has incurred damages, which include, but are not limited to, pecuniary loss and the loss of opportunities to make substantial profits from the sale of its valves and other components of the mixing system including at least the manifold piping in certain potable water mixing systems. The amount to which Red Valve has been damaged by Onyx’s conduct well exceeds \$75,000, exclusive of interest and costs.

89. Unless restrained by this Court, these actions are likely to recur and will cause irreparable injury for which there is no adequate remedy at law.

90. Onyx’s interference was willful, malicious, oppressive and in conscious disregard of rights, and therefore is entitled to an award of punitive damages to punish such conduct and deter future wrongful conduct.

**WHEREFORE, Red Valve prays for judgment that:**

A. The ‘279 Patent has been indirectly infringed by Onyx in violation of 35 U.S.C. § 271(b), and such infringement has been willful and deliberate;

B. The '279 Patent is valid and enforceable;

C. Red Valve is awarded three times its damages, plus interest, for such infringement with such damages including, but not limited to, those sales of valves and mixing systems which were lost due to Onyx's unlawful activities;

D. Onyx, its affiliates, officers, directors, employees, agents, licensees, subsidiaries, successors and assigns, and any and all persons acting in privity or in concert with any of them who receive notice of the injunction, including distributors, sales representatives, and customers, be permanently enjoined from any future acts of infringement of the '279 Patent;

E. The Court declares this to be an exceptional case under 35 U.S.C. § 285 and awards Red Valve its attorneys' fees, costs and expenses in this action;

F. Red Valve is awarded compensatory and punitive damages, together with counsel fees and costs, which resulted from Onyx's tortious interference with Red Valve's attempts to enter into contracts for the sale of valves and other components for use in mixing systems which fall within the scope of one or more claims of the '279 Patent;

G. Onyx, its affiliates, officers, directors, employees, agents, licensees, subsidiaries, successors and assigns, and any and all persons acting in privity or in concert with any of them who receive notice of the injunction, including distributors, sales representatives, and customers, be permanently enjoined from any future efforts to tortuously interfere with Red Valve's attempts to enter into contracts for the sale of valves and other components for use in mixing systems which fall within the scope of one or more claims of the '279 Patent.

H. The Court grant to Red Valve such other and further relief as the Court may deem just and proper.

**JURY DEMAND**

Red Valve hereby demands a trial by jury of all issues herein which are triable by jury.

Respectfully submitted,

Dated: June 4, 2015

s/ Cecilia R. Dickson

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**CERTIFICATE OF SERVICE**

I hereby certify that on the 4<sup>th</sup> day of June, 2015, I electronically filed the foregoing **FIRST AMENDED COMPLAINT** with the Clerk of the Court using the CM/ECF system which sent notification to all counsel of record.

**THE WEBB LAW FIRM**

*s/ Cecilia R. Dickson*

Cecilia R. Dickson