

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA  
CIVIL ACTION NO.: 1:15-cv-705

PREMARK FEG L.L.C.

Plaintiff,

v.

CHAMPION INDUSTRIES, INC.

Defendant.

**COMPLAINT**

**(JURY TRIAL DEMANDED)**

NOW COMES Plaintiff PREMARK FEG L.L.C. ("PREMARK"), through counsel, and alleges as its complaint against the Defendant the following:

**PARTIES**

1. PREMARK is a limited liability company organized and existing under the laws of the State of Delaware and has an address at 155 Harlem Ave., Glenview, Illinois 60025.

2. CHAMPION INDUSTRIES, INC. ("CHAMPION") is, upon information and belief, a corporation organized and existing under the laws of North Carolina and has a principal place of business at 3765 Champion Blvd, Winston-Salem, North Carolina 27105.

**JURISDICTION AND VENUE**

3. This is an action for patent infringement arising under the patent laws of the United States. The Court has original and exclusive jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

4. CHAMPION resides within this judicial district. Pursuant to 28 U.S.C. §§ 1391(c) and 1400(b), venue is proper in this district where CHAMPION is subject to personal jurisdiction.

## **BACKGROUND FACTS**

5. PREMARK is the owner by assignment of United States Patent No. 8,157,924, entitled “Warewasher Including Heat Recovery System With Hot Water Supplement,” which was duly and legally issued by the United States Patent and Trademark Office on April 17, 2012 (“the ‘924 Patent”). A true and accurate copy of the ‘924 Patent is attached as Exhibit A.

6. The ‘924 Patent is directed to a warewash machine that includes a hot water booster filling arrangement with both a cold water input and a hot water input. A heat recovery system transfers heat from exhaust air to incoming cold water before the incoming water is delivered to the hot water booster for final heating. Under certain temperature conditions, incoming flow through the filling arrangement can be modified so that hot water from the hot water input is delivered to the hot water booster. The delivery of hot water to the booster reduces the amount of time and/or energy needed for the booster to raise the temperature of the water to a desired final rinse temperature.

7. The ‘924 Patent is presumed valid pursuant to 35 U.S.C. §282.

8. PREMARK is also the owner by assignment of United States Patent No. 8,663,395, entitled “Warewasher Including Heat Recovery System With Hot Water Supplement,” which was duly and legally issued by the United States Patent and Trademark Office on March 4, 2014 (“the ‘395 Patent”). A true and accurate copy of the ‘395 Patent is attached as Exhibit B.

9. The application for the ‘395 Patent was filed as a continuation of the application for the ‘924 Patent.

10. The ‘395 Patent is directed to a method of delivering water to a heating tank of a warewasher and cleaning wares within the warewasher. A heat recovery system preheats incoming cold water by transferring heat from exhaust air to the cold water. Under certain temperature conditions, hot water from a hot water source can be delivered to a heating tank of a

final rinse system. Delivery of hot water reduces the amount of time and/or energy needed for the heating tank to raise the temperature of the water to a desired final rinse temperature.

11. The '395 Patent is presumed valid pursuant to 35 U.S.C. §282.

12. ITW FOOD EQUIPMENT GROUP, LLC ("ITW FEG") is an affiliate of PREMARK and is licensed under both the '924 Patent and the '395 Patent.

13. ITW FEG is one of the nation's leading suppliers of commercial food equipment. Among its many, varied products, ITW FEG manufactures and sells warewash machines that are used in commercial applications such as cafeterias and restaurants.

14. ITW FEG makes and sells commercial warewash machines that embody and/or perform the inventions of the '924 Patent and the '395 Patent.

15. CHAMPION competes directly with ITW FEG in the market for commercial warewash machines.

16. CHAMPION manufactures and sells upright conveyor warewash machines under various model designations, including models EUCCW4, EUCCW6, EUCCW8, EEUCCW4, EEUCCW4-LE, EEUCCW6 and EEUCCW8. True and accurate copies of the specification sheets for these models are attached as Exhibit C.

17. CHAMPION also manufactures and sells a warewasher heat recovery unit ("the CHAMPION HRU") for use with upright conveyor machines, including but not limited to each of the EUCCW4, EUCCW6, EUCCW8, EEUCCW4, EEUCCW4-LE, EEUCCW6 and EEUCCW8 model machines.

18. A true and accurate copy of the *Installation/Operation Guide* for the CHAMPION HRU is attached as Exhibit D.

19. CHAMPION manufactures, uses, sells and offers to sell in the United States warewash machines, under at least model designations EUCCW4, EUCCW6, EUCCW8, EEUCCW4, EEUCCW4-LE, EEUCCW6 and EEUCCW8, that incorporate the CHAMPION HRU (“the Accused Machines”)

20. The basic schematic configuration of the Accused Machines is shown on page 33 of Exhibit D.

21. A video entitled “Champion Flight Type Machine Operating And Cleaning” is available online at Champion’s web site [www.championindustries.com](http://www.championindustries.com). True and accurate screenshots from the video are shown in Exhibit E.

22. The Accused Machines include both a cold water input and a hot water input.

23. In the Accused Machines a valve, designated as V1 on page 33 of Exhibit D, controls flow of the cold water through a heat exchange coil to a booster heater.

24. In the Accused Machines another valve, designated as V3 on page 33 of Exhibit D, controls the flow of hot water in a bypass around the heat exchange coil to the booster heater.

25. In the Accused Machines the booster heater feeds water to one or more final rinse header(s).

26. In the Accused Machines a temperature sensor, designated as COIL TEMP on page 33 of Exhibit D, is positioned to detect the temperature of water as it exits the heat exchange coil.

27. The operating flow logic for the Accused Machines is shown on page 34 of Exhibit D.

28. The Accused Machines operate by detecting that the COIL TEMP sensor indication falls to 110°F or below and, in such cases, the cold water valve V1 is turned off and the hot water valve V3 is turned on.

29. CHAMPION applied for and obtained U.S. Patent No. 8,770,154, entitled “Heat Exchanger Water Heating System For Commercial Dishwasher” on July 8, 2014 (“the ‘154 Patent”). A true and accurate copy of the ‘154 Patent is attached at Exhibit F.

30. The ‘924 Patent is identified as cited prior art in the References Cited section of the ‘154 Patent.

31. Allen Hasken (“Hasken”) is employed by CHAMPION as Director of Product Development.

32. Hasken was previously employed by ITW FEG as Product Line Manager for Warewash.

33. As a result of his employment by ITW FEG, Hasken had access to and knowledge of PREMARK’s portfolio of patent applications and patents relating to warewash machines.

**CLAIM I: INFRINGEMENT OF THE '924 PATENT (35 U.S.C. §271)**

34. PREMARK repeats and reasserts the allegations of paragraphs 1 through 33 as if set forth at length herein.

35. As shown in the infringement chart set forth in Exhibit G, the Accused Machines infringe claims 9, 10 and 12-16 of the ‘924 Patent.

36. CHAMPION directly infringes at least claims 9, 10 and 12-16 of the ‘924 Patent, in violation of 35 U.S.C. §271(a), by manufacturing, using, selling and offering to sell the Accused Machines.

37. CHAMPION had knowledge of the existence and scope of the '924 Patent as a result of (a) the citation of the '924 Patent as a reference in CHAMPION's '154 Patent and/or (b) Hasken's knowledge of the '924 Patent, which is attributable to CHAMPION.

38. With knowledge of the '924 Patent, CHAMPION actively induces others to infringe the '924 Patent, in violation of 35 U.S.C. §271(b), by (a) selling the Accused Machines to dealers who directly infringe the '924 Patent by reselling the Accused Machines to end users and (b) instructing end users to use the Accused Machines in a manner that directly infringes the '924 Patent.

39. The infringement of the '924 Patent by CHAMPION is willful.

40. The infringement of the '924 Patent by CHAMPION, as described above, is causing irreparable damage to PREMARK and will continue to cause irreparable damage to PREMARK unless CHAMPION is enjoined by this Court.

**CLAIM II: INFRINGEMENT OF THE '395 PATENT (35 U.S.C. §271)**

41. PREMARK repeats and reasserts the allegations of paragraphs 1 through 40 as if set forth at length herein.

42. As shown in the infringement chart set forth in Exhibit H, operation of the Accused Machines infringes claims 1, 2 and 7-14 of the '395 Patent.

43. CHAMPION directly infringes at least claims 1, 2 and 7-14 of the '395 Patent, in violation of 35 U.S.C. §271(a), by operating the Accused Machines for the purposes of demonstrating, testing, and/or obtaining certification of the Accused Machines.

44. CHAMPION had knowledge of the '395 Patent at least as a result of (a) the citation of the parent '924 Patent as a reference in CHAMPION's '154 Patent and/or (b) Hasken's knowledge of the '395 Patent, which is attributable to CHAMPION.

45. With knowledge of the '395 Patent, CHAMPION actively induces others to infringe the '395 Patent, in violation of 35 U.S.C. §271(b), by placing the Accused Machines into commerce and providing end users with instructions to operate the Accused Machines in a manner that directly infringes the '395 Patent.

46. The infringement of the '395 Patent by CHAMPION is willful.

47. The infringement of the '395 Patent by CHAMPION, as described above, is causing irreparable damage to PREMARK and will continue to cause irreparable damage to PREMARK unless CHAMPION is enjoined by this Court.

#### **PRAYER FOR RELIEF**

WHEREFORE, PREMARK prays for judgment against CHAMPION as follows:

(1) Issuance of a permanent injunction pursuant to 35 U.S.C. §283 enjoining further acts of infringement of the '924 Patent and the '395 Patent.

(2) An accounting of CHAMPION's sales and profits in connection with sales of the infringing products.

(3) An award of damages adequate to compensate for infringement, together with interest and costs in accordance with 35 U.S.C. §284 and 35 U.S.C. §287.

(4) An award of triple damages pursuant to 35 U.S.C. §284.

(5) An award of pre-judgment and post-judgment interest.

(6) An award of attorney fees pursuant to 35 U.S.C. §285.

(7) An award of such other and further relief as the Court may deem just and proper.

#### **DEMAND FOR JURY TRIAL**

PREMARK demands a jury trial of all issues raised by the Complaint which are triable of right by a jury.

This the 27<sup>th</sup> day of August, 2015.

s/ Mark A. Stafford

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