

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF ARKANSAS  
WESTERN DIVISION**

**COOLING & APPLIED TECHNOLOGY, INC.**

**PLAINTIFF**

**V.**

**CASE NO. 4:14-cv-0368-BRW**

**MORRIS & ASSOCIATES, INC.**

**DEFENDANT**

**FIRST AMENDED COMPLAINT**

Plaintiff, Cooling & Applied Technology, Inc., for its first amended complaint against Defendant, Morris & Associates, Inc., states:

**PARTIES**

1. Plaintiff Cooling & Applied Technology, Inc. (“CAT”) is an Arkansas corporation with its principal place of business in Russellville, Arkansas.

2. Defendant Morris & Associates, Inc. (“Morris”) is a North Carolina corporation with its principal place of business in Garner, North Carolina. Morris is registered to do business in Arkansas and does business in Arkansas, including in this District.

**JURISDICTION AND VENUE**

3. This is an action for patent infringement. The Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338.

4. This Court has personal jurisdiction over Morris because it does substantial business in this forum, including selling and offering for sale goods in

Arkansas and in this District, and has a registered agent for purposes of accepting service of process in this District.

5. Venue is proper in the Eastern District of Arkansas pursuant to 28 U.S.C § 1391(b)-(c) and 28 U.S.C. § 1400(b).

### **BACKGROUND FACTS**

6. Since 1997, CAT has been manufacturing and selling equipment for the food processing industry, including chillers and other machines for use in poultry processing.

7. CAT and Morris are the only two poultry chiller manufacturers in the United States. Upon information and belief, Morris advertises and sells poultry processing equipment to poultry processing companies throughout the United States. CAT and Morris share many of the same customers.

8. In the processing of poultry for human consumption, it is necessary that warm poultry carcasses be chilled as rapidly as possible. This required chilling typically occurs in an auger-type poultry chiller. An auger-type chiller includes a spiral auger mounted in a tank holding chilled water. The rotation of the auger moves the poultry carcasses through the chilled water bath from one end of the chiller to the other.

#### **A. THE '622 PATENT**

9. CAT is the owner by assignment of all right, title, and interest in and to U.S. Patent No. 6,397,622 (“the ‘622 patent”), entitled “Water Flow for Auger Type Poultry Chiller.” The ‘622 patent was issued on June 4, 2002. CAT filed a

request for *ex parte* reexamination of the '622 patent with the United States Patent and Trademark Office ("USPTO") on December 18, 2013. An *Ex Parte* Reexamination Certificate was issued by the USPTO on May 9, 2014. A true and correct copy of the '622 patent and the *Ex Parte* Reexamination Certificate for the '622 patent are attached as Exhibit A.

10. The '622 patent is directed to an auger-type chiller that includes a tank having side walls that correspond to the shape of the auger in the chiller. The shape of the tank allows the chilled water level to be raised over the shaft of the auger without a significant volume of the chilled water being routed away from the spiral path formed by the auger. The auger-type chiller of the '622 patent is configured for maximum efficiency in the transfer of heat from the poultry carcasses to the chilling water because the chilled water is forced to flow around the auger and come into contact with the poultry carcasses.

#### **B. MORRIS "HIGH SIDE" AUGER CHILLER SYSTEM**

11. Morris makes and sells auger-type chiller systems referred to as Morris "high side" auger chiller systems. The Morris "high side" auger chiller system includes an auger chiller, a re-chiller, and piping to connect the auger chiller and the re-chiller. Morris also makes and sells Morris "high side" auger chillers and Morris re-chillers individually and apart from entire Morris "high side" auger chiller systems, such as in circumstances where the customer intends to use a new Morris "high side" auger chiller with an existing re-chiller or use a new Morris re-chiller with an existing auger chiller. In addition, Morris makes and sells Morris

“high side” auger chiller extension sections for extending the length of existing auger chillers. As used in this First Amended Complaint, a Morris “high side” auger chiller system refers to a chiller system comprising a Morris “high side” auger chiller or an auger chiller having a Morris “high side” auger chiller extension section, a re-chiller, and associated piping to connect the auger chiller and re-chiller.

12. Morris’s website, which is accessible at [www.morris-associates.com](http://www.morris-associates.com), includes the Morris “high side” auger chiller system as one of the chilling systems offered for sale by Morris. Morris’s website describes in detail the various pieces of equipment that comprise the Morris “high side” auger chiller system. The website also includes photographs and other images of the equipment used in the Morris “high side” chiller system.

13. Morris’s website provides hyperlinks to a number of brochures illustrating and promoting the benefits of Morris “high side” auger chillers, Morris re-chillers, and Morris “high side” auger chiller systems. One of the brochures shows the Morris “high side” auger chiller with a water level above the shaft of the auger. The brochures are downloadable and viewable by the public, including Morris’s and CAT’s current and prospective customers. The brochures on Morris “high side” auger chillers, Morris re-chillers, and Morris “high side” auger chiller systems are attached as Exhibit B.

14. After receiving an order for and manufacturing the Morris “high side” auger chiller, Morris “high side” auger chiller extension section, Morris re-chiller,

and/or Morris “high side” auger chiller system, Morris installs the chiller, extension section, re-chiller, and/or chiller system in the processing plant of the customer. Morris assembles and positions the equipment in the customer’s poultry processing plant and connects the piping between the auger chiller and the re-chiller. In addition to the installation, upon information and belief, Morris performs in-person the start-up of the chiller system and trains the customer on how to operate the chiller system, including the adding of chilled water to the auger chiller to a water level above the shaft of the auger and the recirculating of chilled water to and from the auger chiller and re-chiller. Morris also provides each of its customers operating manuals for using the chiller system. In addition, Morris’s website states: “Our service department supplies maintenance documentation, training, standard operating procedures (SOPs), troubleshooting and much more support for your Morris & Associates equipment.” Morris also provides a 24-hour telephone hotline for customers to call for instruction on operating the Morris “high side” auger chiller system.

### **C. PTAB’S DENIAL OF MORRIS’S IPR PETITION**

15. Morris filed a petition for *inter partes* review (IPR) of the ‘622 patent with the Patent Trial and Appeal Board (PTAB) of the USPTO on December 18, 2014. Morris asserted in its IPR petition that all of the claims of the ‘622 patent were invalid.

16. On July 21, 2015, the PTAB issued a Decision Denying Institution of *Inter Partes* Review (“the PTAB Decision”). The PTAB denied Morris’s IPR petition

on all four grounds asserted by Morris and found that Morris had failed to demonstrate a reasonable likelihood that any of the claims of the '622 were unpatentable. A true and correct copy of the PTAB Decision is attached as Exhibit C.

17. Morris filed a request for rehearing with the PTAB on August 20, 2015. The PTAB denied Morris's request for rehearing on October 20, 2015. A true and correct copy of the Decision on Request for Rehearing is attached as Exhibit D.

#### **D. CAUSES OF ACTION**

##### **COUNT I – DIRECT PATENT INFRINGEMENT**

18. CAT adopts, realleges and incorporates all of the allegations and facts stated in Paragraphs 1-17 of this First Amended Complaint.

19. Section 271(a) of the Patent Act provides that: "Except as otherwise provided in this title, whoever without authority makes, uses, offers to sell, or sells any patented invention, within the United States or imports into the United States any patented invention during the term of the patent thereof, infringes the patent."

20. Since May 9, 2014, Morris has made, used, offered for sale, and/or sold, and continues to make, use, offer for sale, and/or sell, auger-type poultry chiller systems that embody the auger-type chiller system of the '622 patent, including the Morris "high side" auger chiller system. Morris's conduct therefore constitutes direct infringement, either literally or under the doctrine of equivalents, of at least one of the claims of the '622 patent under 35 U.S.C. § 271.

21. As an example, Morris installing, setting-up and/or commissioning Morris “high side” auger chiller systems and training customers to operate Morris “high side” auger chiller systems constitutes patent infringement in violation of CAT’s rights. The Morris “high side” auger chiller systems installed, set-up, and/or commissioned by Morris include all of the features recited in at least one of the claims of the ‘622 patent. In addition, Morris conducts customer training on Morris “high side” auger chiller systems having all of the features recited in at least one of the claims of the ‘622 patent.

22. In addition, upon information and belief, Morris exercises direction and control over the actions of its customers during the installation, set-up, and/or commissioning of Morris “high side” auger chiller systems and during training on Morris “high side” auger chiller systems. Morris therefore makes and uses the Morris “high side” auger chiller system in violation of Section 271(a) of the Patent Act.

23. Morris’s direct infringement has caused and will continue to cause CAT irreparable harm for which it has no adequate remedy at law unless Morris’s infringing activities are enjoined by this Court.

24. CAT has been and continues to be damaged by Morris’s direct infringement of the ‘622 patent in an amount to be determined at trial.

## **COUNT II – INDUCED PATENT INFRINGEMENT**

25. CAT adopts, realleges and incorporates all of the allegations and facts stated in Paragraphs 1-24 of this First Amended Complaint.

26. Section 271(b) of the Patent Act provides that: “Whoever actively induces infringement of a patent shall be liable as an infringer.”

27. Morris actively induces infringement of the ‘622 patent through its advertising and marketing of Morris “high side” auger chillers, Morris re-chillers, and Morris “high side” auger chiller systems.

28. Morris actively induces infringement of the ‘622 patent through its in-person training of its customers on how to operate Morris “high side” auger chiller systems.

29. Morris actively induces infringement of the ‘622 patent by providing operating manuals for Morris “high side” auger chillers and Morris re-chillers.

30. Morris actively induces infringement of the ‘622 patent by providing instruction via a 24-hour hotline to customers on properly operating the Morris “high side” auger chillers, Morris re-chillers, and Morris “high side” auger chiller systems.

31. Morris has been aware of the ‘622 patent since June 2002. Morris has been aware of the Reexamination Certificate of the ‘622 patent since at least the original Complaint filed in this case was served on June 20, 2014.

32. Morris instructs and encourages its customers to make and use Morris “high side” auger chiller systems in a manner that infringes the ‘622 patent. For example, Morris instructs and encourages its customers to operate the auger chiller of the chiller system with a water level above the shaft of the auger.



33. Morris's advertisements for Morris "high side" auger chillers, Morris re-chillers, and Morris "high side" auger chiller systems on its website, which specifically highlight the benefits of the equipment, encourages and actively induces its customers to make and use the chiller system in violation of CAT's rights.

34. Morris's in-person training on how to operate Morris "high side" auger chillers, Morris re-chillers, and Morris "high side" auger chiller systems encourages and actively induces its customers to make and use the chiller system in violation of CAT's rights.

35. Morris's operating manuals provided to its customers on how to operate Morris "high side" auger chillers, Morris re-chillers, and Morris "high side" auger chiller systems encourages and actively induces its customers to make and use the chiller system in violation of CAT's rights.

36. Morris encourages and actively induces its customers to make and use the chiller system in violation of CAT's rights by providing instruction via a 24-hour hotline to customers on properly operating Morris "high side" auger chillers, Morris re-chillers, and Morris "high side" auger chiller systems.

37. Morris has caused its customers to make and use Morris "high side" auger chiller systems in a manner that infringes the '622 patent, including with a water level over the shaft of the auger. Such making and use by Morris's customers constitutes direct infringement. Morris's customers have infringed and continue to directly infringe the '622 patent by making and using Morris "high side" chiller

systems in their intended manner and as instructed by Morris for cooling poultry carcasses.

38. With complete knowledge of the '622 patent, Morris's actions, as described above, were specifically intended to encourage and induce its customers to make and use the chiller systems in such a way that infringes the '622 patent. Morris knew or should have known that its actions were inducing infringement of the '622 patent.

39. Morris's induced infringement has caused and will continue to cause CAT irreparable harm for which it has no adequate remedy at law unless Morris's infringing activities are enjoined by this Court.

40. CAT has been and continues to be damaged by Morris's induced infringement of the '622 patent in an amount to be determined at trial.

### **WILLFUL INFRINGEMENT**

41. CAT adopts, realleges and incorporates all of the allegations and facts stated in Paragraphs 1-40 of this First Amended Complaint.

42. Morris's infringement, as described above, has been and continues to be willful and intentional.

43. Morris's acts of infringement have been committed and are being committed with knowledge of CAT's rights in the '622 patent since at least June 20, 2014, when the original Complaint in this case was served. Morris has acted and is continuing to act despite an objectively high likelihood that its actions constitute direct and/or induced infringement of the '622 patent because Morris "high side"

auger chiller systems have all of the features of at least one claim of the '622 patent. Morris knew or should have known of that objectively high risk.

44. The '622 patent is presumed valid and is valid. Morris has no reasonable grounds for challenging the validity of the '622 patent, as evidenced by the PTAB's denial of Morris's IPR petition and request for rehearing.

45. Morris's infringement of the '622 patent since at least June 20, 2014 therefore has been willful and intentional.

WHEREFORE, Plaintiff CAT prays for relief, as follows:

A. A judgment that Morris has infringed at least one of the claims of the '622 patent;

B. An award of CAT's damages resulting from Morris's infringement of the '622 patent under 35 U.S.C. § 284, including CAT's lost profits, but no less than a reasonable royalty;

C. An award of treble damages under 35 U.S.C. § 284 as a result of Morris's willful infringement of the '622 patent;

D. A finding that this case is exceptional and an award of reasonable attorneys' fees pursuant to 35 U.S.C. § 285;

E. An award of costs and expenses;

F. A preliminary and permanent injunction barring Morris from further infringement of the '622 patent; and

G. Such further relief as this Court deems proper.

**JURY DEMAND**

Plaintiff, Cooling & Applied Technology, Inc., hereby demands a trial by jury on all issues so triable.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on December 4, 2015, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which shall send notification of such filing to the following:

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