

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

TWIN RIVERS ENGINEERING, INC.,

A Florida corporation,

Plaintiff,

v.

2:15-cv-01838-JRG

FIELDPIECE INSTRUMENTS, INC.,

A California corporation,

and

CHY FIREMATE CO., LTD.

A Taiwan corporation,

Defendants.

PLAINTIFF TWIN RIVERS ENGINEERING'S SECOND AMENDED COMPLAINT

Plaintiff Twin Rivers Engineering, Inc. ("Twin Rivers" or "TRE"), hereby amends its Complaint against Defendant Fieldpiece Instruments, Inc. ("Fieldpiece") pursuant to Rule 15 of the Federal Rules of Civil Procedure and the Court's Order of January 26, 2016 (Docket No. 11). Plaintiff Twin Rivers alleges: (a) that Fieldpiece and CHY Firemate Co., Ltd. ("CHY") infringe U.S. Patent 7,022,993 C1 ("993 Patent") under 35 U.S.C. § 271; (b) that Fieldpiece and CHY engage in false patent marking under 35 U.S.C. § 292; (c) that Fieldpiece engages in unfair competition under 15 U.S.C. § 1125 (a); and (d) that Fieldpiece and CHY, engaged in an illegal combination and conspiracy in restraint of trade in violation of the Sherman Act, 15 U.S.C. § 1. In support thereof Twin Rivers alleges as follows:

PLAINTIFF'S SECOND AMENDED COMPLAINT

PARTIES

1. Twin Rivers is a Florida corporation, with its principal place of business at 912 Columbus Avenue, Melbourne, Florida 32901. William J. Williams II is Twin Rivers' President and principal shareholder and the inventor of the reexamined U.S. Patent in suit,

2. Fieldpiece is a California corporation, with its principal place of business at 1900 East Wright Circle, Anaheim, California 92806. Rey P. Harju is Fieldpiece's President and principal shareholder. Fieldpiece is a former licensee of Twin Rivers' '993 Patent for six and a half years from April 16, 2006 to October 11, 2012.

3. CHY is a Taiwan corporation with its principal place of business at No. 3, Shengli 1st St., Xintian Village, Rende District, Tainan City, Taiwan R.O.C. CHY was a manufacturer and supplier of authorized handheld infrared leak detectors to Fieldpiece until termination in October 2012 of the 2006 Business Agreement between Twin Rivers and Fieldpiece. Subsequently CHY continued to manufacture and supply Fieldpiece with unauthorized, infringing leak detectors. CHY also manufactures and supplies unauthorized leak detectors to private label resellers of handheld infrared of leak detectors in the Asian market.

4. Fieldpiece and CHY and have conspired to drive Twin Rivers, its licensees and customers out of the U.S., the European and Asian markets for leak detectors: (a) by refusing to supply leak detectors, leak detector housings and bid on tooling for alternative housing designs; and (b) by sending false and fraudulent cease and desist letters to Twin Rivers' customers and licensees to eliminate competition with Fieldpiece.

JURISDICTION AND VENUE

5. This Court has jurisdiction of the claims asserted pursuant to the Patent Laws of the United States, Title 35 U.S.C. §§ 271, 283 and 28 U.S.C. §§ 1332(a)(1), 1338, the Lanham

Act, 15 U.S.C. §§ 1116, 1125(a), and Section 4 of the Clayton Act, 15 U.S.C. § 15, to prevent and restrain violations by Defendant of Section 1 of the Sherman Act, 15 U.S.C. § 1. This Court has subject matter jurisdiction over this Sherman Act claim under 28 U.S.C. §§ 1331, 1332, 1337(a), and 1367.

6. Personal jurisdiction exists over the Defendant Fieldpiece because it conducts a regular course of business in Texas and in this District; has committed acts of willful patent infringement in Texas and in this District; and has caused damage to Twin Rivers in Texas.

7. Personal jurisdiction exists over the Defendant CHY under 35 U.S.C. §§ 271(c) and 292; under § 12 of the Clayton Act, 15 U.S.C. § 22 (2002); and under Rule 4(k)(2) of the Federal Rules of Civil Procedure because CHY has manufactured and sold to Fieldpiece handheld infrared leak detectors that infringe Twin Rivers' patent, for import to and sale in the United States, including this District; because CHY has falsely marked handheld infrared leak detectors with Twin Rivers' patent numbers; because CHY has a thirty year history of contracts with and sales of test instruments to Fieldpiece and Fluke Corporation of 6920 Seaway Blvd, Everett, Washington 98203; because CHY executives and employees make regular, at least annual trips to the United States; and because CHY has conspired with Fieldpiece using international and U.S. mail and and international and U.S. wires.

8. Venue is proper in this district pursuant to 15 U.S.C. §§ 15, 22 and to 28 U.S.C. §§ 1391 and 1400(b) because a substantial part of defendants' conduct giving rise to the claims occurred in this district; because plaintiff Twin Rivers has suffered injury in this district; because defendant is a resident of this district pursuant to the patent venue statute; and because defendant has committed acts of patent infringement and induced the commission of acts of patent infringement in this district.

FACTS

a. The Patent

9. On September 14, 2004 and April 4, 2006, the United States Patent and Trademark Office ("USPTO") issued respectively United States Patent Nos. 6,791,088 ("088 Patent") and 7,022,993 ("993 Patent") to William J. Williams, II, who assigned the patents to Twin Rivers. Copies of the '088 Patent and the '993 Patent are attached respectively as EXHIBIT A and EXHIBIT B. On July 13, 2010 the USPTO issued an *Inter Partes* Reexamination Certificate for the '993 Patent as United States Patent No. 7,022,993 C1, a copy of which is attached as EXHIBIT C.

10. The patents disclose a leak detector that uses infrared energy to identify the presence and concentration of a selected refrigerant gas. In one embodiment claimed in the '993 patent, the leak detector includes a sampling chamber through which a pump pulls a sample of gas from a site of suspected leaking refrigerant gas. An infrared (IR) emitter in the chamber directs IR energy through a first filter that blocks energy below approximately 6 microns, to eliminate electromagnetic noise that can inhibit detection of the refrigerant gas. The IR energy then passes through the gas sample, which absorbs a portion of the IR energy, and continues through a bandpass filter that restricts the passing IR energy to between approximately 8 microns and approximately 10 microns, a range that minimizes false alarms in the sensor that detects the resultant IR energy from the first filter and the bandpass filter. The leak detector mechanism is contained in a portable handheld enclosure.

b. The Business Agreement

11. On April 17, 2006, Twin Rivers and Fieldpiece entered into a Business Agreement, attached as EXHIBIT D, pursuant to which Twin Rivers conferred a terminable at

will exclusive license under the '088 and '993 patents to Fieldpiece to sell hand-held infrared leak detectors containing Twin Rivers' patented technology, to the Heating Ventilation, Air Conditioning and Refrigeration (HVAC/R) market in the United States.

12. Under the terms of the Business Agreement, Fieldpiece placed orders for fully-manufactured HVAC/R infrared leak detectors with its supplier, CHY. CHY forwarded equivalent orders to Twin Rivers for specific components to be installed in the patented HVAC/R infrared leak detectors, which Twin Rivers sent to CHY for inclusion in the products manufactured by CHY for Fieldpiece, and for which CHY paid a premium to Twin Rivers.

c. The *Inter Partes* Reexamination

13. On December 7, 2006, Twin Rivers brought a patent infringement action in the Middle District of Florida against Inficon, Inc., of Syracuse, New York, for infringement of the '088 and '993 patents in the Middle District of Florida, case no. 06cv1870.

14. On February 20, 2007, Inficon filed requests with the United States Patent and Trademark Office ("USPTO") for *inter partes* reexamination of all claims of the '088 and '993 patents. For the request for reexamination of the '993 patent, Inficon argued that sixteen new prior art references that the USPTO had not used in its examination of the '993 patent plus one prior art reference that had been used in examination of the '993 patent together presented issues that raised seventeen different substantial new questions of patentability of the claims of the '993 patent.

15. On March 22, 2007, Inficon filed a "Conditionally Unopposed Motion to Stay [the Inficon] Litigation Pending the Outcome of Patent Reexamination Proceedings in the [USPTO]." The court granted the motion and stayed the case on March 26, 2007.

16. On November 1, 2007 Twin Rivers and Inficon filed a "Joint Notice of Voluntary Dismissal [of Twin Rivers' action against Inficon] Without Prejudice."

17. On June 29, 2010, upon reexamination, the USPTO invalidated the '088 Patent.

18. On July 13, 2010 the USPTO issued *Inter Partes* Reexamination Certificate (No. 0172) for the '993 Patent, issued as 7,022,993 C1 (Reexam '993 Patent), Exh. C. The USPTO confirmed the patentability of claims 2, 3, 6, and 7; cancelled claims 1, 4, 5 and 8; and added new claim 9, which the USPTO determined to be patentable.

19. Fieldpiece knew of the patent infringement litigation and the reexamination proceeding, and chose not to participate and/or assist in either.

20. As a result of the *inter partes* reexamination, the claims of the '993 patent have twice been subjected to examination by the USPTO, and the claims have in effect been subjected to adversarial examination by patent attorneys employed by Inficon, a direct competitor of Twin Rivers. By withstanding such extreme scrutiny, the claims of the '993 patent have acquired a heightened presumption of validity against future challenges.

d. Breach of Contract Litigation

21. Twin Rivers gave written notice to Fieldpiece—on November 27, 2012 that Twin Rivers was terminating the Business Agreement, and that "all license rights granted therein shall terminate automatically without further action being required by either party." Letter from Twin Rivers' counsel Broad and Cassel, attached as Exhibit E.

22. On November 27, 2012, Twin Rivers filed a complaint against Fieldpiece in the Middle District of Florida alleging *inter alia* Fieldpiece's breach of the Business Agreement that the parties entered into in April 2006. 12-cv-01794-Orl-36TBS, Document 113 at 5-6, attached as Exhibit F.

23. On March 18, 2014, District Judge Charlene Edwards Honeywell of the Middle District of Florida ordered that:

- a. TRE's Motion for Partial Summary Judgment is GRANTED;
- b. It is hereby Declared that the Business Agreement between Twin Rivers and Fieldpiece was terminable at will, and was in fact terminated, effective, at the latest, November 28, 2012;
- c. A Declaratory Judgment will be entered by separate order of the Court, upon the conclusion of this litigation.
- d. TRE's motion to dismiss counterclaims is GRANTED in part and DENIED in part;
 - i. The Motion to Dismiss Counterclaims is granted as to Fieldpiece's counterclaim for breach of contract to the extent it seeks to impose liability for action occurring after the termination of the Business Agreement.
 - ii. The Motion to Dismiss Counterclaims is denied in all other respects.

12-cv-01794-Orl-36TBS, Document 113 at 14-15.

24. On November 3, 2014, District Judge Paul G. Byron of the Middle District of Florida issued an Order amending the judgment, attached as Exhibit G, at page 4, "to include the following:"

Declaratory Judgment is entered in favor of Plaintiff, Twin Rivers Engineering Corporation, and against Defendant, Fieldpiece Instruments, Inc., as to Count III of the Second Amended Complaint. The Business Agreement between Twin Rivers Engineering Corporation, and Defendant Fieldpiece Instruments, Inc. was terminable at will, and was terminated on October 11, 2012.

Exhibit G, 6:12-cv-01794-PGB-TBS, Document 195 at 4.

25. Several months prior to October 11, 2012, Fieldpiece's supplier CHY stopped paying to Twin Rivers the payments in lieu of royalties that were due to Twin Rivers under the Business Agreement.

e. Fieldpiece's Infringement of the '993 Patent

26. After October 11, 2012 (the effective date of termination of Business Agreement as held by Judge Byron), further after November 28, 2012 (the effective date of termination of the Business Agreement as first held by of Judge Honeywell's grant of summary judgment in favor of Twin Rivers); and yet further after November 3, 2014 (the date Judge Byron amended the Judgment to reflect the October 11, 2012 termination date), Fieldpiece continued to have made and continued to sell hand-held infrared leak detectors using Twin Rivers' patented technology according to the '993 patent, without a license, without payment to Twin Rivers.

27. Fieldpiece continued to buy infrared leak detectors from CHY with no changes that bore on the claims of the patent to which Fieldpiece was no longer licensed.

f. Fieldpiece's and CHY's False Marking

28. Throughout the period referred to in paragraph 22 above and continuing until the filing of the instant Complaint, Defendant Fieldpiece has without authorization by Twin Rivers marked Twin Rivers' invalidated '088 patent and Twin Rivers' valid '993 Patent unlicensed by Fieldpiece on the sales, product and promotional literature shown on Fieldpiece's website. <http://www.fieldpiece.com/>.

29. To this day, Fieldpiece marks the '088 and '993 Patents on:

a. Packaging. The outside cardboard packaging of the plastic carrying case in which Fieldpiece sells its infrared leak detector, model SRL2K7, http://www.fieldpiece.com/media/art/SRL2-Blow-Mold-Packaging_v10_corrected.pdf.

See Exhibit 1 to attached Declaration of Russell O. Paige ("Paige Decl.").

b. User Manual. <http://www.fieldpiece.com/support/user-manuals/en>, click on: SRL2K7 - Infrared Refrigerant Leak Detector, which directs to:

<http://www.fieldpiece.com/media/manuals/Opman-SRL2-web.pdf>, page 2, second column. See Exhibit 2 to Paige Decl.

c. Promotional Flyers. <http://www.fieldpiece.com/products/flyers>, Click on SRL2K7 - Infrared Refrigerant Leak Detector, which directs to; http://www.fieldpiece.com/media/flyers/SRL2color_NEW1007_v07_WEB.pdf, at page 2, under "SRL2 Specifications." See Exhibit 3 to Paige Decl.

30. Fieldpiece included the hard copy versions of the SRL2K7 Packaging and SRL2 User Manual to each purchaser until early to mid 2015, and distributed the hard copy Promotional Flyer of the SRL2 leak detector to distributors and retailers until at least the same time. Electronic versions of the hard copy Packaging, User Manual and Promotional Flyer remain on Fieldpiece's website.

31. On information and belief, CHY manufactures Fieldpiece's infrared leak detector kit, model SRL2K7, including the cardboard packaging therefor and the SRL2 User Manual in hard copy form.

32. Fieldpiece's unauthorized marking of the outside Packaging, User Manual and Product Flyer for its infrared leak detector with Twin Rivers' '088 and '993 patent numbers was false, untrue, wrong, and was intended to, and did deceive infrared leak detector distributors, retailers and the general purchasing public.

g. Fieldpiece's Intent to Injure Twin Rivers

33. Fieldpiece's motive for the deception was to (1) obscure from suppliers, distributors and customers the fact that Twin Rivers had terminated the Business Agreement with Fieldpiece and the license thereunder; (2) keep the competitive advantage afforded to Fieldpiece by Twin Rivers' patents; (3) misrepresent as continuing its terminated association with and

supply relationship with Twin Rivers; (4) usurp Twin Rivers' goodwill and trade on the value of that goodwill; (5) dilute the value of Twin Rivers' goodwill; (6) obtain a monetary and reputational benefit for its own business and products; (7) remove from Twin Rivers the ability to control the nature and quality of products associated with Twin Rivers' patents; and (8) maintain Fieldpiece's competitive posture *vis-à-vis* Twin Rivers and other sources of leak detectors.

34. Twin Rivers and Fieldpiece are direct competitors in the sale of infrared leak detectors sold in the HVAC market. Twin Rivers has sold and continues to sell private label infrared leak detectors incorporating the invention disclosed by the '993 Patent to manufacturers of instruments for resale through their distribution channels in the HVAC market. Fieldpiece sells SRL2K7 leak detectors, which infringe the '993 Patent, to distributors of leak detectors in the HVAC market.

35. Over approximately the last 90 days, as a direct result of Fieldpiece's unauthorized marking of its SRL2K7 leak detector Packaging, User Manuals and Product Flyers, on the Internet and in hard copy, all with the '993 patent, Twin Rivers has lost two private label leak detector accounts for the sale of infrared leak detectors in the HVAC market.

36. On information and belief, Fieldpiece leak detectors are experiencing an increase in returns to Fieldpiece by their end users and their distributors due to recent increases in issues related to quality and/or quality control. Fieldpiece's false marking of Twin Rivers' '993 patent associates Fieldpiece's leak detectors with Twin Rivers in the minds of distributors, who, on information and belief, erroneously believe Twin Rivers to be the source of Fieldpiece's SRL2K7 leak detectors. Fieldpiece's false marking of the '993 patents in connection with Fieldpiece's SRL2K7 leak detectors thus threatens to falsely associate Fieldpiece's quality-related returns

with Twin Rivers and will erode Twin Rivers' sales and hamper its ability contract for private label sales of Twin Rivers leak detectors.

h. Fieldpiece Has Caused Market Confusion

37. Fieldpiece's False Marking, False Designation of Origin, False Advertising of Twin Rivers' patent numbers on Fieldpiece's hard copy and Internet images of its Packaging, User Manual and Promotional Flyer has caused confusion among consumers, retailers and distributors and is likely to cause further confusion.

38. On August 21, 2013, a posting on the hvac-talk.com blog was touting the Fieldpiece SRL2 leak detector. Within an hour a second blog posting corrected the first: "It's not Fieldpiece technology or design. This device is designed and made by <http://twinriversengineering.com>." <http://hvac-talk.com/vbb/showthread.php?1379431-Fieldpiece-srl2-review&s=8bb7307ec4b86bdb0b42290241c65a6b&p=16491601#post16491601>.

39. Fieldpiece's False Marking has caused actual confusion.

i. Fieldpiece's Patent Application

40. On July 26, 2013, Rey P. Harju, President of Fieldpiece and W. Travis Ault filed Patent Application No. 13/952,505 ("505 Application") with the USPTO disclosing what the applicants allege in the specification "is an improvement over the infrared (IR) leak detector disclosed in US. Pat. No. 7,022,993, the entire disclosure of which is hereby incorporated into the present disclosure." The '505 application lists Fieldpiece as assignee. On April 7, 2015, the USPTO rejected Fieldpiece's '505 Application solely over the Twin Rivers '993 Patent. Fieldpiece amended the '505 Application in response to the April 7, 2015 rejection, and on August 20, 2015 the USPTO again rejected Fieldpiece's '505 Application as obvious over the

'993 patent in combination with either one of two other references. US Patent Application 13/952,505 File Wrapper Documents, attached as Exhibit 4 to Paige Decl.

41. Accordingly, Fieldpiece has known of Twin Rivers' '993 patent since before, but no later than April 4, 2006, when it signed the Business Agreement with Twin Rivers.

42. Fieldpiece has known of Twin Rivers' termination of the Business Agreement and the license thereunder since November 27, 2012. That termination was confirmed by the Middle District in Florida on March 14, 2014. Yet, Fieldpiece continues to list the Twin Rivers' 993 Patent on Fieldpiece's website which bears a copyright notice dated 2015.

j. Fieldpiece and CHY's Concerted Refusal to Deal

43. As retribution for the termination of the Business Agreement, Fieldpiece and CHY entered into a contract, combination and conspiracy in restraint of trade by attempting to steal the business and assets of Twin Rivers by infringing its patent, refusing to do business with Twin Rivers, and by selling patented products to which they had no rights.

k. Origins of Twin Rivers' Plastic Enclosure

44. The Business Agreement, effective April 17, 2006, provides for collaboration among Fieldpiece, Twin Rivers and CHY on product development:

2. Agreement
 - a. Fieldpiece will work with TRE and Fieldpiece's suppliers to create marketable products, which Fieldpiece plans to sell through its existing sales channels in the HVAC/R market.
 - b. TRE agrees to supply technical assistance to support the creation of marketable product covered by the patent.
 - c. With TRE's help, and help from Fieldpiece's suppliers, Fieldpiece agrees to help develop, produce, market, and sell a handheld infrared leak detector to the heating, ventilation, air conditioning and refrigeration (HVAC/R) market.

- d. If TRE wishes to sell leak detectors to the automotive market through Fieldpiece, TRE will do so exclusively. ...
- g. ...
- i. TRE agrees to pay all maintenance fees required to keep the patents in effect.

Exhibit D at 2.

45. Shortly after the signing of the Business Agreement, Mr. Williams, President of Plaintiff Twin Rivers, and Mr. Harju, President of Defendant Fieldpiece traveled to Taiwan to meet with CHY to work out the details for design and manufacture by CHY of the handheld infrared leak detector licensed under the '993 Patent by Twin Rivers to Fieldpiece. Messrs. Williams and Harju had meetings with James Chang, President of CHY. Some of these meetings were attended by as many as eight CHY engineers. The meetings were intended to coordinate the final design, manufacture and assembly of the licensed leak detectors for sale by Fieldpiece with a goal of getting the leak detectors on the market as quickly as possible.

46. During one such meeting, Mr. Williams presented Twin Rivers' design for an injection molded plastic housing for the patented leak detector mechanism. One of the CHY engineers suggested that, rather than taking the time for tooling a mold for the Twin Rivers' design, they could use an existing mold CHY used to produce parts for plastic housings for handheld instruments. CHY's mold and housing parts production were up and running prior to the April, 2006 time frame and were used by CHY for several handheld test instruments it manufactured for its own account and for resale by third party customers.

47. In order to fit the patented mechanism of the patented leak detector into CHY's pre-existing housing, Twin Rivers adjusted, repositioned and modified the internal mechanism. CHY never identified its plastic mold or the plastic housing parts made through use of its mold as representing proprietary trade dress, and never made any demand for payment to CHY for use

of its mold to manufacture the plastic housing for Twin River's leak detector that CHY manufactured for sale by Fieldpiece. Other than the provision of the Business Agreement calling for cooperation in developing a commercial leak detector, no agreement exists identifying the mold or the plastic housing parts made with it as proprietary or trade dress or assigning any rights to the trade dress to Fieldpiece, CHY or Twin Rivers.

48. On information and belief, CHY used the same plastic injection mold it offered at the April 2006 meeting in Taiwan, to make plastic housing parts for the leak detector it would manufacture under the '993 Patent licensed by Twin Rivers to Fieldpiece to produce injection molded plastic housings for CHY and third party customers for test instruments manufactured by CHY prior to the 2006 Business Agreement.

49. By 2012, CHY had come to use its housing mold to produce plastic housings for handheld infrared leak detectors that CHY manufactured: (a) under Fieldpiece's license of Twin Rivers' '993 Patent for Fieldpiece to sell in the HVAC market in the U.S. under the Fieldpiece brand; (b) under license of the '993 Patent for the Canton, Michigan-based Service Solutions Division of SPX, Corp. ("Service Solutions"), of Charlotte, North Carolina to sell in the Automotive refrigerant market in the U.S. under the Robinair brand; and (c) by agreement with Service Solutions to sell in the automotive market in Europe under the Robinair brand.

50. CHY also used its leak detector housing mold to produce plastic housing parts for handheld infrared leak detectors that CHY manufactured using the teachings of the '993 Patent and sold to Fuso, Co., Ltd. of Tokyo, Japan, for resale in the Japanese market.

51. Either CHY or third parties also used either CHY's plastic mold or third party-owned plastic molds to produce injection molded plastic housing parts for other handheld infrared leak detectors and other test instruments, including handheld infrared leak detectors sold

under the TASCOS brand by the Ichinen Tasco Japan Co., Ltd., of Osaka, Japan; the ASADA brand by the Asada Corporation of Nagoya, Japan, and the BBK brand by Bunka Boeki Kogyo, Co., Ltd., of Tokyo, Japan, and flow meters sold by Hach Co. of Loveland, Colorado.

I. Fieldpiece's False Claims of Owning Proprietary Trade Dress

52. A week to 10 days before October 11, 2012, Mr. Harju of Fieldpiece, in California, telephoned Mr. Williams in Florida, and informed him that Mr. Harju or Fieldpiece had purchased CHY's mold for the injected molded plastic parts housing the infrared leak detectors CHY made for Fieldpiece under the 'Twin Rivers' '993 patent and that the plastic housings made with the mold would no longer be available to Twin Rivers.

53. On information and belief, the mold that Mr. Harju said he purchased from CHY remained in place at CHY's plant in Taiwan.

54. On October 11, 2012, Mr. Harju sent a curt email to Mr. Williams stating that:

Our agreement with you regarding SPX is over.

SPX is in Europe chasing HVAC business we developed, using lower prices to get take [*sic*] the business. As I've told you before, this is not good.

We have rescinded approval to ship products to SPX using our proprietary plastic and other electrical, electronic, and mechanical components.

A copy of the October 11, 2012 email is attached as Exhibit H.

55. On October 11, 2012, the same day Fieldpiece terminated the Business Agreement with Twin Rivers, *see* November 3, 2014 Order at 4, Travis Ault of Fieldpiece requested CHY to "hold shipment until further notice" of leak detectors to SPX because "SPX/TIFF [an SPX brand] violating the agreement."

56. On October 12, 2012, Mr. Harju wrote Ann Ke of CHY in Taiwan that:

Up to now we have agreed to let TRE sell leak detectors to SPX using our plastic and the design and components developed for our leak detector.

No more. That agreement is null and void. Please immediately cease shipping leak detectors to SPX using our proprietary design and parts to anyone but Fieldpiece.

57. On the same day, Daphne Yeh of CHY responded to Haji's request that CHY boycott Twin Rivers' European sales to SPX:

We had stopped all pending shipment a few days ago when Ann [Ke of CHY] got your email, or an email from Travis. I'm sorry that SPX broke the agreement and it has such an impact on you competing on price would be the worst way to go. We'll do our best to secure FP [Fieldpiece] and CHY's efforts on this product.

58. On October 13, 2012, Harju wrote Daphne Yeh of CHY that: "[h]owever this is resolved, it must result in us NEVER seeing SPX competing with us in the HVAC market with our product."

59. On October 15, 2012, Daphne Yeh of CHY wrote Harju assuring him that CHY would not supply Twin Rivers' pending orders for the EU market and asking whether CHY should respond to Twin Rivers' request to provide tooling for a redesigned plastic housing.

60. On the same day, Harju responded as to the tooling request: "Keep it on hold for now. Don't do anything. ... I don't want to compete with the product we developed, even if someone does put it in a different case."

61. The following week, on October 25, TRE reminded CHY of the request for a quote on tooling. After checking with Fieldpiece and receiving instructions not to turn TRE down, but don't quote either, CHY responded to TRE that "it is not proper for us to offer you directly."

62. On October 30, 2012, Harju again explained his anticompetitive intent to CHY:

Anything Bill [Williams of Twin Rivers] does that is not specifically for the automotive market will compete with us. ... We are worried about competing with companies who specifically compete in the HVAC market worldwide.

m. Fieldpiece's Fraudulent Cease and Desist Letters

63. On March 4, 2014, Fieldpiece's attorney Mark F. Warzecha sent to Doug Keeports, President of Twin Rivers' customer for infrared leak detectors, Bacharach, Inc. ("Bacharach") of New Kensington, Pennsylvania, a cease and desist letter, attached as EXHIBIT I, threatening Bacharach with a lawsuit claiming trade dress and patent infringement:

- (a) Bacharach's "sale of a product nearly identical to that of my client's is a violation of Fieldpiece's trade dress rights under the Lanham Act,," and
- (b) Fieldpiece "has a good faith basis to believe your ILD [infrared leak detector] contains technology derived from a patent owned by Twin Rivers Engineering Corporation ("TRE"). TRE and Fieldpiece are parties to an agreement whereby TRE granted Fieldpiece the exclusive right to practice TRE's patent. Although TRE has attempted to terminate the parties' agreement, Fieldpiece contends the agreement is still valid and enforceable and the matter is currently being litigated and has not yet been ruled upon by the Court. If in fact your ILD practices on TRE's patent and the Court rules in Fieldpiece's favor, Fieldpiece expects to have grounds to file suit for patent infringement"

64. The Warzecha letter to Bacharach on behalf of Fieldpiece was representative of two other similar letters to JB Industries, Inc. of Aurora, Illinois, and CPS Products, Inc., of Hialeah, Florida. The three Warzecha letters were false and predatory and had the anticompetitive effects Fieldpiece intended.

65. The Warzecha letters were objectively false because no trade dress protection exists for the plastic housing for the Fieldpiece SRL2K7 leak detector for at least the following reasons:

- (a) The plastic housing was not designed for Fieldpiece and existed and was used by CHY for instruments other than handheld infrared leak detectors before Twin Rivers licensed its '993 Patent to Fieldpiece;
- (b) The plastic housing for infrared leak detectors was not distinctive or did not acquire secondary meaning associated with Fieldpiece, because CHY used the plastic housing, made it available to numerous third parties; and, on information and belief, third parties independently developed virtually identical housing for various instruments;
- (c) CHY's plastic injection mold for portions of the housing for handheld infrared leak detectors does not encompass "the total image" of handheld infrared leak detectors;

- (d) The plastic housing for leak detectors and other instruments is functional;
- (e) The purported sale by CHY of its plastic injection mold to Fieldpiece did not transfer any trade dress to Fieldpiece;
- (f) The Business Agreement did not assign ownership of the plastic housing design.

66. The Warzecha letter also misrepresented Fieldpiece's ability to sue its recipients for patent infringement, because:

- (a) The Business Agreement did not transfer to Fieldpiece any right to sue for infringement;
- (b) The Business Agreement licensed less than all the rights under the '993 Patent to Fieldpiece because, e.g., Twin Rivers retained rights to the patent in the Automotive market;
- (c) Twin Rivers retained the duty to maintain the patent;
- (d) Fieldpiece never asked Twin Rivers to be a party to a suit against its customers.

67. Accordingly, Fieldpiece lacked standing to sue any of Twin Rivers' three customers to whom Warzecha addressed cease and desist letters threatening suit.

68. The Warzecha letters nevertheless succeeded in causing Twin Rivers' customers to back away from their agreements to purchase patented leak detectors from Twin Rivers.

69. The Warzecha letters were sent in interstate commerce by certified U.S. Postal Service mail.

n. Injury to Competition and to Twin Rivers

70. Fieldpiece and CHY's agreement: (a) not to bid for, or manufacture, leak detectors and leak detector housings for Twin Rivers; (b) to the sham sale by CHY of the injection plastic mold for housings by CHY to Fieldpiece; and (c) to threaten Twin Rivers' licensees and customers with unfounded, fraudulent threats of litigation, required Twin Rivers to seek an alternative manufacturer, and to redesign the housing, which caused increased costs, manufacturing delays, lost sales, lost profits, lost market share.

71. Fieldpiece and CHY's agreement: (a) not to bid or manufacture; (b) to the sham sale by CHY of the injection plastic mold; and (c) to threaten Twin Rivers' licensees and customers with litigation, were concerted acts in furtherance of Fieldpiece and CHY's conspiracy in restraint of trade.

72. Fieldpiece and CHY's agreement: (a) not to bid or manufacture; (b) to the sham sale by CHY of the injection plastic mold; and (c) to threaten Twin Rivers' licensees and customers with litigation, eliminated competition among manufacturers, their private label customers, the distributors and in the sale to end user customers, of handheld infrared leak detectors.

CAUSES OF ACTION

COUNT 1

Infringement of U.S. Patent No. 7,022,993 C1 Under 35 U.S.C. §§271, 281 (Fieldpiece and CHY)

73. Twin Rivers realleges and incorporates by reference paragraphs 1 through 71 above, as if fully set forth herein.

74. Twin Rivers is the owner by assignment of United States Patent No. 7,022,993 C1 ("993 Patent") to William J. Williams II titled "Infrared Leak Detector." The '993 Patent was duly and lawfully issued on April 4, 2006 and reissued after *inter partes* reexamination on July 13, 2010 by the U.S. Patent and Trademark Office. A copy of the '993 Patent is attached as Exhibit B.

75. The '993 Patent relates to a leak detector instruments that use an infrared emitter and sensor to identify the presence and concentration of material gas compounds such as refrigerant gas.

76. Defendants Fieldpiece and CHY infringe the '993 Patent by making, using, selling and/or offering to sell products, including but not limited to infrared leak detector model No. SRL2K7 leak detector instruments that use an infrared emitter and sensor to identify the presence and concentration of material gas compound such as refrigerant and will continue to do so unless enjoined therefrom by this Court. See Fieldpiece's SRL2K7 User Manual, Exh 2 to Paige Decl.

77. Defendants Fieldpiece and CHY also infringe the '993 Patent by contributory infringement and/or by inducing others to infringe one or more claims of the '993 Patent. Fieldpiece, CHY and others will continue to infringe the '993 Patent unless enjoined by the Court.

78. Defendants Fieldpiece and CHY's unauthorized publication of Twin Rivers' patent numbers constitutes false marking under 35 U.S.C. § 292 and is an admission by Fieldpiece and CHY that the Fieldpiece SRL2 infrared leak detector infringes Twin Rivers' '993 Patent:

Placing a patent number on a product is an admission by the marking party that the marked product falls within the scope of the patent claims. The act of marking is akin to a corporate officer admitting in a letter or at a deposition that the company's product infringes a patent.

Frolow v. Wilson Sporting Goods Co., 710 F.3d 1303, 1310, 2013 U.S. App. LEXIS 5252 (Fed. Cir., March 15, 2013).

79. Defendants Fieldpiece's and CHY's infringement of the '993 Patent, whether direct, contributory and/or by inducement, has been and continues to be knowing and willful.

80. Twin Rivers has been damaged by Defendants Fieldpiece's and CHY's infringement of the '993 Patent.

COUNT 2

False Marking Under 35 U.S.C. § 292 (Fieldpiece and CHY)

81. Twin Rivers realleges and incorporates by reference paragraphs 1 through 79 above, as if fully set forth herein.

82. Fieldpiece and CHY have used and continue to use Twin Rivers' 6,791,088, EXH. A and 7,022,993, EXH. B, Patent Numbers without license or authorization since at least October 11, 2012.

83. Fieldpiece's and CHY's unauthorized use of Twin Rivers' patent numbers has been included on Fieldpiece's Packaging, Exh. 1 to Paige Decl., User Manuals, Exh. 2 to Paige Decl., and Product Flyers Exh.3 to Paige Decl., for Fieldpiece's infringing infrared leak detectors, including, but not limited to model number SRL2K7.

84. Fieldpiece and CHY have published and continue to publish Packaging, User Manuals and Product Flyers bearing Twin Rivers' patent numbers on paper and/or on the Internet.

85. Twin Rivers and Fieldpiece are direct competitors in the sale of infrared leak detectors.

86. Fieldpiece's and CHY's unauthorized publication of Twin Rivers' patent numbers has caused competitive injury to Twin Rivers.

87. Fieldpiece's and CHY's unauthorized publication of Twin Rivers' patent numbers has caused actual damages to Twin Rivers.

88. Fieldpiece and CHY intended their unauthorized publication of Twin Rivers' patent numbers to counterfeit or imitate the mark of patentee Twin Rivers.

89. Fieldpiece's and CHY's unauthorized publication of Twin Rivers' patent numbers was in bad faith and was intended to deceive and has deceived the public and to induce and has induced the public to believe that Fieldpiece's infrared leak detectors were made, offered for sale, sold, or imported into the United States by or with the consent of patent owner Twin Rivers.

COUNT 3

Unfair Competition Under Section 43(a) Of the Lanham Act, 15 U.S.C. § 1125(a)
(Fieldpiece)

90. Twin Rivers realleges and incorporates by reference paragraphs 1 through 88 above, as if fully set forth herein.

91. Fieldpiece's use of Twin Rivers' 6,791,088, EXH. A, and 7,022,993, EXH. B, Patent Numbers constitute use of words or symbols likely to cause confusion or mistake by actual and potential purchasers of infrared leak detectors.

92. Fieldpiece's use of Twin Rivers' patent numbers is false because it expresses a false affiliation by Fieldpiece with Twin Rivers, it falsely implies Twin River's sponsorship or endorsement by Fieldpiece's infrared leak detectors, falsely claims or implies that Twin Rivers is the source of Fieldpiece's infrared leak detectors, and falsely claims that Fieldpiece is licensed to sell infrared leak detectors under Twin Rivers' patents.

93. Fieldpiece made and continues to make false or misleading statements of fact, claiming or implying its ownership of Twin Rivers' patents.

94. Fieldpiece's statements had the capacity to deceive a substantial segment of potential customers and actually deceived potential distributor and retail customers of infrared leak detectors.

95. Fieldpiece's deception was material, in that it was likely to influence consumers' purchasing decisions.

96. Fieldpiece's and Twin Rivers' infrared leak detectors are transacted in interstate commerce.

97. Twin Rivers has been injured and is likely to be further injured in the future as a result of Fieldpiece's false statements about Twin Rivers' patents and about Fieldpiece's authorized use of the '993 patent.

98. Fieldpiece's false and misleading statements concerning Twin Rivers' patents constitute false advertising, false designation of origin and unfair competition within the meaning of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

COUNT 4

Per Se Unlawful Concerted Refusal to Deal Under 15 U.S.C. § 1
(Fieldpiece and CHY)

99. Twin Rivers realleges and incorporates by reference paragraphs 1 through 97 above, as if fully set forth herein.

100. Fieldpiece and CHY agreed to exclude Twin Rivers from the U.S. and international market for infrared leak detectors sold to the HVAC market segment by agreeing: (1) that CHY would not manufacture patented leak detectors for Twin Rivers; (2) that CHY would not manufacture the original plastic housing for Twin Rivers; (3) that CHY would not bid on Twin Rivers' request that CHY bid on retooling for a new plastic housing design; and (4) by Fieldpiece and its attorney sending the unfounded, false, and/or fraudulent Warzecha letters to Twin Rivers' three HVAC customers.

101. Fieldpiece and CHY intended their acts in furtherance of the exclusion of Twin Rivers, Bacharach, JB Industries and CPS Products to diminish and eliminate competition to Fieldpiece in the U.S. and international markets.

102. Fieldpiece and CHY's acts in furtherance of the exclusion of Twin Rivers had the effects intended by Fieldpiece and CHY of excluding Twin Rivers and its licensees and authorized resellers from the U.S. and international markets for handheld infrared leak detectors.

Fieldpiece and CHY's exclusion of Twin Rivers' authorized U.S. and European sellers of handheld infrared leak detectors from the European market for such leak detectors injured Twin Rivers in the U.S.

103. Fieldpiece and CHY's exclusion of Twin Rivers and its licensees and authorized resellers from the U.S, and international markets for handheld infrared handheld infrared leak detectors eliminated competition in the U.S. and international markets for handheld infrared leak detectors.

104. Fieldpiece and CHY's exclusionary conduct sought to and effectively did expand Fieldpiece's license of the '993 Patent from one limited to the manufacture for, and sale in, the U.S. HVAC market, to one that included protection from competition for Fieldpiece's international sales, including in the European HVAC and Automotive markets for handheld infrared leak detectors, and CHY's unauthorized manufacture for, and international sales, including the Asian HVAC and Automotive markets for handheld infrared leak detectors.

105. Fieldpiece and CHY's exclusion of Twin Rivers and its licensees and authorized resellers injured Twin Rivers through increased costs, delayed production, lost sales, loss of market share, price erosion, reduced profits, and lost opportunities to sell Twin Rivers' '993 Patent.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Twin Rivers Engineering, Inc., respectfully requests the Court to enter the following relief:

- A. That the Court find Defendants Fieldpiece Instruments, Inc. and CHY Firemate Co., Ltd. liable of direct infringement of the United States Patent 7,022,993, either literally or under

the doctrine of equivalents, and/or that Defendants have contributorily infringed and/or induced infringement of the '993 Patent.

- B. That the Court award damages to Twin Rivers against Fieldpiece and CHY for Fieldpiece's and CHY's infringement of the '993 patent and for no less than a reasonable royalty pursuant to 35 U.S.C. § 284.
- C. That the Court determine that Fieldpiece's and CHY's infringement is willful and award treble damages to Twin Rivers for Fieldpiece's and CHY's willful infringement pursuant to 35 U.S.C. § 284.
- D. That the Court determine this case to be an exceptional case and award attorneys' fees against Fieldpiece and CHY pursuant to 35 U.S.C. § 285.
- E. That the Court preliminarily and permanently enjoin and restrain defendants Fieldpiece Instruments, Inc., CHY Firemate Co., Ltd., and all of their employees, agents, servants, and vendors from participating with defendants, from infringement, contributory infringement and inducement to infringe the '993 patent pursuant to 35 U.S.C. § 283:
 - (i) From making, using, importing, selling and/or offering to sell products, related products, or other goods in the United States that infringe the '993 patent.
 - (ii) To deliver to Twin Rivers or its designee, for destruction all products, related products or any other goods that infringe the '993 patent.
 - (iii) To file with the Court and serve upon Twin Rivers written reports signed under oath by the Chief Executive Officers of defendants Fieldpiece and CHY, setting forth in detail the manner in which Defendants have complied with the injunction.
- F. That the Court find Defendants Fieldpiece and CHY liable for false marking pursuant to 35 U.S.C. § 292.

- G. That the Court award damages to Plaintiff Twin Rivers against Defendants Fieldpiece and CHY for competitive injury sustained as a result of Fieldpiece's and CHY's false marking of Twin Rivers' '088 and '993 Patents.
- H. That the Court preliminarily and permanently enjoin Fieldpiece and CHY from false marking of the '088 and '993 patents.
- I. That the Court determine that Fieldpiece is liable for violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).
- J. That the Court award damages to Twin Rivers against Fieldpiece for (1) Fieldpiece's profits, (2) damages sustained by Twin Rivers; (3) the costs of the action and (4) in assessing such damages, the court enter judgment in an amount three times the amount of such damages, pursuant to 15 U.S.C. § 1117(a).
- K. That the Court determine this case to be an exceptional case and award reasonable attorney fees to Plaintiff Twin Rivers against the Defendant Fieldpiece pursuant to 15 U.S.C. § 1117(a).
- L. That the Court determine that Fieldpiece and CHY have violated Section 1 of the Sherman Act.
- M. That the Court award treble damages in favor of Twin Rivers against Fieldpiece and CHY pursuant to Section 4 of the Clayton Act, 15 U.S.C. § 15.
- N. That the Court award prejudgment interest.
- O. And that the Court award attorneys fees against Fieldpiece and CHY under Section 4 of the Clayton Act, 15 U.S.C. § 15.
- P. That the Court enter such further or other relief to which Plaintiff Twin Rivers may be entitled.

February 29, 2016,

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Michael C. Smith". The signature is fluid and cursive, with the first name "Michael" being more prominent than the last name "Smith".

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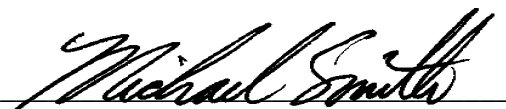
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**COUNSEL FOR PLAINTIFF
TWIN RIVERS ENGINEERING, INC.**

CERTIFICATE OF SERVICE

The undersigned hereby certifies that all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system this the 29th day of February, 2016.


Michael C. Smith