

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

INTEGRATED STEALTH TECHNOLOGY, INC.,
a Michigan corporation,

Case No. 1:16-cv-00355
Hon. Robert J. Jonker

Plaintiff,

v.

COLUMBIA INSURANCE CO.,
a Nebraska corporation,
MiTEK HOLDINGS, INC.,
a Delaware corporation, and
MiTEK USA, INC.,
a Missouri Corporation,

Defendants.

FIRST AMENDED COMPLAINT AND DEMAND FOR TRIAL BY JURY

McShane & Bowie, P.L.C.
Christopher J. Breay (P51646)
Counsel for Plaintiff
99 Monroe Avenue NW, Suite 1100
Grand Rapids, MI 49503
616-732-5000
cjb@msblaw.com

Mitchell Intellectual Property
Law, PLLC
James A. Mitchell (P17832)
Co-Counsel for Plaintiff
Watermark Technical Center
1595 Galbraith Ave., S.E.
Grand Rapids, MI 49546
616-965-2431
jamitchell@mitchelliplaw.com

Complaint

Parties, Jurisdiction, and Venue

1. Plaintiff Integrated Stealth Technology, Inc. (IST) is a corporation of the State of Michigan having a place of business in the City of Lansing, County of Ingham, State of Michigan.

2. Defendant Columbia Insurance Co. is a Nebraska corporation having a principal place of business in Nebraska.

3. Defendant MiTek Holdings, Inc. (MH) is a Delaware corporation having a principal place of business in Missouri.

4. Defendant MiTek USA, Inc. (MU) is a Missouri corporation having a principal place of business in Missouri.

5. This Court has subject-matter jurisdiction over this matter under the Declaratory Judgment Act, Title 28, §§ 2201 and 2202, the Patent Laws of the United States, Title 35 USC § 100 et. seq. and Title 28 USC § 1338, there being an actual and continuing controversy between the parties based on Defendants' assertion and threats that IST infringes Defendants' patents, and IST's assertion that said patents are invalid and not infringed by IST. This Court also has federal-question jurisdiction and diversity jurisdiction over this action pursuant to 28 U.S.C. § 1331 and § 1332, respectively, as questions are raised pursuant to federal antitrust laws, and there is complete diversity of citizenship and the amount in controversy exceeds \$75,000.

6. This Court has personal jurisdiction over Defendants as MU is registered to do business in the State of Michigan, each Defendant conducts business in the State of Michigan, and all Defendants – in a joint effort – have been in regular contact with IST over the course of

several months in enforcement efforts and business negotiations relating to the subject of this action.

7. Venue is proper in this District under 28 USC §§ 1391 (b), (c) and § 1400 (b).

Patents-in-Suit

8. On August 22, 2006, the United States Patent and Trademark Office issued U.S. Patent No. 7,093,829 ('829 patent), entitled "Automatic Truss Jig Setting System." A copy of the '829 patent is attached as Exhibit A.

9. Columbia is the owner of the '829 patent.

10. MU is the exclusive licensee of the '829 patent.

11. On March 29, 2011, the United States Patent and Trademark Office issued U.S. Patent No. 7,913,986 ('986 patent), entitled "Automatic Truss Jig Setting System." A copy of the '986 patent is attached as Exhibit B.

12. Columbia is the owner of the '986 patent.

13. MU is the exclusive licensee of the '986 patent.

14. On February 7, 2012, the United States Patent and Trademark Office issued U.S. Patent No. 8,109,493 ('493 patent), entitled "Automatic Truss Assembly Jig Setting System." A copy of the '493 patent is attached as Exhibit C.

15. MH is the owner of the '493 patent.

16. MU is the exclusive licensee of the '493 patent.

17. On October 23, 2012, the United States Patent and Trademark Office issued U.S. Patent No. 8,292,278 ('278 patent), entitled "Automatic Truss Jig Setting System." A copy of the '278 patent is attached as Exhibit D.

18. Columbia is the owner of the '278 patent.

19. MU is the exclusive licensee of the '278 patent.

20. On August 19, 2014, the United States Patent and Trademark Office issued U.S. Patent No. 8,807,548 ('548 patent), entitled "Automatic Truss Jig Setting System." A copy of the '548 patent is attached as Exhibit E.

21. Columbia is the owner of the '548 patent.

22. MU is the exclusive licensee of the '548 patent.

Technical Subject Matter, Prior Art, and Defendants' Accusations

23. This case relates to truss assembly tables for positioning pucks (or pins) in such a way as to serve as jigs for assembling roof or floor trusses. The table comprises separate segments with open slots between them, through which the pins or pucks project and travel from position to position. Such tables are disclosed in prior patents granted at least as early as the 1990s, e.g. US 4943038 filed July 17, 1989 and issued July 24, 1990, US 5092038 filed June 29, 1989 and issued Mar. 3, 1992, and US 5676358 filed Nov. 2, 1995 and issued Oct. 17, 1997.

24. IST has been accused of infringing four closely related Fredrickson patents, all of which claim locating a "movement means" ('278, '829, '986) or "movement assemblies" ('548) out of, or substantially out of, the so called "zone" below the open slots, so that dust and debris will not fall through the slots and into the movement means/assembly. The movement means/assemblies of the Fredrickson patents are motor driven screw threaded rods upon which the pucks are threadably mounted. The Fredrickson pucks slide in channels positioned beneath the table segments on either side of the open slots.

25. IST is also accused of infringing the '493 patent to Koskovich which claims a "self- contained unit" comprising a table segment (referred to as a plank) to which a drive motor and a puck assembly are secured. The puck assembly includes a puck extending above the top

surface of the plank. In addition to being secured to the plank, the puck assembly is also “operatively connected” to the rotating output member of the motor “so that rotational movement of the output member of the motor produces translational movement of the puck assembly lengthwise along the top surface of the plank.”

26. A self-contained unit as claimed in the ‘493 patent was publicly sold by Koskovich Industries as early as 1992, 15 years before the former owner of Koskovich Industries, filed for the ‘493 patent on that product on June 8, 2007.

IST’s Automated Puck System (APS)

27. Edward G. Joseph has developed an Automated Puck System (APS) for truss assembly tables that uses a chain drive assembly in connection with moving the pucks on a truss jig system. Mr. Joseph has licensed this chain drive system to IST.

28. IST began using the APS in 2010.

29. Mr. Joseph applied for patent protection on his APS on February 25, 2011, and the United States Patent Office has allowed claims to his chain drive assembly system for moving pucks on the truss assembly table.

30. Defendants and/or their predecessors were aware that IST was using the APS since at least November of 2010.

2010 Cease and Desist Demand

31. Columbia’s predecessor in interest to patents ‘829, ‘986, ‘278, and ‘548 was Truss Industry Products Systems, Inc. (TIPS).

32. On November 9, 2010, TIPS sent correspondence to IST accusing IST of infringing each of the subject patents (except the '493 patent) and demanding that IST cease and desist from all actions allegedly infringing said patents.

33. IST President and CEO Edward Joseph responded promptly, pointing out that: “. . . the automated puck system that we have produced does not have any threaded rods or guide rods to run our system. This is nothing like what the truss industry has seen.”

34. Not since April 4 of 2016 has TIPS or any Defendant filed suit or initiated a proceeding of any kind in an attempt to enforce rights in any patent allegedly being infringed by IST.

35. In reliance on the absence of any follow up contact by TIPS, IST continued to invest in, manufacture and sell its APS product.

Defendants' Belated Renewed Cease and Desist Demands

36. Beginning on January 9, 2015, counsel for Defendants has reasserted its claims of infringement, having sent correspondence on a regular basis to IST claiming that the APS infringes the patents-in-suit and demanding that IST cease and desist from continuing to use the APS or in any other way infringe the patents.

37. Counsel for Defendants prepared a draft Complaint and sent a copy to counsel for IST.

38. IST denies that it is infringing any of the patents and, moreover, believes each of the patents is invalid.

39. A substantial controversy between the parties having adverse legal interests of sufficient immediacy and reality exists to warrant issuance of a declaratory judgment.

40. The continuing existence of the threat posed by Defendants' patents and allegations interferes with and diminishes IST's ability to sell its APS products and detracts from the value of IST to potential purchasers of its business.

Count I

Declaratory Judgment of Invalidity of the '829 Patent

41. IST incorporates by reference each of the preceding allegations.

42. The '829 patent is invalid under 35 USC §103, at least for the reason that locating the movement means for the pucks outside of a zone beneath the slot would have been obvious to one of ordinary skill for preventing dust and debris from falling into the movement means/assemblies.

43. The '829 patent is invalid under 35 USC §112, at least for the reason that the claims fail to particularly point out and distinctly claim the subject matter which applicants regard as their invention.

44. IST reserves the right to assert other grounds for invalidity, including 35 USC §102, based on other evidence which may come to its attention during the course of this matter.

45. IST seeks and is entitled to a declaratory judgment that all claims in the '829 patent are invalid.

Count II

Declaratory Judgment of Non-Infringement of the '829 Patent

46. IST incorporates by reference each of the preceding allegations.

47. IST has not infringed the '829 patent for several reasons, including, without limitation, that the APS does not have structure corresponding to or equivalent to the "movement means" limitation of the patent. The APS utilizes a chain drive mechanism, which is fundamentally, structurally and substantially different from the disclosed structures "movement means" corresponding to the claims of the '829 patent. Moreover, the APS lacks a "side channel," a claim element of the '829 patent.

48. IST seeks and is entitled to a declaratory judgment that it is not infringing any valid claim of the '829 patent.

Count III

Declaratory Judgment of Invalidity of '986 Patent

49. IST incorporates by reference each of the preceding allegations.

50. The '986 patent is invalid under 35 USC §103, at least for the reason that locating the movement means for the pucks outside of a zone beneath the slot would have been obvious to one of ordinary skill for preventing dust and debris from falling into the movement means/assemblies.

51. The '986 patent is invalid under 35 USC §112, at least for the reason that the claims fail to particularly point out and distinctly claim the subject matter which applicants regard as their invention.

52. IST reserves the right to assert other grounds for invalidity, including 35 USC §102, based on other evidence which may come to its attention during the course of this matter.

53. IST seeks and is entitled to a declaratory judgment that all claims in the ‘986 patent are invalid.

Count IV

Declaratory Judgment of Non-Infringement of the ‘986 Patent

54. IST incorporates by reference each of the preceding allegations.

55. IST has not infringed the ‘986 patent for several reasons, including, without limitation, the APS does not have structure corresponding to or equivalent to the “movement means” limitation of the patent. The APS utilizes a chain drive mechanism, which is fundamentally, structurally and substantially different from the disclosed structures “movement means” corresponding to the claims of the ‘986 patent. Moreover, the APS lacks a “side channel,” a claim element of the ‘986 patent.

56. IST seeks and is entitled to a declaratory judgment that it is not infringing any valid claim of the ‘986 patent.

Count V

Declaratory Judgment of Invalidity of the ‘278 Patent

57. IST incorporates by reference each of the preceding allegations.

58. The ‘278 patent is invalid under 35 USC §103, at least for the reason that locating the movement means for the pucks outside of a zone beneath the slot would have been obvious to one of ordinary skill for preventing dust and debris from falling into the movement means/assemblies.

59. The ‘278 patent is invalid under 35 USC §112, at least for the reason that the claims fail to particularly point out and distinctly claim the subject matter which applicants regard as their invention.

60 IST reserves the right to assert other grounds for invalidity, including 35 USC §102, based on other evidence which may come to its attention during the course of this matter.

61. IST seeks and is entitled to a declaratory judgment that all claims in the ‘278 patent are invalid.

Count VI

Declaratory Judgment of Non-Infringement of the ‘278 Patent

62. IST incorporates by reference each of the preceding allegations.

63. IST has not infringed the ‘278 patent for several reasons, including, without limitation, the APS does not have structure corresponding to or equivalent to the “movement means” limitation of the patent. The APS utilizes a chain drive mechanism, which is fundamentally, structurally and substantially different from the disclosed structures “movement means” corresponding to the claims of the ‘278 patent.

64. IST seeks and is entitled to a declaratory judgment that it is not infringing any valid claim of the ‘278 patent.

Count VII

Declaratory Judgment of Invalidity of the ‘548 Patent

65. IST incorporates by reference each of the preceding allegations.

66. The ‘548 patent is invalid under 35 USC §103, at least for the reason that locating the movement means for the pucks outside of a zone beneath the slot, would have been obvious to one of ordinary skill for preventing dust and debris from falling into the movement means/assemblies.

67. The '548 patent is invalid under 35 USC §112, at least for the reason that the claims fail to particularly point out and distinctly claim the subject matter which applicants regard as their invention.

68. IST reserves the right to assert other grounds for invalidity, including 35 USC §102, based on other evidence which may come to its attention during the course of this matter.

69. IST seeks and is entitled to a declaratory judgment that all claims in the '548 patent are invalid.

Count VIII

Declaratory Judgment of Non-Infringement of the '548 Patent

70. IST incorporates by reference each of the preceding allegations.

71. IST has not infringed the '548 patent for several reasons, including, without limitation, that the APS does not have structure corresponding to or equivalent to the "movement assemblies" limitation of the patent. The APS utilizes a chain drive mechanism, which is fundamentally, structurally and substantially different from the disclosed structures "movement assemblies" corresponding to the claims of the '278 patent.

72. IST seeks and is entitled to a declaratory judgment that it is not infringing any valid claim of the '548 patent.

Count IX

Declaratory Judgment of Invalidity of the '493 Patent

73. IST incorporates by reference each of the preceding allegations.

74. The '493 patent is invalid under 35 USC § 102 or §103 for numerous reasons, including, without limitation, the following:

- a. A self-contained unit as claimed in the '493 patent was publicly sold by Koskovich Industries as early as 1992, 15 years before the former owner of Koskovich Industries filed for the '493 patent on that product on June 8, 2007.
- b. In the alternative, the self-contained unit as claimed in the '493 patent would have been obvious to one of ordinary skill in the art as was publicly sold by Koskovich Industries as early as 1992, 15 years before the former owner of Koskovich Industries filed for the '493 patent on that product on June 8, 2007.
- c. The '493 patent is invalid under 35 USC §112, at least for the reason that the claims fail to particularly point out and distinctly claim the subject matter which applicants regard as their invention.

75. IST reserves the right to assert other grounds for invalidity, including 35 USC §102, based on other evidence which may come to its attention during the course of this matter.

76. IST seeks and is entitled to a declaratory judgment that all claims in the '493 patent are invalid.

Count X

Declaratory Judgment of Non-Infringement of the '493 Patent

77. IST incorporates by reference each of the preceding allegations.

78. IST has not infringed the '493 patent for several reasons, including, without limitation, that the puck assembly of the APS product is not secured to a plank, and its puck is not operatively coupled to a rotating output member of the motor. Rather, the APS pluck slides along the top of the table, and is operatively connected to a chain. It does not move translationally with respect to the chain, but rather moves with the chain. Moreover, the APS also lacks the plate member and rotating rod limitations of claim 17. And the APS avoids independent claim 24, at least because it lacks a spring connecting the puck to the puck assembly. The APS is not a self-contained unit.

79. IST seeks and is entitled to a declaratory judgment that it is not infringing any valid claim of the '493 patent.

Count XI

Violation of the Antitrust Laws Sherman Act Section 2

80. IST incorporates by reference each of the preceding allegations.

81. On February 7, 2012, the United States Patent and Trademark Office issued to Jerome E. Koskovich U.S. Patent No. 8,109,493 ('493 patent), entitled "Automatic Truss Assembly Jig Setting System." A copy of the Koskovich '493 patent is attached as Exhibit C.

82. The Koskovich '493 patent claims a "self- contained unit" comprising a table segment (referred to as a plank) to which a drive motor and a puck assembly are secured. The puck assembly includes a puck extending above the top surface of the plank. In addition to being secured to the plank, the puck assembly is also "operatively connected" to the rotating output member of the motor "so that rotational movement of the output member of the motor produces translational movement of the puck assembly lengthwise along the top surface of the plank."

83. On information and belief, Jerome E. Koskovich was the owner of Koskovich Industries, which was sold to MiTek.

84. A self-contained unit as claimed in the Koskovich '493 patent was publicly sold as the "Omni Jet Set," by Koskovich Industries as early as 1992, 15 years before Jerome E. Koskovich, the former owner of Koskovich Industries, filed for the '493 patent on that product on June 8, 2007. A publication dated 1992 disclosing the Koskovich Omni Jet Set is attached as the enclosure to Exhibit F.

85. Exhibit G is a page from the 1992 Omni Jet Set publication, on which Claim 1 of the Koskovich '493 patent is super imposed on the Omni Jet Set product. Exhibit G shows that every feature of claim 1 of the Koskovich '493 patent can be found in the 1992 Koskovich Industries Jet Set product.

86. The United States Patent Office was never informed of the prior Koskovich Omni Jet Set product.

87. If the Patent Examiner for the Koskovich '493 patent had been aware of the prior art Koskovich Omni Jet Set, the '493 patent would not have been issued.

88. Upon information and belief, Koskovich and/or Defendants knowingly and deliberately withheld the Koskovich Omni Jet Set information from the Patent Office with the intent to deceive the Patent Examiner into allowing the Koskovich '493 patent.

89. In addition, Defendants were informed by counsel for IST of the existence of the Koskovich Omni Jet Set publication and product as early as January 13, 2016, in a letter from IST counsel Fitch Even to Keith A. Rabenberg of Senniger Powers LLP, counsel for Defendants. Exhibit F.

90. Notwithstanding knowledge of this invalidating prior art and the fact that it had not been disclosed to the US Patent Office, Defendants have filed suit against IST based in part on the Koskovich '493 patent.

91. Such filing is objectively baseless in view of the known invalidating prior Koskovich Omni Jet Set product.

92. Upon information and belief, Defendants filed their baseless suit and have been utilizing the fraudulently obtained Koskovich '493 patent to further their anticompetitive aims in violation of the antitrust laws.

93. Upon information and belief, Defendants hold and/or are aggressively pursuing monopoly power in the Automatic Truss Assembly Jig Setting System industry.

94. IST has been terrorized and forced by the aggressive use of the fraudulently obtained Koskovich '493 patent to refrain from aggressively pursuing the marketing and sale of IST products accused of infringing the Koskovich '493 patent.

95. IST has refrained from pursuing competitive sales from Defendants' customers because of the aggressive use by Defendants of the fraudulently obtained Koskovich '493 patent.

96. IST has been forced to incur considerable sums in legal fees because of the aggressive use by Defendants of the fraudulently obtained Koskovich '493 patent.

97. By their actions, Defendants have violated the antitrust laws of the United States, including, without limitation, Section 2 of the Sherman Act.

Count XII

Violation of the Antitrust Laws Sherman Act Section 1

98. IST incorporates by reference each of the preceding allegations.

99. Defendants have entered into a conspiracy and contract in restraint of trade, to aggressively pursue the enforcement of the fraudulently obtained Koskovich '493 patent for anti-competitive gain in the Automatic Truss Assembly Jig Setting System industry.

100. Defendants have entered into a conspiracy and contract in restraint of trade, to aggressively pursue the enforcement of the Koskovich '493 patent for anti-competitive gain in the Automatic Truss Assembly Jig Setting System industry, knowing since at least January 13, 2016 that the Koskovich '493 patent is invalid in view of the prior art Koskovich Omni Jet Set product, of which the US Patent Office was not made aware.

101. IST has been damaged by such conduct, as set forth above.

102. Such conduct by Defendants constitutes a combination and conspiracy in restraint of trade, in violation of the antitrust laws of the United States, including, without limitation, Section 1 of the Sherman Act.

Affirmative Defenses

103. IST incorporates by reference each of the preceding allegations.

104. Defendants' claims of infringement are barred by laches, waiver, and equitable estoppel for the reasons set forth above.

105. IST does not infringe the patents in suit for the reasons set forth above.

106. IST is not liable for infringement for the reasons set forth above.

107. The scope of Defendants' claims is limited by prosecution history estoppel.

108. The patents-in-suit are unenforceable because of Defendants' unclean hands and inequitable conduct in filing and prosecuting the Koskovich '493 patent application without disclosing to the US Patent Office the Koskovich prior art which was publicly disclosed and sold by Koskovich Industries as early as 1992.

109. The patents-in-suit are invalid because of their misuse by Defendants.

110. The patents-in-suit are invalid under 35 USC §§102, 103, and 112.

111. IST reserves the right to assert other affirmative defenses as they become apparent to IST during the course of this litigation.

WHEREFORE, Plaintiff Integrated Stealth Technology, Inc. (IST) requests that this Court enter Judgment in its favor and against Defendants

a. Declaring that each of the patents-in-suit is invalid.

b. Declaring that IST is not infringing any of the patents-in-suit.

- c. Enjoining Defendants and each of their owners, directors, officers, employees, agents, and all other persons acting in concert or participation with them from suing for infringement or otherwise asserting infringement of any of the patents against IST.
- d. In the amount of the attorneys' fees and costs incurred by IST in connection with this action,
- e. In the amount of three times the damages incurred by IST and, in addition, all other damages and forms of relief allowed by the antitrust laws, and
- f. Awarding such other and further relief that this Court deems just and equitable to render.

Demand for Trial by Jury

Plaintiff Integrated Stealth Technology, Inc. hereby demands that each and every claim and defense raised in this action be tried before a Jury of its peers.

Dated:

6-3-2016

McSHANE & BOWIE, P.L.C.

By: 

Christopher J. Breay (P51646)
Counsel for Plaintiff
99 Monroe Avenue NW, Suite 1100
Grand Rapids, MI 49503
(616) 732-5000
cjb@msblaw.com

James A. Mitchell (P17832)
Mitchell Intellectual Property Law
Co-Counsel for Plaintiff
Watermark Technical Center
1595 Galbraith Avenue SE
Grand Rapids, MI 49546
(616) 965-2430
jamitchell@mitchelliplaw.com

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