IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MINNESOTA

GRUPO PETROTEMEX, S.A. DE C.V. and DAK AMERICAS LLC,

Civil Action No.

Plaintiffs,

COMPLAINT

v.

JURY TRIAL DEMANDED

POLYMETRIX AG,

Defendant.

Plaintiffs Grupo Petrotemex, S.A. de C.V. ("GPT") and DAK Americas LLC ("DAK"), by and through their attorneys, for their Complaint against Defendant Polymetrix AG ("Polymetrix") allege as follows:

PRELIMINARY STATEMENT

1. This is an action for infringement of U.S. Patent Nos. 7,790,840; 7,868,125; and 7,192,545 (collectively, "the Asserted Patents") under the U.S. Patent Act based on Defendant's unauthorized manufacture, use, offer for sale, and sale of polymer processing equipment for the manufacture of polyethylene terephthalate (PET) that utilizes Plaintiffs' patented technologies in the United States.

PARTIES

2. Plaintiff GPT is a sociedad anónima de capital variable organized under the laws of Mexico with a principal place of business at Ricardo Margain No. 444, Torre sur, Piso 16, Col. Valle del Campestre, 66265 San Pedro Garza Garcia, Nuevo León, México. GPT, through its subsidiaries, supplies PET for the manufacture of plastic jars,

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containers, and films for packaging foods and beverages, personal care products, and other consumer products. GPT derives revenue from the sale of PET in the United States by its subsidiaries that are in direct competition with Polymetrix.

3. Plaintiff DAK is a limited liability company organized under the laws of Delaware with a principal place of business at 5925 Carnegie Boulevard, Suite 500, Charlotte, North Carolina 28209. DAK supplies PET resins for use in containers used by many leading branded customer products in the United States and is an exclusive licensee of the Asserted Patents.

4. Upon information and belief, Defendant Polymetrix is a corporation organized under the laws of Switzerland with a principal place of business at Sandackerstrasse 24, 9245 Oberbüren, Switzerland. Polymetrix was formerly named "Bühler Thermal Processes AG" prior to a corporate name change.

JURISDICTION

5. This lawsuit is an action for patent infringement arising under the patent laws of the United States, 35 U.S.C. §§ 1, *et seq*. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

6. Upon information and belief, Defendant Polymetrix is subject to personal jurisdiction in this Court, because Polymetrix has purposefully availed itself of the rights and benefits of Minnesota law, including, for example: (i) employing at least one individual in this judicial district; and (ii) regularly doing business or soliciting business, engaging in other persistent courses of conduct, and deriving substantial revenue from

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products and services provided to individuals in this judicial district and in this state. Attached as Exhibit A are screenshots from the Polymetrix and Bühler Group websites showing that Polymetrix's North American contact (Mike Hendley) is located in Minneapolis, Minnesota. Upon further information and belief, Mr. Hendley is located at 3316 Gettysburg Avenue South, Minneapolis, Minnesota 55426, and Mr. Hendley has and continues to transact business in this judicial district on behalf of Defendant Polymetrix, including, for example, conducting sales and marketing of Polymetrix's processes for the manufacture of PET.

VENUE

7. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391(b) and 1400(b), because Defendant Polymetrix regularly conducts business in this judicial district, has regular and established places of business in this judicial district, and because certain of the acts complained of herein occurred in this judicial district.

FACTS

The Asserted Patents

8. The Asserted Patents generally relate to the crystallization of polymer pellets in the manufacture of PET. Plaintiffs have an extensive patent portfolio relating to crystallization and production technologies used in the manufacture of PET. Such technologies provide substantial efficiencies and advantages in the manufacture of PET.

9. U.S. Patent No. 7,790,840 ("the '840 patent"), entitled Crystallizing Conveyor, was duly and legally issued on September 7, 2010 and names Bruce Roger

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DeBruin and Richard Gill Bonner as the inventors. Attached as Exhibit B is a true and correct copy of the '840 patent.

10. GPT is the assignee of the entire right, title, and interest in the '840 patent.

11. U.S. Patent No. 7,868,125 ("the '125 patent"), entitled Production of Non-Solid-Stated Polyester Particles Having Solid-Stated Properties, was duly and legally issued on January 11, 2011 and names Bruce Roger DeBruin, Tommy Ray Maddox, II, John Alan Wabshall, Jr., Steven Lee Stafford, Stephen Weinhold, Robert Noah Estep, Mary Therese Jernigan, Steven Paul Bellner, Alan George Wonders, and John Guy Franjione as the inventors. Attached as Exhibit C is a true and correct copy of the '125 patent.

12. GPT is the assignee of the entire right, title, and interest in the '125 patent.

13. U.S. Patent No. 7,192,545 ("the '545 patent"), entitled Thermal Crystallization of A Molten Polyester Polymer in A Fluid, was duly and legally issued on March 20, 2007 and names Michael Paul Ekart, Mary Therese Jernigan, Cory Lee Wells, and Larry Cates Windes as the inventors. Attached as Exhibit D is a true and correct copy of the '545 patent.

14. GPT is the assignee of the entire right, title, and interest in the '545 patent.

Defendant's Infringing Activities

15. Upon information and belief, Defendant Polymetrix has and continues to infringe the Asserted Patents by, among other things, manufacturing and selling polymer processing equipment—including instructions on how to operate such equipment—that

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practices Plaintiffs' patented inventions. Such equipment includes at least Polymetrix's EcoSphere[™] technology with melt-to-pellet crystallization.

16. Upon information and belief, Defendant's parent located in Switzerland, third party Bühler Group, has manufactured and sold conventional equipment for manufacturing PET since at least the 1980s. Conventional PET manufacturing facilities typically require equipment for crystallizing the PET pellets and performing solid-state polymerization that is expensive to fabricate and maintain and that occupies a large footprint in the manufacturing plant. Bühler Group sought to provide PET plants to customers that were less expensive to install, operate, and maintain than conventional PET plants. Before the Asserted Patents, Bühler Group did not possess the technology or know-how to successfully provide plants in which molten PET is introduced into a liquid medium with a temperature greater than the glass-transition temperature of PET, PET pellets are crystallized in a pneumatic conveying system, or non-solid-stated PET is produced with solid-state properties.

17. Upon information and belief, in or around 2012-2013, Bühler Group formed Bühler Thermal Processes AG as a separate company to design, engineer, supply, and build plants for customers to manufacture PET. In 2015, Bühler Thermal Processes AG changed its name to Polymetrix AG.

18. Upon information and belief, Defendant Polymetrix's EcoSphereTM process includes introducing molten PET into a liquid medium (*e.g.*, water) having a temperature greater than the glass-transition temperature of PET. The polymer melt has a carboxylic

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acid monomer of at least 80 mol% terephthalic acid and a hydroxyl monomer of at least 80 mol% ethylene glycol. Pellets are formed from the molten PET. The PET pellets are quenched, dried, crystallized, and annealed. Crystallization of the PET pellets occurs using a pneumatic conveying system that transfers the pellets in a conveying gas having a temperature sufficient to substantially initiate or accomplish crystallization. The average bulk temperature of the PET pellets is above 165°C during quenching, drying, crystallizing, and annealing. The intrinsic viscosity of the PET pellets when formed is within about 5% of the intrinsic viscosity of the pellets after annealing. Attached as Exhibit E is a screenshot from Defendant Polymetrix's website describing the $EcoSphere^{TM}$ process with melt-to-pellet crystallization. Additional documents describing the $EcoSphere^{TM}$ technology are attached as Exhibits F and G.

19. Upon information and belief, Defendant (under the name Polymetrix AG or Bühler Thermal Processes AG) has and continues to sell or offer for sale in the United States plants that use the EcoSphere[™] process.

20. Upon information and belief, customers of Defendant (under the name Polymetrix AG or Bühler Thermal Processes AG) have and continue to import into the United States PET manufactured using Defendant's EcoSphereTM process. Such importation constitutes infringement under 35 U.S.C. § 271(g).

21. Defendant Polymetrix was given notice in a letter dated December 31, 2015 that systems and production apparatus it manufactured and sold infringes at least the '840 patent. In a letter to Defendant Polymetrix dated February 12, 2016, Plaintiffs provided

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an exemplary claim chart mapping Defendant's EcoSphere[™] process to claim 1 of the '840 patent.

22. Defendant Polymetrix was given notice on July 7, 2016 of the '125 and '545 patents in connection with its EcoSphere[™] technology.

23. Defendant Polymetrix has knowledge of the existence of the Asserted Patents, and its acts of infringement have been willful and in disregard for the Asserted Patents, without any reasonable basis for believing that it had a right to engage in the infringing conduct.

24. Plaintiffs have suffered damage as a result of Defendant Polymetrix's infringing activities to date. Upon information and belief, Defendant Polymetrix has and will continue to—unless enjoined by this Court—infringe the Asserted Patents by selling, at a minimum, polymer processing equipment (including instructions on how to operate such equipment) using Polymetrix's EcoSphereTM technology with melt-to-pellet crystallization.

25. This is an exceptional case as that term is used in 35 U.S.C. § 285.

COUNT ONE

(Infringement of U.S. Patent No. 7,790,840)

26. Plaintiffs repeat and re-allege paragraphs 1 through 25 hereof, as if fully set forth herein.

27. Defendant Polymetrix, in violation of 35 U.S.C. § 271(b), has been and is indirectly infringing the '840 patent by actively, knowingly, and intentionally inducing

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infringement of the '840 patent by others, including Defendant's customers. Since Defendant has been aware of the '840 patent, Defendant has known and intended that its customers engage in acts of infringement that include the use of Defendant's EcoSphere[™] technology and plants incorporating Defendant's EcoSphere[™] technology. Defendant has been and continues to actively induce direct infringement by, *inter alia*, designing and selling plants and equipment that perform the methods claimed in the '840 patent, by providing instructions to its customers on the use of such plants and equipment in a manner that would directly infringe one or more claims of the '840 patent, and by offering support and technical assistance to its customers that encourage use of such plants and equipment in ways that directly infringe one or more claims of the '840 patent. Attached as Exhibit H is a preliminary claim chart showing by way of non-limiting example how Defendant Polymetrix indirectly infringes at least claim 1 of the '840 patent.

28. Defendant Polymetrix, in violation of 35 U.S.C. § 271(c), has been and is indirectly infringing the '840 patent by actively, knowingly, and intentionally contributing to the infringement of the '840 patent by others, including Defendant's customers. Since Defendant has been aware of the '840 patent, Defendant has known and intended that its customers engage in acts of infringement that include the use of Defendant's EcoSphereTM technology and plants incorporating Defendant's EcoSphereTM technology. Defendant has been and continues to contribute to the infringement of the '840 patent by selling and offering for sale plants and equipment within the United States

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knowing that such plants and equipment are especially made for use in a manner that directly infringes one or more claims of the '840 patent by its customers. The plants and equipment designed and sold by Defendant that perform the methods claimed in the '840 patent constitute a material part of the invention claimed in the '840 patent. Because the EcoSphere[™] process is not performed without, for example, using a pneumatic conveying system as claimed in the '840 patent, there are no substantial non-infringing uses for Defendant's EcoSphere[™] technology or plants incorporating Defendant's EcoSphere[™] technology.

29. Defendant Polymetrix's acts of infringement of the '840 patent have caused and will continue to cause Plaintiffs damages for which Plaintiffs are entitled to compensation pursuant to 35 U.S.C. § 284, including lost profits. But for Defendant's infringement of the '840 patent, Plaintiffs would have sold the PET made using the EcoSphereTM technology to Defendant's customers, and Plaintiffs would have made additional profits.

30. Defendant Polymetrix's infringement of the '840 patent has been and continues to be knowing, intentional, and willful.

31. Defendant Polymetrix's acts of infringement of the '840 patent have caused and will continue to cause Plaintiffs immediate and irreparable harm unless such infringing activities are enjoined by this Court pursuant to 35 U.S.C. § 283. Plaintiffs have no adequate remedy at law.

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COUNT TWO

(Infringement of U.S. Patent No. 7,868,125)

32. Plaintiffs repeat and re-allege paragraphs 1 through 25 hereof, as if fully set forth herein.

33. Defendant Polymetrix, in violation of 35 U.S.C. § 271(b), has been and is indirectly infringing the '125 patent by actively, knowingly, and intentionally inducing infringement of the '125 patent by others, including Defendant's customers. Since Defendant has been aware of the '125 patent, Defendant has known and intended that its customers engage in acts of infringement that include the use of Defendant's EcoSphereTM technology and plants incorporating Defendant's EcoSphereTM technology. Defendant has been and continues to actively induce direct infringement by, *inter alia*, designing and selling plants and equipment that perform the methods claimed in the '125 patent, by providing instructions to its customers on the use of such plants and equipment in a manner that would directly infringe one or more claims of the '125 patent, and by offering support and technical assistance to its customers that encourage use of such plants and equipment in ways that directly infringe one or more claims of the '125 patent. Attached as Exhibit I is a preliminary claim chart showing by way of non-limiting example how Defendant Polymetrix indirectly infringes at least claim 1 of the '125 patent.

34. Defendant Polymetrix, in violation of 35 U.S.C. § 271(c), has been and is indirectly infringing the '125 patent by actively, knowingly, and intentionally

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contributing to the infringement of the '125 patent by others, including Defendant's customers. Since Defendant has been aware of the '125 patent, Defendant has known and intended that its customers engage in acts of infringement that include the use of Defendant's EcoSphereTM technology and plants incorporating Defendant's EcoSphereTM technology. Defendant has been and continues to contribute to the infringement of the '125 patent by selling and offering for sale plants and equipment within the United States knowing that such plants and equipment are especially made for use in a manner that directly infringes one or more claims of the '125 patent by its customers. The plants and equipment designed and sold by Defendant that perform the methods claimed in the '125 patent constitute a material part of the invention claimed in the '125 patent. Because the EcoSphereTM process is not performed without, for example, forming, quenching, drying, crystallizing, and annealing the PET pellets as claimed in the '125 patent, there are no substantial non-infringing uses for Defendant's EcoSphere[™] technology or plants incorporating Defendant's EcoSphereTM technology.

35. Defendant Polymetrix's acts of infringement of the '125 patent have caused and will continue to cause Plaintiffs damages for which Plaintiffs are entitled to compensation pursuant to 35 U.S.C. § 284, including lost profits. But for Defendant's infringement of the '125 patent, Plaintiffs would have sold the PET made using the EcoSphereTM technology to Defendant's customers, and Plaintiffs would have made additional profits.

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36. Defendant Polymetrix's infringement of the '125 patent has been and continues to be knowing, intentional, and willful.

37. Defendant Polymetrix's acts of infringement of the '125 patent have caused and will continue to cause Plaintiffs immediate and irreparable harm unless such infringing activities are enjoined by this Court pursuant to 35 U.S.C. § 283. Plaintiffs have no adequate remedy at law.

COUNT THREE

(Infringement of U.S. Patent No. 7,192,545)

38. Plaintiffs repeat and re-allege paragraphs 1 through 25 hereof, as if fully set forth herein.

39. Defendant Polymetrix, in violation of 35 U.S.C. § 271(b), has been and is indirectly infringing the '545 patent by actively, knowingly, and intentionally inducing infringement of the '545 patent by others, including Defendant's customers. Since Defendant has been aware of the '545 patent, Defendant has known and intended that its customers engage in acts of infringement that include the use of Defendant's EcoSphereTM technology and plants incorporating Defendant's EcoSphereTM technology. Defendant has been and continues to actively induce direct infringement by, *inter alia*, designing and selling plants and equipment that perform the methods claimed in the '545 patent, by providing instructions to its customers on the use of such plants and equipment in a manner that would directly infringe one or more claims of the '545 patent, and by offering support and technical assistance to its customers that encourage use of such

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plants and equipment in ways that directly infringe one or more claims of the '545 patent. Attached as Exhibit J is a preliminary claim chart showing by way of non-limiting example how Defendant Polymetrix indirectly infringes at least claim 1 of the '545 patent.

40. Defendant Polymetrix, in violation of 35 U.S.C. § 271(c), has been and is indirectly infringing the '545 patent by actively, knowingly, and intentionally contributing to the infringement of the '545 patent by others, including Defendant's customers. Since Defendant has been aware of the '545 patent, Defendant has known and intended that its customers engage in acts of infringement that include the use of Defendant's EcoSphereTM technology and plants incorporating Defendant's EcoSphereTM technology. Defendant has been and continues to contribute to the infringement of the '545 patent by selling and offering for sale plants and equipment within the United States knowing that such plants and equipment are especially made for use in a manner that directly infringes one or more claims of the '545 patent by its customers. The plants and equipment designed and sold by Defendant that perform the methods claimed in the '545 patent constitute a material part of the invention claimed in the '545 patent. Because the EcoSphereTM process is not performed without, for example, introducing molten PET into a liquid medium having a temperature greater than the glass-transition temperature of the PET as claimed in the '545 patent, there are no substantial non-infringing uses for Defendant's EcoSphereTM technology or plants incorporating Defendant's EcoSphereTM technology.

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41. Defendant Polymetrix's acts of infringement of the '545 patent have caused and will continue to cause Plaintiffs damages for which Plaintiffs are entitled to compensation pursuant to 35 U.S.C. § 284, including lost profits. But for Defendant's infringement of the '545 patent, Plaintiffs would have sold the PET made using the EcoSphereTM technology to Defendant's customers, and Plaintiffs would have made additional profits.

42. Defendant Polymetrix's infringement of the '545 patent has been and continues to be knowing, intentional, and willful.

43. Defendant Polymetrix's acts of infringement of the '545 patent have caused and will continue to cause Plaintiffs immediate and irreparable harm unless such infringing activities are enjoined by this Court pursuant to 35 U.S.C. § 283. Plaintiffs have no adequate remedy at law.

DEMAND FOR JURY TRIAL

44. Plaintiffs demand a jury trial of all issues in this action so triable.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs request judgment against Defendant Polymetrix as follows:

1. Adjudging that Defendant Polymetrix has infringed the '840, '125, and '545 patents in violation of 35 U.S.C. § 271;

2. Granting an injunction permanently enjoining Defendant Polymetrix, its employees, agents, officers, directors, attorneys, successors, affiliates, subsidiaries and

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assigns, and all of those in active concert and participation with any of the foregoing persons or entities from infringing the '840, '125, and '545 patents;

3. Ordering Defendant Polymetrix to account and pay damages adequate to compensate Plaintiffs for Defendant's infringement of the '840, '125, and '545 patents, with pre-judgment and post-judgment interest and costs, pursuant to 35 U.S.C. § 284;

4. Ordering that the damages award be increased up to three times the actual amount assessed, pursuant to 35 U.S.C. § 284;

5. Declaring this case exceptional and awarding Plaintiffs their reasonable attorneys' fees, pursuant to 35 U.S.C. § 285; and

6. Awarding such other and further relief as this Court deems just and proper.

July 12, 2016

Respectfully Submitted,

NORTON ROSE FULBRIGHT US LLP

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