

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 16-cv-01782-KMT

IQASR, LLC,

Plaintiff,

v.

WENDT, CORP., a New York corporation

Defendant.

FIRST AMENDED VERIFIED COMPLAINT AND JURY DEMAND

Plaintiff IQASR, LLC, files this First Amended Verified Complaint for patent infringement against Defendants Wendt, Corp., and alleges as follows:

PARTIES

1. Plaintiff IQASR, LLC, (“Plaintiff” or “IQASR”), is a Colorado limited liability corporation, having a principal place of business at 1917 15th Ave Greeley, Colorado 80631-5356.

2. Defendant Wendt, Corp., (“Wendt”) is a New York corporation, having a principal place of business at 2555 Walden Ave, Buffalo, NY 14225-4737.

3. American Iron & Metal Co., (“American Iron”) is a Colorado corporation, having a principal place of business at 1801 South La Crosse Avenue/Highway 227 Pueblo County, Colorado 81006. Upon information and belief, American Iron has at least four automobile recycling facilities in the state of Colorado. By virtue of its incorporation under Colorado law,

American Iron is a resident of the State of Colorado. American Iron was listed a co-defendant in the original complaint [ECF. No. 1]; however, by mutual agreement between the Parties, American Iron was dismissed without prejudice. [ECF. No. 24].

JURISDICTION AND VENUE

4. This is an action for patent infringement of United States Patent No. 9,132,432, entitled Isotropic Quantization Sorting Systems of Automobile Shredder Residue to Enhance Recovery of Recyclable Materials.

5. This action arises under the patent laws of the United States of America. *See* 35 U.S.C. 271. This Court has jurisdiction over the subject matter of this action under 28 U.S.C. §§ 1331 and 1338(a).

6. Personal jurisdiction over the Defendant in Colorado is proper under C.R.S. § 13-1-124 and the United States Constitution because Defendant is transacting business in this jurisdiction. Defendant Wendt has further stipulated to the jurisdiction of the Courts of the State of Colorado.

7. In addition, this Court has personal jurisdiction over Defendant because it has knowingly and actively engaged in acts in the forum state that have infringed, will infringe, and/or aided and abetted in the direct and/or indirect infringement of at least claims 1-15, 18-20, and 22 of United States Patent No. 9,132,432. Additionally, this Court has personal jurisdiction over Defendant because it has knowingly and actively engaged in acts in the forum state that contributed to the infringement by others in this District, and/or induced the infringement by others in this District, of at least claims 1-15, 18-20, and 22 of United States Patent No. 9,132,432.

8. Specifically, this Court has personal jurisdiction over Defendants based upon Defendant's sale and/or use of goods and transaction of business in the State of Colorado and sufficient minimum contact with the State of Colorado, and with the District of Colorado, in particular. Upon information and belief, Defendant has transacted business within this district, has committed tortious acts within this district, has committed tortious injury to IQASR in this district, regularly does and/or solicits business in this district, derives revenue from goods used or consumed in this district, engages in other persistent courses of conduct in this district, and is subject to the jurisdiction of this Court.

9. Venue in this Court is proper under 28 U.S.C. §§ 1391(b)–(c) & 1400(b) because Defendant is subject to personal jurisdiction in this District, and therefore a resident of this judicial district; and/or a substantial part of the events giving rise to the claim occurred in this District. Moreover, Defendant Wendt has agreed that venue is proper in this Court.

PATENT-IN-SUIT

10. The patent-in-suit is United States Patent No. 9,132,432 ("the '432 Patent") (Exhibit A). The '432 Patent is directed to the separation of automobile shredder residue ("ASR").

11. IQASR is the current owner by assignment of all rights, title, and interest in and to the '432 Patent.

12. The '432 Patent claims priority to US Patent Application No. 13/274,328 filed on October 15, 2011.

BACKGROUND

13. Approximately 95% of all motor vehicles removed from service are processed for recycling. In the recycling process, cars may be dismantled and stripped of reusable parts. The

stripped cars may be sent to automobile recycling processors where they are crushed into smaller pieces and eventually separated. Metal chunks are recovered and sold to metal scrap and nonferrous metal processing industries. On average, 75% of a vehicle by weight is recycled. The remaining 25% of the vehicle is commonly landfilled.

14. The shredding of automobiles results in a mixture of ferrous metal, non-ferrous metal, (e.g. alloys of copper and aluminum) and a mixture of other materials (e.g. glass, fiber, rubber, plastics and dirt). Some of which was previously thought to not be economically recoverable.

15. During the recycling process, the crushed automobile will first pass through a ferrous sorting recovery system where ferrous metals, such as steel and iron, are removed. Typically, ferrous sorting recovery systems use powerful magnets to separate out large portions of the ferrous metals. The remaining material is generally referred to as Automobile Shredder Residue (hereinafter "ASR"). It should be noted that in some cases, the crushed automobile, prior to passing through a ferrous sorting recovery system, can, at times, also be referred to as ASR.

16. ASR may include a variety of materials such as but not limited to: magnetic fuzz, dirt, non-metallic waste, trash, metals, ferrous metals, nonferrous metals, light trash, heavy trash, glass, plastic, wood, aluminum, copper, zinc, brass, lead, stainless steel, magnesium, nickel, tin, insulated copper wire, any combination thereof, or the like.

17. This ASR, having passed through a ferrous sorting recovery system, can then be introduced to a non-ferrous recovery system where the remaining non-ferrous recyclable materials are sorted for later recovery and recycling. Examples of non-ferrous recovery systems may include, for example, Eddy Current Separators or Induction Sensor Systems, among others.

18. One significant technical issue related to automobile recycling is the presence of what is known in the industry as “magnetic fuzz” in ASR and its efficient removal. The ‘432 Patent addresses this technical issue, among others.

19. A person of ordinary skill in the art will understand the term “magnetic fuzz.”

20. The presence of magnetic fuzz in ASR limits the recovery of otherwise recyclable materials. For example, the presence of magnetic fuzz degrades the effectiveness of Induction Sorting Systems to separate ASR.

21. Utilizing the methods protected in the ‘432 Patent, Plaintiff is able to, among other things, non-magnetically remove magnetic fuzz from ASR in a non-ferrous recovery system such that the magnetic fuzz is substantially free of recyclable materials. This removed magnetic fuzz may be discarded, and the remaining recyclable materials can be sold. Without this patented process, the otherwise recyclable materials would be landfilled.

22. It is estimated that a typical automobile recycling facility can recover approximately two million dollars (\$2,000,000) per year in additional recyclable materials utilizing the process protected by the ‘432 Patent.

23. Non-ferrous recovery systems have not commonly been used to non-magnetically sort magnetic fuzz from ASR where the sorted magnetic fuzz is substantially free of recyclable materials.

24. The inventor of the ‘432 Patent, Dean Andersen (“Andersen”), and his family have been involved in the automobile scrap and salvage industry since 1959.

25. Andersen invented the technology that is embodied in the ‘432 Patent. Andersen invented, among other things, improved methods for the separation of automobile shredder residue.

26. As outlined in independent claim 1 of the ‘432 Patent, among other things, Andersen invented a method of separation of automobile shredder residue that comprises the steps of:

providing automobile shredder residue as a result from a ferrous sorting recovery system; introducing said automobile shredder residue into an automobile shredder residue sorting, non-ferrous recovery system; non-magnetically sorting magnetic fuzz from said automobile shredder residue with said automobile shredder residue sorting, non-ferrous recovery system; wherein said sorted magnetic fuzz is substantially free of recyclable materials.

27. IQASR's efforts to advance ASR separation technology have created significant commercial value, marketplace advantage, and numerous environmental benefits. As a family owned business, the value and marketplace advantage that IQASR derives from its superior ASR separation technology allows it to compete against larger and better financed companies.

28. IQASR is a direct competitor with Defendant Wendt and American Iron in both the automobile recycling equipment, and ASR separation industries respectively.

29. On or about the week of January 7, 2013, a Wendt representative, Amit Dewan, traveled to Greeley, Colorado, to install a sensor separator device that Andersen had purchased from Defendant Wendt. This sensor separator was to be installed at a facility utilizing IQASR's ASR separation technology.

30. During that visit, Mr. Dewan expressed an interest in seeing IQASR's ASR separation technology. Mr. Dewan was given a tour by Andersen, and even took numerous photographs of IQASR's ASR separation technology that was operating on-site.

31. At the time of this visit, IQASR's ASR separation technology was protected by United States Patent No. 8,226,019 (the "'019 Patent") as well as the pendency of the '432 Patent. Both the '019 Patent and the '432 Patent claim priority to a common parent, U.S. Patent Application No. 13/274,328.

32. During this tour, Mr. Dewan was specifically informed by IQASR of the '019 Patent on its ASR separation technology.

33. During this tour, Mr. Dewan was specifically informed by IQASR of the then-pending status of the '432 Patent as to its ASR separation technology.

34. Mr. Dewan specifically took photographs of the patent and patent pending markings on IQASR's ASR separation technology which specifically stated at the time:

U.S. PAT. No. 8226019
Other Patents Pending

(See Exhibit G)

35. From its inspector Mr. Dewan, Wendt was provided information related to the technical capabilities of IQASR's ASR separation technology. Upon information and belief, the photographs taken by Mr. Dewan were provided to Wendt representatives, including senior management.

36. Upon information and belief, Mr. Dewan also disclosed to other Wendt representatives, including senior management, information indicating that IQASR's ASR separation technology was protected by the '019 patent as well as the pending status of the '432 Patent.

37. Upon information and belief, after receiving this information from Mr. Dewan, Wendt set out to duplicate IQASR's ASR separation technology. Specifically, Wendt appears to have intentionally and willfully set out to seize, for its own financial benefit, Andersen's invention embodied in the '432 Patent to usurp IQASR's marketplace advantage.

38. Upon further information and belief, Wendt sought even more information in its efforts to reproduce IQASR's ASR separation technology and so it again sought to gain access to IQASR's technology in Greeley, Colorado, in furtherance of its scheme.

39. On or about Spring 2013, Defendant Wendt contacted IQASR's manager Andersen expressing an interest in IQASR's ASR separation technology. Wendt's interest

indicated a desire to purchase, license or enter into a partnership with respect to IQASR's ASR technology.

40. Upon information and belief, Wendt's representations and/or indications to IQASR and Andersen were misleading, false, and fraudulent, as it had no intention of purchasing, licensing or entering into any type of partnership with IQASR with respect to its ASR separation technology, but merely wanted access to IQASR's proprietary technology in a coordinated effort to steal it.

41. Under the false pretext of being a potential *bona fide* purchaser, licensee and/or partner, on or about late Spring 2013, Wendt representatives, Tim Conway and Dave Kamanski (collectively "Wendt representatives"), traveled to Greeley, Colorado, to again view IQASR's ASR separation technology.

42. Upon information and belief, this pretextual visit was in furtherance of Defendant Wendt's plan to fraudulently gain access to IQASR's ASR separation technology under false pretenses.

43. During this pretextual visit, Wendt's representatives were specifically informed by IQASR of the '019 Patent on its ASR separation technology.

44. During this pretextual visit, Wendt's representatives were specifically informed by IQASR of the then-pending status of the '432 Patent as to its ASR separation technology.

45. During this pretextual visit, Wendt's representatives were specifically directed to the patent and other patent pending markings on IQASR's ASR separation technology. This marking specifically stated at that time:

U.S. PAT. No. 8226019
Other Patents Pending

(See Exhibit G)

46. Defendant Wendt never contacted IQASR or Andersen relative to its ASR separation technology after this visit.

47. Upon information and belief, the information related to the technical capabilities of IQASR's ASR separation technology were provided to Wendt engineers, as well as senior management, in furtherance of its plan to steal and/or replicate IQASR's ASR separation technology for its own commercial benefit.

48. Upon information and belief, Wendt had never before attempted to non-magnetically sort magnetic fuzz from ASR in a non-ferrous recovery system using ASR provided from a ferrous sorting recovery system.

49. In a letter sent to IQASR after service of the Original Complaint (ECF. No. 1), Wendt, through counsel, admitted that it had purchased several third party "air classifiers" (i.e. windsifters) that were installed at their Testing Center in Buffalo, New York. (Exhibit H)

50. These windsifters, or air classifiers, are non-ferrous recovery systems.

51. These windsifters, or air classifiers, are a wind tunnel sorting system.

52. These windsifters, or air classifiers, are a wind tunnel sorting system having a vertical air flow.

53. In that same letter, Wendt, through counsel, further admitted that these windsifters, or air classifiers, that it uses and sells a "vertical separation technique." (*Id.*)

54. Upon information and belief, after September 15, 2015, Wendt made and used an ASR separation system, using vertical Windsifters at its Testing Center in Buffalo, New York, that, among other things:

- provides ASR generated from a ferrous sorting recovery system;

- introduces this ASR into an ASR sorting, non-ferrous recovery system; and
- non-magnetically sorts magnetic fuzz from this ASR with an ASR sorting non-ferrous recovery system such that the sorted magnetic fuzz is substantially free of recyclable materials.

55. Upon information and belief, after September 15, 2015, Wendt made and used an ASR separation system, using vertical Windsifters at its Testing Center in Buffalo, New York that, among other things:

- provides ASR generated from a ferrous sorting recovery system;
- introduces this ASR into an ASR sorting, non-ferrous recovery system; and
- non-magnetically sorts magnetic fuzz from this ASR with an ASR sorting, non-ferrous recovery system such that the sorted magnetic fuzz is substantially free of recyclable materials; and
- where the ASR sorting, non-ferrous recovery system is a wind tunnel sorting system.

56. Upon information and belief, after September 15, 2015, Wendt made and used an ASR separation system, using these vertical Windsifters at its Testing Center in Buffalo, New York that, among other things:

- provides ASR generated from a ferrous sorting recovery system;
- introduces this ASR into an ASR sorting, non-ferrous recovery system; and

- non-magnetically sorts magnetic fuzz from this ASR with an ASR sorting, non-ferrous recovery system such that the sorted magnetic fuzz is substantially free of recyclable materials;
- where the ASR sorting, non-ferrous recovery system is a wind tunnel sorting system; and
- where the wind tunnel sorting system has a vertical air flow.

57. On or about July 2013, in an issue of Recycling Today, Wendt representatives publicly stated that:

“...Wendt is introducing systems that are equipped with air classification to remove the light materials fraction. The air classifiers are operating at the Wendt Test Center and will be incorporated into several systems the company is building this summer...” (Exhibit B at 58 and 62)

58. Upon information and belief, such “air classification systems to remove light materials” were duplications of IQASR’s inventive features embodied in at least claims 1-15, 18-20, and 22 of the ‘432 Patent, and IQASR’s ASR separation technology that was inspected by Mr. Dewan and Wendt’s representatives.

59. Upon information and belief, Wendt ran ASR material through an air classifier to remove the light fraction, or magnetic fuzz, out of the ASR at its Testing Center in Buffalo, New York, after September 15, 2015.

60. On or about October 2013, in an issue of Recycling Today, Defendant published an advertisement stating that at its Wendt Test Center it was:

“...running our material through an air classifier to take a large quantity of the fuzz out...” (Exhibit C)

61. Upon information and belief, Wendt’s action of “running our material through an air classifier to take a large quantity of the fuzz out” was a duplication of IQASR’s inventive

features embodied in at least claims 1-15, 18-20, and 22 of the '432 Patent, and IQASR's ASR separation technology that was previously inspected by Mr. Dewan and Wendt's representatives.

62. Upon information and belief, Wendt ran ASR material through an air classifier to take magnetic fuzz out of the ASR at its Testing Center in Buffalo, New York, after September 15, 2015.

63. Upon information and belief, Wendt continues to make, test, operate, use, cause others to use, sell, and offer for sale systems and methods of separating ASR, including but not limited to: ASR sorting, ferrous sorting recovery systems; ASR sorting, non-ferrous recovery systems; and ASR sorting, non-ferrous recovery systems that non-magnetically sort magnetic fuzz from ASR where the sorted magnetic fuzz is substantially free of recyclable materials. (*See e.g.* Exhibits B-E and I).

64. Defendant Wendt presently makes, uses, causes others to use, sells and offers for sale systems and methods of separating ASR, such as those marketed as Defendant's ASR Windsifter, or any similar products (collectively referred to as "Windsifter" or "Windsifter system"). Wendt specifically advertises its Windsifter system as being "efficient [at the] removal of fuzz and dust." (*See* Exhibits D and I)

65. Upon information and belief, Wendt's marketing its Windsifter system's "efficient removal of fuzz and dust" was a duplication of IQASR's inventive features embodied in at least claims 1-15, 18-20, and 22 of the '432 Patent, and IQASR's ASR separation technology that was previously inspected by Mr. Dewan and Wendt representatives.

66. Upon information and belief, Wendt's Windsifter system is an ASR sorting, non-ferrous recovery system designed to sort magnetic fuzz without the use of magnets such that the sorted magnetic fuzz is substantially free of recyclable materials. Upon further information and

belief, Wendt's Windsifter system is designed to receive ASR from a ferrous sorting recovery system.

67. On or about February 23, 2016, Grant Frasier, a business colleague of Andersen in the ASR separation industry, traveled to Wendt's Testing Center in Buffalo, New York, and met with a Wendt salesperson, William Close.

68. During Mr. Frasier's visit to Wendt's Testing Facility in Buffalo, New York, he personally witnessed the operation of Wendt's Windsifter system, among other equipment.

69. Upon information and belief, during Mr. Frasier's visit to Wendt's Testing Facility in Buffalo, New York, he personally witnessed Wendt perform all of the steps of at least claims 1-15, 18-20, and 22 of the '432 Patent.

70. Mr. Frasier sent a follow up e-mail from the visit and Mr. Close responded to Mr. Frasier's questions (in red) admitting essentially that Wendt's Windsifter system removes magnetic fuzz and functions in an infringing manner. (*See* Exhibit E under questions # 4).

71. In that same communication, a Wendt salesperson confirmed that Wendt's Windsifter system "[c]an be installed on [Mr. Fraiser's] current equipment." (*Id.*).

72. Upon information and belief, both parties understood this communication to mean that ASR from a ferrous sorting recovery system could be introduced to Wendt's Windsifter system, which is an ASR sorting, non-ferrous recovery system, such that it non-magnetically sorts magnetic fuzz from the ASR where the sorted magnetic fuzz is substantially free of recyclable materials.

73. Mr. Frasier confirmed to IQASR that the ASR removal of magnetic fuzz by Wendt's Windsifter system is done non-magnetically and that its separated magnetic fuzz is substantially free of recyclable materials.

74. Upon information and belief, the Windsifter that Mr. Frasier personally witnessed in operation at Wendt's Testing Facility performs all of the steps of at least claims 1-15, 18-20, and 22 of the '432 Patent.

75. Upon information and belief, after September 15, 2015, Mr. Frasier personally witnessed Defendant Wendt operate an ASR separation system, using Windsifters at its Testing Center in Buffalo, New York, that, among other things:

- provides ASR generated from a ferrous sorting recovery system;
- introduces this ASR into an ASR sorting, non-ferrous recovery system; and
- non-magnetically sorts magnetic fuzz from this ASR with an ASR sorting non-ferrous recovery system such that the sorted magnetic fuzz is substantially free of recyclable materials.

76. Upon information and belief, after September 15, 2015, Mr. Frasier personally witnessed Defendant Wendt operate an ASR separation system, using Windsifters at its Testing Center in Buffalo, New York, that, among other things:

- provides ASR generated from a ferrous sorting recovery system;
- introduces this ASR into an ASR sorting, non-ferrous recovery system; and
- non-magnetically sorts magnetic fuzz from this ASR with an ASR sorting, non-ferrous recovery system such that the sorted magnetic fuzz is substantially free of recyclable materials; and
- where the ASR sorting, non-ferrous recovery system is a wind tunnel sorting system.

77. Upon information and belief, after September 15, 2015, Mr. Frasier personally witnessed Defendant Wendt operate an ASR separation system, using Windsifters at its Testing Center in Buffalo, New York, that, among other things:

- provides ASR generated from a ferrous sorting recovery system;
- introduces this ASR into an ASR sorting, non-ferrous recovery system; and
- non-magnetically sorts magnetic fuzz from this ASR with an ASR sorting, non-ferrous recovery system such that the sorted magnetic fuzz is substantially free of recyclable materials;
- where the ASR sorting, non-ferrous recovery system is a wind tunnel sorting system; and
- where the wind tunnel sorting system has a vertical air flow.

78. Upon information and belief, Wendt manufactured and sold an ASR Windsifter system that embodies or practices at least claims 1-15, 18-20, and 22 of the '432 Patent to American Iron for use at its Pueblo automobile recycling facility. Upon further information and belief, Wendt transported and installed this Windsifter system at American Iron's Pueblo automobile recycling facility where it was in operation.

79. Mr. Andersen traveled to observe American Iron's Pueblo facility and personally viewed the operation of a ferrous sorting recovery system, and an ASR sorting, non-ferrous residue recovery system, namely Wendt's Windsifter.

80. Upon information and belief, after September 15, 2015, American Iron operated an ASR separation system using a Wendt Windsifter at its Pueblo, Colorado facility that, among other things:

- provides ASR generated from a ferrous sorting recovery system;

- introduces this ASR into an ASR sorting, non-ferrous recovery system; and
- non-magnetically sorts magnetic fuzz from this ASR with an ASR sorting, non-ferrous recovery system such that the sorted magnetic fuzz is substantially free of recyclable materials.

81. Upon information and belief, after September 15, 2015, American Iron operated an ASR separation system using a Wendt Windsifter at its Pueblo, Colorado facility that, among other things:

- provides ASR generated from a ferrous sorting recovery system;
- introduces this ASR into an ASR sorting, non-ferrous recovery system; and
- non-magnetically sorts magnetic fuzz from this ASR with an ASR sorting, non-ferrous recovery system such that the sorted magnetic fuzz is substantially free of recyclable materials; and
- where the ASR sorting, non-ferrous recovery system is a wind tunnel sorting system.

82. Upon information and belief, after September 15, 2015, American Iron operated an ASR separation system using a Wendt Windsifter at its Pueblo, Colorado facility that, among other things:

- provides ASR generated from a ferrous sorting recovery system;
- introduces this ASR into an ASR sorting, non-ferrous recovery system; and

- non-magnetically sorts magnetic fuzz from this ASR with an ASR sorting non-ferrous recovery system such that the sorted magnetic fuzz is substantially free of recyclable materials;
- where the ASR sorting, non-ferrous recovery system is a wind tunnel sorting system; and
- where the wind tunnel sorting system has a vertical air flow.

83. American Iron's use of the Windsifter product is an unpermitted infringement of IQASR's '432 Patent.

84. Wendt waived service of process on August 9, 2016 (ECF No. 8). As of this date, Wendt had undisputable knowledge of the '432 Patent.

85. After Defendant waived service of the Original Complaint (ECF No. 1), its counsel represented that Wendt had repossessed the Windsifter originally sold to American Iron that was in use at its Pueblo facility. Wendt's counsel further represented that it sold that same Windsifter to a third party automobile recycling facility in Tennessee. Wendt's offer for sale, and execution of that offer of its Windsifter, was taken with full knowledge of the allegations of the Original Complaint as well as the '432 Patent (*See* ECF No. 1 Exhibit A).

86. Upon information and belief, after September 15, 2015, the third party in Tennessee is currently operating an ASR separation system using a Wendt Windsifter in the United States that, among other things:

- provides ASR generated from a ferrous sorting recovery system;
- introduces this ASR into an ASR sorting, non-ferrous recovery system; and

- non-magnetically sorts magnetic fuzz from this ASR with an ASR sorting, non-ferrous recovery system such that the sorted magnetic fuzz is substantially free of recyclable materials.

87. Upon information and belief, after September 15, 2015, the third party in Tennessee is currently operating an ASR separation system using a Wendt Windsifter in the United States that, among other things:

- provides ASR generated from a ferrous sorting recovery system;
- introduces this ASR into an ASR sorting, non-ferrous recovery system; and
- non-magnetically sorts magnetic fuzz from this ASR with an ASR sorting, non-ferrous recovery system such that the sorted magnetic fuzz is substantially free of recyclable materials; and
- where the ASR sorting, non-ferrous recovery system is a wind tunnel sorting system.

88. Upon information and belief, after September 15, 2015, the third party in Tennessee is currently operating an ASR separation system using a Wendt Windsifter in the United States that, among other things:

- provides ASR generated from a ferrous sorting recovery system;
- introduces this ASR into an ASR sorting, non-ferrous recovery system; and
- non-magnetically sorts magnetic fuzz from this ASR with an ASR sorting non-ferrous recovery system such that the sorted magnetic fuzz is substantially free of recyclable materials;

- where the ASR sorting, non-ferrous recovery system is a wind tunnel sorting system; and
- where the wind tunnel sorting system has a vertical air flow.

89. Wendt publicly advertises, among other things, that it provides the following services:

- a full line of spare parts, shredder castings, wear parts and a fully-stocked, multimillion-dollar parts inventory. We also provide a variety of post-sale support services to keep our customers operation up and running at maximum productivity.
- Custom plant design from infeed to downstream separation and automation.
- Extensive array of training and support programs custom-tailored for first time operators.
- ...after-sales support team members are engineers and have hands-on field experience to provide electrical, mechanical and hydraulic trouble-shooting services.
- [a] Dedicated Project Manager for a single customer contact throughout a project.
- “full system integrat[ion].

(Exhibit J)

90. Upon information and belief, after September 15, 2015, Wendt agreed to provide, provided spare parts, as well as maintenance, training, after-sales support, project management and other support services for the ASR Windsifter initially at American Iron's Pueblo facility.

91. Upon information and belief, after August 9, 2016, Wendt provided, and continues to provide spare parts, as well as maintenance, installation and integration, training, after-sales support, project management and other support services, for the ASR Windsifter sold to the third party in Tennessee.

92. Wendt's manufacturing the Windsifter product, as well as any uses, sales, offers to sell, or importation of the same, are unpermitted infringements of IQASR's '432 Patent. It is also an unpermitted act of indirect infringement to make, import, use, sell or offer to sell components that are uniquely adapted for use with its Windsifter system, or that Defendant knows will be used in its Windsifter product.

93. Upon information and belief, after September 15, 2015, Defendant Wendt agreed to provide, provided to American Iron components for use in, and/or repair of, its Windsifter system that practices the processes covered by the '432 Patent. Upon further information and belief, such components constitute a material part of the Windsifter system.

94. Upon information and belief, after August 9, 2016, Defendant Wendt agreed to provide, provided, and continues to provide to the third party in Tennessee, components for use in, and/or repair of, its Windsifter that practices the processes covered by the '432 Patent. Upon further information and belief, such components constitute a material part of the Windsifter.

95. Upon information and belief, Wendt's Windsifter system is a custom built, and highly specialized piece of industrial machinery having a single purpose in the processing of ASR. Upon further information and belief, Wendt's Windsifter system, as well as components for Wendt's Windsifter system, are custom made or especially adapted for use in Wendt's

infringing Windsifter system and are not staple articles or commodities of commerce suitable for any substantial noninfringing use.

96. Upon further information and belief, Wendt's Windsifter has no known non-infringing uses, modes or other configurations.

97. Wendt's business is focused on the Scrap Metal Recycling Industry. (Exhibit J) Upon further information and belief, its products and services do not extend outside this narrow market.

98. Upon information and belief, Wendt intends to continue making, using, selling, offering for sale, or importing its Windsifter system that practices at least one claim of the '432 Patent.

99. Upon information and belief, the third party in Tennessee intends to continue using the Windsifter system that practices at least one claim of the '432 Patent.

COUNT I

INFRINGEMENT OF THE '432 PATENT

100. Plaintiff realleges and incorporates each of the preceding and subsequent paragraphs of this Complaint as if fully set forth herein.

101. IQASR is the owner of all right, title, and interest in the '432 Patent, duly and properly issued by the United States Patent and Trademark Office.

102. The '432 Patent is valid and enforceable, having been validly issued by the United States Patent and Trademark Office after significant examination and analysis by the designated patent examiner.

103. IQASR has never granted Wendt a license to practice any part of the '432 Patent.

104. IQASR has never given Wendt permission to practice any part of the '432 Patent.

105. Upon information and belief, Defendant has infringed at least one claim of the ‘432 Patent by, among other things, performing, making, using, offering to sell, or selling in the United States, or importing into or exporting from the United States, products or services that are covered by at least one or more claims of the ‘432 Patent, on or after September 15, 2015.

106. Upon information and belief, Defendant has willfully infringed at least one claim of the ‘432 Patent by, among other things, performing, making, using, offering to sell, or selling in the United States, or importing into or exporting from the United States, products or services that are covered by at least one or more claims of the ‘432 Patent, on or after August 9, 2016.

107. Upon information and belief, Defendant Wendt has performed every element of at least one of claims 1-15, 18-20, and 22, of the ‘432 Patent in the United States after September 15, 2015. Upon further information and belief, Defendant Wendt continues to perform every element of at least one of claims 1-15, 18-20, and 22, of the ‘432 Patent in the United States.

108. Upon information and belief, Defendant Wendt has performed every element of at least one of claims 1-15, 18-20, and 22, of the ‘432 Patent in the United States after August 9, 2016. Upon further information and belief, Defendant Wendt continues to perform every element of at least one of claims 1-15, 18-20, and 22, of the ‘432 Patent in the United States.

109. Upon information and belief, Defendant Wendt has contributed to and/or induced performance by others of every element of at least one of claims 1-15, 18-20, and 22, of the ‘432 Patent in the United States after September 15, 2015. Upon further information and belief, Defendant Wendt continues to contribute to and/or induce performance by others of every element of at least one of claims 1-15, 18-20, and 22, of the ‘432 Patent in the United States.

110. Upon information and belief, Defendant Wendt has contributed to and/or induced performance by others of every element of at least one of claims 1-15, 18-20, and 22, of the ‘432

Patent in the United States after August 9, 2016. Upon further information and belief, Defendant Wendt continues to contribute to and/or induce performance by others of every element of at least one of claims 1-15, 18-20, and 22, of '432 Patent in the United States.

111. Upon information and belief, Defendant Wendt has infringed the '432 Patent by performing each and every step of at least one claim of the '432 Patent after September 15, 2015, in the United States.

112. Upon information and belief, Defendant Wendt has infringed the '432 Patent by performing each and every step of at least one claim of the '432 Patent after September 15, 2015, at its Test Center located in Buffalo, New York.

113. Upon information and belief, after September 15, 2015, Defendant Wendt provided ASR from a ferrous sorting recovery system generated at its Test Center located in Buffalo, New York.

114. Upon information and belief, after September 15, 2015, Defendant Wendt provided ASR from a ferrous sorting recovery system generated at a facility within the United States under its direction and/or control.

115. Upon information and belief, after September 15, 2015, Defendant Wendt was provided ASR from a ferrous sorting recovery system generated by third parties in the United States at the direction and/or control of Wendt, and shipped to its Test Facility in Buffalo, New York, where it was introduced into a non-ferrous recovery system such as a Wendt Windsifter or other Wendt non-ferrous recovery system.

116. Upon information and belief, Wendt's Windsifter system is designed specifically to receive ASR from a ferrous sorting recovery system and non-magnetically sort magnetic fuzz from this ASR, such that the sorted magnetic fuzz is substantially free of recyclable materials.

117. Upon information and belief, Defendant Wendt has knowledge that its infringing Windsifter system was especially made and designed to infringe the '432 Patent, and moreover cannot be modified to operate in a non-infringing manner.

118. Upon information and belief, Wendt's Windsifter system is designed specifically to receive ASR from a ferrous sorting recovery system and cannot be modified to cease non-magnetically sorting magnetic fuzz such that it is substantially free of recyclable materials. Upon further information and belief, Defendant Wendt has knowledge that its Windsifter system is a highly specialized industrial product produced for a niche market and does not have any suitable non-infringing uses.

119. Upon information and belief, American Iron, among others, has performed every step of at least one of claims 1-15, 18-20, and 22, of the '432 Patent in the United States after September 15, 2015.

120. Upon information and belief, a third party in Tennessee purchased an infringing Wendt Windsifter that was repossessed by Wendt. Upon further information and belief, Wendt assisted in the sale and installation and continued maintenance, service, warranties, and production of spare parts for this third party in Tennessee.

121. Upon information and belief, the third party in Tennessee has been induced to directly infringe by performing every step of at least one of claims 1-15, 18-20, and 22, of the '432 Patent in the United States after September 15, 2015.

122. Defendant Wendt has directly infringed at least one claim of the '432 Patent, either literally or under the doctrine of equivalents.

123. Defendant Wendt has infringed at least one claim of the '432 Patent, by contributing to the direct infringement of American Iron, the third party in Tennessee, and others.

124. Defendant Wendt has infringed at least one claim of the '432 Patent, by knowingly and with specific intent inducing direct infringement of the '432 Patent by American Iron and the third party in Tennessee.

125. Upon information and belief, Defendant's infringement of at least one claim of the '432 Patent was deliberate and willful.

126. Upon information and belief, Defendant lacks a good faith belief that their activities do not infringe at least one claim of the '432 Patent.

127. At least as early as January 13, 2013, Defendant Wendt was aware of IQASR's prior '019 Patent.

128. Upon information and belief, Defendant Wendt knew, or should have known, that the prior '019 Patent and the '432 Patent both claimed priority to US Patent Application No. 13/274,328 filed on October 15, 2011, such information being publicly available and easily accessible by even a lay person.

129. Upon information and belief, Wendt had easy access to, and/or direct knowledge of, the entire prosecution history of the '432 Patent which was publicly disclosed by the United States Patent Office on April 18, 2013. (*See* Exhibit F, which is a true and correct copy of the Notice of Publication issued by the USPTO.)

130. Defendant's infringement was deliberately done with knowledge of the '432 Patent at the time of the infringement.

131. Upon information and belief, Defendant Wendt or its representatives accessed the publicly available prosecution histories of the '019 and '432 Patents, and further had knowledge that the '432 Patent was granted on September 15, 2015. Upon further information and belief, despite this knowledge, Defendant Wendt continued with its directly and indirectly infringing actions.

132. Upon information and belief, Wendt knew that by performing the steps covered by the '432 Patent, it could achieve an improved recovery of recyclable materials from any processed ASR, and therefore it sought and obtained sales for its Windsifter system.

133. Upon information and belief, Defendant Wendt has sold multiple infringing Windsifter systems to others.

134. Upon information and belief, Defendant's sale, installation, continuing maintenance, and support of its infringing Windsifter provided to American Iron, the third party in Tennessee, and others, were all done with knowledge that its actions would induce and/or contribute to direct infringement by others. Such continued assistance, for which Wendt was paid, represents culpable conduct that directly encouraged American Iron and the Tennessee third party to directly infringe by helping them continue to process ASR in violation the '432 Patent.

135. Defendant's acts of continuing infringement, including the sale of the Windsifter that was repossessed from American Iron and sold to a third party in Tennessee, were done after formal service of the Original Complaint in this action, and as such were taken with knowledge of the '432 Patent.

136. Defendant Wendt's participation in the sale of an infringing Windsifter system after service of the Original Complaint in this matter was reckless and taken with knowledge that

such actions posed a substantial and unjustified risk and were taken in subjective bad faith. Moreover, such actions show that Defendant Wendt continued to act, despite a risk of infringement that was obvious on its face.

137. Defendant Wendt actively knew of and reviewed the prosecution history of the ‘432 Patent, up to and including the time of the ‘432 Patent’s allowance and issuance. Upon information and belief, Defendant’s infringement was deliberately done with willful blindness as to the existence of the ‘432 Patent.

138. Upon information and belief, Wendt intentionally and deliberately took action not to investigate the presence of “other patents pending” despite being placed on notice of the existence of the ‘019 Patent and the pendency of the ‘432 Patent. (See Exhibit G).

139. Upon information and belief, Defendant Wendt knew there was a high probability that IQASR had already been granted, or would be granted, additional patents in addition to the ‘019 Patent, but deliberately and intentionally refused, and directed its representatives to refrain from accessing, the publicly available USPTO records that would have confirmed that fact.

140. Defendant Wendt took deliberate action to prevent investigation into the presence of “other patents pending” despite being placed on notice of the existence of the ‘019 Patent and the pendency of the ‘432 Patent. Such action included intentionally refraining from seeking counsel to investigate the effect of the ‘019 Patent on their ASR separation technology, as well as the presence of “other patents pending” of which they were advised.

141. Upon information and belief, Defendant Wendt intentionally and deliberately took action to not to investigate and/or confirm the high probability that IQASR had been, or would have been, granted additional patents, including the ‘432 Patent. Upon further information and belief, Defendant Wendt intentionally and deliberately directed its representatives not to

investigate and/or confirm the high probability that IQASR had been granted, or would have been granted, additional patents, including the ‘432 Patent.

142. Upon information and belief, Defendant Wendt intentionally and deliberately chose not to investigate or review the USPTO records concerning the ‘432 Patent, up to and including the time of the ‘432 Patent’s allowance, despite their knowledge of its existence.

143. Defendant has profited through infringement of IQASR’s ‘432 Patent.

144. Defendant’s infringement of the ‘432 Patent has damaged and will continue to damage Plaintiff IQASR, as the infringing activity is ongoing.

145. Defendant Wendt intends to continue their unlawful infringing activity, and IQASR continues to and will continue to suffer irreparable harm— for which there is no adequate remedy at law—from such unlawful infringing activity unless Defendant Wendt is enjoined by this Court.

146. Plaintiff IQASR has expended significant labor, skill and money to develop the technological advancements in ASR separation, some of which are embodied in the ‘432 Patent, among others.

147. IQASR has realized significant commercial value and marketplace advantage from its advancements in ASR separation technology.

148. Defendant Wendt fraudulently, unlawfully, and unfairly gained access to IQASR’s ASR separation technology under false pretenses in an effort to wrongfully capitalize on its commercial value and gain an unfair marketplace advantage against IQASR.

149. Defendant Wendt’s wrongful actions have misappropriated business, sales, and licensing opportunities that were created by Plaintiff through expenditure of its time, labor and skill in developing its ASR separation technologies.

150. Defendant Wendt's wrongful actions have misappropriated Plaintiff's business and marketplace advantage and time, labor, and money expenditures in obtaining patent protection for its ASR separation technologies.

151. Defendant Wendt intends to continue to wrongfully capitalize on IQASR's commercial value and gain an unfair marketplace advantage while IQASR continues to and will continue to suffer irreparable harm—for which there is no adequate remedy at law—from such unlawful infringing activity unless Defendant Wendt is enjoined by this Court.

152. Defendant Wendt's actions of fraudulently gaining access to IQASR's ASR separation technology under false pretenses in order to steal it were done willfully, in bad faith, and are contrary to honest industrial or commercial practice, and violate society's concepts of fair play.

153. Defendant Wendt intends to continue to wrongfully benefit from its dishonest industrial or commercial practices while IQASR continues to and will continue to suffer irreparable harm—for which there is no adequate remedy at law—from such unlawful infringing activity unless Defendant Wendt is enjoined by this Court.

JURY DEMAND

154. Plaintiff IQASR hereby demands a jury trial on all triable issues.

PRAYER FOR RELIEF

WHEREFORE, IQASR prays for judgment and seeks relief as follows:

- 1) The Court declare that Defendant has infringed the exclusive rights granted to IQASR that are disclosed by the claims of the '432 Patent;
- 2) The Court declare that the '432 Patent is valid and enforceable;

3) The Court enjoin Defendant preliminarily and permanently against further infringement of the '432 Patent by Defendant, its officers, agents, servants, employees, affiliates, subsidiaries, licensees, successors and assigns, and those persons acting in concert with it, including related individuals and entities, customers, representatives, dealers, and distributors;

4) That Defendant Wendt pay IQASR restitution, in an amount according to proof;

5) That Defendant Wendt pay the Plaintiff IQASR's actual damages and losses;

6) That Defendant Wendt account to IQASR for any and all gains, gross receipts, profits, and advantages attributed to or derived by it as a result of the activities complained of in this Complaint, according to proof;

7) The Court award to IQASR damages in an amount adequate to compensate it for Defendant's infringement of the '432 Patent, but in no event less than a reasonable royalty pursuant to 35 U.S.C § 284;

8) The Court award to IQASR its costs, and pre- and post-judgment interest on its damages, pursuant to 35 U.S.C. § 284;

9) The Court declare this case to be exceptional and award IQASR its reasonable attorney fees and costs under 35 U.S.C. § 285, as interpreted by the US Supreme Court in *Octane Fitness, LLC v. ICON Health & Fitness, Inc.*, 134 S. Ct. 1749 (2014) and others;

10) The Court declare that Defendant's acts of infringement, inducement of infringement, and/or contributory infringement of the '432 Patent have been willful;

11) The Court increase all damages awarded to IQASR in this case to three times the damages amount found by the jury or assessed by this Court pursuant to 35 U.S.C. § 284; and

12) The Court award to IQASR such other and further relief as the Court may deem just and proper.

Dated: October 4, 2016.

SANTANGELO LAW OFFICES P.C.

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Attorneys for Plaintiff *IQASR, LLC*

VERIFICATION

I, Dean Andersen, as owner and Manager of the Plaintiff, IQASR, LLC, hereby verify and state that I have reviewed the above allegations in this First Amended Complaint and that to my knowledge all such allegations are true and correct.

IQASR, LLC

By: Dean Andersen 10/3/16
Dean Andersen, Owner and Manager

CERTIFICATE OF SERVICE

I hereby certify that on this 4th day of October, 2016, the foregoing **FIRST AMENDED VERIFIED COMPLAINT AND JURY DEMAND** was filed via ECF, which automatically serves a true and accurate copy of that **FIRST AMENDED VERIFIED COMPLAINT AND JURY DEMAND** to the following:

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