

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

ECOLAB USA INC.,

Plaintiff,

v.

TERMINIX COMPANY INC.,
TERMINIX COMPANY OF EAST
CAROLINA, INC., TERMINIX COMPANY
OF NORTH CAROLINA, INC.,
TERMINIX NO. 157, INC.,
TERMINIX SERVICE II, INC., and
TERMINIX SEVA, INC.,

Defendants.

Civil Action No. _____

JURY TRIAL DEMANDED
INJUNCTIVE RELIEF REQUESTED

COMPLAINT

The Plaintiff, and for its Complaint against Defendants, states and alleges as follows:

PARTIES

1. Plaintiff Ecolab USA Inc. (“Ecolab”) is incorporated in the state of Delaware and has a principal place of business at Ecolab Center, 370 North Wabasha Street, St. Paul, Minnesota 55201.

2. Terminix Company Inc., Terminix Company of East Carolina, Inc., Terminix Company of North Carolina, Inc., Terminix No. 157, Inc., Terminix Service II, Inc., and Terminix Seva, Inc. are collectively referred to as the “Defendants.”

3. Upon information and belief, the Defendants are all active corporations that are commonly owned and controlled by the same individual.

4. Upon information and belief, Terminix Company Inc., and Terminix Seva, Inc. are corporations incorporated in the state of Virginia with an office location at 2709 Breezewood Avenue, Fayetteville, North Carolina, 28303.

5. Upon information and belief, Terminix Company of East Carolina, Inc., Terminix Company of North Carolina, Inc., Terminix No. 157, Inc., and Terminix Service II, Inc., are corporations incorporated in the state of North Carolina with an office location at 2709 Breezewood Avenue, Fayetteville, North Carolina, 28303.

JURISDICTION AND VENUE

6. This is an action for patent infringement arising under the patent laws of the United States of America, 35 U.S.C. § 1, et seq., including 35 U.S.C. §§ 271 and 282-85.

7. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a) in that this is a civil action arising out of the patent laws of the United States of America.

8. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391(b)-(c) and 1400. This court has personal jurisdiction over the Defendants. There is specific jurisdiction over the Defendants in this judicial district. Among other things, the Defendants purchased the Hetta Portable Thermal Chamber, which is the device used for infringement, in this District from Hetta Solutions, Inc., which at the time of the sale was a Minnesota corporation. The device Defendants purchased and used for infringement could only be purchased in this District. Defendants availed themselves of this District by, upon information and belief, negotiating and consummating at transaction within this District for the device used for infringement.

COUNT I - INFRINGEMENT OF U.S. PATENT NO. 9,226,489

9. Plaintiff restates the allegations set forth in paragraphs 1-8 and incorporates them herein by reference.

10. On January 5, 2016, United States Patent No. 9,226,489 B2 (hereinafter “the ’489 patent”) entitled HEAT SYSTEM FOR KILLING PESTS was duly and legally issued to Ecolab USA Inc. Since that date, Ecolab USA Inc. has owned right, title, and interest in the ’489 patent. A copy of the ’489 patent is attached hereto as Exhibit A.

11. The Defendants use the Hetta Portable Thermal Chamber during service calls to treat bed bug infestations in homes. This use, and the related sale and offer for sale of services using the Hetta Portable Thermal Chamber, directly infringes one or more claims of the ’489 patent, including but not limited to claims 17-32, 35-36, 38-40, and 42-44.

12. The Defendants’ use of the Hetta Portable Thermal Chamber was previously referenced by name and advertised on the Defendants’ website, at <http://www.insect.com/residential-services/bed-bug-control/bed-bug-heat-treatment>, as follows:

Bed Bug Heat Treatment

Portable Bed Bug Heat Treatment by Terminix®

Often found in small cracks near a bed or in comforters, bed bugs are tiny parasites that feed on human blood and leave behind itchy welts in their wake. At Terminix®, we offer our clients from Tidewater, VA to Eastern NC complete protection against bed bugs and bed bug bites with our portable thermal chamber.

Hetta Solutions: Complete Bed Bug Heat Treatment

The Hetta Solutions portable system uses extreme heat to kill all life stages of bed bugs within six to eight hours of its implementation. Its insulated canvas material ensures heat loss inside the enclosure is kept to a minimum and a control box allows us to monitor the temperature in all locations of the enclosure.

Other aspects of our 8’ x 8’ x 7’ tall inflated “heat tent” include:

- Reduced use of pesticides

- Insect-proof zippers
- Carefully controlled temperatures
- Large design ideal for bed springs, mattresses
- Safe for leather, suede and artwork
- Works well with encapsulation
- Will not harm electronic equipment
- Saves items difficult to replace

13. Ecolab sent the Defendants a letter on October 12, 2016 informing them of the '489 patent and putting them on notice that the Defendants' use of the Hetta Portable Thermal Chamber fell within several claims of the '489 patent.

14. After being notified by Ecolab of alleged infringement of the '489 patent, the Defendants modified the website such that it no longer references "Hetta" by name, but still refers to the use of the enclosure for bed bug remediation. The description of the heat chamber treatment includes the same eight features that were previously referenced on the website:

Bed Bug Heat Treatment

Heat Chamber Treatment by Terminix®

Often found in small cracks near a bed or in comforters, bed bugs are tiny parasites that feed on human blood and leave behind itchy welts in their wake. At Terminix®, we offer our clients from Tidewater, VA to Eastern NC complete protection against bed bugs and bed bug bites with heat chamber system treatments.

Complete Bed Bug Heat Treatment

Our heat chamber system uses hot air to effectively kill bed bugs in all life stages, in hours.

Other aspects of our heat chamber treatment include:

- Reduced use of pesticides
- Insect-proof zippers
- Carefully controlled temperatures
- Large design ideal for bed springs, mattresses
- Safe for leather, suede and artwork
- Works well with encapsulation
- Will not harm electronic equipment
- Saves items difficult to replace

15. The Defendants have infringed the '489 patent by using the Hetta Portable Thermal Chamber during bed bug service calls. The Defendants have also infringed the '489 patent by selling and offering for sale bed bug remediation services that use the Hetta Portable Thermal Chamber. The Defendants have used the Hetta Portable Thermal Chamber in a method that embodies the invention of the '489 patent, including at least claims 17-32, 35-36, 38-40, and 42-44.

16. The Defendants are aware of the '489 patent and have been aware of the '489 patent at least since receiving Ecolab's letter of October 12, 2016. The Defendants have knowingly made use of the Hetta Portable Thermal Chamber in a method that is claimed in the '489 patent.

17. Ecolab has been damaged by the Defendants' infringement of the '489 patent in an amount to be proven at trial and will continue to be damaged in the future unless the Defendants are permanently enjoined from infringing the '489 patent.

18. Since at least as early as receiving Ecolab's letter of October 12, 2016, the Defendants have been aware that the '489 patent was duly and legally issued and that continued use, sale, and/or offer for sale of services using the Hetta Portable Thermal Chamber infringes the '489 patent.

19. The Defendants' infringement of the '489 patent is now and has been willful since at least the date Defendants received Ecolab's letter of October 12, 2016.

20. By reason of the Defendants' willful infringement, Ecolab is entitled to recover actual damages, treble damages, attorneys' fees, and the costs of this litigation pursuant to 35 U.S.C. §§ 284 and 285 and injunctive relief pursuant to 35 U.S.C. § 283.

PRAYER FOR RELIEF

WHEREFORE, Ecolab prays for judgment that:

A. United States Patent No. 9,226,489 is valid and has been infringed by the Defendants;

B. The Defendants and their officers, agents, servants and employees, and those persons in active concert or participation with any of them, be enjoined from further infringing United States Patent No. 9,226,489;

C. An accounting be had for the damages arising out of the Defendants' infringement of United States Patent No. 9,226,489, including treble damages for willful infringement as provided by 35 U.S.C. §§ 284 and 285, with interest;

D. The Defendants, their officers, agents, servants and employees, and those persons in active concert or participation with any of them, be enjoined from continued use, importation, offer for sale, or sale of any products used to infringe said patents;

E. Ecolab be awarded its attorneys' fees, costs, and expenses in this action;

F. Ecolab be awarded such other and further relief as this Court may deem necessary and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury of all issues so triable.

Dated this 23rd day of January, 2017

Respectfully submitted,

ECOLAB USA INC.

By its attorneys,

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