

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

PREMIER TECH TECHNOLOGIES
LIMITED,

Plaintiff,

v.

DURAVANT LLC,
f/k/a FISCHBEIN LLC,

Defendant.

Case No. 1:17-cv-00643-MHC

Jury Trial Demanded

FIRST AMENDED COMPLAINT

Plaintiff Premier Tech Technologies Limited, by and through its undersigned counsel, brings this action for patent infringement against Duravant LLC, and alleges as follows:

PARTIES

1. Premier Tech Technologies Limited (“Premier Tech”) is a corporation organized and existing under the laws of Canada having its principal place of business at 1, Avenue Premier, Rivière-du-Loup (Québec), G5R 6C1, Canada.

2. Defendant Duravant LLC (“Duravant” or “Defendant”) is a limited liability company organized under the laws of the State of Delaware, with its principal place of business at 3500 Lacey Road, Suite 290, Downers Grove, Illinois 60515. Duravant maintains offices in Georgia at 410 Horizon Drive, Suite 200, Suwanee, Georgia 30024, and further maintains a registered agent for service of process at Corporate Service Company, 40 Technology Pkwy South, #300, Gwinnett, Norcross, GA 30092.

3. On information and belief, until about 2013 Fischbein LLC (“Fischbein”) was a limited liability company organized under the laws of the State of Delaware, with a principal place of business at 410 Horizon Drive, Suite 200, Suwanee, Georgia 30024. As set forth in more detail below, Fischbein is now wholly owned by Duravant.

FACTUAL ALLEGATIONS

Background of Premier Tech

4. Premier Tech designs and manufactures industrial equipment. For more than ninety years Premier Tech has served customers around the world in three core industries: Horticulture and Agriculture – greenhouse production, agriculture, and lawn and garden; Industrial Equipment – rigid and flexible

packaging, material handling, and palletizing; and Environmental Technologies – wastewater treatment and rainwater harvesting.

5. Premier Tech’s Industrial Equipment Group is an industry leading manufacturer of industrial rigid and flexible packaging and material handling equipment and provides completely integrated packaging lines that it designs, manufactures, and integrates to meet its customer demands.

6. Premier Tech has a long history of technical innovation and its specific contributions to the state of the art of rigid and flexible packaging and material handling equipment have substantially changed how companies fill, package, seal, and transport products in a wide variety of industries.

7. In connection with its research and development efforts to improve packaging and material handling equipment, Premier Tech has developed multiple innovative technologies including those protected by the valid and subsisting United States patents referenced below.

Defendant Duravant’s Corporate Structure

8. Fischbein has been a long time competitor of Premier Tech by providing similar industrial packaging equipment. (*See Exhibit A*).

9. On information and belief, in or around May 2013, Odyssey Investment Partners, LLC (“Odyssey”)—a New York-based private equity firm—acquired Fischbein.

10. On information and belief, in or around the fourth quarter of 2014, Odyssey formed the portfolio company Duravant, creating the “Duravant family of operating companies” which “serve the food processing, packaging and material handling [markets].” (*See Exhibit B*)

11. On information and belief, Odyssey added Fischbein to the “Duravant family of operating companies” where Fischbein operated under the title “Fischbein Americas, A Division of Fischbein LLC.”

12. On information and belief, in or around May 2015 Duravant acquired Hamer LLC, a Plymouth, Minnesota based manufacturer of packaging equipment specializing in automated bagging systems, fillers, sealers and robotic palletizers. At the time, Hamer LLC was a limited liability company organized under the laws of the State of Delaware.

13. In or around December 2015, Duravant filed notice with individual secretaries of state, including the Georgia Secretary of State, amending Fischbein LLC’s application to transact business in the state (or its local equivalent) to change its name to “Duravant LLC.”

14. Duravant continues to market, distribute, and service products designed, manufactured, and sold by Fischbein LLC under the “Fischbein” trade name.

15. On information and belief, in or around January, 2016, Duravant changed Hamer LLC’s name to Hamer-Fischbein LLC.

16. On information and belief, Duravant LLC and Hamer-Fischbein LLC are wholly owned subsidiaries of Odyssey Investment Partners LLC.

17. On information and belief, Defendant Duravant LLC, by and through the various entities identified herein and their affiliates, designs, manufactures, uses, offers for sale, sells, and services the accused products identified below under the “Fischbein” trade name.

18. Plaintiff acknowledges that additional transactions, impacting the corporate structure or ownership of the entities identified above, may not be publically available, but, on information and belief, the foregoing accurately represents the entities involved in designing, manufacturing, using, selling, and offering for sale the equipment accused of infringement herein.

Jurisdiction and Venue

19. This is an action for patent infringement arising under the patent laws of the United States, 35 U.S.C. § 1, *et seq.*, including 35 U.S.C. § 271. This Court

has original and exclusive subject matter jurisdiction over the patent infringement claims for relief under 28 U.S.C. §§ 1331, 1338(a).

20. Personal jurisdiction exists generally over Duravant because Duravant's contacts with this District are significant and pervasive. Duravant has conducted business continuously and systematically in the State of Georgia and in this judicial district for many years and, on information and belief, continues to conduct that business actively today. On information and belief, prior to being acquired by Duravant, Fischbein maintained its principal place of business in this District at 410 Horizon Drive, Suite 200, Suwanee, GA 30024 until at least 2013; Duravant continues to maintain a manufacturing facility in Georgia at that same address. Furthermore, Fischbein has been, and is currently, registered to do business in Georgia, having maintained that registration since at least 2005. Fischbein, like Duravant, also has a registered agent for service of process at Corporate Service Company, 40 Technology Pkwy South, #300, Gwinnett, Norcross, GA 30092. All of these facts render Duravant essentially at home in the forum and support the exercise of general personal jurisdiction over it.

21. Venue is proper in this Court under 28 U.S.C. § 1391 as well as 28 U.S.C. § 1400(b).

The Patents-in-Suit

22. Premier Tech is the owner of the entire right, title, and interest in and to U.S. Patent No. 8,974,109 (the “‘109 Patent”), entitled “*Blending Scale*” which was duly issued by the United States Patent and Trademark Office on March 10, 2015. A copy of the ‘109 Patent is attached as Exhibit C.

Defendant’s Wrongful Conduct

23. Duravant designs, manufactures, uses, imports, offers for sale, and/or sells equipment under the Fischbein trade name throughout the United States that directly competes with offerings from Premier Tech.

24. The products offered by Fischbein relevant to this action are the products referred to below as Blending Scales.

25. Defendant sells multiple “Blending Scales” products, including by way of example, the “RSV-100 Simplex,” “RDV-100 Duplex,” “8800 RGVS Simplex,” and “8800 RGVD Duplex” (collectively, the “Fischbein Blending Scales” or “FBS”):



Figure 1

(See Exhibit D).

26. Defendant has been aware of Premier Tech’s claims herein since as early as April 4, 2012, when Premier Tech—via letter to then Fischbein’s President & CEO Jeffrey F. Reed—notified Fischbein that its equipment included features covered by Premier Tech’s published pending U.S. patent application, U.S. Pub. No. 2012/0026824. (See Exhibit E).

27. That patent application ultimately issued as the ‘109 Patent. (See Exhibit C).

28. On July 24, 2015, Premier Tech sent another letter to Defendant, providing actual notice of the ‘109 Patent to Defendant. (See Exhibit F).

29. Defendant has directly infringed, contributed to the infringement of, and/or continues to induce users of the FBS to infringe, one or more claims of the ‘109 Patent, by intentionally developing, making, using, marketing, advertising, providing, sending, importing, distributing, and/or selling the FBS and

accompanying documentation, materials, components, training, or support and aiding, abetting, encouraging, promoting or inviting the use thereof.

30. The FBS include all elements of, for example, claim 9 of the '109 Patent.

31. By way of example, claim 9 of the '109 Patent recites “[a] blending scale for dosing and blending a main product and an auxiliary product, the blending scale.”

32. The FBS are blending scales utilized for dosing and blending a main product through a main product feeding system, and at least one auxiliary product, through an auxiliary product feeding system.

33. The FBS are designed to “automatically blend seeds from two different supply hoppers” (*See, e.g.*, Exhibit G) (hereinafter “Product Webpage”) achieving “homogenous blending of major and refuge corn hybrids (top to bottom and front to back) [with] ultra high accuracy scale weighments.” (Exhibit H, Fischbein RIB Scale Handout_sm, Dated Nov. 2, 2011, at *13 (hereinafter “Scale Handout”)):

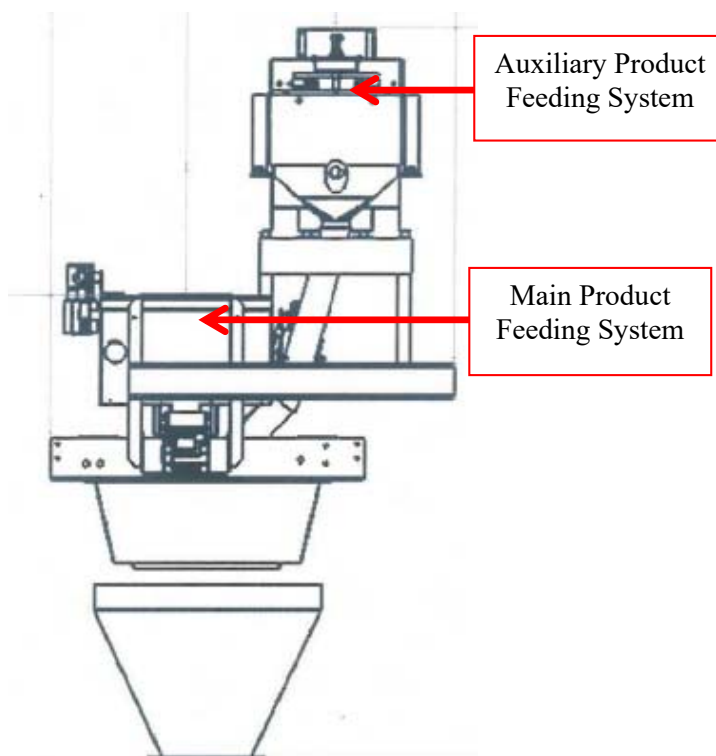


Figure 2

(Scale Handout, at *11).

34. The FBS include Auxiliary Product Dosing Device, an Auxiliary Product Dispenser, and a Blend Collector:

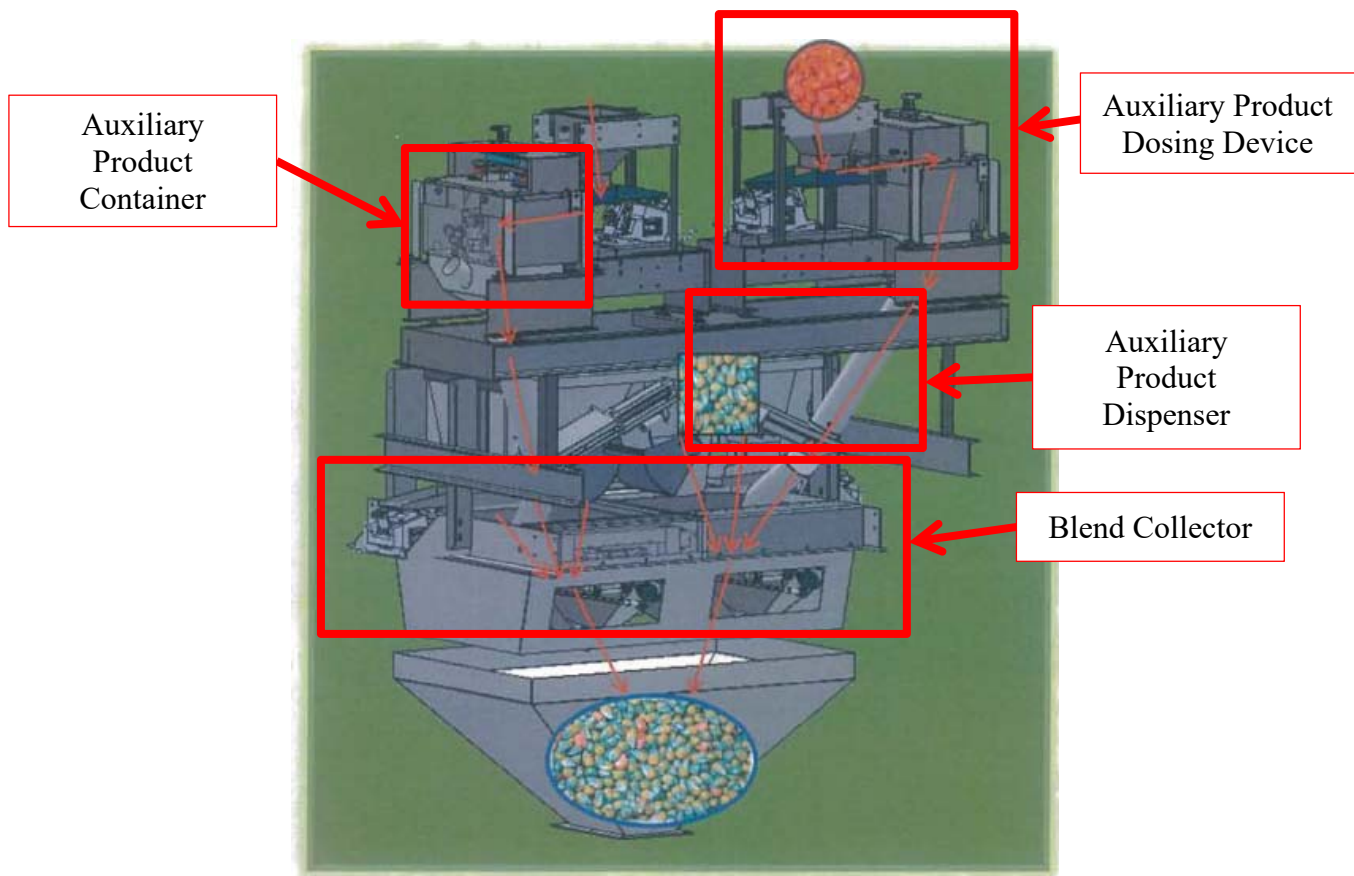


Figure 3

(Scale Handout, at *10).

35. Claim 9 of the '109 Patent further recites “a blend collector including a weighing device to weigh a quantity of a blend of the auxiliary product and the main product contained in the blend collector.”

36. The FBS include a blend collector (Scale Handout, at *10, *20, *36) that includes a weighing device. The FBS measure the weight of the blend of the auxiliary and main products; the main and refuge products are combined in the blend hopper, which then weighs the blend. (Scale Handout, at *20, *46). The

blend collector includes discharge doors configurable in an open or closed configuration:

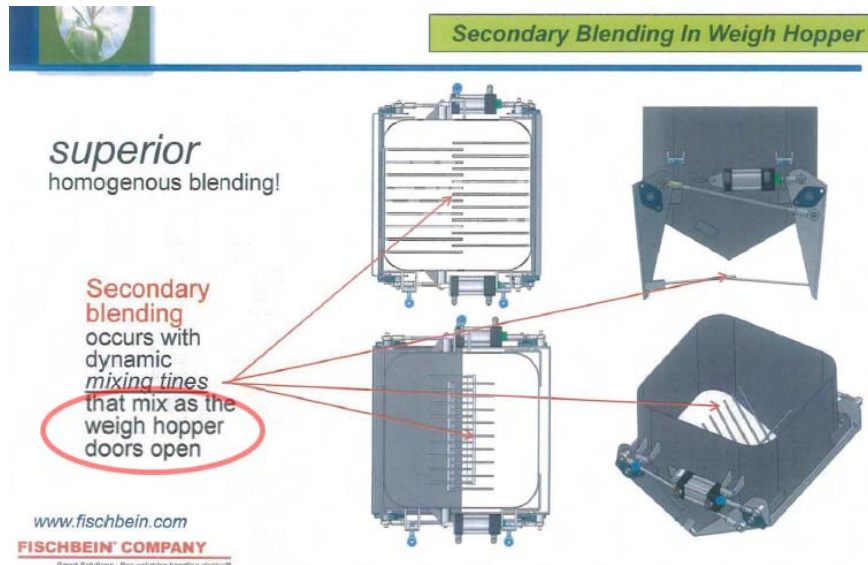


Figure 4

(Scale Handout, at *20)(red circle added).

37. Claim 9 of the ‘109 Patent further recites “being selectively configurable in a closed configuration for containing and weighing the quantity of the blend of the auxiliary product and the main product and in a discharge configuration for releasing the quantity of the blend of the auxiliary product and the main product therefrom.”

38. The weighing doors of the FBS are selectively configurable in a closed configuration, for containing and weighing the quantity of the blend of the auxiliary product and the main product, and in a discharge configuration, for

releasing the quantity of the blend of the auxiliary product and the main product therefrom. (Scale Handout, at *20). The FBS are designed to “automatically blend seeds from two different supply hoppers.” (Product Webpage, at *1). The auxiliary product and main product are fed in to the weigh pan with the discharge doors in the closed configuration:



Figure 5

(Screenshot from Fischbein Product Video) (hereinafter “FBS Video”). Once the weighing process is complete, the discharge doors are opened to release the blended product:



Figure 6

(Screenshot from FBS Video) (showing discharge doors open (left) and closed (right)).

39. Claim 9 of the '109 Patent further recites “an auxiliary product dosing device.”

40. The FBS include an auxiliary product dosing subsystem that collects, measures, and dispenses the auxiliary product prior to blending. (*See* Scale Handout, at *10, *12, *26-27; Product Webpage at *1).

41. Claim 9 of the '109 Patent further recites “an auxiliary product feeding hopper and a measuring device.”

42. The auxiliary product dosing subsystem of the FBS utilizes auxiliary product feeding hoppers, where auxiliary product is loaded prior to weighing, and a measuring device:

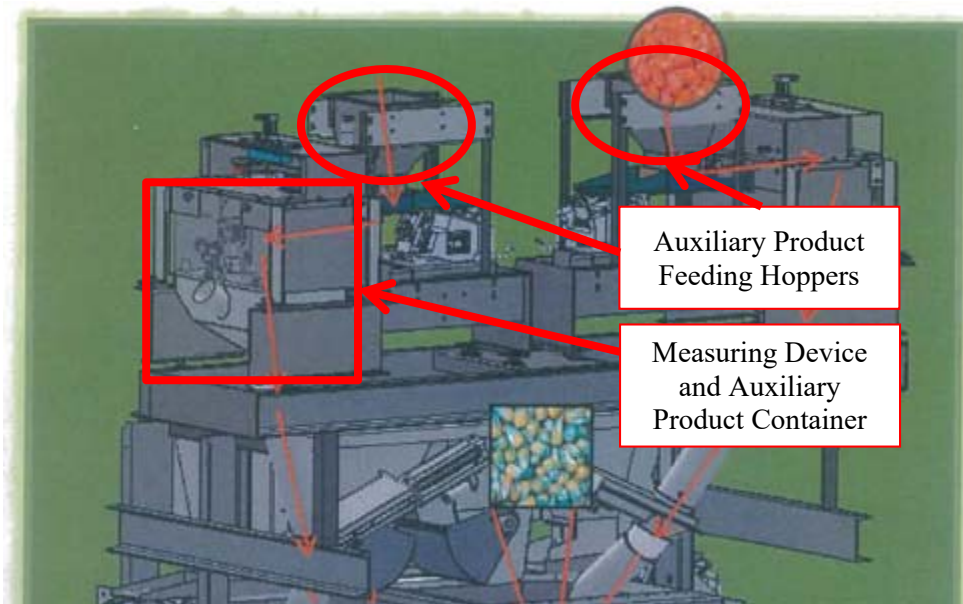


Figure 7

(Scale Handout, at *10).

43. Claim 9 of the '109 Patent further recites a measuring device “with an auxiliary product container.”

44. The FBS measuring device includes an auxiliary product container with discharge doors. (Scale Handout, at *25, *29, *35).

45. Claim 9 of the '109 Patent further recites “receiving auxiliary product from the auxiliary product feeding hopper, the measuring device weighing a quantity of the auxiliary product contained in the auxiliary product container.”

46. The auxiliary product container of the FBS receives auxiliary product from the auxiliary product feeding hopper and the measuring device weighs a quantity of the auxiliary product contained in the auxiliary product container.

Auxiliary product is fed from the auxiliary product feeding hopper via vibratory feeder to the auxiliary product container:



Figure 8

(Screenshot from FBS Video).

47. Claim 9 of the '109 Patent further recites “the auxiliary product container being selectively configurable in a closed configuration for containing and weighing the quantity of the auxiliary product and in a discharge configuration for releasing the quantity of the auxiliary product in the blend collector.”

48. The auxiliary product container of the FBS is selectively configurable in a closed configuration for containing and weighing a quantity of the auxiliary product, and in a discharge configuration for releasing the quantity of the auxiliary product. Inside the weigh scale subassembly, a hopper that collects the auxiliary product for weighing, and includes discharge doors, for releasing the product to the

staging gate. (Scale Handout, at *30; Video). Once the measuring device has weighed the auxiliary product, the discharge doors of the auxiliary product container can be opened for releasing the weighed quantity of the auxiliary product. (Scale Handout, at *30). Auxiliary product is fed in to the auxiliary product container with the discharge doors closed:

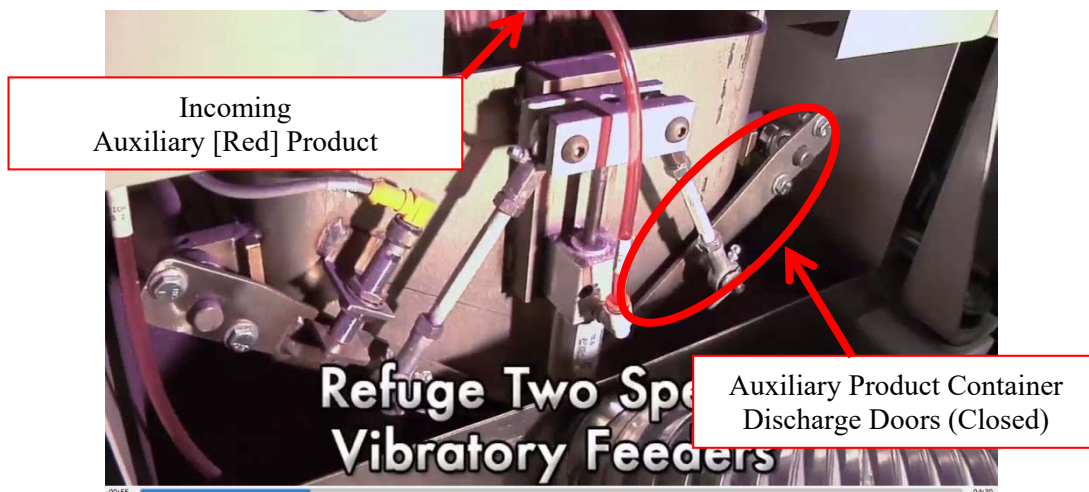


Figure 9

(Screenshot from FBS Video). The discharge doors are opened to release the auxiliary product after weighing:

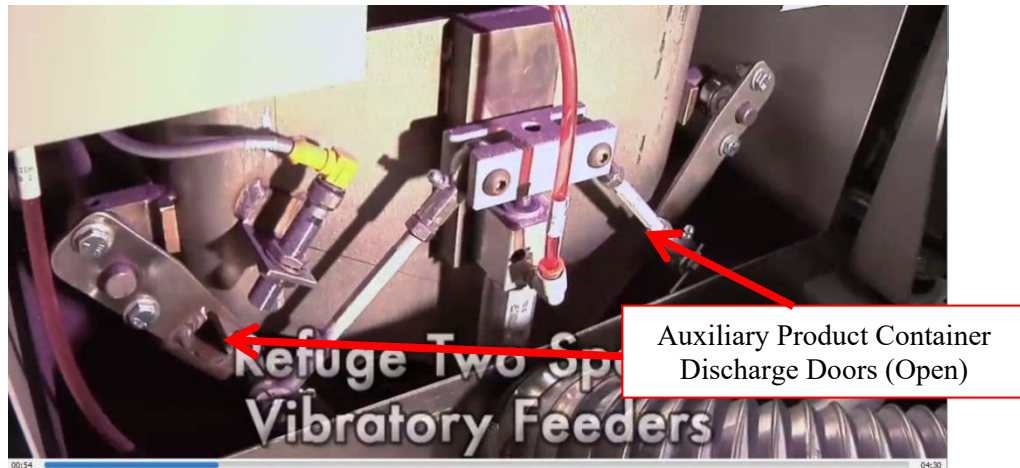


Figure 10

(Screenshot from FBS Video).

49. Claim 9 of the '109 Patent further recites “a main product feeding system.”

50. The FBS include a main product feeding system. The FBS are designed to “automatically blend seeds from two different supply hoppers” (Product Webpage), and the main product feeding system supplies the bulk product for mixing with the auxiliary refuge products. In the FBS, auxiliary product passes through one feeding and dosing/metering system, and the main product passes through an adjacent main product feeding system, prior to blending.

51. Claim 9 of the '109 Patent further recites “a feeder selectively configurable in a closed configuration preventing release of the main product and in a discharge configuration for releasing the main product in the blend collector.”

52. The main product feeding system of the FBS is selectively configurable in a closed configuration preventing the release of the main product, and in a discharge configuration for releasing the main product in the blend collector:



Figure 11
(Screenshots from FBS Video).



Figure 12

53. Claim 9 of the '109 Patent further recites “a controller operatively connected to the blend collector, the auxiliary product dosing device and the main product feeding system to receive weight data from the weighing device of the blend collector and the measuring device of the auxiliary product dosing device and to send instruction data to configure the blend collector in the discharge configuration based on the weight data received from the weighing device, to configure the auxiliary product container in the discharge configuration based on the weight data received from the measuring device, and to configure the feeder of the main product feeding system selectively in the closed configuration and the

discharge configuration based on the weight data received from the weighing device and the measuring device.”

54. The FBS include a controller such as, for example, the Allen Bradley PLC and color Panelview 1000 HMI to control the operation of the equipment. (Scale Handout, at *14). The FBS utilize the Allen Bradley PLC and associated HMI to control the units’ function. The measuring and blending functionality includes the ability for the PLC to monitor the weights observed by the auxiliary product dosing device and the main weigh hopper of blended product. In order to control the feed and dispensing of the auxiliary and main products, the Allen Bradley PLC / controller receives weight input from the device monitoring the process, in this case, load cells and/or scales.

55. The FBS measure the weight of the blend of the auxiliary and main products when the discharge doors are configured in the closed position as such a configuration would be required to obtain a steady state weight measurement from the load cells and/or scales. (Scale Handout, at *14, *41-49; FBS Video). To have the ability to precisely blend and dispense the auxiliary and main products, the PLC / controller has control over the discharge door configurations, a control which is based on the status of the overall process based on the readings from the scales / load cells. The FBS have the ability to control the release of the main

product from the main product feeding system. (*See* Scale Handout, at *14, *15, *41-49). The FBS include set points for high speed and low speed (“dribble”) fill rates, target set points and limits by weight for both main and auxiliary products. (Scale Handout, at *45-46).

56. The FBS control the configuration of the discharge doors of the auxiliary product container and the blend collector between the open configuration and the closed configuration to release the main and auxiliary products based on the current dosing. (Scale Handout, at *14, *41-49). Once the targeted blend weight is reached, the main product feed is shut off.

57. Additional details regarding the functionality of the Fischbein Blending Scales will become clear during discovery.

COUNT I
Infringement of U.S. Patent No. 8,974,109

58. Premier Tech incorporates by reference each of the foregoing paragraphs as though fully set forth herein.

59. Defendant has infringed and is currently infringing, literally and/or under the doctrine of equivalents, the ‘109 Patent by, among other things, making, using, selling, offering for sale, and/or importing within this judicial district and elsewhere in the United States, without license or authority, products that infringe

one or more claims of the '109 Patent, including but not limited to the FBS products.

60. Defendant has been aware of the '109 Patent since at least April 4, 2012. Alternatively, Defendant has been aware of the '109 Patent at least from July 24, 2015, or the date of this Complaint.

61. Defendant also indirectly infringes the '109 Patent in violation of 35 U.S.C. § 271(b) and (c). Defendant induced and is inducing infringement of the '109 Patent by, among other things, actively and knowingly aiding and abetting others to directly make, use, offer for sale, sell, and/or import within this judicial district and elsewhere in the United States, without license or authority, for example, the FBS, which fall within the scope of at least claim 9 of the '109 Patent. On information and belief Defendant provides directions, instructions, and/or other materials that encourage and facilitate infringing use by others. Defendant has sold and is selling at least the FBS with the knowledge and intent that customers who buy the product will commit infringement by using the product, and, therefore, those customers have been and are directly infringing the '109 Patent.

62. Defendant has contributorily and is currently contributorily infringing the '109 Patent, in violation of 35 U.S.C. § 271(c), by, among other things, selling,

offering for sale, and/or importing into this judicial district and elsewhere in the United States, without license or authority, products, for example, the FBS, or components of those products which constitute a material part of the '109 Patent, knowing that such products and/or components are especially made or especially adapted for use in the infringement of the '109 Patent, including but not limited to claim 9, and are not staple articles of commerce suitable for substantial non-infringing use.

63. Having been previously notified of its infringing acts, the infringement by Defendant of the '109 Patent continues to be willful and deliberate, and, therefore, Premier Tech is entitled to damages, including enhanced damages, under 35 U.S.C. § 284.

64. As a direct and proximate result of the infringement of the '109 Patent by Defendant, Premier Tech has suffered and will continue to suffer irreparable injury for which there is no adequate remedy at law. Premier Tech also has been damaged and, until an injunction issues, will continue to be damaged in an amount yet to be determined.

JURY DEMAND

Premier Tech requests a jury trial on all issues so triable.

PRAYER FOR RELIEF

WHEREFORE, Premier Tech requests that the Court enter the following in its favor and against Defendant as follows:

A. A judgment in favor of Premier Tech on all of its claims against Defendant;

B. A judgment that Defendant has violated 35 U.S.C. § 271 by infringing, directly or indirectly, and literally or under the doctrine of equivalents, one or more claims of the '109 Patent;

C. A judgment awarding Premier Tech damages adequate to compensate for Defendant's infringement, but in no event less than a reasonable royalty under 35 U.S.C. § 284, in an amount to be determined at trial;

D. A judgment that Defendant's patent infringement has been and continues to be willful, and a trebling of damages;

E. A judgment declaring that this is an exceptional case and awarding Premier Tech its actual costs, expenses, and reasonable attorneys' fees under 35 U.S.C. § 285;

F. A judgment that Defendant and its respective officers, agents, servants, employees, and attorneys, and all other persons who are in active concert

or participation with them are enjoined, preliminarily and permanently, from further infringement of the '109 Patent;

G. A judgment awarding Premier Tech pre-judgment and post-judgment interest; and

H. A judgment awarding such further equitable or other relief as the Court deems just and proper.

Dated: August 16, 2017

Respectfully submitted,

By: /s/ Ann G. Fort

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Attorneys for Premier Tech Technologies Ltd.

CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing document complies with LR 7.1(D), NDGa. The font and point size used in preparing the foregoing is Times New Roman, 14 point.

This 16th day of August, 2017.

/s/ Walter S. Freitag _____
Walter S. Freitag

CERTIFICATE OF SERVICE

I hereby certify that I have this day electronically filed the **FIRST AMENDED COMPLAINT** with the Clerk of Court using the CM/ECF system, and have notified the following attorneys for Defendant of such filing via electronic mail:

Keith E. Broyles
ALSTON & BIRD LLP
1201 West Peachtree Street
Atlanta, Georgia 30309
keith.broyles@alston.com

This 16th day of August, 2017.

/s/ Ann G. Fort _____
Ann G. Fort
Georgia Bar No. 269995