

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

HIP, INC.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	C.A. No. 18-802 (GMS)
	)	
HORMEL FOODS CORPORATION,	)	<b>JURY TRIAL DEMANDED</b>
HORMEL FOODS CORPORATE	)	
SERVICES LLC, OSCEOLA FOOD, LLC,	)	
ROCHELLE FOODS, LLC, and DOLD	)	
FOODS, LLC,	)	
	)	
Defendants.	)	

**FIRST AMENDED COMPLAINT FOR CORRECTION OF PATENT INVENTORSHIP  
AND OWNERSHIP, INFRINGEMENT, INDUCING INFRINGEMENT, AND  
DECLARATORY JUDGMENT**

COMES NOW Plaintiff HIP, Inc. (“Plaintiff” or “HIP”) and files this First Amended Complaint (a) against Defendant Hormel Foods Corporation for correction of inventorship and ownership of U.S. Patent No. 9,980,498 (the “’498 Patent”) and (b) against Defendants Hormel Foods Corporation, Hormel Foods Corporate Services, LLC, Osceola Food, LLC, Rochelle Foods, LLC, and Dold Foods, LLC (collectively, “Defendants”) pursuant to Fed. Rule Civ. P. 18(b) (Joinder of Contingent Claims) for infringement of the ’498 Patent, inducing infringement, and declaratory judgment. Plaintiff HIP, Inc. states and avers as follows:

**PARTIES**

1. Plaintiff, HIP, Inc., is an Oklahoma corporation with its principal place of business in Dallas, Texas. Plaintiff HIP, Inc. was formerly known as Unitherm Food Systems, Inc. The true and sole inventor of all of the subject matter claimed in above-referenced U.S. Patent No. 9,980,498 (the “’498 Patent”) is Plaintiff’s president, David Howard. Plaintiff HIP, Inc. has standing to bring this action for correction of inventorship and ownership, as well as its

contingent claims for infringement of the '498 Patent, inducing infringement of the '498 Patent, and Declaratory Judgment, by virtue of an assignment from David Howard to Plaintiff of all rights in the '498 Patent. (See Exhibit J). A copy of the '498 Patent, which is entitled "Hybrid Bacon Cooking System", is attached hereto as Exhibit A.

2. Upon information and belief, Defendant Hormel Foods Corporation is a Delaware corporation with its principal place of business in Austin, Minnesota. At present, Hormel Foods Corporation is erroneously listed as the owner of record of the '498 Patent by virtue of assignments received from the currently named "inventors".

3. Upon information and belief, Defendant Hormel Foods Corporate Services, LLC is a Delaware limited liability company with its principal place of business in Austin, Minnesota. Also upon information and belief, Hormel Foods Corporate Services, LLC is a wholly owned subsidiary of Hormel Foods Corporation. Defendants Hormel Foods Corporation and Hormel Foods Corporate Services, LLC are collectively referred to herein as "Hormel".

4. Upon information and belief, Defendant Osceola Food, LLC is a Delaware limited liability company. Also upon information and belief, Osceola Food, LLC manufactures bacon products at its principle place of business in Osceola, Iowa and is a wholly owned subsidiary of Hormel Foods Corporation.

5. Upon information and belief, Defendant Rochelle Foods, LLC is a Delaware limited liability company. Also upon information and belief, Rochelle Foods, LLC manufactures bacon products at its principle place of business in Rochelle, Illinois and is a wholly owned subsidiary of Hormel Foods Corporation.

6. Upon information and belief, Defendant Dold Foods, LLC is a Delaware limited liability company. Also upon information and belief, Dold Foods, LLC manufactures bacon

products at its principle place of business in Wichita, Kansas and is a wholly owned subsidiary of Hormel Foods Corporation.

### **NATURE OF THIS ACTION**

7. This is an action for (a) correction of inventorship and ownership, (b) direct patent infringement, and (c) actively inducing patent infringement, all arising under the patent laws of the United States, Title 35 of the United States Code, and (d) for Declaratory Judgment arising under 28 U.S.C. § 2201(a).

### **JURISDICTION AND VENUE**

8. This Court has exclusive subject matter jurisdiction over this action under 28 U.S.C. §§ 1331 and 1338(a).

9. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391(b), 1391(c), and 1400(b) because all of the Defendants reside in this District.

10. Joinder of the Defendants in this case is proper under 35 U.S.C. § 299 because (1) the infringing acts of the Defendants arise out of the same transaction, occurrence, or series of transactions or occurrences relating to the using in the United States of the same infringing process, and (2) there exist questions of fact common to all Defendants that will arise in the action.

### **FACTUAL BACKGROUND**

#### **The '498 Patent**

11. The '498 Patent was issued by the U.S. Patent and Trademark Office on May 29, 2018. The '498 Patent issued from U.S. Patent Application Serial No. 13/207,065, which was filed on August 10, 2011, and claims the benefit of Provisional Patent Application No. 61/372,065, which was filed on August 11, 2010.

12. Through error, the “inventors” currently named in the ’498 Patent are Brian J. Srsen, Richard M. Herreid, James E. Mino, and Brian E. Hendrickson. At present, Defendant Hormel Foods Corporation is erroneously listed as the owner of record of the ’498 Patent by virtue of assignments which Hormel Foods Corporation has received from all of the named “inventors”.

13. The true and sole inventor of all the subject matter claimed in the ’498 Patent is Plaintiff’s president, David Howard. Through error, David Howard was omitted as the sole inventor of the ’498 Patent. This Complaint therefore seeks a correction of inventorship under 35 U.S.C. §256(b) to name David Howard as the sole inventor of the ’498 Patent. Since David Howard assigned all of his rights in the ’498 Patent to Plaintiff, this Complaint seeks transfer of ownership of the ’498 Patent, and all pending foreign patent applications and/or foreign patents in any way based on U.S. Patent Application Serial No. 13/207,065, Provisional Patent Application No. 61/372,065 and/or the ’498 Patent to Plaintiff, the equitable title holder.

14. The ’498 Patent has a total of 16 claims. Claim 1 calls for a method of making precooked bacon pieces using a hybrid cooking system, comprising:

- a) preheating bacon pieces with a microwave oven to a temperature of 140°F to 210°F to create preheated bacon pieces, the preheating forming a barrier with melted fat around the preheated bacon pieces and reducing an amount of condensation that forms on the preheated bacon pieces when transferred to a cooking compartment of an oven, the barrier preventing any condensation that forms from contacting the preheated bacon pieces under the melted fat and diluting flavor in the preheated bacon pieces;

- b) transferring the preheated bacon pieces to the cooking compartment of the oven, the cooking compartment heated with steam from an external steam generator, the external steam generator being external to the cooking compartment, the steam being injected into the cooking compartment and being approximately 400°F to 1000°F when the steam leaves the external steam generator, the cooking compartment including internal surfaces, the steam assisting in keeping the internal surfaces at a temperature below 375°F [i.e., the smoke point of bacon fat] thereby reducing off flavors during cooking in the cooking compartment; and
- c) cooking the preheated bacon pieces in the cooking compartment to a water activity level of 0.92 or less to create precooked bacon pieces.

15. The remaining claims 2-16 of the '498 Patent either repeat certain limitations called for in claim 1 or variously call for: (i) cooking bacon slices having a thickness of 0.25 inch (6.35 millimeters) or less; (ii) the steam level in the cooking compartment being greater than 90%; (iii) the preheater being either a microwave, infrared or hot air oven; or (iv) the cooking compartment including a heating element to preheat the compartment.

16. The only oven disclosed in the '498 Patent and used in the patent examples for cooking the preheated bacon is a Unitherm Mini Spiral Oven.

**The Prior Related Patent of David Howard (The “Howard Patent”)**

17. On December 6, 2016, Plaintiff’s president, David Howard, obtained U.S. Patent No. 9,510,610 for a “Process for Producing Precooked Bacon Slices” (the “Howard Patent”). The Howard Patent was duly and legally issued by the U.S. Patent and Trademark Office to

Plaintiff as the assignee of the inventor, Mr. Howard. A copy of the Howard Patent is attached hereto as Exhibit B.

18. The Howard Patent discloses and claims various embodiments of what has been referred to as the “Unitherm Process” wherein precooked sliced bacon products are prepared by cooking the bacon in a superheated steam environment in a spiral oven. As expressly called for in claim 2 of the Howard Patent, the Unitherm Process can also optionally include a preheating step.

19. The process claimed in the ’498 Patent is an embodiment of the Unitherm Process which includes a preheating step. Specifically, the ’498 Process is an embodiment of the Unitherm Process wherein the bacon is preheated in a microwave or other oven prior to cooking the bacon in a superheated steam environment in a spiral oven.

**Prior Related Proceedings Between the Parties**

20. On September 29, 2014, more than two years and two months prior to the issuance of the Howard Patent, Plaintiff brought suit against Hormel in the U.S. District Court for the District of Minnesota (*Unitherm Food Systems, Inc. v. Hormel Foods Corporation and Hormel Foods Corporate Services, LLC*, Case No.: 0:14-CV-04034-JNE/BRK (D. Minn.)) for breach of a Mutual Confidential Disclosure Agreement (the “MCDA”) and a Joint Development Agreement (the “JDA”) between the parties. Relevant to the present case, Plaintiff also brought a claim for declaratory relief under the terms of the JDA naming Plaintiff the owner of the Hormel patent application for the ’498 Patent.

21. Hormel counterclaimed for (i) breach of the JDA, (ii) a declaration of ownership under the JDA of Hormel’s own patent application for the ’498 Patent, and (iii) a declaration of

ownership of the Unitherm Process as disclosed in Plaintiff's then pending application for the Howard Patent.

22. On September 14, 2016, more than two and one half months prior to the issuance of the Howard Patent and more than 20 months prior to the issuance of the '498 Patent, a final judgment was entered by the Federal District Court in Minnesota in which the Court dismissed, *with prejudice*, Hormel's declaratory judgment counterclaim for ownership of the Unitherm Process disclosed in the Howard patent application but dismissed, *without prejudice*, Plaintiff's and Hormel's declaratory judgment claims for ownership of the '498 Process disclosed in the pending Hormel patent application. All other claims of both parties were dismissed with prejudice.

23. A copy of a summary judgment Order which led to the final judgment is attached hereto as Exhibit C. Relevant to the present action, in rejecting Hormel's attempt to obtain summary judgment on its counterclaim for a declaration that Hormel developed the process disclosed in the Hormel patent application which became the '498 Patent, the Court noted "Howard's deposition testimony that during the July 2007 presentation to Hormel, Howard presented the idea of preheating bacon with a microwave before cooking it in a spiral oven." (Exhibit C, p. 10).

24. Also relevant to the present action, the Court found in dismissing *with prejudice* Hormel's counterclaim for ownership of the Unitherm Process disclosed in the Howard Patent Application that (a) "it is undisputed Howard conceived of the Unitherm Process before the JDA's effective date" and (b) "Hormel does not point the Court to any specific improvement in the process that was developed as part of the Project." (Exhibit C, pp 9-10).

25. Plaintiff filed a Notice of Appeal to the U.S. Court of Appeals for the 8<sup>th</sup> Circuit on September 19, 2016. Hormel filed a Notice of Cross-Appeal on October 5, 2016.

26. In a decision issued on April 18, 2018, the 8<sup>th</sup> Circuit affirmed the judgment of the District Court regarding all claims and counterclaims on appeal. A copy of the 8<sup>th</sup> Circuit decision is attached hereto as Exhibit D.

27. The 8<sup>th</sup> Circuit decision issued 6 weeks prior to the issuance of the '498 Patent. Concerning the parties contractual claims under the JDA for ownership of the process disclosed in the Hormel application for the '498 Patent, which had been dismissed *without prejudice* by the District Court, the 8<sup>th</sup> Circuit noted that these claims had not been dismissed in this manner to evade the final order doctrine, but rather because the application for the '498 Patent was still pending. The 8<sup>th</sup> Circuit further noted that the parties had assured the Court that the contract claims would not be revived after the appeal. (Exhibit D, p. 4, footnote 2).

28. Also relevant to this present action, in affirming the judgment of the District Court against Hormel's counterclaim for ownership of the Unitherm Process disclosed in the Howard Patent, the 8<sup>th</sup> Circuit held that:

It is undisputed that Unitherm's Howard brought a developed "Unitherm Process" to Hormel when they entered the JDA in September 2007. Some months later, Unitherm applied for the Unitherm Process patent. Hormel declined invitations to add claims to the application and presented no evidence that any improvements in the Process as patented were developed as part of the Project.

(Exhibit D, page 13).

29. The 8<sup>th</sup> Circuit further affirmed that: "The Unitherm Process, as patented, was conceived by Unitherm and sufficiently reduced to practice to induce Hormel to enter into the JDA." (*Id.*). In addition, all of "the information Hormel disclosed to JBT was disclosed in the Unitherm Process patent application . . ." (*Id.* at pages 9-10).



30. On April 24, 2018, five weeks prior to the issuance of the '498 Patent, Plaintiff HIP, Inc. filed suit in this Court against the same Defendants as named in this present action (*HIP, Inc. v. Hormel Foods Corporation et al.*, Case No. 1:18-cv-00615-GMS). Plaintiff's claims which are pending before this Court in the prior filed case are for: infringement of the Howard Patent by Defendants Hormel Foods Corporation, Hormel Foods Corporate Services, LLC, Osceola Food, LLC, and Rochelle Foods, LLC; declaratory relief regarding the impending infringement of the Howard Patent by Defendants Hormel Foods Corporation, Hormel Foods Corporate Services, and Dold Foods, LLC; and actively inducing infringement of the Howard Patent by Defendants Hormel Foods Corporation and Hormel Foods Corporate Services.

31. A Protective Order entered in the Minnesota case limits the use of documents identified by Hormel as Confidential or Attorney's Eyes Only (AEO) in that case. The facts stated herein are therefore based upon Plaintiff's records, Plaintiff's knowledge and information obtained independent of Hormel's confidential production, the non-sealed records of the Minnesota case which are available to the public on the PACER system, documents and testimony not designated as Confidential or AEO by Hormel or by third parties from whom discovery was obtained, records available from the U.S. Department of Agriculture (USDA) Food Safety and Inspection Service, and other publically available sources such as Hormel's annual and quarterly reports, press releases, advertisements, etc.

**Prior to the Processes Invented by David Howard, Precooked Bacon Was Produced in the U.S. in 100% Microwave Oven Systems**

32. Prior to the processes invented by David Howard, substantially all commercial manufactures, including Hormel, used continuous 100% microwave oven systems to produce precooked sliced bacon products for sale in retail and foodservice markets. A continuous microwave oven system typically consists of a series of four or five microwave oven cabinets

through which the bacon slices are sequentially conveyed such that the first cabinet begins the heating process and the cooking of the bacon is completed in the final cabinet.

33. The precooked bacon products produced by these microwave oven systems do not approach the flavor, texture, or appearance of freshly-cooked bacon. Further problems associated with the commercial microwave oven process include: low yields; inconsistent and non-uniform product characteristics; a high fire risk; and high maintenance and energy costs.

34. The high fire risk in the microwave oven process results not only from electrical arcing problems which are commonly encountered in industrial microwave ovens, but also from the amount of flammable bacon fat which is rendered from the product during cooking. In order for the precooked bacon to qualify as “fully cooked”, at least 60% of the raw weight of the bacon must typically be rendered from the product.

35. In addition, because the microwave oven systems rely upon microwave energy for cooking rather than the creation of a sterilizing high temperature environment in the oven, health safety risks resulting from pathogen contamination in the oven conveyor belt, and elsewhere in the oven itself, are also a concern for the microwave oven process.

36. For example, positive swabs showing pathogen contamination of microwave oven belts in the precooked bacon section of Defendants’ facility in Rochelle, Illinois necessitated the replacement of the oven belts in July of 2013 and March of 2014.

37. Microwave ovens in the precooked bacon section of the Rochelle, Illinois facility also tested positive for contamination in January of 2013, February of 2014, August of 2016, and January, March, and August of 2017.

38. The Unitherm Process, performed with or without the optional preheating step, provides significant improvements in product consistency and yield and produces a precooked sliced bacon product which is remarkably similar to freshly cooked bacon.

39. The Unitherm Process, performed with or without the optional preheating step, also prevents contamination and eliminates fire risks within the oven by cooking the bacon in a sterilizing, superheated steam environment such that an amount of oxygen sufficient for igniting the highly flammable bacon fat is not present within the spiral oven.

#### **Mr. Howard's Background and Invention of the Processes**

40. Plaintiff's president, David Howard, began business in the United Kingdom in 1985 and expanded operations to the United States in 1993.

41. Since 1985, Mr. Howard has invented a number of different cooking and heating processes, systems, and ovens. Mr. Howard has also obtained eighteen (18) U.S. patents and has obtained patents in other countries. In addition to U.S. Patent No. 9,510,610 (the "Howard Patent"), Mr. Howard's other patents include: U.S. 9,504,258 for "Airflow Pattern for Spiral Ovens"; U.S. 9,445,689 for "Transfer Mechanism for a Continuous Heat Transfer System"; U.S. 9,345,252 for "Method, Continuous Apparatus, and Burner for Producing a Surface-Roasted Product"; U.S. 9,220,276 for "Airflow Pattern for Spiral Ovens"; U.S. 9,215,892 for "Pasteurization System for Root Vegetables"; U.S. 8,875,621 for "Method, Continuous Apparatus, and Burner for Producing a Surface-Roasted Product"; U.S. 9,107,422 for "Airflow Pattern for Spiral Ovens"; U.S. 8,728,555 for "Apparatus and Method for Searing, Branding, and Cooking"; U.S. 8,646,383 for "Spiral Oven Apparatus and Method of Cooking"; U.S. 6,867,392 for "Infrared Element and Oven"; U.S. 6,780,448 for "Pasteurization of Food Products"; U.S.

6,675,589 for “Freeze-Crusting Process”; and U.S. 6,622,513 for “Freeze-Crusting Process and Apparatus”.

42. In 1989, after a series of catastrophic fires in various bacon cooking facilities, Mr. Howard developed a system in the U.K. for cooking bacon slices in a linear convection oven in an environment which included up to about 50% superheated steam. The linear oven, which was also developed by Mr. Howard, was known as the Unitherm RapidFlow Oven.

43. Two major producers in the U.K., TMI and Sovereign Foods, adopted the process and began using multiple RapidFlow Oven lines for manufacturing precooked bacon.

44. Mr. Howard’s RapidFlow Oven Process included the options of (a) cooking the bacon at a temperature above the smoke point of the bacon fat (i.e., above 375°F) to impart a roasted flavor to the product or (b) maintaining the temperature in the oven below the smoke point of the bacon fat to prevent the addition of the roasted flavor.

45. The product produced by the RapidFlow Oven Process was a fully cooked sliced bacon product which was rendered to less than 40% of its raw weight, had a water activity level of less than 0.92, and resembled pan-fried bacon.

46. Because of the length of the linear oven that would be required in most U.S. production lines for producing high volumes of precooked bacon, the RapidFlow Oven system was not a good fit for the U.S. market. Additionally, although elevated superheated steam levels were provided in the linear oven process, Mr. Howard desired to develop a continuous process in which substantially all of the air in the oven was replaced with superheated steam.

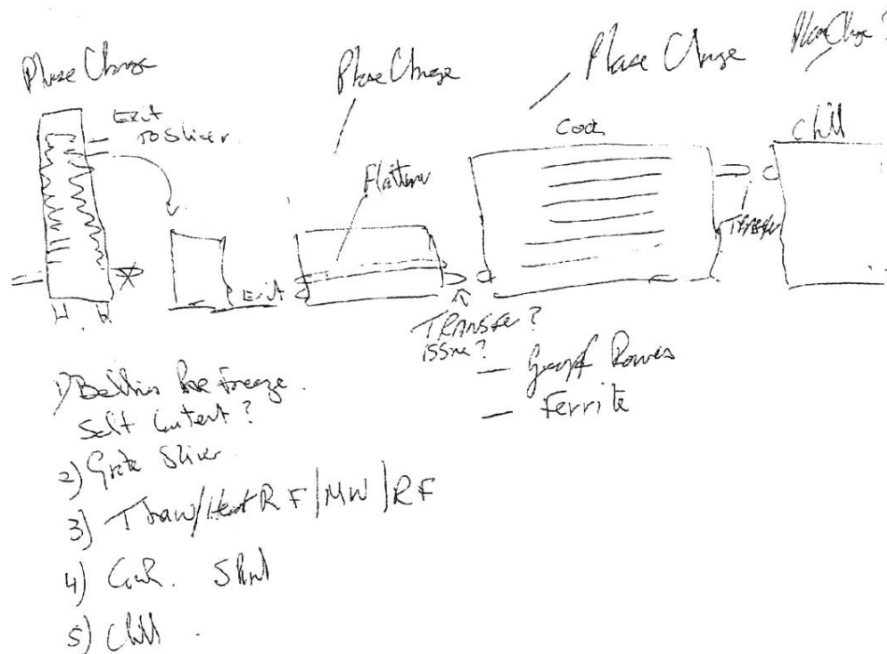
47. In 1994, Mr. Howard conceived the continuous Unitherm Process of cooking sliced bacon in a superheated steam environment in a spiral oven. Mr. Howard recorded his conception of the Unitherm Process in an invention disclosure form.

48. At that time, however, Plaintiff was awaiting the outcome of patent litigation between others in the industry which would determine whether Plaintiff would be able to produce and sell spiral ovens and spiral oven processes.

49. In 1995, at the request of Armour Swift Eckrich, Mr. Howard performed an in-depth review of a 100% microwave oven line for cooking bacon at an Armour Swift Eckrich facility.

50. Plaintiff subsequently entered into discussions with Ferrite Microwave Technologies, a manufacturer of industrial microwave ovens, for a possible purchase of Ferrite by Plaintiff.

51. In 2004, David Howard conceived the version of the Unitherm Process (i.e., the Unitherm Process with the use of a microwave oven, or other preheater, prior to the spiral oven) which is now claimed in the '498 Patent. Mr. Howard's invention of the process claimed in the '498 Patent is shown in a sketch of the process which was contemporaneously drawn by Mr. Howard in 2004 as follows:



52. This sketch shows a processing line which consists of a series of five pieces of equipment. Notes 1-5 which correspond to and provide additional information regarding the five pieces of equipment are provided below the sketch.

53. Proceeding from left to right, and as explained by the notations in the sketch, the first piece of equipment shown in Mr. Howard's sketch is a Unitherm vertical freeze cruster which had just been patented by Mr. Howard in 2004. The freeze cruster was shown in the sketch as an alternative to the walk-in type freezers which are commonly used in the art for freezing or par freezing the incoming bacon bellies to stiffen the bellies for consistent slicing.

54. The second piece of equipment shown in Mr. Howard's sketch is a Grote slicer for cutting the bacon bellies into raw bacon slices.

55. The third piece of equipment shown in Mr. Howard's 2004 sketch is a preheater which, as described in note 3, can be a radio frequency (RF) heater, a microwave (MW) oven, or a RapidFlow (RF) linear convection oven. The preheater produces a "phase change" wherein the preheater can be operated to "thaw" or "heat" the bacon prior to cooking. The sketch also shows that the preheating cabinet could optionally include both a lower conveyor belt and an upper belt (i.e., a flattener) between which the bacon slices would be conveyed to produce a flatter product.

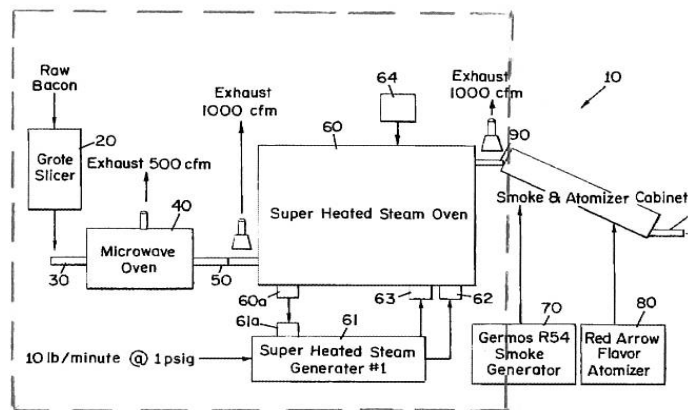
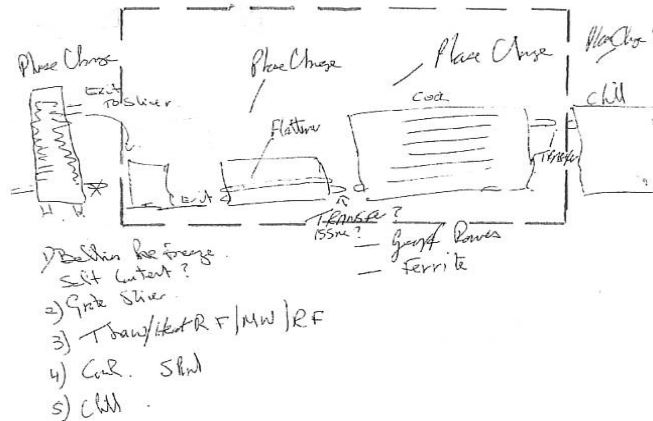
56. The fourth piece of equipment shown in Mr. Howard's sketch is the spiral oven in which the bacon is cooked as it is conveyed upwardly in a spiral pattern from a bottom inlet to an upper outlet of the oven.

57. The final piece of equipment is a chiller for chilling the cooked product.

58. Mr. Howard's conception of the use of a microwave oven as a preheater prior to the spiral oven is further corroborated by Mr. Howard's reference in the 2004 sketch to "Ferrite".

Geoff Rawes, who is also mentioned in the 2004 sketch, was the president of the slicer manufacturer, Grote Co. Mr. Rawes retired from Grote Co. in February of 2008.

59. Mr. Howard's 2004 sketch is shown again below along with Figure 1 of the '498 Patent. For comparison purposes, rectangles highlighting the same subject matter (i.e., a Grote slicer, followed by a microwave oven, followed by a spiral oven having a bottom inlet and an upper outlet) relevant to the claims of the '498 Patent have been added to the drawings. In terms of the relevant subject matter of the claims of the '498 Patent, the drawings are the same.



60. Plaintiff successfully performed the Unitherm Process, without preheating, in April and May of 2006 using a Unitherm Mini Spiral Oven. The reduction to practice was

recorded on video and in a May 4, 2006 file memo entitled “Bacon Test Cook” which was prepared by Mr. Howard.

61. As recorded in the memo, the bacon slices were fully enveloped in a superheated steam cooking medium which filled the spiral oven. In the same manner as specified in the claims of the '498 Patent, the superheated steam was injected into the spiral oven from an external steam generator and thus operated to heat the cooking chamber. As also specified in the claims of the '498 Patent, the May 4, 2006 memo notes that the thickness of the bacon slices will typically be not more than 5 millimeters (0.2 inches).

62. In addition to the external heat provided by injecting the superheated steam, the cooking medium circulating in the oven was also heated, using heating elements within the oven, to help preheat the oven and to assist in maintaining the desired operating temperature. The oven heating elements used were electrical elements. However, Mr. Howard noted in the May 4, 2006 memo that thermal oil heating elements, which are commonly used in spiral ovens, could alternatively be used for conducting the Unitherm Process at oven temperatures below 400°F.

63. Although the reduction to practice in May of 2006 did not involve the use of a preheater, Mr. Howard observed that (i) the excess amount of superheated steam which was injected into the spiral oven was being expelled from the oven inlet and outlet, (ii) the excess superheated steam expelled from the inlet was contacting the cold, raw bacon on the infeed portion of the oven conveyor belt prior to entering the oven, and (iii) the resultant heating of the bacon slices prior to entering the oven had the effect of relaxing the bacon, which caused that the slices to lay flatter on the conveyor, as opposed to having something of a banana-type curvature.



**David Howard Fully Disclosed and Taught the Claimed Process to Hormel and the Inventors Named on the '498 Patent**

64. Plaintiff approached Hormel in June of 2007 to determine Hormel's interest in replacing its microwave bacon lines with the Unitherm Process. Plaintiff told Hormel's vice-president, Larry Pfeil, that the Unitherm Process involved cooking bacon using superheated steam. Plaintiff also told Ron Christensen of Hormel that the Unitherm Process used a spiral oven.

65. Hormel's reaction was that its "opportunity to get ahead of the competition is to jump on this immediately."

66. On July 20, 2007, immediately after the parties signed the Mutual Confidential Disclosure Agreement (the "MCDA"), David Howard, who was accompanied by Plaintiff's then Commercial Vice President, Tom Van Doorn, described the Unitherm Process to Hormel in detail, including Mr. Howard's version of the Unitherm Process which included the addition of an optional preheating step prior to cooking and browning the bacon slices using superheated steam in a spiral oven.

67. "Inventors" Richard Herreid and Brian Srsen named by Hormel on the '498 Patent attended this presentation.

68. Mr. Van Doorn has confirmed that in Mr. Howard's presentation, Mr. Howard disclosed to Hormel the concept of preheating the bacon slices in a microwave oven prior to cooking the bacon using superheated steam in the spiral oven. (See Exhibit E, Declaration of Thomas Van Doorn, Sr.).

69. In his presentation to Hormel on July 20, 2007, Mr. Howard (a) discussed his extensive background, experience, and prior discoveries in bacon cooking and (b) fully disclosed his invention of the processes, his reduction to practice of the Unitherm Process, and all of the

information relevant to the version of the Unitherm Process which is now recited in the claims of the '498 Patent including:

- a. The use of a preheater prior to cooking and browning the bacon slices in a substantially 100% superheated steam environment in a spiral oven;
- b. The preheater could be a microwave oven, a radio frequency heater, a RapidFlow oven or other linear oven using hot air as the heating medium, an infrared oven, or a superheated steam heater;
- c. Plaintiff had earlier been in discussions with Ferrite regarding the possible purchase of the Ferrite company;
- d. A Ferrite microwave oven would be a good option for the preheating step;
- e. Alternatively, the use of a microwave oven for preheating the bacon could be of interest to Hormel as a means of salvaging and reusing microwave oven cabinets which would otherwise be taken out of operation as Hormel's 100% microwave cooking lines were replaced with the Unitherm Process systems;
- f. The microwave or other preheater could be used to thaw the product after slicing or could be used to further preheat the product to any degree desired so long as (i) the preheated product did not reach a temperature of 212° F and (ii) the cooking and browning process was completed in the superheated steam environment in the spiral oven;
- g. Preheating the product would reduce the heating requirements in the spiral oven per pound of product and could therefore be used as a means to reduce the size of the spiral oven and/or increase product throughput and production rates;

- h. The effect of preheating the raw bacon slices to the rendering temperature of the bacon fat and beyond is that a hot fluid layer containing rendered fat forms on the surface of the product and the fluid begins to drip. The hot liquefied fat on the preheated product entering the spiral oven significantly reduces or eliminates the formation and interaction of condensed steam on the surface of the product as compared to the amount of condensate which forms on and interacts with the exposed surface of a cold, non-preheated product which enters the oven at the belly slicing temperature (i.e., circa 26° F);
- i. The Unitherm Process, with or without preheating, produces a fully cooked bacon product (i.e., a product which has been rendered to less than 40% of its raw weight) which resembles pan-fried bacon, is entirely safe for human consumption and has increased shelf life (i.e., has a water activity level of less than 0.92);
- j. Performing the cooking process in the spiral oven at a temperature above the smoke point of the fat (i.e., above 375° F) imparts what Mr. Howard referred to as a “roasting” flavor to the product, and therefore Mr. Howard advised that demonstrations should be conducted at temperatures in the spiral oven both below and above the smoke point so that Hormel could evaluate whether it preferred the product with or without the roasted flavor;
- k. For the best product and the safest operation in terms of both fire prevention and food safety, sufficient superheated steam should be injected into the spiral oven so that the bacon is cooked in a substantially 100% superheated steam environment;
- l. The superheated steam is injected into the oven from an external generator which heats the cooking chamber of the spiral oven;

- m. In addition to the external heat delivered into the spiral oven by the superheated steam, heat is also provided in the oven by circulating the cooking medium in the oven over a set of internal heating elements;
- n. The heating elements in the spiral oven can be electric, thermal oil or gas elements, with thermal oil being a viable option if a low temperature and/or non-roasting operation below 400° F is preferred; and
- o. The use of the Unitherm Process, with or without preheating, to produce other alternative products including precooked bacon bits.

70. As confirmed by the deposition testimony of Mr. Van Doorn and of Craig Bernheimer, a former employee of Plaintiff, in the litigation between Plaintiff and Hormel in Minnesota, Mr. Howard not only initially disclosed and explained the preheating concept to Hormel to thaw the product and/or to take the product to a molten state, but continued to discuss these concepts throughout the performance of the JDA. (See: Exhibit F, Deposition of Mr. Van Doorn, p. 174, line 21 – p. 175, line 6; and Exhibit G, Deposition of Mr. Bernheimer, p. 110, line 12 – p. 111, line 19).

71. On July 11, 2007, prior to the signing of the MCDA, without Plaintiff's knowledge, after learning from Mr. Howard that the Unitherm process used superheated steam and involved the use of a spiral oven, Hormel attempted to cook bacon in a spiral oven manufactured by Plaintiff's competitor, John Bean Technologies Corporation (JBT). This attempt by Hormel to cook bacon in a JBT spiral oven occurred at JBT's test facility in Sandusky, Ohio.

72. After the MCDA was signed, Plaintiff demonstrated the Unitherm Process, without preheating except for the effect of the excess steam expelled from the entrance of the oven, for Hormel in August of 2007 using a Unitherm Mini Spiral Oven.

73. Plaintiff and Hormel then signed the Joint Development Agreement (the “JDA”) on September 25, 2007.

74. Using “source product” (i.e., bacon bellies) which Hormel would provide pursuant to paragraph 2 of the JDA, Plaintiff was tasked under paragraph 3 to “develop the Project to produce a commercially viable end product with all due haste.”

75. If Plaintiff succeeded in this task, Hormel pledged in paragraph 5.c. of the JDA under the heading “Exclusivity” that: (a) “the parties will negotiate an agreement by which UNITHERM will be the exclusive supplier to HORMEL of equipment for an initial five (5) years” and that (b) “Following the initial five (5) year period of exclusivity, the parties will attempt, in good faith, to negotiate an agreement by which the exclusivity period is extended.”

76. Unknown to Plaintiff, Hormel intended that this clause, drafted by Hormel’s Senior Attorney, would not be binding on Hormel under Minnesota law, as was later ruled by the District Court in Minnesota.

77. However, in order to induce Plaintiff to give Hormel a specific bacon product which Hormel desired and to teach Hormel how to produce the product using the Unitherm Process, Hormel led Plaintiff falsely to believe that Hormel would honor its commitment under the Exclusivity clause.

78. After the JDA was executed, Plaintiff provided additional demonstrations of the Unitherm Process to numerous Hormel personnel, including Hormel’s named “inventors” Srsen

and Herreid. The oven used by Plaintiff in performing these demonstrations was the Unitherm Mini Spiral Oven.

79. The live demonstrations performed by Plaintiff did not include a preheating step. However, Plaintiff advised that the infeed of the Unitherm Mini Spiral Oven would be configured to allow the placement and demonstration of any desired preheating cabinet at the infeed of the spiral oven as had been discussed. Plaintiff also offered, for demonstration purposes, to provide the preheating cabinets at cost if any of the preheating techniques suggested by Plaintiff were of interest to Hormel.

80. In addition, Plaintiff provided a video to Hormel demonstrating a reduction to practice by Howard, with no Hormel personnel present, of the Unitherm Process with the addition of a superheated steam preheating system outside of the inlet of the spiral oven.

81. The initial demonstrations provided by Plaintiff were conducted under less than ideal conditions. Plaintiff was in the process of constructing a test kitchen and was awaiting the arrival of a new, higher capacity steam generator which would provide more stable operation of the spiral oven system for performing the Unitherm Process.

82. However, Hormel desired to proceed with the tests using the smaller steam generator.

83. Despite difficulties caused by the limited capacity of the old steam generator, Hormel expressed to Plaintiff its satisfaction with the bacon product and the operation of the spiral oven.

84. Following the eventual delivery of the higher capacity steam generator, Plaintiff performed demonstrations for Hormel on April 17, 2008. Hormel provided 144 bacon bellies for

these demonstrations. These demonstrations included all of the steps and requirements recited in the claims of the '498 Patent, except for the use of a preheater.

85. Specifically, the demonstrations conducted by Plaintiff on April 17, 2008 included: (a) using Plaintiff's new external steam generator to generate pressurized (i.e., greater than 50 psig) superheated steam at a temperature above 400° F; (b) injecting the superheated steam into the spiral oven to add external heat to the oven for preheating and cooking, and to provide and maintain a substantially 100% superheated steam cooking environment; (c) slicing the bacon to a thickness of 0.2 inch or less; (d) operating the spiral oven at a temperature of 350° F; and (e) the successful demonstration of the production of products which intentionally did and did not include smoke point flavor notes. In addition to the external heating of the oven by the superheated steam, heat was also provided in the oven by passing the vapor cooking medium over a set of internal heating elements.

86. Hormel expressed great satisfaction with the bacon product produced under these conditions. The product was a fully cooked sliced bacon product which had been rendered to less than 40% of its original raw weight and had a water activity level of less than 0.92.

87. Following the demonstrations on April 17, 2008, Hormel's vice president, Larry Pfeil, assured Plaintiff that "everyone that counted" at Hormel was on board with the bacon project. Hormel then rented the Unitherm Mini Spiral Oven, ostensibly for further tests. The oven was shipped to Hormel's R&D facility in Austin, Minnesota.

88. In January of 2009, Hormel instructed Plaintiff to send Hormel a quote for a scaled-up version of the Unitherm spiral oven having an increased capacity for use in a large commercial line to cook 20 million pounds per year of bacon. Hormel also instructed Plaintiff to provide a quote for a correspondingly sized spiral chiller for chilling the product.

89. Providing scaled-up spiral ovens of this size was not new for Plaintiff. At that time, Plaintiff was selling the Unitherm spiral oven in three size ranges, Mini, Medium, and Large, and had offered to demonstrate the Unitherm Process to Hormel using either the Mini or the Large. Hormel selected the Mini Spiral Oven.

90. Hormel did not respond negatively to the quotes. However, Hormel never issued purchase orders for the scaled-up Unitherm spiral oven and chiller.

91. Later, in addition to finding that the Exclusivity clause of the JDA was only an invalid agreement to negotiate, the District Court dismissed Plaintiff's claim for breach of the JDA because: (a) in the District Court's view as affirmed by the 8<sup>th</sup> Circuit, the JDA Project was limited solely to the development of a commercial oven and (b) Plaintiff's evidence showing that quality bacon had been produced was therefore irrelevant. (See Exhibit C, pages 3-4).

92. During the initial stage of the demonstrations provided to Hormel, Plaintiff discovered as a result of a press release by JBT on December 5, 2007 that Hormel had attempted to cook bacon using superheated steam in a spiral oven at JBT's facilities in Sandusky, Ohio, and that Hormel had thus disclosed these concepts to JBT.

93. Having been persuaded by Hormel that Hormel could be trusted to act in good faith going forward and would honor its commitments, Plaintiff elected to continue to work with Hormel under the JDA in order to obtain the right, as assured by Hormel, to be the exclusive supplier of equipment related to all of the commercial production lines which would be built by Hormel.

94. However, because of the JBT press release, and being concerned that JBT would attempt to beat Plaintiff to the Patent Office, Plaintiff filed the original US application 12/013,337 for the Howard Patent on January 11, 2008. Plaintiff informed Hormel of the patent



application. Hormel did not object. Plaintiff also provided drafts of the application to Hormel's named "inventor" Herreid and to others at Hormel for review.

95. Hormel did not request that any Hormel employee be named as an inventor in the Howard Patent Application and never identified any Hormel employee whom Hormel claims to have invented any subject matter which is claimed or disclosed in the Howard Patent.

96. Relevant to the subject matter of the claims granted in the '498 Patent, the specification of the Howard Patent further confirms Mr. Howard's invention of the concepts of: injecting superheated steam into the bacon oven to provide external heat and to maintain a substantially 100% superheated steam cooking environment (Exhibit B, Column 4, lines 37-40); a low temperature operation of 325° F (*Id.* at Column 7, lines 30-32); the use of thermal oil heating elements in the oven as a means of providing additional heat (*Id.* at Column 7, lines 41-44); and the operation at low temperature to eliminate smoke and provide a product with no pit flavor notes (*Id.* at Column 7, lines 38-40). The Howard Patent also indicates a preferred slicing thickness of less than 0.2 inch (5 millimeters).

97. In honor of its exclusive relationship with Hormel under the JDA and in anticipation of the future exclusive supplier contract which Hormel had pledged, falsely, to award to Plaintiff, and which Hormel also continued falsely to give every impression of honoring, Plaintiff declined inquiries from large bacon producers Kraft/Oscar Mayer and Cargill, did not present videos of the Unitherm Process at trade shows, and did not promote the Unitherm Process in other ways.

98. Without Plaintiff's knowledge, after the rented Unitherm Mini Spiral Oven was shipped to Hormel's R&D facility, Hormel began using the Unitherm Process with the

microwave preheating step (i.e., the Hybrid Process) which had been invented and disclosed to Hormel by David Howard.

99. After taking possession of the Unitherm Mini Spiral Oven, Hormel ceased sharing information with Plaintiff, other than to say that the Unitherm Process was producing bacon so good that it was “too good.”

100. Without Plaintiff’s knowledge, Hormel moved the Unitherm Mini Spiral Oven and Process to the USDA inspected facility of Defendant Osceola Food, LLC in Osceola, Iowa, where it used the Unitherm spiral oven, with preheating, to produce precooked sliced bacon.

101. For example, in February of 2012, the Unitherm Mini Spiral Oven was placed in full time, single shift, commercial operation at the Osceola facility using Mr. Howard’s hybrid process to produce a labeled, precooked sliced bacon product for food service customers. Production from the line was then doubled for the period extending from March through November by moving to a two shift operation.

102. On April 1, 2010, Hormel sent Plaintiff a letter terminating the JDA, stating that no commercially viable results had been achieved.

103. The termination letter stated that Hormel was seeking approval to purchase the Unitherm spiral oven. However, the letter did not inform Plaintiff that Hormel intended to continue to use the Unitherm Mini Spiral Oven and the hybrid process to cook bacon.

104. Rather, Hormel intentionally led Plaintiff falsely to believe that Hormel would not be using the Unitherm Process, in any form, or the Unitherm Mini Spiral Oven to cook bacon.

105. Having been led falsely to believe that the bacon project was now abandoned and that Hormel desired to retain the Unitherm Mini Spiral Oven solely for testing other types of cooking processes for other products, Plaintiff sold the used oven to Hormel. The terms of the

sale provided that the sale of the oven did not include the transfer of any intellectual property rights.

106. Unknown to Plaintiff, just 19 weeks after the termination letter, Hormel filed U.S. Provisional Patent Application No. 61/372,560 for the “Hybrid Bacon Cooking System”. Also unknown to Plaintiff, Hormel then filed U.S. Utility Patent Application No. 13/207,065 which claims the benefit of the provisional application.

107. Although Plaintiff’s president, David Howard, is the true and sole inventor of the subject matter of all of the claims of the ’498 Patent, Hormel did not inform Plaintiff of the filing of the patent applications and did not name David Howard as the inventor of the subject matter claimed. Rather, through error, the “inventors” named on the ’498 Patent are Hormel employees Brian J. Srsen, Richard M. Herreid, James E. Mino, and Brian E. Hendrickson.

**Defendants are Directly and Actively Inducing Infringement of the ’498 Patent**

108. Since at least as early as 2014, Hormel and Osceola Food, LLC have been producing precooked sliced bacon at the Osceola Food facility in Osceola, Iowa using the process which was invented by Mr. Howard and is claimed in the ’498 Patent wherein, after preheating the bacon in a microwave oven to a temperature above 140° F to begin the rendering process so that the surfaces of the product are covered with liquefied fat, the bacon slices are cooked and browned in a JBT spiral oven having a cooking chamber to which superheated steam, which is produced by an external generator at a temperature above 400° F, is injected to heat the oven and to maintain a substantially 100% superheated steam environment.

109. The JBT spiral oven also includes and uses a low temperature thermal oil heating element over which the cooking medium is passed to preheat the spiral oven and to add additional heat to the cooking medium during operation. The oven is operated entirely below

375° F (i.e., the smoke point of the bacon fat) as further taught by Mr. Howard to avoid imparting any related flavor notes to the product.

110. Since at least as early as 2014, Hormel and Osceola Food, LLC have used the process claimed in the '498 Patent (and the process claimed in the Howard Patent) at the Osceola facility to produce a precooked sliced bacon product having the appearance of pan-fried bacon which Hormel sells under the name BACON 1. The BACON 1 product is rendered to less than 40% of its original raw weight and has a water activity level of less than 0.92.

111. The process used at the Osceola Food facility to produce BACON 1 was solely invented by David Howard and includes every step, limitation or other requirement called for in each of the claims of the '498 Patent (as well as in the Howard Patent). Consequently, the process used at the Osceola Food facility to produce BACON 1 infringes each of the claims of the '498 Patent.

112. Upon discovering that Hormel was producing precooked sliced bacon products in a JBT spiral oven using the Unitherm Process, Plaintiff brought suit against Hormel in the U.S. District Court in Minnesota as discussed above for breach of the MCDA and the JDA.

113. The precooked sliced bacon product which the Defendants now produce and sell under the name BACON 1 using the JBT spiral oven is the same product which was being produced by Mr. Howard's processes using the Unitherm Mini Spiral Oven.

114. Initially, however, Hormel discovered that the bacon produced by the JBT spiral oven was not as good as the bacon produced in the Unitherm Spiral Oven.

115. However, rather than changing course and working with Plaintiff, Hormel instead instructed JBT to modify the JBT oven so that it would perform Mr. Howard's process in the same manner as the Unitherm Spiral Oven.

116. Consequently, as noted by the District Court in Minnesota on page 2 of its summary judgment Order (Exhibit C):

In March 2012, representatives of JBT, a Unitherm competitor that also makes spiral ovens, visited the Hormel facility housing the Unitherm oven. A JBT report of the trip states that they “observed and measured the current spiral oven cooking process” with the Unitherm oven, that “JBT must now duplicate the oven conditions” in its own oven, and that Hormel would soon visit JBT “to determine if we can accurately duplicate the conditions to give them the same flavor and texture.” In 2013, Hormel began to procure commercial oven equipment from JBT. In 2014, Hormel released a bacon product, Bacon1, made using the Hybrid Process.

117. JBT also confirmed that the Unitherm Mini Spiral Oven was controlling the environment in the oven at a level approaching 100% steam, which was a particular aspect of the performance of Mr. Howard’s process which Hormel required JBT to duplicate in the JBT oven.

118. Hormel and Rochelle Foods, LLC are now also using the same process, which infringes each claim of the ’498 Patent, to produce BACON 1 at the Rochelle Foods facility in Rochelle, Illinois. The Rochelle Foods line also uses a JBT spiral oven.

119. Upon information and belief, the Defendants are also using the process which infringes at least one or more of the claims of the ’498 Patent to produce one or more additional products, other than BACON 1, at the Osceola Food facility and/or the Rochelle Foods facility.

120. Defendants Hormel and Rochelle Foods, LLC have been producing BACON 1 at the Rochelle Foods facility since at least as early as March 6, 2017.

121. Moreover, Hormel admits that the claims of the ’498 Patent read on the process which Hormel, Osceola Food, LLC and Rochelle Foods, LLC are using at the Osceola and Rochelle facilities to produce the BACON 1 product. Attached hereto as Exhibit H is a Hormel advertisement, copyright 2018, which was published prior to the issuance of the ’498 Patent on May 29, 2018. In the advertisement, Hormel states that “*Hormel*<sup>®</sup> *Bacon 1*<sup>™</sup> perfectly cooked

bacon uses a patent-pending cooking technique that delivers uncompromised flavor, texture and eye appeal, in a fully cooked bacon.” (emphasis added).

122. On page 1 of its 2016 Annual Report, Hormel states that: “Refrigerated Foods was able to deliver sales growth of six percent led by innovative items in foodservice such as *Hormel® Bacon1™* fully cooked bacon and *Hormel® Fire Braised™* meats.”

123. In a Hormel Form 8-K Report dated August 24, 2017, Hormel’s CEO, Jim Snee, is quoted as follows:

“Earlier this month we committed over \$130 million to expand production capacity for precooked bacon at our Dold Foods facility in Wichita, Kansas,” Snee said. “The demand for bacon, especially **HORMEL® BACON 1™** fully cooked bacon, has been incredible. This strategic investment significantly increases our capacity and gives us runway for future growth in foodservice.”

124. In an Earnings Call Transcript regarding 3<sup>rd</sup> Quarter 2017 Results, Hormel’s CEO, Jim Snee, also stated that: “We expect this expansion to be completed in December 2018.”

125. The current expansion by Defendants Hormel and Dold Foods, LLC at the Dold Foods facility in Wichita, Kansas adds multiple new production lines for BACON 1, each involving the use of a JBT spiral oven and each using the same process which infringes each of the claims of the ’498 Patent.

126. Upon information and belief, Defendants intend to use the process covered by the ’498 Patent to produce BACON 1 at the expanded facility as early as December 2018.

127. Upon information and belief, Defendants have undertaken the expansion to accommodate increased demand for precooked bacon, including BACON 1.

128. Upon information and belief, the expansion which is currently underway at the Dold Foods facility involves the construction of four new lines at least three of which are for producing BACON 1.

129. Upon information and belief, at least one of the new lines at the Dold Foods facility is alternatively or additionally for the production of one or more products, other than BACON 1, using the process which infringes at least one or more of the claims of the '498 Patent.

130. Upon information and belief, the expansion at the Dold Foods facility in Wichita, Kansas will increase Hormel's current production capacity for the BACON 1 product in the United States by at least 150%.

131. Upon information and belief, the one or more products, other than BACON 1, produced by at least one of the new lines at the Dold Foods facility will be bacon bits.

132. Upon information and belief, Defendants have advertised the expanded facility for producing precooked bacon, including BACON 1, to customers or other third parties at trade exhibitions.

133. Upon information and belief, Defendants have therefore solicited, or are prepared to solicit, increased orders for precooked bacon, including BACON 1, to be produced at the expanded facility.

**Henri van de Bilt**

134. Six commercial bacon lines sold by Plaintiff are in use worldwide for producing American style precooked bacon (referred to as "streaky bacon") using the Unitherm Process.

135. One of these lines, for example, purchased by Henri van de Bilt, a company in the Netherlands, uses Plaintiff's Unitherm Process without the preheating step. The Henri van de Bilt bacon line uses a Unitherm Mini Spiral Oven of substantially the same size and type as was used by Plaintiff to teach the Unitherm Process to Hormel and was subsequently rented and later purchased by Hormel.

136. In 2015, the International Taste and Quality Institute based in Brussels, Belgium gave its Superior Taste Award, with three gold stars, to Henri van de Bilt for the precooked sliced bacon product produced using the Unitherm Process. The Superior Taste Award is based upon blind scientific tests for evaluating the taste, first impression, sight, aroma, texture, and overall mark of the product. A copy of the Award is attached hereto as Exhibit I.

137. In the course of the conduct above specified, the Defendants have willfully inflicted and continue to willfully inflict grievous and irreparable harm, damage and injury upon Plaintiff and have given rise to the following causes of action:

**COUNT I**  
**(Claim for Correction of Inventorship and Ownership Against Hormel Foods Corporation)**

138. Plaintiff re-alleges and incorporates herein by reference the allegations in each of the preceding paragraphs as if fully set forth herein.

139. Plaintiff's president, David Howard, conceived all of the subject matter called for in each of the claims of the '498 Patent prior to the filing on August 11, 2010 of the Provisional Patent Application No. 61/372,065 from which the '498 Patent was eventually issued.

140. Mr. Howard's conception of the invention was of the complete and operative process as called for in each of the claims of the '498 Patent so that one of ordinary skill in the art would understand the invention and could readily carry it out.

141. Also prior to the filing of the Provisional Patent Application No. 61/372,065 from which the '498 Patent was eventually issued, Mr. Howard shared the full details of his invention as called for in each of the claims of the '498 Patent with Hormel, including Hormel's named "inventors" Srsen and Herreid, so that Hormel was readily able to carry out Mr. Howard's invention.



142. By virtue of Mr. Howard's sole conception of the entire process as called for in each claim of the '498 Patent and his sharing of the full details of his invention with Hormel and the named "inventors" on the '498 Patent so that Hormel and the named "inventors" on the '498 Patent were enabled to carry out Mr. Howard's invention, Mr. Howard is and rightfully should be named as the true and sole inventor of the '498 Patent.

143. Mr. Howard assigned all of his rights in the '498 Patent to Plaintiff. Therefore, Plaintiff holds equitable title to the '498 Patent.

144. Through error, Brian J. Srsen, Richard M. Herreid, James E. Mino, and Brian E. Hendrickson were named as the inventors of the '498 Patent.

145. Through error, David Howard was omitted as the sole inventor of the '498 Patent.

146. Plaintiff HIP, Inc., as the assignee from David Howard of all right, title and interest in and to the '498 Patent, has therefore been damaged by the failure to name Mr. Howard as the sole inventor of the '498 Patent.

147. Pursuant to 35 U.S.C. § 256, Plaintiff is entitled to (a) a judgment and declaration that David Howard is the sole inventor of the '498 Patent and that Plaintiff, by virtue of the assignment from Mr. Howard, is the sole owner of all rights in the '498 Patent, as well as all rights in any additional patents issued in the United States and/or patent applications issued or pending in any foreign countries which claim priority from U.S. Patent Application Serial No. 13/207,065, Provisional Patent Application No. 61/372,065, and/or the '498 Patent and (b) an order from the Court directing the Director of the U.S. Patent and Trademark Office to issue a certificate of correction and directing Hormel Foods Corporation to assign the '498 Patent and all

related United States patents to Plaintiff, and an order from the Court compelling Hormel to assign all such foreign patent applications or patents to Plaintiff.<sup>1</sup>

148. By virtue of Mr. Howard's sole inventorship of and Plaintiff's ownership of all rights in the '498 Patent, the Defendants Hormel Foods Corporation, Hormel Foods Corporate Services, LLC, Osceola Food, LLC, Rochelle Foods, LLC, and Dold Foods, LLC have no right or permission to use the process claimed in the '498 Patent to produce BACON 1 or any other product.

## COUNT II

### **(Contingent Claims for Patent Infringement Against Hormel Foods Corporation, Hormel Foods Corporate Services, LLC, Osceola Food, LLC, and Rochelle Foods, LLC)**

149. Plaintiff re-alleges and incorporates herein by reference the allegations in each of the preceding paragraphs as if fully set forth herein.

150. For reasons described above, Plaintiff currently holds equitable title to the '498 Patent, and has held equitable title to the '498 Patent at least since the date of issuance, and therefore it is the true owner of the '498 Patent. Plaintiff therefore has standing to sue for infringement of the '498 Patent and has had standing to sue at least since the date it filed suit.

151. Nonetheless, Plaintiff recognizes that this claim is contingent upon the Court entering a judgment and declaration that David Howard is the sole inventor of the '498 Patent

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<sup>1</sup> Defendants have asserted that to the extent this Complaint seeks a correction of inventorship under 35 U.S.C. §256(b) to name David Howard as the sole inventor of, and a declaration that Plaintiff, by virtue of the assignment from Mr. Howard, is the sole owner of, all rights in any additional patent applications, which are currently pending in the United States and which claim priority from U.S. Patent Application Serial No. 13/207,065, Provisional Patent Application No. 61/372,065, and/or the '498 Patent, and which are issued by the United States Patent and Trademark Office during the pendency of this litigation, are premature because the applications have not been issued. Based on this assertion, Plaintiff has dropped these claims without prejudice to being refiled if any such patents issue.

and that Plaintiff, by virtue of the assignment from Mr. Howard, is the sole legal owner of all rights in the '498 Patent.

152. Because this is a contingent cause of action under F.R.C.P. 18(b), Plaintiff is amenable to staying Count II pending the disposition of Count I.

153. In violation of 35 U.S.C. § 271(a), Defendants Hormel Foods Corporation, Hormel Foods Corporate Services, LLC, Osceola Food, LLC, and Rochelle Foods, LLC are infringing each of the claims of the '498 Patent by using in the United States, without permission or authority, the process called for in each of these claims.

154. Defendants have known since the issuance of the '498 Patent on May 29, 2018 that the process which they are using at the Osceola Food and Rochelle Foods facilities infringes the '498 Patent (as well as the Howard Patent).

155. Defendants will continue to infringe one or more claims of the '498 Patent unless enjoined by this Court.

156. Defendants have known since before the filing of the Provisional Patent Application No. 61/372,065 from which the '498 Patent was eventually issued that David Howard is the sole inventor of all of the subject matter called for in each of the claims of the '498 Patent and that Defendants therefore have no right or permission to use the invention claimed in the '498 Patent.

157. Despite this knowledge, and despite being aware of the claims allowed in the '498 Patent since the issuance of a decision by the Patent Trial and Appeal Board on January 2, 2018, Defendants have not only refused to discontinue their use, in the United States, of the process called for in each of the claims of the '498 Patent, but are proceeding with the expansion of their

infringing production lines and facilities in the United States to increase their current production of BACON 1 by at least 150%.

158. As a result of Defendants' infringement, Plaintiff has suffered and will continue to suffer damages, in an amount to be proven at trial, and irreparable harm.

159. Defendants' infringement of the '498 Patent has been willful, deliberate and in bad faith such that Plaintiff is entitled to an award of enhanced damages under 35 U.S.C. § 284.

160. Defendants' conduct presents an exceptional case such that Plaintiff is entitled under 35 U.S.C. § 285 to an award of its reasonable attorney's fees.

### **COUNT III**

#### **(Contingent Claim for Patent Infringement or Declaratory Judgement of Patent Infringement Against Hormel Foods Corporation, Hormel Foods Corporate Services, LLC, and Dold Foods, LLC)**

161. Plaintiff re-alleges and incorporates herein by reference the allegations in each of the preceding paragraphs as if fully set forth herein.

162. For reasons described above, Plaintiff currently holds equitable title to the '498 Patent, and has held equitable title to the '498 Patent at least since the date of issuance, and therefore it is the true owner of the '498 Patent. Plaintiff therefore has standing to sue for infringement of the '498 Patent and has had standing to sue at least since the date it filed suit.

163. Nonetheless, Plaintiff recognizes that this claim is contingent upon the Court entering a judgment and declaration that David Howard is the sole inventor of the '498 Patent and that Plaintiff, by virtue of the assignment from Mr. Howard, is the sole legal owner of all rights in the '498 Patent.

164. Because this is a contingent cause of action under F.R.C.P. 18(b), Plaintiff is amenable to staying Count III pending the disposition of Count I. If this case is stayed until after the Court resolves the inventorship/ownership dispute in Count I, on information and belief,

Dold Foods will have completed its expansion work and begun expanded production of BACON1 and this cause of action is for patent infringement by Hormel and Dold Foods, LLC. Alternatively, if Dold Foods has not yet begun production of BACON 1, this cause of action is for declaratory judgment.

165. As discussed above, Hormel has committed over \$130 million to expand production capacity for precooked bacon, including BACON 1, at the Dold Foods facility in Wichita, Kansas, and by Defendants' own admission, the process covered by the '498 Patent can be used at the expanded facility as early as December 2018.

166. Upon information and belief, Hormel has advertised the expansion to customers or other third parties and has solicited increased orders for precooked bacon, including BACON 1, to be produced at the expanded facility.

167. An actual, immediate, real, and justiciable controversy exists under the Declaratory Judgment Act, 28 U.S.C. § 2201, between Plaintiff and Defendants Hormel and Dold Foods, LLC concerning the \$130 million expansion of the Dold Foods facility in Wichita, Kansas in which multiple new production lines are under construction, without authority or permission from Plaintiff, for the impending production of BACON 1 using the same process which infringes each of the claims of the '498 Patent (as well as the claims of the Howard Patent).

168. This expansion at the Dold Foods facility will and is intended to expand Defendants' production of the BACON 1 product in the United States using the infringing processes.

169. Upon information and belief, this expansion at the Dold Foods facility will and is intended to increase Defendants' production of the BACON 1 product by at least 150%.

170. Hormel and Dold Foods have known since the issuance of the '498 Patent on May 29, 2018 that the process which they are implementing at the Dold Foods facility infringes the '498 Patent (as well as the claims of the Howard Patent).

171. Hormel and Dold Foods have known since before the filing of the Provisional Patent Application No. 61/372,065 from which the '498 Patent was eventually issued that David Howard is the sole inventor of all of the subject matter called for in each of the claims of the '498 Patent and that Defendants therefore have no right or permission to use the invention claimed in the '498 Patent.

172. Despite this knowledge, and despite being aware of the claims allowed in the '498 Patent since the issuance of the decision by the Patent Trial and Appeal Board on January 2, 2018, Hormel and Dold Foods have forged ahead with their \$130 million expansion which will immediately be used to implement the infringing processes to produce more BACON 1 product and at least one additional product upon completion of the expansion this year.

173. It is therefore necessary that this Court provide and enter declaratory relief on behalf of Plaintiff under 28 U.S.C. § 2201 finding that the process which the Defendants Hormel and Dold Foods, LLC are in the process of implementing to produce BACON 1 and at least one additional product at the Dold Foods facility in Wichita, Kansas will infringe the '498 Patent (as well as the claims of the Howard Patent).

174. Alternatively, in violation of 35 U.S.C. § 271(a), Defendants Hormel Foods Corporation, Hormel Foods Corporate Services, and Dold Foods, LLC are infringing each of the claims of the '498 Patent by using in the United States, without permission or authority, the process called for in each of these claims.

175. Plaintiff will suffer significant additional injury and irreparable harm as a result of the actual initiation of this infringing activity, in violation of Plaintiff's patent rights, which will increase the Defendants' current production capacity for BACON 1 by at least 150% and produce at least one additional product for sale by Hormel.

**COUNT IV**  
**(Contingent Claim for Actively Inducing Infringement Against Hormel Foods Corporation and Hormel Foods Corporate Services, LLC)**

176. Plaintiff re-alleges and incorporates herein by reference the allegations in each of the preceding paragraphs as if fully set forth herein.

177. For reasons described above, Plaintiff currently holds equitable title to the '498 Patent, and has held equitable title to the '498 Patent at least since the date of issuance, and therefore it is the true owner of the '498 Patent. Plaintiff therefore has standing to sue for infringement of the '498 Patent and has had standing to sue at least since the date it filed suit.

178. Nonetheless, Plaintiff recognizes that this claim is contingent upon the Court entering a judgment and declaration that David Howard is the sole inventor of the '498 Patent and that Plaintiff, by virtue of the assignment from Mr. Howard, is the sole legal owner of all rights in the '498 Patent.

179. Because this is a contingent cause of action under F.R.C.P. 18(b), Plaintiff is amenable to staying Count IV pending the disposition of Count I.

180. As shown and claimed above: Defendants Hormel and Osceola Food, LLC are directly infringing each claim of the '498 Patent under 35 U.S.C. § 271(a) at the Osceola Food facility in Osceola, Iowa; Defendants Hormel and Rochelle Foods, LLC are directly infringing each claim of the '498 Patent under 35 U.S.C. § 271(a) at the Rochelle Foods facility in Rochelle, Illinois; and Defendants Hormel and Dold Foods, LLC are actively implementing the

use at the Dold Foods facility in Wichita, Kansas of the same process which directly infringes each claim of the '498 Patent.

181. Additionally or in the alternative, and without authority or permission from Plaintiff: Defendant Hormel is actively inducing under 35 U.S.C. § 271(b) the direct infringement by Defendant Osceola Food, LLC of each claim of the '498 Patent at the Osceola Food facility in Osceola, Iowa; Defendant Hormel is actively inducing under 35 U.S.C. § 271(b) the direct infringement by Defendant Rochelle Foods, LLC of each claim of the '498 Patent at the Rochelle Foods facility in Rochelle, Illinois; and Defendant Hormel is actively inducing under 35 U.S.C. § 271(b) the impending implementation of the same infringing process by Defendant Dold Foods, LLC at the Dold Foods facility in Wichita, Kansas.

182. The BACON 1 product is a Hormel branded product which is being produced for, and is being promoted and sold by, Hormel.

183. Defendants Osceola Food, LLC, Rochelle Foods, LLC, and Dold Foods, LLC are wholly owned subsidiaries of Hormel who (a) have been and are being instructed, aided and abetted in the performance of the infringing processes by Hormel and (b) have been and are being directed by Hormel to perform the infringing processes to produce the Hormel branded BACON 1 product which is sold by Hormel.

184. Defendant Dold Foods, LLC is also being instructed, aided and abetted in the performance of the infringing processes by Hormel, and is being directed by Hormel to perform the infringing processes, to produce at least one additional product, other than BACON 1, which will be sold by Hormel

185. Hormel has known since the issuance of the '498 Patent on May 29, 2018 that the process which is in use at the Osceola Food and Rochelle Foods facilities and which is being



implemented at the at the Dold Foods facility infringes the '498 Patent (as well as the claims of the Howard Patent).

186. Hormel has known since before the filing of the Provisional Patent Application No. 61/372,065 from which the '498 Patent was eventually issued that David Howard is the sole inventor of all of the subject matter called for in each of the claims of the '498 Patent and that Hormel therefore has no right or permission to use or to actively induce the use of the invention claimed in the '498 Patent.

187. Despite this knowledge, and despite being aware of the claims allowed in the '498 Patent since the issuance of the decision by the Patent Trial and Appeal Board on January 2, 2018, Hormel continues to actively induce Osceola Food, LLC, Rochelle Foods, LLC, and Dold Foods, LLC to perform the process in order to produce the BACON 1 product and at least one other product for sale by Hormel, knowing that the process which Hormel has instructed, aided, and abetted Osceola Food, LLC, Rochelle Foods, LLC, and Dold Foods, LLC in performing directly infringes each claim of the '498 Patent.

188. As a result of Hormel's active inducement of infringement by Osceola Food, LLC, Rochelle Foods, LLC, and Dold Foods, LLC, Plaintiff has suffered and will continue to suffer damages, in an amount to be proven at trial, and irreparable harm.

189. Hormel's active inducement of the infringement of the '498 Patent by Osceola Food, LLC, Rochelle Foods, LLC and Dold Foods, LLC has been willful, deliberate, and in bad faith such that Plaintiff is entitled to an award of enhanced damages under 35 U.S.C. § 284.

190. Hormel will continue to actively induce infringement of the '498 Patent unless enjoined by this Court.

191. Hormel's conduct presents an exceptional case such that Plaintiff is entitled under 35 U.S.C. § 285 to an award of its reasonable attorney's fees.

**COUNT V**  
**(Alternative Claim for Correction of Co-Inventorship and Co-Ownership**  
**Against Hormel Foods Corporation)**

192. Plaintiff re-alleges and incorporates herein by reference the allegations in each of the preceding paragraphs as if fully set forth herein.

193. In the alternative to Counts I-IV set forth above, if it is adjudged that David Howard is a co-inventor rather than the sole inventor of the subject matter claimed in the '498 Patent, then, pursuant to 35 U.S.C. § 256, Plaintiff is entitled to a judgment that David Howard is a co-inventor of the '498 Patent and of all United States patents or foreign patents and/or foreign patent applications claiming priority to the '498 Patent and/or either or both of the applications from which the '498 Patent derived and that Plaintiff, by virtue of the assignment from Mr. Howard, is a joint owner of the '498 Patent under 35 U.S.C. § 262, as well as any additional patents in the United States or patents and/or patent applications in any other country which claim priority from the '498 Patent and/or either or both of the applications from which the '498 Patent derived.<sup>2</sup>

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<sup>2</sup> Defendants have asserted that to the extent this Complaint seeks a correction of inventorship under 35 U.S.C. §256(b) to name David Howard as a co-inventor of, and a declaration that Plaintiff, by virtue of the assignment from Mr. Howard, is a co-owner of, all rights in any additional patent applications, which are currently pending in the United States and which claim priority from U.S. Patent Application Serial No. 13/207,065, Provisional Patent Application No. 61/372,065, and/or the '498 Patent, and which are issued by the United States Patent and Trademark Office during the pendency of this litigation, are premature because the applications have not been issued. Based on this assertion, Plaintiff has dropped these claims without prejudice to being refiled if any such patents issue.

**PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff HIP prays for judgment and seeks relief against Defendants Hormel Foods Corporation, Hormel Foods Corporate Services, LLC, Osceola Food, LLC, Rochelle Foods, LLC, and Dold Foods, LLC as follows:

- A. For a judgment and declaration that David Howard is the sole inventor of U.S. Patent No. 9,980,498 (the '498 Patent) and that Plaintiff is the sole owner of all rights in the '498 Patent and of any patents or patent applications in other countries which claim priority from the '498 Patent and/or either or both of the applications from which the '498 Patent derived;
- B. For an order pursuant to 35 U.S.C. § 256 requiring the Director of the United States Patent and Trademark Office to issue a Certificate to correct the inventorship of the '498 Patent to name David Howard as the sole inventor of the '498 Patent and to remove Brian J. Srsen, Richard M. Herreid, James E. Mino, and Brian E. Hendrickson as inventors;
- C. For an order that Hormel assign the '498 Patent, all United States patents or foreign patents and/or patent applications which claim priority from the '498 Patent and/or either or both of the applications from which the '498 Patent derived, and all United States patents or patents and/or patent applications in other countries which claim priority from the '498 Patent and/or either or both of the applications from which the '498 Patent derived, to Plaintiff HIP, Inc.;
- D. For a judgment that one or more of the claims of the '498 Patent have been and continue to be infringed by the Defendants Hormel Foods Corporation, Hormel Foods Corporate Services, LLC, Osceola Food, LLC, and Rochelle Foods, LLC;

- E. For Declaratory Judgment that the process which the Defendants Hormel Foods Corporation, Hormel Foods Corporate Services, LLC, and Dold Foods, LLC are implementing to produce BACON 1 and at least one other product at the Dold Foods facility in Wichita, Kansas will infringe one or more of the claims of the '498 Patent;
- F. For a judgment that Defendants' infringement of the '498 Patent has been willful;
- G. For a judgment that Defendants Hormel Foods Corporation and Hormel Foods Corporate Services, LLC have induced and continue to actively induce the direct infringement of one or more of the claims of the '498 Patent by Defendants Osceola Food, LLC, Rochelle Foods, LLC, and Dold Foods, LLC;
- H. For a judgment that the active inducement of infringement of the '498 Patent by Hormel Foods Corporation and Hormel Foods Corporate Services, LLC has been willful;
- I. For a judgment and an award of all damages sustained by Plaintiff HIP, Inc. as the result of Defendants' misconduct, including but not limited to their acts of infringement and/or inducing infringement, and in no event less than a reasonable royalty pursuant to 35 U.S.C § 284, and including supplemental damages for any continuing post-verdict infringement and/or inducing infringement assuming, arguendo, Plaintiff HIP, Inc. is not entitled to a permanent injunction;
- J. For a permanent injunction enjoining Defendants and those in active concert or privy with them from infringing or inducing infringement of the claims of the '498 Patent;
- K. For a judgment and an award of enhanced damages pursuant to 35 U.S.C. § 284;
- L. For a judgment and an award of attorney's fees pursuant to 35 U.S.C. § 285;
- M. For a judgment and an award of all interest and costs; and

N. For a judgment and an award of such other and further relief as the Court deems just and proper.

MORRIS, NICHOLS, ARSHT & TUNNELL LLP

*/s/ Karen Jacobs*

OF COUNSEL:

Jerry R. Selinger  
Susan E. Powley  
PATTERSON + SHERIDAN LLP  
1700 Pacific Avenue, Suite 2650  
Dallas, TX 75201  
(214) 272-0958

B. Todd Patterson  
PATTERSON + SHERIDAN LLP  
24 Greenway Plaza, Suite 1600  
Houston, TX 77046  
(713) 623-4844

Dennis Brown  
BROWN PATENT LAW, P.L.L.C.  
2700 N. Hemlock Ct., Suite 111 E  
Broken Arrow, OK 74012  
(918) 615-3357

August 6, 2018

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Karen Jacobs (#2881)  
Michael J. Flynn (#5333)  
1201 North Market Street  
P.O. Box 1347  
Wilmington, DE 19899  
(302) 658-9200  
kjacobs@mnat.com  
mflynn@mnat.com  
*Attorneys for HIP, Inc.*

**CERTIFICATE OF SERVICE**

I hereby certify that on August 6, 2018, I caused the foregoing to be electronically filed with the Clerk of the Court using CM/ECF, which will send notification of such filing to all registered participants.

I further certify that I caused copies of the foregoing document to be served on August 6, 2018, upon the following in the manner indicated:

David E. Moore  
Bindu A. Palapura  
Stephanie E. O'Byrne  
POTTER ANDERSON & CORROON LLP  
Hercules Plaza, 6th Floor  
1313 N. Market Street  
Wilmington, DE 19801  
*Attorneys for Defendants*

*VIA ELECTRONIC MAIL*

Kurt J. Niederluecke  
Timothy M. O'Shea  
Barbara Marchevsky  
FREDRIKSON & BYRON P.A.  
200 South Sixth Street, Suite 4000  
Minneapolis, MN 55402  
*Attorneys for Defendants*

*VIA ELECTRONIC MAIL*

*/s/ Karen Jacobs*

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Karen Jacobs (#2881)