

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

_____)	
ECOLAB USA INC.,)	
)	
)	
Plaintiff,)	Civil Action No. _____
)	
v.)	
)	
B & B PEST CONTROL,)	
JOHN BOZARJIAN SR., and)	<u>JURY TRIAL DEMANDED</u>
JOHN BOZARJIAN JR.,)	
)	
Defendants.)	
_____)	

COMPLAINT

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

PARTIES

1. Plaintiff Ecolab USA Inc. (“Ecolab”) is incorporated in the state of Delaware and has a principal place of business at Ecolab Center, 370 North Wabasha Street, Saint Paul, Minnesota 55201.
2. Upon information and belief, Defendant B & B Pest Control is a Massachusetts company and has a principal place of business at 271 Western Avenue, Suite 203, Lynn, Massachusetts 01904.
3. Upon information and belief, Defendant John Bozarjian Sr. is an individual residing at 54 Brassie Way, Unit 54, North Reading, Massachusetts 01864.
4. Upon information and belief, Defendant John Bozarjian Jr. is an individual residing at 4 Grace Road, Danvers, Massachusetts 01923.

5. Upon information and belief, the Bozarjian Defendants own and/or do business under the name B & B Pest Control.

6. Defendants offer pest control services in Massachusetts, including through use of at least the website www.bbpest.com.

JURISDICTION AND VENUE

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

8. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a) in that this is a civil action arising out of the patent laws of the United States of America. This Court has personal jurisdiction over all Defendants. The Bozarjian Defendants reside in this District and B & B Pest Control has established its principal place of business in this District. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391 and 1400.

COUNT I - INFRINGEMENT OF U.S. PATENT NO. 10,070,639

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

10. On September 11, 2018, United States Patent No. 10,070,639 B2 (hereinafter “the ’639 patent”) entitled HEAT SYSTEM FOR KILLING PESTS was duly and legally issued to Ecolab USA Inc. Since that date, Ecolab USA Inc. has owned right, title, and interest in the ’639 patent. A copy of the ’639 patent is attached hereto as Exhibit A.

11. In their use of the AmCan BugStop Hot House (hereafter “Hot House”), and sale and offer for sale of services employing the Hot House, to treat bed bug infestations, Defendants have infringed and continue to infringe one or more claims of the ’639 patent, including but not limited to claims 1, 3-5, 7-15, 17, and 19.

12. Defendants' use of the Hot House to treat for bed bug infestations is depicted and discussed on Defendants' website, at www.bbpest.com/hot-house-treatments-for-bed-bugs.

According to Defendants' website, the Hot House offers "the quick and effective killing of bed bugs in all life stages within hours, without chemicals, in the hardest to reach places." And the Hot House "can even hold several items at once, including mattresses, box springs, headboards, couches, and more." Defendants tout the "economical and effective" nature of the Hot House treatment option.

13. The Hot House meets every limitation of the system claims of the '639 patent, including at least claims 1, 3-5, and 7-12. As such, Defendants' use of the Hot House system in the United States constitutes infringement of the system claims under 35 U.S.C. § 271(a).

14. Defendants' bed bug treatment services employing the Hot House meet every limitation of the method claims of the '639 patent, including at least claims 13-15, 17, and 19. As such, Defendants use, sale, and offer for sale of bed bug treatment services employing the Hot House constitutes infringement of the method claims under 35 U.S.C. § 271(a).

15. Upon information and belief, Defendants are and have been aware of the '639 patent, and their infringement of the '639 patent claims was and is knowing and intentional.

16. On or about September 27, 2018, Ecolab sent a letter to the manufacturer of the Hot House, AmCan, informing AmCan of Ecolab's rights in the '639 patent and explaining how the Hot House and use thereof infringed several claims of the '639 patent. A copy of Ecolab's letter to AmCan is attached as Exhibit B.

17. As part of the discussions with AmCan concerning Ecolab's allegations of infringement, Ecolab asked AmCan to provide notice of the '639 patent and Ecolab's infringement allegations to all U.S. purchasers of the Hot House.

18. Upon information and belief, Defendants were informed by AmCan of the existence of the '639 patent and of Ecolab's allegation that the Hot House infringes several claims of the '639 patent.

19. Ecolab has been damaged by Defendants' infringement of the '639 patent in an amount to be proven at trial and will continue to be damaged in the future unless Defendants are permanently enjoined from infringing the '639 patent.

20. Defendants' infringement of the '639 patent is now and has been willful. Defendants' misconduct is egregious and typifies behavior beyond typical patent infringement.

21. Unless these acts of Defendants are restrained by this Court, they will continue, and they will continue to cause irreparable injury to Ecolab for which there is no adequate remedy at law. Ecolab is, therefore, entitled to injunctive relief pursuant to 35 U.S.C. § 283.

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

PRAYER FOR RELIEF

WHEREFORE, Ecolab prays for judgment that:

A. United States Patent No. 10,070,639 is valid and has been infringed by Defendants;

B. Defendants and their officers, agents, servants and employees, and those persons in active concert or participation with any of them, be enjoined from further infringing United States Patent No. 10,070,639;

C. An accounting be had for the damages arising out of Defendants' infringement of United States Patent No. 10,070,639, including treble damages for willful infringement as provided by 35 U.S.C. §§ 284 and 285, with interest;

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

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

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

DEMAND FOR JURY TRIAL

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

Dated this 19th day of February, 2019

Respectfully submitted,

ECOLAB USA INC.

By its attorneys,

/s/ Lisa M. Tittlemore

Lisa M. Tittlemore (BBO # 567941)

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