

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

MIXING & MASS TRANSFER)	
TECHNOLOGIES, LLC, a Pennsylvania)	
limited liability company,)	Civil Action No.:
)	
Plaintiff,)	
)	
v.)	<u>COMPLAINT AND</u>
)	<u>DEMAND FOR JURY TRIAL</u>
)	
SPX CORPORATION, a Delaware)	
corporation, SPX FLOW, INC., a Delaware)	
corporation, SPX FLOW US, LLC, a)	
Delaware limited liability company, and)	
DOES I through X, inclusive,)	
)	
Defendants.)	

COMPLAINT

Plaintiff, Mixing & Mass Transfer Technologies, LLC (hereinafter, “M2T” or “Plaintiff”), by its attorneys, says as and for its Complaint against SPX CORPORATION, SPX FLOW, INC., SPX FLOW US, LLC, and Does I through X, inclusive (hereinafter collectively the “Defendants”) the following:

1. This is an action for willful patent infringement and unfair competition under federal law and state law, false advertising and false designation of origin under the Lanham Act, declaratory relief, and unjust enrichment. Plaintiff seeks equitable relief and damages as well as declaratory relief regarding a patent procured by one of the Defendants through fraud and inequitable conduct, including the use of Plaintiff’s confidential, proprietary and trade secret information, is unenforceable.

2. Plaintiff, M2T, has long been recognized as a leader in the design, manufacture and sale of proprietary, high efficiency mechanical surface aeration impellers as well as related processes using aeration to increase the dissolution of oxygen in surface aeration operations, particularly in secondary wastewater treatment processes.

3. M2T and its predecessors have been awarded numerous United States Patents for its invention of mechanical surface aeration impellers and related processes including, United States Patent Nos. 5,988,604 entitled “Mixing impellers especially adapted for use in surface aeration”; 6,715,912 entitled “Surface aeration impellers”; 6,860,631 entitled “Surface aeration impeller designs”; 6,877,959 entitled “Surface aeration impellers”; 6,966,983 entitled “Continuous multistage thermophilic aerobic sludge digestion system”; and 7,563,374 entitled “Continuous multistage thermophilic aerobic and aerobic-anaerobic sludge treatment process”.

4. This action relates to M2T’s “HI-FLO™ 1.5” aeration impellers which M2T invented in 2002 and for which it thereafter was awarded United States Patent No. 6,877,959.

5. This action is brought against Defendants SPX CORPORATION (“SPX”), SPX FLOW, INC. (“SPX FLOW”), believed to be the successor by merger to SPX, and SPX FLOW US, LLC (“SPX FLOW US”), believed to be a wholly owned subsidiary of SPX FLOW, which have knowingly and deliberately infringed and continue to infringe M2T’s patented invention, misappropriated M2T’s related trade secrets (in violation of a written agreement with M2T), manufactured and began marketing infringing surface aeration impellers and, later, unfairly competed with M2T by, among other things, falsely describing and marketing their Lightning™ Model A245 Surface Aerator product as “patented technology”—when in fact the patented

technology belongs to M2T and to which Defendants have no license rights—and making other false and/or misleading statements.

6. Additionally, Defendants, through one or more of their agents, acquired and used M2T's trade secrets to unlawfully apply for and procure United States Patent No. 7,114,844.

7. M2T has instituted this action to halt the Defendants' ongoing infringement of United States Patent No. 6,877,959, to recover damages from the Defendants for their willful infringement, to redress Defendants' misappropriation of M2T's trade secrets, breach of contract, and other unlawful conduct, and to obtain a declaration from the Court that United States Patent No. 7,114,844 is unenforceable because it was procured through unlawful and inequitable conduct.

THE PARTIES AND PERSONAL JURISDICTION

8. M2T is a Pennsylvania limited liability company with its principal place of business in Boalsburg, Pennsylvania. M2T also is the successor-in-interest to Mixing & Mass Transfer Technologies, Inc., a Pennsylvania corporation.

9. SPX is a Delaware corporation with its global headquarters in Charlotte, North Carolina. SPX is subject to the jurisdiction of this Court.

10. SPX FLOW, INC. is a Delaware corporation with its global headquarters in Charlotte, North Carolina. Upon information and belief, SPX FLOW, INC. is the successor by merger to SPX or one of SPX's lines of business. SPX FLOW is subject to the jurisdiction of this Court.

11. SPX FLOW US, LLC is a Delaware limited liability company with its headquarters, and its Lightnin Division headquarters, in Rochester, New York. SPX FLOW US is subject to the jurisdiction of this Court.

12. The identity, organization and location of Does I through X are presently unknown but, upon information and belief, each of them acted in concert with either SPX, SPX FLOW, and/or SPX FLOW US, or all of them, and actively engaged in the wrongful conduct alleged in this Complaint.

13. Upon information and belief, all of the Defendants including Does I through X are subject to the jurisdiction of this Court.

SUBJECT MATTER JURISDICTION AND VENUE

14. This Court has original subject matter jurisdiction over Plaintiff's federal law claims for patent infringement, unfair competition, false advertising and false designation of origin pursuant to 28 U.S.C. § 1331 and § 1338.

15. This Court has original subject matter jurisdiction over Plaintiff's state law claims pursuant to 28 U.S.C. § 1332 because there is complete diversity of citizenship between the Plaintiff and all Defendants, and the amount in controversy exceeds \$75,000.00.

16. This Court has original subject matter jurisdiction over Plaintiff's claim for declaratory relief pursuant to 28 U.S.C. § 2201 because there is an actual controversy within its jurisdiction between the Plaintiff and Defendants as alleged herein.

17. This Court also has supplemental jurisdiction over Plaintiff's state law claims pursuant to 28 U.S.C. § 1367.

18. Venue is proper in this District pursuant to 28 U.S.C. § 1391 and § 1400.

FACTS COMMON TO ALL COUNTS

19. At all times relevant to this action, M2T has been in the business, *inter alia*, of designing, manufacturing, marketing and selling proprietary, high efficiency aeration impellers used in secondary wastewater treatment processes throughout the United States and the world.

20. In 2002, John R. McWhirter, Ph.D., a principal of M2T, invented a new type of surface aeration impeller which featured a horizontal top plate affixed to the vertical blades of the impeller.

21. Dr. McWhirter and M2T believed that the addition of the horizontal top plate would lower the spray height of the liquid being mixed and dramatically increase the liquid mixing capacity and standard oxygen transfer aeration efficiency of the surface aeration impeller.

22. By the spring of 2002, M2T's revolutionary new surface aeration impeller designs were ready for full-scale testing.

23. In order to test prototypes of the newly-designed surface aeration impellers, however, M2T needed the use of a very large liquid mixing tank in which to install and operate the surface aeration impellers but it did not possess any such tank.

24. In May 2002, M2T arranged with SPX to use SPX's large liquid mixing test tanks in SPX's Lightnin Division headquarters facility in Rochester, New York to test the prototypes.

25. On May 22, 2002, M2T and SPX entered into a Facilities Lease Agreement (the "Facilities Lease Agreement") pursuant to which M2T would, in exchange for specified "lease

fees” test its new surface aeration impeller designs using the large test tanks at SPX’s facility.

A true and correct copy of the Facilities Lease Agreement is attached as Exhibit A hereto.

26. The Facilities Lease Agreement was amended and/or extended by letters dated October 9, 2002 and November 6, 2002. True and correct copies of the October 9, 2002 and November 6, 2002 letters are attached as Exhibit B hereto.

27. Contemporaneously with the execution of the Facilities Lease Agreement, and incorporated into the Facilities Lease Agreement, SPX and M2T entered into a Mutual Non-Disclosure Agreement (the “Non-Disclosure Agreement”). A true and correct copy of the Non-Disclosure Agreement is Attachment E to the Facilities Lease Agreement is attached separately as Exhibit C hereto.

28. The Non-Disclosure Agreement is both an independent agreement and was incorporated by reference into the Facilities Lease Agreement and the amended and/or extended Facilities Lease Agreement.

29. In the Non-Disclosure Agreement, the parties acknowledged that “disclosure of proprietary information of either party hereto to the industry, general public, or third parties could seriously jeopardize the proprietary property rights of the Disclosing Party.”

30. In the Non-Disclosure Agreement, SPX and M2T agreed to “hold the Proprietary Information disclosed by the Disclosing Party in confidence for a period of two (2) years from the date of termination, using the same degree of care it uses in respect of its own confidential information of like nature.”

31. In May, June and July of 2002, and again in October and December, M2T used tanks at SPX's Rochester facility to test its new surface aeration impeller designs.

32. The tests performed by M2T at the facilities of SPX proved that Dr. McWhirter and M2T were correct: The newly designed surface aeration impellers dramatically increased the standard aeration efficiency of the impellers over earlier designs of such impellers.

33. Employees of SPX, including, but not limited to, SPX's Senior Engineer, Ronald J. Weetman, had access to M2T's secret tests and learned, for the first time, of the unique features and high efficiency of M2T's new aeration impeller designs, including, but not limited to, the inclusion of a horizontal top plate.

34. On March 3, 2003, SPX filed a patent application entitled "Aeration Apparatus and Method" with the United States Patent and Trademark Office identifying Ronald J. Weetman as its sole inventor. The application was subsequently assigned Application No. 10/376,458 (the "SPX Application").

35. The "Apparatus" described in the SPX Application copied all of the unique features of the M2T surface aeration impellers, including, but not limited to, the inclusion of a horizontal top plate, which had been secretly tested by M2T at SPX's Rochester, New York facility in prior months.

36. The SPX Application was the same basic design as the M2T impeller design but with the addition of a narrow rectangular slot in the bottom section of the lower 45-degree angled portion of the M2T surface aeration impeller blade. The SPX Application included no data regarding the slotted impeller performance, but it stated the slot would reduce the impeller power

input and thereby increase its efficiency. This is definitely false, however, as the reduced liquid pumping capability would also simultaneously reduce its oxygen transfer performance, thus resulting in no overall improvement of impeller performance.

37. In support of the SPX Application, Ronald J. Weetman submitted a Declaration and Power of Attorney (the “Weetman Declaration”) in which he claimed to be “the first and sole inventor . . . of the subject matter claimed and for which a patent is sought on the invention entitled AERATION APPARATUS AND METHOD, the specification of which is attached hereto.”

38. The above cited statement by Ronald J. Weetman in the SPX Application was false, insofar as, he was not the first and sole inventor of the aeration impeller, which he copied from M2T with the addition of a narrow rectangular slot in the bottom section of the lower 45-degree angled portion of the M2T aeration impeller blade, which would negatively impact the overall impeller aeration performance.

39. The SPX Application was subsequently assigned to SPX.

40. M2T filed a patent application for its newly-designed aeration impellers on June 3, 2003. That application was entitled “SURFACE AERATION IMPELLERS” and was assigned Patent Application No. 10/453,057 (the “M2T Application”).

41. The M2T Application identified Dr. McWhirter as inventor and was subsequently assigned to M2T.

42. On April 12, 2005, M2T was awarded U.S. Utility Patent No. 6,877,959 entitled “SURFACE AERATION IMPELLERS” (the “M2T Patent”). A true and correct copy of the M2T Patent is attached as Exhibit D hereto.

43. On October 3, 2006, SPX was awarded U.S. Utility Patent No. 7,114,844 entitled “AERATION APPARATUS AND METHOD (the “SPX Patent”). A true and correct copy of the SPX Patent is attached as Exhibit E hereto.

44. M2T began marketing surface aerator impellers under the technology described in the M2T Patent in or about late 2002 under M2T’s HI-FLO™ brand.

45. By 2003, M2T was generating sales of several million dollars per year from the sale of its HI-FLO™ surface aerator impellers described in the M2T Patent.

46. In or about July 2005, M2T commenced a lawsuit against SPX in the Court of Common Pleas of Centre County, Pennsylvania, which was removed to the United States District Court for the Middle District of Pennsylvania, alleging SPX’s breach of contract and other torts against M2T related to certain impeller designs (hereinafter the “Prior Lawsuit”).

47. The Prior Lawsuit was resolved by a Settlement Agreement, Waiver and Release dated September 13, 2007 (hereinafter the “2007 Settlement Agreement”).

48. The terms of the 2007 Settlement Agreement are designated as confidential; therefore, a copy is not attached as an exhibit hereto. Upon information and belief, Defendants have a fully executed copy of the 2007 Settlement Agreement. M2T will provide a true and correct copy of the 2007 Settlement Agreement to the Court upon request, and if necessary, file it under seal.

49. Upon information and belief, sometime after the issuance of the M2T Patent on April 12, 2005, SPX began marketing and promoting for sale in commercial advertising aerator impellers that infringe on the M2T Patent.

50. Upon information and belief, SPX marketed and promoted for sale in commercial advertising its infringing surface aeration impellers as Lightnin™ Model A245.

51. Defendants continue to market and promote for sale in commercial advertising the infringing Model A245 today.

52. Defendants marketed and continue to market and promote for sale in commercial advertising the Model A245 aerator as “patented technology.” A true and correct copy of promotional materials by which Defendants marketed the Model A245 aerator as “patented technology” is attached as Exhibit F hereto.

53. In marketing their Model A245 aerators for sale in commercial advertising, Defendants advertised the product as an improvement over their Model A240 based on the addition of a “splash guard,” which is the horizontal top plate copied from the M2T Patent.

54. Unbeknownst to M2T until 2018, Defendants were unlawfully competing with M2T by marketing and selling Model A245 aerators, the design of which Defendants unlawfully copied from M2T in violation of the Facilities Lease Agreement and the Non-Disclosure Agreement and which infringes the M2T Patent.

55. Since at least as early as 2015, Defendants have marketed and promoted for sale in commercial advertising as described in Paragraphs 50-54 above, and have sold in interstate commerce, Model A245 aerators that infringe the M2T Patent.

56. Upon information and belief, Defendants have sold many millions of dollars of Model A245 aerators that infringe the M2T Patent in the United States alone.

57. Shortly after learning of the infringement of the M2T Patent and other unlawful actions by the Defendants, M2T demanded, in writing, that SPX (and its licensees including SPX FLOW and SPX FLOW US) cease manufacturing, marketing and selling Model A245 aeration impellers that infringe the M2T Patent. A true and correct copy of M2T's May 14, 2018 demand letter is attached as Exhibit G hereto.

58. SPX FLOW's Assistant General Counsel & Chief Compliance Officer, Kelly A. Clement, responded to M2T's demand letter on behalf of Defendants on May 30, 2018, generally referencing the 2007 Settlement Agreement and asserting, without further explanation, that M2T had granted SPX a "full and complete release against any and all claims involving A245 impellers, among numerous other products and technologies." A true and correct copy of Defendants' May 30, 2018 letter is attached as Exhibit H hereto.

59. In a letter dated October 4, 2018, M2T, through its counsel, categorically denied any assertion that the 2007 Settlement Agreement granted SPX a "full and complete release against any and all claims involving A245 impellers" based upon Sections 4.1 and 4.4 of the 2007 Settlement Agreement. A true and correct copy of M2T's October 4, 2018 letter is attached as Exhibit I hereto.

60. In support of its denial, M2T asserted in the October 4, 2018 letter that Section 4.1 of the 2007 Settlement Agreement "releases only claims 'any of the M2T Parties has asserted, could have asserted or could assert as of the effective date of [the 2007 Settlement

Agreement]’ M2T’s claims relating to SPX Flow’s future marketing and sale of the A245 could not have been asserted as of the effective date of the Settlement Agreement.”

61. In further support of its denial, M2T asserted in the October 4, 2018 letter that Section 4.4 of the 2007 Settlement Agreement, “read in *pari materia* with Section 4.1, refutes SPX’s assertion that the Settlement Agreement bars M2T’s claims regarding SPX Flow’s A245 aerator impeller.”

62. Section 4.4 of the 2007 Settlement Agreement provides:

4.4 No Cross Licensing. This is not a cross licensing agreement. The SPX Parties do not license to MMT any of the SPX Patents, and the MMT Parties do not license to SPX Parties any of the following patents: U.S. Patent Nos. 6,877,959, 6,860,361, 6,715,912, or 6,464,384 (hereinafter, collectively the “MMT Patents”). (Emphasis added.)

63. In its letter of October 4, 2018, M2T posed to Defendants’ counsel the following questions:

- a. If SPX has no license to the ‘959 Patent, what permits it to lawfully market and sell a product - the A245 - that practices the ‘959 Patent?
- b. To what “Patented technology” does SPX Flow refer in its marketing of the A245?

64. To date, M2T has received no response of any kind from any of the Defendants to its letter of October 4, 2018.

65. M2T has never licensed or otherwise authorized any of the Defendants to manufacture, market, or sell aeration impellers that practice the M2T Patent in any respect.

COUNT ONE
(PATENT INFRINGEMENT – ALL DEFENDANTS)

66. M2T hereby re-alleges and incorporates by reference the allegations set forth in paragraphs 1 through 65, inclusive, as though fully set forth herein.

67. On April 12, 2005, the M2T Patent was duly and legally issued to M2T and M2T is the owner of all rights, title and interest in and to the M2T Patent and possesses all rights of recovery under the M2T Patent.

68. Defendants have infringed and are infringing the M2T Patent in violation of 35 U.S.C. § 271 by performing, without authority, one or more of the following acts: (a) making, using, offering to sell, and selling products that infringe one or more valid claims of the M2T Patent; and (b) contributing to the infringement of the M2T Patent by others; and (c) inducing others to infringe the M2T Patent.

69. Defendants' acts of direct and indirect infringement and their inducement of others to infringe the M2T Patent has caused damages to M2T and M2T is entitled to recover from the Defendants, and each of them, the damages sustained by M2T as a result of the wrongful acts of the Defendants in an amount to be proven at trial, and which is believed to be millions of dollars.

70. Defendants' acts of direct and indirect infringement and their inducement of others to infringe the M2T Patent will, if they continue, cause additional damages to M2T and cause irreparable harm, for which there is no remedy at law.

71. Defendants are, and have been, aware of the M2T Patent since its issuance and, therefore, their infringement of the M2T Patent is and has been willful and deliberate, and M2T

is entitled to enhanced damages and attorneys' fees incurred in this action pursuant to 35 U.S.C. §§ 284 and 285.

COUNT TWO
(UNFAIR COMPETITION UNDER 15 U.S.C. § 1125(a)(1)(A) – ALL DEFENDANTS)

72. M2T hereby re-alleges and incorporates by reference the allegations set forth in paragraphs 1 through 71, inclusive, as though fully set forth herein.

73. Defendants have used in interstate commerce false and misleading designations of origin and descriptions and representations of fact regarding, among other things, the respective parties' rights to use M2T's proprietary information, including, but not limited to M2T's patented HI-FLO™ surface aerator impeller to, among others, the general public and potential purchasers through its website and marketing materials.

74. Defendants have issued false and misleading representations of fact regarding, among other things, Defendants' right to use M2T's proprietary information, including, but not limited to, M2T's patented HI-FLO™ surface aerator impeller, to U.S. Government employees through its activities in filing and prosecuting the SPX Patent Application before the United States Patent and Trademark Office.

75. Upon information and belief, Defendants have asserted, among other things, that Defendants, rather than M2T, are authorized to make, use, market and sell a patented surface aeration impeller that otherwise infringes the M2T Patent.

76. Defendants have misrepresented to the public and potential purchasers that the A245 Surface Aerator is legitimately offered for sale by Defendants as "Patented technology."

77. Upon information and belief, SPX applied for and the United States Patent and Trademark Office granted the SPX Patent, which incorporated unique features of M2T's surface aeration impeller, including but not limited to the unauthorized inclusion of M2T's proprietary horizontal top plate.

78. Upon information and belief, Defendants have misrepresented to the public and potential purchasers the patented nature of their A245 surface aerator, which infringes the M2T Patent.

79. Defendants' false and misleading statements are likely to cause, and upon information and belief, have actually caused, confusion in the marketplace concerning, among other things, the rights, affiliation, and sponsorship among the parties concerning the exclusive rights to the M2T Patent and proprietary technologies related thereto.

80. Upon information and belief, Defendants have misrepresented to the public and the United States Patent and Trademark Office the inventorship related to the SPX Patent.

81. Defendants' acts alleged herein constitute unfair competition in violation of Section 43(a)(1)(A) of the Lanham Act, 15 U.S.C. § 1125(a)(1)(A).

82. Defendants' use of Model A245 surface aerator marketing materials claiming "Patented technology" is likely to cause, and has actually caused, confusion in the marketplace concerning, among other things, the rights, affiliation, and sponsorship among the parties concerning the exclusive rights to the M2T Patent and proprietary technologies related thereto.

83. As a direct, proximate, and foreseeable result of Defendants' actions, M2T has suffered, and unless Defendants' actions are enjoined by this Court, will continue to suffer, irreparable harm.

84. As a direct and proximate result of Defendants' conduct, M2T has suffered and will continue to suffer damages in an amount to be proved at trial.

COUNT THREE
(FALSE ADVERTISING AND FALSE DESIGNATION OF ORIGIN
UNDER 15 U.S.C. § 1125(a)(1)(B) – ALL DEFENDANTS)

85. M2T hereby re-alleges and incorporates by reference the allegations set forth in paragraphs 1 through 84, inclusive, as though fully set forth herein.

86. Defendants' commercial advertising and promotion of their Model A245 surface aerator as "Patented technology" constitutes a misrepresentation of the nature, characteristics, and/or qualities of their products by falsely and misleadingly stating the patented technology belongs to or is licensed to Defendants when in fact it belongs exclusively to M2T, which never licensed it to any of the Defendants.

87. Defendants' acts alleged herein constitute false advertising and false designation of origin in violation of Section 43(a)(1)(B) of the Lanham Act, 15 U.S.C. § 1125(a)(1)(B).

88. By reason of Defendants' actions, M2T has suffered irreparable harm to its valuable patented and proprietary surface aerator impeller technology disclosed in the M2T Patent.

89. M2T has suffered, and unless Defendants' actions are enjoined by this Court, will continue to suffer, irreparable harm.

90. As a direct and proximate result of Defendants' conduct, M2T has suffered and will continue to suffer damages in an amount to be proved at trial.

COUNT FOUR
(COMMON LAW UNFAIR COMPETITION – ALL DEFENDANTS)

91. M2T hereby re-alleges and incorporates by reference the allegations set forth in paragraphs 1 through 90, inclusive, as though fully set forth herein.

92. Defendants have issued false and misleading representations of fact regarding, among other things, the respective parties' rights to use M2T's proprietary and confidential information, including, but not limited to, M2T's patented HI-FLO™ surface aerator impeller, to, among others, the general public through its website and marketing materials.

93. Defendants have issued false and misleading representations of fact regarding, among other things, Defendants' right to use M2T's proprietary and confidential information, including, but not limited to, M2T's patented HI-FLO™ surface aerator impeller, to U.S. Government employees through its activities in filing and prosecuting the SPX Application before the United States Patent and Trademark Office.

94. Upon information and belief, Defendants have asserted, among other things, that Defendants, rather than M2T, is authorized to make, use, market and sell a patented surface aeration impeller which otherwise infringes the M2T Patent.

95. Defendants have misrepresented to the public that the A245 Surface Aerator is legitimately offered for sale as "Patented technology."

96. Upon information and belief, SPX applied for and the United States Patent and Trademark Office granted the SPX Patent which incorporated unique features of the M2T surface

aeration impeller, including but not limited to the unauthorized inclusion of M2T's proprietary horizontal top plate.

97. Upon information and belief, Defendants have misrepresented to the public the patented nature of their A245 surface aerator by marking such products with the SPX Patent number.

98. Defendants' false and misleading statements are likely to cause, and upon information and belief, have actually caused, confusion in the marketplace concerning, among other things, the rights, affiliation, and sponsorship among the parties concerning the exclusive rights to the M2T Patent and proprietary technologies related thereto.

99. Upon information and belief, Defendants have misrepresented to the public and in the United States Patent and Trademark Office the inventorship related to the SPX Patent.

100. Upon information and belief, Defendants have used and continue to improperly mark the A245 surface aerator products with the SPX Patent number and to misrepresent the inventorship of the SPX Patent.

101. Defendants' use of A245 surface aerator marketing materials claiming "patented technology" and mismarking A245 products with the SPX Patent number is likely to cause, and upon information and belief, has actually caused, confusion in the marketplace concerning among other things, the rights, affiliation, and sponsorship among the parties concerning the exclusive rights to the M2T Patent and proprietary technologies related thereto.

102. As a direct, proximate, and foreseeable result of Defendants' actions, M2T has suffered, and unless Defendants' actions are enjoined by this Court, will continue to suffer, irreparable harm.

103. As a direct and proximate result of Defendants' conduct, M2T has suffered and will continue to suffer damages in an amount to be proved at trial.

COUNT FIVE
(CLAIM FOR DECLARATORY RELIEF – ALL DEFENDANTS)

104. M2T hereby re-alleges and incorporates by reference the allegations set forth in paragraphs 1 through 103, inclusive, as though fully set forth herein.

105. This Court has the authority to declare a United States Patent unenforceable if it determines that an applicant possessed the intent to deceive the United States Patent and Trademark Office as to a material aspect of a patent application.

106. Having misappropriated M2T's Confidential Information, Proprietary Information and trade secrets, SPX intentionally deceived the Patent Office by failing to disclose that significant aspects of the invention identified in the SPX Application had been invented not by Ronald J. Weetman (or anyone else at SPX) but rather by Dr. McWhirter of M2T.

107. The Weetman Declaration contained false and misleading statements that were intentionally false and misleading.

108. The false and misleading statements were material, going to the very identity of the true inventor of the invention and the proper owner of any resulting patent.

109. Accordingly, M2T is entitled to a declaration from this Court that the SPX Patent is invalid.

COUNT SIX
(UNJUST ENRICHMENT – ALL DEFENDANTS)

110. M2T hereby re-alleges and incorporates by reference the allegations set forth in paragraphs 1 through 109, inclusive, as though fully set forth herein.

111. By engaging in the aforementioned conduct, Defendants have been and will be unjustly enriched.

112. Defendants' continued wrongful and unlawful conduct has been and continues to be willful, entitling M2T to monetary damages, including exemplary and punitive damages.

113. Defendants' continued wrongful and unlawful conduct has caused and, unless enjoined by this Court, will continue to cause, irreparable injury and other damage to M2T, its business and its reputation for which M2T has no adequate remedy at law.

114. Under the facts and circumstances described above, Defendants should not be permitted to retain the benefits of their unjust enrichment at the expense of M2T.

PRAYER FOR RELIEF

WHEREFORE, M2T prays that the Court grant it the following relief:

A. An award of damages to M2T, including compensatory, special, exemplary, punitive, statutory and enhanced damages (as appropriate to each cause of action) to be assessed, jointly and severally, against Defendants SPX, SPX FLOW, SPX FLOW US, and the Doe Defendants; and

B. A preliminary and/or permanent injunction restraining all of the Defendants, together with their officers, employees, agents, successors and assigns and all others acting for, by, or in concert with any of them, from (1) infringing the M2T Patent directly or indirectly, or

inducing others to infringe the M2T Patent; (2) engaging in unfair competition against M2T; and (3) engaging in false advertising and false designation of origin, sponsorship, or affiliation; and

C. An Order requiring the Defendants, and each of them, to account to M2T for their profits resulting from their unlawful conduct; and

D. An order declaring the SPX Patent unenforceable; and

E. An award of attorneys' fees and costs (as appropriate); and

F. Such other relief as the Court deems just and equitable under the circumstances.

JURY TRIAL DEMAND

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

Respectfully submitted,

Dated: March 18, 2019

s/Stacey A. Scrivani

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