

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

| | | |
|---|---|----------------------------|
| LOW TEMP INDUSTRIES, INC., |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | Case No. |
| |) | |
| DUKE MANUFACTURING CO., |) | JURY TRIAL DEMANDED |
| Serve: Mark Z. Schraier, Registered Agent |) | |
| 7700 Forsyth Blvd., Suite 1100 |) | |
| St. Louis, MO 63105 |) | |
| |) | |
| Defendant. |) | |

COMPLAINT

Plaintiff Low Temp Industries, Inc. (“LTI” or “Plaintiff”), by and through undersigned counsel, make and file this Complaint against Defendant Duke Manufacturing Co. (“Duke” or “Defendant”), and hereby allege and demand a jury trial as follows:

INTRODUCTION AND ALLEGATIONS COMMON TO ALL CLAIMS

1. For over sixty years, LTI has engaged in helping operators transform the way food is served by selling foodservice equipment to food providers.
2. From its founding, LTI has been a leader in the foodservice industry with its design, durability, and innovation of custom foodservice counters. In the 1960s, LTI began work with the United States Armed Forces to provide them with steam tables for military bases. By the late 1960s, LTI expanded its products and services to provide a diverse set of restaurant equipment, including woodwork and booth seating. In the 1970s, LTI focused on stainless steel construction and built its first soiled dish conveyor system. And in 1995, LTI further distinguished itself from other foodservice companies by inventing its patented Temp-est Aire

technology, which allows air flow to circulate below pans, preventing food and products from drying out.

3. In the 2000s, LTI invented the first food presentation modules employing “hot-cold-freeze” (“HCF”) technology. HCF technology allows for individual food wells within a single food presentation module to be set to any temperature, regardless of the temperature of other neighboring food wells. Not only could the temperature of food wells within a single module be independently controlled, but LTI’s HCF technology also allowed individual food wells to switch from hot-to-cold-to-frozen in an hour or less. LTI branded the system “QuickSwitch,” and it became the only HCF system in the foodservice industry.

4. On June 16, 2008, LTI applied for a patent for its QuickSwitch technology. That patent was granted and issued on November 13, 2012 as U.S. Patent No. 8,307,761 (the “’761 Patent”). The Patent Office also granted LTI’s two continuation patents on the technology—U.S. Patent Nos. 8,661,970 (the “’970 Patent”) and 9,895,253 (the “’253 Patent”). The ’761 Patent, ’970 Patent, and ’253 Patent are collectively referred to as the “Asserted Patents.”

5. The Asserted Patents are now infringed by Duke. This patented technology was a game-changer for foodservice operators, truly differentiating LTI from the competition. LTI became the market leader in food presentation modules employing HCF technology, and has been the market leader ever since. This position, however, is now threatened by Duke’s injection of its infringing copycat HCF product into the market.

6. Without the permission or authorization of LTI, Duke has copied LTI’s QuickSwitch that is subject to the protection of valid United States patents, and has begun to manufacture, distribute, and sell its infringing HCF product. Duke apparently hopes to capitalize

on the goodwill and reputation of LTI by misappropriating LTI's valuable intellectual property, including the patents granted for LTI's innovative designs and products.

7. For over five years, Duke purchased LTI's QuickSwitch through a distributor to drop in to its own countertops. In Spring 2019, Duke approached LTI requesting to purchase LTI's QuickSwitch directly from LTI to avoid paying the markup charged by distributors. LTI declined. In response, Duke ceased purchasing QuickSwitch, and informed LTI that it was going to make its own HCF product that was a "copy" of QuickSwitch. Duke did just that, without the permission or authorization of LTI, and sold its first HCF product in April 2020.

8. As a result of Duke cancelling its purchase agreement with LTI's distributor and making its own infringing product, LTI has suffered significant commercial injury. LTI has lost customers (including Duke, itself), and has experienced incalculable erosion to its goodwill and reputation. If Duke is allowed to continue marketing and promoting its HCF product, then LTI will continue to suffer irreparable harm, including loss of sales, market share, profit and goodwill. In short, LTI's entire business model will be threatened.

9. To eliminate further infringement, LTI brings this action for patent infringement.

NATURE OF THE ACTION

10. This action seeks damages and injunctive relief for Duke's acts of making, using, selling, offering for sale and/or importing its HCF product that infringe the Asserted Patents.

THE PARTIES

11. LTI is a Georgia corporation that maintains its principal place of business at 1947 Bill Casey Pkwy, Jonesboro, GA 30236.

12. Upon information and belief, Duke is a Missouri Corporation with its principal place of business at 2305 North Broadway, St. Louis, MO 63102.

JURISDICTION AND VENUE

13. This action arises under the patent laws of the United States, 35 U.S.C. § 101 *et seq.*, including 35 U.S.C. § 271, *et seq.* This Court has subject matter jurisdiction under 28 U.S.C. § 1331 and § 1338(a).

14. This Court has personal jurisdiction over Duke because, upon information and belief, Duke has its principal place of business within this judicial district in St. Louis, Missouri and has committed acts of infringement in this district.

15. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1400(b). Duke has committed, induced, and/or contributed to the acts of infringement alleged herein in this district, and these claims arise from those acts. Duke has regularly engaged in business in Missouri and in this district, maintaining a regular place of business in this district by way of its headquarters and principal place of business. Additionally, Duke has purposefully availed itself of the privilege of conducting business in this district, for example, by manufacturing, offering for sale, and selling its infringing product in this district.

FACTUAL BACKGROUND

THE '761 PATENT

16. U.S. Patent Number 8,307,761 (the "'761 Patent") is entitled "Multi-Well Food Presentation Modules." The '761 Patent was duly and legally issued on November 13, 2012 by the United States Patent and Trademark Office. A true and correct copy of the '761 Patent is attached to this Complaint as Exhibit A.

17. LTI is the owner and assignee of the '761 Patent. LTI possesses all rights of recovery under the '761 Patent, including the exclusive right to sue for infringement and recover past damages.

18. The '761 patent has not expired and is in full force and effect.

19. Pursuant to 35 U.S.C. § 282, the '761 Patent and each of its claims are valid and enforceable.

20. The '761 Patent relates to “thermally convertible food presentation modules,” where a “single module may be used for both heating and refrigeration of foodstuffs as desired at any given time” and “any well of a module may be switched between heating and cooling of food regardless of the status of any other well of the module.”

THE '970 PATENT

21. U.S. Patent Number 8,661,970 (the “'970 Patent”) is entitled “Multi-Well Food Presentation Modules” and is a continuation of the '761 Patent. The '970 Patent was duly and legally issued on March 4, 2014 by the United States Patent and Trademark Office. A true and correct copy of the '970 Patent is attached to this Complaint as Exhibit B.

22. LTI is the owner and assignee of the '970 Patent. LTI possesses all rights of recovery under the '970 Patent, including the exclusive right to sue for infringement and recover past damages.

23. The '970 Patent has not expired and is in full force and effect.

24. Pursuant to 35 U.S.C. § 282, the '970 Patent and each of its claims are valid and enforceable.

25. The '970 Patent relates to “thermally convertible food presentation modules,” where a “single module may be used for both heating and refrigeration of foodstuffs as desired at any given time” and “any well of a module may be switched between heating and cooling of food regardless of the status of any other well of the module.”

THE '253 PATENT

26. U.S. Patent Number 9,795,253 (the “'253 Patent”) is entitled “Multi-Well Food Presentation Modules” and is a continuation of the '970 Patent. The '253 Patent was duly and

legally issued on October 24, 2017 by the United States Patent and Trademark Office. A true and correct copy of the '253 Patent is attached to this Complaint as Exhibit C.

27. LTI is the owner and assignee of the '253 Patent. LTI possesses all rights of recovery under the '253 Patent, including the exclusive right to sue for infringement and recover past damages.

28. The '253 Patent has not expired and is in full force and effect.

29. Pursuant to 35 U.S.C. § 282, the '253 Patent and each of its claims are valid and enforceable.

30. The '253 Patent relates to “thermally convertible food presentation modules,” where a “single module may be used for both heating and refrigeration of foodstuffs as desired at any given time” and “any well of a module may be switched between heating and cooling of food regardless of the status of any other well of the module.”

DUKE'S KNOWLEDGE OF LTI'S PATENTS AND PATENT RIGHTS

31. LTI complies with the marking requirements of 35 U.S.C. § 287 at least through the websites and materials related to its products.

32. Duke is a competitive manufacturer of commercial foodservice equipment for restaurants, school, and institutions. For years, Duke purchased LTI's QuickSwitch through a distributor to drop in to its own countertops. Duke thus had knowledge of the Asserted Patents since at least the first date it purchased LTI's QuickSwitch through a distributor to drop in to its own countertops.

DUKE'S HCF PRODUCT

33. As of April 2020, Duke has manufactured, sold, and offered for sale its own HCF product, which it admittedly copied from LTI's inventive design. Duke's HCF product comes in

at least two, three, and four food-well configurations (*e.g.* HCF-3 refers to the three-well configuration of Duke's HCF product). (Ex. D at 1).

34. Duke has manufactured, sold, distributed, offered for sale, or otherwise made available its HCF product. Duke has aggressively marketed its HCF product and, upon information and belief, has submitted bids in response to requests for proposals (RFPs) since April 1, 2020.

35. Upon information and belief, Duke's HCF product was designed to compete in the market with LTI's QuickSwitch. Its "Positioning Statement" document identifies LTI as its main competitor and highlights the commonality between the features in Duke's HCF product and LTI's QuickSwitch. (Ex. E at 3). Duke markets its product as "low cost" compared to the "very expensive" LTI product. (Ex. E at 3).

36. Upon information and belief, Duke's efforts are directly targeted to take market share from LTI. Upon information and belief, Duke is promoting its infringing HCF product to the same retailers, distributors, and consumers served by LTI. Upon information and belief, Duke is the second, and only other company to manufacture an HCF product. Upon information and belief, Duke's entrance into the market is aimed to displace LTI's QuickSwitch in light of the few market participants and niche nature of the market. Any sale by Duke of its HCF product would necessarily displace a sale of LTI's patented product.

37. According to Duke's HCF product specifications, attached hereto as Exhibit D, each well comes with its own "[i]ntuitive, easy to use touch screen control [to] change[] mode of operation" and "3 wet heat, 3 dry heat, 3 refrigerated and 1 freeze mode." (Ex. D at 1). Duke's HCF units include "[d]rains at each well." (Ex. D at 1).

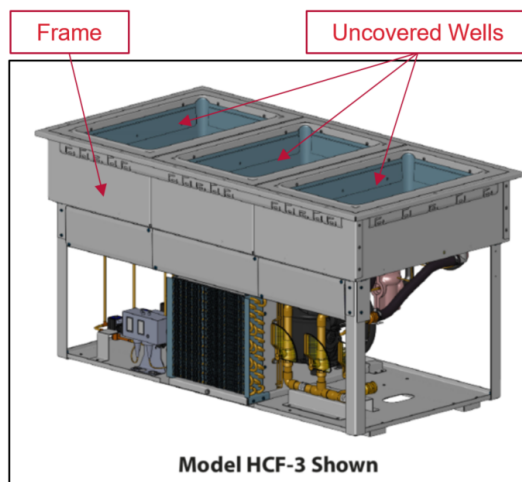
38. Duke's HCF products can be installed for "new cafeterias and/or retrofit them into [] existing cafeterias." (Ex. E at 1). Duke states that "[w]ith HCF technology operators can offer new menu concepts without worrying about how to serve them; change your serving configurations daily and from breakfast to lunch as your menu dictates. Hold hot foods side-by-side with cold foods while maintaining proper temperature for both; offer cold components with hot entrees." (Ex. E at 1).

COUNT ONE
WILLFUL INFRINGEMENT OF U.S. PATENT NO. 8,307,761

39. LTI incorporates by reference the averments of paragraphs 1-38 of this Complaint as though fully set forth here.

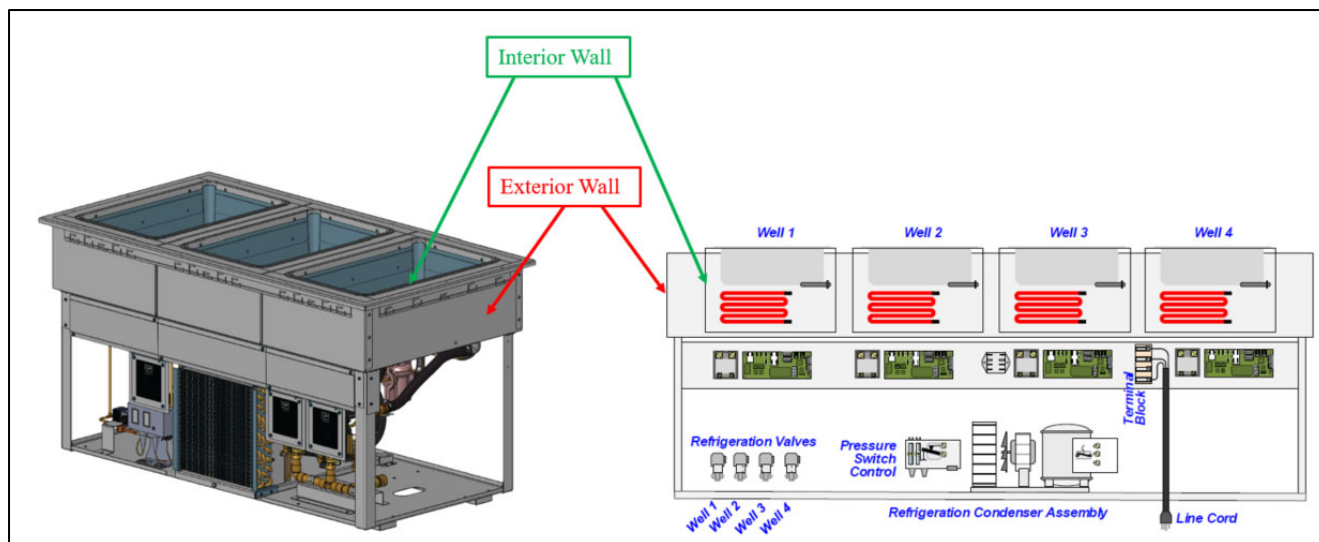
40. Duke, without license or authorization to do so, has infringed one or more claims of the '761 Patent, and continues to infringe, literally or under the doctrine of equivalents, one or more claims the '761 Patent by making, using, selling, offering for sale, and/or importing its HCF product within the United States, in violation of 35 U.S.C. § 271(a).

41. Duke's HCF product infringes the '761 Patent. For example, Duke's HCF product (the HCF-3 is shown below as an example) infringes at least claim 3 of the '761 Patent. Duke's HCF product provides a food presentation module generally immobile in use with a frame and adjacent first and second wells for receiving containers of bulk food, the wells being uncovered in use so as to expose food received therein to the ambient environment.

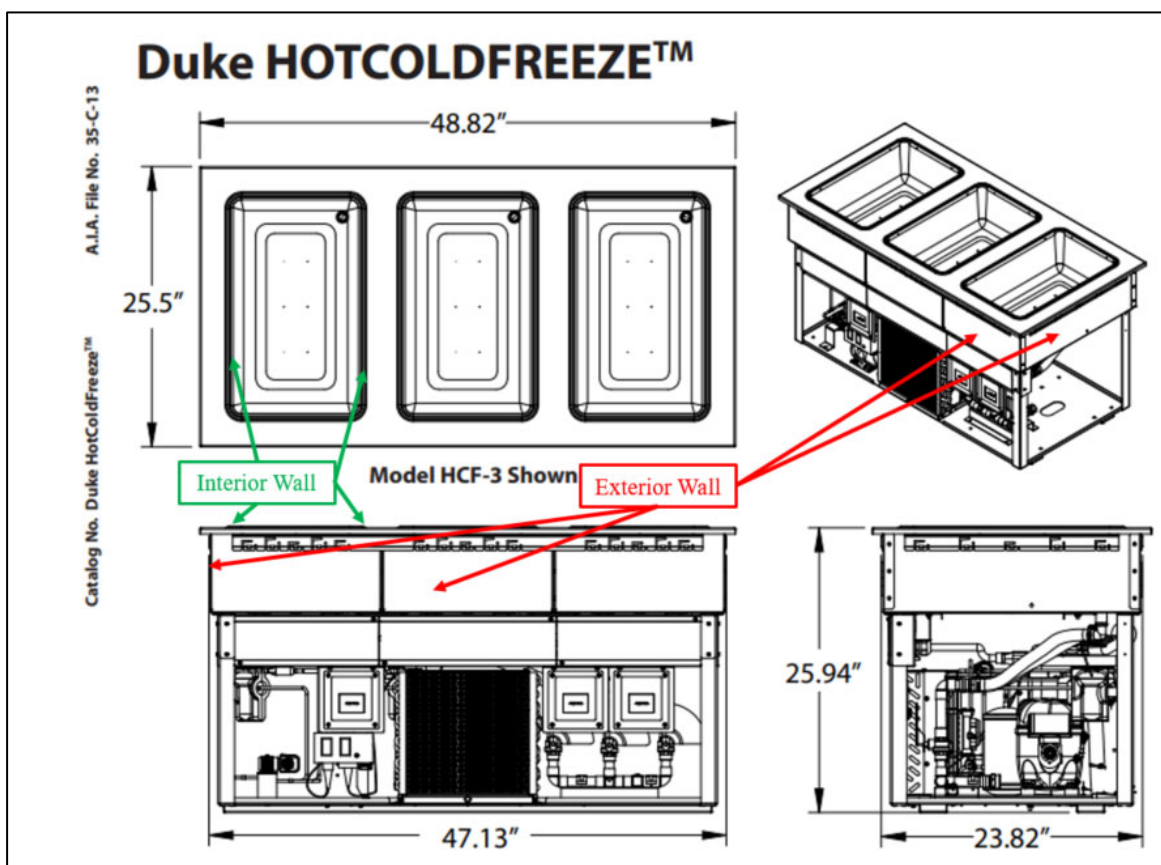


(Ex. D at 1 (annotated)).

42. The wells in Duke's HCF product are individually insulated and thermally isolated from each other via interior walls and exterior walls forming an insulative air gap between the wells. (*See, e.g.*, Ex. E at 1 (disclosing ability to “[h]old hot foods side-by-side with cold foods while maintaining proper temperatures for both”); Ex. F at 1 (describes HCF models as including “300 series stainless steel top rim, 5" deep 300 series stainless steel interior liners, steel exterior housing”); <https://dukemfg.com/products/hcf/> (visited 5/5/2020) (“Will the wells experience heating/cooling transfer by being located next to each other? There is no transfer between the wells. Hot stays hot, cold stays cold, frozen stays frozen”). This is further shown below:



(Ex. G at Cover, 6 (annotated)).



(Ex. D at 4 (annotated)).

43. Duke's HCF product has a temperature-control system for controlling the temperature of the wells independently. (*See, e.g.*, Ex. D at 1 ("1 control per food well," "3 wet heat, 3 dry heat, 3 refrigerated and 1 freeze mode," "touch screen control changes mode of operation")). The temperature-control system allows the food received in one well to be refrigerated at a temperature substantially below ambient, while the food in the other well may be heated to a temperature substantially above ambient. (*See, e.g.*, Ex. G at 12-16; Ex. H at 1 (describing heat and refrigeration settings)). The temperature-control system allows the temperatures of each well to be switched between heating and refrigerating, regardless of the temperature of any other well, such that both wells may be refrigerated, both wells may be heated, or one well may be refrigerated while the other is heated. (*See, e.g.*, Ex. E at 5 (describing switching times from ambient to hot, ambient to cold, ambient to freeze, hot to cold, and hot to freeze); Ex. H at 1).

44. Duke's HCF product's temperature-control system is configured to allow food received in the first well to be heated to a temperature substantially above ambient. (*See, e.g.*, Ex. E at 4-5; Ex. G at 12-16; Ex. I at 4-5).

45. Duke's HCF product's temperature-control system is configured to allow food received in a second well to be refrigerated to a temperature substantially below ambient. (*See, e.g.*, Ex. E at 4-5; Ex. G at 12-16; Ex. I at 4-5).

46. Duke, without license or authorization to do so, also contributes to or induces the direct infringement of the '761 Patent by manufacturing, selling, distributing, offering for sale, or otherwise making available its HCF product to its customers.

47. Duke indirectly infringes the '761 Patent within the United States by inducement under 35 U.S.C. § 271(b). Since learning of the '761 Patent, Duke has knowingly and

intentionally induced, and continues to knowingly and intentionally induce others to directly infringe one or more claims of the '761 Patent. Upon information and belief, Duke does so by providing, either along with or in conjunction with its HCF products, instructions, guides, and/or encouragement to its customers to infringe at least the identified claims of the '761 Patent. (*See, e.g., Ex. G; Ex. H*).

48. Duke also indirectly infringes by contributing to the direct infringement of end users under 35 U.S.C. § 271(c) by providing its HCF product, which is specially made for use in a manner infringing one or more claims of the '761 Patent, and is not a staple article of commerce capable of substantial non-infringing uses.

49. Duke knows and at all relevant times has known of its infringement of the '761 Patent, or at the very least has been willfully blind to its infringement of the '761 Patent.

50. Because Duke knows and at all relevant times has known of its infringement of the '761 Patent, or at the very least has been willfully blind to its infringement of the '761 Patent, its infringement is deliberate and willful.

51. Duke's infringement of LTI's rights will continue to damage LTI, causing irreparable harm for which there is no adequate remedy at law, unless enjoined by this Court.

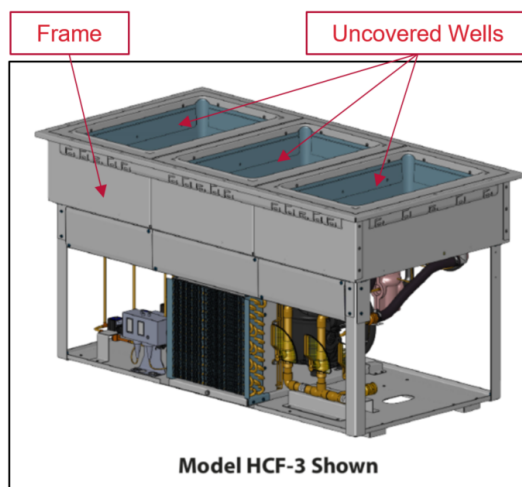
52. Upon information and belief, such infringement has been, and will continue to be willful, and upon further belief, Duke lacks any reasonable invalidity or non-infringement defense making this case exceptional and entitling LTI to increased damages and reasonable attorneys' fees pursuant to 35 U.S.C. §§ 284 and 285.

COUNT TWO
WILLFUL INFRINGEMENT OF U.S. PATENT NO. 8,661,970

53. LTI incorporates by reference the averments of paragraphs 1-52 of this Complaint as though fully set forth here.

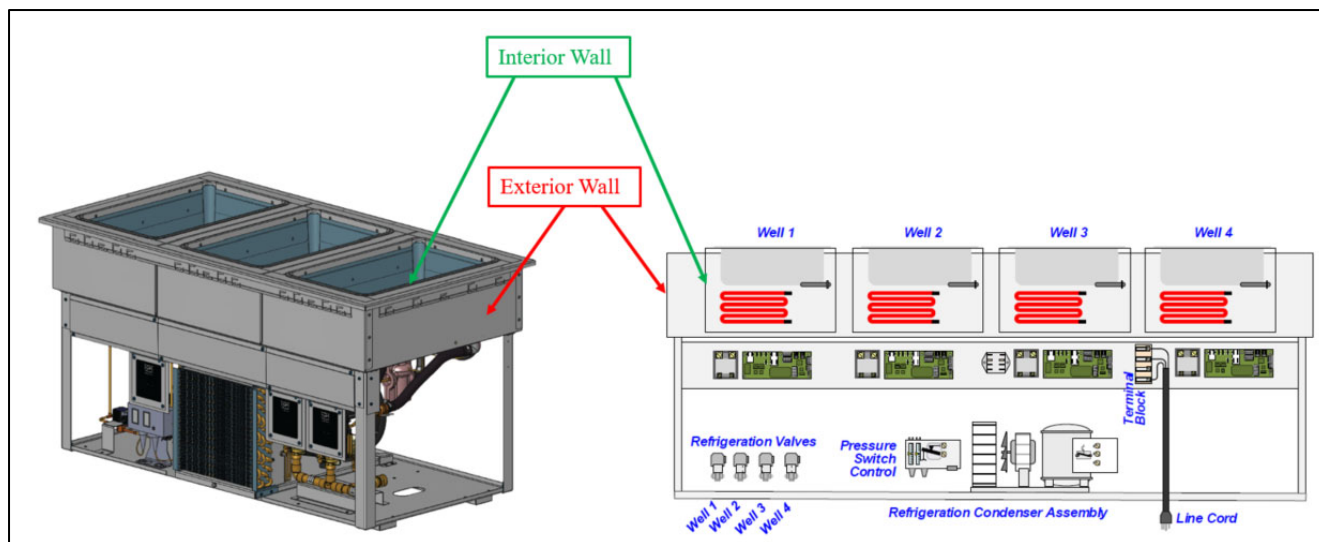
54. Duke, without license or authorization to do so, has infringed one or more claims of the '970 Patent, and continues to infringe, literally or under the doctrine of equivalents, one or more claims the '970 Patent by making, using, selling, offering for sale, and/or importing its HCF product within the United States, in violation of 35 U.S.C. § 271(a).

55. Duke's HCF product infringes the '970 Patent. For example, Duke's HCF product (the HCF-3 is shown below as an example) infringes at least claim 2 of the '970 Patent. Duke's HCF product provides a food presentation module generally immobile in use with a frame and at least two uncovered wells for receiving containers of bulk food.

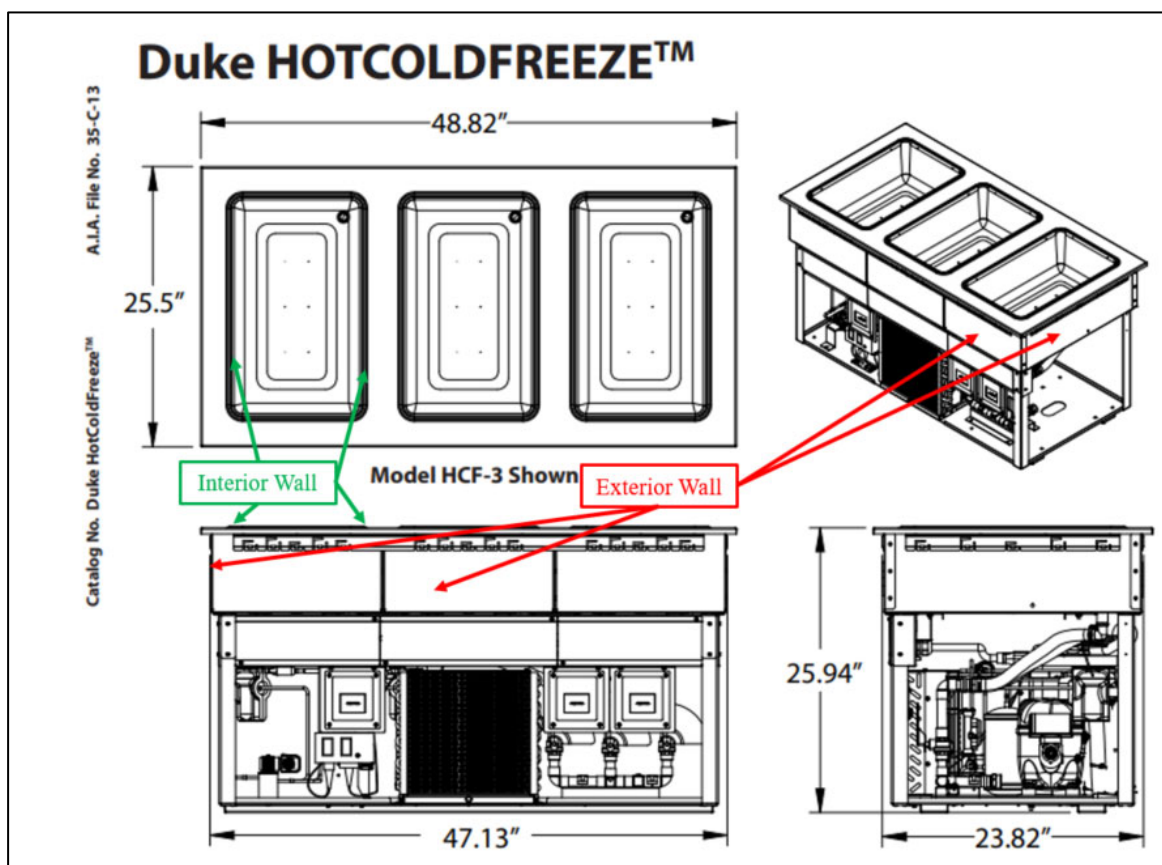


(Ex. D at 1 (annotated)).

56. The wells are thermally isolated from other wells. (*See, e.g.*, Ex. E at 1 (disclosing ability to “[h]old hot foods side-by-side with cold foods while maintaining proper temperatures for both”); Ex. F at 1 (describes HCF models as including “300 series stainless steel top rim, 5" deep 300 series stainless steel interior liners, steel exterior housing”); <https://dukemfg.com/products/hcf/> (visited 5/5/2020) (“Will the wells experience heating/cooling transfer by being located next to each other? There is no transfer between the wells. Hot stays hot, cod stays cold, frozen stays frozen”)). This is further shown below:



(Ex. G at Cover, 6 (annotated)).



(Ex. D at 4 (annotated)).

57. The wells in Duke's HCF product have individual controls that allow the user to select from 3 wet heat, 3 dry heat, 3 refrigerated and 1 freeze mode. (*See, e.g.*, Ex. D at 1 ("1 control per food well," "3 wet heat, 3 dry heat, 3 refrigerated and 1 freeze mode," "touch screen control changes mode of operation")). Duke's HCF product also has a system for controlling the temperatures of the wells; each well has its own touchscreen control to change modes of each well independent of the temperature of the other wells. (*See, e.g., id.*; Ex. G at 12-16). The temperature-control system allows the food received in one well to be refrigerated to a temperature substantially below ambient, while food in another well may be heated to a temperature substantially above ambient. (*See, e.g.*, Ex. E at 1 ("Hold hot foods side-by-side with cold foods while maintaining proper temperatures for both."); Ex. H at 1 (describing heat and refrigeration settings); Ex. G at 12-16). The temperature-control system allows the temperatures of each well to be switched between heating and refrigerating, regardless of the temperature of any other well, such that both wells may be refrigerated, both wells may be heated, or one well may be refrigerated while the other is heated. (*See, e.g.*, Ex. E at 5 (describing switching times from ambient to hot, ambient to cold, ambient to freeze, hot to cold, and hot to freeze); Ex. H at 1 (same)).

58. Duke's HCF product's temperature-control system is configured to allow food received in the first well to be heated to a temperature substantially above ambient. (*See, e.g.*, Ex. E at 4-5; Ex. G at 12-16; Ex. I at 4-5).

59. Duke's HCF product's temperature-control system is configured to allow food received in a second well to be refrigerated to a temperature substantially below ambient. (*See, e.g.*, Ex. E at 4-5; Ex. G at 12-16; Ex. I at 4-5).

60. Duke, without license or authorization to do so, also contributes to or induces the direct infringement of the '970 Patent by manufacturing, selling, distributing, offering for sale, or otherwise making available its HCF product to its customers.

61. Duke indirectly infringes the '970 Patent within the United States by inducement under 35 U.S.C. § 271(b). Since learning of the '970 Patent, Duke has knowingly and intentionally induced, and continues to knowingly and intentionally induce others to directly infringe one or more claims of the '970 Patent. Upon information and belief, Duke does so by providing, either along with or in conjunction with its HCF product, instructions, guides, and/or encouragement to its customers to infringe at least the identified claims of the '970 Patent. (*See, e.g., Ex. G; Ex. H*).

62. Duke also indirectly infringes by contributing to the direct infringement of end users under 35 U.S.C. § 271(c) by providing its HCF product, which is specially made for use in a manner infringing one or more claims of the '970 Patent, and is not a staple article of commerce capable of substantial non-infringing uses.

63. Duke knows, and at all relevant times has known of its infringement of the '970 Patent, or at the very least has been willfully blind to its infringement of the '970 Patent.

64. Because Duke knows and at all relevant times has known of its infringement of the '970 Patent, or at the very least has been willfully blind to its infringement of the '970 Patent, its infringement is deliberate and willful.

65. Duke's infringement of LTI's rights will continue to damage LTI, causing irreparable harm for which there is no adequate remedy at law, unless enjoined by this Court.

66. Upon information and belief, such infringement has been and will continue to be willful, and upon further belief, Duke lacks any reasonable invalidity or non-infringement

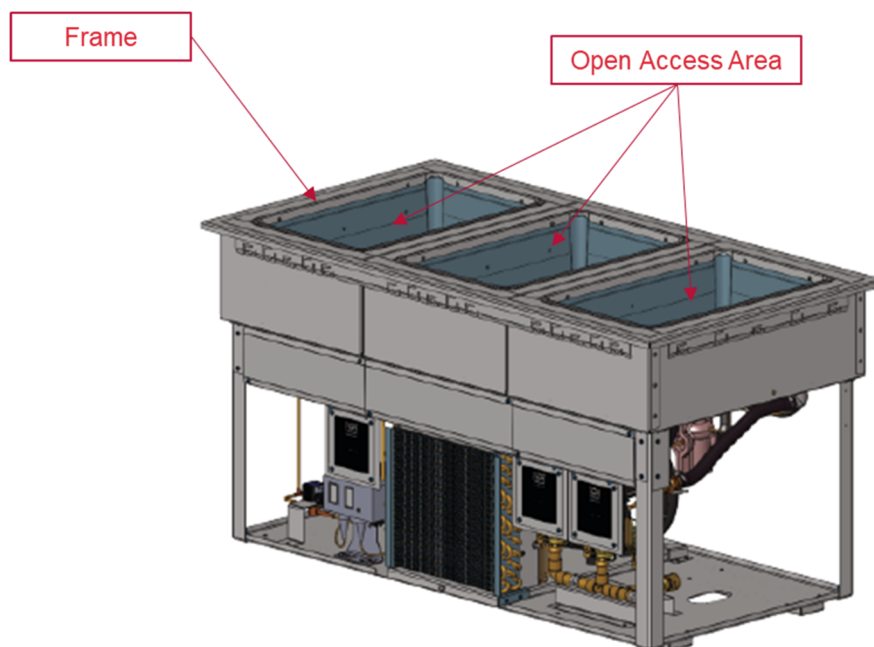
defense making this case exceptional and entitling LTI to increased damages and reasonable attorneys' fees pursuant to 35 U.S.C. §§ 284 and 285.

COUNT THREE
WILLFUL INFRINGEMENT OF U.S. PATENT NO. 9,795,253

67. LTI incorporates by reference the averments of paragraphs 1-66 of this Complaint as though fully set forth here.

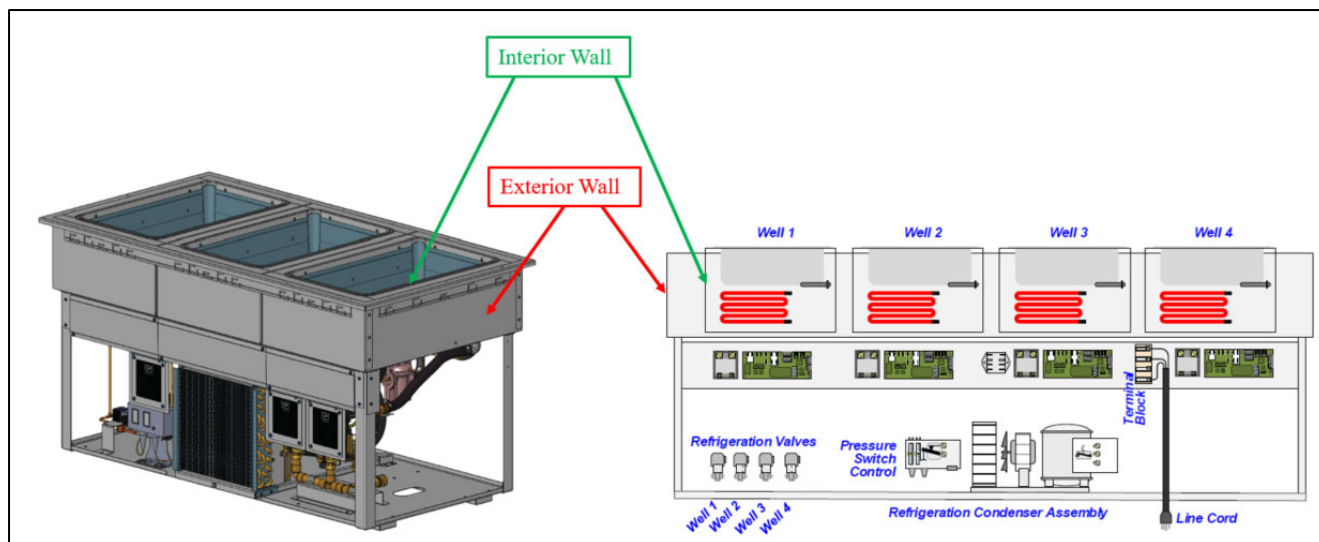
68. Duke, without license or authorization to do so, has infringed one or more claims of the '253 Patent, and continues to infringe, literally or under the doctrine of equivalents, one or more claims the '253 Patent by making, using, selling, offering for sale, and/or importing its HCF product within the United States, in violation of 35 U.S.C. § 271(a).

69. Duke's HCF product infringes the '253 Patent. For example, Duke's HCF product (the HCF-3 is shown as an example) infringes at least claim 2 of the '253 Patent. Duke's HCF product provides a food presentation module generally immobile in use with a frame and a plurality of wells mounted in the frame, each well configured for receiving a container of bulk food, and each well having an open access area to expose food received therein to the ambient environment.

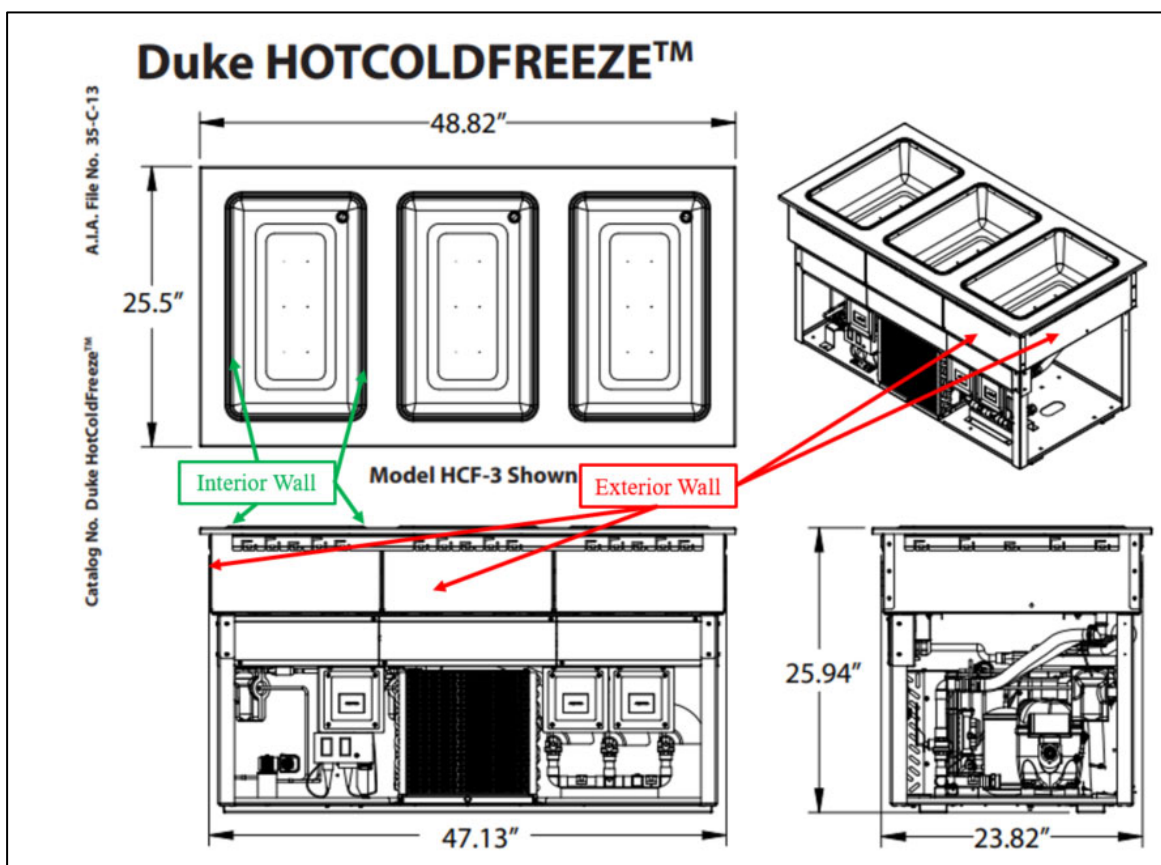


(Ex. D at 1 (annotated)).

70. The wells are isolated thermally from adjacent wells such that at least one exterior wall of one well is spaced an insulative distance from an exterior wall of an adjacent well. (*See, e.g.,* Ex. E at 1 (disclosing ability to “[h]old hot foods side-by-side with cold foods while maintaining proper temperatures for both”); Ex. F at 1 (describes HCF models as including “300 series stainless steel top rim, 5" deep 300 series stainless steel interior liners, steel exterior housing”); <https://dukemfg.com/products/hcf/> (visited 5/5/2020) (“Will the wells experience heating/cooling transfer by being located next to each other? There is no transfer between the wells. Hot stays hot, cold stays cold, frozen stays frozen”)). This is further shown below:



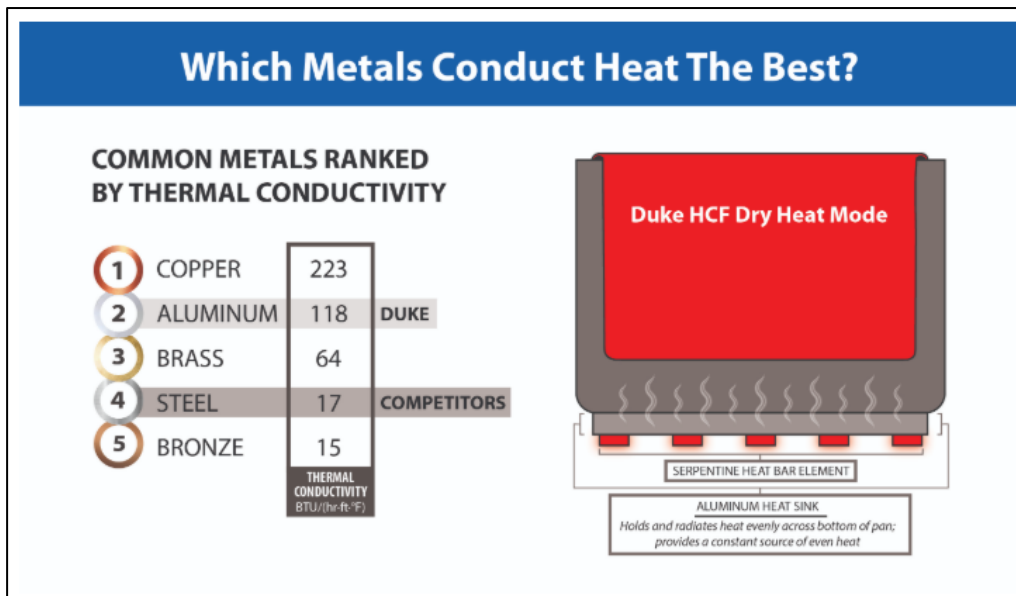
(Ex. G at Cover, 6 (annotated)).



(Ex. D at 4 (annotated)).

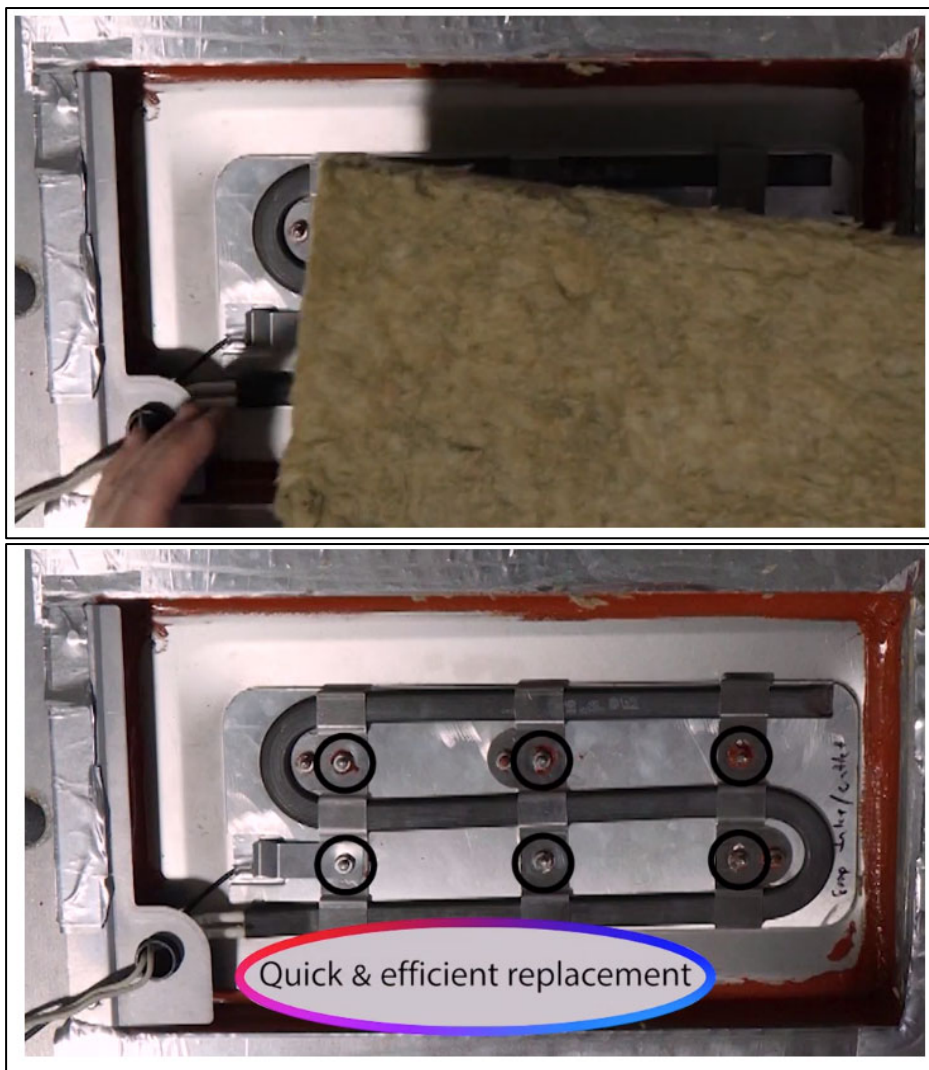
71. Each well in the plurality of wells in Duke’s HCF product is in thermal contact with (i) a heatable thermal blanket and (ii) one or more refrigerant pipes. (*See, e.g.*, Ex. G at 6, 7).

72. Each well in Duke’s HCF product is “in thermal contact with [] a heatable thermal blanket,” as shown below:



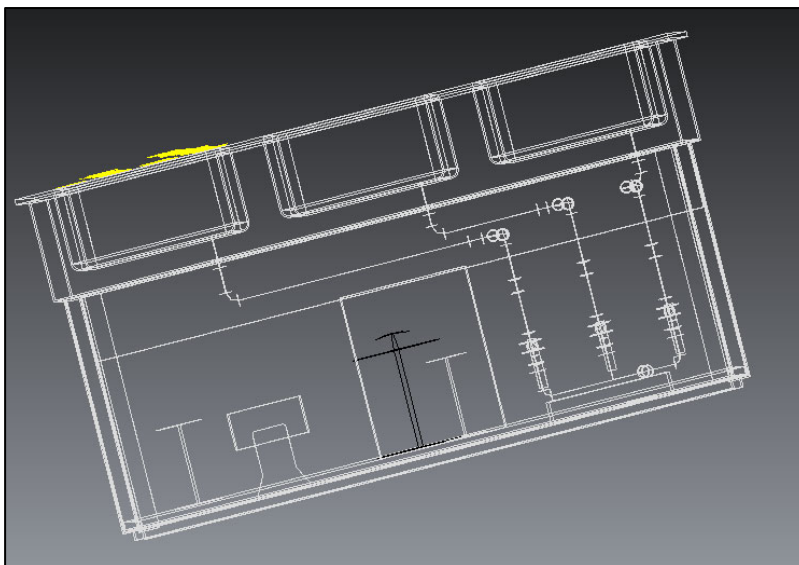
(*See* <https://dukemfg.com/products/hcf/>).

73. The heatable thermal blanket is also shown in Duke’s “Easy to Service” video on the HCF product:



(“Easy to Service” video, available at <https://dukemfg.com/products/hcf/>).

74. Each well in Duke’s HCF product also is “in thermal contact with . . . one or more refrigerant pipes secured thereto,” as shown below:



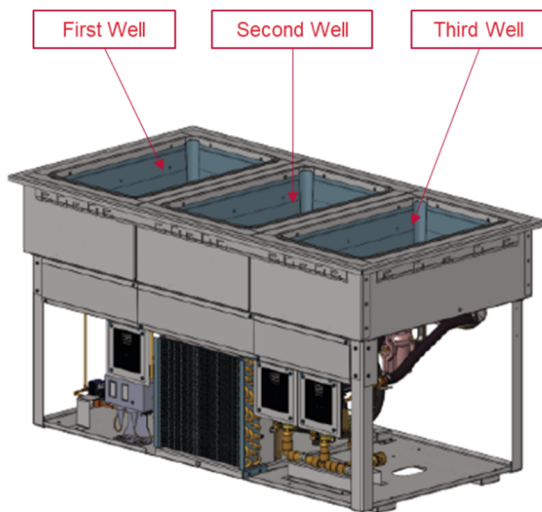
Ex. J (CAD drawing of HCF-3 (available at <https://dukemfg.kclcad.com/app/I116850691#models>)).

75. Duke's HCF product has a temperature-control system for controlling the temperature of the wells independently. (*See, e.g.*, Ex. D at 1 ("1 control per food well," "3 wet heat, 3 dry heat, 3 refrigerated and 1 freeze mode," "touch screen control changes mode of operation")). The temperature-control system allows a food container received in each well to be refrigerated or heated and to switch between being refrigerated or heated independently of the temperature status of any other well. (*See, e.g.*, Ex. G at 12-16; Ex. H at 1 (describing heat and refrigeration settings); Ex. E at 5 (describing switching times from ambient to hot, ambient to cold, ambient to freeze, hot to cold, and hot to freeze)).

76. The heating of each well is accomplished via the heatable thermal blanket, and the cooling of each well is accomplished via flowing refrigerant from a condensing unit into the one or more refrigerant pipes. (Ex. D at 1 (Compressor and R448a Refrigerant), 2; Ex. G at 6, 7; <https://dukemfg.com/products/hcf/>).

77. Duke's HCF-3 and HCF-4 products comprise first, second, and third wells, each well for receiving a container of food and in which the temperature-control system controls the

temperature of each well independently from the temperature of the other wells. (*See, e.g.*, Ex. E at 1 (“Hold hot foods side-by-side with cold foods while maintaining proper temperatures for both.”); Ex. G at 12-16; Ex. H at 1 (describing heat and refrigeration settings)).



(Ex. D at 1 (annotated)).

78. Duke, without license or authorization to do so, also contributes to or induces the direct infringement of the '253 Patent by manufacturing, selling, distributing, offering for sale, or otherwise making available its HCF products to its customers.

79. Duke indirectly infringes the '253 Patent within the United States by inducement under 35 U.S.C. § 271(b). Since learning of the '253 Patent, Duke has knowingly and intentionally induced, and continues to knowingly and intentionally induce others to directly infringe one or more claims of the '253 Patent. Upon information and belief, Duke does so by providing, either along with or in conjunction with its HCF product, instructions, guides, and/or encouragement to its customers to infringe at least the identified claims of the '253 Patent. (*See, e.g.*, Ex. G; Ex. H).

80. Duke also indirectly infringes by contributing to the direct infringement of end users under 35 U.S.C. § 271(c) by providing its HCF product, which is specially made for use in

a manner infringing one or more claims of the '253 Patent, and is not a staple article of commerce capable of substantial non-infringing uses.

81. Duke knows and at all relevant times has known of its infringement of the '253 Patent, or at the very least has been willfully blind to its infringement of the '253 Patent.

82. Because Duke knows and at all relevant times has known of its infringement of the '253 Patent or at the very least has been willfully blind to its infringement of the '253 Patent, its infringement is deliberate and willful.

83. Duke's infringement of LTI's rights will continue to damage LTI, causing irreparable harm for which there is no adequate remedy at law, unless enjoined by this Court.

84. Upon information and belief, such infringement has been, and will continue to be willful, and upon further belief, Duke lacks any reasonable invalidity or non-infringement defense making this case exceptional and entitling LTI to increased damages and reasonable attorneys' fees pursuant to 35 U.S.C. §§ 284 and 285.

JURY DEMAND

85. LTI hereby requests a trial by jury on all issues properly heard by a jury pursuant to the Seventh Amendment of the United States Constitution.

PRAYER FOR RELIEF

86. LTI respectfully requests that the Court find in its favor and against the Defendant, and that the Court grant LTI the following relief:

a. A judgment in favor of LTI that Defendant infringed one or more claims of the '761 Patent, '970 Patent, and the '253 Patent, directly, jointly, and/or indirectly, by way of inducing and/or contributing to the infringement of the '761 Patent, '970 Patent, and the '253 Patent;

b. A *preliminary* and permanent injunction pursuant to 35 U.S.C. § 283, enjoining Defendant and its officers, directors, agents servants, affiliates, employees, divisions, branches, subsidiaries, parents, and all others acting in active concert therewith from infringing, inducing the infringement of, or contributing to the infringement of the '761 Patent, '970 Patent, and '253 Patent, or such other equitable relief the Court determines is warranted;

c. An award to LTI of damages adequate to compensate LTI for the Defendant's acts of infringement together with pre-judgment and post-judgment interest pursuant to 35 U.S.C. § 284;

d. That the Court find Defendant's acts of infringement willful and award treble damages for such willful infringement pursuant to 35 U.S.C. § 284;

e. That the Court declare this to be an exceptional case and award LTI its reasonable attorneys' fees and costs in accordance with 35 U.S.C. § 285; and

f. Any further relief that the Court deems just and proper.

DATED: May 22, 2020

Respectfully submitted,

CARMODY MacDONALD P.C.

By: /s/ David P. Stoeberl
David P. Stoeberl, #46024(MO)
Tyler C. Schaeffer, #60847(MO)
120 South Central Avenue, Suite 1800
St. Louis, Missouri 63105
(314) 854-8600 Telephone
(314) 854-8660 Facsimile
dps@carmodymacdonald.com
tcs@carmodymacdonald.com

and

KILPATRICK TOWNSEND & STOCKTON LLP

D. Clay Holloway (Georgia Bar No. 363296)

(*pro hac vice* application to be filed)

cholloway@kilpatricktownsend.com

David Reed (Georgia Bar No. 185146)

(*pro hac vice* application to be filed)

dreed@kilpatricktownsend.com

Richard Goldstucker (Georgia Bar No. 940472)

(*pro hac vice* application to be filed)

rgoldstucker@kilpatricktownsend.com

Courtney Dabbieri (Georgia Bar No. 885177)

(*pro hac vice* application to be filed)

cdabbieri@kilpatricktownsend.com

1100 Peachtree Street, Suite 2800

Atlanta, GA 30309-4530

Telephone: (404) 815-6500

Facsimile: (404) 815-6555

Kathleen Geyer (Washington Bar No. 55493)

(*pro hac vice* application to be filed)

kgeyer@kilpatricktownsend.com

1420 5th Avenue, Suite 3700

Seattle, WA 98101

Telephone: (206) 467-9600

Facsimile: (206) 623-6793

Attorneys for Plaintiff Low Temp Industries, Inc.