

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
HARRISONBURG DIVISION**

TIPPMANN ENGINEERING, LLC,)	
)	
<i>Plaintiff,</i>)	CASE NO. 5:19-cv-00087-MFU-JCH
)	
v.)	
)	HON. MICHAEL F. URBANSKI
INNOVATIVE REFRIGERATION SYSTEMS, INC. & MICHAEL J. McGINNIS, JR.,)	
)	
<i>Defendants.</i>)	JURY TRIAL DEMANDED
)	

THIRD AMENDED COMPLAINT

Plaintiff Tippmann Engineering, LLC (“Plaintiff” or “Tippmann”) brings this action against Defendant Innovative Refrigeration Systems, Inc. (“Innovative”) and Michael J. McGinnis, Jr. (“Mr. McGinnis”) (collectively, “Defendants”) to stop Defendants’ infringement of Tippmann’s patented blast-freezing and cold-storage technology. For its Third Amended Complaint against Innovative and Mr. McGinnis, Tippmann hereby alleges and states as follows:

NATURE OF THE ACTION

1. This is a civil action arising under the laws of the United States, 35 U.S.C. § 1, *et seq.*, for patent infringement. Tippmann seeks damages and injunctive relief as provided in 35 U.S.C. §§ 281, 283–85.

THE PARTIES

2. Plaintiff Tippmann is a limited liability company organized and existing under the laws of the State of Indiana, with its principal place of business at 9109 Stellhorn Crossing Parkway, Fort Wayne, Indiana 46815.

3. Upon information and belief, Innovative is a corporation organized and existing under the laws of the Commonwealth of Pennsylvania, with an office at 111 Park Drive #C, Montgomeryville, Pennsylvania 18936, having its headquarters and principal place of business at 373 Mt. Torrey Road, Lyndhurst, Virginia 22952, within this judicial district.

4. Mr. McGinnis is the founder and president of Innovative, and, upon information and belief, the sole or at least majority or controlling owner of Innovative. Upon information and belief, Mr. McGinnis makes all major decisions concerning Innovative and, in particular, the actions and activities of Innovative pertinent to this lawsuit as described below. Upon information and belief, Mr. McGinnis has directed, controlled, and had oversight over all such activities of Innovative. Upon information and belief, Mr. McGinnis resides within the Commonwealth of Virginia and this judicial district. Mr. McGinnis is regularly employed by Innovative, in at least his capacity as its president, at the Lyndhurst, Virginia address set forth in Paragraph 3, above.

JURISDICTION AND VENUE

5. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a) because the claims alleged herein arise under the patent laws of the United States, 35 U.S.C. § 1, *et seq.*

6. This Court has personal jurisdiction over Innovative because, as set forth in Paragraph 3, above, and in Exhibit E hereto, Innovative has a regular and established place of business in the Commonwealth of Virginia and this judicial district; Innovative has committed acts of patent infringement in the Commonwealth of Virginia and this judicial district; Innovative has had and continues to have systematic and continuous contacts in and with the Commonwealth of Virginia and this judicial district; Innovative regularly transacts business within the Commonwealth of Virginia and this judicial district; and Innovative regularly avails itself of the

benefits of, and the laws prevailing in, the Commonwealth of Virginia and this judicial district. In addition, Innovative has been a party to the present lawsuit before this Court since on or around November 15, 2019 without objection and, as such, has consented to this Court's exercise of personal jurisdiction over it.

7. This Court has personal jurisdiction over Mr. McGinnis because, upon information and belief, he resides in the Commonwealth of Virginia and this judicial district; he is regularly employed by Innovative, in at least his capacity as its president, and present at the Lyndhurst, Virginia address set forth in Paragraph 3, above; he has committed acts of patent infringement in the Commonwealth of Virginia and this judicial district by, for example, making all major decisions related to Innovative's actions and activities as further described below; he has directed, controlled, and had oversight over all such activities of Innovative; he has had and continues to have systematic and continuous contacts in and with the Commonwealth of Virginia and this judicial district, he regularly transacts business within the Commonwealth of Virginia and this judicial district at least in the course of his duties as president of Innovative; and he regularly avails himself of the benefits of, and the laws prevailing in, the Commonwealth of Virginia and this judicial district.

8. Venue is proper in this Court and judicial district pursuant to 28 U.S.C. § 1400(b) because, as set forth in Paragraph 3, above, and Exhibit E hereto, Innovative and Mr. McGinnis, at least in his capacity as Innovative's president and, upon information and belief, the sole or at least majority or controlling owner of Innovative, have a regular and established place of business in the Commonwealth of Virginia and this judicial district, upon information and belief, Mr. McGinnis resides in the Commonwealth of Virginia and this judicial district, and Defendants have, individually and collectively, committed acts of patent infringement in the Commonwealth of

Virginia and this judicial district, including, without limitation, by offering to sell at least one Accused System, as defined below, that infringes one or more claims of Tippmann's U.S. Patent No. 9,297,570 in violation of at least 35 U.S.C. §§ 271(a)–(c).

THE PATENT-IN-SUIT

9. Tippmann researches, develops, designs, and builds blast-freezing and cold-storage technology that facilitates freezing palletized products in an efficient manner. Tippmann's technology has become the industry standard for ensuring safe, fast, and reliable freezing of palletized products, while being the most energy efficient method available.

10. Tippmann has applied for and obtained several patents to protect its intellectual property in its blast-freezing technology, including U.S. Patent No. 8,783,047 (the "'047 Patent") and U.S. Patent No. 9,297,570 (the "'570 Patent"), which are related members of Tippmann's family of QuickFreeze™ blast-freezing patents (collectively, the "QF Patents"). Tippmann does not assert the '047 Patent in this action.

11. The '570 Patent, entitled "RACK-AISLE FREEZING SYSTEM FOR PALLETIZED PRODUCT," was duly and legally issued by the United States Patent and Trademark Office on March 29, 2016. The '570 Patent generally relates to a system for warehousing pallets of product.

12. A true and correct copy of the '570 Patent is attached to this Complaint as Exhibit A.

13. All rights, title, and interests in and to the '570 Patent are assigned to Tippmann, which is the sole owner of the '570 Patent.

DEFENDANTS' INFRINGING ACTIVITIES

14. Tippmann hereby incorporates by reference, as if fully set forth herein, the foregoing allegations in paragraphs 1 through 13.

15. On or around May 16, 2018, Tippmann submitted to Mr. John Watson of Engineered Systems, Inc. (“ESI”) a quote for the installation of a blast-freezing and cold-storage system “to be utilized in your new facility in Dothan, AL.” (*See* Ex. J.¹) Mr. Watson is, or at that time was, the president of ESI, which was the general contractor for the “new facility” in question. (*See* Ex. F, Innovative’s Resp. to Interrog. No. 6; Ex. G, Innovative’s Initial Disclosures (identifying John H. Watson of ESI).)

16. The quoted system was covered by claims of the QF Patents, including the asserted ’570 Patent. Along with its quote, Tippmann provided schematic drawings for the proposed installation.

17. ESI and the owner of the “new facility” in question, Dothan Warehouse Investors, LLC (“Dothan”), did not hire Tippmann to install the blast-freezing and cold-storage system Tippmann quoted for ESI. Instead, ESI and/or Dothan hired Innovative to design and provide key components of Dothan’s blast-freezing and cold-storage system (the “Accused System”). (*See* Ex. F, Innovative’s Resp. to Interrog. No. 6; *see also* Ex. E, McGinnis Decl. ¶ 5(f).)

18. Soon after Tippmann submitted its quote to ESI, a third-party refrigeration contractor provided schematic drawings to Tippmann showing the system Dothan ultimately purchased and installed—the Accused System—which included penthouse evaporators (the “Dothan Schematic Drawings”). These drawings, and especially their inclusion of penthouse

¹ The document attached hereto as Ex. J is a true and accurate copy of the original with the exception that Ex. J has been redacted to remove highly confidential pricing terms.

evaporators, led Tippmann to believe that that the Accused System infringed the QF Patents, including the '570 Patent. Upon information and belief, copies of both the Dothan Schematic Drawings and the schematic drawings Tippmann provided for its quoted installation are in ESI's and/or Dothan's possession. Further, Tippmann has produced to Innovative the identity of the third-party refrigeration contractor referenced above as well as copies of the Dothan Schematic Drawings in response to certain of Innovative's discovery requests in this action.

19. On November 8, 2018, Tippmann sent Dothan 12 of its "T-2" spacer components and subsequently sold 6,000 T-2 spacers to Dothan on November 26. Tippmann's T-2 spacers are designed to be used with the technology covered by the QF Patents, including the '570 Patent. In particular, the T-2 spacers facilitate a unidirectional, longitudinal airflow when they are placed between layers of vertically stacked, palletized cases. The use of these spacers is claimed in several dependent claims of both QF Patents, including the '570 Patent, and the spacers are additionally independently patented, under U.S. Design Patent No. 732,789 (issued June 23, 2015), U.S. Patent No. 9,873,547 (issued January 23, 2018), and U.S. Patent No. 10,301,067 (issued May 28, 2019).

20. Dothan's purchase of Tippmann's T-2 spacers, which were designed to be used with Tippmann's patented system, further led Tippmann to believe that Dothan had installed and was using a system that infringed the '570 Patent.

21. Based on this belief, on November 14, 2018, Tippmann's counsel sent a letter to Dothan, a true and accurate copy of which is attached to this Complaint as Exhibit B, expressing its concerns about the blast-freezing and cold-storage system Dothan had apparently hired a third-party to install, stating that "if the building configuration and/or equipment being installed infringes on Tippmann's patents there is an issue." Copies of both QF Patents, including the '570 Patent, were enclosed with the letter.

22. Through counsel, Dothan responded on November 26, 2018 and provided a letter from Mr. McGinnis, dated November 20, 2018. True and accurate copies of these letters are together attached to this Complaint as Exhibit C. Dothan’s counsel stated that Dothan “ha[d] not engaged anyone to install [Tippmann’s] blast freezer system” but had instead chosen Innovative to install “Innovative’s own blast freezer system.” (Ex. C at 1.)

23. The attached letter from Mr. McGinnis “explain[ed] the system [Innovative] is installing for Dothan” and described in detail a rooftop-mounted penthouse blast freezer. (*Id.* at 3.) Mr. McGinnis wrote the letter purportedly “to address concerns regarding the design of the freezing plant in the Dothan Warehouse Project.” (Ex. C at C-3–4.) On information and belief, Mr. McGinnis wrote the letter to Dothan’s counsel in response to Tippmann having alleged that Dothan was infringing the QF Patents, including the ’570 Patent. (*See* Ex. C at C-1.) At that time, on information and belief, the Accused System was complete, or at least substantially complete, and in use.

24. In his November 20 letter, Mr. McGinnis demonstrated a knowledge of the QF Patents, including the ’570 Patent, by stating what certain aspects of the Accused System would “not” do, how those aspects would “not” function, how those aspect are “different,” or how those aspects perform certain functions “as opposed to” others. (Ex. C at C-3–4.) For example, Mr. McGinnis stated that the mini-penthouse units Innovative was providing for Dothan “are *not* used for maintaining the storage freezer which the blast freezing area is located.” (*Id.* at C-3 (emphasis added).) He also stated that the Accused System “does *not* use air from the open freezer warehouse” and “does *not* have fans installed in the top of the racking.” (*Id.* (emphases added).) He stated that the Accused System “requires *different* baffling and sealing means on the pallet racking”—although he did not state what he believed such an arrangement was “different” than.

(*Id.* (emphasis added).) He stated that the Accused System involves “airflow . . . cooled by a dedicated evaporator and pushed via sheet metal ductwork through the product *as opposed to* being drawn through the product with a fan at the top of rack from the freezer spaced cooled by many evaporators installed in room.” (*Id.* at C3–4 (emphasis added).) And he stated that, in the Accused System, “[p]roduct is loaded into the pallet racks and the forced air pushes the pallet seals in place *as opposed to* the pallets being placed against and pressing the seals.” (*Id.* at C-4 (emphasis added).)

25. Although Mr. McGinnis’s November 20 letter, (*id.* at C-3–4), did not expressly mention Tippmann or either of the QF Patents, the statements quoted above imply that Mr. McGinnis was both (a) aware of the QF Patents, including the ’570 Patent, at the time he wrote his letter and (b) attempting in his letter to distinguish Innovative’s design for the Accused System from the claimed subject matter of the QF Patents, including the ’570 Patent. Indeed, several of the statements quoted above paraphrase language from claims of the QF Patents. For example, with respect to the last of the statements quoted in paragraph 24, above, claim 1 of the ’570 Patent expressly claims an “opening sized and positioned to be sealingly engaged by the pallet assembly when the pallet assembly is *pressed against* the opening periphery,” and claim 13 of the ’570 Patent, which depends from claim 1, expressly further claims “a *seal* disposed about the opening periphery and adapted to engage the pallet assembly.” (*See* Ex. A, cls. 1, 13 (emphases added).)

26. For the Accused System to have the supposed differences from the QF Patents that Mr. McGinnis outlined in his November 20 letter (Ex. C at C-3–4), Mr. McGinnis would have had to have been aware of the QF Patents, including the ’570 Patent, not just at the time he wrote the letter but well in advance of that time, at least as of the time he and Innovative designed the blast-

freezing and cold-storage system that they proposed to ESI and/or Dothan and which Dothan subsequently accepted and implemented—the Accused System.

27. Upon information and belief based on the “P.E.” designation following Mr. McGinnis’ signature on his November 20 letter, (*see* Ex. C at C-4), Mr. McGinnis is a licensed Professional Engineer and works in that capacity at Innovative.

28. On February 25, 2019, a representative of Dothan emailed Tippmann to complain about a problem with the T-2 spacers Dothan had purchased from Tippmann. The complaint was accompanied by digital photographs of the T-2 spacers in use, showing in part the design of the blast freezing system that Innovative had installed and that Dothan was using (the “Dothan Photos”). Upon information and belief, copies of the Dothan Photos are in Dothan’s possession. Further, Tippmann has produced to Innovative copies of the Dothan Photos in response to certain of Innovative’s discovery requests in this action.

29. All of the information Tippmann received—including the Dothan Schematic Drawings depicting the Innovative-installed system; Dothan’s purchase, communications regarding performance, and photos of Tippmann’s T-2 spacers; and the letter from Dothan’s counsel, itself enclosing a letter from and signed by Mr. McGinnis, President of and engineer for Innovative—evidences that the system Innovative sold and installed at Dothan’s cold-storage facility for Dothan’s use infringes Tippmann’s ’570 Patent.

30. Tippmann’s counsel wrote a letter to Mr. McGinnis at Innovative on March 12, 2019, detailing Tippmann’s concerns about infringement: “We believe your letter supports, rather than refutes, that the blast freezer system Innovative installed for Dothan, and potentially also the other Innovative system Dothan representatives reviewed prior to hiring Innovative, infringes at least claim 1 of the ’570 Patent.” The letter to Innovative enclosed copies of both QF Patents,

including the '570 Patent, as well as a claim chart showing how the Accused System infringes at least claim 1 of the '570 Patent, copies of the Dothan Schematic Drawings, and an annotated copy of Mr. McGinnis's November 20, 2018 letter to Dothan. True and accurate copies of the letter from Tippmann to Innovative, its enclosed claim chart, and its enclosed annotated version of the Innovative letter to Dothan are together attached to this Complaint as Exhibit D.

31. Neither Mr. McGinnis nor any other Innovative representative responded to Tippmann's March 12 letter.

32. Based on at least the exhibits attached hereto and the other evidence recited above, on information and belief, and as further alleged below, Innovative, actively aided by Mr. McGinnis, at least designed, offered to sell, sold, and tested, and Dothan is currently using, the Accused System, which infringes claims of the '570 Patent.

33. Upon information and belief, Mr. McGinnis's role in designing, offering to sell, selling, and testing the Accused System and the components thereof was and is substantial and involves his personal participation in such activities. Indeed, as Mr. McGinnis admitted in paragraph 5(f) of the Declaration of Michael J. McGinnis, Jr., a true and accurate copy of which is attached to this Complaint as Exhibit E: "I was personally involved in the work Innovative performed related to the Dothan Accused System." Moreover, Innovative's responses to Tippmann's Interrogatory Nos. 6 and 8, true and accurate copies of which are excerpted in and attached to this Complaint as Exhibit F, make clear that Mr. McGinnis was one of four individuals at Innovative who was "primarily involved" in the design and testing of the Accused System, (*see* Ex. F, Innovative's Resp. to Interrog. No. 6), and also that he "is the person with the most knowledge at Innovative concerning Innovative's role and responsibilities pertaining to each Accused System," (*see id.*, Innovative's Resp. to Interrog. No. 8).

34. Representatives of Tippmann, including Tippmann's counsel, along with Mr. McGinnis's and Innovative's counsel, visited the Dothan facility and visually inspected the Accused System on July 13, 2020.

35. Tippmann is contemporaneously pursuing claims for infringement of the '570 Patent against Dothan in the U.S. District Court for the Middle District of Alabama; however, that action has been stayed pending the outcome of this one.

**DEFENDANTS' INFRINGEMENT OF
U.S. PATENT NO. 9,297,570**

36. Tippmann hereby incorporates by reference, as if fully set forth herein, the foregoing allegations in paragraphs 1 through 35.

37. Innovative has directly infringed and is continuing to directly infringe at least claims 1–4, 8–16, and 19–22 of the '570 Patent (collectively, the "Asserted Claims"), literally and/or under the doctrine of equivalents, at least due to using, or having used, or at least by testing, having offered to sell, and/or having sold within the United States the Accused System in violation of 35 U.S.C. § 271(a).

38. Innovative and Mr. McGinnis, individually and together, have also induced infringement and continue to induce infringement of at least the Asserted Claims by, with actual or at least constructive knowledge of the '570 Patent, knowingly inducing, with a specific intent to encourage, or with deliberate disregard or indifference for the fact that their individual or collective actions would result in patent infringement by another, direct infringement of the '570 Patent by one or more third parties, including, for example, Dothan, in violation of 35 U.S.C. § 271(b).

39. Further, Innovative and Mr. McGinnis, individually and together, have contributed to direct infringement of at least the Asserted Claims by one or more third parties, including, for

example, Dothan, by, with actual or at least constructive knowledge of the '570 Patent, offering to sell or selling within the United States one or more components of the invention claimed in at least the Asserted Claims, such as for example and without limitation, at least rooftop-mounted penthouse evaporator units that produce freezing air ("PEUs"), temperature monitoring and/or control system(s), plumbing, ductwork, air handlers, fans, and louvers (collectively, the "Innovative-Supplied Components"), (*see* Ex. C at C-3-4; Ex. F, Innovative's Resp. to Interrog. No. 6), knowing that at least the specific combination of those components employed in the Accused System (a) constitutes a material part of the invention of such claims, (b) was especially made or especially adapted for use in infringing such claims, and (c) is not a staple article or commodity of commerce suitable for substantial non-infringing use, in violation of 35 U.S.C. § 271(c).

40. As stated above and detailed more fully below, the information Tippmann received—including the Dothan Schematic Drawings depicting the Innovative-installed system; Dothan's purchase, communications regarding performance, and photos of Tippmann's T-2 spacers; the letter from Dothan's counsel, itself enclosing a letter from and signed by Mr. McGinnis, President of and engineer for Innovative; and the results of Tippmann's visual inspection on July 13, 2020 of the Dothan facility and the Accused System installed therein—evidences that the Accused System infringes Tippmann's '570 Patent and that at least Innovative—at least by offering to sell, selling, and/or using the Accused System—and Dothan—at least by making and/or using the Accused System—have directly infringed and/or are directly infringing the '570 Patent.

41. Claim 1 of the '570 Patent is directed to "[a]n installation for warehousing pallets of product, comprising: a warehouse defining a warehouse space set to a desired air temperature;

and a pallet racking assembly disposed in the warehouse space, the pallet racking assembly comprising: a pallet receiving space sized and configured to receive a pallet assembly including a pallet and a plurality of vertically stacked rows of cases disposed on the pallet and providing an airflow pathway through the vertically stacked rows of cases; an airflow chamber including an air inlet and an air outlet; a fan positioned to direct air into the airflow chamber from the air inlet and exhaust air into the warehouse space through the air outlet; and a wall disposed between the pallet receiving space and the airflow chamber, the wall having an airflow opening defining an opening periphery, the opening sized and positioned to be sealingly engaged by the pallet assembly when the pallet assembly is pressed against the opening periphery, whereby the air at the desired air temperature can pass into the airflow pathway of the pallet assembly to thereby transfer heat between the product and the air.”

42. The Accused System includes an installation for warehousing pallets of product, comprising: (a) a warehouse defining a warehouse space set to a desired air temperature; and (b) a pallet racking assembly disposed in the warehouse space, the pallet racking assembly comprising: (c) a pallet receiving space sized and configured to receive a pallet assembly including a pallet and a plurality of vertically stacked rows of cases disposed on the pallet and providing an airflow pathway through the vertically stacked rows of cases; (d) an airflow chamber including an air inlet and an air outlet; (e) a fan positioned to direct air into the airflow chamber from the air inlet and exhaust air into the warehouse space through the air outlet; (f) and a wall disposed between the pallet receiving space and the airflow chamber, the wall having an airflow opening defining an opening periphery, the opening sized and positioned to be sealingly engaged by the pallet assembly when the pallet assembly is pressed against the opening periphery, (g) whereby

the air at the desired air temperature can pass into the airflow pathway of the pallet assembly to thereby transfer heat between the product and the air.

43. Specifically, with reference to the exhibits attached hereto and other evidence recited above, on information and belief, the Accused System includes each element of claim 1 of the '570 Patent as follows:

Claim 1 of the '570 Patent	Accused System
An installation for warehousing pallets of product, comprising:	The design is an "operation requiring the product to be loaded into the pallet racking to be frozen." Ex. D at 5, bullet 9. The product is necessarily warehoused during the freezing operation.
a warehouse defining a warehouse space set to a desired air temperature; and	"[T]he product [is] loaded into the racking and frozen" Ex. D at 4, ¶ 3.
a pallet racking assembly disposed in the warehouse space, the pallet racking assembly comprising:	"[T]he product [is] loaded into the racking and frozen" Ex. D at 4, ¶ 3.
a pallet receiving space sized and configured to receive a pallet assembly including a pallet and a plurality of vertically stacked rows of cases disposed on the pallet and providing an airflow pathway through the vertically stacked rows of cases;	The Dothan Photos show pallets with cases stacked vertically on the pallets. "Each of the penthouse supply fans serves multiple pallet positions" Ex. D at 4, ¶ 3.
an airflow chamber including an air inlet and an air outlet;	The Dothan Schematic Drawings show racking systems which include an air flow chamber located below the "penthouse unit above." An air flow chamber, by design, must have an air inlet and an air outlet.
a fan positioned to direct air into the airflow chamber from the air inlet and exhaust air into the warehouse space through the air outlet; and	The "penthouses contain . . . the fans and motor and supply and return air channeling means and methods." Ex. D at 4, ¶ 2.
a wall disposed between the pallet receiving space and the airflow chamber, the wall having an airflow opening defining an opening periphery,	The Dothan Schematic Drawings show a wall, or the equivalent thereof, between the pallets and the airflow chamber. A wall, or the equivalent thereof, is necessarily between the pallet racking and the source of airflow in order for air to be to

	<p>“pushed . . . through the product.” <i>See</i> Ex. D at 4, bullet 6.</p> <p>“This design requires . . . baffling and sealing means on the pallet racking” Ex. D at 4, bullet 6.</p> <p>“Product is loaded into the pallet racks and the forced air pushes the pallet seals in place” Ex. D at 5, bullet 10.</p> <p>The “sealing means on the pallet racking” necessitates an air intake opening in a wall to be sealed. <i>See</i> Ex. D at 4, bullet 6.</p>
<p>the opening sized and positioned to be sealingly engaged by the pallet assembly when the pallet assembly is pressed against the opening periphery,</p>	<p>Air is “pushed . . . through the product,” which means the opening is sized to sealingly engage a pallet assembly. <i>See</i> Ex. D at 4, bullet 6.</p> <p>Air “pushes the pallet seals in place” Ex. D at 5, bullet 10. This effects the pressing of the pallet assembly against the opening for sealing.</p>
<p>whereby the air at the desired air temperature can pass into the airflow pathway of the pallet assembly to thereby transfer heat between the product and the air.</p>	<p>Product is loaded into racking “to be frozen.” Ex. D at 5, bullet 9.</p>

Accordingly, the Accused System meets each limitation of, and therefore infringes, at least claim 1 of the '570 Patent in violation of 35 U.S.C. § 271(a).

44. Claim 2 of the '570 Patent is directed to “[t]he installation of claim 1, in combination with the pallet assembly received in the pallet receiving space and sealingly engaged with the opening.”

45. The Accused System includes “pallet racking” (*e.g.*, Ex. D at 4, ¶ 3), pallets with cases stacked vertically on the pallets, as shown in the Dothan Photos. “Product is loaded into the pallet racks and the forced air pushes the pallet seals in place” (*Id.* at 5, bullet 10.) This effects the pressing of the pallet assembly against the opening for sealing. Accordingly, the

Accused System meets each limitation of, and therefore infringes, at least claim 2 of the '570 Patent in violation of 35 U.S.C. § 271(a).

46. Claim 3 of the '570 Patent is directed to “[t]he installation of claim 2, wherein the pallet assembly includes a spacer disposed between respective vertically stacked rows of cases, the spacer providing the airflow pathway by separating respective ones of the plurality of vertically stacked rows of cases from one another.”

47. The Accused System includes spacers between the rows of cases, as shown in the Dothan Photos. Tippmann provided these spacers, which were designed to separate the rows of cases and provide airflow. Accordingly, the Accused System meets each limitation of, and therefore infringes, at least claim 3 of the '570 Patent in violation of 35 U.S.C. § 271(a).

48. Claim 4 of the '570 Patent is directed to “[t]he installation of claim 3, wherein the spacer is made from at least one of a plastic and strips of solid material.”

49. The Accused System includes plastic spacers between the rows of cases, as shown in the Dothan Photos. Tippmann provided these plastic spacers to Dothan. Accordingly, the Accused System meets each limitation of, and therefore infringes, at least claim 4 of the '570 Patent in violation of 35 U.S.C. § 271(a).

50. Claim 8 of the '570 Patent is directed to “[t]he installation of claim 1, further comprising an air conditioner operably connected to the warehouse space to deliver conditioned air to the warehouse space, the conditioned air providing the desired air temperature.”

51. The Accused System includes “rooftop mounted pre-fabricated mini-penthouses for blast freezing of product at your facility. These penthouses contain the cooling evaporator” (Ex. D at 4, ¶ 2; *see also id.* at 4, bullet 1 (“dedicated evaporators for freezing product”).) The evaporator described is an air conditioner. Further, various structures “channel the air blown from

the mini-penthouse evaporator down into the freezer for distribution within the pallet racking system and the air in the freezer freely returns back to the mini-penthouse through return grating in the floor of the mini penthouse.” (*Id.* at 4, ¶ 2.) The mini-penthouse described is operably connected to the warehouse space. Accordingly, the Accused System meets each limitation of, and therefore infringes, at least claim 8 of the ’570 Patent in violation of 35 U.S.C. § 271(a).

52. Claim 9 of the ’570 Patent is directed to “[t]he installation of claim 8, wherein the air conditioner comprises a chiller producing freezing air, whereby the freezing air can through the airflow pathway of the pallet assembly to thereby quickly freeze the product contained in the vertically stacked rows of cases.”

53. The Accused System includes “dedicated evaporators for freezing product.” (Ex. D at 4, bullet 1.) Accordingly, the Accused System meets each limitation of, and therefore infringes, at least claim 9 of the ’570 Patent in violation of 35 U.S.C. § 271(a).

54. Claim 10 of the ’570 Patent is directed to “[t]he installation of claim 1, wherein the wall of the pallet racking assembly comprises a first wall on a first side of the airflow chamber such that the pallet receiving space comprises a first pallet receiving space at the first side of the airflow chamber, the pallet racking assembly further comprising: a second pallet receiving space at a second side of the airflow chamber opposite the first side, the second pallet receiving space sized and configured to receive a pallet assembly; and a second wall on the second side of the airflow chamber, the second wall disposed between the second pallet receiving space and the airflow chamber, and having a second airflow opening sized and positioned to be sealingly engaged by the pallet assembly.”

55. The Accused System includes racking systems with a rack on opposite sides of an airflow chamber, *i.e.*, with a second side and a second wall, or the equivalent thereof, as shown in

the Dothan Schematic Drawings. The Dothan Schematic Drawings and Innovative's description of the system (*see* Ex. D), describe multiple racks constructed and operating in the same fashion, and therefore there is a second pallet receiving space and second airflow opening. Accordingly, the Accused System meets each limitation of, and therefore infringes, at least claim 10 of the '570 Patent in violation of 35 U.S.C. § 271(a).

56. Claim 11 of the '570 Patent is directed to “[t]he installation of claim 1, further comprising a plurality of pallet guides disposed in opposite sides of the opening and defining a space therebetween, the space sized to receive the pallet assembly to ensure that the pallet assembly is properly positioned in front of the opening.”

57. The Accused System includes angle-iron pallet guides supporting pallet assemblies, as shown in the Dothan Photos. “Product is loaded into the pallet racks and the forced air pushes the pallet seals in place” (Ex. D at 5, bullet 10), such sealing necessitating that the opening receiving the pallet assembly is sized to ensure the assembly is properly positioned at the opening. Accordingly, the Accused System meets each limitation of, and therefore infringes, at least claim 11 of the '570 Patent in violation of 35 U.S.C. § 271(a).

58. Claim 12 of the '570 Patent is directed to “[t]he installation of claim 1, wherein the pallet racking assembly comprises: a plurality of the pallet receiving spaces arranged in vertically spaced horizontal rows; and the wall includes a plurality of the airflow openings respectively disposed at each of the plurality of the pallet receiving spaces, whereby the pallet racking assembly is configured to accommodate multiple pallet assemblies exposed to the air at the desired air temperature via the airflow chamber of the pallet racking assembly.”

59. The Accused System includes at least two vertically spaced rows of product, as shown in the Dothan Photos. Each pallet is shown abutting a wall, or the equivalent thereof, which

necessarily has an opening to facilitate air flow through the pallet. “Each of the penthouse supply fans serves multiple pallet positions.” (Ex. D at 4, ¶ 2.) Accordingly, the Accused System meets each limitation of, and therefore infringes, at least claim 12 of the ’570 Patent in violation of 35 U.S.C. § 271(a).

60. Claim 13 of the ’570 Patent is directed to “[t]he installation of claim 1, wherein the pallet racking assembly further comprises a seal disposed about the opening periphery and adapted to engage the pallet assembly to facilitate passage of the air at the desired air temperature primarily through the airflow pathway of the pallet assembly.”

61. The Accused System includes “baffling and sealing means on the pallet racking.” (Ex. D at 4, bullet 6.) “Product is loaded into the pallet racks and the forced air pushes the pallet seals in place” (*Id.* at 5, bullet 10.) Accordingly, the Accused System meets each limitation of, and therefore infringes, at least claim 13 of the ’570 Patent in violation of 35 U.S.C. § 271(a).

62. Claim 14 of the ’570 Patent is directed to “[t]he installation of claim 1, wherein the installation comprises a plurality of the pallet racking assemblies arranged in spaced-apart rows in the warehouse space to form an aisle sufficiently wide to accommodate a forklift to pass through the aisle.”

63. The Accused System includes multiple racks spaced from one another, as shown in the Dothan Schematic Drawings. Upon information and belief, the Dothan Schematic Drawings are copied from or based on Tippmann drawings of corresponding systems and show the same spacing between racks. The spacing between aisles in the Tippmann drawings is sufficient to accommodate a forklift. Accordingly, the Accused System meets each limitation of, and therefore infringes, at least claim 14 of the ’570 Patent in violation of 35 U.S.C. § 271(a).

64. Claim 15 of the '570 Patent is directed to “[t]he installation of claim 1, wherein the rows of pallet racking assemblies are substantially parallel to each other.”

65. The Accused System includes multiple racks parallel to one another, as shown in the Dothan Schematic Drawings. Accordingly, the Accused System meets each limitation of, and therefore infringes, at least claim 15 of the '570 Patent in violation of 35 U.S.C. § 271(a).

66. Claim 16 of the '570 Patent is directed to “[a]n installation for warehousing pallets of product, comprising: a warehouse defining a warehouse space set to a desired air temperature; a plurality of pallet assemblies, each pallet assembly comprising: a pallet; and a plurality of vertically stacked rows of cases disposed on the pallet and providing an airflow pathway through the vertically stacked rows of cases containing the product; and a pallet racking assembly disposed in the warehouse space, the pallet racking assembly comprising: a plurality of pallet receiving spaces each sized and configured to receive a respective pallet assembly therein; an airflow chamber including an air inlet and an air outlet; a fan positioned to direct the air into the airflow chamber from the air inlet and exhaust air into the warehouse space through the air outlet; and a wall disposed between the plurality of pallet receiving spaces and the airflow chamber, the wall having an airflow opening disposed at each of the plurality of pallet receiving spaces, each airflow opening defining an opening periphery sized to be sealingly engaged by a respective pallet assembly, whereby the air at the desired air temperature can pass into respective airflow pathways of the plurality of pallet assemblies to thereby simultaneously transfer heat between the product of the respective vertically stacked rows of cases and the air at the desired air temperature.”

67. The Accused System includes an installation for warehousing pallets of product, comprising: (a) a warehouse defining a warehouse space set to a desired air temperature; (b) a plurality of pallet assemblies, each pallet assembly comprising: (c) a pallet; and (d) a plurality of

vertically stacked rows of cases disposed on the pallet and providing an airflow pathway through the vertically stacked rows of cases containing the product; and (e) a pallet racking assembly disposed in the warehouse space, the pallet racking assembly comprising: (f) a plurality of pallet receiving spaces each sized and configured to receive a respective pallet assembly therein; (g) an airflow chamber including an air inlet and an air outlet; (h) a fan positioned to direct the air into the airflow chamber from the air inlet and exhaust air into the warehouse space through the air outlet; and (i) a wall disposed between the plurality of pallet receiving spaces and the airflow chamber, the wall having an airflow opening disposed at each of the plurality of pallet receiving spaces, each airflow opening defining an opening periphery sized to be sealingly engaged by a respective pallet assembly, (j) whereby the air at the desired air temperature can pass into respective airflow pathways of the plurality of pallet assemblies to thereby simultaneously transfer heat between the product of the respective vertically stacked rows of cases and the air at the desired air temperature.

68. Specifically, with reference to the exhibits attached hereto and other evidence recited above, on information and belief, the Accused System includes each element of claim 16 of the '570 Patent as follows:

Claim 16 of the '570 Patent	Accused System
An installation for warehousing pallets of product, comprising:	The design is an “operation requiring the product to be loaded into the pallet racking to be frozen.” Ex. D at 5, bullet 9. The product is necessarily warehoused during the freezing operation.
a warehouse defining a warehouse space set to a desired air temperature; and	“[T]he product [is] loaded into the racking and frozen” Ex. D at 4, ¶ 3.
a plurality of pallet assemblies, each pallet assembly comprising:	“Product is loaded into the pallet racks. . . .” Ex. D at 5, bullet 10; <i>see also id.</i> at 4, ¶ 3 (“pallet racking”).

	The Dothan Photos show pallets with cases stacked vertically on the pallets.
a pallet; and	The Dothan Photos show a pallet.
a plurality of vertically stacked rows of cases disposed on the pallet and providing an airflow pathway through the vertically stacked rows of cases containing the product; and	The Dothan Photos show vertically stacked rows of cases on a pallet.
a pallet racking assembly disposed in the warehouse space, the pallet racking assembly comprising:	<p>“Product is loaded into the pallet racks. . . .” Ex. D at 5, bullet 10; <i>see also id.</i> at 4, ¶ 3 (“pallet racking”).</p> <p>The Dothan Photos show pallets with cases stacked vertically on the pallets.</p>
a plurality of pallet receiving spaces each sized and configured to receive a respective pallet assembly therein;	<p>The Dothan Photos show pallets with cases stacked vertically on the pallets.</p> <p>“Each of the penthouse supply fans serves multiple pallet positions” Ex. D at 4, ¶ 3.</p>
an airflow chamber including an air inlet and an air outlet;	<p>The Dothan Schematic Drawings show racking systems which include an air flow chamber located below the “penthouse unit above.”</p> <p>An air flow chamber, by design, must have an air inlet and an air outlet.</p>
a fan positioned to direct the air into the airflow chamber from the air inlet and exhaust air into the warehouse space through the air outlet; and	The “penthouses contain . . . the fans and motor and supply and return air channeling means and methods.” Ex. D at 4, ¶ 2.
a wall disposed between the plurality of pallet receiving spaces and the airflow chamber, the wall having an airflow opening disposed at each of the plurality of pallet receiving spaces,	<p>The Dothan Schematic Drawings show a wall, or the equivalent thereof, between the pallets and the airflow chamber.</p> <p>A wall, or the equivalent thereof, is necessarily between the pallet racking and the source of airflow in order for air to be to “pushed . . . through the product.” <i>See</i> Ex. D at 4, bullet 6.</p> <p>The “sealing means on the pallet racking” necessitates an air intake in a wall opening to be sealed. <i>See</i> Ex. D at 4, bullet 6.</p>

	There is a plurality of pallet receiving spaces since “[e]ach of the penthouse supply fans serves multiple pallet positions.” Ex. D at 4, ¶ 3.
each airflow opening defining an opening periphery sized to be sealingly engaged by a respective pallet assembly,	Air is “pushed . . . through the product,” which means the opening is sized to sealingly engage a pallet assembly. <i>See</i> Ex. D at 4, bullet 6. There is a plurality of pallet receiving spaces since “[e]ach of the penthouse supply fans serves multiple pallet positions.” Ex. D at 4, ¶ 3.
whereby the air at the desired air temperature can pass into respective airflow pathways of the plurality of pallet assemblies to thereby simultaneously transfer heat between the product of the respective vertically stacked rows of cases and the air at the desired air temperature.	Product is loaded into racking “to be frozen.” Ex. D at 5, bullet 9. The Dothan Photos show airflow pathways via Tippmann’s T-2 spacers, which were designed to facilitate airflow, between vertically stacked rows of cases.

Accordingly, the Accused System meets each limitation of, and therefore infringes, at least claim 16 of the ’570 Patent in violation of 35 U.S.C. § 271(a).

69. Claim 19 of the ’570 Patent is directed to “[t]he installation of claim 16, wherein each of the plurality of pallet assemblies includes a spacer disposed between respective vertically stacked rows of cases, the spacer providing the airflow pathway by separating respective ones of the plurality of vertically stacked rows of cases from one another.”

70. The Accused System includes spacers between the rows of cases, as shown in the Dothan Photos. Tippmann provided these spacers to Dothan, which were designed to separate the rows of cases and provide airflow pathways. Accordingly, the Accused System meets each limitation of, and therefore infringes, at least claim 19 of the ’570 Patent in violation of 35 U.S.C. § 271(a).

71. Claim 20 of the '570 Patent is directed to “[t]he installation of claim 16, further comprising an air conditioner operably connected to the warehouse space to deliver conditioned air to the warehouse space, the conditioned air providing the desired air temperature.”

72. The Accused System includes “rooftop mounted pre-fabricated mini-penthouses for blast freezing of product at your facility. These penthouses contain the cooling evaporator” (Ex. D at 4, ¶ 2; *see also id.* at 4, bullet 1 (“dedicated evaporators for freezing product”).) The evaporator described is an air conditioner. Further, various structures “channel the air blown from the mini-penthouse evaporator down into the freezer for distribution within the pallet racking system and the air in the freezer freely returns back to the mini-penthouse through return grating in the floor of the mini penthouse.” (*Id.* at 4, ¶ 2.) The mini-penthouse described is operably connected to the warehouse space. Accordingly, the Accused System meets each limitation of, and therefore infringes, at least claim 20 of the '570 Patent in violation of 35 U.S.C. § 271(a).

73. Claim 21 of the '570 Patent is directed to “[t]he installation of claim 20, wherein the air conditioner comprises a chiller producing freezing air, whereby the freezing air can flow through respective airflow pathways of the plurality of pallet assemblies to thereby quickly freeze the product contained in respective vertically stacked rows of cases.”

74. The Accused System includes “dedicated evaporators for freezing product.” (Ex. D at 4, bullet 1.) Accordingly, the Accused System meets each limitation of, and therefore infringes, at least claim 21 of the '570 Patent in violation of 35 U.S.C. § 271(a).

75. Claim 22 of the '570 Patent is directed to “[t]he installation of claim 16, wherein the wall of the pallet racking assembly comprises a first wall on a first side of the airflow chamber such that the plurality of pallet receiving spaces comprises a first plurality of pallet receiving spaces at the first side of the airflow chamber, the pallet racking assembly further comprising: a

second plurality of pallet receiving spaces at a second side of the airflow chamber opposite the first side, each of the second plurality of pallet receiving spaces sized and configured to receive a respective pallet assembly therein; and a second wall at the second side of the airflow chamber, the second wall disposed between the second plurality of pallet receiving spaces and the airflow chamber, and having a second airflow opening disposed at each of the second plurality of pallet receiving spaces, each of the second plurality of pallet receiving spaces sized and positioned to be sealingly engaged by the pallet assembly.”

76. The Accused System includes racking systems with a rack on opposite sides of an airflow chamber, *i.e.*, with a second side and a second wall, or the equivalent thereof, as shown in the Dothan Schematic Drawings. The Dothan Schematic Drawings and Innovative’s description of the system (*see* Ex. D), describe multiple racks constructed and operating in the same fashion, and therefore there is a second plurality of pallet receiving spaces and second airflow openings. Accordingly, the Accused System meets each limitation of, and therefore infringes, at least claim 22 of the ’570 Patent in violation of 35 U.S.C. § 271(a).

77. Tippmann’s visual inspection of the Dothan Accused System on July 13, 2020 confirmed that the Accused System meets each limitation of the Asserted Claims as set forth and described above.

78. Tippmann has suffered and continues to suffer damages as a result of Innovative’s infringement of the ’570 Patent in an amount to be determined at trial.

79. Innovative’s infringement of the ’570 Patent has damaged and will continue to damage Tippmann, causing irreparable harm for which there is no adequate remedy at law, unless and until Innovative’s infringement is enjoined by this Court.

DEFENDANTS' INDUCEMENT OF INFRINGEMENT UNDER 35 U.S.C. § 271(b)

80. Tippmann hereby incorporates by reference, as if fully set forth herein, the foregoing allegations in paragraphs 1 through 79.

81. Defendants, individually and together, with actual or at least constructive knowledge of the '570 Patent, actively encouraged Dothan to infringe the '570 Patent, with knowledge, or with willful blindness to the knowledge, that Dothan's implementation and use of the Accused System and/or components thereof constituted patent infringement by Dothan. (*See* Exs. B–D, F.)

82. Defendants, individually and together, possessed and acted with a specific intent to encourage, or with deliberate disregard or indifference for the fact that their individual or collective actions with respect to the Accused System would result in, infringement of the '570 Patent by Dothan. (*See* Exs. B–D, F.)

83. Defendants admit that they “knew about the '570 Patent prior to the filing of th[is] lawsuit.” (*See* Dkt. 82-1, at 4.) But they neither state when they first “knew about the '570 Patent” nor deny that they “knew about the '570 Patent” prior to Tippmann's initial letter to Dothan in November 2018. Indeed, as discussed and alleged in paragraphs 22–26, above, Mr. McGinnis's letter dated November 20, 2018 demonstrates that he and Innovative had actual knowledge of the QF Patents, including the '570 Patent, prior to the date that Dothan installed the Accused System. Mr. McGinnis's letter makes clear that he was attempting to distinguish the Accused System from the claimed subject matter of the QF Patents and, thus, that Defendants attempted to “design around” the QF Patents for purposes of providing the Accused System to Dothan. Although Defendants' supposed “design around” fails to avoid infringement of at least the Asserted Claims for at least the reasons set forth herein, Defendants could not have attempted their supposed

“design around” without first having been aware of the QF Patents and, in particular, the claimed subject matter of the QF Patents, at least as of the time Defendants designed the Accused System for, and proposed it to, Dothan.

84. Further, Defendants, individually and together, were at least willfully blind to the existence of the '570 Patent and the knowledge that inducing Dothan to install and use the Accused System constituted infringement of the '570 Patent, which willful blindness establishes Defendants' intent to induce Dothan's infringing acts.

85. *First*, for example, on information and belief, Defendants learned of the QF Patents, including the '570 Patent, or at least learned enough information about the QF Patents, such that they had at least constructive knowledge of the QF Patents and their failure to review or otherwise investigate them amounts to willful blindness with respect to the knowledge that inducing Dothan to install and use the Accused System constituted patent infringement, at least as early as in or around May 2017. On information and belief, Mr. Charles Taylor, who was then president of CRT Design, Inc. (“CRT”), performed the design and engineering of the Williams Foods Works and Distribution, LLC (“Williams”) blast-freezing and cold-storage system in Union City, Tennessee (the “Williams System”). (*See* Ex. F, Innovative's Resp. to Interrog. No. 6; Ex. G, Innovative's Initial Disclosures (identifying John H. Watson of ESI and Charles Taylor of CRT); Ex. H, Innovative's Supplemental Resp. to Interrog. No. 6.)

86. In view of the design of the Williams System, which incorporates key features claimed in the QF Patents, including the '570 Patent—such as, for example, air handlers or fans, ductwork, and louvers that discharge chilled air vertically (i.e., in a single, straight path that is roughly perpendicular to the warehouse ceiling) downward from PEUs and into an airflow chamber or plenum formed by the rear sides of pallet racking assemblies and walls—Mr. Taylor

and CRT were, on information and belief, independently aware of the QF Patents, including the '570 Patent, prior to performing the design and engineering of the Williams System.

87. On information and belief, Mr. Taylor and CRT learned of the QF Patents by, for example, reviewing Tippmann's website, observing installed QuickFreeze™ systems or related literature marked or otherwise inclusive of the patent numbers of the QF Patents, and/or by other means that Tippmann anticipates will be revealed during discovery.

88. On information and belief, Mr. Taylor mistakenly believed that the QF Patents, including the '570 Patent, claimed and covered only a "negative-pressure" blast-freezing system in which chilled air is forcibly evacuated from the airflow chamber, when in fact the coverage of the '570 Patent is not so limited. Based on this mistaken belief, Mr. Taylor and CRT designed the Williams System to be a "positive-pressure" system in which chilled air is forced into the airflow chamber.

89. On information and belief, Mr. Taylor informed Defendants of the QF Patents, including the '570 Patent (to the extent Defendants were not already independently aware of the QF Patents), in or around May 2017 and apprised Defendants of Mr. Taylor's (incorrect) belief that the QF Patents claimed only a "negative-pressure" blast-freezing system, and further apprised them (again, incorrectly) that Mr. Taylor's "positive-pressure" design for the Williams System would circumvent or avoid infringement of the QF Patents.

90. Innovative subsequently supplied the "refrigeration components" of the Williams System to or for CRT and/or Williams. (*See* Ex. H, Innovative's Supplemental Resp. to Interrog. No. 6.)

91. Emboldened by Mr. Taylor's (incorrect) belief that the QF Patents claimed only a "negative-pressure" blast-freezing system, and in reliance on Mr. Taylor's and/or their own flawed

understanding of the QF Patents, Defendants subsequently appropriated certain aspects of Mr. Taylor’s purportedly non-infringing design for the Williams System—most notably the “positive-pressure” aspect—for use in their own work designing and supplying components for the Accused System installed at Dothan’s cold-storage facility.

92. In courting Dothan’s business prior to being hired by Dothan to perform work on the Accused System, at least Mr. McGinnis, and potentially other representatives of Innovative, accompanied representatives of Dothan, including, on information and belief, at least Mr. Watson, on at least two rounds of site visits to other cold-storage facilities, at least some of which included blast-freezing systems Innovative had supplied or on which Innovative had performed work, or for which Innovative had supplied components, in the past. (*See* Ex. C at C-1 (“During its due diligence for this project, Dothan Warehouse viewed several different cold storage facilities in different states.”).) On or around April 18, 2018, the aforementioned parties, including at least Mr. McGinnis and Mr. Watson, visited three such cold-storage facilities: Merchandise Warehouse in Indianapolis, Indiana; Blue Ridge Capital Freezer in Lebanon, Pennsylvania; and Innovative’s own Refrigeration Plant in Lyndhurst, Virginia. On or around May 8, 2018, at least the aforementioned parties also visited the Williams cold-storage facility in Union City, Tennessee and inspected the Williams System. On information and belief, of those four facilities, only the Williams System includes a “positive-pressure” blast-freezing system that directs chilled air into an airflow chamber or plenum formed by pallet racking assemblies.

93. Defendants had no reasonable basis for relying on Mr. Taylor’s mistaken belief that a “positive-pressure” system, such as the Williams System, would not infringe the QF Patents, including the ’570 Patent.

94. Despite knowing of the QF Patents, Defendants failed to take reasonable steps to investigate and verify for themselves Mr. Taylor’s conclusion that the QF Patents claimed and covered only a “negative-pressure” blast-freezing system or to otherwise verify the scope of the QF Patents for themselves.

95. Defendants had no reasonable basis for believing that a “positive-pressure” system, such as the Williams System, would not infringe either of the QF Patents, including the ’570 Patent.

96. Subsequently, Dothan requested that Defendants provide for it a blast-freezing system similar to the one installed, and which Dothan’s representatives had observed, at the Williams facility—the Williams System. (*See* Ex. C at C-1 (“After receiving quotes from all interested vendors, Dothan Warehouse chose Innovative . . . to install Innovative’s own blast freezer system, which Dothan Warehouse observed installed in another Innovative customer’s freezer warehouse.”).)

97. On information and belief, Defendants “closed the deal” to perform work on the Accused System installed at Dothan’s cold-storage facility at least in part by representing to Dothan that Defendants could install a “positive-pressure” blast-freezing system similar to the Williams System at a lower cost than Tippmann’s patented system and that such system would circumvent or avoid infringing the QF Patents, including the ’570 Patent. (*See* Ex. C at C-3–4 (stating that Defendants’ design for the Accused System involves “airflow . . . cooled by a dedicated evaporator and pushed via sheet metal ductwork through the product as opposed to being drawn through the product with a fan at the top of rack from the freezer space cooled by many evaporators installed in room”).)

98. In contrast to the Williams System, at Dothan's cold-storage facility, Defendants designed and incorporated into the Accused System structural details claimed in certain dependent claims of the '570 Patent, such as, for example, "pallet guides," (*see* Ex. A, cl. 11), based on the mistaken belief that since the independent claims of the '570 Patent purportedly did not cover a "positive-pressure" blast-freezing system, Innovative could freely appropriate structural details found in dependent claims of the '570 Patent without infringing those claims.

99. Upon completion of the Accused System, Defendants "performed some post-installation testing" on the Accused System, (*see* Ex. F, Innovative's Resp. to Interrog. No. 6), and, on information and belief, provided Dothan instructions on how to configure, operate, and/or use the Accused System.

100. Defendants induced Dothan to perform acts, such as making and using the Accused System, that constitute infringement of at least the Asserted Claims.

101. In choosing to adopt, without any basis for doing so, Mr. Taylor's baseless belief regarding the scope of the QF Patents, including the '570 Patent, and further in failing to take reasonable steps to verify the scope of the QF Patents for themselves, Defendants willfully ignored and blinded themselves with respect to the knowledge that inducing Dothan to make and use the Accused System constituted patent infringement.

102. **Second**, and alternatively, Defendants learned of the QF Patents, including the '570 Patent, or at least learned enough information about the QF Patents, such that they had at least constructive knowledge of the QF Patents and their failure to review or otherwise investigate them amounts to willful blindness with respect to the knowledge that inducing Dothan to install and use the Accused System constituted patent infringement, sometime shortly after May 16, 2018.

103. ESI contracted with Innovative to perform work on and, on information and belief, construct, the Accused System. (See Ex. F, Innovative’s Resp. to Interrog. No. 6; Ex. G, Innovative’s Initial Disclosures (identifying John H. Watson of ESI).) ESI’s president, or then-president, Mr. Watson, is also a member and/or manager of Watson & Downs Investments II, LLC, which is one of the members of the entity that owns the Accused System—Dothan. (See Ex. I, Dothan’s Conflict Disclosure Statement, Case No. 1:19-cv-00477-ALB-SRW, Dkt. 10 (filed Nov. 21, 2019).)

104. Mr. Watson had at least two sources of interest in the success of the Accused System installed at Dothan’s cold-storage facility: one as ESI’s president, and another as an investor in Dothan. Mr. Watson had every incentive to obtain a blast-freezing system for Dothan at the lowest possible cost. As such, Mr. Watson and ESI sought quotes from multiple potential providers of blast-freezing systems, including both Tippmann and Innovative. (See Ex. C at C-1; Ex. J.)

105. On or around May 16, 2018, Tippmann submitted a quote and accompanying design drawings to Mr. Watson with the expectation that he and ESI would consider Tippmann to design and install the blast-freezing system at Dothan’s cold-storage facility. Tippmann quoted the installation of its patented QuickFreeze™ system, which is a “negative-pressure” system covered by aspects of both QF Patents, including the ’570 Patent. (See Ex. J.) The first two lines of Tippmann’s quote expressly stated that its QuickFreeze™ system is patented: “We are pleased to present our proposal for our *patented* QF+ freeze system to be utilized in your new facility in Dothan, AL The following proposal includes design, engineering and installation of our *patented* system.” (See *id.* (emphasis added).)

106. A reviewer of Tippmann's quote could not have reasonably overlooked that the system Tippmann was proposing to install at Dothan's cold-storage facility was patented.

107. On information and belief Mr. Watson did not find Tippmann's quote to be the lowest-cost option. (*See* Ex. C at C-1 ("After receiving quotes from all interested vendors, Dothan Warehouse chose Innovative . . . to install Innovative's own blast freezer system, which system Dothan Warehouse observed installed in another Innovative customer's freezer warehouse.").) Mr. Watson did not hire Tippmann.

108. On information and belief, Mr. Watson requested that Defendants, with which Mr. Watson had previously met on at least two occasions for the site visits discussed above, provide options for a lower-cost blast-freezing system. On information and belief, Mr. Watson requested that Defendants provide a blast-freezing system similar to the one Tippmann proposed in its quote and/or similar to the Williams System that Mr. Watson had observed just days prior to receiving Tippmann's quote. On information and belief, to facilitate his request to Defendants, Mr. Watson or another ESI representative, such as Felton Woodham, (*see* Ex. F, Innovative's Resp. to Interrog. No. 6), shared Tippmann's quote and the associated drawings with Defendants sometime shortly after Tippmann submitted the quote to Mr. Watson on or around May 16, 2018. This is supported by at least the fact that, for example, Tippmann's quote specifies on its face that "we are providing a proposal and pricing for a 480 Pallet Position System," (*see* Ex. J), and the Accused System, which Innovative designed and for which it supplied certain components, such as at least the Innovative-Supplied Components mentioned above, also includes 480 pallet positions. On information and belief, with Tippmann's quote and drawings in hand, Innovative appropriated and replicated certain aspects of Tippmann's design, including the proposed number of pallet positions.

109. Tippmann learned that its drawings had been shared with Innovative after a third-party refrigeration contractor, whose identity Tippmann has disclosed to Innovative in response to certain of Innovative's discovery requests in this action, sent Tippmann modified versions of the drawings Tippmann had submitted to Mr. Watson in conjunction with its quote. The drawings had been modified in various ways, including, for example, to include Innovative's PEUs.

110. On information and belief, Mr. McGinnis and other representatives of Innovative reviewed Tippmann's quote and then modified, or copied and modified, Tippmann's design drawings to convert the "negative-pressure" QuickFreeze™ system Tippmann had proposed to a "positive-pressure" system similar to the Williams System based on the incorrect, unfounded, and unreasonable beliefs that the scope of both QF Patents, including the '570 Patent, was limited to a "negative-pressure" system and that a "positive-pressure" system similar to the Williams System would not infringe either of the QF Patents, including the '570 Patent. (*See* Ex. C at C-3-4 (stating that Innovative's design for the Accused System involves "airflow . . . cooled by a dedicated evaporator and *pushed* via sheet metal ductwork through the product as opposed to being *drawn through* the product with a fan at the top of rack from the freezer space cooled by many evaporators installed in room" (emphases added)).)

111. Defendants provided ESI and/or Dothan design drawings for a "positive-pressure" system that detailed at least the layout, construction, components, and operation of the Accused System. In modifying Tippmann's design drawings as described above, Defendants accorded their imprimatur to the design drawings they provided to ESI and/or Dothan.

112. Upon completion of the Accused System, Defendants "performed some post-installation testing" on the Accused System, (*see* Ex. F, Innovative's Resp. to Interrog. No. 6),

and, on information and belief, provided Dothan instructions on how to configure, operate, and/or use the Accused System.

113. To the extent that Defendants were not already independently aware of the QF Patents, including the '570 Patent—from their dealings with Mr. Taylor and CRT, discussed above, for example—they learned through at least Mr. McGinnis's review of Tippmann's quote that Tippmann's QuickFreeze™ blast-freezing system is patented.

114. Despite knowing of the QF Patents or at least that Tippmann's QuickFreeze™ blast-freezing system is patented, Defendants failed to take reasonable steps to investigate and verify whether merely reversing the airflow of Tippmann's QuickFreeze™ system would infringe either of the QF Patents, including the '570 Patent, and, with reckless disregard for the patented nature of Tippmann's QuickFreeze™ blast-freezing system, modified, or copied and modified, Tippmann's design drawings for purposes of facilitating their own design for the Accused System.

115. Defendants had no reasonable basis for believing that a “positive-pressure” system, such as the Accused System, would not infringe either of the QF Patents, including the '570 Patent.

116. Defendants induced Dothan to perform acts, such as at least making and using the Accused System, that constitute infringement of at least the Asserted Claims.

117. In failing to take reasonable steps to verify the scope of the QF Patents after learning that Tippmann's QuickFreeze™ blast-freezing system is patented, Defendants willfully ignored and blinded themselves with respect to the knowledge that inducing Dothan to make and use the Accused System constituted patent infringement.

118. Defendants' willful blindness with respect to the knowledge that the acts they induced Dothan to commit—at least Dothan's making and use of the Accused System—constitute patent infringement is further evidenced by Innovative's response, or rather lack thereof, when it

learned that Tippmann might have an applicable patent “in approximately 2010 to 2013 timeframe.” (*See* Ex. F, Innovative’s Resp. to Interrog. No. 13.) Despite then learning from “general discussion among others in the industry” that Tippmann may have obtained an applicable patent, Innovative did not bother to “obtain, or otherwise review,” the QF Patents, including the asserted ’570 Patent. (*Id.*)

119. Upon information and belief, for at least the reasons set forth in paragraphs 24–26, 85–98, and/or 102–113, above, Innovative’s claim that it “did not receive, obtain, or otherwise review any particular Tippman [sic] patent or ‘learn’ about the particular patent at issue until it received Tippman’s [sic] November 2018,” (*see id.*), is incorrect and/or false.

120. Defendants’ approach with respect to Tippmann’s QF Patents, including the ’570 Patent, has been nothing short of a “head-in-the-sand” approach of self-serving and purposeful ignorance. (*See id.*) Defendants willfully blinded themselves with respect to both the existence of the QF Patents, including the ’570 Patent, and the knowledge that inducing Dothan to install and use the Accused System constituted infringement of the ’570 Patent. (*See id.*)

121. Further, Mr. McGinnis’s letter dated November 20, 2018, (Ex. C at C-3–4), does not negate Defendants’ intent to encourage infringement by Dothan. To the contrary, Mr. McGinnis’ letter is little more than a self-serving, post-hoc attempt to persuade Innovative’s customer, Dothan, that Innovative had not designed, tested, and instructed Dothan how to use an infringing system. Indeed, Mr. McGinnis had every incentive to reassure Dothan that nothing was wrong, at least to avoid the possibilities of Dothan suing and/or demanding indemnification from Innovative related to a patent-infringement claim by Tippmann. Accordingly, that Mr. McGinnis relayed to Dothan his incorrect beliefs about how the Accused System supposedly differs from the claims of the QF Patents, including the ’570 Patent, merely demonstrates that Defendants wanted

Dothan to believe what they believe (incorrectly) regarding the QF Patents and does not in any way mitigate the willful blindness that Defendants otherwise cultivated with respect to both the existence of the QF Patents, including the '570 Patent, and the knowledge that inducing Dothan to install and use the Accused System constituted infringement of the '570 Patent.

122. As a result of Defendants supplying Dothan with the design of the Accused System, certain components thereof, such as at least the Innovative-Supplied Components mentioned above, and, on information and belief, instructions on how to configure, operate, and/or use the Accused System, Defendants knowingly and intentionally encouraged Dothan to perform acts that directly infringe the '570 Patent, and Dothan has directly infringed, and continues to directly infringe, the '570 Patent in violation of 35 U.S.C. § 271(a) at least by making and using the Accused System.

123. Mr. McGinnis actively and knowingly assisted with, and, upon information and belief, directed, controlled, and exercised authority and oversight over decisions relating to, Innovative's infringing activities with respect to the Accused System, including without limitation Innovative's design of the Accused System, offer to sell and/or sale of the Accused System and/or components thereof to Dothan, and, on information and belief, providing instructions to Dothan on how to operate and use the Accused System. (*See Exs. B–D, F.*)

124. By, with actual or at least constructive knowledge of the '570 Patent, knowingly and intentionally encouraging Dothan to perform acts that directly infringe the '570 Patent, and having at least willfully blinded themselves with respect to the knowledge that inducing Dothan to perform those acts constituted patent infringement, Defendants, individually and together, induced Dothan's infringement of the '570 Patent.

125. Tippmann has suffered and continues to suffer damages as a result of Defendants' inducement of infringement of the '570 Patent in an amount to be determined at trial.

126. Defendants' inducement of infringement of the '570 Patent has damaged and will continue to damage Tippmann, causing irreparable harm for which there is no adequate remedy at law, unless and until Defendants' infringement is enjoined by this Court.

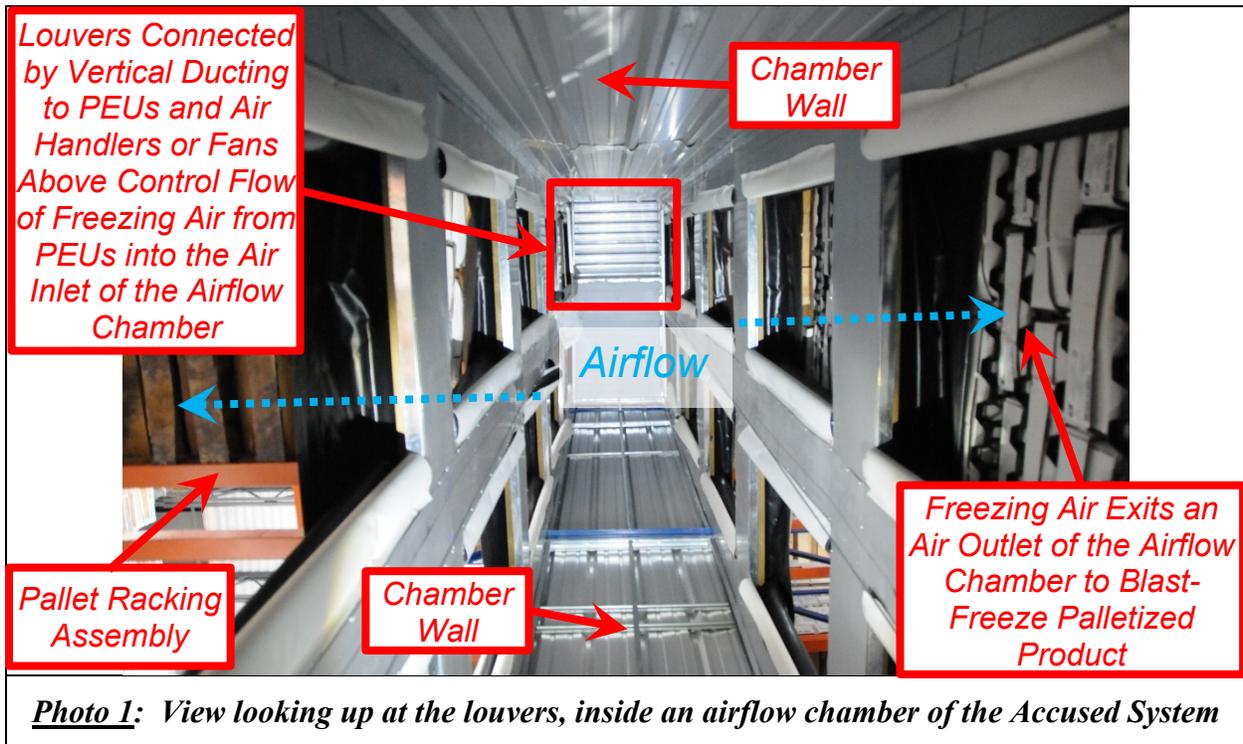
DEFENDANTS' CONTRIBUTORY INFRINGEMENT UNDER 35 U.S.C. § 271(c)

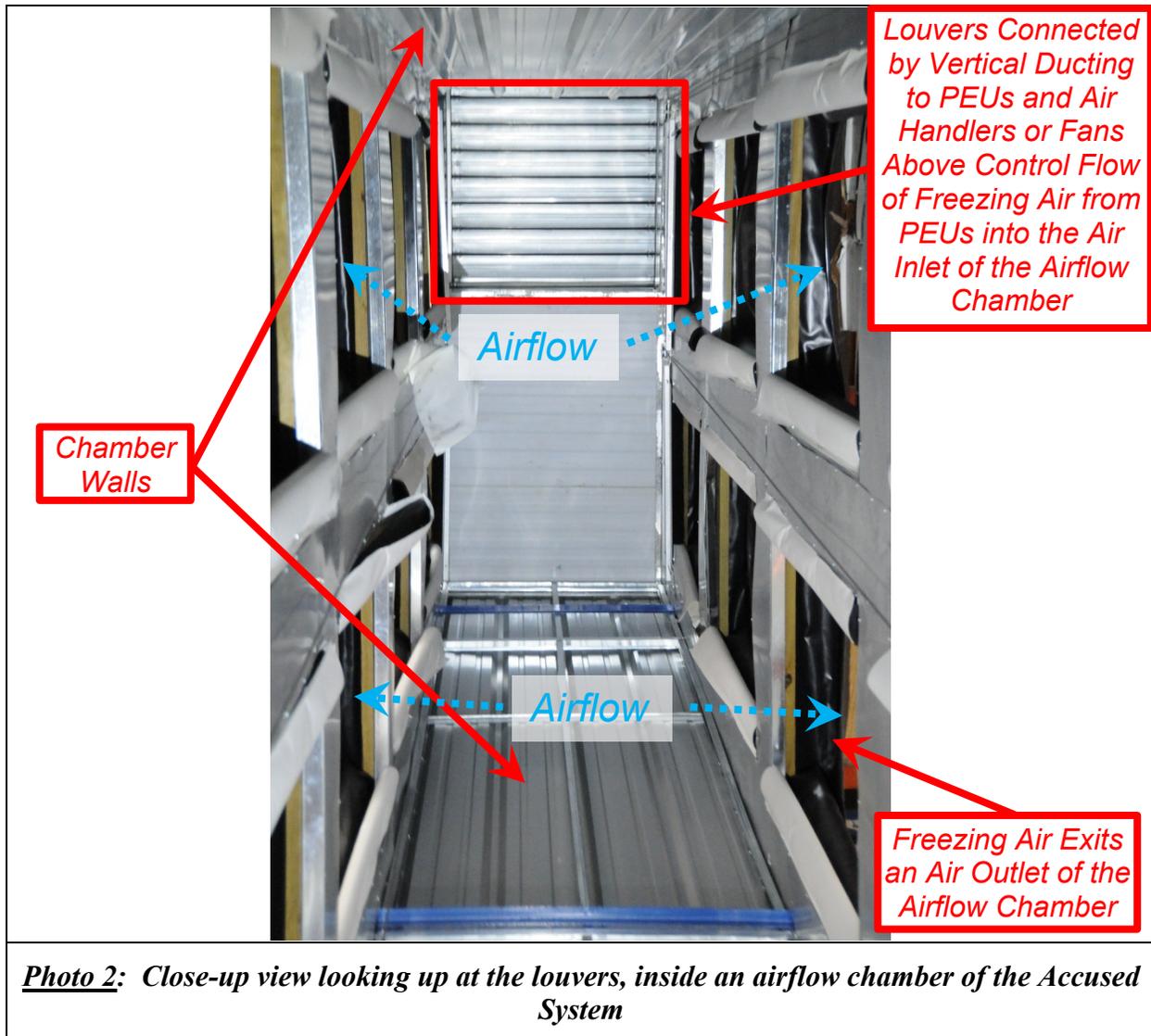
127. Tippmann hereby incorporates by reference, as if fully set forth herein, the foregoing allegations in paragraphs 1 through 126.

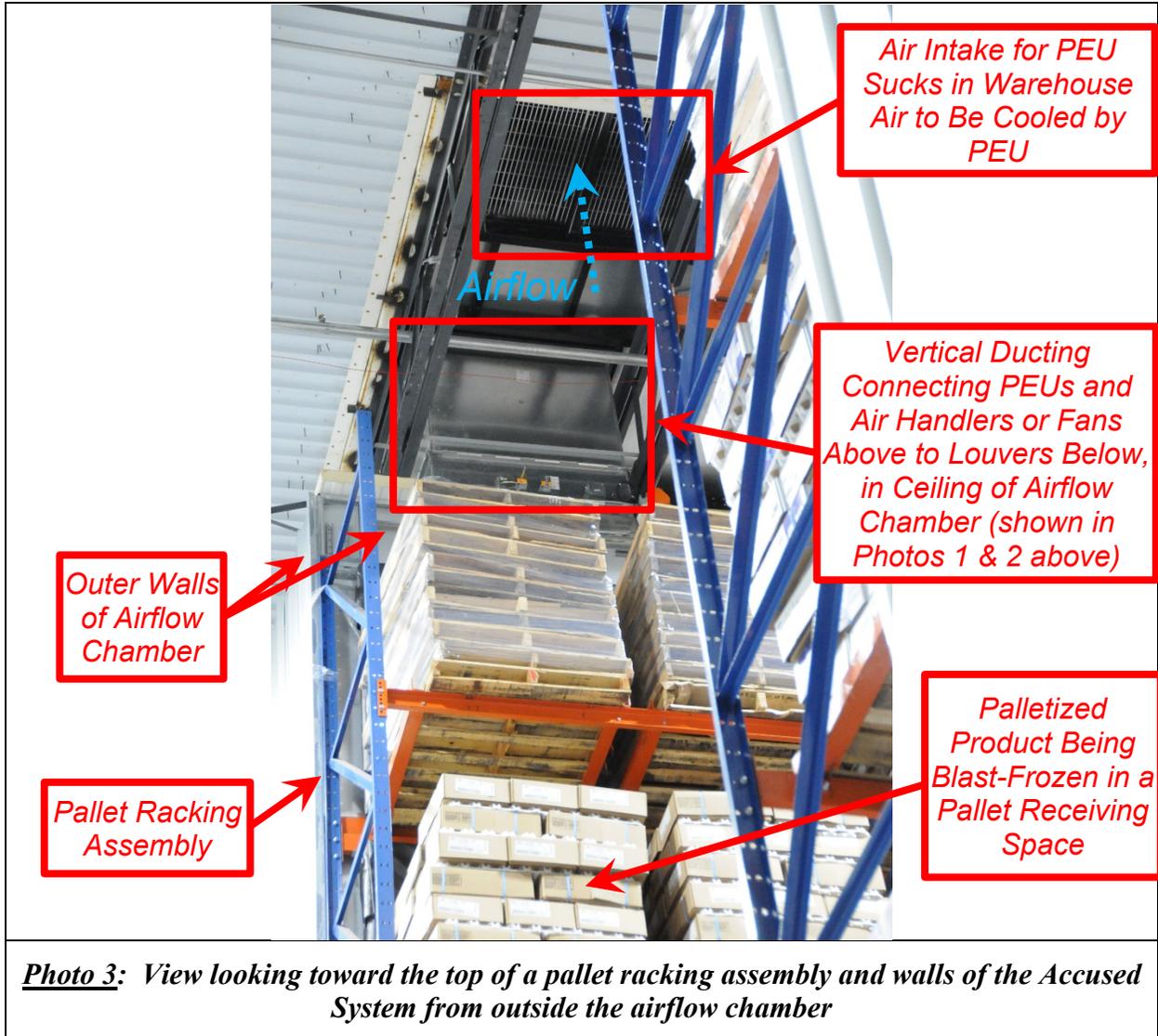
128. Defendants, individually and together, have contributed to direct infringement of at least the Asserted Claims by Dothan for at least the reasons described above, by, with actual or at least constructive knowledge of the '570 Patent for at least the reasons described above, designing the Accused System and offering to sell or selling to Dothan one or more components of the invention claimed in at least the Asserted Claims, such as for example and without limitation, at least the Innovative-Supplied Components mentioned above, for use in specific combinations in the Accused System in accordance with Defendants' design specifications.

129. Moreover, certain combinations and configurations of the Innovative-Supplied Components, as designed by Defendants for use in, and as installed and used in, the Accused System, form apparatuses that do not constitute staple articles or commodities of commerce and are not suitable for substantial non-infringing uses. For example, and without limitation, the PEUs of the Accused System are installed with at least air handlers or fans, ductwork, and louvers, the combination of which results in (a) chilled air being discharged vertically (i.e., in a single, straight path that is roughly perpendicular to the warehouse ceiling) downward from the PEUs, and (b) into an airflow chamber or plenum formed by the rear sides of pallet racking assemblies and walls

of the Accused System, as shown in the following annotated photos of the Accused System, labeled as Photos 1–3 (collectively, the “Non-Staple Components”). Excluding the textual annotations, Photos 1–3 are true and accurate reproductions of photos Tippmann acquired during its inspection of the Accused System on July 13, 2020.

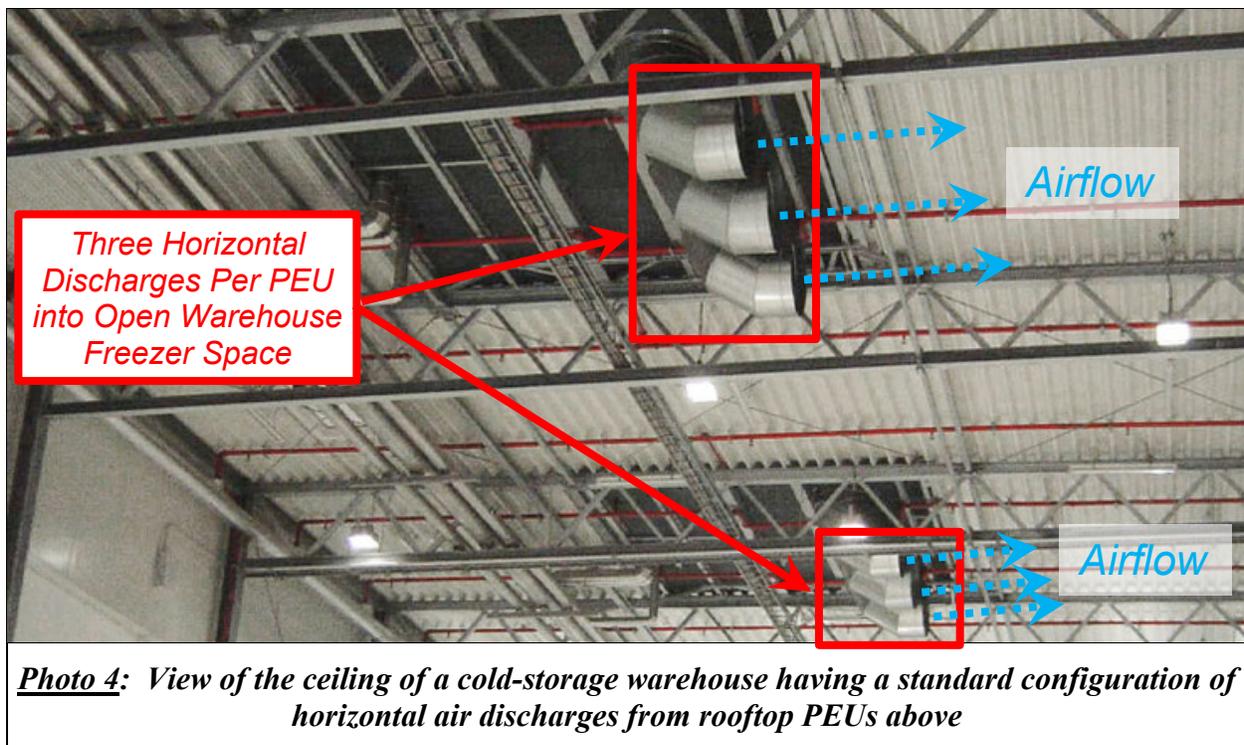






130. In contrast to the configuration of the Non-Staple Components described and shown above, in general a combination and configuration of the Innovative-Supplied Components utilized in a substantially non-infringing manner would not (a) discharge chilled air vertically (i.e., in a single, straight path that is roughly perpendicular to the warehouse ceiling) downward from the PEUs, or (b) into an airflow chamber or plenum formed by the rear sides of pallet racking assemblies and walls. Instead, for example, in most if not all standard installations the chilled-air output of PEUs is installed so as to be connected to a distribution plenum (e.g., ductwork) that distributes the cooled air inside the full expanse of an open warehouse freezer space of a cold-

storage warehouse, not individual airflow chambers or plenums formed by the rear sides of pallet racking assemblies and walls within a cold-storage warehouse. Moreover, in such standard installations PEUs generally discharge chilled air into the open warehouse space horizontally (i.e., in a path that is roughly parallel to the warehouse ceiling), not vertically (i.e., in a single, straight path that is roughly perpendicular to the warehouse ceiling) downward from the PEUs. The following photos illustrate a standard combination and configuration of certain of the Innovative-Supplied Components:



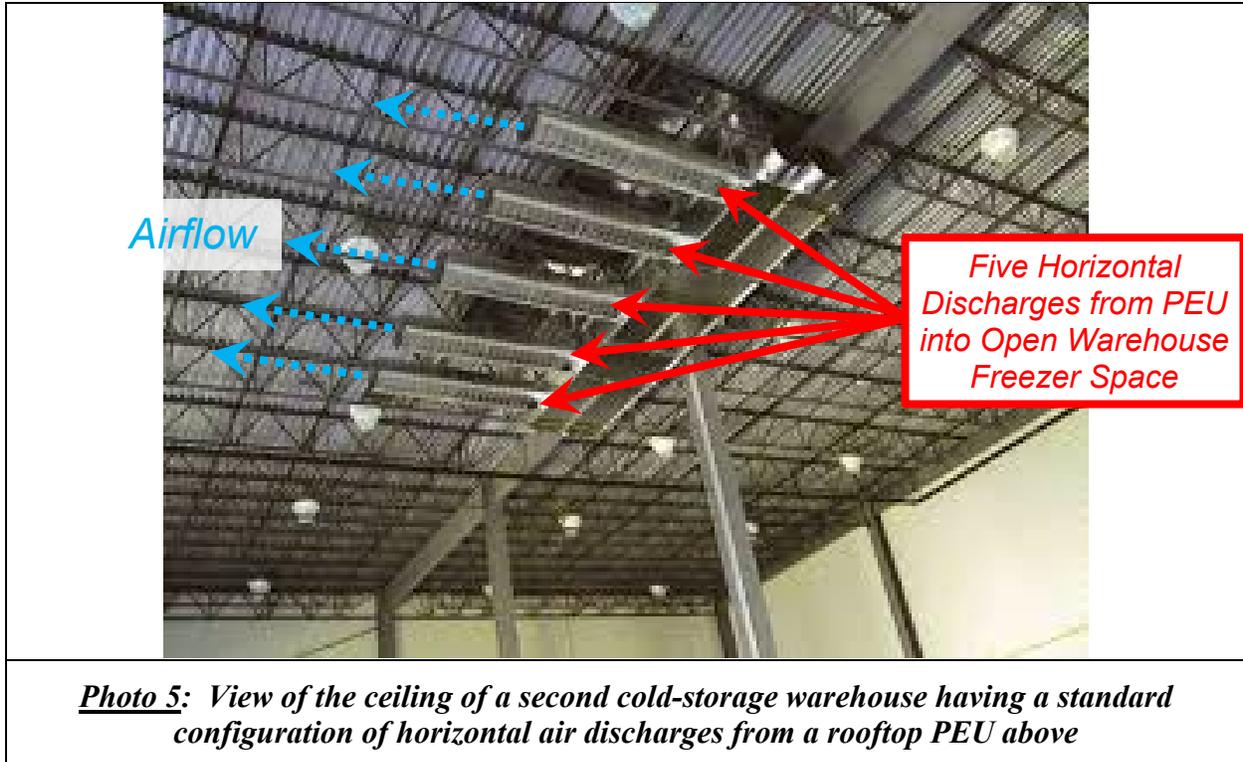


Photo 5: View of the ceiling of a second cold-storage warehouse having a standard configuration of horizontal air discharges from a rooftop PEU above

131. Further, at least the Non-Staple Components as combined and installed in the Accused System constitute a material part of the invention of one or more of the Asserted Claims. For example, and without limitation, Asserted Claims 1, 8, and 9 of the '570 Patent include elements corresponding to the Non-Staple Components: claim 1 requires, among other elements, “an airflow chamber” formed by at least one “pallet racking assembly” and walls and that includes “an air inlet” and at least one “air outlet”; claim 1 further requires “a fan positioned to direct air into the airflow chamber from the air inlet and exhaust air into the warehouse space through the air outlet”; claim 8 requires, in addition to the elements of claim 1, an “air conditioner operably connected to the warehouse space to deliver conditioned air to the warehouse space”; and claim 9 requires that the “air conditioner” of claim 8 be “a chiller producing freezing air.” As described and shown above, the Non-Staple Components as combined and installed in the Accused System align with each of these elements: Defendants’ PEUs constitute both “air conditioner[s]” and “chiller[s] producing freezing air” as in claims 8 and 9. Further Defendants’ PEUs include one or

more fans, or one or more air handlers that themselves include one or more fans, as in claim 1, and those fans are configured in the Accused System, per Defendants' design, to (a) "direct air into the airflow chamber from the air inlet" located in the ceiling of the airflow chamber via the ductwork and louvers supplied by Defendants and (b) "exhaust air into the warehouse space" through at least one "air outlet" corresponding to a pallet receiving space in the pallet racking assembly associated with the airflow chamber. Asserted Claims 16, 20, and 21 of the '570 Patent include the same elements corresponding to the Non-Staple Components as Asserted Claims 1, 8, and 9, respectively.

132. Defendants, individually and together, knew, actually or at least constructively, or for at least the reasons described above were willfully blind to the knowledge, that the Non-Staple Components as combined and installed in the Accused System constitute a material part of the invention of one or more of the Asserted Claims, including at least claims 1, 8, 9, 16, 20, and 21 for at least the reasons described above. (*See Exs. B–D, F.*)

133. Defendants, individually and together, knew, actually or at least constructively, or for at least the reasons described above were willfully blind to the knowledge, that the Non-Staple Components as combined and installed in the Accused System were especially made or especially adapted for use in infringing one or more of the Asserted Claims, including at least claims 1, 8, 9, 16, 20, and 21 for at least the reasons described above. (*See Exs. B–D, F.*)

134. The Non-Staple Components as combined and installed in the Accused System have no substantial non-infringing use; indeed, such combination could only facilitate the implementation and use of a blast-freezing system as claimed in the Asserted Claims.

135. Defendants, individually and together, knew, actually or at least constructively, or for at least the reasons described above were willfully blind to the knowledge, that the Non-Staple

Components as combined and installed are not staple articles or commodities of commerce suitable for substantial non-infringing use. (*See* Exs. B–D, F.)

136. Mr. McGinnis actively and knowingly assisted with, and, upon information and belief, directed, controlled, and exercised authority and oversight over decisions relating to, Innovative’s infringing activities with respect to the Accused System, including without limitation Innovative’s design of the Accused System and Innovative’s offer to sell and/or sale of the Innovative-Supplied Components, including the Non-Staple Components, to Dothan. (*See* Exs. B–D, F.)

137. As a result of Defendants selling the Innovative-Supplied Components, including the Non-Staple Components, to Dothan, Dothan has directly infringed, and continues to directly infringe, the ’570 Patent in violation of 35 U.S.C. § 271(a) at least by making and using the Accused System.

138. Tippmann has suffered and continues to suffer damages as a result of Defendants’ contributory infringement of the ’570 Patent in an amount to be determined at trial.

139. Defendants’ contributory infringement of the ’570 Patent has damaged and will continue to damage Tippmann, causing irreparable harm for which there is no adequate remedy at law, unless and until Defendants’ contributory infringement is enjoined by this Court.

DEFENDANTS’ WILLFUL INFRINGEMENT

140. Tippmann hereby incorporates by reference, as if fully set forth herein, the foregoing allegations in paragraphs 1 through 139.

141. Defendants were aware of the ’570 Patent at least as of March 12, 2019, when Defendants received a letter from Tippmann’s counsel identifying the ’570 Patent by its patent number and enclosing a copy of the ’570 Patent.

142. Despite their knowledge of the '570 Patent, Defendants offered to sell and sold to Dothan the Accused System and the Non-Staple Components and continue to, upon information and belief, offer to sell, sell, install, and test systems and components thereof that are not colorably different than the Accused System and the Non-Staple Components, respectively, to and for other customers, and Innovative makes, uses, sells, and/or offers to sell the technology of the '570 Patent, unfairly competing against Tippmann by infringing the '570 Patent. And despite their knowledge of the '570 Patent, Defendants actively induced at least Dothan to infringe the '570 Patent.

143. By deciding to make, use, offer to sell, and/or sell the Accused System and the Non-Staple Components, and relatedly by actively inducing Dothan's direct infringement of the '570 Patent, despite full knowledge of the '570 Patent and at least a reasonable, if not high, likelihood that Innovative and Dothan were infringing the '570 Patent, Defendants wantonly disregarded Tippmann's rights in the '570 Patent and willfully infringed the '570 Patent directly (Innovative), contributorily (Innovative and Mr. McGinnis), and/or by inducement (Innovative and Mr. McGinnis). Defendants' conduct is therefore sufficiently egregious to warrant an award to Tippmann of enhanced damages pursuant to 35 U.S.C. § 284.

PRAYER FOR RELIEF

WHEREFORE, Tippmann prays for the following judgment and relief against Defendants:

144. A judgment that Defendants have infringed and are infringing the '570 Patent contributorily and through inducement, and that Innovative has directly infringed and is infringing the '570 Patent;

145. A judgment that Defendants' infringement of the '570 Patent was and is willful;

146. A permanent injunction against Defendants and their respective affiliates, subsidiaries, assigns, employees, agents, and anyone else acting in privity or concert with Defendants, from infringing the '570 Patent directly, contributorily, or through inducement;

147. An award of all damages adequate to compensate Tippmann for Defendants' patent infringement, such damages to be determined by a jury, and, if necessary, an accounting to adequately compensate Tippmann for the infringement;

148. An award of enhanced damages, including up to three times the amount found or assessed, based on Defendants' willful infringement;

149. An award of pre-judgment and post-judgment interest at the maximum rate allowed by law;

150. An order finding that this is an exceptional case and awarding Tippmann its costs, expenses, disbursements, and reasonable attorneys' fees related to Defendants' patent infringement under 35 U.S.C. § 285 and all other applicable statutes, rules and common law; and

151. Such other further relief, in law or equity, as this Court deems just and proper.

DEMAND FOR JURY TRIAL

Tippmann hereby demands a jury trial on any and all issues appropriately triable before a jury.

Dated: October 29, 2020

Respectfully submitted, by:

/s/ Daniel M. Lechleiter

Daniel M. Lechleiter

Admitted *pro hac vice*

Indiana Bar No. 25675-49

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CERTIFICATE OF SERVICE

I hereby certify that on the 29th day of October, 2020, I electronically filed the foregoing pleading with the Clerk of Court using the CM/ECF system, which will send an electronic notification of such filing to the following counsel of record:

/s/ Daniel M. Lechleiter

Counsel for Plaintiff