

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI, SOUTHERN DIVISION**

MEMCO, INC., a Missouri corporation,)	
)	
Plaintiff/Counterclaim Defendant,)	
)	
v.)	Case No. 07-3302-CV-GAF
)	
BAADER-JOHNSON FOOD PROCESSING)	JURY TRIAL DEMANDED
MACHINERY, BAADER NORTH)	
AMERICA CORP., a Massachusetts)	
corporation, and JOHNSON FOOD)	
EQUIPMENT COMPANY, a Missouri)	
corporation,)	
)	
Defendants/Counterclaim Plaintiffs.)	

FIRST AMENDED COMPLAINT

COMES NOW Plaintiff Memco, Inc. (“Memco”) by and through its attorneys, and, in support of its Complaint for infringement of U.S. Patent No. 7,175,516 in violation of the patent laws of the United States, 35 U.S.C. §§ 1 *et seq.*, against Defendants Baader-Johnson Food Processing Machinery (“Baader-Johnson”), Baader North America Corp. (“Baader North America”), and Johnson Food Equipment Company (“Johnson”) states as follows:

THE PARTIES

1. Memco is a corporation organized and existing under the laws of the State of Missouri, having its principal place of business in Hollister, Missouri.
2. Upon information and belief, Baader-Johnson is a subsidiary of Baader North America and has its principal place of business in Kansas City, Kansas.
3. Upon information and belief, Baader North America is a Massachusetts corporation, having its principal place of business in Kansas City, Kansas. Baader North America is the parent company of Baader-Johnson.

4. Upon information and belief, Johnson is a Missouri corporation, having its principal place of business in Kansas City, Missouri.

JURISDICTION AND VENUE

5. This Court has jurisdiction over the subject matter of Memco's Complaint pursuant to 28 U.S.C. §§ 1331 and 1338(a).

6. This Court has personal jurisdiction over Defendants because, among other things, they have physically conducted and continue to physically conduct business throughout the State of Missouri and in this judicial district. Additionally, the infringing acts occurred in this division and in the Southwestern Division of this judicial district.

7. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391(b), 1391(c), and 1400(b). In particular, venue is proper in this division pursuant to Local Rule 3.2 because the claim for relief arose in this division and because the plaintiff is a resident of this division.

BACKGROUND

8. Memco offers products and services in a variety of industries, including food processing. Memco supplies multiple products for the poultry processing industry. Sales for Memco's poultry processing line are handled by M and M Poultry, a division of Memco. This line includes de-feathering machines that are driven by hub and belt assemblies, to which the patent in question pertains.

9. On February 13, 2007, the United States Patent and Trademark Office duly and legally issued United States Patent No. 7,175,516 ("the '516 patent"), entitled "Poultry Processing Hub and Belt Assembly." The '516 patent was reissued on August 9, 2011 as United States Patent No. RE42,603 ("the '603 Patent"). The '603 patent names Robert Clarke as its inventor and Memco as its assignee. Accordingly, Memco owns by assignment the entire right,

title, and interest in the '603 patent such that it may enforce that patent. A copy of Memco's '603 patent is attached hereto as **Exhibit "A"**.

10. Claim 1 of the '603 patent claims a poultry processing apparatus comprising a plurality of spaced-apart hubs in substantial alignment, each hub journaled to a drive shaft, each drive shaft having a pulley end with a pulley attached thereto and a drive end with a finger plate having a plurality of plucking fingers, the finger plate mechanically attached to the drive end thereto; a drive mechanism; a belt operatively connecting each pulley and the drive mechanism, wherein the belt is a timing belt with two sides having spaced-apart protruding serrations on each side and each pulley is provided with spaced apart recessed serrations which mate with the protruding serrations of the timing belt, and wherein the belt is alternated above and below each of the aligned pulleys; and at least one tension idler arm. Claim 1 is based on Claims 1, 2, 3, and 4 of the '516 patent and incorporate only the language and elements found therein. Thus, Claim 1 is substantially identical to the corresponding claims of the '516 patent.

Claim 5 claims a poultry processing apparatus comprising a plurality of spaced-apart hubs in substantial alignment, each hub having: a hub plate attached at an end of each hub, each hub plate having an insert flange and a seal adjacent the insert flange; a drive shaft journaled to each of the hubs with at least two independent sealed bearings, each drive shaft having a pulley end with a pulley attached thereto and a drive end with a finger plate having a plurality of plucking fingers, the finger plate mechanically attached to the drive end; a drive mechanism; a belt operatively connecting each pulley and the drive mechanism, wherein rotation of the belt about the pulleys spins the drive shaft to rotate the finger plate; and at least one tension idler arm for releasing tension on the belt. Claim 6 claims the same apparatus without the at least one tension idler arm, but wherein the belt is a timing belt having spaced-apart protruding serrations,

and wherein each pulley forms spaced apart recessed serrations which mate with the protruding serrations of the timing belt. Claim 7 claims the apparatus of claim 6, wherein the timing belt has two sides, each of the sides forming spaced-apart protruding serrations, and wherein the belt is alternated above and below each of the aligned pulleys. Claims 5, 6, and 7 are identical to Claims 8, 9, and 10, respectively, of the '516 patent.

Claim 8 claims a poultry processing apparatus comprising a plurality of spaced-apart hubs in substantial alignment, each of the hubs journaled to a drive shaft, each drive shaft having (a) a pulley end with a pulley attached thereto, the pulley forming spaced-apart recessions, and (b) a drive end with a finger plate having a plurality of plucking fingers, the finger plate mechanically attached to the drive end; a drive mechanism; and a belt forming spaced-apart protruding serrations on each side and alternating above and below each of the aligned pulleys, wherein the belt serrations engage the pulley recessions and wherein rotation of the belt spins the pulleys to rotate the drive shaft and the finger plate. Claim 10 claims the apparatus of claim 8, the belt comprising a timing belt for alternately rotating time-opposed pairs of pulleys, to avoid entanglement of finger plates associated with the pulleys. Claims 8 and 10 are identical to Claims 11 and 13, respectively, of the '516 patent.

11. Plaintiff has placed the required statutory notice under 35 U.S.C. §287 on products and on literature describing the above patent. (See **Exhibit "B"** attached hereto and incorporated by reference.)

CAUSE OF ACTION

INFRINGEMENT OF THE '516/'603 PATENT

12. Memco repeats and realleges the allegations of paragraphs 1 through 11 as though fully set forth herein.

13. Defendants have been and are directly infringing, actively inducing others to infringe, and/or contributing to the infringement of Claims 1, 5, 6, 7, 8, and 10 of the '603 patent by making, using, importing into the United States, offering for sale, selling, and/or otherwise distributing infringing poultry processing hub and belt assemblies in violation of 35 U.S.C. § 271.

14. Defendants' infringement has injured or will injure Memco and Memco is entitled to recover damages adequate to compensate it for Defendants' infringement, which in no event can be less than a reasonably royalty.

15. Defendants' infringement has been deliberate, willful, intentional, and with full knowledge of the existence of the '516 patent.

16. Defendants have caused or will cause Memco substantial damage and irreparable injury by its infringement of the '603 patent, and Memco will continue to suffer damage and irreparable injury unless and until Defendants are enjoined by this Court from continuing their infringement.

17. Memco is entitled to injunctive relief and compensatory relief, including attorneys' fees and costs, as well as enhanced damages pursuant to 35 U.S.C. §§ 271, 281, and 283-85.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Memco respectfully requests that this Court enter Judgment in favor of Memco against Defendants Baader-Johnson, Baader North America, and Johnson, and grant to Memco all of the following relief:

A. Enter judgment that Defendants have infringed and are infringing the '603 patent;

B. Enter judgment that the aforementioned infringement by Defendants has been and is willful;

C. Enter an order permanently enjoining Defendants, their respective officers, agents, and employees, and all others in active concert or participation with Defendants or any of them from further infringing, whether directly or indirectly, the '603 patent;

D. Award Memco its damages in an amount sufficient to compensate Memco for Defendants' infringement of the '603 patent, together with pre-judgment and post-judgment interest and costs, pursuant to 35 U.S.C. § 284;

E. Award enhanced damages to Memco in an amount not less than three times the compensatory damages awarded by this Court for Defendants' willful infringement of the '603 patent, pursuant to 35 U.S.C. § 284;

F. Declare this case to be "exceptional" under 35 U.S.C. § 285, and award Memco its attorneys' fees, expenses, and costs incurred in this action; and

G. Award Memco such other and further relief as this Court deems just and proper.

Date: August 24, 2011.

Respectfully submitted,

/s/ Cassandra L. Wilkinson
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on August 24, 2011, the foregoing document was electronically transmitted to the Clerk of the Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to the following ECF registrants:

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