UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

GREAT LAKE CHEESE CO., INC.,
17825 Great Lakes Parkway
Troy, Ohio 44234,

and

GREAT LAKES CHEESE OF LA CROSSE, WISCONSIN, INC.,
2200 Enterprise Avenue
La Crosse, Wisconsin 54603

Plaintiffs,

v.

SCHREIBER FOODS, INC.,
425 Pine Street
Green Bay, Wisconsin 54307-9010

Defendant.

CASE NO. 1:02CV1352 JUDGE NUGENT

JUDGE MAG. JUDGE STREEPY

MAGISTRATE JUDGE

COMPLAINT FOR DECLARATORY JUDGMENT

For their Complaint for Declaratory Judgment against Defendant Schreiber Foods, Inc. ("Schreiber"), Plaintiffs Great Lake Cheese Co., Inc. and Great Lakes Cheese Of La Crosse, Wisconsin, Inc. allege:

PARTIES

1. Plaintiff Great Lake Cheese Co., Inc. ("Great Lakes Cheese") is an Ohio corporation with its principal place of business in Troy, Ohio. Plaintiff Great Lakes Cheese Of La Crosse, Wisconsin, Inc. ("GLC-La Crosse"), a wholly-owned subsidiary of Great Lakes Cheese, is a Wisconsin corporation headquartered in La Crosse, Wisconsin. Great Lakes Cheese owns additional subsidaries, and Great Lakes Cheese and its subsidiaries are sometimes referred to herein as the "Great Lakes Cheese Companies."

2. Defendant Schreiber, on information and belief, is a Wisconsin corporation with its principal place of business in Green Bay, Wisconsin.

3. Subject matter jurisdiction is proper under 28 U.S.C. §§ 1331, 1338(a), § 1367, and § 2201. Venue is proper under §§ 1391(b) and (c).

4. Venue and personal jurisdiction are proper in this District.

FACTS COMMON TO ALL COUNTS

5. Great Lakes Cheese, through its subsidiaries including GLC-La Crosse, produces and sells a variety of cheeses and cheese products throughout the United States.

6. Schreiber produces and sells a variety of cheese and cheese products throughout the United States, and is a major competitor of Great Lakes Cheese. Schreiber is the assignee of numerous United States Patents, including the patents which are the subject of this action.

7. In 1996, GLC-La Crosse purchased from Kustner Industries, S.A. ("Kustner"), a Swiss company, a Model KD Continuous Process IWS Wrapping Machine, designed to package processed cheese into individually wrapped slices (the "Kustner KD Machine"). The Kustner KD Machine was placed in service at GLC-La Crosse's facility in April 1997.

8. In 1997, Schreiber filed separate patent infringement lawsuits in the United States District Court for the Eastern District of Wisconsin (the "Wisconsin Litigation") against Kustner, the Great Lakes Cheese, GLC-La Crosse, Great Lakes Cheese of Wisconsin, Inc. (another wholly-owned subsidiary of Great Lakes Cheese, herein "GLC-Wisconsin") and others, alleging that the manufacture, sale and use of the Kustner KD and KE (a modification of the KD model) Machines infringed United States Patent No. 5,440,860 (the "'860 patent") assigned to Schreiber. Thereafter, Kustner accused the same defendants of infringing United States Patent No. 5,701,724 (the "'724 patent"), also assigned to Schreiber, in connection with the manufacture, sale and use of the Kustner KD and KE Machines. Copies of the '860 and '724 patents are attached as Exhibits A and B. The '860 and '724 patents are members of the same family of patents and generally claim improved methods and apparatus for forming and hermetically sealing slices of food, including cheese. The patent infringement complaints brought by Kustner were eventually consolidated for trial and appeal.

9. On August 25, 1998, after trial, a jury in the Wisconsin Litigation entered a verdict that the defendants infringed the '860 and '724 patents, and awarded substantial damages against the defendants, including Great Lakes Cheese, GLC-La Crosse and GLC-Wisconsin. On March 31, 2000, the District Court granted the defendants' motion for judgment as a matter of law that they did not infringe the '860 and '724 patents, and dismissed the litigation. On February 27, 2002, a panel of the United States Court of Appeals for the Federal Circuit overturned the judgment of the District Court with directions to reinstate the jury verdict. Schreiber's motion for entry of judgment on the jury's verdict is pending.

10. In April 2000, GLC-La Crosse modified its Kustner KD Machine so that the seals of the individually wrapped slices of cheese produced by that machine were not hermetic. This

was done expressly to avoid claims of infringement of the '860 and '724 patents, as each independent claim of those patents requires that the slices of cheese produced by the claimed methods and apparatus be hermetically sealed, and the prosecution history of those patents establishes that such limitation is critical to the patentability of those claimed methods and apparatus.

11. GLC-La Crosse has also purchased and put into service three other Kustner KD and/or KE Machines: one purchased at auction and placed into service in May 2000, and two purchased from Kustner and placed into service in early 2001. None of these machines produces individually wrapped slices of cheese which are hermetically sealed.

12. On May 9, 2000, United States Patent No. 6,058,680 (the "'680 patent") assigned to Schreiber was issued. A copy of the '680 patent is attached as Exhibit C. The '680 patent is a member of the same family of patents as the '860 and '724 patents. The '680 patent does not contain certain limitations which were the subject of much controversy in the Wisconsin Litigation, but its independent claims each contain the same limitations concerning the hermetic sealing of slices that are found in the independent claims of the '860 and '724 patents.

13. Schreiber has asserted to the Great Lakes Cheese Companies that the modifications to the Kustner Machines described above have not resulted in the production of individually wrapped slices of cheese whose seals are not hermetic and that, consequently, Schreiber intends to assert claims against one or more of the Great Lakes Cheese Companies for infringement of the '860, '724 and/or '680 patents absent payment and/or other arrangements satisfactory to Schreiber.

14. Schreiber has also asserted to the Great Lakes Cheese Companies that it holds one or more patents which cover the production of individually wrapped slices of cheese with the

Kustner Machines even if those slices are not hermetically sealed and that, therefore, the Great Lakes Cheese Companies have infringed and are infringing these patents. Based on publicly available information given Schreiber's description of these patents to the Great Lakes Cheese Companies, it is apparent that Schreiber is referring to at least United States Patent Nos. 5,347,792 (the "'792 patent"), 5,619,844 (the "'844 patent) and/or 5,800,851 (the "'851 patent"), all assigned to Schreiber. Copies of the '792 and '851 patents are attached as Exhibits D, E and F. Schreiber has expressly or impliedly threatened the Great Lakes Cheese Companies that it intends to assert claims against one or more of the Great Lakes Cheese Companies for infringement of these patents absent payment and/or other arrangements satisfactory to Schreiber.

COUNT ONE

(Declaratory Judgment of Non-Infringement of United States Patent Nos. 5,440,860, 5,701,724 and 6,058,680)

15. Plaintiffs incorporate by reference Paras. 1 - 14 of this Complaint.

16. An actual controversy exists between Plaintiffs on the one hand and Schreiber on the other over alleged infringement of the claims of the '860, '724 and/or '680 patents.

17. Plaintiffs, from and after the modifications of the Kustner Machines so that individually wrapped slices of cheese produced by those machines do not have hermetic seals, have not infringed any valid claims of the '860, '724 or '680 patents.

COUNT TWO

(Declaratory Judgment of Invalidity of United States Patent No. 6,058,680)

18. Plaintiffs incorporate by reference Paras. 1 - 17 of this Complaint.

19. An actual controversy exists between Plaintiffs on the one hand and Schreiber on the other over the validity of the '680 patent.

20. The '680 patent is invalid under 35 U.S.C. §§ 102, 103 and/or 112.

COUNT THREE

(Declaratory Judgment of Non-Infringement of United States Patent Nos. 5,347,792, 5,619,844 and 5,800,851)

21. Plaintiffs incorporate by reference Paras. 1 - 20 of this Complaint.

22. An actual controversy exists between Plaintiffs on the one hand and Schreiber on the other over alleged infringement of the claims of the '792, '844 and/or '851 patents.

23. Plaintiffs, from and after the modifications of the Kustner Machines so that individually wrapped slices of cheese produced by those machines do not have hermetic seals, have not infringed any valid claims of the '792, '844 or '851 patents.

COUNT FOUR

(Declaratory Judgment of Invalidity of United States Patent Nos. 5,347,792, 5,619,844 and 5,800,851)

24. Plaintiffs incorporate by reference Paras. 1 - 23 of this Complaint.

25. An actual controversy exists between Plaintiffs on the one hand and Schreiber on the other over the validity of the '792, '844 and '851 patents.

26. The '792, '844 and '851 patents are invalid under 35 U.S.C. §§ 102, 103 and/or 112.

WHEREFORE, Great Lakes Cheese and GLC-La Crosse pray that this Court:

A. Declare that the Great Lakes Cheese Companies have not infringed any valid claims of the '860, '724 or '680 patents from and after the modifications of the Kustner Machines so that individually wrapped slices of cheese produced by those machines do not have hermetic seals as described above;

B. Declare that the Great Lakes Cheese Companies have not infringed any valid claims of the '792, '844 or '851 patents;

C. Declare that the '680, '792, '844 and '851 patents are invalid;

D. Grant judgment for Great Lakes Cheese and GLC-La Crosse for their costs and attorneys fees pursuant to 35 U.S.C. § 285;

E. Grant such other and further relief that this Court deems just.

Respectfully submitted,

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