

NOV 06 2001
ISSUED

FILED

01 NOV -6 PM 2:07

CLEVELAND DISTRICT COURT
NORTHERN DISTRICT OF OHIO
CLEVELAND

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

SWAGELOK COMPANY
29500 Solon Road
Solon, Ohio 44139

Plaintiff,

v.

GARITECH SYSTEMS INC.
707 Bradfield Road
Houston, Texas 77060

Defendant.

CIVIL ACTION NO. **1:01CV2539**

JUDGE ALDRICH

JUDGE

MAG. JUDGE BAUGHMAN

**COMPLAINT FOR DECLARATORY JUDGMENT OF PATENT NON-
INFRINGEMENT AND INVALIDITY and DEMAND FOR JURY TRIAL**

Plaintiff Swagelok Company, through its undersigned counsel, hereby presents its
Complaint against Defendant Garitech Systems Inc. as follows:

NATURE OF THE ACTION

1. This is an action based on the Patent Laws of the United States, 35 U.S.C. § 1 et seq., seeking a declaratory judgment of non-infringement and invalidity of United States Patent No. 6,289,933 B1 (hereafter "the '933 patent").
2. The '933 patent, entitled *Diaphragm Valve*, issued on September 18, 2001.
3. A true and correct copy of the '933 patent is attached hereto as Exhibit A.

THE PARTIES

4. Plaintiff, Swagelok Company (hereafter "Swagelok"), is a corporation organized and existing under the laws of the State of Ohio, with its principal place of business at 29500 Solon Road, Solon, Ohio 44139.

5. Upon information and belief, Defendant, Garitech Systems Inc. (hereafter "Garitech") is a corporation organized and existing under the laws of the State of Texas, having its principal place of business at 707 Bradfield Road, Houston, Texas 77060.

JURISDICTION AND VENUE

6. This Court has original subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1338(a), 2201 and 2202.

7. This Court has personal jurisdiction over Garitech pursuant to the provisions of the Ohio Long Arm Statute, Ohio Rev. Code § 2307.382, and the laws of the United States.

8. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391(b)-(d) & 1400(a).

COUNT 1:

Complaint for Declaratory Judgment of Patent Non-Infringement and Invalidity

9. Plaintiff Swagelok incorporates herein by reference all allegations set forth in paragraphs 1 through 8 as if fully rewritten herein.

10. Upon information and belief, Defendant Garitech is the assignee and sole owner of the '933 patent.

11. Garitech products are currently on sale in Ohio and, upon information and belief, being sold in Ohio.

12. Upon information and belief, Garitech derives substantial revenue from the sale of its products in Ohio.

13. Garitech valves relating to the '933 patent are currently on sale in Ohio and, upon information and belief, being sold in Ohio.

14. Upon information and belief, Garitech derives substantial revenue from the sale in Ohio of valves relating to the '933 patent.

15. Tek Supply, Inc. is a Massachusetts corporation with a principal place of business in Canton, Massachusetts.

16. Tek Supply, Inc. is, upon information and belief, the parent or owner of Defendant Garitech.

17. Tek Supply Inc. offers Garitech products for sale in Ohio and, on information and belief, sells Garitech products in Ohio.

18. Persons desiring to purchase Garitech products, including such persons in Ohio, may do so by submitting a "Request for Quote" to Tek Supply, Inc. over the Internet, via <http://www.teksupplyinc.com>.

19. Robert James Sales, Inc. is a corporation with a principal place of business in Buffalo, New York which sells stainless steel piping products, including valves.

20. Robert James Sales, Inc. offers Garitech products for sale in Ohio and, on information and belief, sells Garitech products in Ohio.

21. Robert James Sales, Inc. maintains two regional warehouses in Ohio, one in or near Cincinnati, Ohio and the other in or near Twinsburg, Ohio.

22. Garitech, through its counsel Robert A. Koons, Jr., sent to Swagelok's President a letter dated July 19, 2001, a true and accurate copy of which is attached as Exhibit B.

23. Mr. Koons stated in his July 19, 2001 letter that Swagelok part number 8LV-DR81P10184-C “is virtually identical in form and function to a valve design which Garitech presently has under application for a United States utility patent.”

24. Swagelok’s part number 8LV-DR81P10184-C is a point of use valve (hereafter “Swagelok’s POV”).

25. Mr. Koons’ July 19, 2001 letter also stated “drawings from our client’s patent application” were enclosed with the letter.

26. No drawing of Garitech’s valve included with the July 19, 2001 letter was identical to any drawing submitted during prosecution of the patent application issuing as the ‘933 patent.

27. In his July 19, 2001 letter Mr. Koons further stated “Swagelok’s design was obviously drawn directly from the patent-pending design.”

28. Mr. Koons’s July 19, 2001 letter to Swagelok’s President also stated that “you may expect Garitech to pursue its rights and remedies against Swagelok for offering to sell, selling, making, or using our client’s patented valve design.”

29. By letter dated August 8, 2001 Mr. Koons provided Swagelok’s counsel with what he stated was “a copy of the claims on the subject patent, as allowed” and advised “that the issue fee has been paid and that the patent is expected to issue shortly.”

30. An actual and justiciable controversy exists between Plaintiff Swagelok and Defendant Garitech with respect to an alleged infringement of the ‘933 patent, based upon Mr. Koons’ correspondence of July 19, 2001 and August 8, 2001.

31. Plaintiff Swagelok has not infringed any claim in the ‘933 patent.

32. Plaintiff Swagelok has not induced infringement of any claim in the ‘933 patent.

33. Plaintiff Swagelok has not contributed to infringement of any claim in the ‘933 patent.

34. The accused Swagelok POV does not literally infringe claim 1 of the '933 patent.
35. The accused Swagelok POV does not literally infringe any claim of the '933 patent depending directly or indirectly from claim 1.
36. The accused Swagelok POV does not literally infringe claim 7 of the '933 patent.
37. The accused Swagelok POV does not literally infringe any claim of the '933 patent depending directly or indirectly from claim 7.
38. The accused Swagelok POV does not literally infringe claim 13 of the '933 patent.
39. The accused Swagelok POV does not literally infringe any claim of the '933 patent.
40. The accused Swagelok POV does not infringe claim 1 of the '933 patent under the doctrine of equivalents.
41. The accused Swagelok POV does not infringe, under the doctrine of equivalents, any claim of the '933 patent depending directly or indirectly from claim 1.
42. The accused Swagelok POV does not infringe claim 7 of the '933 patent under the doctrine of equivalents.
43. The accused Swagelok POV does not infringe, under the doctrine of equivalents, any claim of the '933 patent depending directly or indirectly from claim 7.
44. The accused Swagelok POV does not infringe claim 13 of the '933 patent under the doctrine of equivalents.
45. The accused Swagelok POV does not infringe any claim of the '933 patent under the doctrine of equivalents.
46. The '933 patent claims are invalid under 35 U.S.C. § 102, 103 and/or 112.
47. Garitech's accusations of patent infringement have damaged Swagelok, and unless they are stopped will continue to damage Swagelok.

48. If Garitech is permitted to continue its incorrect assertions that the accused Swagelok POV infringes the '933 patent, the manner and amount of damage to Swagelok caused thereby cannot be fully measured or compensated in economic terms, and so cannot be fully or adequately remedied at law.

REQUEST FOR RELIEF

WHEREFORE, Plaintiff Swagelok requests that the Court determine the rights and liabilities of the parties as to the asserted infringement of the '933 patent, and:

- (a) Declare that Swagelok has not infringed, contributed to the infringement of, or induced the infringement of any claim of the '933 patent;
- (b) Declare that the accused Swagelok POV does not literally infringe any claim of the '933 patent;
- (c) Declare that the accused Swagelok POV does not infringe any claim of the '933 patent under the doctrine of equivalents;
- (d) Enjoin Defendant Garitech, as well as its officers, agents, servants, employees, attorneys and all other persons in active concert or participation with Garitech, from asserting that the accused Swagelok POV infringes the '933 patent, including the filing of any legal action making such an assertion;
- (e) Declare the '933 patent claims invalid;
- (f) Award Swagelok its damages and costs; and
- (g) Award Swagelok such other relief as the Court deems just and proper.

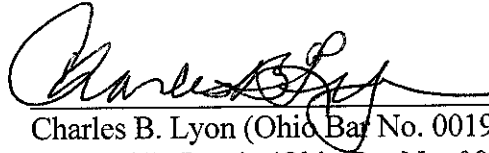
JURY DEMAND

Plaintiff Swagelok hereby demands a trial by jury on all issues triable by jury.

DATED: November 6, 2001

Respectfully submitted,

CALFEE, HALTER & GRISWOLD LLP



Charles B. Lyon (Ohio Bar No. 0019668)
Leonard L. Lewis (Ohio Bar No. 0019686)
George R. Hoskins (Ohio Bar No. 0069793)
1400 McDonald Investment Center
800 Superior Avenue
Cleveland, Ohio 44114-2688
Telephone: (216) 622-8200
Facsimile: (216) 241-0816
e-mail: CLyon@calfee.com
e-mail: LLewis@calfee.com
e-mail: GHoskins@calfee.com

Attorneys for Plaintiff
Swagelok Company