

**UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF MISSOURI  
ST. JOSEPH DIVISION**

PROVISUR TECHNOLOGIES, INC.,	)	
	)	
<i>Plaintiff,</i>	)	
	)	Case No. 5:21-cv-06113-SRB
v.	)	
	)	<b>JURY TRIAL DEMANDED</b>
WEBER, INC., WEBER MASCHINENBAU	)	
GMBH BREIDENBACH, and WEBER	)	
MASCHINENBAU GMBH	)	
NEUBRANDENBURG,	)	
	)	
<i>Defendants.</i>	)	

**FIRST AMENDED COMPLAINT**

Plaintiff Provisur Technologies, Inc. (“Provisur”), by and through its counsel, complains against Defendants Weber, Inc., Weber Maschinenbau GmbH Breidenbach, and Weber Maschinenbau GmbH Neubrandenburg (collectively, “Defendants” or “Weber”) as follows:

**INTRODUCTION**

1. This is the third action Provisur has filed in this District to protect itself from Defendants’ continued patent infringement and wrongful business conduct. Defendants have already been found to be a willful infringer of multiple Provisur patents concerning commercial food slicing machines and related products. Defendants are guilty of egregious misconduct against Provisur beyond typical patent infringement, including developing products that embody Provisur’s patented technology and intentionally copying Provisur’s patented ideas, for instance. Provisur has uncovered that Defendants’ leadership, business team, engineers, patent agents, and lawyers systematically plotted to monitor, rate, analyze, and pillage Provisur’s business, customers, and intellectual property for many years and Defendants have unfairly profited from these actions. Throughout the litigations, Defendants have attempted to withhold evidence of their

misdeeds and consistently refused to provide basic information to Provisur about Defendants' products and business. This action has three counts including two counts for patent infringement and one count for unfair business practices. Provisur seeks recovery for the many injuries caused by Defendants' continued willful patent infringement and unfair business practices to capture the North American market for high-speed food slicers.

### **THE PARTIES**

2. Provisur is a Delaware corporation having a principal place of business at 222 North LaSalle Street, Suite 720, Chicago, Illinois, 60601. Provisur is the patent owner in this case. Provisur is an industry leader in global food product processing. It designs, makes, and sells food processing technology under eleven brands that have patented successful commercial innovations for over forty years. Provisur is the owner and assignee of the United States patents involved in this case: U.S. Patent No. 8,408,109 B2, U.S. Patent No. 10,625,436, and U.S. Patent No. 10,639,812. Provisur also fully owns and operates subsidiaries, for example, Formax, Inc. ("Formax"), which are included within reference to "Provisur" herein.

3. On information and belief, Weber Maschinenbau GmbH Breidenbach is a German company with a principal place of business at Guenther-Weber-Straße 3, 35236 Breidenbach, Germany. Weber Maschinenbau GmbH Breidenbach is associated with, directs, and is the German parent-company of multiple food processing subsidiary entities around the world.

4. On information and belief, Weber Maschinenbau GmbH Breidenbach, founded by Guenther Weber, designs, manufactures, and directs global sales and marketing of food processing machinery including, but not limited to, slicing, derinding, peeling, packaging, and skinning machines. *See* <https://www.weberweb.com/company/>.

5. Weber, Inc. is a corporation existing under the laws of Missouri with a principal place of business at 10701 N. Ambassador Dr., Kansas City, Missouri, 64153. It is a fully-owned subsidiary of Weber Maschinenbau GmbH Breidenbach.

6. Weber, Inc. is responsible for North American sales, technical support, parts supply, and service of food processing machinery designed and/or manufactured by Weber Maschinenbau GmbH Breidenbach and/or Weber Maschinenbau GmbH Neubrandenburg.

7. On information and belief, Weber Maschinenbau GmbH Neubrandenburg is a German company with a principal place of business at Feldmark 11, 17034 Neubrandenburg, Germany. Weber Maschinenbau GmbH Neubrandenburg is engaged in the design, manufacture, sales, and marketing of food processing machinery. *See* <https://www.weberslicer.com/company/history/>.

8. On information and belief, Weber, Inc., Weber Maschinenbau GmbH Breidenbach, and Weber Maschinenbau GmbH Neubrandenburg share common ownership.

9. There are questions of fact common to all Defendants with respect to the infringement of the asserted patents in this action. On information and belief, Defendants' "Accused Slicer Products" (defined below) operate in the same way with respect to the claimed features of the '109 patent and Defendants' "Accused weSlice Slicer Products" (defined below) operate in the same way with respect to the claimed features of the '436 and '812 patents. There are also questions of fact common to all Defendants regarding their unlawful conduct under Missouri law.

#### **JURISDICTION AND VENUE**

10. This Court has federal question jurisdiction over this matter pursuant to 28 U.S.C. §§ 1331 and 1338, because this is a matter arising under the United States patent statutes, 35 U.S.C.

§ 101 *et seq.*, for infringement of United States patents. This Court may exercise supplemental jurisdiction over Provisur's state law claim pursuant to 28 U.S.C. § 1367.

11. This Court also has federal diversity jurisdiction over this action pursuant to 28 U.S.C. § 1332, because there is complete diversity of citizenship among the parties and because Defendants' misconduct has caused Provisur to suffer millions of dollars in damage.

12. This Court has personal jurisdiction over Weber, Inc. pursuant to Federal Rule of Civil Procedure 4(k)(1) and Mo. Rev. Stat. § 506.500(1).

13. Weber, Inc. is incorporated and maintains its principal place of business in the State of Missouri.

14. Moreover, Weber, Inc. is located within this District and Division and has continuous and systematic contact with this District and Division. Weber, Inc. makes, uses, sells, offers to sell, and/or imports infringing food processing machinery—and instructs or directs customers regarding the use of such machinery—throughout North America, including in the State of Missouri and including in this District and Division.

15. Weber, Inc. has purposefully and voluntarily placed one or more of its infringing products, as described herein, into the stream of commerce with the expectation that they will be purchased by consumers within this District and Division. For example, Weber, Inc. targets its marketing to U.S. customers by way of online websites that are accessible throughout the country, including in this District and Division. These online websites provide Missouri-based corporate contact information for residents in the U.S. who are interested in purchasing Defendants' products. Weber, Inc. also maintains a North American Technology Center in Kansas City, Missouri, to, among other things, market, demonstrate, and educate customers from throughout the United States about its products. Accordingly, Weber, Inc. has sufficient minimum contacts

with this District such that the exercise of jurisdiction over Weber, Inc. will not offend traditional notions of fair play and substantial justice.

16. In addition, because Weber, Inc. has transacted business giving rise to this action within the state of Missouri, and because Weber, Inc. is conducting regular business within the State of Missouri, this District, and this Division, this Court has personal jurisdiction over Weber, Inc. pursuant to Federal Rule of Civil Procedure 4(k)(1) and Mo. Rev. Stat. § 506.500(1).

17. This Court also has personal jurisdiction over Weber Maschinenbau GmbH Breidenbach (“Weber Germany”) and Weber Maschinenbau GmbH Neubrandenburg (collectively, the “German Defendants”) pursuant to Federal Rule of Civil Procedure 4(k)(1) and Mo. Rev. Stat. § 506.500(1), or, in the alternative, Federal Rule of Civil Procedure 4(k)(2). The German Defendants are responsible for the overall design, manufacture, export, advertisement, sales strategy, and/or distribution of infringing food processing machinery—and instruction or direction of customers regarding the use of such machinery—throughout North America, including the State of Missouri and including in this District and Division. The German Defendants are likewise associated with Weber, Inc., a Missouri corporation, through contract and common ownership.

18. For years, the German Defendants have purposefully and voluntarily placed one or more of the infringing products, as described herein, into the U.S. stream of commerce, with the expectation that the infringing products will be purchased by consumers within this District and Division and, accordingly, have maintained continuous and systematic contact with this District and this Division throughout that time. The German Defendants have targeted their marketing to U.S.-based customers by way of online, English-language websites that are accessible throughout the country, including in this District and Division, and which include corporate contact

information for residents in the U.S. and this District and Division who are interested in purchasing Defendants' products.

19. The German Defendants also target U.S. customers through their attendance at U.S. tradeshows and promotional events that occur throughout the United States, including within this District and Division, and by using international wires to direct communication to recipients within this District and Division. As described herein, those communications include fraudulent statements and instructions to commit trade secret theft. Accordingly, the German Defendants have sufficient minimum contacts with this District such that the exercise of jurisdiction over the German Defendants will not offend traditional notions of fair play and substantial justice.

20. Because the German Defendants have transacted business giving rise to this action within the state of Missouri and because Defendants are doing business within the State of Missouri, this District, and this Division, this Court has personal jurisdiction over Defendants pursuant to Federal Rule of Civil Procedure 4(k)(1) and Mo. Rev. Stat. § 506.500(1), or in the alternative, Federal Rule of Civil Procedure 4(k)(2).

21. Venue is proper in this judicial District pursuant to 28 U.S.C. §§ 1391 and 1400(b).

22. Defendants have committed acts of infringement and engaged in the other unlawful conduct giving rise to this action within this District and regularly conduct business in this District.

## **FACTUAL ALLEGATIONS**

### **A. BACKGROUND**

23. Provisur manages global brands of food processing technology that make and sell an array of market-leading forming, slicing, defrosting, marinating, tenderizing, injecting, grinding, mixing, separating, coating, frying, cooking, and smoking products. In 2016, Provisur ranked sixth on Crain's Chicago Business innovation list among large, corporate competitors for

the quality of its patents issued in 2015, according to an analysis by OceanTomo. Provisur is consistently selected by processors for its innovative and high-quality equipment.

24. Specifically in the field of food forming and slicing, Provisur fully owns and operates Formax. Since developing the first high-capacity food forming system more than 45 years ago, Formax has remained a leading brand in the U.S. and global food processing markets.

25. In recognition of its innovations, the United States Patent and Trademark Office (“USPTO”) has granted Provisur (including Formax) over one hundred food processing technology patents. Formax has also received domestic and international accolades for its leadership in developing innovative, advanced food processing equipment systems, including the North American Meat Institute’s Supplier of the Year Award and the Safe Food Institute’s SQF Certification.

26. Defendants have spent years targeting the North American market for industrial foods slicers and have resorted to copying Provisur’s cutting-edge innovations and using slicing machine technology invented by Provisur. Over several years, Defendants have used Provisur’s patented technology to redesign and modify products they sell.

27. On information and belief, Defendants have carefully monitored Provisur’s food slicing business, products, and patents for many years. Defendants are fully knowledgeable about the patents and the infringement alleged in this First Amended Complaint.

28. Defendants have cited Provisur patents and patent applications as prior art in their own patent applications in the United States and abroad.

29. Defendants have instituted numerous challenges to Provisur patents throughout the world. Provisur has successfully defeated nearly all of these challenges.

30. Even with this knowledge of Provisur’s patent portfolio, Defendants continue to commit widespread infringement of Provisur’s duly granted patents. Defendants’ conduct demonstrates a total disregard for U.S. patent and other laws.

31. Defendants have also engaged in broad, improper, and unfair business practices where they have used unethical and unlawful means to steal sensitive economic information about competitors, like Provisur, to gain an unfair advantage in the North American high-speed slicing market.

32. To protect itself from Defendants’ continued infringement, Provisur filed two other patent infringement lawsuits in this District. The first was filed in February 2019 (W.D. Mo., 5:19-CV-06021, assigned to Hon. Judge Stephen R. Bough) (“*Provisur I*”). The second was filed in May 2020 (W.D. Mo., 5:20-CV-06069, assigned to Hon. Judge Stephen R. Bough) (“*Provisur II*”). Provisur has also filed several patent lawsuits against Defendants in German courts. For example, there is a lawsuit in Germany involving EP 2 251 159, which is related to the ’109 patent (“German Proceedings”).

33. After a consolidated trial in *Provisur I* and *Provisur II* during October 2022, a jury found that Defendants willfully infringed multiple food slicing patents held by Provisur—including two of the patents asserted in this case (the ’436 and ’812 patents)—and awarded Provisur \$10.5 million in damages. The Court doubled the damages to approximately \$21 million, noting that Defendants’ “systemic misconduct transcended that of a garden-variety infringer,” and found that the evidence showed Defendants “intentionally copied” Provisur’s patented ideas. The jury also determined that the ’436 and ’812 patents are valid.

34. In *Provisur II*, Provisur accused all versions of the Weber S6 Slicer of infringement. Unfortunately, throughout the course of discovery, Defendants concealed the existence of the



newest version of Weber’s S6 Slicer—the weSLICE 9500, also known as and referred to as the “S6-02”—until after the close of both fact and expert discovery. Given the late disclosure, and Defendants’ insistence that the weSLICE/S6-02 was a different machine entirely, the Court held that the weSLICE 9500 was not at issue in *Provisur II* and would not be included in the case at risk of delaying trial. Instead, the Court invited Provisur “to file yet another lawsuit against Defendants.” *Provisur II*, Doc. 288 at 2. At the Court’s invitation, and to preserve judicial resources, Provisur now asserts its patent infringement claims against the weSLICE 9500.

**B. THE NORTH AMERICAN MARKET FOR HIGH-SPEED SLICERS AND SLICING EQUIPMENT**

35. Across North America, individuals and families enjoy a dizzying bounty of food options at grocery stores, supermarkets, restaurants and other vendors. This is thanks to a sophisticated, industrialized network of farms, processors, and vendors.

36. Deli products are a robust and growing sector of the North American market. These include, among other familiar products, bacons, lunch meats, and cheeses. These products are often pre-sliced before being packaged and sold.

37. In order to meet the scale of the North American food processing industry, the slicing of deli products is mechanized. While mechanized slicers can be as simple as the electric blades found behind the counter of the deli section at a local grocery, these slicers alone could not meet the need for sliced food product in the U.S.

38. Rather, machine designers have created high-speed food slicers that operate at industrial scales. These high-speed slicing machines can operate at thousands of slices per minute, cutting consecutive slices from multiple-foot-long “loaves” of food product. Individually, these slicing machines can be the size of a small truck. And they typically operate as part of food slicing

“lines,” with sophisticated “upstream” machinery bringing un-sliced food loaves into the machine, and sophisticated “downstream” machinery arranging sliced “drafts” into a packaging machine.

39. Industrial machinery companies sell these high-speed slicing lines to food processors across North America.

40. Although sliced deli products are sold throughout the world, different regions of the world have preferences for different deli products. These differences present unique design and marketing challenges to industrial machine companies selling high-speed slicing lines. For example, soft meat products popular in the United States—such as hams and bologna—present different obstacles in slicing when compared to the hard salamis and sausages popular in Europe.

41. Provisur manages global brands of food processing technology that make and sell an array of market-leading forming, slicing, defrosting, marinating, tenderizing, injecting, grinding, mixing, separating, coating, frying, cooking, and smoking products.

42. Provisur, through its subsidiary Formax, has sold high-speed food slicing lines in the United States for decades. Formax first began selling slicing solutions to U.S. processors in the 1980s. Since that time, Formax has acquired a wealth of technical and market knowledge that has allowed it to progressively introduce new generations of high-speed slicing equipment with features desirable to U.S. processors.

43. The German Defendants at first followed a similar trajectory, albeit a continent away. Beginning in the 1980s, the German Defendants began designing slicing machines and selling them to the German market.

44. By the mid-1990s, the German Defendants caused the creation of Weber, Inc., a Missouri corporation. The German Defendants used Weber, Inc. as a retailer and distributor of

their high-speed slicing equipment in the United States. Weber, Inc. does not design or build this equipment. Rather, this equipment remains, to this day, designed by the German Defendants.

**C. UNFAIR BUSINESS PRACTICES**

45. In addition to willfully infringing Provisur's U.S. patents, Defendants have also engaged in a scheme of unfair competition to target Provisur's customers and sell them products copied from Provisur's innovations.

46. For example, beginning in the early 2010s, the German Defendants adopted a strategy to increase their focus on the North American market for high-speed slicing equipment. This change coincided with a number of changes in leadership throughout the Defendants. For example, Tobias Weber succeeded to ownership of the German Defendants. Jarrod McCarroll became chief executive officer of Weber, Inc. And Weber, Inc. changed its registered agent, first to Norbert Muehlich and then to Levy Craig Registered Agent Corporation.

***Industrial Surveillance of Provisur***

47. Since at least March of 2014, the German Defendants have maintained a system to automatically monitor Provisur's patent and business activity, such as the publications of Provisur's U.S. and European patent applications and the grants of Provisur's U.S. and European patents. This automated system is a version of the "PatOffice" software, such as advertised at <https://www.patoffice.de/>.

48. The German Defendants maintain a department called the "Patent Management Group." This department is tasked with reviewing new entries of Provisur's patents that are ingested into the PatOffice database. The German Defendants' Patent Management Group then rates Provisur's ideas on a 1-3 scale, and may also comment on those patents.

49. The Patent Management Group also solicits rankings and comments from other employees of the German Defendants.

50. These rankings indicate, among other things, the perceived relevance of Provisur's ideas to the market.

51. Additionally, the German Defendants engage in detailed analyses of Provisur's products. This, too, is done to identify marketable improvements in features of high-speed slicing equipment that Provisur has developed.

52. The Defendants' surveillance of Provisur goes beyond publicly accessible sources. They have used subterfuge and other tactics to gain confidential information on the pricing and features of Provisur's products.

53. The Defendants have routinely collaborated to steal detailed equipment quotes and customized pricing issued from Provisur to customers. For example, in October 2018, the Defendants stole a detailed quote that Formax had issued to customer Butterball. The Defendants then reversed the redactions that had been applied to that quote and circulated it internally, including to a Weber technical solutions manager.

54. The Defendants have also stolen confidential information about Provisur's new product launches. At the direction of Defendants, their sales employees have improperly sought and received new product launch information from Provisur employees. By way of example, in January 2017, and at the direction of Mr. McCarroll, a former Provisur employee sought and received confidential information about Provisur's new product launch plans at the IPPE trade show.

55. In addition to directing its own employees to steal Provisur's sensitive economic information, the Defendants have induced current and former Provisur employees to disclose that information.

### *Copying the Independent Drive Technology*

56. Since the early 2000s Provisur designed, built, and marketed slicing machines with independent drive technology. In such machines, two or more side-by-side loaves of food product can be driven at independent speeds into the slicing blade. Provisur recognized that machines with independent drives could deliver enhancements, such as increased yield and decreased giveaway to customers.

57. Developing a slicing machine with independent drives is a complex engineering challenge.

58. Beginning in the mid-2000s, Provisur debuted a number of improvements in its independent drive technology. For example, with the POWERMAX4000® slicing system, Provisur introduced a slicer that could have up to four independent drives. Then, with the POWERMAX®3000 slicing system, Provisur introduced a slicer that could have multiple independent drives while being compatible with in-line loading from the rear. Next, with the POWERMAX®3500 slicing system, Provisur introduced a slicer that could have multiple independent drives, remain compatible with in-line loading from the rear, and drive food product loaves to the blade using both upper and lower feed conveyors. And with the POWERMAX®4500 slicing system, Provisur expanded the benefits of the POWERMAX®3500 system.

59. Conversely, Defendants did not at first believe that independent drive technology was a priority. Even as late as the beginning of March 2014, the German Defendants were directing individuals at Weber, Inc. that customers would not want independent drive technology in a slicer.

60. By mid-March 2014, the German Defendants were aware of Provisur's improvements to independent drive technology, such as through its monitoring of the

EP2566670A2 applications, which had been published in March of 2013. By March of 2014, an “Admin” in Weber Germany’s Patent Management Group had rated the technology a 3 out of 3.

61. Later that year, individuals associated with the Defendants—including Mr. McCarroll and various employees of the German Defendants, analyzed the new Provisur POWERMAX®3500 product. The consensus of those individuals was that with this technology, Provisur had proved itself “more advanced” than Weber products and with lower pricing.

62. The analyses of the Defendants were correct. The POWERMAX®3500 and POWERMAX®4500 products represented a next-generation slicing solution. They were an upgrade to legacy slicing machines, such as Provisur’s FX-180 and related models, that were still being operated by long-time Provisur customers.

63. The German Defendants recognized that the window was closing on their ability to aggressively expand in North America.

64. The German Defendants accelerated the development of a competing product with four-lane independent drives.

### *Marketing the Copied Technology*

65. Customers who purchase high-speed slicing lines care about the reputation of the company who designs those lines, including that company’s reputation for ingenuity and invention. Defendants understood this fact. For example, the Defendants have published advertisements touting their supposed ingenuity and inventiveness.

66. The Defendants did not admit that their new independent drive products copied the inventions of Provisur. Rather, the Defendants collaborated to falsely and misleadingly take credit for those innovations.

67. For example, by at least January 2015, the Defendants described its cheese slicing equipment as “innovative” because of “patented vario Grippers.” In later marketing materials,

published by at least April 2015, the Defendants elaborated that those “[i]ndependent drives perform flawlessly” and were among the “Weber innovations helping natural cheese processors operate more efficiently. By at least October 2015, the Defendants were describing their independent drive technology as “exclusive” to them.

68. The “vario” grippers marketed by the Defendants were not a result of their innovation. The independent drive features were instead copied Provisur technology. At the October 2022 trial in the patent infringement litigation, a jury determined that the Defendants had willfully infringed two Provisur patents on independent drive technology. The Defendants were aware of this.

69. The “vario” grippers marketed by the Defendants were not exclusive to their business operations. Rather, Provisur had been selling successful high-speed slicers with independent drives and independent grippers for decades. At the time the Defendants were advertising their “vario” grippers as “exclusive,” Provisur was actively marketing, for example, the PowerMax4500 product which featured four independent drives and grippers. The Defendants were aware of this.

70. The “vario” grippers marketed by the Defendants are not properly patented. The Defendants were aware of this fact.

71. The Defendants made similar marketing statements about other of its high-speed slicing equipment. For example, the Defendants described amongst their “innovations” or “innovative” technology: interleaving (by April 2015); scanning and software to grade bacon (by July 2015); and pick robotics (by August 2015).

72. As with the independent drive technology, all of these technologies relied on features or innovations that the German Defendants had incorporated into their products after learning about the same features present in Provisur technology.

73. The Defendants knew that they were falsely holding themselves out as innovative and inventive. The Defendants caused thousands of electronic communications to be sent to customers and potential customers. The aim of these communications was to induce those customers or potential customers to purchase machinery designed and sold by companies operated by Defendants. Over the course of these communications, the Defendants never informed those customers or potential customers that critical features of those products resulted from copying and theft, not innovation and inventiveness. Given the strong impression to the contrary, which the Defendants deliberately cultivated, the Defendants' silence in these communications was itself a misrepresentation.

74. Additionally, the Defendants designed marketing statements to confuse customers and potential customers about the origin of Defendants' machines. In particular, Defendants relied on Google "adwords" and other tactics to hijack traffic from customers and potential customers who were searching for Provisur machines.

75. The Defendants disseminated these false marketing claims with the plan, scheme, and intent to deprive North American food processors of their money by inducing them to purchase equipment sold by Defendants.

76. North American food processors who received these false marketing statements relied on them in deciding to purchase high-speed slicing equipment from the Defendants.

77. The Defendants disseminated these false marketing claims knowing they were false. Although Defendants hired the services of outside patent attorneys and agents, such as the



Mannitz Finsterwald firm and the Grunecker firm, that outside counsel cooperated with the Defendants' goals of subverting U.S. patent laws. Despite advising Defendants over the entire relevant time period, neither the Mannitz Finsterwald firm nor the Grunecker firm ever provided a thorough freedom to operate analysis to Defendants regarding the Patents-in-Suit. Rather, the Mannitz Finsterwald firm and the Grunecker firm enabled the Defendants' misconduct.

***Fraudulent Attempts to License Competitor Patents***

78. On or around April 20, 2015, the Defendants contacted Provisur via electronic mail and demanded a "free license" to Provisur's patents protecting the independent drive technology.

79. In this communication, the Defendants asserted that they had a "prior use" of the technology which could be used to invalidate the Provisur patent. The Defendants did not use the patented technology prior to the critical date of Provisur's patent. The Defendants made this false statement knowing it was false, and with the plan, scheme, and intent to deprive Provisur of a valuable intellectual property right.

80. In this communication, the Defendants asserted that they knew of "prior art" that could be used to invalidate the Provisur patent. The Defendants did not, in fact, know of such prior art. The Defendants made this false statement knowing it was false, and with the plan, scheme, and intent to deprive Provisur of a valuable intellectual property right.

81. The effect of the Defendants' email demanding a free license is analogous to telling Provisur: "nice patent, it would be a real shame if something happened to it." The Defendants threatened to destroy Provisur's valuable property, with full knowledge that they did not have a lawful basis to do so.

82. In addition to the patents protecting the independent drive technology, the Defendants made similar threats to other Provisur patents.

83. Provisur did not cave to the threats, and it did not offer a free license to the Defendants.

84. The Defendants proceeded to make, use, offer, and sell products incorporating technology that infringed Provisur patents.

***False Statements to Employees of Weber, Inc.***

85. The German Defendants does not appear to have disclosed their PatOffice monitoring program to all of their business affiliates. In particular, Weber, Inc. was kept uninformed about these activities.

86. In addition, the German Defendants sent affirmatively fraudulent communications to Weber, Inc.'s employees to encourage them to sell infringing products as part of their scheme to steal from Provisur.

87. For example, the German Defendants were aware that the "SmartLoader" equipment they had designed infringed at least Provisur's U.S. patent no. 7,065,936.

88. The Defendants never developed a "freedom to operate" opinion in good faith that the SmartLoader could be sold without infringing U.S. patent no. 7,065,936.

89. However, at some point between April 2015 and June 2015, the German Defendants affirmatively represented to Weber, Inc. that the SmartLoader did not infringe any U.S. patents. This resulted in Mr. McCarroll, Weber, Inc.'s CEO, informing his team that there was "great news" and that Weber, Inc. "will be able to sell the Smart Loader in the US."

90. The German Defendants continued to encourage their employees and affiliates to aggressively market the SmartLoader.

91. The German Defendants disseminated these false freedom to operate statements with the plan, scheme, and intent to deprive food processing customers of their money by buying equipment that infringed Provisur patents.

92. Weber, Inc. relied on these false freedom to operate statements.

93. The German Defendants disseminated these false freedom to operate statements knowing they were false.

### ***Pillaging the Key Provisur Accounts***

94. Once the German Defendants had copied desirable Provisur features into their own equipment and fraudulently bolstered their reputation for innovation and inventiveness, they still needed to find U.S. food processing companies to purchase that equipment.

95. To do so, the German Defendants collaborated to misappropriate Provisur's trade secrets in order to target Provisur's customer base.

96. Over the many years Provisur has sold slicing lines in North America, it has developed a substantial and valuable understanding of the identity and needs of U.S. and Canadian food processors. For example, working with Provisur's technical employees, Provisur's sales employees generate custom quotes and design build-outs for prospective equipment sales. Provisur's sales employees have also developed long-term relationships with customers. Provisur's sales employees do so by, among other acts, maintaining a Key Account List of Provisur's key customers. The Key Account List is a compilation of food processors where Provisur food processing lines are running.

97. This information in the Key Account List is valuable. It allows Provisur to know, for example, what food products are being sliced in that location, the volume of slicing, the presentation needs of that customer, and the age of existing equipment. All of this information is highly relevant to effectively selling new equipment to these customers.

98. In 1998, Russel Stroner began to work as a sales employee for Formax, Inc. That year, he signed a "Non-Disclosure Non-Competition Agreement." In doing so, Mr. Stroner agreed not to use any information deemed to be confidential or a trade secret without the express consent

of Formax, Inc. According to the agreement, such confidential or trade secret information included “FORMAX parts, tooling, drawings, specifications, processes, machinery, apparatus, technical data, customer lists, [and] vendor lists[.]”

99. In Mr. Stroner’s role as a trusted member of the Provisur sales team, he had access to Provisur’s confidential sales documents, including the Key Account List. During his time at Provisur, Mr. Stroner regularly obtained paper and local electronic copies of these confidential documents. Among other locations, Mr. Stroner maintained those paper and local electronic copies at his home.

100. Mr. Stroner left Provisur in 2013. At that time, Mr. Stroner did not return to Provisur all of the Provisur confidential documents in his possession. Rather, Mr. Stroner kept them even though they were confidential. Mr. Stroner did not seek Provisur’s permission to retain those confidential documents. Mr. Stroner’s retention of those confidential documents, including the Key Account List, amounted to theft of those documents.

101. In the summer of 2015, Mr. Stroner accepted a sales job at Weber, Inc.

102. Mr. McCarroll hired Mr. Stroner to work as a sales manager at Weber Inc. in 2015. Mr. McCarroll did so because he believed that Mr. Stroner would provide the Defendants with Provisur’s confidential information and trade secrets.

103. In or around early October 2015, shortly after Mr. Stroner had begun employment with Weber Inc., Mr. McCarroll asked Mr. Stroner to send him a copy of Provisur’s Key Account List. Mr. McCarroll knew or had reason to know that Mr. Stroner had acquired the Key Account List by improper means, including by theft.

104. In response, on October 15, 2015, Mr. Stroner sent a local copy of Provisur’s Key Account List to Mr. McCarroll. By asking for and receiving Provisur’s Key Account List from

Mr. Stroner, Mr. McCarroll acquired that document by improper means. Weber Inc. employees acting at the direction of Mr. McCarroll then sent Provisur's Key Account List to the German Defendants.

105. Since Mr. McCarroll's misappropriation of Provisur's Key Account List, the Defendants have pursued a joint strategy to use that information to target Provisur's customers. They have done so throughout at least 2016, 2017, 2018, 2019, and 2020. Defendants' use of that information has been without the express or implied consent of Provisur.

106. Defendants' misappropriation of Provisur's Key Account List has taken programmatic form. In September 2016, at the direction of Defendants' senior management, Defendants' employees in the United States and Germany used the Key Account List to devise a strategy aimed at stealing Provisur's North American customers. They named this strategy, "Pillage & Protect."

107. On September 27, 2016, Mr. McCarroll sent a slide deck outlining the "Pillage & Protect" strategy to Weber's then-chief technology officer, Joerg Schmeiser. Mr. Schmeiser, and other senior officers of the German Defendants, supported the "Pillage & Protect" strategy.

108. In December 2016, Weber hosted a two-day training retreat to kick off the "Pillage & Protect" sales campaign against Provisur. Thereafter, Weber Inc.'s sales employees used the information from Provisur's Key Account List to target Provisur's customers.

109. For example, Defendants used Provisur's Key Account List to target its sales efforts at Provisur customer John F. Martin, including by issuing an equipment quote to John F. Martin in September 2017.

110. By way of further example, Defendants used Provisur's Key Account List to target its sales efforts at Provisur customer Fresh Mark, including by issuing an equipment quote to Fresh Mark in November 2017.

111. By way of further example, Defendants used Provisur's Key Account List to target its sales efforts at Provisur customer Smithfield Foods, including by issuing an equipment quote to Smithfield Foods in October 2018.

112. By way of further example, Defendants used Provisur's Key Account List to target its sales efforts at Provisur customer Sugar Creek Packing, including by issuing an equipment quote to Sugar Creek Packing in June 2019.

113. By way of further example, Defendants used Provisur's Key Account List to target its sales efforts at Provisur customer Tyson Foods Houston, including by issuing an equipment quote to Tyson Foods Houston in August 2020.

114. By way of further example, Defendants used Provisur's Key Account List to target its sales efforts at Provisur customer Cargill, including by issuing an equipment quote to Fresh Mark in November 2020.

**D. HARM TO PROVISUR**

115. Provisur has suffered a business injury as a result of the Defendants' scheme, as described herein.

116. Defendants' misconduct has interrupted and terminated some of Provisur's business relationships with its customers. As a result of Defendants' misconduct, Provisur has lost sales opportunities to Defendants, suffered an injury to its share of the North American food slicing equipment market, and suffered a reduction to its fair market value.

117. During the course of the misconduct described herein, which took place from approximately 2015 to 2021, Defendants actions caused substantial damage to Provisur. An economic analysis will be necessary to fully quantify the extent of Provisur's damages.

**E. THE PATENT INFRINGEMENT LITIGATION**

118. On February 22, 2019, Provisur filed a complaint for patent infringement against Defendants and various other associated organizations. That litigation resulted in a jury trial in this District between October 14 and October 28 of 2022, where Defendants were found liable for willfully infringing a Provisur patent on technology used in specialized conveyors used to package sliced food products.

119. On May 6, 2020, Provisur filed a second complaint for patent infringement against these parties. That litigation was consolidated into the first infringement action and resulted in a jury finding that Defendants were liable for willfully infringing two Provisur patents on technology used in high-speed, multi-lane food slicers.

120. The products at issue in the second infringement complaint were products with the independent drive technology discussed herein.

121. On September 21, 2021, Provisur filed the current suit alleging further patent infringement by Defendants.

122. This litigation includes products with the independent drive technology discussed herein.

123. Collectively, the patent infringement litigation brought by Provisur against the Defendants has been hard-fought and resource intensive. For example, the Defendants have consistently engaged in tactics to delay and limit discovery into its operations. Provisur, by and through counsel, has continuously and diligently prosecuted its claims against Defendants.

124. A protective order has been entered in each of the patent infringement litigations. Under these protective orders, information designated as confidential must not be shared with the opposing parties and may only be reviewed by outside counsel for those parties or other designated recipients. The Defendants have liberally designated materials as confidential. Further, the Defendants have repeatedly and baselessly accused Provisur of violating these protective orders. The actions of the Defendants with respect to their designated “confidential” information has increased the complexity of the litigation and has had a chilling effect on the ability of Provisur’s outside counsel to share developments with Provisur.

125. Many of the facts described herein first became public as a result of the jury trial in the first and second infringement litigations. That trial began October 17, 2022, and concluded October 28, 2022.

126. In particular, as a result of that jury trial, it became public that the actions taken by the Defendants went beyond patent infringement. The Defendants organize their business around fraud and theft. As the Court found in a written opinion on January 9, 2023: “Defendants’ conduct was an egregious case of misconduct beyond typical infringement.... The evidence supports a finding—and the jury found—that defendants developed products that embodied Plaintiff’s patented technology.... The evidence shows that Defendants intentionally copied Plaintiff’s patented ideas.... Overall, the Court finds that this case did not involve close issues.... The jury rejected all of Defendants’ validity arguments, found infringement of the ‘936, ‘436, and ‘812 patents, and awarded Plaintiff the full amount of damages on those patents.”



**COUNT ONE**  
**(Infringement of U.S. Patent No. 8,408,109 B2)**  
**(Against all Defendants)**

127. Provisur repeats, realleges, and incorporates by reference the prior allegations as if fully set forth herein.

128. U.S. Patent No. 8,408,109 B2 (the “’109” patent), entitled “Food Article Feed Apparatus for a Food Article Slicing Machine,” was duly issued by the USPTO on April 2, 2013, and lists named inventors Scott A. Lindee and Salvatore Lamartino. A true and correct copy of the ’109 patent is attached hereto as Exhibit A.

129. Provisur is the owner and assignee of the ’109 patent, with the full rights to enforce the ’109 patent and sue for damages by reason of infringement of the ’109 patent.

130. Provisur is in compliance with the patent marking requirements contained in 35 U.S.C. § 287 with respect to the ’109 patent.

131. The ’109 patent describes a food article slicing machine that can slice multiple food articles at once at independent rates while monitoring each food article to achieve optimal weight control and yield. *See, e.g.*, Exhibit A at Col. 2:23-27. The food article slicing machine of the ’109 patent provides advantages such as productivity, food hygiene, and operation. *See, e.g., id.* at Col. 2:28-31.

132. Defendants have directly infringed and continue to directly infringe one or more claims of the ’109 patent in violation of 35 U.S.C. 271(a), including at least independent claim 1, by making, using, offering to sell, selling, and/or importing into the United States products that include, but are not limited to, the Weber Slicer S6, the Weber Slicer 904-02 (and later versions of the Weber Slicer 904), the Weber Slicer 905, and the Weber Slicer 906, for example, as listed

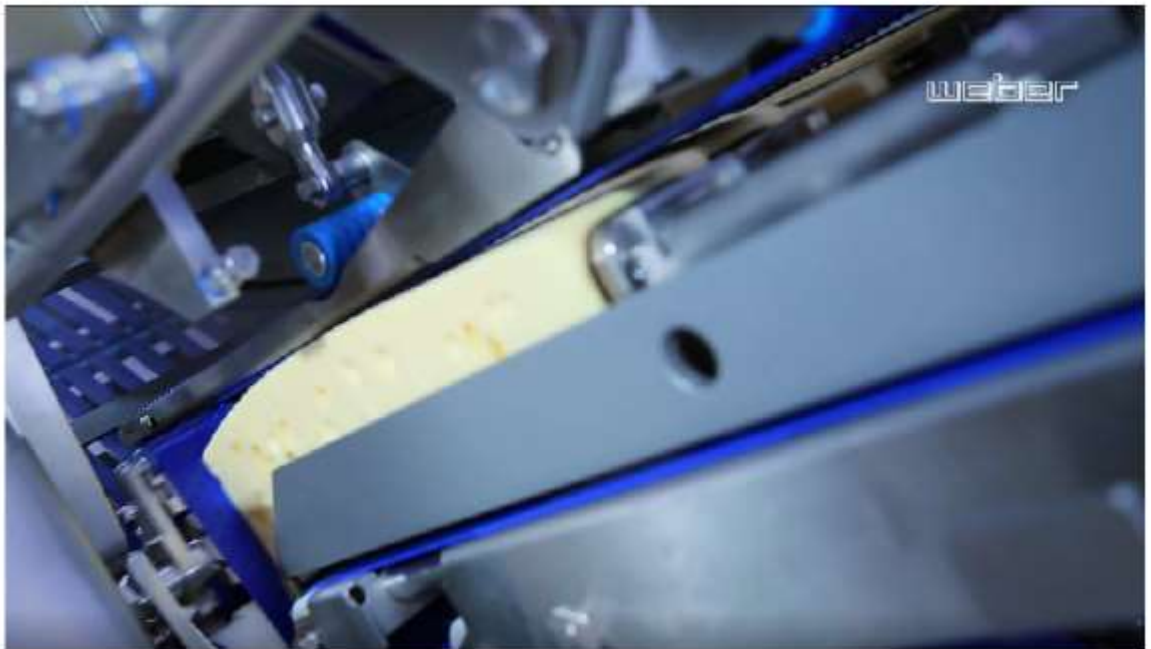
on Weber's website, <https://www.weberweb.com/products/slicer/> (the "Accused Slicer Products").<sup>1</sup>

133. Defendants' Accused Slicer Products operate in the same way with respect to the relevant claim elements of the '109 patent. Defendants' Accused Slicer Products contain all of the elements of claim 1 of the '109 patent, including, for example: (a) a first conveyor having at least one first endless belt that moves to provide a first conveying surface on top of the first endless belt for moving a first food article toward a cutting plane; (b) a second conveyor having at least one second endless belt that moves to provide a second conveying surface on top of the second endless belt for moving a second food article toward the cutting plane; (c) said first conveyor driven by rotation of a hollow first shaft; said second conveyor driven by rotation of a second shaft; said second shaft independently operating concentrically within said hollow first shaft; (d) a first motor driving the hollow first shaft into rotation; and (e) a second motor driving the second shaft into rotation.

134. The images below correspond to videos taken from Weber's website depicting, as an example, one of Defendants' Accused Slicer Products, Weber's Slicer S6, in action. The images and videos reflect it includes, for example, at least a first conveyor having a first endless belt driven by rotation of a hollow first shaft for moving food product toward a cutting plane, a second conveyor having a second endless belt driven by rotation of a second shaft for moving food product toward a cutting plane.

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<sup>1</sup> Provisur added the weSLICE9500 as an accused product of the '109 patent on May 9, 2023.







135. As part of the discovery process in the ongoing infringement litigation brought by Provisur against Defendants, Defendants have produced additional information showing infringement of one or more claims of the '109 patent by Defendants' Accused Slicer Products. For example, the images below come from the Weber Operating manual Slicer S6, produced as WEBER-0125962 *et seq.* in Case Nos. 5:19-cv-06021 and 5:20-cv-06069, and the Weber Operating manual Slicer CCS 906, produced as WEBER-0226948 *et seq.* in Case Nos. 5:19-cv-06021 and 5:20-cv-06069. These manuals are additional evidence of infringement by Defendants' Accused Slicer Products.

**Installing the product bed conveyor**

Installation of the product bed conveyor is performed in the same manner for all variants and described below using the standard version.

Depending on the Slicer equipment, the product bed conveyor can have a separate drive for each track (1). Each drive has a coupling component (3) on one of the couplings (2).

The coupling components must be aligned for installing the product bed conveyor.

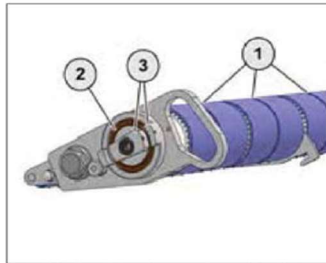


Fig. 166: Coupling piece on the product bed conveyor

The coupling pieces are correctly aligned when the markings on the coupling pieces line up with the markings on the handle of the product bed conveyor.

- Check the machine-side coupling piece and the operator-side coupling piece to see if the markings (1) on the coupling pieces and the marking (2) on the handle of the product bed conveyor line up.
- Align a coupling piece by turning the associated drive shaft into the correct position using the conveyor belt (3).

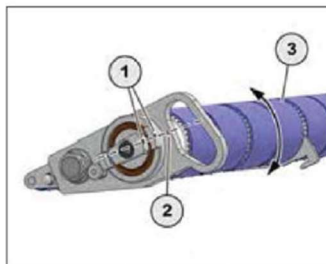


Fig. 167: Aligning the coupling pieces

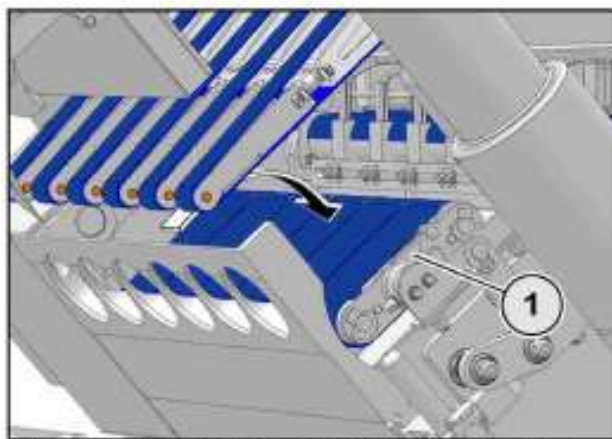


Fig. 50: Pivoting the product bed conveyor

136. Defendants also indirectly infringe one or more claims of the '109 patent in violation of 35 U.S.C. § 271(b) and/or (c) by actively inducing infringement of the '109 patent by others and/or by offering to sell or selling within the U.S. a component covered by the claims of the '109 patent that is a material part of the invention and not a staple article or commodity of the commerce suitable for substantial noninfringing use.

137. For example, Defendants instruct customers of Defendants' Accused Slicer Products how to install and operate the product as claimed, including through product documentation and in-person and remote customer support. Defendants' instructions to its customers are also set forth in published tutorials, quick tips, upgrades and modifications, and product videos on its website and YouTube channel(s). *See* <https://www.youtube.com/user/weberslicer>. At least six videos on Weber's website, for example listed above, demonstrate Defendants' Accused Slicer Products operating as claimed in the '109 patent.

138. Defendants' Accused Slicer Products are designed, manufactured, imported, used, and/or sold with no uses other than to operate in a way as claimed in the '109 patent.

139. Defendants have failed to disclose documents—such as internal emails—relating to Defendants' knowledge of Provisur patents. This lack of disclosure has occurred despite multiple outstanding discovery requests in both of the prior infringement actions brought by Provisur against Defendants in this District. On information and belief, Defendants have communicated internally about Provisur patents, and these communications will establish that Defendants have been aware of the '109 patent and the related application.

140. On information and belief, Defendants have been aware of the application that led to the '109 patent since at least 2021, when the German Proceedings were filed.

141. On information and belief, Defendants have been aware of their infringement of the '109 patent, as alleged in this First Amended Complaint, through at least their participation in the German Proceedings, and their extensive monitoring of Provisur's food slicing business, products, designs, and patents, as discussed above. Defendants and their principals knew it was highly likely

that Defendants' actions constituted infringement, or, in the alternative, Defendants' infringement was so apparent that Defendants should have known.

142. Defendants are, therefore, liable for infringement and willful infringement of the '109 patent pursuant to 35 U.S.C. § 271.

143. Defendants' acts of infringement have caused damage to Provisur.

144. Provisur is entitled to recover from Defendants the damages sustained by Provisur as a result of Defendants' wrongful acts, in an amount subject to proof at trial and, in any case, no less than a reasonable royalty, pursuant to 35 U.S.C. § 284.

145. Defendants' acts of patent infringement have caused irreparable harm to Provisur. Therefore, Provisur is entitled to the grant of a preliminary and permanent injunction pursuant to 35 U.S.C. § 283, enjoining Defendants, and each of their agents, employees, principals, officers, attorneys, successors, and all those in active concert or participation with Defendants from further acts of infringement, contributory infringement, and inducement to infringe with respect to the claims of the Patents-in-Suit.

146. Defendants' infringement of the Patent-in-Suit is willful and deliberate, justifying treble damages pursuant to 35 U.S.C. § 284.

147. This is an exceptional case, justifying the awarding of attorneys' fees and costs pursuant to 35 U.S.C. § 285.

148. Provisur reserves the right to assert additional infringement allegations as discovery progresses and in accord with the rules and deadlines of this Court.



**COUNT TWO**  
**(Infringement of U.S. Patent No. 10,625,436 and U.S. Patent No. 10,639,812**  
**by weSLICE9500)**  
**(Against all Defendants)**

149. Provisur repeats, realleges, and incorporates by reference the prior allegations as if fully set forth herein.

150. U.S. Patent No. 10,625,436 (the “’436 patent”), entitled “High Speed Slicing Machine,” was duly issued by the USPTO on April 21, 2020, and lists named inventors Scott A. Lindee, James E. Pasek, David Hancock, and Thomas C. Wolcott. A true and correct copy of the ’436 patent is attached hereto as Exhibit B.

151. U.S. Patent No. 10,639,812 (the “’812 patent”), entitled “High Speed Slicing Machine,” was duly issued by the USPTO on May 5, 2020, and lists named inventors Scott A. Lindee, James E. Pasek, David Hancock, and Thomas C. Wolcott. A true and correct copy of the ’812 patent is attached hereto as Exhibit C.

152. Provisur is the owner and assignee of the ’436 and ’812 patents (together, the “InLine VarioSlicer Patents”), with the full rights to enforce them and sue for damages by reason of infringement of them.

153. Provisur is in compliance with the patent marking requirements contained in 35 U.S.C. § 287 with respect to the InLine VarioSlicer Patents.

154. The ’436 patent describes a food article slicing machine that can slice multiple food articles at once at independent rates while monitoring each food article to achieve optimal weight control and yield. *See, e.g.*, Exhibit B at Col. 2:44-48. The food article slicing machine of the ’436 patent provides advantages such as productivity, food hygiene, and operation. *See, e.g., id.* at Col. 2:49-52.

155. The '812 patent describes a food article slicing machine that can slice multiple food articles at once at independent rates while monitoring each food article to achieve optimal weight control and yield. *See, e.g.*, Exhibit C at Col. 2:44-48. The food article slicing machine of the '812 patent provides advantages such as productivity, food hygiene, and operation. *See, e.g., id.* at Col. 2:49-52.

156. In the *Provisur I* and *II* trial, the jury determined that the asserted claims of the InLine VarioSlicer Patents were infringed. The *Provisur I* and *II* jury determined that the asserted claims of the InLine VarioSlicer Patents are not invalid. The Court denied Defendants' request for post-trial relief on January 16, 2023. The InLine VarioSlicer Patents also survived an *inter partes* review challenge by Weber, Inc., wherein the PTAB determined that all challenged claims are not unpatentable.

157. Defendants are estopped from challenging the judgments and rulings of *Provisur I* and *II*, including on claim construction, infringement, validity, willfulness, and damages.

158. Defendants have directly infringed and continue to directly infringe one or more claims of the '436 patent in violation of 35 U.S.C. 271(a), including at least claims 9, 10, 11, 12, and 16 by making, using, offering to sell, selling, and/or importing into the United States products that include, but are not limited to, the Weber Slicer weSLICE 9500 (and later versions of the Weber Slicer S6, Weber's weSLICE line of Slicers, and weSLICE 9500), for example, as listed on Weber's website, <https://www.weberweb.com/products/slicer/> (the "Accused weSLICE Slicer Products").

159. Defendants have directly infringed and continue to directly infringe one or more claims of the '812 patent in violation of 35 U.S.C. 271(a), including at least claims 1, 7, and 8 by

making, using, offering to sell, selling, and/or importing into the U.S. products that include, but are not limited to, the Accused weSLICE Slicer Products.

160. Defendants' Accused weSLICE Slicer Products operate in the same way with respect to the relevant claim elements of the '436 patent. Defendants' Accused weSLICE Slicer Products contain all of the elements of claim 9 of the '436 patent and all of the elements of claim 1 of the '812 patent, including, for example: (a) a slicing station comprising a knife blade and a knife blade drive driving the blade along a cutting path in a cutting plane; (b) a food article loading apparatus including a lift tray assembly moveable between a staging position and an elevated position, the elevated position being a position where food articles disposed within the lift tray assembly are in a food article feed path; (c) a food article feed apparatus disposed over said food article loading apparatus and having a conveyor assembly with independently driven endless conveyor belts; (d) wherein each of the conveyor belts is used in cooperation with an independently driven and controlled food article gripper for moving a food article along the food article feed path, (e) wherein the conveyor assembly is an upper conveyor assembly; and (f) a food article stop gate disposed upstream of the slicing station that forms a portion of the food article feed path, wherein the food articles are supported in position along the food article feed path by at least the food article stop gate when the lift tray assembly is moved when in its elevated position, the food articles passing over the food article stop gate when the food articles move along the food article feed path, and wherein the food article stop gate also serves as a door for the removal of food article end portions.

161. The images below correspond to videos taken from Weber's website depicting, as an example, one of Defendants' Accused weSLICE Slicer Products, Weber's weSLICE 9500, in action. The images and videos reflect it includes, for example, at least a food article loading

apparatus, a food article feed apparatus, a food article gripper, a slicing station, and a food article stop gate.





162. Defendants also indirectly infringe one or more claims of the InLine VarioSlicer Patents in violation of 35 U.S.C. § 271(b) and/or (c) by actively inducing infringement of the InLine VarioSlicer Patents by others and/or by offering to sell or selling within the U.S. a component covered by the claims of the InLine VarioSlicer Patents that is a material part of the invention and not a staple article or commodity of the commerce suitable for substantial noninfringing use.

163. For example, Defendants instruct customers of Defendants' Accused weSLICE Slicer Products how to install and operate the product as claimed, including through product documentation and in-person and remote customer support. Defendants' instructions to its customers are also set forth in published tutorials, quick tips, upgrades and modifications, and product videos on its website and YouTube channel(s). See <https://www.us.weberweb.com/portfolio/slicer/weslice-9500/>. At least three videos on Weber's

website, for example listed above, demonstrate Defendants' Accused weSLICE Slicer Products operating as claimed in the InLine VarioSlicer Patents.

164. Defendants' Accused weSLICE Slicer Products are designed, manufactured, imported, used and/or sold with no uses other than to operate in a way as claimed in the InLine VarioSlicer Patents.

165. Defendants have failed to disclose documents—such as internal emails—relating to Defendants' knowledge of Provisur patents. This lack of disclosure has occurred despite multiple outstanding discovery requests in both of the prior infringement actions brought by Provisur against Defendants in this District. On information and belief, Defendants have communicated internally about Provisur patents, and these communications will establish that Defendants have been aware of the InLine VarioSlicer Patents and their related applications.

166. On information and belief, Defendants have been aware of the application that led to the InLine VarioSlicer Patents since at least 2019, when the German Proceedings were filed.

167. On information and belief, Defendants have been aware of their infringement of the InLine VarioSlicer Patents, as alleged in this First Amended Complaint, through at least their extensive monitoring of Provisur's food slicing business, products, designs, and patents, as discussed above. Defendants and their principals knew it was highly likely that Defendants' actions constituted infringement, or, in the alternative, Defendants' infringement was so apparent that Defendants should have known.

168. Defendants are, therefore, liable for infringement and willful infringement of the InLine VarioSlicer Patents pursuant to 35 U.S.C. § 271.

169. Defendants' acts of infringement have caused damage to Provisur.

170. Provisur is entitled to recover from Defendants the damages sustained by Provisur as a result of Defendants' wrongful acts, in an amount subject to proof at trial and, in any case, no less than a reasonable royalty, pursuant to 35 U.S.C. § 284.

171. Defendants' acts of patent infringement have caused irreparable harm to Provisur. Therefore, Provisur is entitled to the grant of a preliminary and permanent injunction pursuant to 35 U.S.C. § 283, enjoining Defendants, and each of their agents, employees, principals, officers, attorneys, successors, and all those in active concert or participation with Defendants from further acts of infringement, contributory infringement, and inducement to infringe with respect to the claims of the Patents-in-Suit.

172. Defendants' infringement of the Patents-in-Suit is willful and deliberate, justifying treble damages pursuant to 35 U.S.C. § 284.

173. This is an exceptional case, justifying the awarding of attorneys' fees and costs pursuant to 35 U.S.C. § 285.

174. Provisur reserves the right to assert additional infringement allegations as discovery progresses and in accord with the rules and deadlines of this Court.

**COUNT THREE**  
**(Unfair Competition under Missouri Law)**  
**(Against all Defendants)**

175. Provisur repeats, realleges, and incorporates by reference the prior allegations as if fully set forth herein.

176. Defendants have engaged in improper conduct that forms the basis of a Missouri unfair competition claim by, among other things, knowingly and improperly acquiring access to Provisur's confidential and proprietary business information and/or trade secrets, interfering with Provisur's business relationships, monitoring and incorporating Provisur's patented technology

into Defendants' products, and attempting to pass off Provisur's patented technology as their own in order to gain an unfair competitive advantage in the North American high-speed slicing market.

177. Defendants have adopted a corporate strategy that persistently flouts U.S. intellectual property protections and other U.S. laws in order to unfairly increase market share—absorbing the risk of protracted litigation and legal judgments as a cost of doing business.

178. Defendants employ a do-whatever-it-takes business strategy that includes stealing and copying Provisur's confidential and proprietary information, trade secrets, and/or patented inventions and improperly capitalizing on Provisur's time, effort, talent, and inventiveness.

179. These business practices hinder fair business competition and substantially interfere with the ability of others in the market to compete on the merits of their products.

180. Provisur specializes in innovative industrial food processing machines and integrated production systems for the North American market for high-speed slicers and slicing equipment. It invests heavily in new product development and is consistently rated among the most innovative companies by Crain's Chicago Business.

181. Provisur has built a substantial commercial advantage in its industry through its development, use, and promotion of its innovative technology and product development, including slicers with the capability to slice multiple loaves of food simultaneously and independently.

182. As previously set forth, beginning at least as early as 2015, Defendants, through Weber Inc.'s CEO, Jarrod McCarroll, attempted to gain an unfair competitive advantage over Provisur by improperly acquiring Provisur's confidential and proprietary sales documents and/or trade secrets from former Provisur (and/or Formax) employees.

183. Mr. McCarroll requested these confidential documents and information even though he knew, or had reason to know, that they had been acquired and maintained without



Provisur's authorization and contained Provisur's confidential and proprietary information and/or trade secrets.

184. Mr. McCarroll received, reviewed, and shared these documents and other information with Weber Inc. employees.

185. Mr. McCarroll also directed that these confidential and proprietary documents be shared with the German Defendants.

186. Further, since at least January 2015, Defendants have falsely designated and associated Provisur's innovative technology, including Provisur's independent drive technology, with Defendants' slicing products by promoting, selling, and otherwise attempting to pass off this technology as their own, thereby deceiving the public, including on Defendants' websites and in communications with and statements directed to customers and potential customers related to the sale of products containing Provisur's patented technology.

187. Defendants have deceived the public by falsely representing that Defendants, rather than Provisur, developed this innovative technology.

188. Defendants have unfairly claimed that they can offer the expertise and advantages attributable to Provisur and its innovative and patented technology.

189. Defendants have improperly used Provisur's confidential and proprietary information and/or trade secrets, including sales documents and customer lists, and innovative and patented technology to quote and secure sales and service contracts with Provisur customers and other consumers in the U.S. high-speed slicing market.

190. Defendants' unlawful activities were designed to undermine Provisur by exploiting, without consideration or authorization, Provisur's technology on which Provisur has expended

substantial resources, investment, and time, and to secure benefits and profits properly belonging to Provisur.

191. Defendants' acts are calculated, and likely, to cause confusion, mistake, and deception among consumers and prospective consumers regarding the affiliation and source of the technology encompassed by Defendants' products and deprived consumers of information relevant to their purchasing decisions.

192. Defendants' conduct deprives Provisur of the advertising and marketing value of its innovative technology and the goodwill that otherwise would stem from public knowledge of the true source of this technology.

193. Defendants' willful and deliberate conduct violates society's notions of fair play and fundamental fairness.

194. Defendants' willful and deliberate conduct constitutes unfair competition under Missouri common law and has damaged Provisur in an amount to be determined at trial.

195. Provisur is entitled to an award of punitive damages as a result of Defendants' willful acts in amount sufficient to deter Defendants and others from engaging in similar conduct.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff Provisur respectfully requests that this Court enter judgment in its favor against Defendants and grant to Provisur the following relief:

A. Find that Defendants are infringing the Patents-in-Suit in violation of 35 U.S.C. § 271(a), (b), and/or (c);

B. Enter an order preliminarily and permanently enjoining Defendants, their officers, directors, agents, servants, employees, and all other persons in privity or acting in concert with

them who receive actual notice of the order by personal service or otherwise, from any further acts of infringement of the Patents-in-Suit;

C. Award Provisur damages in an amount adequate to compensate Provisur for Defendants' infringement of the Patents-in-Suit;

D. Treble any and all damages awarded to Provisur by reason of Defendants' willful infringement of the Patents-in-Suit pursuant to 35 U.S.C. § 284;

E. Award Provisur interest on damages awarded and their costs pursuant to 35 U.S.C. § 284;

F. Find that this is an exceptional case and awarding Provisur its reasonable attorneys' fees pursuant to 35 U.S.C. § 285;

G. Find that all Defendants violated Missouri law against unfair competition;

H. Award Provisur recoverable damages in an amount to be determined at trial, including an award of compensatory and actual damages, punitive damages, reasonable attorneys' fees, prejudgment interest, post-judgment interest, and costs; and

I. Award such other and further relief as this Court deems proper.

### **JURY DEMAND**

Provisur respectfully requests a trial by jury of all issues properly triable by jury in this action.

Dated: June 23, 2023

/s/ Craig C. Martin

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**CERTIFICATE OF SERVICE**

I hereby certify that on June 23, 2023, I caused a true and correct copy of the foregoing:

**PROVISUR TECHNOLOGIES INC.'S FIRST AMENDED COMPLAINT**

to be served on all counsel of record via the Court's CM/ECF system pursuant to Federal and local rules.

*/s/ Craig C. Martin*  
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