

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

HOUWELING INTELLECTUAL
PROPERTIES, INC., a Delaware Corporation,
and Beheer 141 B.V., a Dutch Company,

Plaintiffs,

v.

VAN DER HOEVEN HORTICULTURAL
PROJECTS B.V., a business entity of
unknown form,

Defendant.

Civil Action No. 1:22-cv-06004

Judge Joan B. Gottschall

JURY TRIAL DEMANDED

SECOND AMENDED COMPLAINT

Plaintiffs Houweling Intellectual Properties, Inc. (“Houweling”) and Beheer 141 B.V. doing business as Kubo (“Kubo”, collectively with Houweling also referred to as “Plaintiffs”), bring this action seeking injunctive relief and damages in order to protect and enforce its patent rights against knowing and willful infringement by Van der Hoeven Horticultural Projects B.V. (“Van der Hoeven” or “Defendant”). Plaintiffs allege as follows:

THE PARTIES

1. Houweling is a corporation duly organized and existing under the laws of the State of Delaware.
2. Kubo is a company organized and existing under the law of the Netherlands.
3. Defendant Van der Hoeven Horticultural Projects B.V. is a company of unknown form having a place of business with an address of Vrij-Harnasch 124, 2635 BZ Den Hoorn, The Netherlands. On information and belief, Van der Hoeven Horticultural Projects B.V. is engaged in the design, building, and operation of greenhouses.

JURISDICTION AND VENUE

4. This is a civil action for patent infringement arising under the Patent Act of the United States, 35 U.S.C. §§ 100 *et seq.*, including 35 U.S.C. § 271. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

5. This Court has personal jurisdiction over Defendant because, on information and belief, it has sufficient minimum contacts with this forum as a result of business conducted within this District. On information and belief, Defendant has committed acts of patent infringement within this District giving rise to this action through the offer for sale of greenhouses and have established minimum contacts with this forum such that the exercise of jurisdiction would not offend traditional notions of fair play and substantial justice.

6. Defendant resides in this district because it is subject to personal jurisdiction in this district. Venue is proper under 28 U.S.C. §§ 1391 and 1400.

PLAINTIFFS AND THE ASSERTED PATENTS

7. Houweling's principal Casey Houweling invented unique and novel features for a greenhouse with a climate control system adjacent to the growing section of a greenhouse, which are protected by U.S. Patent No. U.S. Pat. No. 8,707,617 (the "'617 Patent"), which was duly and legally issued on April 29, 2014, and U.S. Patent No. 11,412,668, ('668 patent), which was duly and legally issued on August 16, 2022.

8. As explained in more detail below, at the time of issuance, Casey Houweling was the principal for another company that built and operated greenhouses under the Ultra Clima name in the U.S. and abroad using the technology and inventions of the '617 Patent and '668 Patent. The '617 Patent, '668 Patent and related patents have since been assigned to a holding company that licenses the patents to cooperative greenhouse manufacturers.

9. Kubo is a Dutch greenhouse builder that is the exclusive licensee of the '617

Patent and '668 Patent; and Kubo markets, sells and builds greenhouses under the Ultra Clima name that incorporate the technology disclosed and claimed in the '617 Patent and '668 Patent.

10. The '617 patent is valid and enforceable, and a true and correct copy of the '617 Patent is attached hereto as Exhibit A.

11. The '668 patent is valid and enforceable, and a true and correct copy of the '668 Patent is attached hereto as Exhibit B.

12. Claim 1 of the '617 Patent recites:

A greenhouse, comprising:

a growing section;

a climate control system comprising a substantially enclosed end gable adjacent to and outside said growing section, said end gable comprising one or more vents and one or more louvers selectively moveable to cooperate with said one or more vents to control air flow through said one or more vents;

wherein said climate control system is arranged to control the environment within said growing section by flowing ambient air from outside said greenhouse into said climate control system and into said growing section, re-circulating air from said growing section back into said climate control system and into said growing section, and a combination thereof, said ambient air, re-circulating air, or combination thereof, flowing through said climate control section and into said growing section to control the climate within said growing section.

13. Claim 17 of the '617 Patent recites:

A greenhouse, comprising:

a substantially enclosed growing section; and

a substantially enclosed end gable adjacent to and outside said growing section, said end gable comprising one or more vents and one or more louvers selectively moveable to cooperate with said one or more vents to control air flow through said one or more vents, said end gable arranged to flow cool air into said growing section to reduce the temperature therein, to flow warm air into said growing section to increase the temperature therein, and to re-circulate air within said growing section when the temperature therein is at the desired level, said temperature reducing air, temperature increasing air, and re-circulating air passing through said end gable and into said substantially enclosed growing section to

control the temperature therein.

14. Houweling is the owner by assignment of all rights, title, and interest in the '617 Patent, and possesses the exclusive right to enforce the '617 Patent, including the exclusive right to recover damages for past infringement.

15. The prior assignee of the '617 Patent Houweling Nurseries Oxnard, Inc. under the direction of Casey Houweling, developed, built and operated greenhouses using the technology in the '617 Patent. These greenhouses are located in Camarillo California, Mona Utah, and Vancouver British Columbia. These greenhouses were developed to grow vegetables such as tomatoes and cucumbers and continue to grow vegetables and other crops today.

16. Houweling and Kubo also sub-license the '617 Patent and other related patents to greenhouse builders that market and build greenhouses incorporating the patented technology disclosed in the '617 patent.

17. Claim 1 of the '668 Patent recites:

A greenhouse, comprising:

a greenhouse structure having outside walls and a floor, said greenhouse structure comprising a climate control system and a growing section;

wherein said climate control system is separated by a partition from said growing section, wherein said partition is parallel to and runs the entire length of one of the sides of said greenhouse structure such that said climate control system is bordered only by said walls of said greenhouse structure and said partition, said climate control system arranged to control the environment within said growing section by flowing ambient air from outside said greenhouse into said growing section and/or by re-circulating air from said growing section back into said growing section, wherein said climate control system comprises one or more vents adapted to draw ambient air into said climate control system, wherein said partition comprises a partition vent to allow air to pass between said growing section and said climate control system, whereby a plurality of tubes are in communication with said one or more vents to regulate the environment of said growing section, wherein said tubes are arranged at the bottom of said growing section to uniformly distribute air to a greenhouse crop within said growing section such that said tubes uniformly distribute air from a location near the bottom of said growing section.

18. Claim 14 of the '668 Patent recites:

A greenhouse, comprising:

a greenhouse structure having outside walls and a floor, said greenhouse structure comprising a climate control system and a growing section;

wherein said climate control system is separated by a partition from said growing section, wherein said partition runs from the floor of said greenhouse structure and the entire length of one of said outside walls, wherein said partition is parallel to said one of said outside walls such that at least part of said climate control is within the entire area formed by said walls of said greenhouse structure and said partition, said climate control system arranged to control the environment within said growing section by flowing ambient air from outside said greenhouse into said growing section, re-circulating air from said growing section back into said growing section, and a combination thereof, said ambient air, re-circulated air, or combination thereof, flowing through said climate control system and into said growing section, wherein said climate control system comprises one or more vents adapted to draw ambient air into said climate control system, wherein said partition comprises a partition vent to allow air to pass between said growing section and said climate control system, whereby a plurality of tubes are in communication with said one or more vents to regulate the environment of said growing section.

19. Houweling is the owner by assignment of all rights, title, and interest in the '668 Patent, and possesses the exclusive right to enforce the '668 Patent, including the exclusive right to recover damages for past infringement.

20. The prior assignee of the '668 Patent, Houweling Nurseries Oxnard, Inc., under the direction of Casey Houweling, developed, built and operated greenhouses using the technology in the '668 Patent. These greenhouses are located in Camarillo California, Mona Utah, and Vancouver British Columbia. These greenhouses were developed to grow vegetables such as tomatoes and cucumbers and continue to grow vegetables and other crops today.

21. Houweling and Kubo also sub-license the '668 Patent and other related patents to greenhouse builders that market and build greenhouses incorporating the patented technology disclosed in the '668 patent.

DEFENDANT'S INFRINGEMENT

22. Defendant has offered for sale, sold and is currently building greenhouses that infringe claims 1 and 17 of the '617 Patent, and claims 1 and 14 of the '668 patent. On information and belief, Defendant continues to offer for sale in the U.S., including in this judicial district, greenhouses that infringe at least claims 1 and 17 of the '617 Patent and claims 1 and 14 of the '668 patent.

23. On information and belief, in November or December of 2021, Defendant offered to sell a greenhouse to an indoor farming company and greenhouse operator known as Bright Farms, which is located in Rochelle, Illinois. On further information, the greenhouse that Defendant offered was the same as or substantially the same as Defendant's greenhouse marketed, offered for sale, sold and manufactured under the ModulAIR name. Below is an image of the ModulAIR greenhouse from Defendant's ModulAIR website brochure attached hereto as Exhibit C.



24. Since at least 2020, Defendant has embarked on a sales campaign to offer to sell and sell ModulAir greenhouses across the United States that infringe claims 1 and 17 of the '617 Patent and claims 1 and 14 of the '668 patent. This includes the following sales of ModulAir greenhouses to Local Bounti in Mount Pleasant, Texas, and Better Future Farms – Louisa County, Virginia, that took place in November and December, 2022.

25. Since at least 2020, the Defendant has also made numerous offers for sale of the greenhouses that infringe claims 1 and 17 of the '617 Patent and claims 1 and 14 of the '668 patent, including the following as recent as February 2023, when Defendant offered to sell a ModulAir greenhouse to US Organic Farms in Gardner, Kansas.

26. On information and belief, Defendant had actual notice of its infringement of the '617 Patent from 2016 or earlier, when it was made aware of notice letters that Houweling sent to operators of greenhouses built by Defendant. These letters advised that Defendant's greenhouses, including the ModulAIR greenhouse, are covered by the '617 Patent and other

related patents (“Houweling Patents”). The letters requested that the greenhouse operators conduct an investigation related to the use and manufacturing of greenhouses or greenhouse systems covered by the Houweling Patents. In response, Defendant’s attorney sent the previous assignee of the ’617 Patent a letter acknowledging the notice letters sent to the greenhouse operators and made numerous threats of legal action against the previous assignee for sending the notice letters.

27. Instead of cooperating with Houweling or the previous assignee in resolving the dispute regarding Defendant’s infringing greenhouses, Defendant engaged in attacks on Houweling’s related patents in Australia, Europe and in the United States in an effort to have these patents revoked or their claims held unpatentable. In each case, one or more claims of the Houweling patent that was being attacked have been upheld. For example, on December 14, 2016, on information and belief, Defendant led a group of European greenhouse builders in seeking *Inter Partes* Review of the ’617 Patent. Following extensive briefing and a hearing before the U.S. Patent and Trademark Office, all but one of the claims in the ’617 Patent were upheld as patentable (see IPR2017-00476). Defendant appealed this decision to the Court of Appeal for the Federal Circuit, where the decision of the USPTO was affirmed (US C.A.F.C. 2018-2234).

28. On information and belief, Defendant had notice of the ‘668 patent from the date that it issued and at least by October 31, 2022, and Defendant was aware that the ModulAir greenhouses sold and offered for sale after the notice date infringe at least claims 1 and 14 of the ‘668 Patent.

29. Despite Houweling providing clear notice to Defendant regarding infringement of the ’617 Patent and ‘668 Patent, Defendant infringed the ‘617 Patent and ‘668 Patent as alleged herein and, on information and belief, Defendant will continue to infringe the ’617 Patent and “668 Patent by offering to sell, selling, and/or building its infringing greenhouses in the U.S.

This is further evidenced by at least the Defendant's recent opening of a New York division/office that is designed to market Defendant's greenhouses in the U.S. and Mexico.

FIRST CAUSE OF ACTION
(Infringement of the '617 Patent;
35 U.S.C. § 271)

30. Plaintiffs reallege and incorporate by reference the full text of all of the foregoing numbered paragraphs, photographs, figures, and tables as though each such paragraph, photograph, figure, and table has been fully set forth herein.

31. Houweling is the assignee and owner of all rights, title, and interest to the '617 Patent, entitled "*Greenhouse and Forced Greenhouse Climate Control System and Method*," which was duly and legally issued by the United States Patent and Trademark Office on April 29, 2014, and which has been duly and legally assigned to Houweling. The '617 Patent is valid and enforceable. Kubo is the exclusive licensee of the '617 Patent.

32. Houweling has never licensed Defendant under the '617 Patent or otherwise authorized Defendant to practice the '617 Patent, and Defendant is not authorized to practice the inventions claimed in the '617 Patent.

33. On information and belief, Defendant has infringed and continues to infringe at least claims 1 and 17 of the '617 Patent under 35 U.S.C. §271(a) by offering to sell and selling in the U.S. greenhouses that include all of the features claimed by these claims, including at least the greenhouse offers for sales and sales discussed above, without the authority of Plaintiffs.

34. On information and belief, and by way of example, the greenhouses discussed above that Defendant offered to sell or sold comprise a climate control section, comprising a configuration of vents, louvers and tubes allowing for the utilization of ambient air, recirculated air or a combination thereof, such that the product in question meets the limitations of at least claims 1 and 17 of the '617 Patent.

35. On information and belief, before its first acts of infringement, Defendant knew of Houweling's Ultra Clima greenhouse, knew the Ultra Clima greenhouse was patent-protected, knew that Houweling had obtained the '617 Patent, knew Defendant's greenhouse product was

substantially similar such that it would infringe the '617 Patent, and knew Defendant's use and sale of that design was unauthorized.

36. On information and belief, Defendant's infringement of the '617 Patent has damaged and will continue to damage Plaintiffs, or is likely to damage Plaintiffs, in an amount yet to be determined.

37. Defendant received notice that its greenhouses, including the ModulAIR greenhouse, infringe at least one claim of the '617 Patent at least as early as 2016. However, despite such knowledge, Defendant has offered to sell and sold infringing greenhouses in the United States, including the sales and offers to sell discussed above. Defendant's infringement of the '617 Patent was willful and deliberate.

38. Defendant's infringement of the '617 Patent will irreparably injure Plaintiffs, and Plaintiffs have no adequate remedy at law for these injuries. Unless further infringing acts are enjoined by this Court, Plaintiffs will continue to suffer irreparable injury.

39. This is an exceptional case such that Houweling should be awarded its reasonable attorneys' fees and expenses incurred in bringing and in furtherance of this action.

SECOND CAUSE OF ACTION
(Infringement of the '668 Patent;
35 U.S.C. § 271)

40. Plaintiffs reallege and incorporate by reference the full text of all of the foregoing numbered paragraphs, photographs, figures, and tables as though each such paragraph, photograph, figure, and table has been fully set forth herein.

41. Houweling is the assignee and owner of all rights, title, and interest to the '668 Patent, entitled "*Greenhouse and Forced Greenhouse Climate Control System and Method*," which was duly and legally issued by the United States Patent and Trademark Office on August 16, 2022, and which has been duly and legally assigned to Houweling. The '668 Patent is valid and enforceable. Kubo is the exclusive licensee of the '668 Patent.

42. Houweling has never licensed Defendant under the '668 Patent or otherwise authorized Defendant to practice the '668 Patent, and Defendant is not authorized to practice the inventions claimed in the '668 Patent.

43. On information and belief, Defendant has infringed and continues to infringe at least claims 1 and 14 of the '668 Patent under 35 U.S.C. §271(a) by offering to sell and selling in the U.S. greenhouses that include all of the features claimed by these claims, including at least the greenhouse offers for sales and sales discussed above, without the authority of Plaintiffs.

44. On information and belief, and by way of example, the greenhouses discussed above that Defendant offered to sell or sold comprise a climate control section, comprising a configuration of vents, louvers and tubes allowing for the utilization of ambient air, recirculated air or a combination thereof, such that the product in question meets the limitations of at least claims 1 and 14 of the '668 Patent.

45. On information and belief, before its first sales and offers for sale occurring after August 16, 2022, Defendant knew of Houweling's Ultra Clima greenhouse, knew the Ultra Clima greenhouse was patent-protected, knew that Houweling had obtained the '668 Patent, knew Defendant's greenhouse product was substantially similar such that it would infringe the '668 Patent, and knew Defendant's use and sale of that design was unauthorized.

46. On information and belief, Defendant's infringement of the '668 Patent has damaged and will continue to damage Plaintiffs, or is likely to damage Plaintiffs, in an amount yet to be determined.

47. Defendant received notice that its greenhouses, including the ModulAIR greenhouse, infringe at least one claim of the '668 Patent at least as early as October 2022. However, despite such knowledge, Defendant has offered to sell and sold infringing greenhouses in the United States after issuance of the '668 Patent, including the sales and offers to sell discussed above. Defendant's infringement of the '668 Patent was willful and deliberate.

48. Defendant's infringement of the '668 Patent will irreparably injure Plaintiffs, and Plaintiffs have no adequate remedy at law for these injuries. Unless further infringing acts are enjoined by this Court, Plaintiffs will continue to suffer irreparable injury.

49. This is an exceptional case such that Plaintiffs should be awarded their reasonable attorneys' fees and expenses incurred in bringing and in furtherance of this action.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Houweling Intellectual Properties, Inc. prays for relief as follows:

- A. Entry of judgment against Defendant, and for Houweling, that the '617 Patent and '668 Patent have been directly infringed by Defendant;
- B. Judgment that Defendant's acts of patent infringement are willful.
- C. A post-judgment accounting of damages for the period of infringement of the '617 Patent and '668 Patent established by Plaintiffs at trial;
- D. An award of damages adequate to compensate Houweling for the infringement of Defendant together with pre-judgment interest and post judgment interest, but in no event less than a lost profits and/or a reasonable royalty under 35 U.S.C. §284.
- E. An order preliminarily and then permanently enjoining Defendant and its respective officers, directors, agents, servants, affiliates, employees, divisions, branches, subsidiaries, parents, and all others acting in active concert or participation with them, from continued acts of infringement of the '617 Patent and '668 Patent;
- F. If a permanent injunction is not granted, a judicial determination of the conditions of future infringement such as a royalty bearing compulsory license or such other relief as the Court deems appropriate;
- G. An order that Defendant be ordered to surrender for destruction of all products, containers, labels, advertisements, promotional materials, and other materials constituting an infringement of the '617 Patent and '668 Patent and/or the means by which such infringement is facilitated;
- H. That Plaintiff be awarded the profits acquired by Defendant through Defendant's unlawful acts;
- I. That the Court increase and enhance by three times any award of damages so adjudicated against Defendant under 35 U.S.C. §284;

J. An order declaring that this is an exceptional case within the meaning of 35 U.S.C. § 285;

K. An award of costs, expenses and attorney's fees; and

L. Such other and further relief as the Court deems proper in law or equity.

DEMAND FOR JURY TRIAL

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiff Houweling Intellectual Properties, Inc., hereby demands a trial by jury of any and all issues triable of right by a jury pursuant to the Seventh Amendment to the United States Constitution or as given by a statute of the United States.

Dated: July 3, 2023

Respectfully submitted,

/s/ Mircea A. Tipescu

Mircea A. Tipescu (IL Bar No. 6276053)

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CERTIFICATE OF SERVICE

I hereby certify that on July 3, 2023, a copy of the foregoing document was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. Parties may access this filing through the Court's CM/ECF system.

/s/ Mircea A. Tipescu

Mircea A. Tipescu

Attorney for Plaintiff