

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

RITE-HITE CORPORATION,)	
ARBON EQUIPMENT CORPORATION, and)	
RITE-HITE AFTERMARKET CORPORATION,)	
)	
Plaintiffs,)	
)	
v.)	Civ. No. _____
)	
DELTA T CORPORATION d/b/a)	Jury Trial Demanded
BIG ASS FANS and)	
MECHANIZATION SYSTEMS COMPANY, INC.,)	
)	
Defendants.)	

COMPLAINT

INTRODUCTION

1. This is an action for a declaratory judgment of non-infringement and invalidity by plaintiffs Rite-Hite Corporation, Arbon Equipment Corporation, and Rite-Hite Aftermarket Corporation (collectively, “Rite-Hite”) of several United States Patents jointly owned by defendants Delta T Corporation d/b/a Big Ass Fans and Mechanization Systems Company, Inc. (“Defendants”).

JURISDICTION AND VENUE

2. This action arises under the laws of the United States, specifically Title 35 of the United States Code. This Court therefore has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1338(a). Further, because this action presents an actual controversy with respect to the validity, infringement and/or unenforceability of the patents in suit, the Court may grant the declaratory relief sought pursuant to 28 U.S.C. §§ 2201 and 2202.

3. Venue properly lies in this district pursuant to 28 U.S.C. §§ 1391(b) and 1391(c). The defendants are subject to personal jurisdiction in this judicial district. Defendants have systematic and not isolated activities in this judicial district. The defendants sell and offer for sale products, including large diameter fans, in this judicial district.

PARTIES

4. Rite-Hite Corporation (“RHC”) is a corporation organized and existing under the laws of the State of Wisconsin and having a principal place of business in Milwaukee, Wisconsin.

5. Arbon Equipment Corporation (“Arbon”) is a corporation organized and existing under the laws of the State of Wisconsin and having a principal place of business in Milwaukee, Wisconsin.

6. Rite-Hite Aftermarket Corporation (“Rite-Hite Aftermarket”) is a corporation organized and existing under the laws of the State of Wisconsin and having a principal place of business in Milwaukee, Wisconsin.

7. Upon information and belief, Delta T Corporation d/b/a Big Ass Fans (“Big Ass”) is a corporation organized and existing under the laws of the Commonwealth of Kentucky and having a principal place of business in Lexington, Kentucky.

8. Upon information and belief, Mechanization Systems Company, Inc. (“Mechanization Systems”) is a corporation organized and existing under the laws of the State of California and having a principal place of business in San Bernadino, California.

FIRST CLAIM FOR RELIEF

**DECLARATORY JUDGMENT OF NON-INFRINGEMENT
OF U.S. PATENT NOS. 6,244,821; 6,589,016; AND 6,817,835**

9. Rite-Hite realleges and incorporates by reference, as if fully set forth herein, all of the allegations contained in paragraphs 1 through 8 of this complaint.

10. U.S. Patent No. 6,244,821 (“the ‘821 patent”), entitled Low Speed Cooling Fan, was filed February 19, 1999, and issued June 12, 2001.

11. U.S. Patent No. 6,589,016 (“the ‘016 patent”), entitled Low Speed Cooling Fan, is a continuation of the ‘821 patent. The ‘016 patent was filed June 12, 2001, and issued July 8, 2003.

12. U.S. Patent No. 6,817,835 (“the ‘835 patent”), entitled Low Speed Cooling Fan, is a continuation of the ‘016 patent. The ‘835 patent was filed May 16, 2003, and issued November 16, 2004. The ‘821, ‘016, and ‘835 patents are referred to herein as the patents in suit.

13. The named inventors of the patents in suit are William C. Fairbank (“Fairbank”) and Walter K. Boyd.

14. The alleged invention of the patents in suit relates to “a large diameter low speed fan that can be used to slowly circulate a large volume of air in a uniform manner throughout a building so as to facilitate cooling of individuals and animals located within the building.” (‘821 patent, column 1, lines 6-10).

15. Upon information and belief, the patents in suit are assigned jointly to Delta T and Mechanization Systems.

16. The defendant Delta T markets large diameter fans under the name “Big Ass Fans.” In its advertising, Delta T alleges that its fans are covered by one or more claims under the patents in suit. Delta T markets and sells Big Ass Fans in this judicial district.

17. Mechanization Systems also sells and offers for sale large diameter fans in this judicial district, through its distributor and wholly-owned subsidiary, MacroAir Technologies LLC.

18. Rite-Hite has announced plans to make, use, sell, and offer for sale large diameter fans in this judicial district and elsewhere and has made one or more such fans in this judicial district.

19. Defendants have threatened to sue Rite-Hite if it markets Rite-Hite’s large diameter fans. In a meeting on November 15, 2006, Carey Smith, the president of Delta T, told representatives of Rite-Hite that Delta T would sue Rite-Hite if it makes, sells or offers for sale large diameter fans in competition with Big Ass Fans.

20. Based on Defendants’ conduct, Rite-Hite now believes, in good faith, that Defendants will commence suit against Rite-Hite for patent infringement. An actual controversy exists between the parties as to the infringement of the ‘821, ‘016, and ‘835 patents by reason of Defendants’ conduct and accusations.

21. Given that the patents in suit are jointly owned by Mechanization Systems and Delta T, the former is joined herein as a necessary party.

22. No claim of the ‘821 patent can be validly construed to be infringed by the manufacture, use, sale or offer for sale of the Rite-Hite fan.

23. No claim of the ‘016 patent can be validly construed to be infringed by the manufacture, use, sale or offer for sale of the Rite-Hite fan.

24. No claim of the '835 patent can be validly construed to be infringed by the manufacture, use, sale or offer for sale of the Rite-Hite fan.

SECOND CLAIM FOR RELIEF

**DECLARATORY JUDGMENT OF INVALIDITY AND UNENFORCEABILITY
OF U.S. PATENT NOS. 6,244,821; 6,589,016; AND 6,817,835**

25. Rite-Hite realleges and incorporates by reference, as if fully set forth herein, all of the allegations contained in paragraphs 1 through 23 of this complaint.

26. One or more claims of the '821 patent are unenforceable and/or are invalid for failure to meet one or more of the requirements of Title 35 of the United States Code.

27. One or more claims of the '016 patent are unenforceable and/or are invalid for failure to meet one or more of the requirements of Title 35 of the United States Code.

28. One or more claims of the '835 patent are unenforceable and/or are invalid for failure to meet one or more of the requirements of Title 35 of the United States Code.

29. On information and belief, the applicants for the patents in suit, their agents and others involved in the prosecution of the applications for the patents in suit withheld material information from the United States Patent and Trademark Office ("USPTO") with an intent to deceive the USPTO into granting the patents in suit for at least the reasons detailed herein.

30. Fairbank, along with Tom Walsh, Eudel Vis and Ramesh Kumar, is the author of an article entitled "A Large Paddle Fan for Livestock Cooling" ("the Fairbank article"). The Fairbank article is attached hereto as Exhibit A.

31. The Fairbank article was published in 1989 by the American Society of Agricultural Engineers.

32. The Fairbank article is prior art to the patents in suit.
33. The Fairbank article discloses a fan having a diameter of 6 meters.
34. The Fairbank article discloses a fan where the fan blades have an airfoil shape.
35. The Fairbank article discloses a fan having a diameter of 6 meters that rotates at speeds of 36, 40, and 44 revolutions per minute.
36. The Fairbank article discloses “Ceiling or paddle fans, AKA Casablanca fans, provide creature comfort with frugal use of energy. A large fan would seem applicable to penned cattle. A 6 m fan was designed, constructed of common materials, and was aerodynamically tested for downwash and wall jet characteristics. Air flow volume greater than 3000 m³-min⁻¹ per KW exceeds any available fan system.”
37. The Fairbank article was not disclosed to the USPTO in connection with the prosecution of the patents in suit.
38. The Fairbank article was known to named inventor William Fairbank.
39. The Fairbank article was material to the examination of the patents in suit.
40. Fairbank knew or should have known of the materiality of the Fairbank article.
41. The Fairbank article was known to Delta T, its representatives, agents or attorneys prior to November 16, 2004.
42. The Fairbank article anticipates or renders obvious at least some of the claims of the patents in suit.
43. The Fairbank article was withheld with an intent to deceive the USPTO.
44. The patents in suit are unenforceable for inequitable conduct.

WHEREFORE, the plaintiffs, Rite-Hite Corporation, Arbon Equipment Corporation and Rite-Hite Aftermarket Corporation, request that judgment be entered against Defendants and in the plaintiffs' favor as follows:

A. Declaring that:

- 1) United States Patent No. 6,244,821 is, as to each of the claims therein, not infringed by the fans manufactured, used, sold or offered for sale by Rite-Hite.
- 2) United States Patent No. 6,589,016 is, as to each of the claims therein, not infringed by the fans manufactured, used, sold or offered for sale by Rite-Hite.
- 3) United States Patent No. 6,817,835 is, as to each of the claims therein, not infringed by the fans manufactured, used, sold or offered for sale by Rite-Hite.
- 4) United States Patent No. 6,244,821 is, as to each of the claims therein, invalid and unenforceable.
- 5) United States Patent No. 6,589,016 is, as to each of the claims therein, invalid and unenforceable.
- 6) United States Patent No. 6,817,835 is, as to each of the claims therein, invalid and unenforceable.

B. For plaintiffs' costs and reasonable attorneys fees.

D. Such other and further relief as this court deems just and proper.

JURY DEMAND

Plaintiffs hereby request a trial by jury on all issues triable by a jury.

Dated this 15th day of November, 2006.

By 

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