

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN
GREEN BAY DIVISION**

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FORMAX, INC., an Illinois Corporation, :
 :
Plaintiff, : Civil Action No.: 11-CV-298
 : JURY DEMANDED
v. :
AL KAR-RAPIDPAK-MP EQUIPMENT, INC., :
a Wisconsin Corporation, and TOMAHAWK :
MANUFACTURING, INC., a Wisconsin :
Corporation, :
 :
Defendants. :

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff Formax, Inc. (“Formax”), by and through its counsel, complains against Defendants Alkar-Rapidpak-MP Equipment, Inc. (“Alkar”), and Tomahawk Manufacturing, Inc. (“Tomahawk”) (collectively “Defendants”) as follows:

THE PARTIES

1. This is an action for patent infringement concerning Defendants’ food forming machines that are offered for sale throughout the United States and in Wisconsin.
2. The patentee in this case is Formax. Formax is an Illinois corporation having a principal place of business in Mokena, Illinois. Formax developed the world’s first high-volume industrial meat forming machine more than 40 years ago. It is and always has been a leading developer of food forming equipment, and it has patented its innovations. The patent at issue embodies one of those innovations.

3. Upon information and belief, Defendant Alkar is a Wisconsin corporation, having a principal place of business in Lodi, Wisconsin. Alkar produces food processing machinery including mixers, bread machines, frying machines and ovens, among other machines. In contrast to Formax, Alkar has adopted a business model to make forming machinery that is in essence a “knock-off” of Formax machinery. To that end, Alkar partnered with Tomahawk to create the MP ServoDrive Former, a product that infringes one of Formax’s patents, as further discussed below.

4. Upon information and belief, Defendant Tomahawk is a Wisconsin corporation, having a principal place of business in Sheboygan, Wisconsin, located within the Eastern District of Wisconsin, Green Bay Division. Like Alkar, Tomahawk’s business model is based on making “knock off” tooling and parts for use in Formax machines, and includes, for example, bearings, gears and mold plates designed to mimic Formax’s bearings, gears and mold plates. Tomahawk makes knock-offs of nearly all Formax parts, such that an interested consumer could conceivably purchase an entire “Formax” machine using replacement Tomahawk parts, rather than Formax parts. Tomahawk also produces tooling used by Alkar to make its “knock-off” food processing machinery, and in fact, partnered with Alkar to create the MP ServoDrive Former, a product that infringes one of Formax’s patents, as further discussed below.

JURISDICTION

5. This is an action for patent infringement pursuant to 35 U.S.C. § 271.

6. This Court has subject matter 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 a United States patent.

7. Upon information and belief, this Court has personal jurisdiction over Defendants because each Defendant is incorporated and maintains its principal place of business in the State

of Wisconsin. Moreover, Defendant Tomahawk is located within this District and Division. In addition, each Defendant markets, manufactures, sells, installs, advertises, and/or distributes food processing machinery and instructs and/or directs customers regarding the use of such machinery throughout the United States, including the State of Wisconsin and including in this District and Division. Each Defendant has purposefully and voluntarily placed one of 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. Accordingly, Defendants have sufficient minimum contacts with this District such that the exercise of jurisdiction over Defendants will not offend traditional notions of fair play and substantial justice. In addition, because Defendants have transacted business giving rise to this action within the state of Wisconsin and because Defendants are doing business within the State of Wisconsin, this District, and this Division, this Court has personal jurisdiction over defendants pursuant to Wis. Stat. Sec. 801.05(1).

VENUE

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

10. Upon information and belief, the Defendants have committed acts of infringement giving rise to this action within this judicial district and regularly conduct business in this judicial district.

COUNT ONE (Infringement of U.S. Patent No. 7,318,723)

11. Plaintiff hereby repeats and realleges paragraphs 1-10 above as if set forth fully herein.

12. United States Patent No. 7,318,723 (“the ‘723 patent”), entitled “Frame for a Patty-Forming Apparatus,” was duly issued by the United States Patent & Trademark Office

(“USPTO”) on January 15, 2008. A true and correct copy of the ‘723 patent is attached hereto as Exhibit 1.

13. Formax is the assignee of the ‘723 patent, with the full rights to enforce the ‘723 patent and sue for damages by reason of infringement of the ‘723 patent. Upon information and belief, Defendants have directly infringed and continue to directly infringe the ‘723 patent. These infringing acts include, but are not limited to, the manufacture, use, sale, offer for sale and/or importation of food product molding machines with a frame as claimed in the ‘723 patent, including at least the MP ServoDrive Former.

14. The Defendants are liable for infringement of the ‘723 patent pursuant to 35 U.S.C. §271.

15. The Defendants’ acts of infringement have caused damage to Plaintiff, and Plaintiff is entitled to recover from the Defendants the damages sustained by Plaintiff as a result of the Defendants’ wrongful acts, in an amount subject to proof at trial, pursuant to 35 U.S.C. § 284.

16. The Defendants’ infringement of the ‘723 patent will continue to harm Plaintiff, causing irreparable harm, for which there is no adequate remedy at law, unless the Defendants are enjoined by this Court.

17. Upon information and belief, Defendants have knowledge of the ‘723 patent and Defendants’ infringement of the ‘723 patent is willful and deliberate, justifying the assessment of treble damages pursuant to 35 U.S.C. § 284.

18. Upon information and belief, this is an exceptional case, justifying the awarding of attorneys’ fees and costs pursuant to 35 U.S.C. § 285.

PRAYER FOR RELIEF

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

- (a) Find that the Defendants are infringing the '723 patent;
- (b) Find that the Defendants' infringement is willful;
- (c) 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 '723 patent;
- (d) Award Plaintiff damages in an amount adequate to compensate Plaintiff for Defendants' infringement of the '723 patent;
- (e) Enter an order trebling any and all damages awarded to Plaintiff by reason of Defendants' willful infringement of the '723 patent pursuant to 35 U.S.C § 284;
- (f) Enter an order awarding Plaintiff interest on damages awarded and their costs pursuant to 35 U.S.C. § 284;
- (g) Enter an order finding that this is an exceptional case and awarding Plaintiff their reasonable attorneys' fees pursuant to 35 U.S.C. § 285; and
- (h) Award such other and further relief as this Court deems proper.

JURY DEMAND

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

Dated: March 24, 2011

/s/ James D. Peterson

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