

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

STAY-TRU® SERVICES, INC.

Plaintiff,

v.

FLOWSERVE US, INC. and SULZER
PROCESS PUMPS (US), INC.,

Defendants

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CIVIL ACTION NO. _____

JURY TRIAL DEMANDED

PLAINTIFF'S ORIGINAL COMPLAINT

Plaintiff Stay-Tru® Services, Inc. ("Stay-Tru") files this Original Complaint against Defendants Flowserve US, Inc. ("Flowserve") and Sulzer Process Pumps (US), Inc. ("Sulzer") alleging as follows:

I. THE PARTIES

1. Stay-Tru is a Texas company organized and existing under the laws of the State of Texas, with a business address of P.O. Box 17615, Sugar Land, TX 77496.

2. Upon information and belief, Flowserve is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business at 6330 Dixie Drive, Houston, TX 77087, and is doing business in this judicial district and elsewhere. Flowserve may be served with process by serving its registered agent, CT Corporation System located at 350 N. St. Paul Street, Dallas, Texas 75201.

3. Upon information and belief, Sulzer is a corporation organized and existing under the laws of the State of Delaware, with a place of business at 2901 Wilcrest Drive, Suite 345, Houston, TX 77042, and is doing business in this judicial district and elsewhere. Sulzer may be served with

process by serving its registered agent, CT Corporation System located at 1021 Main Street, Suite 1150, Houston, Texas 77002.

II. JURISDICTION AND VENUE

4. This action arises under the patent laws of the United States, Title 35 United States Code, particularly §§ 271 and 281 and Title 28 United States Code § 1338(a). Venue is proper in this Court under Title 28 United States Code §§ 1391(b) and (c).

III. PATENT INFRINGEMENT

5. On June 18, 2002, United States Patent No. 6,405,992 (“the ‘992 patent”) was duly and legally issued for a “PregROUTED Baseplate for Supporting Rotating Machinery.” A true and correct copy of the ‘992 patent is attached hereto as Exhibit “A” and made a part hereof.

6. Stay-Tru is the owner of all right, title and interest of the ‘992 patent with all rights to enforce the ‘992 patent against infringers, and collect damages for all relevant times, including the right to prosecute this action.

7. The ‘992 patent relates to a method for preparing and installing a baseplate for supporting rotating machinery. The novel method that is claimed includes pregROUTING the baseplate before installation, curing the grout, and machining the mounting surfaces for the rotating machinery before field installation. This ensures precise alignment of the pump and motor shafts mounted on the baseplates.

8. The ‘992 patent underwent Reexamination by the United States Patent Office in March 2005. In May 2008, the United States Patent Office issued its Notice of Intent to Issue Ex Parte Reexamination Certificates. All claims asserted against Defendants in this case retained their validity through Reexamination. The Reexamination Certificate is in the process of being published.

9. Upon information and belief, Flowserve has in the past and continues to manufacture pregrouted baseplates, and machines the mounting surface after grouting and before installation, with full knowledge of the '992 patent and without a reasonable basis for believing it can use this process without infringing the '992 patent. In manufacturing and selling these baseplates, Flowserve has in the past and continues to infringe directly, by inducement, or by contributing to the infringement of claims of the '992 patent.

10. Upon information and belief, Sulzer has in the past and continues to manufacture pregrouted baseplates, and machines the mounting surface after grouting and before installation, with full knowledge of the '992 patent and without a reasonable basis for believing it can use this process without infringing the '992 patent. In manufacturing and selling these baseplates, Sulzer has in the past and continues to infringe directly, by inducement, or by contributing to the infringement of claims of the '992 patent.

11. Stay-Tru has been damaged as a result of Defendants' infringing conduct. Defendants are, thus, liable to Stay-Tru in an amount that adequately compensates for its infringements, which, by law, cannot be less than a reasonable royalty, together with interest and costs as fixed by this Court under 35 U.S.C. § 284.

12. Defendants' infringing conduct has been willful. The Defendants knew of the '992 patent no later than September 9, 2004 when Stay-Tru filed an infringement action based on the '992 patent against these Defendants in Civil Action Number 4:04-cv-03536. Since at least that time, Defendants have continued to manufacture pregrouted baseplates, and machine the mounting surface after grouting and before installation, with full knowledge of the '992 patent and without a reasonable basis for believing they can use this process without infringing the '992 patent.

13. Upon information and belief, Defendants will continue their infringement of the '992 patent unless enjoined by the Court. Defendants' infringing conduct causes Stay-Tru irreparable harm and will continue to cause such harm without the issuance of an injunction.

IV. JURY DEMAND

Stay-Tru hereby requests a trial by jury pursuant to Rule 38 of the Federal Rules of Civil Procedure.

V. PRAYER FOR RELIEF

WHEREFORE, Stay-Tru respectfully requests that the Court find in its favor and against Defendants, and that the Court grant Stay-Tru the following relief:

- a. Judgment that one or more claims of United States Patent No. 6,405,992 have been infringed, either literally and/or under the doctrine of equivalents, by Defendants and/or by others to whose infringement Defendants have contributed and/or by others whose infringement has been induced by Defendants;
- b. Judgment that Defendants account for and pay to Stay-Tru all damages to and costs incurred by Stay-Tru because of Defendants' infringing activities and other conduct complained of herein;
- c. That Defendants' infringement be found to be willful from the time Defendants became aware of the infringing nature of its services, and that the Court award additional damages for the period of such willful infringement pursuant to 35 U.S.C. § 284.
- d. That Stay-Tru be granted pre-judgment and post-judgment interest on the damages caused by Defendants' infringing activities and other conduct complained of herein;
- e. That the Court declare this an exceptional case and award Stay-Tru its reasonable attorney's fees and costs in accordance with 35 U.S.C. § 285;
- f. That Defendants be permanently enjoined from any further activity or conduct that infringes one or more claims of United States Patent No. 6,405,992; and
- g. That Stay-Tru be granted such other and further relief as the Court may deem just and proper under the circumstances.

Dated: June 24, 2008.

Respectfully submitted,

/s/ Jonathan T. Suder
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