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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

CV '06 500 PK

BOYDSTUN METAL WORKS, INC.
an Oregon corporation,

Plaintiff,

v.

COTTRELL, INC.
a Georgia corporation,

Defendant.

Civil No. _____

COMPLAINT FOR PATENT INFRINGMENT; PRELIMINARY INJUNCTION

DEMAND FOR JURY TRIAL

Plaintiff Boydstun Metal Works, Inc., by and through its undersigned counsel, respectfully makes the following allegations for its Complaint against Defendant Cottrell, Inc. These allegations are made upon knowledge with respect to Plaintiff Boydstun Metal Works, Inc. and its own acts, and upon information and belief as to all other matters.

ASSERTED PATENT

This is a patent infringement case involving U.S. Patent No. 7,025,547 ("the '547 patent"), which issued April 11, 2006, and is assigned to and owned by Plaintiff Boydstun Metal Works, Inc. ("Boydstun").

PARTIES

1. Boydstun is an Oregon corporation having its principal place of business in Portland, Oregon. Boydstun was founded in 1987, and has since grown into a business that employs roughly 350 people living in or around Portland, Oregon.

2. Defendant Cottrell, Inc. ("Cottrell") is a Georgia corporation having its principal place of business at 2125 Candler Road, Gainesville, Georgia 30507.

JURISDICTION

3. This Court has subject matter jurisdiction over this matter pursuant to 28 U.S.C. §§ 1331 and 1338.

4. In light of its contacts with Oregon, Cottrell is subject to the personal jurisdiction of this Court.

5. Pursuant to 28 U.S.C. §§ 1391 and 1400(b), this Court is a proper venue for this action.

BACKGROUND

6. Boydstun and Cottrell are competitors that manufacture, sell and service trucks and trailers used by carriers to transport vehicles (hereinafter "vehicle transporters"). Transporting vehicles is an interstate business, and vehicle transporters are a common sight on roadways throughout the United States. An example of a Boydstun vehicle transporter is shown below in Figure 1.

Figure 1 - Boydstun Vehicle Transporter

7. Vehicle carriers are typically responsible for safely and efficiently loading vehicles (e.g., cars or trucks) onto a transporter at a pick-up location, transporting the vehicles to a specified destination (often hundreds of miles and several states away), and unloading the vehicles upon arrival at that destination.

Overview of Vehicle Transporters

8. Vehicle transporters store vehicles on two levels - an upper level and a lower level. Each level has platforms that support the vehicles. Drivers secure vehicles to the platforms using chains or straps.

9. Vehicle transporter platforms can be configured in a variety of ways to facilitate the loading, unloading and transporting of vehicles. Figure 2 shows a prior art vehicle transporter configured to load vehicles from the ground onto the upper level.

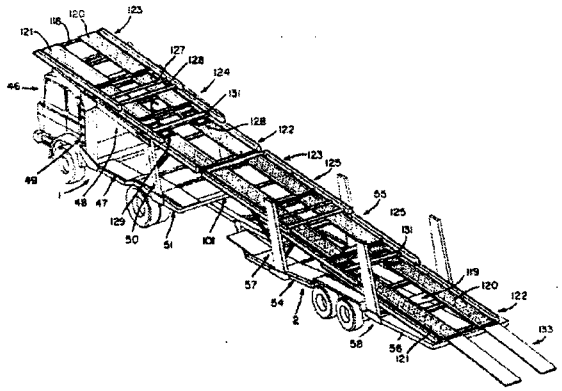

Figure 2 – Vehicle Transporter Configured to Load Vehicles Onto Upper Level

10. Vehicle transporters typically have one or more actuators that are used to move vehicle platforms into desired positions. A prior art actuator, shown in Figure 3 below, has telescoping tubes that slide together. One end of the actuator can be connected at a pivot point to the transporter's frame and the other end can be connected at another pivot point to a vehicle platform. In this arrangement, extending the actuator raises the platform, and retracting the actuator lowers the platform.

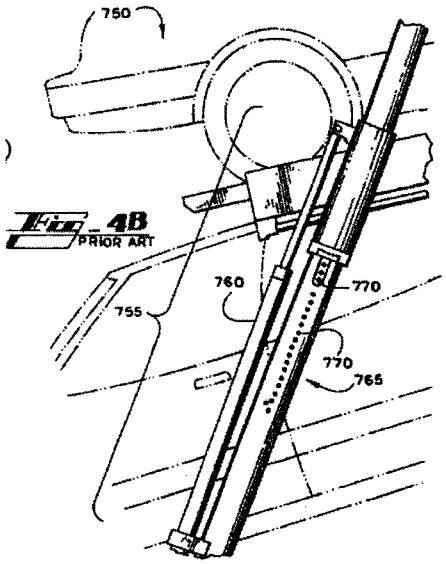

Figure 3 – Prior Art Actuator

11. For decades, vehicle transporters have used hydraulic actuators, whose length is altered (extended or retracted) by applying hydraulic pressure to the actuator. The subject of this lawsuit is a new, patented actuator design for vehicle transporters that uses a screw in lieu of hydraulic pressure to extend and retract the actuator.

Marketplace for Vehicle Transporters

12. In the United States, Boydstun and Cottrell are the two largest suppliers of vehicle transporters, together accounting for roughly 95% of vehicle transporter sales in the U.S., and with Cottrell having the largest share of the market.

13. Boydstun and Cottrell directly compete by frequently submitting dueling bids to vehicle carrier customers. Boydstun and Cottrell also compete for business by attending, and demonstrating their vehicle transporters at, the same trade shows and other industry functions. Due to the competitive relationship between Boydstun and Cottrell, upon information and belief, each company is familiar with the other's overall business operations, including customer bases and business expectancies.

14. Boydstun and Cottrell compete not only nationally, but also here in Oregon. As a well established hub in the vehicle transporter industry, Portland, Oregon, is a frequent pick-up and drop-off location for vehicle carriers, including several of Cottrell's customers. Interstate 5 is a common route for carriers moving vehicles between Seattle, Portland, San Francisco and/or Los Angeles. In addition, Portland has a railhead that frequently receives vehicles via rail from places like Detroit, and the Port of Portland routinely receives shipments of vehicles from overseas. Thus, vehicle carriers move many vehicles to and from Portland and other locations within Oregon, across the region and throughout the country.

15. Cottrell has maintained a continuous and systematic business presence in Oregon, and has captured substantial portions of the Oregon markets for vehicle transporters and transporter repairs. In recent years, Cottrell has sold its vehicle transporters to several vehicle carriers based in Oregon, including Dicks Towing (Medford, Oregon), CJ&M Transport, Inc. (operates a terminal in Portland, Oregon), and Selland Owner Operators (has several owner operators located in Oregon). In addition, upon information and belief, customers of Cottrell such as Dependable Auto Shippers, AAAdvantage Auto Transporters, Shasta Automotive, Sierra Mountain Express, and Jack Cooper Transport routinely operate their vehicle transporters on established routes in Oregon.

16. Until recently, Cottrell had an "Authorized Dealer" in Portland, Oregon, operating as West Coast Truck and Trailer Sales. Cottrell subsidized the payment of the real property lease for the offices of West Coast Truck and Trailer Sales. Cottrell also represented in a lien and financing statement filed with the Oregon Secretary of State on November 14, 2003, that the "car haul trailers and head ramps manufactured by Cottrell, Inc., in the possession of West Coast Truck and Trailer Sales" were provided by Cottrell on consignment and that West Coast Truck and Trailer Sales "does not own or have an ownership interest in the car haul trailers or the head ramps."

17. Cottrell has authorized "Service Centers" throughout the United States, and upon information and belief, it has regularly and continuously supplied these Centers with its know-how, such as service literature, and parts for its vehicle transporters. Cottrell has at least one "Service Center" in Oregon, doing business in Portland as Pacific Coast Truck and Trailer.

18. On information and belief, Cottrell screens, approves and controls such "Service Centers," inviting those who believe they can meet "the demanding tests for quality and

customer care needed to work on Cottrell auto transport equipment" to "contact us for a service center application."

19. On information and belief, Cottrell intentionally directs its activities to serve the Oregon markets for its products and services.

BOYDSTUN'S PATENTED SCREW ACTUATOR INNOVATION

20. Operating a vehicle transporter is a potentially dangerous activity. According to the National Automobile Transportation Association, the vehicle transport industry had the highest employee injury rate in 1979.

Drawbacks of Hydraulic Actuators

21. Hydraulic actuators on vehicle transporters are extended and retracted by applying hydraulic pressure to chambers within the actuator. Although actuator seals are used to maintain pressure with these chambers, it is not uncommon for hydraulic actuators to develop leaks or other failures and lose hydraulic pressure, causing the actuator to retract unexpectedly.

22. As shown in Figure 3 above, to secure these actuators and guard against the abrupt collapse of a vehicle platform caused by loss of pressure, drivers manually insert metal pins through holes in the hydraulic actuator. This process, known as "pinning," is time-consuming, and exposes drivers to roadway hazards. These disadvantages compel some drivers to take shortcuts in the pinning process, which sometimes cause damage to the vehicles being transported and/or result in driver injuries.

23. Another drawback is that on vehicle transporters using hydraulic actuators, the upper decks cannot be lowered to a position where drivers can secure upper deck vehicles from the ground. Consequently, drivers are required to climb to the upper decks to secure vehicles there, which increases their risk of injury.

Description of Screw Actuator Innovation

24. To address the problems posed by hydraulic actuators, Boydstun designed an actuator for vehicle transporters whose movement is driven by a screw, as shown in the Figure 4 example below. When the screw is turned in one direction, it causes the actuator to extend. Turning the screw in the other direction causes the actuator to retract. The screw is commonly turned by a hydraulic motor.

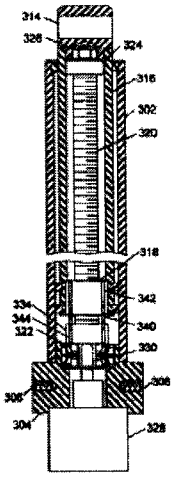

Figure 4 –Embodiment of Boydstun's Innovative Screw Actuator

25. In Boydstun's innovative design, the actuator will maintain its position even when there is a complete loss of hydraulic pressure to the motor. This feature eliminates the need for pinning, as shown in Figure 5 below, making the vehicle loading and unloading process both safer and faster.

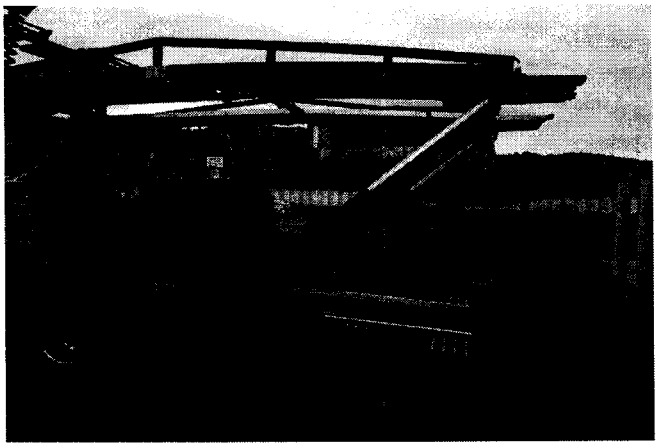

Figure 5 – Boydstun's Innovative Screw Actuator Holding Its Position Without Pinning

26. Another important advantage realized by Boydstun's screw actuator innovation involves the lowering of a vehicle transporter's upper decks. Boydstun's innovative screw actuators have a longer range of motion than hydraulic actuators, which allows the upper decks of a transporter to be lowered to a level where drivers can work on them from the ground, as shown below in Figure 6. This eliminates the danger associated with drivers climbing to the upper decks to secure vehicles.

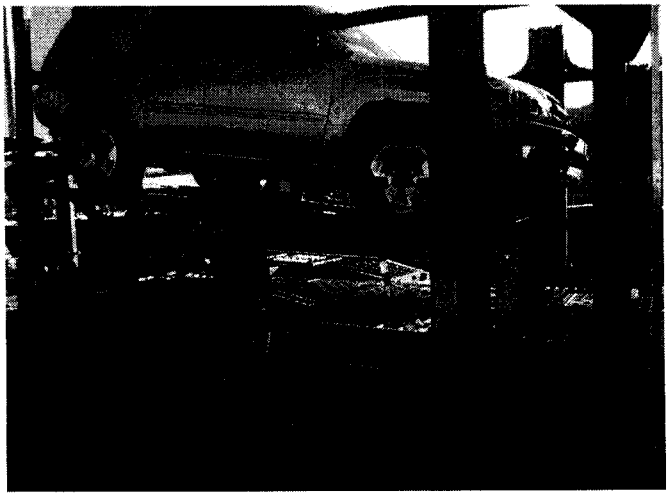

Figure 6 –Adjusting the Upper Deck of a Boydstun Vehicle Transporter From the Ground

Positive Industry Response to Screw Actuator Innovation

27. Boydstun's screw actuator innovation, and its marked improvement in overall driver safety, efficiency, and longevity, has been well received by the vehicle transport industry. For example, in early 2005, Toyota Transport committed to converting its entire fleet of existing vehicle transporters to new transporters with screw actuator technology.

Boydstun's Screw Actuator Patent

28. On March 29, 2004, Boydstun filed U.S. Patent Application No. 10/812,748 ("the '748 Application") on its screw actuator innovation. On or before April 18, 2005, Cottrell had notice that Boydstun had filed for patent protection on this innovation.

29. The '748 Application was published by the United States Patent and Trademark Office ("PTO") on September 29, 2005, as Patent Application Publication No. 2005/0214092 A1. Boydstun provided Cottrell a copy of the published '748 Application by letter dated March 17, 2006.

30. The '748 Application matured into the '547 patent, entitled "Vehicle Transporter with Screw Actuators" (attached hereto as Exhibit 1), which was issued by the PTO on April 11, 2006, and is assigned to Boydstun.

31. Before the issuance of the '547 patent, Boydstun applied "patent pending" language to the exterior of its vehicle transporters, and started marking its screw actuator transporters with U.S. Patent No. 7,025,547 when the patent issued.

COTTRELL'S COPYING OF BOYDSTUN'S PATENTED SCREW ACTUATOR INNOVATION

32. Cottrell initially responded to Boydstun's screw actuator innovation with skepticism and criticism, but in response to mounting demand from customers, Cottrell decided to manufacture and sell vehicle transporters with screw actuators.

33. Instead of designing and refining its own actuator innovation, and incurring the associated costs, Cottrell resorted to disassembling, examining and reverse engineering one or more of Boydstun's innovative screw actuators.

34. In March 2005, Cottrell displayed its knock-off version of the innovative Boydstun screw actuator at the Mid-America Tracking Show in Louisville, Kentucky.

35. On April 18, 2005, Boydstun gave Cottrell written notification that the vehicle transporter shown by Cottrell at the Mid-America Trucking Show was covered by Boydstun's pending patent application.

36. The screw actuators found on Cottrell's vehicle transporters are substantial copies of the innovative screw actuators that are found on Boydstun's transporters and that are described and clamed in the '547 patent. Cottrell makes, uses, offers to sell, and sells vehicle transporters with screw actuators that infringe one or more claims of the '547 patent.

37. Notwithstanding Cottrell's substantial copying of Boydstun's innovative screw actuators, Cottrell's screw actuators are of a significantly lower quality than Boydstun's screw actuators. In particular, Cottrell's copied version has less internal stability, which makes it more prone to wear and tear and reduces its life expectancy, as compared to Boydstun's screw actuators.

COTTRELL TRADING ON BOYDSTUN'S PATENTED SCREW ACTUATOR INNOVATION

38. Cottrell has featured screw actuators in its marketing literature and on its Website, describing them as its "telescrew" technology.

39. Upon information and belief, from at least Summer 2005 to the present, Cottrell has manufactured, used, sold and/or offered for sale vehicle transporters with screw actuators, including at least the following models: (1) 2006 EZ-5307 XL Screw Driven 7-Car Himount

Trailer; (2) Model C-09SS Highside Screw Unit; and (3) Model C-11SS High Side Screw Unit. One or more of Cottrell's vehicle transporters with screw actuators have been titled in Oregon and bear Oregon license plates. For example, in August 2005, Cottrell provided a screw actuator transporter titled in Oregon and bearing Oregon license plates to vehicle carrier Sierra Mountain Express.

40. Having copied Boydstun's innovative screw actuator technology, Cottrell is taking business away from Boydstun. For example, Gulf State Toyota Transport Systems ("GSTTS") had purchased vehicle transporters exclusively from Boydstun until recently when GSTTS bought a number of Cottrell screw actuator vehicle transporters, each employing Cottrell's knock-off version of Boydstun's screw actuator innovation.

41. Despite knowing by April 2005 of Boydstun's screw actuator patent application, a copy of which was published in September 2005, Cottrell has continued to manufacture, use, offer for sale, and sell vehicle transporters with screw actuators. Upon information and belief, Cottrell will continue to sell these transporters in disregard of the newly issued '547 patent.

HARM CAUSED BY COTTRELL

42. Cottrell's actions complained of herein have caused, and/or are likely to cause, irreparable harm to Boydstun's reputation and goodwill as a provider of certain desired innovations and as a holder of intellectual property rights to those innovations, and such actions have eroded Boydstun's market share. This harm cannot be adequately compensated monetarily. Boydstun will continue to suffer such irreparable injury until Cottrell is enjoined from infringing the '547 patent.

43. Cottrell's actions complained of herein have caused, and/or are likely to cause, actual deception of and harm to vehicle carriers who purchase a Cottrell transporter with screw

actuators under the false impression that Cottrell's screw actuators are on par with Boydstun's screw actuators in terms of quality.

COUNT ONE - PATENT INFRINGEMENT

44. Boydstun incorporates the allegations stated in Paragraphs 1-43 as if fully set forth herein.

45. Boydstun has never licensed or permitted Cottrell to practice any of the legal rights granted under the '547 patent.

46. Upon information and belief, Cottrell infringes the '547 patent by making, using, offering for sale, and/or selling in the United States, vehicle transporters with screw actuators, under 35 U.S.C. § 271(a).

47. Upon information and belief, Cottrell is actively inducing its customers to infringe, under 35 U.S.C. § 271(b), and contributing to their infringement, under 35 U.S.C. § 271(c).

48. Boydstun will suffer irreparable damage due to the infringing acts of Cottrell, unless Cottrell is enjoined by this Court from those acts which infringe the '547 patent.

49. Boydstun is suffering and has suffered monetary damage as a result of Cottrell's infringement of the '547 patent.

50. Boydstun has marked the patented functionality pursuant to 35 U.S.C. § 287.

51. Upon information and belief, Cottrell is aware of the existence of the '547 patent.

52. Boydstun is informed and believes, and on this basis alleges, that Cottrell is infringing, and upon information and belief will continue to infringe, in a willful manner unless enjoined by this Court.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Boydstun prays for the following relief:

(1) A judicial determination that Cottrell has infringed the '547 patent pursuant to 35 U.S.C. § 271;

(2) A judicial determination that Cottrell has willfully infringed the '547 patent, and that trebled damages be awarded under 35 U.S.C. § 284;

(3) A preliminary injunction enjoining Cottrell, its agents, officers, assigns and others acting in concert with Cottrell from: infringing, inducing infringement of, and/or contributing to infringement of the '547 patent.

(4) A permanent injunction enjoining Cottrell, its agents, officers, assigns and others acting in concert with Cottrell from: infringing, inducing infringement of, and/or contributing to infringement of the '547 patent.

(5) An award of damages, reflecting an accounting of damages, to compensate Boydstun for the acts complained of herein, including damages under 35 U.S.C. § 154(d)(1).

(6) An award of pre-judgment interest and post-judgment interest on the damages awarded;

(7) An award consisting of Boydstun's attorney's fees, costs and disbursements incurred herein; and

(8) Such other and further relief as the Court deems just.

JURY DEMAND

Pursuant to Fed. R. Civ. P. 38 and Local Rule 38.1(b), Plaintiff Boydstun demands a jury trial on all issues triable to a jury.

Respectfully submitted,

Dated: April 11, 2006 By: _____

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