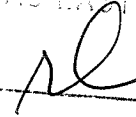


UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TEXARKANA DIVISION

06 APR -7 PM 3:39

TEXAS-EASTERN

BY



PHIBRO-TECH, INC. and MICHIGAN
TECHNOLOGICAL UNIVERSITY,

Plaintiffs,

v.

OSMOSE HOLDINGS, INC. and OSMOSE,
INC.

Defendants.

506 CV 77
Civil Action No.

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff, Phibro-Tech, Inc. ("Phibro") and Plaintiff Michigan Technological University ("MTU"), (collectively referred to herein as "Plaintiffs"), for their Complaint against Defendant Osmose Holdings, Inc. and Defendant Osmose, Inc. (collectively referred to herein as "Defendants"), allege as follows:

JURISDICTION AND THE PARTIES

1. Plaintiff Phibro is a Delaware corporation with a principal place of business located at 65 Challenger Road, Ridgefield Park, New Jersey, 07660.
2. Plaintiff MTU is a body corporate organized and existing under the laws of the State of Michigan located at 1400 Townsend Drive, Houghton, Michigan, 49931.

3. On information and belief, Defendant Osmose Holdings, Inc. is a Delaware corporation having its principal place of business at 980 Ellicott Street, Buffalo, New York, 14209.

4. On information and belief, Defendant Osmose, Inc. is a New York corporation having its principal place of business at 1016 Everee Inn Road, Griffin, Georgia, 30224-0249.

5. On information and belief, Defendants design, manufacture, use, sell, and offer for sale products used for wood preservation.

6. This is an action for patent infringement arising under the patent laws of the United States, Title 35, United States Code § 1, *et seq*, including 35 U.S.C. § 271 and 281.

7. This Court has jurisdiction pursuant to 28 U.S.C. § 1338(a).

8. Venue is proper in this judicial district.

NATURE OF THE ACTION

9. Plaintiff MTU is the owner by assignment of all right, title and interest in and to United States Patent No. 6,753,035 (“the ‘035 patent”), entitled “Compositions and Methods for Wood Preservation,” which was duly and lawfully issued by the United States Patent and Trademark office (“PTO”) on June 22, 2004. A copy of the ‘035 patent is attached hereto as Exhibit A.

10. Plaintiff Phibro is the exclusive licensee of the ‘035 patent.

11. On information and belief, Defendants have made additives for wood and have applied such additives to wood in a manner that has infringed and continues to infringe at least claim 18 of the '035 patent.

12. On information and belief, Defendants have made additives for wood and sold and/or otherwise provided for use such additives in the United States to third-party customers, subsidiaries, related companies and/or agents of Defendants that have applied such additives in the United States to wood in a manner that has infringed and continues to infringe at least claim 18 of the '035 patent, with full knowledge, awareness and approval of Defendants.

COUNT I - PATENT INFRINGEMENT

13. Plaintiffs repeat and reallege the allegations of paragraphs 1-12 as though fully set forth herein.

14. On information and belief, Defendants have infringed and continue to infringe at least claim 18 of the '035 patent. They infringe the '035 patent by (a) their manufacture and use, of additives containing copper salt nanoparticles and application of such nanoparticles to wood with a sufficient pressure that such nanoparticles penetrate such wood; (b) contributing to and/or inducing infringement of at least claim 18 of the '035 patent by others; and (c) jointly infringing at least claim 18 of the '035 patent with others.

15. On information and belief, Defendants' infringement of the '035 patent has been and continues to be deliberate, willful, and with full knowledge and awareness of the '035 patent.

16. Defendants' acts have caused, and unless restrained and enjoined will continue to cause, irreparable injury and damages to Plaintiffs for which Plaintiffs have no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for relief as follows:

1. That Defendants be permanently enjoined and restrained from using any method for incorporating additives into wood within the scope of at least claim 18 of the '035 patent, or from otherwise infringing, contributing to infringement, or jointly infringing at least claim 18 of the '035 patent.
2. That pursuant to 35 U.S.C. § 284, Plaintiffs be awarded damages adequate to compensate Plaintiffs for infringement of claim 18 of the '035 patent, but in no event less than a reasonable royalty, together with prejudgment interest.
3. That pursuant to 35 U.S.C. § 284, Plaintiffs be awarded increased damages in the amount of three times the amount found or assessed for the deliberate and willful nature of Defendants' infringing activities.
4. That pursuant to 35 U.S.C. § 285, Plaintiffs be awarded its costs, disbursements and attorneys' fees in preparing for and pursuing this action.
5. That Plaintiffs be awarded all such other and further relief as the Court deems equitable, just and proper.

Respectfully submitted,

Date: April 7, 2006



John R. Mercy
State Bar of Texas No. 13947200
MERCY CARTER TIDWELL L.L.P.
1724 Galleria Oaks Drive
Texarkana, Texas 75503
Telephone: (903) 794-9419
Facsimile: (903) 794-1268
Email: jmercy@texarkanalawyers.com

and

Jerry R. Selinger
MORGAN, LEWIS & BOCKIUS LLP
1717 Main Street, Suite 3200
Dallas, Texas 75201-7347

Attorneys for Plaintiffs

Of Counsel:

Thomas B. Kenworthy
MORGAN, LEWIS & BOCKIUS LLP
1701 Market Street
Philadelphia, Pennsylvania 19103-2921
(215) 963-5702