

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

ZEECO, INC.,)
an Oklahoma corporation,)

Plaintiff,)

vs.)

JOHN ZINK COMPANY, LLC, a)
Delaware limited liability company,)
and HITACHI ZOSEN CORPORATION)
F/K/A HITACHI SHIPBUILDING &)
ENGINEERING CO., LTD, a foreign)
corporation,)

Defendants.)

FILED

MAR 22 2001

Phil Lombardi, Clerk
U.S. DISTRICT COURT

Civil Action No.

01 CV 0209 B (E)

COMPLAINT

COMES NOW the Plaintiff, Zeeco, Inc., and for its claims against Defendants, John Zink Company, LLC ("JZC") and Hitachi Zosen Corporation, formerly known as Hitachi Shipbuilding & Engineering Co., Ltd. ("Hitachi"), alleges and states as follows:

1. Zeeco is a corporation organized and existing under the laws of the State of Oklahoma with its principal place of business in the Northern District of Oklahoma.
2. JZC is a limited liability company organized and existing under the laws of the State of Delaware with its principal place of business in the Northern District of Oklahoma.
3. Hitachi is a foreign corporation with its principal place of business in Osaka, Japan.
4. Jurisdiction of this Court arises under the Federal Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, and under the laws of the United States concerning actions relating to patents, including 28 U.S.C. § 1338(a).
5. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b) - (d).

03/22/01

6. On January 29, 1985, U.S. Patent No. 4,496,306 entitled "Multi-Stage Combustion Method for Inhibiting Formation of Nitrogen Oxides" was issued to Hitachi (the "306 Patent").

7. On or about the 7th day of December, 1993, Hitachi entered into an exclusive license with John Zink Company, a division of Koch Engineering Company Inc., a Kansas corporation.

8. JZC, by and through its predecessor-in-interest, John Zink Company, has obtained an exclusive license from Hitachi to make and sell products under the '306 Patent.

9. Zeeco has made and/or offered for sale within the past six years (and since the issuance of said '306 Patent) certain commercial/industrial oil and gas burners.

10. JZC has charged Zeeco with infringement of the '306 Patent and such charges/claims are by reason of Zeeco's manufacture, offering for sale and selling of said burner products. Zeeco denies that any of its burner products infringe the '306 Patent.

11. There is a substantial and continuing justiciable controversy between Zeeco and Defendants as to Defendants' right to threaten or maintain suit for infringement of said '306 Patent, as to the validity and scope thereof, and as to whether any of Zeeco's burners or other products infringe any valid claim thereof.

12. On information and belief, Zeeco further alleges that the '306 Patent is invalid and/or unenforceable.

Prayer For Relief

WHEREFORE, Zeeco prays that this Court enter judgment in its favor and against Defendants as follows:

1. Judgment that Defendants are without right or authority to threaten or maintain suit against Zeeco or its customers for alleged infringement of the '306 Patent, that the '306 Patent is

invalid, unenforceable, and void in law, and that the '306 Patent is not infringed by Zeeco because of the making, selling, offering for sale or using of any of Zeeco's burners or other products.

2. Judgment for Zeeco's costs and reasonable attorney's fees incurred in this action.
3. Judgment for such other and further relief as the Court may deem just and proper.

Respectfully submitted,



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JURY TRIAL DEMANDED