

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
(MARTINSBURG DIVISION)**

AUTOMATED MERCHANDISING
SYSTEMS INC.,

Plaintiff,

v.

CRANE CO., and SEAGA
MANUFACTURING, INC.,

Defendants.

Civil Action No. **3:03-CV-88-JPB (lead case)**
(consolidated with 3:08-CV-97, 3:04-CV-80,
3:04-CV-75, and 3:04-CV-48)

FIRST AMENDED COMPLAINT

This First Amended Complaint for patent infringement, breach of contract and tortuous interference with business and/or contractual relations is filed on behalf of Automated Merchandising Systems Inc. by counsel.

1. Plaintiff, Automated Merchandising Systems Inc. (“AMS”), is a corporation of the state of Delaware having its corporate headquarters and main place of business located at 255 West Burr Blvd., Kearneysville, West Virginia 25430.

2. Upon information and belief, defendant Crane Co. (“Crane”) is a corporation of the state of Delaware having its corporate headquarters at 100 First Stanford Place, Stamford Connecticut 06902.

3. Upon information and belief, defendant Seaga Manufacturing, Inc. (“Seaga”) is a corporation of the state of Illinois having its corporate headquarters at 700 Seaga Drive, Freeport, Illinois 61032.

4. This court has jurisdiction over this action under 28 U.S.C. §§ 1331, 1332 and 1338 since the matter includes a controversy arising under an act of Congress relating to patents

(35 U.S.C. § 1 *et seq.*), and a controversy arising under the Lanham Act, 15 U.S.C. § 1125, and under 28 U.S.C. § 1367 since the matter includes state law claims that are so related to related to claims in the action within this court's original jurisdiction that they form part of the same case or controversy. Diversity jurisdiction is also satisfied because this action is between citizens of different states and the matter in controversy exceeds \$75,000, exclusive of interests and costs.

5. Venue is proper in this court under 28 U.S.C. § 1391(b-c) and 28 U.S.C. § 1400 since each of the defendants resides in this judicial district. Each of the defendants is subject to personal jurisdiction in this district and State. On information and belief, the defendants sell and offer to sell products at issue in this action in the district and the State, directly, indirectly and through intermediaries and/or agents. Upon information and belief, defendants each have established a distribution network and placed products at issue in this action into the stream of commerce, using the distribution network, with the expectation and knowledge that some of those products would be sold in this judicial district and in this State. Further, the defendants' conduct outside this judicial district has caused injury to plaintiff within this judicial district and/or State, and, upon information and belief, with the expectation and knowledge that such injurious effects would be felt by plaintiff AMS within this judicial district and this State. Defendants are also subject to jurisdiction in this State under West Virginia's "long-arm" statute. Each of the defendants has continuous and systematic contacts with this State and/or district thereby subjecting each defendant to general jurisdiction in this State and/or district.

BACKGROUND FACTS

6. On May 7, 2002, United States Patent No. 6,384,402 ("the '402 patent") was duly, properly, and legally issued and assigned to AMS. The '402 patent is valid and in full force and effect and products produced under the claims of that patent have enjoyed substantial commercial

success and recognition in the trade. A copy of the '402 patent is attached to the Complaint as Doc.#1-2

7. On September 21, 2004, United States Patent No. 6,794,634 (“the ‘634 patent”) was duly, properly, and legally issued and assigned to AMS. The '634 patent is valid and in full force and effect and products produced under the claims of that patent have enjoyed substantial commercial success and recognition in the trade. A copy of the '634 patent is attached to the Complaint as Doc.#1-3.

8. On March 20, 2007, United States Patent No. 7,191,915 (“the '915 patent”) was duly, properly, and legally issued and assigned to AMS. The '915 patent is valid and in full force and effect and products produced under the claims of that patent have enjoyed substantial commercial success and recognition in the trade. A copy of the '915 patent is attached to the Complaint as Doc.#1-4.

9. On March 11, 2008, United States Patent No. 7,343,220 (“the '220 patent”) was duly, properly, and legally issued and assigned to AMS. The '220 patent is valid and in full force and effect and products produced under the claims of that patent have enjoyed substantial commercial success and recognition in the trade. A copy of the '220 patent is attached to the Complaint as Doc.#1-5.

10. Plaintiff AMS makes and sells glass-front snack vending machines equipped with an optical product vend detection system under the Sensit® trade name. AMS sells those vending machines through a nationwide network of independent distributors, dealers and/or resellers.

11. On September 27, 2002, AMS initiated an action in this Court against one of its competitors, a Minnesota company by the name of Automatic Products International, Ltd. (“AP”)

and its sister corporation, Gross-Given Manufacturing Company (“Gross-Given”) accusing those defendants of infringing the ‘402 patent. That action was docketed as Civil Action No. 3:02CV82. The products accused of infringement in that action included the “GoldenEye” optical vend detection system.

12. AMS settled its claims against AP and Gross-Given and Judge Broadwater of this court entered a Consent Judgment against both defendants on February 26, 2004. The Consent Judgment against AP and Gross-Given provided, among other things that the ‘402 patent is not invalid and that the accused products infringe one or more claims of that patent.

13. The settlement agreement reached by the parties granted AP and Gross-Given a license under the ‘402 patent and any later issued patents claiming priority to the application that became the ‘402 patent. The licensees agreed to pay AMS a unit royalty and to provide AMS with quarterly sales reports.

14. On December 29, 2003, AMS initiated an action against Crane for patent infringement by filing a Complaint in this court accusing Crane of infringing the ‘402 patent. The action was docketed as Civil Action No. 3:03CV88.

15. Crane offered, and continues to offer, two different lines of glass-front snack vending machines. Crane markets and sells one line of glass-front snack vending machines under the GPL name, and a second line under the National Vendors name. The glass front vending machines in both Crane product lines include optical vend detector systems.

16. Upon information and belief, the optical vend detection system employed in the GPL glass-front snack vendors is called the Posi-Vend® system, while the optical vend detection system employed in the National Vendor machines is called the SureVend® system.

17. In the summer of 2004, Defendant Seaga approached AMS seeking a license under the '402 patent for the optical vend detector equipped glass-front snack vending machines it planned to commercialize.

18. On August 30, 2004, AMS entered into a License Agreement with Seaga under which Seaga agreed to pay certain royalties and obtained a license to make, use and sell products within the scope of the '402 patent and any later issued patents claiming priority to the application that became the '402 patent.

19. On September 21, 2004, the '634 patent issued and AMS initiated a second patent infringement action against Crane accusing Crane of infringing that patent. That action was assigned to Judge Broadwater and docketed as Civil Action No. 3:04CV80.

20. On June 13, 2005, this Court stayed both the 3:03CV88 action and the 3:04CV80 action pending reexamination of U.S. Patent Nos. 6,384,402 and 6,794,634.

CRANE'S ACTIVITIES DURING THE STAY

21. On June 6, 2006, Crane announced that it and AP had reached an agreement by which Crane would acquire certain assets of AP.

22. Upon information and belief, as part of its agreement with AP, Crane acquired, among other things, the right to continue doing business under the Automatic Products name, the right to manufacture, market and sell AP's glass-front snack vending machines, the tools, information and equipment used by AP to manufacture those vending machines, AP's product inventory, the raw materials used to manufacture and service AP's vending machines, and AP's vending machine patent portfolio. Crane acquired so many of AP's assets that AP effectively merged with Crane.

23. Upon information and belief, AP continues to operate out of Minnesota and is doing business as Automatic Products, a Crane Co. Company.

CRANE HAS ENCOURAGED AMS' LICENSEES TO STOP PAYING ROYALTIES

24. AP provided AMS with sales reports and quarterly royalty payments under the Settlement Agreement with AMS until the Fall of 2006. The last AP sales report was provided to AMS on November 6, 2006. AP has failed to provide any sales reports or royalties for sales made after October 2006.

25. AP, after the Crane acquisition, continued to sell both the Studio® and Premier™ lines of glass-front snack vending machines covered by the license agreement between AP and AMS.

26. Under Crane, AP discontinued selling the lower-priced Studio® vendors, but continues to sell its Premier™ line of optical vend detector equipped glass front snack vending machines (previously known as the Snackshop™ line). Upon information and belief, no royalties or sales reports were provided to AMS by AP after Crane assumed control of AP.

27. Upon information and belief, Seaga began making shipments of optical vend detector equipped glass front snack vending machines in late 2006 or early 2007.

28. Seaga, however, provided no sales reports to AMS and failed to submit the requisite royalties. Seaga breached its License Agreement with AMS by failing to report its sales of the licensed product to AMS and by failing to pay AMS the royalties required under the 2004 License Agreement.

29. Upon information and belief, the president of Crane Merchandising Systems division, Mr. Brad Ellis, advised Seaga's owner, Mr. Steven Chesney, that AMS' licensed patent

claims had been invalidated by the United States Patent and Trademark Office (“USPTO”) and that there was no reason to continue paying AMS under the Seaga license agreement.

30. Upon information and belief, Mr. Ellis further advised Mr. Chesney that Crane would provide legal defense for Seaga should AMS sue Seaga for patent infringement of the licensed patents.

31. The efforts to resolve the licensing issue between AMS and Seaga failed, and AMS was forced to terminate its License Agreement with Seaga.

COUNT I – PATENT INFRINGEMENT (CRANE)

32. AMS repeats the allegations of ¶¶ 1-31 of its Complaint as if set forth at length herein.

33. Crane has been, and is, making, having made, offering for sale, selling, using and/or importing products (including glass-front snack vending machines equipped with the “SureVend,” “Posi-Vend,” or “GoldenEye” optical sensor systems) which infringe at least claim 1 of the '915 patent and claim 1 of the '220 patent. Crane’s infringement of these patents has been willful, wanton, egregious, and with total disregard for AMS' rights, and will continue unabated unless enjoined by this Court. Crane’s infringement is and has been direct, indirect, literal, by equivalents, through inducement, and/or by contributing to direct infringement by others.

COUNT II – PATENT INFRINGEMENT (SEAGA)

34. AMS repeats the allegations of ¶¶ 1-31 of its Complaint as if set forth at length herein.

35. Seaga has been, and is, making, having made, offering for sale, selling, using and/or using glass-front snack vending machines equipped with an optical vend detection sensor which infringe at least claim 1 of the '402 patent, claim 1 of the '634 patent, claim 1 of the '915 patent, and claim 1 the '220 patent. Seaga's infringement of these patents has been willful, wanton, egregious, and with total disregard for AMS' rights, and will continue unabated unless enjoined by this Court. Seaga's infringement is and has been direct, indirect, literal, by equivalents, through inducement, and/or by contributing to direct infringement of others.

COUNT III – TORTIOUS INTERFERENCE WITH CONTRACTUAL AND/OR BUSINESS RELATIONS (CRANE)

36. AMS repeats the allegations of ¶¶ 1-31 of its Complaint as if set forth at length herein.

37. Crane has intentionally and improperly interfered with the License Agreement between Seaga and AMS. Crane's interference with that contract is without justification or excuse and caused and/or contributed to Seaga's breach of its contractual obligations to AMS, interrupting Seaga's payment of royalties and forcing AMS to incur the costs of pursuing an infringement claim against Seaga and incurring attorney's fees in association with that action. AMS will continue to be damaged by Crane's conduct unless Crane is enjoined by this Court.

COUNT IV – BREACH OF CONTRACT (SEAGA)

38. AMS repeats the allegations of ¶¶ 1-31 of its Complaint as if set forth at length herein.

39. Seaga breached its contractual obligations to AMS by, without cause, justification or excuse, failing to make the sales reports to AMS required by the 2004 License Agreement

entered between AMS and Seaga and by not paying the royalties on Seaga's sales of the product licensed thereunder.

40. The 2004 License Agreement between AMS and Seaga provided adequate consideration to both parties, upon the provision of a sales report and payment of the requisite royalties, Seaga was provided a license under specified AMS patents.

41. Seaga is contractually obligated to pay the royalty specified by the 2004 License Agreement for all sales Seaga made prior to AMS' termination of that Agreement and to reimburse the attorney's fees and costs incurred in prosecuting AMS' present breach of contract action.

WHEREFORE AMS demands:

(a) An injunction against the defendant Crane enjoining it, its employees, agents, attorneys, and privies, and all those in active concert or participation therewith, from the continued infringement of the '915 and '220 patents, pursuant to 35 U.S.C. § 283;

(b) An injunction against the defendant Seaga enjoining it, its employees, agents, attorneys, and privies, and all those in active concert or participation therewith, from the continued infringement of the '402, '634, '915 and '220 patents, pursuant to 35 U.S.C. § 283;

(c) An accounting, assessment and award of damages, not less than a reasonable royalty, and including prejudgment interest, adequate to fully compensate AMS for the infringement of the patents complained of herein, together with interest and costs as affixed by the Court, pursuant to 35 U.S.C. § 284;

(d) That any damage awarded pursuant to 35 U.S.C. § 284 be increased up to three times, as provided by 35 U.S.C. § 284, in view of defendants' willful infringement of the '402 patent;

(e) An accounting, assessment and award of contract damages against Seaga for breach of the 2004 License Agreement with AMS, including an award of attorney's fees and costs incurred by AMS in prosecuting its breach of contract claim against Seaga;

(f) A finding that this is an exceptional case and an award to AMS of reasonable attorneys' fees due to the exceptional nature of this case, pursuant to 35 U.S.C. §.285;

(g) An injunction against the defendant Crane enjoining it, its employees, agents, attorneys, and privies, and all those in active concert or participation therewith, from interfering with AMS's business and/or contractual relations with others;

(h) An award to AMS of costs incurred in prosecuting this matter; and

(i) Such other and further relief as this Court deems just and proper.

JURY DEMAND

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure and the 7th Amendment to the Constitution of the United States, AMS demands a trial by jury of all issues triable as of right by jury in the above action.

Date: April 6, 2011

AUTOMATED MERCHANDISING SYSTEMS INC.
by its Attorneys

/s/ Charles F. Printz, Jr.

Charles F. Printz, Jr. (WVSB#2985)
BOWLES RICE MCDAVID GRAFF & LOVE LLP
101 South Queen St., P.O. Drawer 1419
Martinsburg, West Virginia 25402-1419
Telephone: 304-263-0836
Facsimile: 304-267-3822

Of Counsel:

James D. Berquist
Donald L. Jackson
DAVIDSON BERQUIST JACKSON & GOWDEY, LLP
4300 Wilson Blvd., Suite 700
Arlington, Virginia 22203
Telephone: 703-894-6400
Facsimile: 703-894-6430

CERTIFICATE OF SERVICE

I, Charles F. Printz, Jr., hereby certify that I electronically filed the foregoing *First Amended Complaint* with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following:

Jamil N. Alibhai, Esq., Laura Russell, Esq.
William Munck, Esq., Brooks Taylor, Esq.
Daniel Venglarik, Esq.
MUNCK CARTER PC
600 Banner Place Tower
12770 Coit Rd.
Dallas, Texas 75251

James D. Berquist, Esq., Donald L. Jackson, Esq.
J. Scott Davidson, Esq., Peter W. Gowdey, Esq.
DAVIDSON BERQUIST JACKSON & GOWDEY, LLP
4300 Wilson Blvd., Ste. 700
Arlington, Virginia 22203

Michael T. Smith, Esq.
STEPTOE & JOHNSON PLLC
Post Office Box 2629
Martinsburg, West Virginia 25402

David G. Hanson, Esq.
William A. Rinehart, II, Esq.
Reinhart Boerner VanDeuren Norris & Rieselbach
1000 N. Water Street
Milwaukee, Wisconsin 53201

Matthew P. Heiskell, Esq.
SPILMAN, THOMAS & BATTLE, PLLC
P.O. Box 615
Morgantown, West Virginia 26507-0615

Dated this 6th day of April 2011.

/s/ Charles F. Printz, Jr.
Charles F. Printz, Jr.