

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

BROOKS INSTRUMENT, LLC and)	
BI PRODUCTS, LLC,)	Civil Action No. 6:10-cv-221-LED
)	
Plaintiffs,)	
)	
v.)	
)	
MKS INSTRUMENTS, INC.)	JURY TRIAL DEMANDED
)	
Defendant.)	
)	

FIRST AMENDED COMPLAINT FOR PATENT INFRINGEMENT (Albert Patents)

Plaintiffs, Brooks Instrument, LLC, and BI Products, LLC (collectively, “Plaintiffs”), by and through their attorneys, bring this action against defendant, MKS Instruments, Inc. (“Defendant”), and allege as follows:

PARTIES

1. Brooks is a Delaware limited liability company having its principal place of business at 407 W. Vine Street, Hatfield, PA 19440-3000. Brooks maintains manufacturing facilities in Allen, TX.
2. BI Products, LLC (“BI Products”) is a Delaware limited liability company with its principal place of 407 W. Vine Street, Hatfield, PA 19440-3000.
3. On information and belief, Defendant MKS is a Pennsylvania corporation having its principal place of business at 2 Tech Drive, Andover, Massachusetts 01810.

JURISDICTION AND VENUE

4. This action arises under the Patent laws of the United States, 35 U.S.C. §§ 1 *et*

seq.

5. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

6. Upon information and belief, Defendant is subject to this Court's general and specific jurisdiction because: Defendant has minimum contacts within the State of Texas and within this District, including via its website, pursuant to due process and/or the Texas Long Arm statute; Defendant has purposefully availed itself of the privileges of conducting business in the State of Texas and within this District; Defendant regularly conducts and solicits business within the State of Texas and within this District; and Plaintiffs' causes of action arise directly from Defendant's business contacts and other activities in the State of Texas and within this District.

7. More specifically, upon information and belief, Defendant, directly and/or through intermediaries, ships, distributes, offers for sale, sells and/or advertises (including via the provision of interactive web pages) its products and services in the State of Texas and within the Eastern District of Texas. Defendant has a sales office in Richardson, Texas. Upon information and belief, Defendant has committed Patent infringement, induced Patent infringement, and contributed to the infringement of Plaintiffs' Patents in the State of Texas and within this District. For example, Defendant solicits customers in the State of Texas and within this District. Upon information and belief, Defendant has paying customers in the Eastern District of Texas, including, but not limited to, Flextronics International, Texas Instruments Incorporated, and TriQuint Semiconductor, Inc., who each use Defendant's products and services in the State of Texas and within this District.

8. Defendant has committed acts within this District that give rise to this action and does business in this District, including offering infringing products for sale, selling infringing products,

and providing service and support to its customers in this District. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b) and (c) and 28 U.S.C. § 1400(b).

GENERAL ALLEGATIONS

9. Brooks is the owner by assignment of United States Patent Nos. 6,910,381 (the “‘381 Patent”) entitled “System and Method of Operation of an Embedded System for a Digital Capacitance Diaphragm Gauge”; 7,010,983 (the “‘983 Patent”), entitled “Method for Digitally Controlling a Sensor System”; 7,490,518 (the “‘518 Patent”), entitled “System and Method of Operation of an Embedded System for a Digital Capacitance Diaphragm Gauge”; and 7,720,628 (the “‘628 Patent”), entitled “Digitally Controlled Sensor System” (collectively, “the Asserted Patents”).

10. BI Products is the exclusive licensee of the ‘381 Patent, the ‘983 Patent, the ‘518 Patent, and the ‘628 Patent.

11. On June 28, 2005, the United States Patent and Trademark Office (“USPTO”) duly and properly issued the ‘381 Patent to inventors David M. Albert, Edwin K. Arrant, and Marvin B. Edwards. Brooks was assigned the entire right, title and interest in the ‘381 Patent, and granted BI Products an exclusive license for the ‘381 Patent. A true and correct copy of the ‘381 Patent is attached as Exhibit A.

12. On March 14, 2006, the USPTO duly and properly issued the ‘983 Patent to inventors David M. Albert, Edwin K. Arrant, and Marvin B. Edwards. Brooks was assigned the entire right, title and interest in the ‘983 Patent, and granted BI Products an exclusive license for the ‘983 Patent. A true and correct copy of the ‘983 Patent is attached as Exhibit B.

13. On February 17, 2009, the USPTO duly and properly issued the ‘518 Patent to

inventors David M. Albert, Edwin K. Arrant, and Marvin B. Edwards. Brooks was assigned the entire right, title and interest in the '518 Patent, and granted BI Products an exclusive license for the '518 Patent. A true and correct copy of the '518 Patent is attached as Exhibit C.

14. On May 18, 2010, the USPTO duly and properly issued the '628 Patent to inventors David M. Albert, Edwin K. Arrant, and Marvin B. Edwards. Brooks was assigned the entire right, title and interest in the '628 Patent, and granted BI Products an exclusive license for the '628 Patent. A true and correct copy of the '628 Patent is attached as Exhibit D.

COUNT I: INFRINGEMENT OF THE '381 PATENT

15. Plaintiffs incorporate and reallege the allegations of paragraphs 1 through 14 as if set fully forth herein.

16. Defendant has been and is infringing, inducing infringement and/or contributing to infringement of the '381 Patent in this District, and throughout the United States, by making, selling, using, offering for sale, using, and/or importing infringing pressure measurement and control products covered by one or more claims of the '381 Patent, including at least manometers, pressure management and control subsystems, and pressure transducers, including at least the i-Baratron and e-Baratron products. Upon information and belief, Defendant also infringes the '381 patent by making, using, selling, and offering to sell calibration products and services, including calibration equipment that contains e-Baratron(s), i-Baratron(s) or both. Additionally, Defendant makes, sells, offers for sale, uses, and/or imports other, custom-designed products that contain, upon information and belief, e-Baratrons and/or i-Baratrons, and makes, sells, offers for sale, uses, and/or imports additional products, including, but not limited to, MKS Tru-Flo Mass Flow Verifiers, MKS Dual-Zone Pressure Controllers, and MKS Gas Box Rate-of-Rise In Situ Flow Verifiers that infringe the '381 patent.

17. Upon information and belief, Defendant has sold products and services especially designed to be used by its customers in such a way that infringes the '381 Patent, which lack substantial noninfringing uses, and which customers have used to actually infringe the '381 Patent, including those identified in products and services identified in paragraph 16. Upon information and belief, Defendant has also sold products and services to its customers, and, despite its knowledge of the '381 Patent, has specifically intended that its customers infringe the '381 Patent by providing at least marketing materials and instruction manuals detailing how to use its products in such a way that infringes the '381 Patent, as well as by providing and supporting the aforementioned calibration services, and Defendant's customers have utilized Defendant's products and services to actually infringe the '381 Patent.

18. Defendant committed these acts of infringement without license or authorization.

19. Upon information and belief, to the extent any marking was required by 35 U.S.C. § 287, all predecessors in interest to the '381 Patent complied with such requirements.

20. Defendant had actual notice of the '381 Patent prior to this lawsuit, but has continued to willfully and deliberately infringe despite such notice.

21. As a result of Defendant's willful infringement of the '381 Patent, Plaintiffs have suffered monetary damages in an amount not yet determined, and will continue to suffer damages in the future unless Defendant's infringing activities are enjoined by this Court.

22. Plaintiffs have suffered and will continue to suffer severe and irreparable harm unless this Court issues a permanent injunction prohibiting Defendant, its agents, servants, employees, representatives, and all others acting in active concert therewith from infringing the '381 Patent.

COUNT II: INFRINGEMENT OF THE '983 PATENT

23. Plaintiffs incorporate and reallege the allegations of paragraphs 1 through 22 as if set fully forth herein.

24. Defendant has been and is infringing, inducing infringement and/or contributing to infringement of the '983 Patent in this District, and throughout the United States, by making, selling, using, offering for sale, using, and/or importing infringing pressure measurement and control products covered by one or more claims of the '983 Patent, including at least manometers, pressure management and control subsystems, and pressure transducers, including at least the i-Baratron and e-Baratron products. Upon information and belief, Defendant also infringes the '983 patent by making, using, selling, and offering to sell calibration products and services, including calibration equipment that contains e-Baratron(s), i-Baratron(s) or both. Additionally, Defendant makes, sells, offers for sale, uses, and/or imports other, custom-designed products that contain, upon information and belief, e-Baratrons and/or i-Baratrons, and makes, sells, offers for sale, uses, and/or imports additional products, including, but not limited to, MKS Tru-Flo Mass Flow Verifiers, MKS Dual-Zone Pressure Controllers, and MKS Gas Box Rate-of-Rise In Situ Flow Verifiers that infringe the '983 patent.

25. Upon information and belief, Defendant has sold products and services especially designed to be used by its customers in such a way that infringes the '983 Patent, which lack substantial noninfringing uses, and which customers have used to actually infringe the '983 Patent, including those identified in products and services identified in paragraph 24. Upon information and belief, Defendant has also sold products and services to its customers, and, despite its knowledge of the '983 Patent, has specifically intended that its customers infringe the '381 Patent by providing at least marketing materials and instruction manuals detailing how to

use its products in such a way that infringes the '983 Patent, as well as by providing and supporting the aforementioned calibration services, and Defendant's customers have utilized Defendant's products and services to actually infringe the '983 Patent.

21. Defendant committed these acts of infringement without license or authorization.

22. Upon information and belief, to the extent any marking was required by 35 U.S.C. § 287, all predecessors in interest to the '983 Patent complied with such requirements.

23. Defendant had actual notice of the '983 Patent prior to this lawsuit, but has continued to willfully and deliberately infringe despite such notice.

26. As a result of Defendant's willful infringement of the '983 Patent, Plaintiffs have suffered monetary damages in an amount not yet determined, and will continue to suffer damages in the future unless Defendant's infringing activities are enjoined by this Court.

27. Plaintiffs have suffered and will continue to suffer severe and irreparable harm unless this Court issues a permanent injunction prohibiting Defendant, its agents, servants, employees, representatives, and all others acting in active concert therewith from infringing the '983 Patent.

COUNT III: INFRINGEMENT OF THE '518 PATENT

28. Plaintiffs incorporate and reallege the allegations of paragraphs 1 through 27 as if set fully forth herein.

29. Defendant has been and is infringing, inducing infringement and/or contributing to infringement of the '518 Patent in this District, and throughout the United States, by making, selling, using, offering for sale, using, and/or importing infringing pressure measurement and control products covered by one or more claims of the '518 Patent, including at least manometers, pressure management and control subsystems, and pressure transducers, including

at least the i-Baratron and e-Baratron products. Upon information and belief, Defendant also infringes the '518 patent by making, using, selling, and offering to sell calibration products and services, including calibration equipment that contains e-Baratron(s), i-Baratron(s) or both. Additionally, Defendant makes, sells, offers for sale, uses, and/or imports other, custom-designed products that contain, upon information and belief, e-Baratrons and/or i-Baratrons, and makes, sells, offers for sale, uses, and/or imports additional products, including, but not limited to, MKS Tru-Flo Mass Flow Verifiers, MKS Dual-Zone Pressure Controllers, and MKS Gas Box Rate-of-Rise In Situ Flow Verifiers that infringe the '518 patent.

30. Upon information and belief, Defendant has sold products and services especially designed to be used by its customers in such a way that infringes the '518 Patent, which lack substantial noninfringing uses, and which customers have used to actually infringe the '518 Patent, including those identified in products and services identified in paragraph 29. Upon information and belief, Defendant has also sold products and services to its customers, and, despite its knowledge of the '518 Patent, has specifically intended that its customers infringe the '518 Patent by providing at least marketing materials and instruction manuals detailing how to use its products in such a way that infringes the '518 Patent, as well as by providing and supporting the aforementioned calibration services, and Defendant's customers have utilized Defendant's products and services to actually infringe the '518 Patent.

31. Defendant committed these acts of infringement without license or authorization.

32. Upon information and belief, to the extent any marking was required by 35 U.S.C. § 287, all predecessors in interest to the '518 Patent complied with such requirements.

33. Defendant had actual notice of the '518 Patent prior to this lawsuit, but has continued to willfully and deliberately infringe despite such notice.

34. As a result of Defendant's willful infringement of the '518 Patent, Plaintiffs have suffered monetary damages in an amount not yet determined, and will continue to suffer damages in the future unless Defendant's infringing activities are enjoined by this Court.

35. Plaintiffs have suffered and will continue to suffer severe and irreparable harm unless this Court issues a permanent injunction prohibiting Defendant, its agents, servants, employees, representatives, and all others acting in active concert therewith from infringing the '518 Patent.

COUNT IV: INFRINGEMENT OF THE '628 PATENT

36. Plaintiffs incorporate and reallege the allegations of paragraphs 1 through 35 as if set fully forth herein.

37. Defendant has been and is infringing, inducing infringement and/or contributing to infringement of the '628 Patent in this District, and throughout the United States, by making, selling, using, offering for sale, using, and/or importing infringing pressure measurement and control products covered by one or more claims of the '628 Patent, including at least manometers, pressure management and control subsystems, and pressure transducers, including at least the i-Baratron and e-Baratron products. Upon information and belief, Defendant also infringes the '628 patent by making, using, selling, and offering to sell calibration products and services, including calibration equipment that contains e-Baratron(s), i-Baratron(s) or both. Additionally, Defendant makes, sells, offers for sale, uses, and/or imports other, custom-designed products that contain, upon information and belief, e-Baratrons and/or i-Baratrons, and makes, sells, offers for sale, uses, and/or imports additional products, including, but not limited to, MKS Tru-Flo Mass Flow Verifiers, MKS Dual-Zone Pressure Controllers, and MKS Gas Box Rate-of-Rise In Situ Flow Verifiers that infringe the '628 patent.

38. Upon information and belief, Defendant has sold products and services especially designed to be used by its customers in such a way that infringes the '628 Patent, which lack substantial noninfringing uses, and which customers have used to actually infringe the '628 Patent, including those identified in products and services identified in paragraph 37. Upon information and belief, Defendant has also sold products and services to its customers, and, despite its knowledge of the '628 Patent, has specifically intended that its customers infringe the '628 Patent by providing at least marketing materials and instruction manuals detailing how to use its products in such a way that infringes the '628 Patent, as well as by providing and supporting the aforementioned calibration services, and Defendant's customers have utilized Defendant's products and services to actually infringe the '628 Patent.

39. Defendant committed these acts of infringement without license or authorization.

40. Upon information and belief, to the extent any marking was required by 35 U.S.C. § 287, all predecessors in interest to the '628 Patent complied with such requirements.

41. Defendant had actual notice of the '628 Patent prior to this lawsuit, but has continued to willfully and deliberately infringe despite such notice.

42. As a result of Defendant's willful infringement of the '628 Patent, Plaintiffs have suffered monetary damages in an amount not yet determined, and will continue to suffer damages in the future unless Defendant's infringing activities are enjoined by this Court.

43. Plaintiffs have suffered and will continue to suffer severe and irreparable harm unless this Court issues a permanent injunction prohibiting Defendant, its agents, servants, employees, representatives, and all others acting in active concert therewith from infringing the '628 Patent.

JURY DEMAND

44. Plaintiff demands a trial by jury on all issues so triable.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests the Court to grant it the following relief:

- (a) A judgment in favor of the Plaintiffs that Defendant has infringed, directly, and/or indirectly, by way of inducing and/or contributing to the infringement of claims of the '381 Patent;
- (b) A judgment in favor of the Plaintiffs that Defendant has infringed, directly, and/or indirectly, by way of inducing and/or contributing to the infringement of claims of the '983 Patent;
- (c) A judgment in favor of the Plaintiffs that Defendant has infringed, directly, and/or indirectly, by way of inducing and/or contributing to the infringement of claims of the '518 Patent;
- (d) A judgment in favor of the Plaintiffs that Defendant has infringed, directly, and/or indirectly, by way of inducing and/or contributing to the infringement of claims of the '628 Patent;
- (e) A judgment that such infringement was willful;
- (f) A permanent injunction enjoining Defendant and its officers, directors, agents, servants, affiliates, employees, divisions, branches, subsidiaries, parents, and all others acting in concert therewith from infringement, inducing the infringement of, or contributing to the infringement of, each of the Asserted Patents;
- (g) A judgment and order requiring Defendant to pay Plaintiffs their damages, costs, expenses, and pre-judgment and post-judgment interest for Defendant's infringement of each of the Asserted Patents;

- (h) An award to Plaintiffs for enhanced damages resulting from the knowing, deliberate and willful nature of Defendant's infringement;
- (i) A judgment and order finding that this is an exceptional case within the meaning of 35 U.S.C. § 285 and awarding Plaintiffs their reasonable attorneys' fees; and
- (j) Any and all such other relief that this Court deems just and proper.

Dated: September 13, 2010

Respectfully submitted,



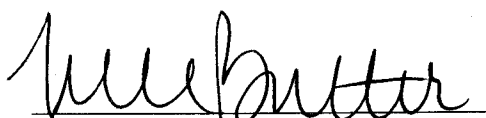
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**ATTORNEYS FOR BROOKS
INSTRUMENT, LLC. and
BI PRODUCTS, LLC**

CERTIFICATE OF SERVICE

The undersigned hereby certifies that all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system per Local Rule CV-5(a)(3) this 13th day of September, 2010. Any other counsel of record will be served by facsimile transmission and/or first class mail.


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