

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

METSO MINERALS INDUSTRIES, INC.,

Plaintiff,

v.

Case No. 07-CV-00926
Judge Charles N. Clevert

FLSMIDTH-EXCEL LLC,
EXCEL FOUNDRY & MACHINE, INC.,
JOSEPH P. MARTINEZ, CHERYL A.
SULLIVAN, KENNETH L. OLSON,
DOUGLAS M. PARSONS, RICHARD A.
PARSONS, AND CHRISTOPHER P. WADE,

Defendants.

FIFTH AMENDED COMPLAINT

Plaintiff, Metso Minerals Industries, Inc. ("Metso"), by its attorneys, Quarles & Brady, LLP, alleges its Fifth Amended Complaint against Defendants, FLSmidth-Excel ("Excel"), Excel Foundry & Machine, Inc. ("Excel Foundry"), Joseph P. Martinez, Cheryl A. Sullivan, Kenneth L. Olson, Douglas M. Parsons, Richard A. Parsons, and Christopher P. Wade as follows:

NATURE OF THE ACTION

1. Excel admitted in open court on January 30, 2008, that it has infringed one of Metso's patents, U.S. Patent No. 4,750,681 (the '681 Patent), and that its affiliated company, Excel Foundry, has infringed another of Metso's patents, U.S. Patent No. 5,451,110 (the '110 Patent).

EXHIBIT 2

2. Excel and Excel Foundry (together referred to herein as the “Excel Defendants”) have since admitted they worked together to copy Metso’s HP400 conical crusher to create one of the infringing product at issue, the Raptor XL400.

3. The copying was facilitated by the unauthorized taking, disclosure and misuse of Metso’s confidential, proprietary and trade secret information.

4. Current Excel employee Joseph P. Martinez is a former Metso employee. Martinez is being sued in his personal capacity because he is under contractual and other obligations to keep private Metso’s confidential and proprietary information. After leaving Metso to work for Excel, Martinez breached his obligations to Metso by disclosing confidential and proprietary information to Excel, facilitating the Excel Defendants’ copying of Metso’s products to make conical crushers sold under Excel’s Raptor line as XL400, XL600/900 and XL1100, which are substantially similar to Metso’s HP400, HP800 and MP1000, respectively.

5. Current Excel Foundry employee Cheryl A. Sullivan is a former Metso employee. Sullivan is being sued in her personal capacity because she is under contractual and other obligations to keep private Metso’s confidential and proprietary information. After leaving Metso to work for Excel Foundry, Sullivan breached her obligations to Metso by disclosing confidential and proprietary information including Metso’s customer information, pricing information, current inventory listings, product information and specifications to Excel Foundry, and upon information and belief, other confidential Metso information, facilitating the Excel Defendants’ unfair competition and the copying of Metso’s HP400, HP800 and MP1000 crushers.

6. Current Excel employee Kenneth Olson is a former Metso employee. Olson is being sued in his personal capacity because he is under contractual and other obligations to keep

private Metso's confidential and proprietary information. After leaving Metso to work for Excel, Olson breached his obligations to Metso by disclosing confidential and proprietary information to the Excel Defendants, facilitating the Excel Defendants' copying of Metso's conical crushers to make conical crushers sold under Excel's Raptor line as XL400, XL600/900 and XL 1100, which are substantially similar Metso's HP400, HP800 and MP1000, respectively.

7. Defendant Douglas M. Parsons is President and CEO of Excel Foundry and CEO of Excel. Douglas Parsons is being sued in his personal capacity because he actively participated in the misappropriation of Metso's confidential and proprietary information by, among other things, actively encouraging employees of the Excel Defendants to acquire and use Metso's confidential and proprietary information to develop the XL400, XL600/900 and XL 1100 crushers, which are copies of Metso products, and spare parts therefor.

8. Defendant Richard A. Parsons is Executive Vice President of Excel Foundry and participates in the management of Defendant Excel. Richard Parsons is being sued in his personal capacity because he actively participated in the misappropriation of Metso's confidential and proprietary information by, among other things, actively encouraging employees of the Excel Defendants to acquire and use Metso's confidential and proprietary information to develop the XL400, XL600/900 and XL1100 crushers, which are copies of Metso's products, and spare parts therefor.

9. Current Excel employee Christopher P. Wade is a former employee of Angus Industries, a former Metso vendor, distributor, and authorized repair facility. He is being sued in his personal capacity. As disclosed at the April 7, 2009 deposition of current Excel employee Andrew Bartram, Wade knowingly misappropriated Metso's confidential and proprietary information by, among other things, actively taking Metso's confidential and proprietary

information, including but not limited to detailed design drawings and technical data sheets containing dimensions and tolerances for Metso's HP and MP crusher lines, from Angus Industries when he had been instructed by Bartram (then a Metso employee) not to do so. Wade took Metso's confidential and proprietary information from Angus Industries even though he knew or should have known that such information was the property of Metso, and that it should have been returned to Metso.

10. The patent claims alleged herein are brought pursuant to Title 35 of the United States Code. The '110 Patent issued on September 19, 1995 and remains enforceable. The '681 Patent issued on June 14, 1988 and expired on February 24, 2006. The patent claims in this action are to recover damages resulting from the infringement of the '110 Patent and to obtain injunctive relief from such infringement, and to recover damages caused by the infringement of the '681 Patent that accrued within six years of October 17, 2007, the date the Complaint in this action was filed, as allowed pursuant to 35 U.S.C. §286.

11. The misappropriation of trade secret claims alleged herein are based on Wisconsin's Uniform Trade Secrets Act, Wis. Stat. § 134.90, and arise out of the defendants' acquisition, disclosure and misuse of Metso's confidential and proprietary information to facilitate their copying of the Metso HP400, HP800 and MP1000 models of crushers and spare parts therefor.

12. The identity theft and computer crimes alleged herein are based on Wisconsin Statutes § 895.446, § 943.203 and § 943.70 and arise out of the unauthorized access of Metso's computer network.

13. The breach of contract, breach of loyalty, interference with contract, fraud, trespass to chattels and conversion claims alleged herein are based on Wisconsin common law.

14. The trademark infringement and unfair competition claims alleged herein are brought pursuant to the Lanham Act, common law unfair competition rights, common law trademark rights, and Wis. Stat. § 100.18. These claims arise out of the Excel Defendants' unauthorized and misleading use of Metso's trademarks in their marketing materials, their false statement that certain of their products are made in the U.S.A., and their misuse of Metso's confidential and proprietary information and related activities.

THE PARTIES

15. Metso is a corporation organized under the laws of Delaware, with a principal place of business at 20965 Crossroads Circle, Waukesha, WI 53186. Metso is engaged in, among other things, the development, manufacture and sale of mining and industrial mineral processing equipment, including high performance crushers used in the aggregate and mining market.

16. Excel is an Illinois corporation with a place of business at 543 A.J. Allen Circle, Suite B, Wales, WI 53183. Excel is a direct competitor of Metso.

17. Excel Foundry is an Illinois corporation with its principal place of business at 14463 Wagonseller Road, Pekin, IL 61554. Excel Foundry is a direct competitor of Metso.

18. Joseph P. Martinez is an individual residing at 2210 Patrick Lane, Waukesha, WI 53188-7302. Joseph P. Martinez is a former Metso employee, now employed by Defendant Excel.

19. Cheryl A. Sullivan is an individual residing at 5402 Haymeadow Lane, #3B, Peoria, IL 61615. Cheryl A. Sullivan is a former Metso employee, now employed by Defendant Excel Foundry.

20. Kenneth L. Olson is an individual residing at 202 E. 6th Street, Mendota, IL. Kenneth Olson is a former Metso employee, now employed by Defendant Excel.

21. Douglas M. Parsons is an individual residing at 5126 N. Primrose Ct., Peoria, IL. Douglas Parsons is President and CEO of Defendant Excel Foundry and CEO of Defendant Excel.

22. Richard A. Parsons is an individual residing at 5117 N. Primrose Ct., Peoria, IL. Richard Parsons is Executive Vice President of Defendant Excel Foundry and participates in the management of Defendant Excel.

23. Christopher P. Wade is an individual residing at 1812 Parkfield Drive, Pekin, IL. Christopher P. Wade is a former employee of Angus Industries, a former Metso vendor, distributor, and authorized repair facility. Wade is now employed by Defendant Excel.

JURISDICTION AND VENUE

24. This Court has original jurisdiction of this action pursuant to 28 U.S.C. §§ 1331 and 1338, with reference to the United States Patent Laws, Title 35 of the United States Code and the Lanham Act.

25. This Court has supplemental jurisdiction over all state law claims under 28 U.S.C. § 1367(a).

26. This Court has personal jurisdiction over all Defendants under 28 U.S.C. § 1400 and Wis. Stat. § 801.05.

27. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391 and 1400.

THE '110 PATENT

28. On September 19, 1995, United States Patent No. 5,451,110 entitled "Bearing Wear Indicator" was duly and legally issued. A copy of the '110 Patent is attached hereto as

Exhibit A. The '110 Patent discloses a design for a bearing that releases an indicator when it needs to be replaced. The release of an indicator is useful for identifying worn parts prior to the point of machine failure.

29. Metso is the owner by assignment of the entire right, title, and interest in the '110 Patent.

30. Metso has manufactured and sold in the U.S. and around the world bearings that incorporate the wear indicator design claimed in the '110 patent.

31. The inventions claimed in the '110 Patent represent unique, non-obvious improvements upon previous bearings.

32. There are no acceptable non-infringing alternatives to the inventions claimed in the '110 Patent.

33. Excel Foundry has made, used, offered for sale and sold in the U.S. products that infringe each and every claim of the '110 Patent, including a bearing with wear indicator using the same part number as the patented Metso bearing with wear indicator, Metso part number 17-303-538-501.

THE '681 PATENT

34. On June 14, 1988, United States Patent No. 4,750,681 entitled "Apparatus for High Performance Conical Crushing" was duly and legally issued. A copy of the '681 Patent is attached hereto as Exhibit B. The '681 Patent discloses a design for increasing the production of high powered, high speed conical crushers, including without limitation a design for the head assembly for the crushers. (The head assembly is the portion of the crusher that includes a conical crushing head, which performs the crushing action.)

35. Metso is the owner by assignment of the entire right, title, and interest in the '681 Patent.

36. Metso has manufactured and sold in the U.S. and around the world high performance conical crushers that incorporate the design claimed in the '681 Patent. It also sells head assemblies that incorporate key inventive elements of the patented design.

37. The inventions claimed in the '681 Patent represent unique, non-obvious improvements upon previous rock crushing machines.

38. There are no acceptable non-infringing alternatives to the inventions claimed in the '681 Patent.

39. The Excel Defendants have made, used, offered for sale and sold in the U.S. products that infringe each and every claim of the '681 Patent, including without limitation a head assembly that uses the same part number as the patented Metso head assembly, Metso part number 90058015, the XL 400 conical crusher, the Excel Defendants' copy of Metso's HP400, and upon information and belief the XL1100 conical crusher, the Excel Defendants' copy of the MP1000.

METSO'S CONFIDENTIAL, PROPRIETARY INFORMATION

40. Metso has confidential and proprietary information including without limitation detailed design drawings, part specifications, current inventory listings, customer and pricing information and strategic plans regarding design improvements.

41. Metso's confidential and proprietary information is subject to reasonable steps to maintain its secrecy including limiting its access to those employees who have a need for the information in executing their job duties.

42. Employees who have access to confidential and proprietary information have received periodic training on the company's policies regarding confidential and proprietary information.

43. Metso's engineering drawings are marked as confidential. For example, one of the drawings at issue in this case contains the following legend: "All information contained on this drawing is considered to be both confidential and proprietary by Metso Minerals (Milwaukee) Inc. no use or reproduction thereof may be made without the express written consent of Metso Minerals (Milwaukee) Inc."

METSO'S SECURED WEBSITE

44. Metso has a secured website that its authorized distributors can access remotely via Metso's computer systems.

45. Metso's secured website requires Metso's prior approval as well as a confidential and unique login and password to access.

46. Once logged on to Metso's secured website, an individual has access to Metso's Internet Order Entry (IOE) system and Metso's Technical Library. The site gives users access to Metso's current inventory, delivery dates for inventory, price quotes, detailed customer information including Metso products and parts purchased by customers, product information including specifications, change notice drawings and parts update drawings, as well as a variety of other confidential and proprietary information.

JOSEPH P. MARTINEZ

47. Joseph P. Martinez was employed by Metso until April 5, 2004.

48. Martinez occupied a position of trust within Metso because he was required to know and use Metso's confidential and propriety information as part of his job duties.

49. Martinez knew and acknowledged his agreement with Metso's policies regarding proprietary and confidential information and had a contractual obligation not to disclose or use Metso's proprietary, secret or confidential information.

50. On November 21, 1997, Martinez signed an employment application stating that in consideration for his employment he agreed, if employed, "not to disclose, except to authorized representatives of the Company, confidential information" obtained in the course of his employment. A copy of this application is attached hereto as Exhibit C.

51. On April 5, 2004, Martinez signed Metso's "Termination/Confidentiality Termination Agreement," in which he confirmed that he would "not disclose or use any proprietary, secret or confidential information" belonging to Metso. A copy of this agreement is attached hereto as Exhibit D.

52. Days before his April 5, 2004 departure from Metso, Martinez e-mailed to his home e-mail address e-mails with Metso's design drawings attached for Metso's MP800 crusher and a CAD file of design information for Metso's HP400 crusher. He also acquired before his departure from Metso a CAD file of design information for Metso's MP800 crusher and a CAD file of design information for Metso's MP1000 crusher. Upon information and belief, Martinez took or has acquired and misused other confidential information from Metso.

53. The design information Martinez took acquired or misused is secret, confidential and proprietary to Metso.

54. Martinez did not disclose to Metso that he retained possession of the HP400, MP800 or MP1000 design information or any other confidential Metso information. Instead, Martinez made fraudulent statements to Metso on April 5, 2004, to hide his retention of Metso's confidential information. Martinez falsely told Metso that before he left Metso's employ, he had

returned or would return to Metso all business or technical materials of a proprietary, secret or confidential nature.

55. Martinez did not deliver to Metso all business or technical materials of a proprietary, secret or confidential nature, but instead retained the information contained in the e-mails he had sent to his home as well as other confidential and proprietary information, including without limitation the CAD files for the MP800 and MP1000 crushers.

56. Metso relied in good faith on Martinez's statements only to learn later that Martinez had retained confidential information, which he then disclosed to the Excel Defendants.

57. The Excel Defendants have copied the very same Metso products about which Martinez had improperly retained Metso's confidential, proprietary information and have incorporated this copied information into their entire Raptor line of crushers, including the XL400, XL600/900 and XL1000 crushers and spare parts therefor.

CHERYL SULLIVAN

58. Cheryl Sullivan was employed by Metso until September 17, 2004.

59. Sullivan occupied a position of trust within Metso because she was required to know and use Metso's confidential and proprietary information as part of her job duties.

60. As part of Sullivan's job duties with Metso, Sullivan had access to the individual user names and passwords assigned to the employees of Metso's authorized distributors who had remote access to Metso's secured website.

61. On October 18, 1978, Sullivan signed an employment application in which she agreed not to disclose or use at any time information which is designated by her employer as confidential. A copy of this application is attached hereto as Exhibit E.

62. On September 15, 2004, Sullivan signed Metso's "Termination/Confidentiality Termination Agreement," in which she confirmed that she would "not disclose or use any proprietary, secret or confidential information" belonging to Metso. A copy of this agreement is attached hereto as Exhibit F.

63. Sullivan left Metso's employ to work for Excel Foundry. Prior to Sullivan's departure from Metso, she took steps to retain the login and password for at least one employee of Clark Machinery, a Metso authorized distributor.

64. Sullivan did not disclose to Metso that she retained possession of this information. Instead, Sullivan made fraudulent statements to Metso on September 15, 2004, to hide her retention of Metso's confidential information. Sullivan falsely told Metso that before she left Metso's employ, she had returned or would return to Metso "all reports, customer lists and all other business or technical materials of a proprietary, secret or confidential nature."

65. Sullivan did not deliver to Metso all business or technical materials of a proprietary, secret or confidential nature, but instead retained password and login information that would facilitate her and the Excel Defendants' unauthorized access to Metso's secured website. Upon information and belief, Sullivan retained, acquired or misused other confidential Metso information.

66. Metso relied in good faith on Sullivan's statements only to learn later that Sullivan had retained confidential information, which she then disclosed to the Excel Defendants.

67. While working at Excel Foundry, Cheryl Sullivan has wrongfully used Metso's confidential login and password information, in violation of her obligations to Metso, to access Metso's secured website. The Excel Defendants have misappropriated information from Metso's

secured website to, among other things, target Metso customers, determine the location of Metso products to facilitate their copying of Metso's line of crushers and crusher parts, and to unfairly quote prices and lead times in competition with Metso.

KENNETH OLSON

68. Kenneth Olson was employed by Metso until December 12, 2004.

69. Olson occupied a position of trust within Metso because he was required to know and use Metso's confidential and proprietary information as part of his job duties.

70. Olson knew and acknowledged his agreement with Metso's policies regarding proprietary and confidential information and had a contractual obligation not to disclose or use Metso's proprietary, secret or confidential information.

71. On April 28, 1995, Olson signed an employment application stating that in consideration for his employment he agreed, if employed, "not to disclose, except to authorized representatives of the Company, confidential information" obtained in the course of his employment. A copy of this application is attached hereto as Exhibit G.

72. On December 12, 2004, Olson signed Metso's "Termination/Confidentiality Termination Agreement," in which he confirmed that he would "not disclose or use any proprietary, secret or confidential information" belonging to Metso. A copy of this agreement is attached hereto as Exhibit H.

73. Before his December 12, 2004 departure from Metso, Olson acquired and kept for himself information that was confidential and proprietary to Metso, including without limitation design information for the MP1000. Upon information and belief, Olson took, acquired and misused other confidential information.

74. The MP1000 design information Olson took from Metso is secret, confidential and proprietary to Metso.

75. Olson did not disclose to Metso that he retained possession of the MP1000 design information or any other confidential Metso information. Instead, Olson made fraudulent statements to Metso on December 12, 2004, to hide his retention of Metso's confidential information. Olson falsely told Metso that before he left Metso's employ, he had returned or would return to Metso all business or technical materials of a proprietary, secret, or confidential nature.

76. Olson did not deliver to Metso all business or technical materials of a proprietary, secret or confidential nature, but instead retained the information he had retained concerning the MP1000 design as well as other confidential and proprietary information.

77. Metso relied in good faith on Olson's statement only to learn later that Olson had retained confidential information, which he then disclosed to the Excel Defendants.

78. The Excel Defendants have used the information taken by Olson from Metso to make the XL1100 crusher, a product that is substantially similar to the design of the MP1000, and spare parts therefor. Upon information and belief, the Excel Defendants have misappropriated other Metso confidential information obtained from Olson and other sources.

DOUGLAS PARSONS

79. Douglas Parsons is President and CEO of Defendant Excel Foundry and CEO of Defendant Excel.

80. Douglas Parsons knew or had reason to know that Defendants Martinez, Sullivan, and Olson had taken confidential and proprietary information from Metso to their new positions with the Excel Defendants, and that the Excel Defendants had misappropriated Metso's

confidential design information from Angus Industries, a former Metso distributor, vendor and authorized repair facility. Upon information and belief, Douglas Parsons knew or had reason to know that the Excel Defendants had misappropriated confidential Metso information from other sources. Douglas Parsons actively encouraged the acquisition and use of such confidential information for the benefit of the Excel Defendants and for his own personal benefit.

RICHARD PARSONS

81. Richard Parsons is Executive Vice President of Defendant Excel Foundry and participates in the management of Defendant Excel.

82. Richard Parsons knew or had reason to know that Defendants Martinez, Sullivan, and Olson had taken confidential and proprietary information from Metso to their new positions with the Excel Defendants, and that the Excel Defendants had misappropriated Metso's confidential design information from Angus Industries, a former Metso distributor, vendor and authorized repair facility. Upon information and belief, Richard Parsons knew or had reason to know that the Excel Defendants misappropriated confidential Metso information from other sources. Richard Parsons actively encouraged the acquisition and use of such confidential information for the benefit of the Excel Defendants and for his own personal benefit.

CHRISTOPHER WADE

83. Christopher Wade is a current Excel employee who was formerly employed by Angus Industries, a former Metso vendor, distributor, and authorized repair facility.

84. In early 2001, Angus Industries closed its business, which had included being a Metso vendor, distributor, and authorized repair facility. As a result, in or about February 2001, Metso sent Andrew Bartram, then a Metso employee, to Angus Industries to collect all of the

confidential and proprietary information owned by Metso and held by Angus Industries in its capacity as a Metso distributor, vendor or authorized repair facility.

85. When Bartram arrived to collect Metso's confidential and proprietary information, he informed Wade that he was required to return any Metso property in his possession. Upon information and belief, Wade represented that he would return Metso's property.

86. Contrary to Bartram's instructions, Wade secretly acquired and kept for himself information that was proprietary to Metso, including without limitation detailed design drawings and technical data sheets containing dimensions and tolerances for Metso's HP and MP crusher lines.

87. Because of the instructions given to him by Bartram, Wade knew or had reason to know that the confidential and proprietary Metso information held by Angus Industries was the property of Metso, that he should not have taken any of it, and that he should have returned the information to Metso.

88. The Excel Defendants have used the information taken by Wade to, among other things, make the XL crusher line. Upon information and belief, the Excel Defendants have misappropriated other confidential information obtained from Wade and other sources.

EXCEL FOUNDRY'S UNAUTHORIZED ACCESS OF METSO'S SECURED WEBSITE

89. On October 4, 2004, Excel Foundry used Metso's confidential login and password information to gain unauthorized access to Metso's secured website.

90. Excel Foundry was not authorized to use Metso's login and password information.

91. Over the next month, Excel Foundry continued to regularly access Metso's secured website.

92. Forensic computer analysis has revealed that Excel Foundry accessed Metso's secured website every weekday from October 4, 2004 to November 3, 2004, except for November 1, 2004.

EXCEL DEFENDANTS' ADMITTED COPYING OF METSO'S PRODUCTS

93. The Excel Defendants have admitted copying at least one of Metso's patented products, the HP400 conical crusher.

94. The Excel Defendants used this copied technology to produce Excel's Raptor XL400.

95. The Excel Defendants produce an entire line of Raptor conical crushers, including the XL400, XL600/900 and XL1100, and spare parts therefor, all of which incorporate technology that the Excel Defendants copied from Metso using Metso's confidential information.

96. The Excel Defendants' Raptor line competes directly with Metso's line of conical crushers.

97. Excel Foundry has also admitted copying at least one of Metso's patented products, the bearing wear indicator that is the subject of the '110 Patent.

98. Excel Foundry used information illegally obtained from former Metso employees and, upon information and belief, from other sources to aid in this copying.

METSO'S TRADEMARKS

99. Metso is the owner of U.S. Trademark Registration Nos. 0564234 and 1705758, issued September 23, 1952 and August 4, 1992, for SYMONS for crushing machinery for use in crushing coal, stone, cement, or gravel and for parts for the above-identified equipment.

100. Registration Nos. 0564234 and 1705758 are valid, subsisting, and have both acquired incontestable status under 15 U.S.C. § 1065.

101. Metso is the owner of U.S. Trademark Registration Nos. 0971139 and 2879502, issued December 16, 1970 and August 31, 2004, for NORDBERG for mining equipment, namely, power operated ore crushing dies stamps, crushing rolls, rock, ore and gravel crushers, namely jaw crushers, gyratory crushers, conical crushers, and impact crushers, gyratory fine grinders, and component parts for the foregoing machines.

102. Registration Nos. 0971139 and 2879502 are valid, subsisting, and Registration No. 0971139 has acquired incontestable status under 15 U.S.C. § 1065.

103. Metso is the owner of U.S. Trademark Registration No. 1914518, issued August 29, 1995, for SVEDALA for components for pyro processing kilns.

104. Registration No. 1914518 is valid and subsisting and has acquired incontestable status under 15 U.S.C. § 1065.

105. Metso has invested substantial time, effort and money in developing Metso's name and the good will associated with the trademarks it owns. It has used its trademarks consistently in its marketing, corporate documents, and other contacts with the relevant consuming public. As a result, the marks and Metso's trade name are of enormous value to Metso.

106. Metso's trade name and its registered trademarks are entitled to immediate and strong protection from unfair competition, infringement and injury.

Count One
(Against Excel Foundry)
CLAIM FOR DIRECT INFRINGEMENT OF THE '110 PATENT

107. Metso realleges and incorporates by reference as if fully set forth herein the allegations contained in paragraphs 1 through 33.

108. Excel Foundry has directly infringed one or more claims of the '110 Patent by making, using, selling, offering for sale in the United States, or importing into the United States a wear indicator bearing and/or a bearing assembly comprising a wear indicator bearing that infringes one or more of the claims of the '110 Patent.

109. Excel Foundry's direct infringement has been intentional, willful, and in reckless disregard of Metso's rights.

110. Excel Foundry has caused Metso substantial injury, including lost profits, for which Metso is entitled to damages adequate to compensate it for the infringement.

111. Excel Foundry's direct infringement warrants the assessment of increased damages pursuant to 35 U.S.C. § 284, and an award of attorney fees pursuant to 35 U.S.C. § 285.

Count Two
(Against Excel Foundry)
CLAIM FOR CONTRIBUTORY INFRINGEMENT OF THE '110 PATENT

112. Metso realleges and incorporates by reference as if fully set forth herein the allegations contained in paragraphs 1 through 33 and 107 through 112.

113. Excel Foundry has made, sold, imported or offered for sale in the United States component parts for use in bearing assemblies.

114. Excel Foundry's bearing assembly parts were especially made, or especially adapted, for use in a bearing assembly that falls within the claim language of one or more claims of the '110 Patent.

115. Excel Foundry knew that combining its bearing assembly parts with the other components for which these parts were specially designed would result in a combination of elements that infringes the '110 Patent.

116. Excel Foundry's actions constitute contributory infringement under 35 U.S.C. § 271(c).

117. Excel Foundry's contributory infringement has been intentional, willful, and with a reckless disregard for the rights of Metso.

118. Excel Foundry has caused Metso substantial injury, including lost profits, for which Metso is entitled to damages adequate to compensate it for Excel Foundry's contributory infringement.

119. Excel Foundry's contributory infringement warrants the assessment of increased damages pursuant to 35 U.S.C. § 284, and an award of attorney fees pursuant to 35 U.S.C. § 285.

Count Three
(Against Excel and Excel Foundry)
CLAIM FOR DIRECT INFRINGEMENT OF THE '681 PATENT

120. Metso realleges and incorporates by reference as if fully set forth herein the allegations contained in paragraphs 1 through 39.

121. The Excel Defendants have directly infringed one or more claims of the '681 Patent by making, using, selling, offering for sale in the United States, or importing into the United States an apparatus for high performance conical crushing that infringes one or more of the claims of the '681 Patent.

122. The Excel Defendants' infringement has been the result of direct copying of Metso's patented HP400 conical crusher.

123. The Excel Defendants' infringement has been intentional, willful, and in reckless disregard for the rights of Metso.

124. The Excel Defendants have caused Metso substantial injury, including lost profits, for which Metso is entitled to damages adequate to compensate it for the infringement.

125. The Excel Defendants' direct infringement warrants the assessment of increased damages pursuant to 35 U.S.C. § 284, and an award of attorney fees pursuant to 35 U.S.C. § 285.

Count Four
(Against Excel and Excel Foundry)
CLAIM FOR CONTRIBUTORY INFRINGEMENT OF THE '681 PATENT

126. Metso realleges and incorporates by reference as if fully set forth herein the allegations contained in paragraphs 1 through 39 and 120 through 125.

127. The Excel Defendants have made, sold, imported or offered for sale in the United States an upper head bushing for use in a conical crushing apparatus.

128. The Excel Defendants' upper head bushing was especially made, or especially adapted, for use in an apparatus for high performance conical crushing that is within one or more claims of the '681 Patent.

129. The Excel Defendants knew that combining their upper head bushing with the other components of a high performance conical crusher, for which this bushing was specially designed, would result in a combination of elements that infringes the '681 Patent.

130. The Excel Defendants' actions constitute contributory infringement under 35 U.S.C. § 271(c).

131. The Excel Defendants' contributory infringement has been intentional, willful, and with a reckless disregard for the rights of Metso.

132. The Excel Defendants have caused Metso substantial injury, including lost profits, for which Metso is entitled to damages adequate to compensate it for the Excel Defendants' contributory infringement.

133. The Excel Defendants' contributory infringement warrants the assessment of increased damages pursuant to 35 U.S.C. § 284, and an award of attorney fees pursuant to 35 U.S.C. § 285.

Count Five
(Against Excel and Excel Foundry)
TRADEMARK INFRINGEMENT

134. Metso realleges and incorporates by reference as if fully set forth herein the allegations contained in paragraphs 1 through 27 and 99 through 106.

135. The Excel Defendants have used the Metso trade name and Metso's registered trademarks to give the relevant consuming public the false impression that they are authorized repair facilities, "partners" and/or authorized distributors of Metso products and parts.

136. The Excel Defendants are not authorized and have never been authorized by Metso to use its trademarks or trade name, act as a regional repair facility for Metso products, or make, sell, or supply its machines or parts for the products bearing the Metso trademarks.

137. The use of Metso's trademarks by the Excel Defendants is likely to cause confusion or mistake or to deceive customers into falsely believing that Metso has approved of or sponsored parts and machines made by the Excel Defendants as well as services provided by Excel or Excel Foundry, all in violation of 15 U.S.C. § 1125, 15 U.S.C. § 1114, Wis. Stat. § 100.18, and the common law.

138. The Excel Defendants' actions were and are continuing to be done intentionally, willfully, and with a reckless disregard for Metso's rights.

139. The Excel Defendants' actions have unjustly damaged Metso's trademarks, Metso's business reputation and the goodwill associated with Metso's trademarks.

140. The Excel Defendants' actions have unjustly enriched Excel.

141. The Excel Defendants' actions are causing irreparable injury to Metso for which there is no adequate remedy at law.

142. The Excel Defendants' actions constitute willful trademark infringement entitling Metso to the remedies set forth in 15 U.S.C. § 1117 and 15 U.S.C. § 1118.

Count Six
(Against Joseph P. Martinez and Kenneth L. Olson)
ACQUIRING METSO'S TRADE SECRETS IN VIOLATION OF WIS. STAT. § 134.90

143. Metso realleges and incorporates by reference as if fully set forth herein the allegations contained in paragraphs 1 through 142.

144. The confidential and proprietary information that Metso disclosed to Martinez and Olson while they were employed by Metso constituted trade secrets as that term is defined by Wis. Stat. § 134.90(1)(c).

145. Martinez and Olson acquired access to Metso's confidential and proprietary information under circumstances giving rise to a duty to maintain the secrecy of or limit the use of the information acquired.

146. Martinez and Olson exceeded their authorized access by, among other things, accessing confidential Metso design information while still Metso employees and taking steps to acquire and retain such information for use after their employment terminated.

147. Martinez's and Olson's actions constitute improper acquisition of trade secrets in violation of Wis. Stat. § 134.90(2)(a).

148. Metso is entitled to compensatory damages and injunctive relief pursuant to Wis. Stat. § 134.90.

149. Martinez and Olson willfully acquired Metso's trade secrets, entitling Metso to punitive damages and its actual attorney fees pursuant to Wis. Stat. § 134.90(4)(b) and (c).

Count Seven
(Against Joseph P. Martinez and Kenneth Olson)
DISCLOSING METSO'S TRADE SECRETS IN VIOLATION OF WIS. STAT. § 134.90

150. Metso realleges and incorporates by reference as if fully set forth herein the allegations contained in paragraphs 1 through 149.

151. Martinez and Olson willfully disclosed Metso's trade secret, confidential and proprietary information to the Excel Defendants.

152. At the time of Martinez's and Olson's disclosure to the Excel Defendants, they knew or should have known that they had a duty to maintain the secrecy of the information they disclosed.

153. Martinez's and Olson's actions constitute improper disclosure of trade secrets in violation of Wis. Stat. § 134.90(2)(b).

154. Metso is entitled to compensatory damages and injunctive relief pursuant to Wis. Stat. § 134.90.

155. Martinez and Olson willfully disclosed Metso's trade secrets to the Excel Defendants, entitling Metso to punitive damages and its actual attorney fees pursuant to Wis. Stat. § 134.90(4)(b) and (c).

Count Eight
(Against Joseph P. Martinez and Kenneth L. Olson)
USING METSO'S TRADE SECRETS IN VIOLATION OF WIS. STAT. § 134.90

156. Metso realleges and incorporates by reference as if fully set forth herein the allegations contained in paragraphs 1 through 155.

157. Martinez and Olson have used, and continue to use, Metso's trade secret, confidential and proprietary information for their personal benefit.

158. Martinez's and Olson's use was and has been willful and has caused and continues to cause actual damage to Metso.

159. Martinez's and Olson's actions constitute misuse of trade secrets in violation of Wis. Stat. § 134.90(2)(b).

160. Metso is entitled to compensatory damages and injunctive relief pursuant to Wis. Stat. § 134.90(3).

161. Martinez and Olson have willfully misused Metso's trade secrets, entitling Metso to punitive damages and its actual attorney fees pursuant to Wis. Stat. § 134.90(4)(b) and (c).

Count Nine
(Against Excel, Excel Foundry, Douglas Parsons and Richard Parsons)
ACQUIRING TRADE SECRETS IN VIOLATION OF WIS. STAT. § 134.90

162. Metso realleges and incorporates by reference as if fully set forth herein the allegations contained in paragraphs 1 through 161.

163. The Excel Defendants were able to copy Metso's products by acquiring Metso's trade secrets disclosed to the Excel Defendants by one or more former Metso employees, by Angus Industries or, upon information and belief, by other sources who acquired the information under circumstances giving rise to a duty to maintain the information's secrecy.

164. The confidential Metso information acquired by the Excel Defendants derived independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who stood to financially benefit from its disclosure or use.

165. The confidential Metso information acquired by the Excel Defendants constitutes trade secrets as that term is defined by Wis. Stat. § 134.90(1)(c).

166. The Excel Defendants, through the president of Excel and former Metso employee, Gary Beerkircher, have first hand knowledge of Metso's policies regarding Metso's trade secret, confidential and proprietary information.

167. At the time the Excel Defendants acquired the confidential Metso information, the Excel Defendants, Douglas Parsons and Richard Parsons knew or had reason to know that Metso employees have a duty to maintain the secrecy of such information during and after their employment by Metso, or that the confidential Metso information had been acquired from other sources under circumstances giving rise to a duty to maintain the information's secrecy.

168. The Excel Defendants acquired Metso's trade secrets through improper means.

169. The Excel Defendants' acquisition of Metso's confidential information was willful.

170. The actions of the Excel Defendants, Douglas Parsons and Richard Parsons constitute improper acquisition of trade secrets in violation of Wis. Stat. § 134.90(2)(a).

171. Metso is entitled to compensatory damages and injunctive relief pursuant to Wis. Stat. § 134.90.

172. The conduct of the Excel Defendants, Douglas Parsons and Richard Parsons was willful, entitling Metso to punitive damages and its actual attorney fees pursuant to Wis. Stat. § 134.90(4)(b) and (c).

Count Ten
(Against Excel, Excel Foundry, Douglas Parsons and Richard Parsons)
USING TRADE SECRETS IN VIOLATION OF WIS. STAT. § 134.90

173. Metso realleges and incorporates by reference as if fully set forth herein the allegations contained in paragraphs 1 through 172.

174. With the encouragement and under the direction of Douglas Parsons and Richard Parsons, the Excel Defendants used Metso's trade secrets, confidential and proprietary information to make copies of Metso's products.

175. At the time of such use, the Excel Defendants, Douglas Parsons and Richard Parsons knew, or had reason to know, that they had acquired the information from one or more former Metso employees or other sources who owed a duty to Metso to maintain the secrecy or limit the use of the information.

176. The actions of the Excel Defendants, Douglas Parsons and Richard Parsons constitute misuse of trade secrets in violation of Wis. Stat. § 134.90(2)(b).

177. Metso is entitled to compensatory damages and injunctive relief pursuant to Wis. Stat. § 134.90.

178. The conduct of the Excel Defendants, Douglas Parsons and Richard Parsons was willful, entitling Metso to punitive damages and its actual attorney fees pursuant to Wis. Stat. § 134.90(4)(b) and (c).

Count Eleven
(Against Joseph P. Martinez)
BREACH OF CONTRACT

179. Metso realleges and incorporates by reference as if fully set forth herein the allegations contained in paragraphs 1 through 178.

180. Martinez has a contractual obligation to Metso, as a former Metso employee, not to disclose or use Metso's proprietary, secret or confidential information.

181. Martinez breached his contractual obligation to Metso by failing to deliver to Metso all reports, customer lists and all other business or technical materials of a proprietary, secret or confidential nature owned by or originated at Metso that were in his possession or under his control as of the termination of his employment.

182. Martinez further breached his contractual obligation to Metso by disclosing proprietary, secret or confidential information to the Excel Defendants.

183. As a result of Martinez's breaches, Metso has suffered damages.

Count Twelve
(Against Cheryl Sullivan)
BREACH OF CONTRACT

184. Metso realleges and incorporates by reference as if fully set forth herein the allegations contained in paragraphs 1 through 183.

185. Sullivan has a contractual obligation to Metso, as a former Metso employee, not to disclose or use Metso's proprietary, secret or confidential information.

186. Sullivan breached her contractual obligation to Metso by failing to deliver to Metso all reports, customer lists and passwords, login information and all other business or technical materials of a proprietary, secret or confidential nature owned by or originated at Metso that were in her possession or under her control as of the termination of her employment.

187. Sullivan further breached her contractual obligation to Metso by using, or allowing others to use, login and password information to access Metso's secured website containing confidential inventory, pricing, and product information, including specifications and drawings not available to the public.

188. As a result of Sullivan's breaches, Metso has suffered damage.

Count Thirteen
(Against Cheryl Sullivan and Excel Foundry)
BREACH OF CONTRACT

189. Metso realleges and incorporates by reference as if fully set forth herein the allegations contained in paragraphs 1 through 188.

190. Before access is granted to Metso's secured website, users must acknowledge the truth of the statement "I have read and accept the Standard Terms & Conditions and Web Site Terms & Conditions listed by the hot links below."

191. The button that a user must click before accessing Metso's secured website states "Yes, I Accept," in reference to the website's terms and conditions.

192. The Web Site Terms and Conditions of Use state that the "Site and related services are provided subject to your compliance with the terms and conditions set forth below" and that the site is to be used "solely for evaluating Metso Minerals products for the purposes of making potential purchases and not to use the Site to obtain materials, data, or information for purposes of competitive advantage."

193. By clicking on the "Yes, I Accept Button" and accessing Metso's secured website, Sullivan formed a contractual obligation with Metso not to use the site to obtain materials, data, or information for purposes of competitive advantage.

194. While acting within the scope of her employment by Excel Foundry, Sullivan repeatedly clicked the “Yes, I Accept Button” and accessed Metso’s secured website from a computer within Excel Foundry.

195. Sullivan and Excel Foundry used the information on Metso’s secured website to give Excel Foundry a competitive advantage.

196. Sullivan and Excel Foundry thereby breached the web site terms and conditions of use.

197. Metso was harmed as a result of their breach.

198. Metso is entitled to costs and attorneys fees related to the enforcement of the website’s terms and conditions, as stated in the contract.

Count Fourteen
(Against Joseph P. Martinez)
FRAUD

199. Metso realleges and incorporates by reference as if fully set forth herein the allegations contained in paragraphs 1 through 198.

200. On April 5, 2004, Martinez stated that he had delivered or would deliver to Metso all reports, customer lists and all other business or technical materials of a proprietary, secret or confidential nature owned by or originated at Metso that were in his possession or under his control.

201. The statements Martinez made on April 5, 2004, to Metso were false.

202. Martinez made the statements on April 5, 2004, knowing that they were untrue, but made them to conceal his retention of Metso’s confidential, proprietary and trade secret information.

203. Metso detrimentally relied on Martinez’s false statements.

204. Metso has been damaged by Martinez's misrepresentations.

Count Fifteen
(Against Cheryl Sullivan)
FRAUD

205. Metso realleges and incorporates by reference as if fully set forth herein the allegations contained in paragraphs 1 through 204.

206. On September 15, 2004, Sullivan told Metso that she had delivered, or would deliver, to Metso all reports, customer lists and all other business or technical materials of proprietary, secret or confidential nature owned by or originated at Metso that were in her possession or under her control.

207. The statements Sullivan made on September 15, 2004 were false.

208. Sullivan retained Metso's confidential login and password information after September 15, 2004.

209. Sullivan made the statements on September 15, 2004, knowing that they were untrue, but made them to conceal her retention of Metso's confidential, proprietary and trade secret information.

210. Because of Sullivan's statements, Metso did not know that she had retained distributor login and password information and therefore continued to use the same distributor login and password information after she left the company.

211. Metso detrimentally relied on Sullivan's false statements.

212. Metso has been damaged by Sullivan's misrepresentations.

Count Sixteen
(Against Cheryl Sullivan)
FRAUD

213. Metso realleges and incorporates by reference as if fully set forth herein the allegations contained in paragraphs 1 through 212.

214. Sullivan used Metso's login and password information to access Metso's secured website every weekday from October 4, 2004 to November 3, 2004, with the exception of November 1, 2004.

215. By using Metso's login and password information, Sullivan made repeated, affirmative representations that she was an employee of Clark Machinery.

216. Sullivan was not a Clark Machinery employee or acting on behalf of Clark Machinery.

217. Sullivan represented herself as Clark Machinery, knowing that she was not.

218. Sullivan represented herself as Clark Machinery with the intent to defraud Metso into giving her access to Metso's secured website.

219. Metso relied on Sullivan's false representations which allowed her to access Metso's secured website.

220. Metso has been damaged by Sullivan's misrepresentations.

Count Seventeen
(Against Excel Foundry)
FRAUD

221. Metso realleges and incorporates by reference as if fully set forth herein the allegations contained in paragraphs 1 through 220.

222. Sullivan is employed by Excel Foundry as the Manager of the Customer Support Department.

223. Excel Foundry controls the computer and IP address used by Sullivan to access the internet during regular business hours.

224. Sullivan repeatedly accessed Metso's secured website during regular business hours from an IP address associated with Excel Foundry.

225. Sullivan was acting within the scope of her employment when she repeatedly accessed Metso's secured website.

226. Excel Foundry is liable for and benefited from Sullivan's intentional misrepresentations set forth above that allowed access to Metso's secured website.

Count Eighteen
(Against Joseph P. Martinez and Kenneth L. Olson)
BREACH OF DUTY OF LOYALTY

227. Metso realleges and incorporates by reference as if fully set forth herein the allegations contained in paragraphs 1 through 226.

228. Martinez and Olson owed Metso a duty of loyalty.

229. The duty of loyalty Martinez and Olson owed to Metso encompassed within it a duty of confidentiality and a duty of candor.

230. Martinez and Olson breached their duty of loyalty by misrepresenting to Metso that they had delivered or would promptly deliver all reports, customer lists and all other business or technical materials of a proprietary, secret or confidential nature owned by or originated at Metso which were in their possession or under their control as of the termination of their employment.

231. Martinez and Olson further breached their duty of loyalty to Metso by using and disclosing to the Excel Defendants Metso's confidential and proprietary information.

232. Martinez's and Olson's use and disclosure of Metso's confidential and proprietary information was done for their benefit and to the detriment of Metso.

233. Martinez's and Olson's retention, use and disclosure of Metso's confidential and proprietary information were done without Metso's knowledge, permission or consent.

234. As a result of Martinez's and Olson's breach of their duties of loyalty, confidentiality and candor, Metso has suffered damages.

Count Nineteen
(Against Cheryl Sullivan and Excel Foundry)
UNAUTHORIZED USE OF AN ENTITY'S IDENTIFYING INFORMATION OR
DOCUMENTS IN VIOLATION OF WIS. STAT. § 895.446 PER § 943.203

235. Metso realleges and incorporates by reference as if fully set forth herein the allegations contained in paragraphs 1 through 234.

236. Clark Machinery is an entity as defined by Wis. Stat. § 943.203(1)(a).

237. Metso's secured website uses a unique login and password to identify entities with access to the website.

238. Clark Machinery's login and password for accessing the Metso secured website are identifying information within the meaning of Wis. Stat. § 943.203(1)(c).

239. Sullivan used Clark Machinery's login and password to access Metso's secured website from a computer controlled by Excel Foundry.

240. Sullivan's use of Clark Machinery's login and password information was intentional and was without Metso's authorization.

241. Metso suffered damage as a result of Sullivan's unauthorized use of Clark Machinery's identifying information and subsequent access to confidential and sensitive business information, including current inventories, delivery dates and detailed product information.

242. As a result of this damage, Metso is entitled to actual damages, all costs of the investigation and litigation as well as exemplary damages as allowed pursuant to Wis. Stat. § 895.446.

243. Sullivan and any other Excel Foundry employees who used Clark Machinery's login and password to access Metso's secured website acted within the scope of their employment so Excel Foundry is vicariously liable for its employees' use of Clark Machinery's identifying information in violation of Wis. Stat. § 895.446.

Count Twenty
(Against Joseph P. Martinez)
VIOLATION OF WIS. STAT. § 943.70 COMPUTER CRIMES

244. Metso realleges and incorporates by reference as if fully set forth herein the allegations contained in paragraphs 1 through 243.

245. By sending e-mails with design drawings attached to his home e-mail Martinez copied and took possession of data and supporting documents.

246. Martinez was not authorized to copy or take possession of such information.

247. Metso was damaged by Martinez's unauthorized possession of such information.

248. Martinez's actions constitute a violation of Wisconsin's computer crimes statute, Wis. Stat. § 943.70. As a result of this violation, Metso is entitled to relief preventing the defendants from further use of the information that was unlawfully accessed and such other remedies as are allowed by law.

Count Twenty-One
(Against Cheryl Sullivan and Excel Foundry)
VIOLATION OF WIS. STAT. § 943.70 COMPUTER CRIMES

249. Metso realleges and incorporates by reference as if fully set forth herein the allegations contained in paragraphs 1 through 248.

250. By using Metso's login and password to identify herself as an employee of Clark Machinery, Sullivan accessed data, computer programs and/or supporting documentation while acting within the scope of her employment with Excel Foundry.

251. Sullivan's access to this information was not authorized.

252. Sullivan's actions constitute a violation of Wisconsin's computer crimes statute, Wis. Stat. § 943.70, and Excel Foundry is also liable for its employee's unauthorized access to this information in violation of Wis. Stat. § 943.70.

253. Metso was damaged by Sullivan's unauthorized access to this information.

254. As a result of this violation, Metso is entitled to relief preventing the defendants from further use of the information that was unlawfully accessed and such other remedies as are allowed by law.

**Count Twenty-Two
(Against Sullivan and Excel Foundry)
TRESPASS TO CHATTELS**

255. Metso realleges and incorporates by reference as if fully set forth herein the allegations contained in paragraphs 1 through 254.

256. Sullivan, while acting within the scope of her employment with Excel Foundry, repeatedly accessed Metso's secured website from October 2004 to November 2004. This access was unauthorized.

257. This repeated access diminished the quality and value of Metso's secured website.

258. Excel Foundry benefited from Sullivan's misconduct and is liable for her unauthorized access and repeated trespass.

Count Twenty-Three
(Against Martinez, Sullivan, Olson, Wade, and the Excel Defendants)
CONVERSION OF BUSINESS INFORMATION

259. Metso realleges and incorporates by reference as if fully set forth herein the allegations contained in paragraphs 1 through 258.

260. Sullivan has wrongfully converted Metso's confidential and proprietary information by accessing Metso's secured website without authorization and using the information to her benefit and the benefit of her employer.

261. At all relevant times, the information on Metso's secured website, including without limitation the location of customers owning Metso parts and products, current inventory listings, product pricing, delivery dates, and product specifications, was Metso's property that Sullivan did not have authorization to use after her employment with Metso ended.

262. Martinez and Olson have wrongfully converted Metso's confidential and proprietary information by acquiring for themselves Metso's design information for Metso's MP and HP crushers and using the information for their benefit and the benefit of their employers.

263. At all relevant times, the Metso MP and HP crusher design information accessed and retained by Olson and Martinez was Metso's property that Olson and Martinez did not have authorization to use after their employment with Metso ended.

264. Wade has wrongfully converted Metso's confidential and proprietary information by acquiring for himself Metso's confidential and proprietary design information and using the information for his benefit and the benefit of his employers.

265. At all relevant times, the confidential and proprietary design information accessed and retained by Wade was Metso's property that Wade did not have authorization to use after Angus Industries lost its status as a Metso vendor, distributor, and authorized repair facility.

266. Metso has been damaged and continues to be damaged by Sullivan's, Martinez's Olson's, and Wade's wrongful conversion.

267. The Excel Defendants benefited from and are liable for Sullivan's, Martinez's, Olson's, and Wade's conversion.

Count Twenty-Four
(Against the Excel Defendants, Douglas Parsons and Richard Parsons)
UNFAIR COMPETITION

268. Metso realleges and incorporates by reference as if fully set forth herein the allegations contained in paragraphs 1 through 267.

269. The Excel Defendants, Douglas Parsons and Richard Parsons have engaged in unfair competition by misappropriating Metso's confidential and proprietary information and by using this information to copy Metso's products, undercut Metso's prices, undercut Metso's delivery times and interfere in Metso's relationship with its distributors and customers, causing Metso to lose sales and reduce its prices.

270. The Excel Defendants, Douglas Parsons and Richard Parsons have competed unfairly by recruiting Metso employees to perform for Excel the same functions that they performed for Metso, with the purpose of misappropriating and using Metso's confidential, proprietary and trade secret information to copy its products and compete directly with Metso.

271. The Excel Defendants, Douglas Parsons and Richard Parsons have competed unfairly by using information obtained through the unauthorized access of Metso's secured website.

272. The Excel Defendants have competed unfairly by using Metso's name and trademarks to promote their products and services.

273. The use of Metso's trade name and trademarks in connection with references to design and other services being performed by former Metso employees has created a false and misleading association in the mind of consumers between the Excel Defendants and Metso.

274. The Excel Defendants have competed unfairly, in violation of 15 U.S.C. § 1125 and Section 100.18, Wis. Stats. and the common law by falsely claiming that certain of their products are made in the U.S.A.

275. The unfair competition by the Excel Defendants, Douglas Parsons and Richard Parsons has caused and continues to cause actual damages and irreparable harm to Metso.

Claim Twenty-Five
(Against Excel, Excel Foundry, Douglas Parsons and Richard Parsons)
UNJUST ENRICHMENT

276. Metso realleges and incorporates by reference as if fully set forth herein the allegations contained in paragraphs 1 through 275.

277. Metso spent significant time, energy and money developing the secured website as well as the other confidential and proprietary information that was misappropriated and used by the Excel Defendants, Douglas Parsons and Richard Parsons.

278. The Excel Defendants, Douglas Parsons and Richard Parsons took active steps to acquire and use confidential information from Metso's current and former employees and other sources and actively recruited Metso employees to fill comparable positions in their companies to benefit from the unlawful and unauthorized disclosure of Metso's confidential and proprietary information.

279. At the time the information was disclosed and used by the Excel Defendants, Douglas Parsons and Richard Parsons, these defendants knew or had reason to know that such information belonged to Metso.

280. By acquiring and using Metso's confidential and proprietary information, the Excel Defendants, Douglas Parsons and Richard Parsons benefited financially.

281. The Excel Defendants, Douglas Parsons and Richard Parsons have been unjustly enriched, and Metso has suffered damage as a result of their use of Metso's confidential and proprietary information.

Count Twenty-Six
(Against the Excel Defendants, Douglas Parsons and Richard Parsons)
TORTIOUS INTERFERENCE WITH CONTRACT

282. Metso realleges and incorporates by reference as if fully set forth herein the allegations contained in paragraphs 1 through 281.

283. Metso has enforceable contracts with its former employees and others, including without limitation Joseph Martinez, Cheryl Sullivan, and Kenneth Olson, requiring them not to disclose Metso's confidential, proprietary or secret information.

284. The Excel Defendants, Excel's President Gary Beerkircher, Douglas Parsons and Richard Parsons are aware of the agreements Metso has with its former employees and others requiring them not to disclose confidential, proprietary or secret information.

285. The Excel Defendants, Douglas Parsons and Richard Parsons intentionally interfered with Metso's agreements by encouraging former Metso employees and others to acquire and disclose confidential, secret and proprietary information.

286. As a direct result of this interference and the resulting disclosures, Metso has suffered damage.

287. The Excel Defendants, Douglas Parsons and Richard Parsons are not justified or privileged to interfere with the contracts Metso has requiring that Metso's confidential, secret or proprietary information be kept confidential.

Count Twenty-Seven
(Against Kenneth L. Olson)
BREACH OF CONTRACT

288. Metso realleges and incorporates by reference as if fully set forth herein the allegations contained in paragraphs 1 through 287.

289. Olson has a contractual obligation to Metso, as a former Metso employee, not to disclose or use Metso's proprietary, secret or confidential information.

290. Olson breached his contractual obligation to Metso by failing to deliver to Metso all reports, customer lists and other business or technical materials of a proprietary, secret or confidential nature owned by or originated at Metso that were in his possession or under his control as of the termination of his employment.

291. Olson further breached his contractual obligation to Metso by disclosing proprietary, secret or confidential information to the Excel Defendants.

292. As a result of Olson's breaches, Metso has suffered damages.

Count Twenty-Eight
(Against Kenneth L. Olson)
FRAUD

293. Metso realleges and incorporates by reference as fully set forth herein the allegations contained in paragraphs 1 through 292.

294. On December 8, 2004, Olson stated that he had delivered or would deliver to Metso all reports, customer lists and all other business or technical materials of a proprietary, secret or confidential nature owned by or originating at Metso that were in his possession or under his control.

295. The statements Olson made on December 8, 2004 to Metso were false.

296. Olson made the statements on December 8, 2004, knowing that they were untrue, but made them to conceal his retention of Metso's confidential, proprietary and trade secret information.

297. Metso detrimentally relied on Olson's false statements.

298. Metso has been damaged by Olson's misrepresentations.

**County Twenty-Nine
(Against Christopher P. Wade)
ACQUIRING METSO'S TRADE SECRETS IN VIOLATION OF WIS. STAT. § 134.90**

299. Metso realleges and incorporates by reference as if fully set forth herein the allegations contained in paragraphs 1 through 298.

300. The confidential and proprietary information that Metso disclosed to Angus Industries, a former Metso vendor, distributor, and authorized repair facility, constituted trade secrets as that term is defined by Wis. Stat. § 134.90(1)(c).

301. Wade acquired access to Metso's confidential and proprietary information under circumstances giving rise to a duty to maintain the secrecy of or limit the use of the information acquired.

302. Wade exceeded his authorized access by, among other things, accessing confidential Metso design information while still employed by Angus Industries and taking steps to acquire and retain such information for use after he knew or should have known that Metso's confidential and proprietary information should have been returned to Metso, as Bartram had instructed.

303. Wade's actions constitute improper acquisition of trade secrets in violation of Wis. Stat. § 134.90(2)(a).

304. Metso is entitled to compensatory damages and injunctive relief pursuant to Wis. Stat. § 134.90.

305. Wade willfully acquired Metso's trade secrets, entitling Metso to punitive damages and its actual attorney fees pursuant to Wis. Stat. § 134.90(4)(b) and (c).

Count Thirty
(Against Christopher P. Wade)
DISCLOSING METSO'S TRADE SECRETS IN VIOLATION OF WIS. STAT. § 134.90

306. Metso realleges and incorporates by reference as if fully set forth herein the allegations contained in paragraphs 1 through 305.

307. Wade willfully disclosed Metso's trade secret, confidential and proprietary information to the Excel Defendants.

308. At the time of Wade's disclosure to the Excel Defendants, he knew or should have known that he had a duty to maintain the secrecy of the information he disclosed.

309. Wade's actions constitute improper disclosure of trade secrets in violation of Wis. Stat. § 134.90(2)(b).

310. Metso is entitled to compensatory damages and injunctive relief pursuant to Wis. Stat. § 134.90.

311. Wade willfully disclosed Metso's trade secrets to the Excel Defendants, entitling Metso to punitive damages and its actual attorney fees pursuant to Wis. Stat. § 134.90(4)(b) and (c).

REQUEST FOR RELIEF

WHEREFORE, Metso Minerals Industries, Inc. respectfully requests judgment and relief jointly and severally against FLSmidth-Excel LLC, Excel Foundry & Machine, Inc.,

Joseph P. Martinez, Cheryl A. Sullivan, Kenneth L. Olson, Douglas M. Parsons, Richard A. Parsons, and Christopher P. Wade as follows:

- A. Entering a judgment in favor of Metso on all counts;
- B. Awarding Metso damages adequate to compensate for the infringement of its '681 and '110 patents and a permanent injunction against the Excel Defendants and all those acting in concert with the Excel Defendants from further infringement of the '110 Patent;
- C. Adjudicating that the Excel Defendants' infringement of the '681 Patent was willful, and increasing the Excel Defendants' liability for damages up to three times the amount found or assessed;
- D. Adjudicating that Excel Foundry's infringement of the '110 Patent was willful, and increasing Excel Foundry's liability for damages up to three times the amount found or assessed;
- E. Declaring that this is an exceptional case under 35 U.S.C. § 285, and for an award against the Excel Defendants of increased damages, attorney fees, and costs;
- F. Permanently restraining and forbidding Excel, Excel Foundry and all of their partners, agents, representatives, employees, and all others acting in concert with Excel and Excel Foundry from making false or misleading statements including statements about certain of their products being made in the U.S.A., and using Metso's name and Metso's trademarks, or any colorable imitations thereof;
- G. An award of Metso's actual damages against the Excel Defendants in an amount to be proven at trial, as authorized by 15 U.S.C. § 1117(a);

H. An award of damages against Excel and Excel Foundry for the damages sustained by Metso as a result of Excel and Excel Foundry's false and misleading representations in accordance with Wis. Stat. § 100.18, including reasonable attorney fees;

I. Ordering an accounting by Excel and Excel Foundry of any profits derived in any way from their wrongful acts;

J. Awarding Metso any amount by which Excel and Excel Foundry have been unjustly enriched as a result of their wrongful acts;

K. Trebling the amounts awarded to Metso from the Excel Defendants in accordance with 15 U.S.C. § 1117(b);

L. Awarding Metso compensatory damages for the Defendants' misconduct;

M. Awarding Metso punitive damages from the Defendants and its actual attorney fees pursuant to Wis. Stat. § 134.90(4)(b) and (c);

N. Ordering an injunction against the Defendants, and all those acting in concert with them, from continued and future use of Metso confidential, proprietary and trade secret information, including an injunction prohibiting sales of products incorporating such information;

O. Awarding Metso punitive damages from Excel Foundry, Sullivan, Martinez, and Olson based on their fraudulent misrepresentations to Metso;

P. Awarding an accounting by Douglas Parsons and Richard Parsons of any profits derived in any way from their wrongful acts and awarding Metso any amounts by which Douglas Parsons and Richard Parsons have been unjustly enriched as a result of their wrongful acts, including, without limitation, an accounting or an award based upon the proceeds they obtained

from the sale of Excel Foundry & Machine, Inc. and Excel Crushers Technologies LLC to FLSmidth Inc;

Q. Awarding pre-judgment interest on any damage award against any of the Defendants;

R. Ordering Sullivan and Excel Foundry to pay Metso its attorneys fees and costs related to the enforcement of Metso's secured website's terms and conditions;

S. Ordering that the Defendants' liability to Metso is joint and several, as allowed by law;

T. Granting such other and further relief as the Court deems just and proper.

DEMAND FOR A JURY TRIAL

The Plaintiff, Metso, hereby demands a trial by jury in this action on all claims and issues triable before a jury.

Dated this 3rd day of June, 2009.

/s/ Johanna M. Wilbert
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