

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

THE E.H. WACHS COMPANY,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 05 C 6181
	)	
HURCO TECHNOLOGIES, INC.	)	Honorable Ruben Castillo
	)	
Defendant.	)	
	)	

**FIRST AMENDED COMPLAINT**

Now comes plaintiff, THE E.H. WACHS COMPANY (“Wachs”), by its undersigned counsel, and for its First Amended Complaint against defendant HURCO TECHNOLOGIES, INC. (“Hurco”), respectfully states as follows:

**INTRODUCTION**

1. This cause of action arises out of the manufacture, use, sale and/or offer for sale of machines for exercising and operating valves for water pipe and/or petroleum pipe networks.
2. Wachs is the exclusive assignee of all rights in U.S. Patent No. 5,381,996 (“the Patent”), a copy of which is attached hereto as Exhibit 1, which discloses a valve operating machine capable of exercising and/or operating such valves.
3. Hurco makes, uses, sells and/or offers to sell valve operating machines that infringe the ‘996 Patent.
4. Wachs seeks damages and injunctive relief against Hurco for its infringing conduct.

## **PARTIES**

5. Wachs is a company organized under the laws of the State of Illinois, having a principal place of business at 100 Shepard Ave., Wheeling, Illinois. Wachs has been in business for over 120 years, innovating, developing and manufacturing products in over 26 different product lines, including an entire line of products for efficient valve maintenance of water, waste water and pipeline valves and exercising applications.

6. Hurco is a South Dakota corporation, having a principal place of business at 409 Enterprise Street, Harrisburg, South Dakota. Hurco has a permanent presence in Illinois in the form of a dealer ("Hurco Dealer") in New Lenox, Illinois. Hurco develops and manufactures products for the testing, maintenance and repair of sewer and water systems, including one or more products that compete directly with Wachs' products. Hurco sells and/or offers for sale its products in Illinois through the Hurco Dealer.

## **JURISDICTION AND VENUE**

7. This Action arises under the Patent Laws of the United States, Title 35, United States Code §§101, *et seq.*

8. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§1331 and 1338(a).

9. This Court has personal jurisdiction over Hurco under Illinois' Long Arm Statute.

10. Specifically, Hurco is subject to personal jurisdiction in Illinois under 735 ILCS 5/2-209(a)(2), inasmuch as it has sold and/or offered for sale at least one infringing valve operating machine in Illinois, and in this District. By way of example, at least as recently as June of 2005, Hurco offered for sale and sold an infringing valve operating machine to the City of Carol Stream, Illinois.

11. The present action arises from Hurco's manufacture, sale and offer for sale of infringing valve operating machines, including but not limited to the machine offered for sale and sold to Carol Stream, Illinois.

12. In addition, Hurco is subject to personal jurisdiction in Illinois under 735 ILCS 5/2-209(b)(4), since Hurco is doing business in Illinois. Hurco has made and continues to make sales and offers for sale of valve exercising machines, and other devices in Illinois. Furthermore, Hurco has a permanent presence in Illinois in the form of the Hurco Dealer.

13. Venue is proper in this District pursuant to 28 U.S.C. §§1391(c) and 1400(b).

**COUNT I**  
**(INFRINGEMENT OF THE '996 PATENT)**

14. Wachs repeats and re-alleges the allegations in paragraphs 1-13 as if fully set forth herein.

15. On January 17, 1995, the Patent, entitled "Valve Operator," was duly and legally issued to Scott Arnemann and Scott Ferrar. All right, title and interest in the Patent were assigned to Wachs, which remains the sole owner.

16. Through its manufacture, use, sale and/or offer for sale in the United States of valve operating and exercising products, including but not limited to the product marketed under the name "Valve Star," Hurco has infringed, has induced others to infringe, and/or has committed acts of contributory infringement of one or more claims of the Patent in violation of 35 U.S.C. §§ 271 (a), 271 (b) and/or 271 (c).

17. Although requested, Hurco has refused to provide assurances that it will not in the future continue to infringe, induce others to infringe, and/or commit acts of contributory infringement of one or more claims of the Patent in violation of 35 U.S.C. §§ 271(a), 271(b)

and/or 271(c). Therefore, on information and belief, Hurco's infringing activities will continue in the future.

18. On information and belief, Hurco's foregoing acts of infringement of the '996 Patent were willful and deliberate.

19. As a result of Hurco's infringement, inducement of infringement and/or contributory infringement, Wachs has suffered monetary damages in an amount to be shown at trial, and will continue to suffer damages in the future unless Hurco's infringing activities are enjoined by this Court.

20. Wachs does not have an adequate remedy at law and, unless an injunction is issued enjoining Hurco and its agents, servants, employees, attorneys, representatives, and all others acting on their behalf, from infringing the '996 Patent, Wachs will be greatly and irreparably harmed.

**PRAYER FOR RELIEF**

WHEREFORE, plaintiff The E.H. Wachs Company prays for judgment to be entered against defendant, Hurco Technologies, Inc., as follows:

- A. Declaring that Hurco has infringed Patent;
- B. Declaring that Hurco's infringement of the Patent was willful;
- C. Enjoining Hurco and its respective officers, agents, servants, directors, employees, licensees and others acting in concert with it from further infringing the Patent;
- D. Directing Hurco to account for any pay all damages caused to Wachs by reason of Hurco's infringement, including enhanced damages pursuant to 35 U.S.C., § 284;
- E. Directing Hurco to pay Wachs' costs, expenses and reasonable attorneys' fees pursuant to 35 U.S.C., §§ 284 and 285;

- F. Awarding Wachs pre-judgment and post-judgment interest on all damages;
- G. Awarding Wachs such other relief, as the Court may deem just and equitable.

**JURY DEMAND**

The plaintiff hereby demands a trial by jury of any and all issues so triable as of right.

May 9, 2006

THE E.H. WACHS COMPANY, INC.

By: s/Jacob D. Koering  
One of Its Attorneys

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**CERTIFICATE OF SERVICE**

I, Jacob D. Koering, an attorney, hereby certify that I caused a copy of the foregoing FIRST AMENDED COMPLAINT to be filed in the above-captioned action and that notice of this motion will be sent by operation of the Court's electronic filing system to the following counsel of record on Tuesday, May 9, 2006:

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