

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

RECORDED
AUG 30 2002

FACILITEC CORPORATION and)
ECOLAB, INC.,)
Plaintiffs,)
v.)
GREASE STOPPER,)
Defendant.)

FILED
AUG 29 2002
MICHAEL W. DOBBINS
CLERK, U.S. DISTRICT COURT

Civil Action No. 01 C 2971
The Honorable Ronald A. Guzman
Magistrate Judge Ian H. Levin

JURY TRIAL DEMAND

FIRST AMENDED
COMPLAINT FOR PATENT INFRINGEMENT

Plaintiffs Facilitec Corporation and Ecolab Inc., for their First Amended Complaint against defendant Grease Stopper, Inc., state and allege as follows:

1. This is a civil action arising under the Patent Laws of the United States, 35 U.S.C. §§ 101 et seq., for damages and injunctive relief pursuant to 35 U.S.C. §§ 271 et seq.
2. Plaintiff Facilitec Corporation is incorporated in the State of Delaware, having a principal place of business at 180 Corporate Drive, Elgin, Illinois 60123. Facilitec is a wholly-owned subsidiary of Ecolab, and is engaged in the manufacture and sale of grease containment systems.
3. Plaintiff Ecolab Inc. is incorporated in the State of Delaware, having a principal place of business at Ecolab Center, 370 North Wabasha Street, St. Paul, Minnesota 55102.
4. Upon information and belief, defendant Grease Stopper, Inc. is incorporated in the State of Florida, having a principal place of business at 4305 Boggy Creek Road, Kissimmee, Florida 34744.

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

6. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391(c) and 1400(b), in that Grease Stopper has contacts sufficient to subject them to personal jurisdiction in this District. Grease Stopper has admitted that venue is proper in this District and that it is subject to personal jurisdiction in this District. *See*, Grease Stopper's Answer to Complaint, Affirmative Defenses and Counterclaim at p. 3.

7. On March 23, 1993, United States Patent No. 5,196,040 entitled "GREASE TRAP AND FILTER APPARATUS" ("the '040 patent") was duly and legally issued to Grease Guard, Inc. and Dundee Manufacturing Co., Inc. by assignment from the inventors, Patrick A. Malloy, Jean L. Jodoin, Charles M. Murphy, Christopher S. Barry, Kevin R. Chwala and Charles E. Bain. A copy of the '040 patent is attached to this Complaint as Exhibit A.

8. On June 7, 1994, United States Patent No. 5,318,607 entitled "GREASE TRAP AND FILTER APPARATUS" ("the '607 patent") was duly and legally issued to Grease Guard, Inc. And Dundee Manufacturing Co., Inc. by assignment from the inventors, Patrick A. Malloy, Jean J. Jodoin, Charles M. Murphy, Christopher S. Barry, Kevin R. Chwala and Charles E. Bain. A copy of the '607 patent is attached to this Complaint as Exhibit B.

9. On July 11, 1994, Dundee Manufacturing Co. assigned all of its rights, title and interest in the '040 and '607 patents to Grease Guard, Inc.

10. On January 1, 1998, Grease Guard, Inc. became known as Facilitec Inc., and Facilitec Inc. held by assignment all right, title and interest in the '040 and '607 patents.

11. On September 1, 2000, Ecolab acquired Facilitec Inc. as a wholly-owned subsidiary, and Facilitec Inc. changed its name to Facilitec Corporation. All patents owned by Facilitec were assigned to Ecolab.

12. Ecolab holds by assignment all right, title and interest in the '040 and '607 patents, including the right to bring this action against Grease Stopper for injunctive relief and damages.

13. Upon information and belief, Grease Stopper has used, sold, offered for sale, and/or distributed grease containment systems within the United States which infringe one or more claims of the '040 patent in violation of 35 U.S.C. § 271. More specifically, at least the Pentagon Roof Top Defense System manufactured by Grease Stopper infringes at least one claim of the '040 patent. On information and belief, such unlawful infringing activity by Grease Stopper is continuing and will continue unless enjoined by this Court.

14. Upon information and belief, Grease Stopper has used, sold, offered for sale, and/or distributed grease containment systems within the United States which infringe one or more claims of the '607 patent in violation of 35 U.S.C. § 271. More specifically, at least the Pentagon Roof Top Defense System manufactured by Grease Stopper infringes at least one claim of the '607 patent. On information and belief, such unlawful infringing activity by Grease Stopper is continuing and will continue unless enjoined by this Court.

15. As a result of the aforementioned acts of unlawful patent infringement by Grease Stopper, Facilitec and Ecolab have been severely damaged, and unless such patent infringement is enjoined by this Court, plaintiffs will continue to suffer further damage, including irreparable harm.

16. Upon information and belief, at least some of Grease Stopper's acts of infringement have occurred within this judicial district.

17. Upon information and belief, Grease Stopper has had for some time, actual knowledge of the '040 patent and has willfully, deliberately and intentionally infringed the claims of said patent.

18. Upon information and belief, Grease Stopper has had for some time, actual knowledge of the '607 patent and has willfully, deliberately and intentionally infringed the claims of said patent.

WHEREFORE, Facilitec and Ecolab seek judgment in their favor and against Grease Stopper that:

A. Adjudges U.S. Patent No. 5,196,040 valid, enforceable and infringed by defendant Grease Stopper;

B. Adjudges U.S. Patent No. 5,318,607 valid, enforceable and infringed by defendant Grease Stopper;

C. Preliminarily and permanently enjoins Grease Stopper, their representatives, assignees or successors, or any subsidiaries, divisions, agents, servants, employees thereof, and/or those in privity with Grease Stopper from infringing, contributing to the infringement of, and inducing infringement of U.S. Patent No. 5,196,040, and for all further and proper injunctive relief pursuant to 35 U.S.C. § 283;

D. Preliminarily and permanently enjoins Grease Stopper, their representatives, assignees or successors, or any subsidiaries, divisions, agents, servants, employees thereof, and/or those in privity with Grease Stopper from infringing, contributing to the infringement of, and inducing infringement of U.S. Patent No. 5,318,607, and for all further and proper injunctive relief pursuant to 35 U.S.C. § 283;

E. Awards Facilitec and Ecolab monetary damages from Grease Stopper for past infringement, including but not limited to lost profits and/or a reasonable royalty, plus applicable pre- and post-judgment interest and costs to which Facilitec and Ecolab are entitled under 35 U.S.C. § 284, as well as attorneys' fees pursuant to 35 U.S.C. §285 or other applicable law;

F. Treble such damages for Grease Stopper's willful, deliberate and intentional infringement; and

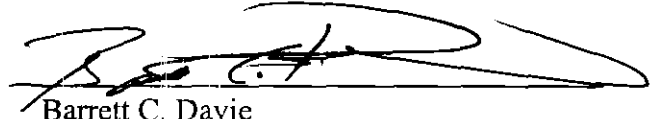
G. Awards Facilitec and Ecolab such other and further relief as this Court may deem just and proper.

Plaintiffs hereby request a trial by jury, pursuant to Rule 38 of the Federal Rules of Civil Procedure, on all issues so triable.

Dated: August 26, 2002.

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**SEE CASE
FILE FOR
EXHIBITS**