

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA**

L.B. WHITE CO., INC.,

Case No. 07-CV-4547 (MJD/JJK)

Plaintiff,

v.

GAS FIRED PRODUCTS, INC., and
ALKE B.V.,

Defendants.

SECOND AMENDED COMPLAINT AND JURY DEMAND

Plaintiff L.B. White Co., Inc. (“L.B. White”) for its Second Amended Complaint against Defendants Gas Fired Products, Inc. (“GFP”) and Alke B.V. (“Alke”), states and alleges as follows:

THE PARTIES

1. L.B. White is a leading manufacturer of heating equipment. Among other things, L.B. White manufactures a complete line of forced air and radiant heating solutions for the agricultural market. L.B. White is incorporated in the State of Wisconsin, having its principal place of business at W6636 L.B. White Road, Onalaska, Wisconsin 54650.

2. Upon information and belief, GFP is a privately held company, having a principal place of business at 305 Doggett Street, Charlotte, North Carolina 28236. Among other things, GFP manufactures and markets infrared gas space heating equipment for the agricultural market.

3. Upon information and belief, Alke is a Netherlands corporation having its principal place of business at Industrielaan 11A, P.O. Box 52, 3925 ZH Scherpenzeel, The Netherlands. Alke manufactures the brooders at issue in this litigation.

JURISDICTION

4. This is a claim for patent infringement arising under the Acts of Congress relating to patents, 35 U.S.C. §§ 271 and 282-85.

5. This Court has jurisdiction under 28 U.S.C. §§ 1331 and 1338(a).

6. Venue is proper in this Court under 28 U.S.C. §§ 1391(b) and 1400.

FACTS

7. L.B. White is the exclusive licensee of United States Patent Number 5,549,099 entitled "Injection and Regulation Device for Atmospheric Gas Burners for Heating Appliance, in Particular of the Infra-Red Type" issued on August 27, 1996 (hereafter "the '099 patent"). A copy of the '099 patent is attached as Exhibit A.

8. The owner of the '099 patent is Centre d'Etude et de Realisations d'Equipment et de Materiel ("CEREM"). L.B. White entered into an exclusive license agreement for the '099 patent with CEREM on October 26, 1994. Under the agreement, L.B. White has the exclusive right to practice the patent in the United States and has the right to commence and prosecute lawsuits against third parties for infringement of the '099 patent.

9. L.B. White manufactures, markets and distributes an infrared heater (also called a "brooder") covered by the '099 patent. The product is sold under the trademark "Infraconic."

10. On information and belief, GFP imports an infrared heater called the "Gro17" or "Grower Select Gro17 Modulating Brooder," and has either started importing or plans to import a redesigned version of the brooder. Both versions of the brooder infringe the '099 patent.

11. Alke manufactures the “Gro 17” brooder and has imported the infringing brooder into the United States.

12. On information and belief, Alke began manufacturing a re-designed brooder after L.B. White commenced this lawsuit and has either starting importing the redesigned brooder into the United States or intends to import the redesigned brooder into the United States, thereby continuing its infringement of the ‘099 patent.

COUNT I – PATENT INFRINGEMENT

13. Defendants are manufacturing, importing, using, selling and offering to sell products that infringe the ‘099 patent, including the Gro 17 brooder and the re-designed version of the brooder.

14. On information and belief, GFP advertised and sold infringing Gro 17 brooders in the State of Minnesota.

15. L.B. White has been damaged by Defendants’ infringement of the ‘099 patent and will continue to be damaged in the future unless Defendants are preliminarily and permanently enjoined from infringing the ‘099 patent, inducing infringement of the patent, and, or contributing to the infringement of the patent by others.

16. Upon information and belief, Defendants are aware that the ‘099 patent was duly and legally issued to CEREM; that L.B. White owns the exclusive right to practice the patent; and that Defendants’ advertising, use, sale, and/or offer for sale of the accused brooders infringe the ‘099 patent. Defendants have continued to sell infringing products despite knowledge of the ‘099 patent.

17. Upon information and belief, Defendants’ infringement of the ‘099 patent has been intentional, willful, and deliberate and will continue unless enjoined by the Court.

PRAYER FOR RELIEF

WHEREFORE, L. B. White prays for judgment that:

- A. United States Patent No. 5,549,099 is valid and infringed by Defendants;
- B. Defendants, their officers, agents, servants and employees, and those persons in active concert or participation with any of them, be enjoined from further infringement of the '099 patent;
- C. An accounting be had for the profits and damages arising out of Defendants' infringement of the '099 patent;
- D. L.B. White be awarded compensatory and exemplary damages, including treble damages for willful infringement as provided by 35 U.S.C. § 284, with interest, but no less than a reasonable royalty;
- E. Defendants be preliminary and permanently enjoined from continued use and manufacture, import, sale, or offer for sale of the products that infringe the '099 patent;
- F. L.B. White be awarded its attorneys' fees, costs, and expenses in this action;
- G. L.B. White be awarded pre-judgment and post-judgment interest on its damages, as allowed by law; and
- H. L.B. White be awarded such other relief as this Court may deem just, equitable, and proper.

DEMAND FOR JURY TRIAL

L.B. White hereby demands a trial by jury of all issues so triable.

Dated: June 11, 2008

s/ Grant D. Fairbairn
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