

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE

HYPERTHERM, INC,

Plaintiff,

v.

AMERICAN TORCH TIP COMPANY,

Defendant.

Civil Action No. 1:05-cv-373-JD

SECOND AMENDED COMPLAINT

1. Plaintiff, Hypertherm, Inc. (“Hypertherm”) brings this action for patent infringement against defendant, American Torch Tip Company (“ATTC”).

Parties

2. Hypertherm is a corporation organized and existing under the laws of the State of New Hampshire and having a regular and established place of business at P.O. Box 5010, Etna Road, Hanover, New Hampshire, 03755. Hypertherm is a worldwide leader in technological development, manufacturing, and marketing of plasma arc cutting equipment and replacement parts.

3. ATTC is, on information and belief, a corporation organized and existing under the laws of the State of Florida and having a regular and established place of business at 6212 29th Street East, Bradenton, Florida, 34203.

Jurisdiction and Venue

4. This action arises under the patent laws of the United States, 35 U.S.C. § 1 et seq., and this Court has jurisdiction under 28 U.S.C. §§ 1331, 1332, and 1338.

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

COUNT I

Infringement Of U.S. Patent No. 6,946,617

6. The allegation of paragraphs 1-5 are incorporated by reference in this Count I as though fully set forth herein.

7. Hypertherm is the owner of all right, title and interest in and to U.S. Patent No. 6,946,617 (the '617 Patent) entitled "Method and Apparatus for Alignment of Components of a Plasma Arc Torch." (A copy of the '617 Patent is attached as Exhibit A.)

8. The '617 Patent was duly issued by the United States Patent and Trademark Office, and is valid and enforceable.

9. Upon information and belief, ATTC makes, uses, sells, offers for sale and/or imports products, domestically and internationally, that infringe claims of the '617 Patent, including products manufactured by ATTC for use with Hypertherm equipment. For example, upon information and belief, ATTC's Part No. 220181 infringes the '617 Patent. Upon information and belief, an opportunity for further investigation and discovery will reveal that additional ATTC products infringe the '617 Patent.

10. Upon information and belief, ATTC is willfully infringing or is contributing to or inducing the infringement of one or more claims of the '617 Patent by manufacturing, using, selling, offering to sell, and/or importing infringing products in the United States. ATTC is still infringing the '617 Patent and will continue to do so unless enjoined by this Court.

11. By reason of said acts of ATTC, Hypertherm has been, and will continue to be, seriously damaged and irreparably injured unless ATTC is enjoined by this Court, and thus Hypertherm is without an adequate remedy at law.

COUNT II

Infringement Of U.S. Patent No. 6,207,923

12. The allegations of paragraphs 1-11 are incorporated by reference in this Count II as though fully set forth herein.

13. Hypertherm is the owner of all right, title and interest in and to U.S. Patent No. 6,207,923 (the '923 Patent) entitled "Plasma Arc Torch Tip Providing a Substantially Columnar Shield Flow." (A copy of the '923 Patent is attached as Exhibit B.)

14. The '923 Patent was duly issued by the United States Patent and Trademark Office, and is valid and enforceable.

15. Upon information and belief, ATTC makes, uses, sells, offers for sale and/or imports products, domestically and internationally, that infringe claims of the '923 Patent, including products manufactured by ATTC for use with Hypertherm equipment. For example, upon information and belief, ATTC's Part No. 120930ATTC infringes the '923 Patent. Upon information and belief, an opportunity for further investigation and discovery will reveal that additional ATTC products infringe the '923 Patent.

16. On information and belief, ATTC is willfully infringing or is contributing to or inducing infringement of one or more claims of the '923 Patent by manufacturing, using, selling, offering to sell, and/or importing infringing products in the United States. ATTC is still infringing the '923 Patent and will continue to do so unless enjoined by this Court.

17. By reason of said acts of ATTC, Hypertherm has been and will continue to be seriously damaged and irreparably injured unless ATTC is enjoined by this Court, and thus, Hypertherm is without an adequate remedy at law.

COUNT III

Infringement Of U.S. Patent No. 4,902,871

18. The allegations of paragraphs 1-17 are incorporated by reference in this Count III as though fully set forth herein.

19. Hypertherm is the owner of all right, title and interest in and to U.S. Patent No. 4,902,871 (the '871 Patent) entitled "Apparatus and Process for Cooling a Plasma Arc Electrode." (A copy of the '871 Patent is attached as Exhibit C.)

20. The '871 Patent was duly issued by the United States Patent and Trademark Office, and is valid and enforceable.

21. Upon information and belief, ATTC makes, uses, sells, offers for sale and/or imports products, domestically and internationally, that infringe claims of the '871 Patent, including products manufactured by ATTC for use with Hypertherm equipment. For example, upon information and belief, ATTC's Part No. 020026ATTC infringes the '871 Patent. Upon information and belief, an opportunity for further investigation and discovery will reveal that additional ATTC products infringe the '871 Patent.

22. On information and belief, ATTC is willfully infringing or is contributing to or inducing infringement of one or more claims of the '871 Patent by manufacturing, using, selling, offering to sell, and/or importing infringing products in the United States. ATTC is still infringing the '871 Patent and will continue to do so unless enjoined by this Court.

23. By reason of said acts of ATTC, Hypertherm has been and will continue to be seriously damaged and irreparably injured unless ATTC is enjoined by this Court, and thus, Hypertherm is without an adequate remedy at law.

COUNT IV

Infringement Of U.S. Patent No. 5,977,510

24. The allegations of paragraphs 1-23 are incorporated by reference in this Count VI as though fully set forth herein.

25. Hypertherm is the owner of all right, title and interest in and to U.S. Patent No. 5,977,510 (the '510 Patent) entitled "Nozzle for a Plasma Arc Torch With an Exit Orifice Having an Inlet Radius and an Extended Length to Diameter Ratio." (A copy of the '510 Patent is attached as Exhibit D.)

26. The '510 Patent was duly issued by the United States Patent and Trademark Office, and is valid and enforceable.

27. Upon information and belief, ATTC makes, uses, sells, offers for sale and/or imports products, domestically and internationally, that infringe claims of the '510 Patent, including products manufactured by ATTC for use with Hypertherm equipment. For example, upon information and belief, ATTC's Part No. 120518ATTC infringes the '510 Patent. Upon information and belief, an opportunity for further investigation and discovery will reveal that additional ATTC products infringe the '510 Patent.

28. On information and belief, ATTC is willfully infringing or is contributing to or inducing infringement of one or more claims of the '510 Patent by manufacturing, using, selling, offering to sell, and/or importing infringing products in the United States. ATTC is still infringing the '510 Patent and will continue to do so unless enjoined by this Court.

29. By reason of said acts of ATTC, Hypertherm has been and will continue to be seriously damaged and irreparably injured unless ATTC is enjoined by this Court, and thus, Hypertherm is without an adequate remedy at law.

COUNT V

Infringement Of U.S. Patent No. 5,310,988

30. The allegations of paragraphs 1-29 are incorporated by reference in this Count V as though fully set forth herein.

31. Hypertherm is the owner of all right, title and interest in and to U.S. Patent No. 5,310,988 (the '988 Patent) entitled "Electrode for High Current Density Plasma Arc Torch." (A copy of the '988 Patent is attached as Exhibit E.)

32. The '988 Patent was duly issued by the United States Patent and Trademark Office, and is valid and enforceable.

33. Upon information and belief, ATTC makes, uses, sells, offers for sale and/or imports products, domestically and internationally, that infringe claims of the '988 Patent, including products manufactured by ATTC for use with Hypertherm equipment. For example, upon information and belief, ATTC's Part No. 220187 infringes the '988 Patent. Upon information and belief, an opportunity for further investigation and discovery will reveal that additional ATTC products infringe the '988 Patent.

34. On information and belief, ATTC is willfully infringing or is contributing to or inducing infringement of one or more claims of the '988 Patent by manufacturing, using, selling, offering to sell, and/or importing infringing products in the United States. ATTC is still infringing the '988 Patent and will continue to do so unless enjoined by this Court.

35. By reason of said acts of ATTC, Hypertherm has been and will continue to be seriously damaged and irreparably injured unless ATTC is enjoined by this Court, and thus, Hypertherm is without an adequate remedy at law.

COUNT VI

Infringement Of U.S. Patent No. 7,019,255

36. The allegations of paragraphs 1-35 are incorporated by reference in this Count VI as though fully set forth herein.

37. Hypertherm is the owner of all right, title and interest in and to U.S. Patent No. 7,019,255 (the '255 Patent) entitled "Method and Apparatus for Alignment of Components of a Plasma Arc Torch." (A copy of the '255 Patent is attached as Exhibit F.)

38. The '255 Patent was duly issued by the United States Patent and Trademark Office, and is valid and enforceable.

39. Upon information and belief, ATTC makes, uses, sells, offers for sale and/or imports products, domestically and internationally, that infringe claims of the '255 Patent, including products manufactured by ATTC for use with Hypertherm equipment. For example, upon information and belief, ATTC's Part No. 220181 infringes the '255 Patent. Upon information and belief, an opportunity for further investigation and discovery will reveal that additional ATTC products infringe the '255 Patent.

40. On information and belief, ATTC is willfully infringing or is contributing to or inducing infringement of one or more claims of the '255 Patent by manufacturing, using, selling, offering to sell, and/or importing infringing products in the United States. ATTC is still infringing the '255 Patent and will continue to do so unless enjoined by this Court.

41. By reason of said acts of ATTC, Hypertherm has been and will continue to be seriously damaged and irreparably injured unless ATTC is enjoined by this Court, and thus, Hypertherm is without an adequate remedy at law.

WHEREFORE, Hypertherm prays for the entry of a judgment by this Court against
ATTC:

- (a) declaring that ATTC has infringed the '617, '923, '871, '510, '988 and '255 Patents;
- (b) ordering that ATTC, its officers, agents, servants, employees, attorneys, and all other persons in active concert or participation with ATTC, be preliminarily and permanently enjoined and restrained from further infringing Hypertherm's '617, '923, '871, '510, '988, and '255 Patents;
- (c) awarding damages, together with interest, to compensate Hypertherm for the past infringement by ATTC of Hypertherm's '617, '923, '871, '510, '988, and '255 Patents;
- (d) awarding Hypertherm prejudgment interest;
- (e) finding this to be an exceptional case, and directing that ATTC pay Hypertherm treble damages, the costs of this action and its reasonable attorneys' fees pursuant to 35 U.S.C. §§ 284-285; and
- (f) For such other further relief as the court deems just and proper.

DEMAND FOR JURY TRIAL

Hypertherm demands a trial by jury on all issues so triable.

Dated: April 12, 2006

Respectfully submitted,

HYPERTHERM, INC.
By its attorneys,

/s/ Jonathan A. Lax _____

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CERTIFICATE OF SERVICE

The undersigned counsel hereby certifies that a copy of the foregoing Second Amended Complaint was forwarded this 12th day of April, 2006 to defendant's counsel, Jamie Hage, Esq. and Scott O'Connell, Esq. at the law firm Nixon Peabody LLP, 900 Elm Street, Manchester, NH via the Court's Electronic Filing System.

/s/ Jonathan A. Lax