

FILED

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CLERK

UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

Jerome Mack,

Civil Action No. CIV03-4160

Plaintiff,

COMPLAINT

v.

Jury Trial Demanded

Newdale School, Mayfield Hutterian
Brethren, Inc., Pleasant Valley Colony of
Hutterian Brethren, Inc., New Elm Springs
Hutterian Brethren, Inc., Rockport
Hutterian Brethren, Inc., Rosedale
Hutterian Brethren, Inc., Thunderbird
Hutterian Brethren, Inc., Fordham
Hutterian Brethren, Inc., Platte Hutterian
Brethren, Inc., Glendale Hutterian
Brethren, Inc., Spring Valley Hutterian
Brethren, Inc., Long Lake Hutterian
Brethren, Inc., Plainview Hutterian
Brethren, Inc., Spink Hutterian Brethren,
Inc., Huron Hutterian Brethren, Inc., Grass
Ranch Hutterian Brethren, Inc.; Heartland
Hutterian Brethren, Inc.,

Defendants.

NATURE OF THE CASE

This is a patent infringement action to stop Defendants' unauthorized and infringing manufacture and use of products incorporating Jerome Mack's ("Mack") patented invention. That invention is a remote controlled boar guidance system and method of artificially inseminating sows. In this lawsuit, Mack seeks injunctive relief to prevent Defendants from continuing infringement of his patented invention. Mack also seeks monetary damages for Defendants' past infringement of his patent. Defendants' disregard of Mack's patent rights shows a violation of the required duty of care to avoid

infringement; therefore, this is an exceptional case and Mack is entitled to damages, increased damages, attorneys' fees, costs, and expenses.

THE PARTIES

1. Mack owns United States Patent No. 6,142,102. The patented technology which is subject of the United States Patent No. 6,142,102 is a remote controlled boar guidance system and method of artificially inseminating sows. The patented technology substantially comprises a product called the "Boarbot," which Mack manufactures and sells through his business, Swine Robotics in Leola, South Dakota. Mack is a resident of the State of South Dakota and Swine Robotics, Inc., has a principal place of business at 10858 365th Avenue South, Leola, South Dakota 57456.

2. Defendants, collectively and individually, infringe on Mack's patent rights through their manufacture and use of the patented technology.

3. Defendant Newdale School was incorporated under the laws of South Dakota on May 18, 1983. Its registered office address is 21336 484th Avenue, Elkton, South Dakota 57026-6628. Its registered agent for service is David Waldner. Its organizational I.D. # is NS007586.

4. Defendant Mayfield Hutterian Brethren, Inc. was incorporated and organized under the laws of South Dakota and was incorporated on January 23, 1981. Its organizational I.D. # is NS007076. Its registered office address is 500 Capitol Building, P.O. Box 490, Aberdeen, South Dakota 57402-0490. Its registered agent for service is Jeffrey T. Sveen.

5. Defendant Pleasant Valley Colony of Hutterian Brethren, Inc. is organized under the laws of South Dakota and was incorporated on January 23, 1981. Its

organizational I.D. # is NS007073. Its registered office address is 500 Capitol Building, P.O. Box 490, Aberdeen, South Dakota 57402-0490. Its registered agent for service is Jeffrey T. Sveen. This Defendant is also registered as Pleasant Valley School.

6. Defendant New Elm Springs Hutterian Brethren, Inc. is organized under the laws of South Dakota and was incorporated on March 31, 1944. Its organizational I.D. # is NS001809. Its registered office address is 500 Capitol Building, P.O. Box 490, Aberdeen, South Dakota 57402-0490. Its registered agent for service is Jeffrey T. Sveen.

7. Defendant Rockport Hutterian Brethren, Inc. is organized under the laws of South Dakota and was incorporated on October 18, 1935. Its organizational I.D. # is NS002212. Its registered office address is 500 Capitol Building, P.O. Box 490, Aberdeen, South Dakota 57402-0490. Its registered agent for service is Jeffrey T. Sveen.

8. Defendant Rosedale Hutterian Brethren, Inc. is organized under the laws of South Dakota and was incorporated on July 1, 1946. Its organizational I.D. # is NS001679. Its registered office address is 500 Capitol Building, P.O. Box 490, Aberdeen, South Dakota 57402-0490. Its registered agent for service is Jeffrey T. Sveen.

9. Defendant Thunderbird Hutterian Brethren, Inc., also registered as Thunderbird School, is organized under the laws of South Dakota and was incorporated on July 10, 1987. Its organizational I.D. # is NS008571. Its registered office address is 500 Capitol Building, P.O. Box 490, Aberdeen, South Dakota 57402-0490. Its registered agent for service is Jeffrey T. Sveen.

10. Defendant Fordham Hutterian Brethren, Inc., also registered as Fordham School, is organized under the laws of South Dakota and was incorporated on May 13, 1983. Its organizational I.D. # is NS007585. Its registered office address is 500 Capitol

Building, P.O. Box 490, Aberdeen, South Dakota 57402-0490. Its registered agent for service is Jeffrey T. Sveen.

11. Defendant Platte Hutterian Brethren, Inc. is organized under the laws of South Dakota and was incorporated on July 9, 1952. Its organization I.D. # is NS002873. Its registered office address is 500 Capitol Building, P.O. Box 490, Aberdeen, South Dakota 57402-0490. Its registered agent for service is Jeffrey T. Sveen.

12. Defendant Glendale Hutterian Brethren, Inc. is organized under the laws of South Dakota and was incorporated on January 23, 1981. Its organizational I.D. # is NS007080. Its registered office address is 500 Capitol Building, P.O. Box 490, Aberdeen, South Dakota 57402-0490. Its registered agent for service is Jeffrey T. Sveen.

13. Defendant Spring Valley Hutterian Brethren, Inc. is organized under the laws of South Dakota and was incorporated on January 23, 1981. Its organizational I.D. # is NS007070. Its registered office address is 500 Capitol Building, P.O. Box 490, Aberdeen, South Dakota 57402-0490. Its registered agent for service is Jeffrey T. Sveen.

14. Defendant Long Lake Hutterian Brethren, Inc. is organized under the laws of South Dakota and was incorporated on January 23, 1981. Its organizational I.D. # is NS007077. Its registered office address is 500 Capitol Building, P.O. Box 490, Aberdeen, South Dakota 57402-0490. Its registered agent for service is Jeffrey T. Sveen.

15. Defendant Plainview Hutterian Brethren, Inc. is organized under the laws of South Dakota and was incorporated on March 24, 1981. Its organizational I.D. # is NS007124. Its registered office address is 500 Capitol Building, P.O. Box 490, Aberdeen, South Dakota 57402-0490. Its registered agent for service is Jeffrey T. Sveen.

16. Defendant Spink Hutterian Brethren, Inc. is organized under the laws of South Dakota and was incorporated on January 23, 1981. Its organizational I.D. # is NS007081. Its registered office address is 500 Capitol Building, P.O. Box 490, Aberdeen, South Dakota 57402-0490. Its registered agent for service is Jeffrey T. Sveen.

17. Defendant Huron Hutterian Brethren, Inc. is organized under the laws of South Dakota and was incorporated on August 8, 1944. Its organizational I.D. # is NS001602. Its registered office address is 500 Capitol Building, P.O. Box 490, Aberdeen, South Dakota 57402-0490. Its registered agent for service is Jeffrey T. Sveen.

18. Defendant Grass Ranch Hutterian Brethren, Inc. is organized under the laws of South Dakota and was incorporated on March 26, 1987. Its organizational I.D. # is NS008502. Its registered office address is 500 Capitol Building, P.O. Box 490, Aberdeen, South Dakota 57402-0490. Its registered agent for service is Jeffrey T. Sveen.

19. Defendant Heartland Hutterian Brethren, Inc. is organized under the laws of Minnesota and was incorporated on March 22, 1991. Its charter # is 1F-917. Its registered office address is 2171 100th Ave., Lake Benton, MN 56149. Its registered agent for service is Joe Wipf, Jr.

20. Upon information and belief, Defendant Heartland Hutterian Brethren, Inc. regularly transacts business in the State of South Dakota.

JURISDICTION AND VENUE

21. This Court has jurisdiction over this patent infringement action pursuant to 28 U.S.C. §§1331 and 1338(a).

22. Venue is proper in this district pursuant to 28 U.S.C. §§1391(b) because Defendants have committed acts of infringement in this judicial district and Defendants reside or transact business in this judicial district.

FACTUAL BACKGROUND
MACK'S INVENTION

23. This case involves a remote controlled boar guidance system, a method for artificially inseminating sows.

24. Mack owns United States Patent No. 6,142,102, which describes a method for artificially inseminating sows through a remote control device. The patent makes dealing with artificial insemination of pigs easier, safer, cheaper and cleaner. The patent solves many problems which had posed difficulties to the efficient artificial insemination of sows in the past. Attached as Exhibit A to this Complaint is the Patent.

25. Mack's invention provides a way of facilitating movement of a boar inside a swine insemination facility to permit safe and efficient insemination of sows by a single person. The remote controlled boar guidance system and method of artificially inseminating sows includes a remote controlled, steerable vehicle having sufficient power to move a boar within confined spaces inside a swine insemination facility.

26. The invention is a great advance over the prior method of artificially inseminating sows, which basically required the work of two or three humans to herd a boar into the insemination facility.

27. The vehicle includes a plurality of wheels distributed on opposite sides of the vehicle. Wheels on each side are separately powered via a remote control to permit steering of the device. The power source, drive motors, and receiver are positioned

within a housing. An opaque protection screen is provided to permit safe release of the boar from the device.

28. Mack sells his patented invention under the name "Boarbot," through his business Swine Robotics.

29. Mack owns all right, title and interest in the United States Patent No. 6,142,102, including the right to sue for past infringement.

THE SUCCESS AND INFRINGEMENT OF MACK'S INVENTION

30. On October 1, 1999, Mack's lawyer filed a patent application in the United States Patent Office to obtain patent protection for the invention.

31. In January of 2000, Mack's Boarbot was made public at an industry tradeshow. Tradeshow attendees were impressed and orders rolled in to Swine Robotics for Mack's Boarbot. Representatives from various colonies, attended the show, saw Mack's invention and asked for trial Boarbots to test the invention.

32. The Mack patent application went through a thorough examination in the United States Patent and Trademark Office. After a thorough review, the examiner allowed the claims and the application issued as the Mack Patent on November 7, 2000.

33. Mack's invention has enjoyed great commercial success.

34. As early as January 2000, Defendants learned of Mack's invention and undertook to manufacture machines using the patented technology themselves.

35. Upon information and belief, Defendant Newdale colony, through its officers, employees and agents, copied and made a knock-off of Mack's Boarbot. Using this experience, Defendant Newdale conspired to likewise build knock-off Boarbots, and

did undertake to distribute components to other colonies, who are named as Defendants in this action, and to facilitate their development of their own knock-off Boarbots.

36. As another example of Defendants' illegal activities, the Spink colony has engaged in a pattern of willful patent infringement since at least the spring of 2001. At that time, Mack was at the Spink farm and he observed the Spink farm's knock-off Boarbot. The Spink colonists working in the repair shop, where the knock-off was located, opened the casing, exposed the components and shared facts about the construction of the knock-off Boarbot.

37. All the while, during 2000 and 2001, Mack learned from suppliers, veterinarian consultants and other persons who traveled to all the Defendants' farms that the Defendants were engaging in systematic patterns of willful patent infringement – as the Defendants all had unauthorized knock-off Boarbots on their farms rather than Mack's (authorized) Boarbot.

38. Upon realizing that Defendants were infringing upon his patented invention, Mack contacted the Defendants by letter delivered via United States Mail – through their registered representative Jeff Sveen – to put them notice of the infringement.

39. In total disregard of Mack's patent rights, Defendants have chosen to exploit the patented technology without paying for it. Despite their knowledge of the Mack patent, Defendants have manufactured, marketed and actively encouraged others to use the patented technology in a manner that infringes the Mack patent.

**MACK WILL BE IRREPARABLY HARMED
BY DEFENDANTS' CONTINUED INFRINGEMENT**

40. Mack has been damaged by Defendants' infringement of his patented invention rights in at least the following ways: First, Defendants' infringement of Mack's patent rights has deprived Mack of sales of its Boarbot. These are sales that Mack would have made but for Defendants' infringement.

41. Second, Defendants' continuing infringement damages Mack's and Swine Robotics' reputation and goodwill as a leading source of Boarbot machines in the hog-growing industry. The public and marketplace perception of Swine Robotics as a source of efficient method for the artificial insemination of boars erodes when unauthorized infringers, like Defendants, are permitted to freely ride upon Mack's intellectual property rights.

42. Third, Defendants' unauthorized, infringing use of Mack's patent has threatened the value of this intellectual property. Accordingly, unless and until Defendants' continued acts of infringement are enjoined, Swine Robotics and Mack will suffer irreparable harm for which there is no adequate remedy at law.

**COUNT I
Patent Infringement In Violation of 35 U.S.C. 271(a)**

43. Paragraphs 1 through 42 are incorporated by reference as if stated fully herein.

44. Mack owns the United States Patent No. 6,142,102, including the right to sue for past infringement.

45. Defendants' make, use and market machines that infringe upon the Mack patent.

46. Mack and Swine Robotics have been damaged by Defendants' infringement and will suffer irreparable injury unless enjoined by this Court.

47. Mack has given extensive written notice to Defendants of its infringement of the Mack patent.

48. Defendants have, however, in flagrant disregard for Mack's rights, continued to manufacture, use and market the patented invention.

COUNT II
INDUCING INFRINGEMENT IN VIOLATION OF 35 U.S.C. 271(b)

49. Paragraphs 1 through 48 are incorporated by reference as if stated fully herein.

50. Mack owns the United States Patent No. 6,142,102, including the right to sue for past infringement.

51. Defendants' activity constitutes active inducement of infringement upon the Mack patent.

52. Mack and Swine Robotics have been damaged by Defendants' infringement and will suffer irreparable injury unless enjoined by this Court.

WHEREFORE, Mack respectfully requests that the Court:

a. Permanently enjoin Defendants, its agents, attorneys, successors and assigns, and all persons acting on their behalf or within their control, from making, using, marketing, selling or otherwise engaging in acts of infringement of Mack's patent;

b. Permanently enjoin Defendants, its agents, attorneys, successors and assigns, and all persons acting on their behalf or within their control, from inducing acts of infringement of Mack's patent;

- c. Award damages adequate to compensate for the infringement, but in no event less than a reasonable royalty for the use made of the invention by the infringer pursuant to 35 U.S.C. §284;
- d. Award treble damages pursuant to 35 U.S.C. §284;
- e. Enter an Order declaring this an exceptional case pursuant to 35 U.S.C. §285 and award Mack his attorneys' fees, costs, and expenses; and
- f. Grant to Mack such other further relief as may be just and appropriate.

Dated: 6-16, 2003

Respectfully submitted,



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