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CLEVELAND OHIO

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

**1:05CV0561**

Molten Metal Equipment  
Innovations Inc.  
16286 Nauvoo Road  
Middlefield, Ohio 44062

CIVIL ACTION NO.

JUDGE:

**JUDGE OLIVER**

Plaintiff,

v.

Metaullics Systems Co., L.P.  
31935 Aurora Road  
Solon, Ohio 44139

**COMPLAINT OF MOLTEN  
METAL EQUIPMENT  
INNOVATIONS, INC.**

**JUDGE BAUGHMAN**

and

Metaullics Systems Co.  
16710 West Park Circle Drive  
Chagrin Falls, Ohio 44022

and

Pyrotek, Inc.  
9503 East Montgomery Avenue  
Spokane, Washington 99206

Defendants.

Plaintiff, Molten Metal Equipment Innovations, Inc. (hereinafter referred to as "MMEI"),  
for its Complaint against Defendants Metaullics Systems Co., L.P. and Metaullics Systems Co.

(hereinafter referred to collectively as "METAULLICS"), and Pyrotek, Inc. ("PYROTEK") (METAULLICS and PYROTEK are collectively referred to as "Defendants") alleges as follows:

### **JURISDICTION AND VENUE**

1. This action arises under the patent laws of the United States, Title 35 of the United States Code. This court has jurisdiction under Title 28 of the United States Code, Section 1338. Venue is proper in this court under Title 28 of the United States Code, Sections 1391(c) and 1400(b).

### **THE PARTIES**

2. Plaintiff MMEI is a corporation organized and existing under the laws of the State of Ohio, having its headquarters and principle place of business at 16286 Nauvoo Road, Middlefield, Ohio 44062.

3. Metaullics Systems Co., L.P. is a partnership organized and existing under the laws of the state of Delaware, having its headquarters and principle place of business at 31935 Aurora Road, Solon, Ohio 44139.

4. Metaullics Systems Co. is a Delaware corporation and is the general partner of Metaullics Systems Co. L.P.

5. PYROTEK, upon information and belief, is a corporation with its headquarters and principle place of business at 9503 East Montgomery Ave., Spokane, WA 99206.

6. PYROTEK has recently acquired substantially all of the assets of METAULLICS.

**STATEMENT OF THE CASE AND BACKGROUND**

7. METAULLICS began operation in 1993 after acquiring the assets of a business formerly owned by Carburundum. The business involves, among other things, the manufacture and sale of pumps used for pumping molten metal.

8. One variety of pump manufactured and sold by METAULLICS, and sold under the "M-Series" designation, includes a volute-shaped (i.e., spiral-shaped) pumping chamber and a "birdcage" impeller. This basic configuration of a birdcage impeller and volute pumping chamber have been used in the industry for many years.

9. Due to close clearances in the traditional M-Series pump design, solid objects in the molten metal, such as slag or brick, could lodge between the tongue of the volute and the impeller and cause the impeller shaft to break.

10. The conventional birdcage impellers are prone to fill up with rocks and oxides.

11. To minimize the above problems, the traditional M-Series pump design uses a shaft bearing mount and baffle plate at the inlet to prevent entry of such solid objects.

12. Paul Cooper began working for METAULLICS while completing a bachelor's degree of mechanical engineering at Case Western Reserve University. Mr. Cooper accepted a position with METAULLICS after graduating in 1983 and held a variety of positions during his term of employment.

13. In June, 1990, Mr. Cooper resigned from METAULLICS. Mr. Cooper experimented thereafter with a variety of pump casings and impeller designs. He attempted to solve problems with birdcage clogging and shaft breakage found in the conventional pump design.

14. Around 1991 MMEI began to sell a new pump (hereafter the "Open-Top Pump").

15. The Open-Top Pump eliminated the shaft bearing mount and baffle plate commonly used to cover the pump inlet in the M-Series pump.

16. The Open-Top Pump replaced the conventional M-Series pump inlet with an open top.

17. The Open-Top Pump eliminated the birdcage impeller used in the conventional M-Series design, and replaced it with a non-clogging solid impeller. The Open-Top Pump eliminated the standard volute of the M-Series design and replaced it with an open-clearance pump chamber.

18. The Open-Top Pump allows for increased metal flow by eliminating the shaft bearing mount and baffle plate. In the Open-Top Pump, there is no need for cleaning under a baffle plate as in the conventional M-Series pump. Rather than block the entry of solids, the Open-Top Pump design allows solids to move through and out of the pump.

19. The combination of eliminating the shaft bearing mount and baffle plate, opening the inlet, providing a non-clogging solid impeller and opening the pump chamber diameters was a departure from the conventional M-Series molten metal pump design features.

20. METAULLICS employees first observed MMEI's Open-Top Pump at least as early as June of 1991. Art Lauer, then an employee of METAULLICS, prepared a sketch depicting a Open-Top Pump that he observed on or about June of 1991.

21. Herb Ritchie, another METAULLICS employee, reporting on the results of an inspection and photographing of a Open-Top Pump at the Wabash alloys facility in Wabash, Indiana on or about September 14 or 15, 1992, reported in a memo: "Operationally, the [MMEI Open-Top Pump] has a lot of potential in our marketplace and is a **very serious threat to our business.**" [emphasis added].

#### Count I.

22. MMEI incorporates as though fully re-written herein each and every allegation set forth in the preceding paragraphs of this Complaint.

23. Mr. Cooper applied for and received U.S. Patent No. 5,203,681, which describes the Open-Top Pump (hereafter "the '681 Patent," attached as Exhibit A). The '681 Patent is assigned to MMEI. MMEI packaging and promotional materials have been marked with the patent number beginning promptly after the '681 Patent issued.

24. The '681 Patent was granted in April 1993 and METAULLICS learned of the patent shortly thereafter. METAULLICS undertook an internal review of the patent. A group of METAULLICS employees was instructed to "keenly review" the '681 patent.

25. In May or June of 1993, an experimental model of the L-Series pump was constructed by METAULLICS. It was tested in water by METAULLICS and a similar version was sent around June of 1993 to Amerimark, a potential customer.

26. The Amerimark pump was an open-top pump that incorporated many of the innovative and patented features of the MMEI Open-Top Pump.

27. The pump sent to Amerimark was tested in molten metal. The results were successful and METAULLICS moved directly from Amerimark to a production version of the L-Series shortly after that.

28. METAULLICS introduced its new L-series pump in 1993. The L-series was the first new metal circulation pump series introduced by METAULLICS or its predecessors since the M-Series in the early 1980s. The L-Series included many of the innovative and patented features of the MMEI Open-Top Pump, and eliminated the standard volute of the M-Series and replaced it with a pump chamber having sufficient clearances for solid objects that could enter the pump inlet to pass through the pump.

29. The L-Series was the first molten metal pump ever sold by METAULLICS to have the combination of an open top, a solid impeller and a pump chamber having sufficient clearances that large solid objects that could enter the inlet could pass through the pump.

30. Like the Open-Top Pump, the non-clogging impeller of the L-Series pump allows for eliminating the baffle plate, thereby increasing metal flow. Because the L-Series pump is an open-top pump, there is no need for cleaning under a baffle plate as in the conventional M-Series pump.

31. MMEI previously sued METAULLICS for patent infringement relating to the '681 patent, and obtained a jury verdict and judgment for willful infringement

against METAULLICS in the United States District Court for the Northern District of Ohio. The judgment in favor of MMEI and against METAULLICS was affirmed by the United States Court of Appeals for the Federal Circuit. The judgment against METAULLICS has been paid and discharged, and MMEI executed a release in favor of METAULLICS releasing METAULLICS from all claims up, to and including November 23, 2004.

32. PYROTEK has recently purchased substantially all of the assets of METAULLICS, and in connection with that transaction requested that MMEI release potential infringement claims and/or execute a covenant not to sue in favor of PYROTEK. Even though the requested release and/or covenant not to sue in favor of PYROTEK was not provided, PYROTEK nonetheless proceeded with the transaction.

33. Since its purchase of the assets of METAULLICS, PYROTEK has made, used, sold and/or offered for sale pumps that infringe the '681 Patent, by selling pumps previously sold by METAULLICS that infringe one or more claims of the '681 Patent. PYROTEK has committed such acts of infringement with full knowledge of the existence of the '681 Patent and the rights of MMEI with respect thereto. Such acts of infringement by PYROTEK have been and continue to be willful and deliberate and MMEI believes such acts will continue in the future unless enjoined by the Court.

34. Prior to its purchase of METAULLICS, PYROTEK made, used, sold or offered for sale pumps that infringe one or more claims of the '681 Patent. PYROTEK has committed such acts of infringement with full knowledge of the existence of the '681 Patent and the rights of MMEI with respect thereto. Such acts of infringement by PYROTEK have

been and continue to be willful and deliberate and MMEI believes such acts will continue in the future unless enjoined by the Court.

35. By reason of PYROTEK's acts of infringement, MMEI has suffered and continues to suffer damages, including lost sales and diminution of value of the '681 Patent, in amounts yet to be determined.

36. PYROTEK's acts of infringement have resulted and continue to result in substantial unjust profits and unjust enrichment of PYROTEK in amounts yet undetermined. Such acts of infringement are causing irreparable harm to MMEI and will continue to cause irreparable harm unless enjoined by the Court.

#### Count II.

37. MMEI incorporates as though fully re-written herein each and every allegation set forth in the preceding paragraphs of this Complaint.

38. Mr. Cooper applied for and received U.S. Patent No. 6,345,964, which describes a unique transfer pump and method relating to the use of the transfer pump (hereafter "the '964 Patent," attached as Exhibit B). The '964 Patent is assigned to MMEI. MMEI packaging and promotional materials have been marked with the patent number beginning promptly after the '964 Patent issued.

39. From November 24, 2004 to the present, METAULLICS made, used, sold and/or offered for sale products that infringe one or more claims of the '964 Patent, including but not limited to the METAULLICS L Series and T Series transfer pumps. METAULLICS has committed such acts of infringement with full knowledge of the existence of



the '964 Patent and the rights of MMEI with respect thereto. Such acts of infringement by METAULLICS have been and continue to be willful and deliberate, and MMEI believes such acts will continue in the future unless enjoined by the Court.

40. Since its purchase of the assets of METAULLICS, PYROTEK has made, used, sold and/or offered for sale pumps that infringe the '964 Patent, by selling pumps previously sold by METAULLICS that infringe one or more claims of the '964. PYROTEK has committed such acts of infringement with full knowledge of the existence of the '964 Patent and the rights of MMEI with respect thereto. Such acts of infringement by PYROTEK have been and continue to be willful and deliberate and MMEI believes such acts will continue in the future unless enjoined by the Court.

41. Prior to its purchase of METAULLICS, PYROTEK made, used, sold and/or offered for sale pumps that infringe one or more claims of the '964 Patent. PYROTEK has committed such acts of infringement with full knowledge of the existence of the '964 Patent and the rights of MMEI with respect thereto. Such acts of infringement by PYROTEK have been and continue to be willful and deliberate and MMEI believes such acts will continue in the future unless enjoined by the Court.

42. By reason of Defendants' acts of infringement, MMEI has suffered and continues to suffer damages, including lost sales and diminution of value of the '964 Patent, in amounts yet to be determined.

43. Defendants' acts of infringement have resulted and continue to result in substantial unjust profits and unjust enrichment of Defendants in amounts yet

undetermined. Such acts of infringement are causing irreparable harm to MMEI and will continue to cause irreparable harm unless enjoined by the Court.

**Count III**

44. MMEI incorporates as though fully re-written herein each and every allegation set forth in the preceding paragraphs of this Complaint.

45. Defendants have induced and/or contributed to their customers' direct infringement of one or more of the method claims of the '964 Patent, by making and selling molten metal transfer pumps knowing them to be a material part of the invention and to be especially made or adapted for use in the MMEI patented method and to not be a staple article of commerce suitable for substantial non-infringing use. Defendants have committed such acts of inducement and/or contributory infringement with full knowledge of the existence of the '964 Patent and the rights of MMEI with respect thereto.

46. Such acts of inducement and/or contributory infringement by Defendants have been and continue to be willful and deliberate and MMEI believes such acts will continue in the future unless enjoined by the Court.

47. By reason of Defendants' acts of inducement and/or contributory infringement, MMEI has suffered and continue to suffer damages, including lost sales and diminution of value of the '964 Patent, in amounts yet to be determined.

48. Defendants' acts of inducement and/or contributory infringement have resulted and continue to result in substantial unjust profits and unjust enrichment of

Defendants in amounts yet undetermined. Such acts of infringement are causing irreparable harm to MMEI and will continue to cause irreparable harm unless enjoined by the Court.

**PRAYER FOR RELIEF**

**WHEREFOR, PLAINTIFF MMEI PRAYS FOR JUDGMENT AS FOLLOWS:**

49. That this Court render judgment against the Defendants for their infringing acts in an amount sufficient to fully compensate MMEI for all damages suffered as a result of the infringement.

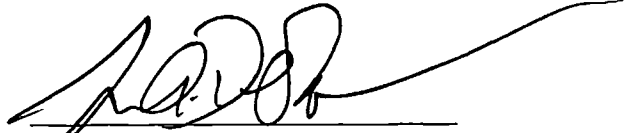
50. That this Court issue preliminary and final injunctions enjoining the Defendants and those employed by, controlled by or associated with Defendants from further acts of infringement of the '681 Patent and the '964 Patent.

51. That this Court order an accounting and determine and assess against Defendants and award to MMEI damages arising out of the infringement of the '681 Patent and the '964 Patent, and that such damages be trebled with interest by reason of the willful and deliberate nature of the infringement.

52. That Plaintiff MMEI be awarded its costs and reasonable attorney fees incurred in this action.

53. That Plaintiff MMEI be awarded such other and further relief as

this Court deems just and proper.



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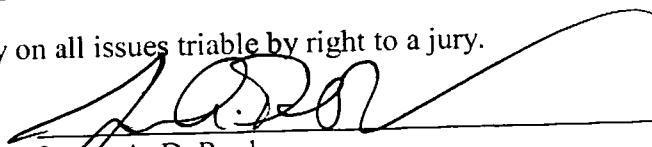
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Attorneys for Plaintiff

**JURY DEMAND**

Plaintiff MMEI demands a trial by jury on all issues triable by right to a jury.

A handwritten signature in black ink, appearing to read 'J.A. DeRoche', is written over a horizontal line.

James A. DeRoche  
Attorney for Plaintiff