



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

<p>Reinke Manufacturing Company, Inc.</p> <p style="text-align: center;">Plaintiff,</p> <p>v.</p> <p>Valmont Industries, Inc.</p> <p style="text-align: center;">Defendant.</p>	<p>Case No. <b>8:04CV372</b></p> <p><b>COMPLAINT FOR DECLARATORY  JUDGMENT</b></p>
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**COMPLAINT FOR DECLARATORY JUDGMENT**

Plaintiff Reinke Manufacturing Company, Inc. ("Reinke"), for its Complaint against defendant Valmont Industries, Inc. ("Valmont"), states that:

1. This Court has jurisdiction of this action, pursuant to the Judiciary and Judicial Procedure Laws of the United States, 28 U.S.C. §§ 1331 and 1338(a). This action arises under the Declaratory Judgment and Patent laws of the United States, including 28 U.S.C. §§ 2201 and 2202, and 35 U.S.C. §§ 1 et seq., as set forth below. Venue for this action is proper in this district, pursuant to the Judiciary and Judicial Procedure Laws of the United States, 28 U.S.C. § 1391.

2. Plaintiff is a corporation incorporated under the laws of the State of Nebraska, having its principal place of business at 101 Reinke Road, Deshler, Nebraska 68340.

3. On information and belief, defendant is a corporation incorporated under the laws of the State of Delaware, having its principal place of business at 1 Valmont Plaza, Omaha, Nebraska 68154.

4. Plaintiff has been and is currently engaged in the manufacture and sale of center pivot irrigation systems.

5. On information and belief, defendant is the owner of United States Patent No. 6,095,439, issued August 1, 2000 for a Corner Irrigation System Including a GPS Guidance System.

6. Defendant, in a letter to plaintiff of July 22, 2004, copy attached hereto as Exhibit "A," represented that it was the owner of such patent, and alleged that certain of plaintiff's products constitute infringement of such patent, wherefore a case of actual controversy within this Court's jurisdiction exists between plaintiff and defendant with respect to the validity, infringement, and enforceability of such patent.

7. Defendant's patent in suit is limited in scope, and is invalid and void, for the following reasons:

(a) Any difference between the subject matter for the claims of such patent and the prior art are such that the subject matter as a whole would have been obvious at the time the alleged invention was made to a person having ordinary skill in the art to which the subject matter pertains;

(b) The purported combination patent claims in suit are invalid in that they are merely an aggregation of old elements, well-known in the art to which such patent relates before the alleged invention and more than one year prior to the filing of the application for such patent; and

(c) The specification of such patent does not contain a written description of the alleged invention and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same, and does not set forth the best mode contemplated by the applicants for carrying out their invention.

8. Defendant's claims against plaintiff are barred by laches.

9. Defendant's patent in suit is not infringed by plaintiff.

10. Defendant's patent in suit is unenforceable because defendant has misused such patent, and has so used such patent, in violation of the antitrust laws, and has unclean hands, in that such patent is being used in an attempt to improperly restrain trade in unpatentable products.

WHEREFORE plaintiff submits that it is entitled to judgment that:

A. Defendant's patent and the claims in suit thereof are invalid, void, and unenforceable;

B. Plaintiff has not committed any act of infringement of defendant's patent with respect to products made, used, or sold by plaintiff since issuance of such patent;

C. Defendant be enjoined from asserting such patent against plaintiff, its representatives, agents, customers, and contractors, present and prospective;

D. Plaintiff recover from defendant plaintiff's costs, including attorney fees;

E. Defendant has misused such patent in violation of the antitrust law;

F. Judgment be entered in plaintiff's favor against defendant for three times the actual damages sustained by plaintiff as a result of defendant's violation of the antitrust

laws, together with such interest thereon as is permitted by law, and plaintiff's costs of this suit, including attorneys fees; and

G. Plaintiff has such other and further relief as this Court may deem just.

Reinke Manufacturing Company, Inc.

Dated: August 6, 2004

By: 

Michael A. Dee PK014960

G. Brian Pingel 479-46-6228

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July 22, 2004

Mr. G. Brian Pingel  
Pingel & Templer, P.C.  
437 Colony Park Building  
3737 Woodland Avenue  
West Des Moines, IA 50266

Re: Reinke Swing Arm Corner Irrigation With GPS Guidance  
U.S. Patent No. 6,095,439 Assigned to Valmont Industries, Inc.  
Our File: V183.11-0001

Dear Mr. Pingel:

On December 18, 2002, Dennis Thomte wrote your client, Reinke Manufacturing Company, Inc. regarding U.S. Patent No. 6,095,439 issued August 1, 2002 entitled "Corner Irrigation System Including A GPS Guidance System." Dennis inquired whether the advertised system of Reinke featuring GPS guidance incorporated the structure set forth in Reinke's U.S. Patent No. 6,290,151 entitled "Swing Arm Guidance System."

In your letter of January 27, 2003, you responded on behalf of Reinke, stating "Reinke's advertised GPS System incorporates the structure and operation as set forth in its patent although in an improved version." You did not provide further explanation.

We have been retained by Valmont Industries to review the Reinke Swing Arm Corner (SAC) system with GPS guidance and the Valmont '439 patent. We have reviewed the Valmont '439 patent, the later Reinke '151 patent, the file wrappers, and publicly available information about the SAC system, and have consulted with technical experts in GPS technology. As a result, we have concluded that the Reinke SAC System with GPS infringes claims 1-3, 5, and 6 of the Valmont '439 patent.

Both Valmont and Reinke have recognized the significant benefits that can be obtained using the GPS guidance system of Valmont's '439 patent. Valmont is willing license to

**EXHIBIT**

**A**

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Reinke under the '439 patent. If Reinke wishes to continue to sell its SAC system with GPS guidance, Valmont is ready to discuss specific license terms.

Very truly yours,

A handwritten signature in black ink, appearing to read "David R. Fairbairn", with a horizontal line extending to the right.

David R. Fairbairn

DRF:ks

c. Valmont Industries, Inc.