

FILED
30 OCT 01 AM 10:08
DISTRICT OF UTAH
BY: _____
DEPUTY CLERK

Robert B. Lochhead, Esq. (1986)
PARR, WADDOUPS, BROWN, GEE & LOVELESS
185 South State Street, Suite 1300
Salt Lake City, Utah 84111
Telephone: (801) 532-7840
Facsimile: (801) 532-7750

Attorneys for Plaintiff

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

POWER & INDUSTRIAL SERVICES CORP., a)	
Pennsylvania corporation,)	COMPLAINT
)	
Plaintiff,)	(Jury Trial Demanded)
)	
v.)	Civil No. 2:01CV-850C
)	
KNOTTS AND COMPANY, a Utah corporation;)	
and BROOK HUGH KNOTTS,)	
)	
Defendants.)	

Plaintiff Power & Industrial Services Corp. ("P & I") complains against defendants Knotts and Company and Brook Hugh Knotts (sometimes hereinafter collectively "Defendants") and alleges as follows:

PARTIES, JURISDICTION AND VENUE

1. Plaintiff P & I is a Pennsylvania corporation having its principal place of business at 450 Millers Run Road, Morgan, Pennsylvania 15064.



2. P & I is informed and believes and therefore alleges that defendant Knotts & Company is a Utah corporation having its principal place of business in Salem, Utah.

3. P & I is informed and believes and therefore alleges that defendant Brook Hugh Knotts is a citizen and resident of Utah County, Utah and an officer and principal shareholder of defendant Knotts & Company. On information and belief, defendant Brook Hugh Knotts at all times material directed and supervised the actions of defendant Knotts & Company alleged in this Complaint.

4. This action arises under the patent laws of the United States, Title 35, United States Code. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338.

5. Venue is proper in this district and division under 28 U.S.C. §§ 1391(b) and 1400.

GENERAL ALLEGATIONS

6. Plaintiff P & I is in the business of designing, manufacturing, selling and installing burner and boiler related parts primarily for the electric utility industry.

7. P & I was founded by Lawrence G. Shekell and John E. Polutnik. Messrs. Shekell and Polutnik invented a method for aligning and clamping a series of tubes in parallel, which is particularly useful in the installation of boiler tubes in steam boilers. A patent application covering this invention was issued on January 28, 1992 as United States Patent No. 5,083,372 ("the '372 patent") entitled "METHOD AND APPARATUS FOR ALIGNING AND CLAMPING A SERIES OF TUBES IN PARALLEL." A true and correct copy of the '372 patent is attached hereto as Exhibit A. The '372 patent contains two claims, each of which is a

“method claim.”

8. P & I is the assignee and sole owner of the '372 patent. At all times subsequent to its issuance, the '372 patent has been and is now valid and fully enforceable.

9. P & I has manufactured, sold and used equipment designed specifically for practicing the invention claimed in the '372 patent.

10. The equipment manufactured, sold and used by P & I which utilizes the invention claimed in the '372 patent has been well received and is respected in the industry.

11. The '372 patent is highly valuable to P & I.

12. As set forth more specifically hereafter, Defendants have engaged and are continuing to engage in a course of conduct to infringe the '372 patent.

13. Without authority from P & I, Defendants make, offer for sale and sell split ring tube alignment devices that are especially made or especially adapted for using the invention claimed in the '372 patent. Defendants have actively induced others to use the above described devices in accordance with the principles and claims of the '372 patent, thereby inducing and contributing to infringement.

14. The devices made, sold, or offered for sale by Defendants, as described above, have been made and sold in the United States and in this District.

15. P & I specifically notified Defendants of the '372 patent and demanded that Defendants cease and desist from any further infringing activity and account for damages pertaining to sales and installations of the split ring tube alignment devices in question.

Notwithstanding the specific notice and demands by P & I, Defendants have continued in their infringing activities in wilful disregard of the patent rights of P & I and with full knowledge of the existence and validity of the '372 patent.

16. The activities of Defendants, as described herein, have injured and will continue to injure P & I and are diverting from P & I to Defendants customers who would otherwise buy P & I's devices that utilize the patented method, at prices charged by P & I.

17. P & I is informed and believes and therefore alleges that the activities of Defendants, as described herein, are further injuring P & I because the infringing sales and use of the Defendants' products enable Defendants to sell ancillary components, which function together with the split ring tube alignment devices to produce the desired result, and "convoyed" products that are sold in association with the devices that use the patented invention, thus depriving P & I of such sales.

FIRST CLAIM FOR RELIEF
(Inducement, 35 U.S.C. § 271(b))

18. P & I realleges and incorporates the allegations set forth in the foregoing paragraphs 1-17.

19. Defendants have actively induced infringement of the '372 patent. Among other things, Defendants have sold split ring tube alignment devices for use in the United States, the use of which infringes the invention claimed in the '372 patent. Defendants have also taught the use of their split ring tube alignment devices to end-users in the United States in a manner that infringes the '372 patent.

20. Defendants' inducement to infringe the '372 patent has been with knowledge of the patent.

21. The Defendants' inducement to infringe the '372 patent is and has been intentional, willful, and in deliberate disregard of the exclusive rights of P & I.

22. P & I has been damaged by Defendants' inducement to infringe the '372 patent. Further, the harm to P & I arising from Defendants' acts of inducement is not fully compensable by money damages. Rather, P & I has suffered, and continues to suffer, irreparable harm which has no adequate remedy at law and which will continue unless Defendants' conduct is enjoined.

SECOND CLAIM FOR RELIEF
(Contributory Infringement, 35 U.S.C. § 271(c))

23. P & I realleges and incorporates the allegations set forth in the foregoing paragraphs 1-22.

24. Defendants have offered to sell and sold within the United States split ring tube alignment devices for use in practicing the invention claimed in the '372 patent, knowing the same to be especially made or especially adapted for use in an infringement of the '372 patent, and not a staple article or commodity of commerce suitable for substantial noninfringing use. Defendants have thereby contributed to infringement of the '372 patent.

25. Defendants' contributory infringement of the '372 patent has been with knowledge of the patent.

26. The Defendants' contributory infringement of the '372 patent is and has been intentional, willful, and in deliberate disregard of the exclusive rights of P & I.

27. P & I has been damaged by Defendants' contributory infringement. Further the harm to P & I arising from Defendants' acts of contributory infringement of the '372 patent is not fully compensable by money damages. Rather, P & I has suffered, and continues to suffer, irreparable harm which has no adequate remedy at law and which will continue unless Defendants' conduct is enjoined.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff P & I prays for judgment against Defendants as follows:

- A. That this Court declare that United States Patent No. 5,083,372 is valid and that Defendants have induced and contributed to infringement of said patent;
- B. That Defendants, their agents, servants, employees, and all persons in active concert or participation with them be preliminarily and permanently enjoined from infringing the '372 patent in any manner, including inducing others to infringe or contributory infringement, and from making, using, offering to sell, or selling any product especially made or especially adapted for use in an infringement of the '372 patent;
- C. That P & I be awarded damages against Defendants arising from the aforementioned infringement of United States Patent No. 5,083,372 in an amount to be determined hereafter, and that those damages so ascertained be trebled and awarded to P & I, together with interest, pre-judgment and post-judgment;
- D. That Defendants be ordered to account to P & I for any and all profits resulting from their infringing activities;

E. That P & I be awarded its attorneys' fees, costs, and expenses incurred in bringing this action; and


F. That P & I be awarded such other and further relief as the Court may deem just and proper.

Plaintiff P & I demands trial by jury of all issues that can properly be tried to a jury.

DATED this 29 day of October, 2001.

PARR, WADDOUPS, BROWN, GEE & LOVELESS

By: _____



Robert B. Lochhead

Attorneys for Plaintiff P & I

Exhibits/
Attachments
to this document
have **not** been
scanned.

Please see the
case file.