

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WISCONSIN

AGRICULTURAL INSTRUMENTS
CORP.

609 North Holmen Drive
Holmen, Wisconsin 54636,

Plaintiff,

v.

Case No: 3:11-cv-00192

BOUMATIC LLC
1919 South Stoughton Road
Madison, Wisconsin 53708,

Defendant.

SECOND AMENDED COMPLAINT

Plaintiff Agricultural Instruments Corp. (“AIC”), by and through its attorneys, DeWitt Ross & Stevens S.C., for its Second Amended Complaint against Defendant BouMatic LLC (“BouMatic”), states as follows:

NATURE OF THE ACTION

1. This is an action arising under the United States Patent Laws, 35 U.S.C. § 1 *et seq.* AIC brings this action seeking damages and injunctive relief arising out of Defendants’ infringement of U.S. Patent Nos. 6,031,367 (“367 Patent”) and 6,307,362 (“362 Patent”).

THE PARTIES

2. Plaintiff AIC is a Wisconsin corporation, with its principal place of business located at 609 North Holmen Drive, Holmen, Wisconsin 54636.

3. Defendant BouMatic is a Nevada limited liability company, with its principal place of business located at 1919 South Stoughton Road, Madison, Wisconsin 53708.

JURISDICTION AND VENUE

4. This is an action for patent infringement arising under the patent laws of the United States, 35 U.S.C. § 1 *et seq.* This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1338.

5. BouMatic is registered to do business in Wisconsin and holds its principal place of business within this judicial district. BouMatic regularly and systematically conducts business activities in this judicial district.

6. BouMatic has committed acts of patent infringement in this judicial district and throughout the State of Wisconsin.

7. Venue is proper in this Court under 28 U.S.C. §§ 1391 and 1400(b), in that BouMatic carried out solicitation or service activities within this judicial district.

BACKGROUND

8. On February 29, 2000, the '367 Patent issued for an invention entitled "Somatic Cell Analyser," which was subsequently assigned to AIC.

9. On October 23, 2001, the '362 Patent issued for the "Somatic Cell Analyser," which was subsequently assigned to AIC.

10. The "Somatic Cell Analyser" is a device for evaluating milk quality and detecting the presence of either infectious or environmental mastitis in dairy cows during the milking process.

11. AIC manufactures and sells dairy equipment using its patented Somatic Cell Analyser.

12. Between approximately February 2005 and September 2008, upper-level management representatives from AIC and BouMatic met at various times and held

ongoing negotiations in an effort to develop a long-term business relationship between the parties, including the potential of an acquisition of AIC by BouMatic.

13. Of particular interest to BouMatic was the Somatic Cell Analyser intellectual property and equipment manufactured by AIC which incorporated it.

14. In conjunction with said discussions, AIC disclosed to BouMatic confidential financial, asset, ownership, marketing, product, sales projection, and patent information.

15. During the course of these negotiations, BouMatic announced its acquisition of Strangko (“Strangko”), a Danish company that manufactures milking and other agricultural equipment, in approximately February 2007.

16. In August 2008, BouMatic extended an offer to purchase AIC.

17. The parties were unable to reach an agreement.

18. Despite multiple efforts by AIC to continue discussions with BouMatic, all business discussions between the parties ceased after September 2008.

19. In approximately August 2010, AIC became aware of a product marketed and sold by BouMatic, the Advantage TS.

20. On or about September 20, 2010, AIC sent BouMatic a cease and desist letter, informing BouMatic that the Advantage TS incorporates features patented by AIC.

21. In that letter, AIC demanded that BouMatic immediately cease all sales and marketing efforts of the Advantage TS, and that failure to do so would result in legal action by AIC for patent infringement.

22. To date, upon information and belief, BouMatic has not ceased its sales of or marketing efforts for the Advantage TS.

23. BouMatic had prior knowledge of the '367 Patent and '362 Patent owing to the prior and unsuccessful negotiations between AIC and BouMatic concerning a possible purchase of AIC and its patents.

24. Strangko developed a product by the name of the Soffimat Plus, which Strangko has displayed at the World Dairy Expo for at least three years.

25. Upon information and belief, the Advantage TS and the Soffimat Plus are essentially the same pieces of equipment.

26. The Advantage TS and the Soffimat Plus infringe at least claims 1, 3, 4, 6, 8, 9, 10, 11, 12, and 13 of the '367 Patent, and may infringe claims 2, 5, 7, 14, 15, 16, 17, and 18 as well.

27. The Advantage TS and the Soffimat Plus infringe at least claims 1, 2, 3, 4, 6, 7, 8, 9, 10, 11, 12, 20, 21, and 22 of the '362 Patent, and may infringe claims 5, 13, 14, 15, 16, 17, 18, and 19 as well.

COUNT ONE
INFRINGEMENT OF U.S. PATENT NO. 6,031,367

28. Paragraphs 1-27 above, inclusive, are incorporated herein by reference.

29. Without consent or license from AIC, and in violation of 35 U.S.C. § 271(a), BouMatic has made, used, sold or offered to sell the Advantage TS, which infringes at least claims 1, 3, 4, 6, 8, 9, 10, 11, 12, and 13 of the '367 Patent, literally and/or under the doctrine of equivalents.

30. Without consent or license from AIC, and in violation of 35 U.S.C. § 271(b) and/or (c), BouMatic has actively induced the infringement of, and/or contributed to the infringement of, at least claims 1, 3, 4, 6, 8, 9, 10, 11, 12, and 13 of the '367 Patent, literally and/or under the doctrine of equivalents.

31. The foregoing acts of infringement were and continue to be performed with BouMatic's knowledge of the '367 Patent and, upon information and belief, BouMatic's knowledge that the Advantage TS infringes the '367 Patent.

32. Upon information and belief, BouMatic has infringed, and continues to infringe, upon the '367 Patent knowingly and willfully, rendering this an exceptional case pursuant to 35 U.S.C. § 285.

33. As a direct and proximate consequence of the acts and practices of BouMatic, BouMatic has caused, is causing and, unless such acts and practices are enjoined by the Court, will continue to cause irreparable harm to AIC for which there is no adequate remedy at law, and for which AIC is entitled to injunctive relief pursuant to 35 U.S.C. § 283.

34. As a direct and proximate consequence of the acts and practices of BouMatic, AIC has also been, is being and, unless such acts and practices are enjoined by the Court, will continue to be injured in its business and property rights, and AIC has suffered, is suffering, and will continue to suffer injury and damages for which it is entitled to relief under 35 U.S.C. § 284.

COUNT TWO
INFRINGEMENT OF U.S. PATENT NO. 6,307,362

35. Paragraphs 1-34 above, inclusive, are incorporated herein by reference.

36. Without consent or license from AIC, and in violation of 35 U.S.C. § 271(a), BouMatic has made, used, sold or offered to sell the Advantage TS, which infringes at least claims 1, 2, 3, 4, 6, 7, 8, 9, 10, 11, 12, 20, 21, and 22 of the '362 Patent, literally and/or under the doctrine of equivalents.

37. Without consent or license from AIC, and in violation of 35 U.S.C. § 271(b) and/or (c), BouMatic has actively induced the infringement of, and/or contributed to the infringement of, at least claims 1, 2, 3, 4, 6, 7, 8, 9, 10, 11, 12, 20, 21, and 22 of the '362 Patent, literally and/or under the doctrine of equivalents.

38. The foregoing acts of infringement were and continue to be performed with BouMatic's knowledge of the '362 Patent and, upon information and belief, BouMatic's knowledge that the Advantage TS infringes the '362 Patent.

39. Upon information and belief, BouMatic has infringed, and continues to infringe, upon the '362 Patent knowingly and willfully, rendering this an exceptional case pursuant to 35 U.S.C. § 285.

40. As a direct and proximate consequence of the acts and practices of BouMatic, BouMatic has caused, is causing and, unless such acts and practices are enjoined by the Court, will continue to cause irreparable harm to AIC for which there is no adequate remedy at law, and for which AIC is entitled to injunctive relief pursuant to 35 U.S.C. § 283.

41. As a direct and proximate consequence of the acts and practices of BouMatic, AIC has also been, is being and, unless such acts and practices are enjoined by the Court, will continue to be injured in its business and property rights, and AIC has suffered, is suffering, and will continue to suffer injury and damages for which it is entitled to relief under 35 U.S.C. § 284.

REQUEST FOR RELIEF

WHEREFORE, Plaintiff seeks the following relief from the Court:

(a) Judgment that BouMatic has infringed, induced infringement, and/or committed acts of contributory infringement, with respect to at least claims 1, 3, 4, 6, 8, 9, 10, 11, 12, and 13 of U.S. Patent No. 6,031,367 and at least claims 1, 2, 3, 4, 6, 7, 8, 9, 10, 11, 12, 20, 21, and 22 of U.S. Patent No. 6,307,362;

(b) An order permanently enjoining BouMatic and its affiliates, subsidiaries, officers, directors, agents, employees, representatives, licensees, successors, assigns, and all those acting for BouMatic and on its behalf, or acting in concert with BouMatic directly or indirectly, from making, using, selling or offering to sell products that infringe U.S. Patent Nos. 6,031,367 and 6,307,362, pursuant to 35 U.S.C. § 283;

(c) An award of damages to Plaintiff in an amount adequate to compensate it for Defendants' infringement of U.S. Patent Nos. 6,031,367 and 6,307,362, but in no event less than a reasonable royalty, together with interest and costs pursuant to 35 U.S.C. § 284;

(d) A determination that BouMatic has willfully and deliberately infringed, willfully contributed to the infringement of, and willfully induced infringement of one or more claims of U.S. Patent Nos. 6,031,367 and 6,307,362;

(e) An order enhancing/trebling the foregoing damages due to Defendant's willful infringement pursuant to 35 U.S.C. § 284;

(f) A determination that this is an exceptional case within the meaning of 35 U.S.C. § 285;

(g) An order that BouMatic be ordered to pay AIC's costs, expenses, and reasonable attorneys' fees pursuant to 35 U.S.C. §§ 284 and 285;

(h) An award to AIC of pre-judgment and post-judgment interest on the damages caused to it by the infringement of BouMatic; and

(i) An award of such other and further relief as the Court may deem just and proper under the circumstances.

JURY DEMAND

Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiff hereby demands a jury trial on all issues triable to a jury.

Dated this 23rd day of September, 2011.

DEWITT ROSS & STEVENS S.C.

By: s/ Harry E. Van Camp

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