

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION**

**CRANE CO.**

§

**Plaintiff,**

§

**v.**

§

**CASE NO. 4:03-CV-01848-CEJ**

§

**AUTOMATED MERCHANDISING  
SYSTEMS, INC.**

§

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§

**Defendant.**

§

**JURY TRIAL REQUESTED**

**PLAINTIFF’S FIRST AMENDED COMPLAINT**

Plaintiff, Crane Co. (“Crane”) files this First Amended Complaint against Defendant, Automated Merchandising Systems, Inc. (“AMS”), and for its causes of action would show the Court the matters set forth below.

**The Parties**

1. Crane is a Delaware corporation. The headquarters of Crane’s manufacturing division, Crane Merchandising Systems, are located at 12955 Enterprise Way, Bridgeton, Missouri 63044. Crane is a leader in the field of automated vending.

2. AMS is a West Virginia corporation having a principal place of business at 109 West Burr Blvd., Kearneysville, West Virginia 25430. AMS is transacting business in this Judicial District by using, selling, and/or offering to sell products (including the products that practice the subject of this action) to customers in this District or by transacting other business in this District and has committed acts of infringement and torts in this jurisdiction.

**Jurisdiction and Venue**

3. This case is an action for patent infringement pursuant to Title 28 United States Code §§ 1331, 1332 and 1338(a), declaratory judgment pursuant to Title 28, United States Code,

§ § 2201-2202 and Title 35, United States Code, § 101 *et seq.*, as to non-infringement and invalidity of alleged patent rights, an action for unfair competition under the Lanham Act, Title 15 United States Code § 1125, and an action for related state law causes of action that necessarily depend on resolution of a substantial question of federal patent law and, thus, arise under patent law. The Court has subject matter jurisdiction pursuant to 28 U.S.C. § § 1331, 1338, 2201, and, to the extent necessary, 1367.

4. Venue is proper within this judicial district and division under 28 U.S.C. §§ 1391 and 1400 because: (1) defendant AMS resides in this Judicial District pursuant to 28 U.S.C. § 1391(c); (2) defendant AMS has committed acts of infringement in this Judicial District; and (3) a substantial part of the events or omissions giving rise to the claim occurred in this Judicial District.

### **Background Facts**

#### **Crane's Patented Technology**

5. From its manufacturing facility located in St. Louis County, Missouri, Crane manufactures and markets products for use in the automated vending machine industry. A feature of some Crane products is the SureVend™ feature, which detects whether a product has been dispensed.

6. On May 4, 2004, the U.S. Patent and Trademark Office duly and legally issued United States Patent No. 6,732,014 (the "'014 Patent") also entitled "Method and System for Accomplishing Product Detection" to Crane, as assignee of the inventors David B. Whitten, of Saint Charles, Missouri, William E. Booth, of Saint Louis, Missouri, Paul K. Griner, of Saint Louis, Missouri, and Brian L. Duncan, of Highland, Illinois. Crane is the owner of the '014 Patent.

7. Crane makes and sells automated vending machines that practice the '014 Patent.

8. AMS makes, uses, sells, and offers to sell automated vending machines in competition with Crane. Upon information and belief, AMS is presently infringing the '014 Patent by making, using, selling, and offering to sell within the United States and within the State of Missouri and within this Judicial District, or actively inducing others to make, use, sell, and offer to sell, products, such as AMS' Visi-Diner and other machines equipped with AMS' "Sensit II" feature, that employ and embody the '014 Patent.

#### **AMS' Threats of Suit and Tortious Activities**

9. On or about July 9, 2003, Crane was served with a third-party subpoena related to litigation filed by AMS against Automated Products International, Ltd. ("API")—a competitor of Crane's—and alleging infringement of U.S. Patent No. 6,384,402 (the "'402 Patent"). That suit was filed in the United States District Court for the Northern District of West Virginia on September 27, 2002. AMS' patent litigation counsel (James D. Berquist) is listed in the Complaint.

10. On or about July 23, 2003, AMS' patent litigation counsel (James D. Berquist) wrote to Crane requesting copies of documents responsive to the third-party subpoena issued in relation to the infringement suit filed by AMS against API.

11. In August of 2003, AMS served a third-party subpoena upon Crane containing, among other requests, the following request for documents: "For each model of vending machine having an optical sensing system, summary-level documents showing the number of such vending machines sold in the United States by Crane on a monthly or quarterly basis from January 2001 to present."

12. On November 6, 2003, AMS' patent litigation counsel (James D. Berquist) contacted Crane in writing, stating that AMS "is the owner of [the '402 Patent] directed to vending machines with an optical vend-sensing system" and enclosing a copy of the patent. Mr. Berquist "invited" Crane to "consider" the application of the '402 Patent to Crane's products equipped with the SureVend feature. Mr. Berquist informed Crane that AMS was willing to offer Crane a license under the '402 Patent, provided that the royalty terms "adequately reflect the importance of the patent to the industry."

13. Following receipt of Mr. Berquist's letter, Crane learned that during the National Automatic Merchandising Association tradeshow held in October 2003 in Washington D.C., AMS representatives falsely informed at least one of Crane's customers that Crane's products infringed the '402 Patent. On information and belief, AMS employee and agent Chuck Thomas informed a Crane customer that Crane's products infringed the '402 Patent. Chuck Thomas is Vice President of Sales for AMS.

14. AMS has wrongly informed vending machine distributors (including a distributor of Crane's products) that Crane's SureVend system was "stolen" from AMS. Further, AMS has instructed its distributors to wrongly inform customers that Crane's SureVend system was "stolen" from AMS and that it infringes the '402 Patent.

15. On December 29, 2003—five days after this suit was filed in this Court—AMS filed a competing suit in the United States District Court for the Northern District of West Virginia alleging that Crane's products infringe the '402 Patent.

16. Crane's products do not infringe the '402 Patent, the scope of which is strictly limited by prior art in the field of optical vend-sensing, the written claims of the patent, and positions asserted by AMS during prosecution before the United States Patent and Trademark

Office. AMS has defamed Crane by making unsupportable allegations of patent infringement to third parties, in violation of libel laws and laws against unfair business practices.

### **AMS' Alleged Patent Rights**

17. None of Crane's products, including those equipped with the SureVend feature, infringe any claims of the '402 Patent. AMS has intentionally and knowingly exaggerated the scope of its patents (even beyond the boundaries set in the patent application process) to the marketplace to the detriment of Crane.

18. The '402 Patent is asserted against Crane by AMS solely as an anticompetitive effort.

### **Count One: Patent Infringement**

19. Defendant AMS has infringed the '014 Patent, either directly or through acts of contributory infringement or inducement in violation of 35 U.S.C. § 271.

20. Crane has been damaged as a result of AMS' infringing activities and will continue to be damaged unless such activities are enjoined by this Court. Pursuant to 35 U.S.C. § 284, Crane is entitled to damages adequate to compensate for the infringement, including, *inter alia*, lost profits and/or reasonable royalty.

21. Crane will be irreparably harmed if AMS' patent infringement continues. The balance of equities favors a preliminary injunction in favor of Crane. Crane therefore requests a preliminary injunction prohibiting AMS, its directors, officers, employees, agents, parents, subsidiaries, affiliates, or anyone else in active concert with it, from selling products or taking any other actions that would infringe the '014 Patent.

**Count Two: Unfair Competition (Lanham Act §43(a))**

22. Crane brings this count against AMS for unfair competition under the Lanham Act. AMS has made false representations in commercial advertising or promotions regarding the quality, nature and characteristics of Crane's products as related to AMS' claimed patent rights. AMS' actions were carried out in interstate commerce and affected Crane's goods sold in interstate commerce.

23. AMS' actions damaged Crane.

24. AMS' actions were conducted in bad faith.

25. The unlawful acts of AMS entitle Crane to treble damages and attorneys' fees.

**Count Three: Tortious Interference**

26. Crane brings this count against AMS for tortious interference with a contract or business expectancy under the common law of Missouri. AMS has intentionally, wantonly, recklessly, in bad faith, and without justification, interfered with Crane's valid business expectancy with knowledge of such business expectancy by communicating to Crane's customers false claims that Crane's products infringe the '402 Patent or contain technology "stolen" from AMS.

27. AMS' actions damaged Crane.

28. The unlawful acts of AMS entitle Crane to exemplary damages and attorneys' fees.

**Count Four: Injurious Falsehood**

29. Crane brings this count against AMS for injurious falsehood under the common law of Missouri. AMS has, acting with bad faith, published a false and disparaging statements harmful to the interests of Crane that AMS knew to be false or acted in reckless disregard of the

statements' truth or falsity by misrepresenting to Crane's customers that Crane's products infringe the '402 Patent or contain technology "stolen" from AMS. AMS intended for the publication of these statements to result in harm to the pecuniary interests of Crane or should have recognized it was likely to do so.

30. AMS' actions damaged Crane.

31. The unlawful acts of AMS entitle Crane to exemplary damages and attorneys' fees.

**Count Five: Request For Declaratory Judgment: Non-infringement**

32. By virtue of AMS' actions, including threats of litigation, statements to the marketplace, accusations of infringement, litigation against competitors, and attempted ("second-filed") litigation in another federal district, a reasonable apprehension existed on Crane's behalf that Crane and/or its customers will be wrongfully sued by AMS for infringement of the '402 Patent. An actual controversy therefore exists between the parties with respect to whether the manufacture, use and/or sale of products equipped with the SureVend feature infringes any valid claim of the '402 Patent.

33. Crane requests a declaration that its products do not infringe the '402 Patent.

**Count Six: Request For Declaratory Judgment: Invalidity**

34. There is a substantial and continuing justiciable controversy between Crane and AMS as to AMS' right to threaten or maintain suit for infringement of the '402 Patent, and as to the validity, scope, and enforceability thereof.

35. Crane is informed and believes and on that basis alleges that the '402 Patent is invalid, unenforceable, and void for one or more of the following reasons:

(a) at least claims 1-6, 23-25 and 37 of the '402 Patent, as asserted by AMS, are invalid for anticipation under 35 U.S.C. §§ 102(a), (b), and/or (e) or obviousness under 35 U.S.C. § 103(a); and

(b) at least claims 1-6, 23-25 and 37 of the '402 Patent, as asserted by AMS, are invalid for derivation under 35 U.S.C. § 102(f).

36. Crane requests a declaration declaring the '402 Patent to be invalid, void, and unenforceable.

#### **Count Seven: False Marking**

37. AMS has marked its products equipped with the Sensit II feature as covered by the '402 Patent when, in fact, such products are not covered by the '402 Patent.

38. AMS' acts of false marking were made for the purpose of deceiving the public.

39. Pursuant to 35 U.S.C. § 292, AMS is subject to a fine of \$500 for each false marking offense, the total sum of which is to be apportioned one-half to the United States and one-half to Crane.

#### **Request For Jury Trial**

40. Crane hereby requests a jury trial.

**WHEREFORE**, Crane respectfully requests that the Court enter a judgment against Defendant AMS as follows:

- (a) that AMS has infringed the '014 Patent;
- (b) a preliminary and permanent injunction restraining AMS and its officers, directors, employees, agents, parents, subsidiaries, affiliates, and all persons acting in active concert or participation with it from further acts of infringement of the '014 Patent, pursuant to 35 U.S.C. § 283;



(c) an award of damages against AMS sufficient to compensate Crane for the defendant's infringement of the '014 Patent, in an amount not less than Crane's lost profit and/or a reasonable royalty, pursuant to 35 U.S.C. § 284;

(d) an award of treble damages, pursuant to 35 U.S.C. § 284, to the extent that AMS' acts of infringement of the '014 Patent are determined to be willful;

(e) a declaration that Crane's manufacture, use and/or sale of products in issue do not infringe the '402 Patent;

(f) a declaration that the '402 Patent is invalid and unenforceable;

(g) that AMS, its officers, agents, employees, directors, servants, successors, and assigns, and all those acting in concert with it or them, or any of them, be restrained and enjoined both during the pendency of this action and permanently thereafter from directly or indirectly interfering with Crane's present or prospective customer relationships or business advantage by wrongfully alleging or asserting that Crane's activities constitute patent infringement;

(h) that Crane be awarded actual and exemplary damages it has suffered as a result of the baseless infringement allegations levied by AMS and AMS' other tortious activities;

(i) that AMS be fined \$500 for each false marking offense, with one-half of the sum apportioned to Crane and one-half to the United States;

(j) that Crane be awarded its costs of court;

(k) that Crane be awarded its attorneys' fees;

(l) that Crane be awarded its pre-judgment and post-judgment interest in the maximum legal amount;

(m) that the Court deem this case "exceptional" within the meaning of 35 U.S.C. § 285; and

(n) that Crane be awarded its such other and further relief as this Court shall deem just and proper.

Respectfully submitted,

HUGHES & LUCE, L.L.P.

/s/ John W. Patton

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**ATTORNEYS FOR PLAINTIFF CRANE CO.**

**CERTIFICATE OF SERVICE**

I hereby certify that I have on this 5th day of May, 2004, the foregoing was filed electronically with the Clerk of Court to be served by operation of the Court's electronic filing system upon the following:

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/s/ John W. Patton