

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
statv1 CHARLOTTE DIVISION

CIVIL NO. ^{5:} 5:00cv 68-MCK

GLOBAL GROUND SUPPORT, L.L.C.,)
)
Plaintiff,)
)
v.) **Complaint**
)
FMC CORPORATION)
)
Defendant.)

Declaratory Judgment of Non-Infringement and Patent Invalidity

Nature of the Action

1. This is a Declaratory Judgment action for a declaration of invalidity and non-infringement of U.S. Patent No. 6,045,092 (“the ‘092 patent”).

The Parties

2. Plaintiff Global Ground Support, L.L.C. (“Global”) is a corporation existing under the laws of Kansas and having a principal place of business at 540 East 56 Highway, Olathe, Kansas 66061. Global is a subsidiary of Air T, Inc., a corporation existing under the laws of the State of Delaware and having a principal place of business at 3524 Airport Road, Maiden, North Carolina 28650.

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3. Upon information and belief, Defendant FMC Corporation (“FMC”) is a corporation organized and existing under the laws of the State of Delaware, having its principal place of business at 200 East Randolph Street, Chicago, Illinois 60601. At all times relevant hereto, Defendant FMC has been doing business in this judicial district, including the sales of deicing equipment similar to the products at issue in this suit.

Jurisdiction and Venue

4. This Court has subject matter jurisdiction under 28 U.S.C. §§2201, 2202, and 1338, as a declaratory judgment action arising under the Patent Laws, Title 35 of the United States Code. Venue is proper in this district under 28 U.S.C. §§1391(b) and (c), as Defendant FMC is a resident of this district.

5. By letter dated April 14, 2000, a copy of which is attached as Exhibit 1, FMC alleges that (a) the product manufactured by Global infringes one or more of the claims of the ‘092 patent, (b) Global’s manufacture of its deicing product constitutes deliberate and willful infringement of the ‘092 patent, and (c) unless Global agrees to take a license on terms acceptable to FMC, FMC will take action to protect its intellectual property rights.

6. Global has informed or will inform FMC that it has no intention of taking a license under the ‘092 patent, as the patent is not infringed by Global’s products, is invalid, or is otherwise unenforceable.

7. Global has at all times relevant hereto manufactured and sold products of the type accused of infringement by FMC, and continues to manufacture and sell such products. FMC’s conduct has created on the part of Global a reasonable apprehension that

Global is faced with a patent infringement lawsuit if it continues to manufacture or sell such products without taking a license from FMC under the '092 patent.

8. As a result of FMC's actions, an actual controversy regarding the validity, enforceability, and infringement of the '092 patent now exists under 28 U.S.C. § 2201.

Background Facts

9. On information and belief, FMC is the owner of all right, title, and interest in the '092 patent.

10. The '092 patent generally involves an apparatus for deicing aircraft, which includes a vehicle frame, a boom having one end mounted on the vehicle frame, a compressor unit supported by the boom, and a deicer air-jet nozzle.

11. The '092 patent includes claims 1-25 directed to an apparatus for deicing aircraft, and claims 26-43 directed to a method for deicing aircraft.

Count I – Non-Infringement

12. Paragraphs 1-11 above are incorporated herein by reference.

13. Global manufactures and sells a product known as the AirPlus!® Forced Air Deicing System.

14. The AirPlus!® Forced Air Deicing System has not, and does not include all of the elements of any of the claims of the '092 patent, and hence does not infringe any of the claims of the '092 patent.

15. The method used by Global's AirPlus!® Forced Air Deicing System has not, and does not include all of the elements of any of the claims of the '092 patent, and hence does not infringe any of the claims of the '092 patent.

Count II – Invalidity

16. Paragraphs 1-11 above are incorporated herein by reference.

17. The '092 patent is invalid under 35 U.S.C. §§ 102, 103, or 112 for one or more of the following reasons:

(a) The alleged inventor, Clifton L. Foster, was not the first and true inventor of the alleged invention purported to be described in the '092 patent. The same methods and products in all material and substantial respects were invented, known to, or used by others in this country before Foster's alleged invention thereof; were patented or described in a printed publication in this or a foreign country before the alleged invention thereof by Foster; or were patented or described in a printed publication in this or a foreign country, or in public use or on sale in this country before the filing date of the applications that became the '092 patent.

(b) By reason of the proceedings in the Patent and Trademark Office during the prosecution of the applications that resulted in the '092 patent, as shown by the file histories thereof, FMC is estopped to claim a construction that would cause the '092 patent to cover or include any product manufactured, used, or sold, or any method used by Global.

(c) The alleged invention was made by another in this country before Foster's alleged invention, and such other person has not abandoned, suppressed, or concealed it.

(d) The '092 patent, and each of the claims thereof, are invalid because the differences between the subject matter of the claims 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 of the alleged invention pertains.

(e) The '092 patent does not particularly point out and distinctly claim the part, improvement, or combination that Foster claims as his invention.

(f) The specification of the '092 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, construct, or use the same; and the description does not adequately explain the best mode for carrying out the alleged invention.

(g) The claims of the '092 patent are excessively vague and indefinite and do not distinctly point out and define the invention.

(h) The alleged invention of the '092 patent was disclosed in a United States patent of another, the application for which was filed before the alleged invention by Foster.

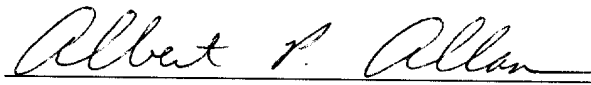
(i) Before the alleged invention by Foster, the alleged invention of the '092 patent was known or used by others or was on sale in this country or was patented or described in a printed publication in this or in a foreign country.

18. Each of the claims of the '092 patent must be restricted to a combination that includes all of the particular, specific structural and method details called for in the claims, certain details of which are not embodied in the AirPlus!® Forced Air Deicing System or in Global's method for deicing aircraft, or any other product or method used or sold by Global. The claims of the '092 patent, if valid, must be narrowly construed and held not to be infringed by Global's AirPlus!® Forced Air Deicing System or by Global's method for deicing aircraft.

WHEREFORE, Global prays that this Court enter judgment that:

- (a) U.S. Patent No. 6,045,092 is invalid or unenforceable;
- (b) Global has not infringed, induced others to infringe, or contributed to infringement of any of the claims of U.S. Patent No. 6,045,092;
- (c) FMC Corporation, its officers, agents, counsel, servants, and employees, and all persons in active concert or participation with any of them, be enjoined from charging infringement of or instituting any action for infringement of U.S. Patent No. 6,045,092 against Global or its customers;
- (d) This is an exceptional case under 35 U.S.C. § 285, and Global be awarded its reasonable attorney fees, expenses, and costs in this action; and
- (e) Global be granted such further relief as justice may require.

This 8th day of May, 2000.



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April 14, 2000

Richard Ball
Chief Executive Officer
Global Ground Support, LLC
540 East 56 Highway
Olathe, Kansas 66061-4640

William Dempsey
President and Chief Operating Officer
Global Ground Support, LLC
540 East 56 Highway
Olathe, Kansas 66061-4640

Re: U.S. Patent No. 6,045,092,
for Apparatus and Method for Deicing Aircraft (April 4, 2000);
FMC Reference No. 12099;
Our Reference No. 16980-00604

Dear Mr. Ball and Mr. Dempsey:

We are writing to follow up on our prior correspondence regarding Global's infringement of FMC's intellectual property rights. In October 1998, Patrick T. Brown of FMC Corporation, provided Global a copy of an application for a U.S. patent filed by FMC, so that Global could avoid infringing FMC's patent rights.

We are writing at this time to inform you that the U.S. Patent and Trademark Office has issued one patent to FMC and has allowed claims in at least two other FMC patent applications. (A copy of FMC's U.S. Patent No. 6,045,092 is attached for your convenience.) All three are directed to aircraft deicer devices having a centrifugal compressor. FMC recently inspected the Global deicer equipment that American Airlines is leasing from Global. Based upon the information that is available to us at this time, we believe that Global is infringing FMC's issued patent.

Prior to FMC's invention, neither Global nor any other person of whom we are aware had made, used, or sold a device covered by FMC's issued or allowed claims. FMC provided Global advance notice of the application and requested that Global not infringe FMC's rights. Nonetheless,

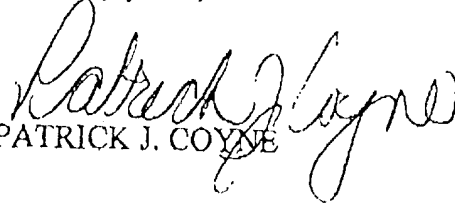
Global Ground Support, LLC
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Global proceeded to build and market an infringing device, with full knowledge of FMC's invention. Particularly in view of FMC's openness, we have no choice but to conclude that Global's infringement of FMC's patent rights has been and continues to be deliberate and willful.

On behalf of FMC, we demand that Global immediately cease making, using, and/or selling any product described by any one or more of the claims of FMC's issued patent. FMC may be willing to discuss licensing arrangements with Global. Absent FMC and Global being able to agree to a mutually acceptable license, however, we will take affirmative steps to protect FMC's valuable intellectual property rights against Global's continued infringement. Please contact us within 20 days of the date of this letter and inform us what steps Global will take to cease its infringement and to compensate FMC for Global's past infringement of FMC's rights.

This demand is made with full reservation of FMC's rights. We look forward to receiving your prompt and favorable response.

Sincerely yours,


PATRICK J. COYNE

cc: Kerry Kampschmidt, Esq. (FMC Houston)