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DISTRICT OF UTAH
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Attorney for Plaintiff Novatek Inc.

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

NOVATEK INC., a Utah corporation,)	
)	
Plaintiff,)	FIRST AMENDED
)	
v.)	COMPLAINT
)	
THE SOLLAMI COMPANY, an Illinois)	Case: 2:11-cv-00180
Corporation,)	Assigned to: Campbell, Tena
)	Assign. Date: 2/16/2011
Defendant.)	
)	

Plaintiff Novatek Inc. ("Novatek") alleges as follows:

PARTIES, JURISDICTION AND VENUE

1. Novatek is a corporation incorporated under the laws of the State of Utah with its principal place of business located in Utah County, State of Utah. Novatek is engaged in the business of manufacturing and distributing road milling, mining, and trenching equipment.
2. Defendant The Sollami Company ("Sollami") is a corporation incorporated under the laws of the State of Illinois. On information and belief, Sollami regularly and continuously conducts business in the State of Utah.
3. This court has jurisdiction of this matter pursuant to 28 U.S.C. §§1331 and 1338(a).

4. This is an action for declaratory judgment of invalidity and/or unenforceability of a patent held by Sollami and of non-infringement by Novatek of the patent held by Sollami. This action is brought pursuant to 28 U.S.C. §§2201 and 2202 and Rule 57, Federal Rules of Civil Procedure.

5. Venue is proper in this district pursuant to 28 U.S.C. §1391(b) and (c).

GENERAL ALLEGATIONS

6. Novatek manufactures and distributes road milling, mining, and trenching equipment e.g. assemblies that may be disposed on the perimeter of a rotary drum or on a continuous chain such that the assemblies may impact the face of a material being removed.

7. Sollami manufactures and distributes road milling, mining, and trenching equipment e.g. assemblies that may be disposed on the perimeter of a rotary drum or on a continuous chain such that the assemblies may impact the face of a material being removed. As such, Sollami is a direct competitor with Novatek.

8. In a letter dated February 9, 2011 ("Letter"), Sollami asserted that Novatek's products infringe U.S. Patent No. 7,883,155 (the "'155 Patent") held by Sollami, and has stated it intends to file a patent infringement action against Novatek. A copy of the Letter is attached hereto as Exhibit "A". Sollami's conduct has created the reasonable apprehension by Novatek that Sollami will file suit against Novatek for patent infringement of the '155 Patent based upon Novatek's manufacturing and distribution of its products.

9. Sollami has a history of pursuing litigation to allege patent infringement including THE SOLLAMI COMPANY vs. KENNAMETAL INC., Case: 2:06-cv-00062-AJS filed January 13, 2006 in the United States District Court for the Western District of Pennsylvania. Sollami's

litigation history has created the reasonable apprehension by Novatek that Sollami will file suit against Novatek for patent infringement of the '155 Patent.

Prosecution of the '155 Patent

10. On August 24, 2006 Sollami filed Application No. 11/509,349 with the U.S. Patent and Trademark Office, which application eventually led to the issuance of the '155 Patent on February 8, 2011. The named inventor on the '155 Patent is Phillip Sollami and the assignee is Sollami.

11. In the course of prosecution of the '155 Patent, Sollami disclosed to the examiner U.S. Patent No. 5,273,343 to Ojanen (the "Ojanen Patent"), filed Nov. 16, 1992, as relevant prior art. According to its Abstract, the Ojanen Patent discloses a "deformed sleeve [] force-fitted into a bore in a bit holder and [] retained therein in a non-rotating manner by friction."

12. In the course of prosecution of the '155 Patent, Sollami failed to disclose and the examiner did not consider other relevant prior art. One such example of other relevant prior art neither disclosed nor considered is U.S. Patent No. 2,626,667 to Spiller (the "Spiller Patent"), filed June 14, 1947. The Spiller Patent discloses a "split and tapered collet which is received within a tapered seat in the drill head spindle" (Col. 1, ln. 23-24) shown in Fig. 3. "Said collet having a tapered outer surface for frictional engagement within said tapered socket" (Claim 4). On information and belief, it 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 to replace the deformed sleeve of the Ojanen Patent with the split collet of the Spiller Patent.

13. Independent Claim 1 of the '155 Patent, the sole independent claim, claims "In an assembly for use in road milling, trenching and mining equipment including a bit, bit holder and a bit block, said bit being mountable in a first bore through said bit holder and said bit holder

being mountable in a second bore through said bit block, said bit holder and bit block, in combination, comprising: a single piece bit holder structure including, a bit holder front portion and a generally cylindrical bit holder shank portion extending axially rearwardly from said front portion defining an annular sidewall, an elongate slot radially through said sidewall extending axially from a distal end of said shank and terminating between said distal end and said front portion defining a C-shape portion of said shank, an outer surface of said C-shape portion providing interference with said second bore on said bit block sufficient to maintain said bit holder on said bit block during use."

14. The assemblies manufactured and distributed by Novatek comprise a bit that fits directly into a bit block without a bit holder as described in Claim 1 of the '155 Patent.

FIRST CLAIM FOR RELIEF
(Declaratory Relief for Invalidity/Unenforceability of the Patent)

15. By this reference, Novatek incorporates all preceding paragraphs of this Complaint as if set forth in full herein.

16. An actual and present controversy exists between Novatek and Sollami with respect to the validity, scope and enforceability of the '155 Patent. Novatek seeks to have the '155 Patent declared invalid so that, *inter alia*, it may manufacture and sell road milling, mining, and trenching equipment without hindrance.

17. Novatek is entitled to a judgment declaring the '155 Patent is invalid under the provisions of 35 U.S.C. § 101, *et seq.*, including, without limitation, Sections 101, 102, 103, 112 and 115 for at least the following reasons:

- a. Any differences between the subject matter of the claims of the '155 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; and

- b. The '155 Patent was issued without due investigation, relevant prior art was overlooked and therefore the Commissioner of Patents exceeded his authority in granting such patent.

18. Unless a declaratory judgment issues determining that the '155 Patent is invalid and unenforceable, Novatek will be at a competitive disadvantage in the marketplace and irreparably injured by, in avoiding infringement of the '155 Patent, incurring expenses and losing sales.

SECOND CLAIM FOR RELIEF
(Declaratory Relief for Non-Infringement of the Patent)

19. By this reference, Novatek incorporates all preceding paragraphs of this Complaint as if set forth in full herein.

20. An actual controversy between the parties has arisen and does now exist as to whether the devices manufactured and distributed by Novatek infringe Sollami's patent. This controversy is ripe for determination by this court.

21. Novatek is entitled to judgment declaring that none of its products infringe the patent and that Novatek has not induced or contributed to infringement of the patent.

22. Novatek has suffered or will suffer irreparable damage and harm unless the court adjudicates the controversy between the parties and issues a declaratory judgment of non-infringement.

PRAYER

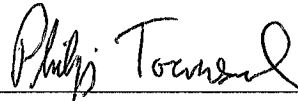
WHEREFORE, Novatek prays for Judgment as follows:

1. On the First Claim for Relief, for declaratory judgment that the '155 Patent is invalid and/or unenforceable;
2. On the Second Claim for Relief, for a declaratory judgment that Novatek has not and does not infringe the '155 Patent;
3. For costs of suit incurred herein; and
4. For such other relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury of all matters that may be tried to a jury.

DATED this 16th day of May, 2011.



Philip W. Townsend, III
Attorney for Plaintiff Novatek Inc.