

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

ALKAR-RAPIDPAK- MP EQUIPMENT, INC.)	
)	
Plaintiff)	
v.)	CIVIL ACTION NO. 09-cv-428
)	JURY TRIAL REQUESTED
JOHN BEAN TECHNOLOGIES CORPORATION,)	
)	
Defendant)	

COMPLAINT

Plaintiff for its Complaint alleges as follows:

THE PARTIES

1. Plaintiff, Alkar-RapidPak-MP Equipment, Inc., formerly Alkar-RapidPak, Inc. ("Alkar"), is a Wisconsin corporation having a principal office at 932 Development Drive, P.O. Box 260, Lodi, Wisconsin, 53555.

2. On information and belief, defendant, John Bean Technologies Corporation ("JBT"), is an Illinois corporation having a business address at 200 East Randolph Drive, Chicago, Illinois 60601.

3. On information and belief, JBT is registered to do business in Wisconsin, Entity ID Number J032073, and has a registered agent (CT Corporation System) in the Western District of Wisconsin at 8040 Excelsior Drive, Suite 200, Madison, Wisconsin 53717.

JURISDICTION AND VENUE

4. This is an action for declaratory relief under the Federal Declaratory Judgment Act, 28 U.S.C. § 2201 *et. seq.*, which arises from an actual controversy between plaintiff and

JBT as to the alleged infringement and validity of U.S. Patent Nos. 5,074,199 and 5,253,567, attached hereto as Exhibits A and B, under the United States patent laws and as to the liability of plaintiff for the alleged infringement of U.S. Patent Nos. 5,074,199 and 5,253,567. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 2201, 2202, 1338 and 1331.

5. Upon information and belief, defendant, JBT is doing business in Wisconsin (including the Western District); operates within Wisconsin (including the Western District) with a fair measure of permanence and continuity; has purposefully availed itself of the privilege of conducting activities within Wisconsin (including the Western District); has established minimum contacts with Wisconsin (including the Western District) such that it should reasonably and fairly anticipate being hailed into court in Wisconsin; has purposefully directed its activities at residents of Wisconsin (including the Western District); and at least a portion of the claim alleged herein arises out of or is related to one or more of the foregoing activities.

6. Alkar manufactures and sells commercial cooking equipment for the meat, poultry and seafood processing industry.

7. In or about July 3, 2007, Alkar purchased certain assets from MP Equipment Co., Inc., a/k/a MP Equipment Company ("MP") relating to commercial cooking equipment.

8. Alkar has developed a frying system designated as MP HelyX™ Frying System ("the accused Alkar system") that JBT has accused of infringing U.S. Patent Nos. 5,074,199 and 5,253,567.

9. On or about January 24-26, 2007, Alkar's predecessor, MP, distributed promotional literature at the International Poultry Expo ("IPE") in Atlanta, Georgia, demonstrating a HelyX™ frying system.

10. On or about February 23, 2007, JBT, through its predecessor, FMC Technologies, Inc. ("FMC"), submitted a letter to Alkar (i.e., MP) advising of U.S. Patent Nos. 5,074,199 and 5,253,567 and commenting that those patents may be of interest in light of MP's plans to introduce the MP HelyX™ frying system. JBT threatened to "take whatever actions we deem appropriate to protect our proprietary rights."

11. On August 23, 2007, JBT (i.e., FMC) submitted a letter to Alkar alleging willful infringement of U.S. Patents 5,074,199 and 5,253,567.

12. On October 1, 2007, Alkar responded by denying infringement of U.S. Patents 5,074,199 and 5,253,567 and advising that "MP Equipment Company has not manufactured, sold, or offered to sell the MP frying system described in the promotional literature distributed at the 2007 International Poultry Expo in Atlanta."

13. On October 12, 2007, JBT (i.e., FMC) challenged the assertions of non-infringement and again alleged that Alkar's system infringed the alleged patents.

14. On October 31, 2007, Alkar responded to JBT (i.e., FMC) emphasizing that Alkar was not in production with the frying system described in the promotional literature distributed at the 2007 IPE show and specifically delineated reasons why the Alkar system would not infringe the asserted patents, and further noting that any frying system developed by Alkar will be designed to avoid infringement of the noted patents, both literally and under the doctrine of equivalents.

15. On December 14, 2007, JBT (i.e., FMC) challenged the clarification and representations made in Alkar's October 31, 2007 letter and stated in part:

"We do not agree with your assertion, and we suggest that if MP wishes to avoid litigation, it should meet its 'burden' of providing specific documentation to support its position ... MP's failure to provide such documentation may be seen as an admission that MP cannot support its [sic: "its"] position and that FMC's infringement claim is well founded, or, at minimum, your lack of disclosure (in view of the brochure) will justify filing suit to obtain detailed information about the MP system."

16. On January 10, 2008, Alkar noted the inaccuracies in the speculations and assumptions made by JBT (i.e., FMC) in its December 14, 2007 letter. Alkar stated in part:

"While MP or any affiliate is not presently in production, it is MP's intent to produce frying systems, for which development is ongoing. Frying systems being developed by MP are being designed to avoid infringement of the noted patents. It is MP's policy to honor the intellectual property rights of others, and MP will continue to follow this policy."

17. Alkar did not hear from a representative of JBT (i.e., FMC) until 10 months after the January 10, 2008 letter, when JBT contacted Alkar to address the spin-off of JBT from FMC Technologies, Inc. At that time, Alkar agreed to provide documentation showing the details of the current MP HelyX™ frying system under the protection of a confidentiality agreement. JBT forwarded a proposed confidentiality agreement to Alkar via a letter dated October 6, 2008.

18. The parties continued to negotiate the confidentiality agreement, as noted in a letter dated November 19, 2008. In the November 19, 2008 letter, JBT inquired as to whether Alkar had offered to sell a fryer of the type described in the marketing materials distributed at the 2007 IPE in Atlanta.

19. Alkar's December 19, 2008 letter specifically stated "...the frying system that is the subject matter of the discussion with [customer] is not the particular system described in the marketing materials distributed at the 2007 Intellectual Poultry Expo in Atlanta." Alkar further supplied a modified confidentiality agreement to JBT.

20. JBT submitted an executed confidentiality agreement to Alkar on December 17, 2008. JBT followed-up with a letter dated January 14, 2008 threatening that if they did not receive a "quick response" with Alkar supplying drawings of the MP fryer system, JBT would "take appropriate action to protect and enforce John Bean Technologies' intellectual property rights."

21. On January 20, 2009, Alkar submitted a letter disclosing drawings of Alkar's current HelyX™ frying system to JBT under the agreement of confidentiality. The letter stated:

"With respect to the 2007 IPE in Atlanta, no product was manufactured in accordance with the fryer [sic: flyer] distributed at that show. Accordingly, whether or not we have any drawings related to that system is not relevant to the present issues."

22. JBT's January 26, 2009 letter requested full size copies of the drawings previously provided among other additional material. The letter stated:

"These designs are relevant to our claim of infringement, particularly because MP has had notice of the infringement issue since at least February 23, 2007."

23. Alkar's February 18, 2009 letter provided enlarged drawings corresponding to the drawings provided on January 20, 2009, and clarified additional issues raised in JBT's January 26, 2009 letter. Alkar reasserted that the designs of the Alkar system not offered or sold were not relevant.

24. JBT remained silent after the receipt of Alkar's February 18, 2009 letter. On April 27, 2009 Alkar sent a follow-up letter stating in part:

"As noted in my previous correspondence, the drawings provided to you are more than sufficient for you to provide confirmation that the disclosed MP fryer system does not infringe any patents owned by JBT Technologies, nor does it infringe any other JBT or FMC intellectual property rights.

Your silence on this issue for over two months indicates that you, JBT Technologies and FMC Technologies agree that there is no infringement of any of JBT or FMC's intellectual property rights. Accordingly, we consider this matter closed." (emphasis in original)

25. JBT's April 30, 2009 letter emphatically stated "there is no agreement that MP has not infringed JBT's intellectual property." JBT's May 8, 2009 letter stated an expectation to inspect Alkar's equipment.

26. Alkar submitted a May 20, 2009 letter consenting to an inspection in the face of JBT's continued assertions of infringement.

27. An actual controversy exists between Alkar and JBT.

28. JBT is subject to the personal jurisdiction of this Court.

29. Venue is proper.

30. Adjudication of the controversy between the parties in the Western District of Wisconsin is desirable and in the public interest, as well as in the interest of the parties and their customers.

COUNT I

31. The accused Alkar system does not provide, either literally or equivalently, claimed elements of U.S. 5,074,199, including, without limitation: means for selectively coupling said heater means to said conveyor means.

32. No valid, enforceable claim of U.S. Patent No. 5,074,199 will be infringed, either directly or contributorily by the manufacture, use, sale or offer for sale by Alkar or its vendees of the accused Alkar system, nor would such manufacture, use, sale or offer to sell otherwise infringe any rights of JBT.

COUNT II

33. The accused Alkar system does not provide, either literally or equivalently, claimed elements of U.S. 5,253,567, including, without limitation: at least one vertical heat-exchanger plate; at least one heat exchange plate; at least one heat exchanger unit comprising at least two substantially vertically disposed sheet members; and/or at least one heat-exchanger plate.

34. No valid, enforceable claim of U.S. Patent No. 5,253,567 will be infringed, either directly or contributorily by the manufacture, use, sale or offer for sale by Alkar or its vendees of

the accused Alkar system, nor would such manufacture, use, sale or offer to sell otherwise infringe any rights of JBT.

COUNT III

35. The Background of the Invention ("Background") of U.S. Patent No. 5,074,199 ("the '199 patent") discloses prior art deep fat fryers of the general type with which the alleged invention of the '199 patent is adapted for use with.

36. The Background of the '199 patent discloses prior art systems having heating units of the "direct fired type" and of the "indirect heating type."

37. The Background of the '199 patent discloses prior art systems of the indirect heating type that are "radiator-type units submerged in the deep fat bath" of the frying system and "embodying a plurality of tubing loops which carry hot, pressurized, circulating heating liquid or fluid therethrough" for heating a cooking bath (e.g. deep fat bath, oil bath or the like) of the fryer system.

38. The Background of the '199 patent discloses prior art systems of the indirect hearing type having a submersible heating unit to be submerged in the cooking bath and also having a conveyor mechanism to carry product portions to be cooked through the cooking bath.

39. The Background of the '199 patent discloses that prior art systems having submersible heating units and conveyors mechanisms require maintenance on such heating units and conveyor mechanisms and, therefore, the heating units and conveyor mechanisms must be able to be raised out of the cooking bath.

40. The Background of the '199 patent discloses a particular problem, namely, that if submersible heating units of the prior art systems are raised above the cooking bath while the bath is at the usual temperature of 500°-600° E, the cooking bath is "very likely to burst into flame resulting in a fire in the fryer." Accordingly, in the past, it has been necessary to permit the heating units to cool down to a predetermined lower temperature before attempting to raise

the heating units out of the fryer bath, in order to prevent the likelihood of starting the bath on fire.

41. One of ordinary skill in the art pertaining to the alleged invention of the '199 patent at the time of the alleged invention of the '199 patent will understand the Background of the '199 patent to disclose prior art systems having submersible heating units and conveyor mechanisms that are attached to one another, such that when the conveyor is removed upwardly from the cooking bath, the heating unit will also move upwardly.

42. In order to overcome the acknowledged problem of prior art systems disclosed in the Background of the '199 patent, one of ordinary skill in the art pertaining to the alleged invention of the '199 patent would find it obvious to modify the prior art systems disclosed in the Background of the '199 patent to provide "means ... for selectively coupling" the heating unit to the conveyor mechanism so that such heating unit can be selectively maintained in a non-coupled relation to the conveyor mechanisms so that the conveyor may be raised out of the bath for maintenance, while the heating unit remains in the cooking bath.

43. The specification of U.S. Patent No. 5,074,199 distinguishes the alleged invention of the '199 patent from a system with a heater means permanently connected to a conveyor means.

44. The file history of the '199 patent includes an Information Disclosure Statement ("IDS") Under 37 CFR § 1.97 submitted to the United States Patent & Trademark Office (USPTO) on December 7, 1989 and entitled "PRIOR ART STATEMENT."

45. Form PTO 1449 accompanied the Information Disclosure Statement and included a listing of only one patent reference, namely, U.S. Patent No. 3,757,672 (the '672 patent).

46. The Information Disclosure Statement did not list any foreign patents, nor did it list any publications, offers for sale or public uses. Written comments were submitted concerning the '672 patent.

47. The IDS discussed the '199 patent and stated in its entirety:

"It is requested that the prior art listed on attached Form PTO-1449 be made of record in the above identified application.

The prior art patent No. 3,757,672 listed in PTO-1449 does not disclose the basic inventive concept of the present invention, i.e., endless conveyor means mounted on said housing and adapted in operative position to carry product portions on the upper run thereof from an infeed end of said housing to a discharge end thereof, including passing of the product portions through the bath, means for driving said conveyor means, power means coaxing with said housing for lifting said conveyor means upwardly to an inoperative position above the bath, and for lowering said conveyor means downwardly to said operative position, heater means adapted to be positioned relative to said housing in the bath for heating the latter, and means coaxing between said conveyor means and said heater means when said heater means is at a relatively cool temperature for selectively coupling said heater means to said conveyor means for moving the heater means upwardly with said conveyor means upon movement of the latter to said inoperative position whereby said heater means will be disposed above the bath, or alternatively to permit said heater means to remain in the bath when said heater means is at a relatively high temperature when said conveyor means is moved to said inoperative position above said bath." (emphasis added).

48. U.S. Patent No. 5,074,199 was not obtained in a manner consistent with the provisions of Title 35, United States Code, for example and without limitation:

- (a) The alleged invention claimed in U.S. Patent No. 5,074,199 was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the named inventors;
- (b) The alleged invention claimed in U.S. Patent No. 5,074,199 was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the filing date for which U.S. Patent No. 5,074,199 obtains the benefit under 35 U.S.C. § 120;
- (c) The alleged invention claimed in U.S. Patent No. 5,074,199 was described in a patent granted on an application for a patent by another filed in the United States

before the date of the alleged invention thereof by the applicants of U.S. Patent No. 5,074,199;

- (d) The differences between the alleged invention claimed in U.S. Patent No. 5,074,199 and the prior art are such that the claimed invention as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which the claimed invention pertains;
- (e) The specification of U.S. Patent No. 5,074,199 does not contain a written description of the alleged invention as claimed;
- (f) U.S. Patent No. 5,074,199 does not sufficiently describe the manner and process of making and using the alleged invention 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 and use the same;
- (g) U.S. 5,074,199 does not set forth the best mode contemplated by the invention for carrying out the alleged invention; and
- (h) The specification of U.S. Patent No. 5,074,199 does not conclude with one or more claims that particularly point out and distinctly claiming the subject matter which the applicant regards as his invention.

COUNT IV

49. U.S. Patent No. 3,458,917 (the '917 patent) issued on August 5, 1969 to Paul Mueller, and assigned on its face to Paul Mueller Company of Springfield, Missouri. The '917 patent is entitled "Method of Fabricating Metal Sheets With Fluid Passages."

50. The '917 patent is prior art to U.S. Patent 5,253,567.

51. The '917 patent discloses metal plates having fluid pockets or passages formed in selected patterns.

52. The plates of the '917 patent may be used for various purposes, including to be submerged in a liquid and/or as a surface heat transfer plate through which heat transfer media is to flow.

53. In the '917 patent, each plate is comprised of two metal sheets welded together at different places to outline fluid passages. Either one or both of the sheets may be embossed, depending upon whether a flat surface on one side is needed. The plate thus formed can be curved to form the curved wall of a tank or can be left straight, as required.

54. The '917 patent discloses that two sheets of metal are placed together face-to-face and are welded in a desired pattern, which may be any pattern determined by a selected pattern of fluid passages. Spot welds may be made to form a flooded type heat transfer surface. Parallel welds may be made to form a parallel-type heat transfer surface.

55. There are no limitations to the shapes of the passages of the metal plates disclosed in the '917 patent.

56. The '917 patent discloses that the sheets may be welded together in a desired pattern, opposing edges may be placed in a conventional sheet metal stretcher leveller and placed under slight tension. High pressure fluid may be introduced into the space between the sheets to cause "pillowing" of one or both of the plates.

57. Fig. 3 of the '917 patent discloses a continuous weld 28 entirely surrounding the central portions of the sheets 20 and 21, and there are a large number of spot welds 29 arranged in a rectangular pattern over the area within the surrounding welded seam 28.

58. Fig. 5 of the '917 patent discloses a configuration after two sheets of equal thickness have undergone stretching and subjected to high pressure fluid. The portion of the sheets 20 and 21 between the spot welds 29 separate or "pillow" to create a heat transfer surface 35 having a plurality of pockets or "pillows" 36. The pockets 36 are in direct communication

with one another, and the wall 35 thus formed becomes a flooded type heat transfer wall in which heat transfer media may flow more or less randomly.

59. U.S. Patent No. 4,466,479 (the '479 patent) issued on August 21, 1984 to John P. MacLean, and is assigned on its face to Texaco, Inc. The '479 patent is entitled "Method of Transferring Heat Between Two Fluids and Heat Exchanger Tube."

60. The '479 patent is prior art to the '567 patent.

61. The '479 patent discloses a heat exchanger tube 13 with a long axis or center line 14 being vertical.

62. The heat exchange tube 13 of the '479 patent is intended to be submerged for the purpose of exchanging heat between fluid flowing internally of the tube and fluid flowing around the tube.

63. The specification of U.S. Patent No. 5,253,567 disclaims and/or disavows tubular (e.g., elliptical) heating unit configurations.

64. U.S. Patent No. 5,253,567 was not obtained in a manner consistent with the provisions of Title 35, United States Code, for example and without limitation:

- (a) The alleged invention claimed in U.S. Patent No. 5,253,567 was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the named inventors;
- (b) The alleged invention claimed in U.S. Patent No. 5,253,567 was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the filing date for which U.S. Patent No. 5,253,567 obtains the benefit under 35 U.S.C. § 120;
- (c) The alleged invention claimed in U.S. Patent No. 5,253,567 was described in a patent granted on an application for a patent by another filed in the United States

before the date of the alleged invention thereof by the applicants of U.S. Patent No. 5,253,567;

- (d) The differences between the alleged invention claimed in U.S. Patent No. 5,253,567 and the prior art are such that the claimed invention as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which the claimed invention pertains;
- (e) The specification of U.S. Patent No. 5,253,567 does not contain a written description of the alleged invention as claimed;
- (f) U.S. Patent No. 5,253,567 does not sufficiently describe the manner and process of making and using the alleged invention 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 and use the same;
- (g) U.S. 5,253,567 does not set forth the best mode contemplated by the invention for carrying out the alleged invention;
- (h) The specification of U.S. Patent No. 5,253,567 does not conclude with one or more claims that particularly point out and distinctly claiming the subject matter which the applicant regards as his invention; and

WHEREFORE, plaintiff prays:

- (a) For judgment declaring that the manufacture, use, sale or offer for sale by plaintiff, Alkar, or its customers or others in privity with plaintiffs of any of Alkar's products and components do not constitute either direct or contributory infringement of any claim of U.S. Patent No. 5,074,199 and that such manufacture, use, sale or offer to sell will not infringe the rights of defendant, JBT;

- (b) For judgment declaring that the manufacture, use, sale or offer for sale by plaintiff, Alkar, or its customers or others in privity with plaintiff of any of Alkar's products and components do not constitute either direct or contributory infringement of any claim of U.S. Patent No. 5,253,567 and that such manufacture, use, sale or offer to sell will not infringe the rights of defendant, JBT;
- (c) For judgment declaring one or more claims of U.S. Patent No. 5,074,199 invalid;
- (d) For judgment declaring one or more claims of U.S. Patent No. 5,253,567 invalid;
- (e) For an injunction restraining defendant, JBT, or anyone in privity with defendant, JBT, from asserting infringement or bringing, prosecuting or threatening any action charging infringement of U.S. Patent Nos. 5,074,199 and 5,253,567, or any other patent under which defendant, JBT, now has the power to assert the claim of infringement against plaintiff, Alkar, or any of its distributors, dealers or vendees or others in privity with any of them, based upon the manufacture, use, sale or offer to sell frying systems manufactured or sold by plaintiff;
- (f) For such other relief as may be just and proper, including plaintiff's costs and reasonable attorneys' fees incurred in connection with the institution, defense and prosecution of this and related civil actions.

Plaintiff hereby requests a trial by JURY.

Respectfully submitted,

s/ Aaron T. Olejniczak 

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