

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA**

UNITHERM FOOD SYSTEMS, INC.,)
an Oklahoma corporation)
)
 Plaintiff,)
)
V.)
)
FOSTER POULTRY FARMS, INC.)
d/b/a FOSTER POULTRY FARMS)
a California corporation)
)
 Defendant.)

No. 09-cv-00154-CVE-FHM
JURY TRIAL DEMANDED

FIRST AMENDED COMPLAINT

Plaintiff, Unitherm Food Systems, Inc., (“Unitherm”) for its complaint against Defendant, Foster Poultry Farms (“Foster Farms”), alleges as follows:

PARTIES

1. Plaintiff, Unitherm, is an Oklahoma corporation with its principal place of business at 502 Industrial Road, Bristow, Oklahoma 74010.

2. Upon information and belief, Foster Poultry Farms is a California corporation with its principal place of business at 1000 Davis Street, Livingston, CA 95334.

JURISDICTION AND VENUE

3 This action arises under the patent laws of the United States, 35 U.S.C. §§ 100 et seq., particularly at least Sections 271(a) and (g), 281 through 285, and 295 of Title 35 of the United States Code. Jurisdiction is proper under 28 U.S.C. §§ 1331 and 1338. Foster Farms conducts business and has other contacts within this state and district sufficient to subject Foster Farms to personal jurisdiction.

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

CAUSE OF ACTION

(Patent Infringement)

Plaintiff adopts and re-alleges each and every numbered paragraph above as if set forth verbatim herein.

5. Unitherm is the owner of United States Patent No. 7,285,299, entitled “Surface Pasteurization of Cooked Food Products,” which issued to David Howard on October 23, 2007 (“the Patent”). A copy of the Patent is appended hereto as Exhibit A. The Patent issued from U.S. Patent Application Serial No. 10/369,318, which was filed February 18, 2003, and which claimed priority to U.S. Provisional Serial No. 60/358,981, filed February 22, 2002.

6. Without authorization or authority, Foster Farms has and continues to engage in acts of using, and of offering for sale and selling products produced from, the processing method claimed in the Patent, which activities infringe the Patent, in this District and

elsewhere in the United States. Unless enjoined by the Court, these activities by Foster Farms will continue.

7. As a result of Foster Farm's infringement, Unitherm has suffered and continues to suffer damages in an amount to be determined at trial.

8. Upon information and belief, the infringement of the Patent by Foster Farms has been willful such that Unitherm's damages should be trebled. In addition, Foster Farm's conduct renders this an exceptional case under 35 U.S.C. § 285, thus entitling Unitherm to an award of attorney fees.

PRAYER FOR RELIEF

WHEREFORE, Unitherm prays that judgment be entered in its favor and against Foster Farms and for relief including:

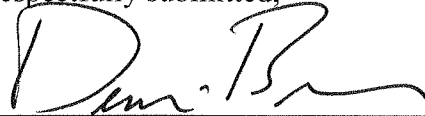
1. That Foster Farms, its officers, directors, employees, and all others acting under its direction or control be preliminarily and permanently enjoined and restrained from infringing the Patent;

2. That Foster Farms account to Unitherm for all gains, profits, and advantages derived by Foster Farms from its infringement of the Patent;

3. Compensatory damages, royalties, interest, and costs pursuant to 35 U.S.C. § 284;

4. Increased damages of treble the amount of actual damages found or assessed pursuant to 35 U.S.C. § 284;
5. Reasonable attorney fees pursuant to 35 U.S.C. § 285; and
6. Such other and further relief as the Court deems proper.

Respectfully submitted,



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