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Of Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON

JOHNSON CRUSHERS INTERNATIONAL,
INC. and KOLBERG-PIONEER, INC.;

Plaintiffs,

v.

SCREEN MACHINE INDUSTRIES, INC.;

Defendant.

Case No. 08-6116-HO

**FIRST AMENDED COMPLAINT
DECLARATORY JUDGMENT
(28 USC §§ 2201, et. seq.)
and
PATENT INFRINGEMENT
(35 USC § 271, et. seq.)**

DEMAND FOR JURY TRIAL

Plaintiffs, Johnson Crushers International, Inc. (“JCI”) and Kolberg-Pioneer, Inc. (“KPI”) (collectively “JCI-KPI”) bring this action for declaratory judgment against Defendant, Screen Machine Industries, Inc., (“Screen Machine”) and state as follows:

Parties

1. JCI is a Tennessee corporation with its principal place of business located at 86470 Franklin Boulevard, Eugene, Oregon 97405. Among other things, JCI designs, manufactures and sells track mounted incline screen plants.

2. KPI is a Tennessee corporation with its principal place of business located at 700 W. 21st Street, Yankton, South Dakota 57078. Among other things, KPI sells track mounted incline screen plants.

3. Upon information and belief, Screen Machine is an Ohio corporation, formerly known as Ohio Central Steel Company, with its principal place of business located at 10685 Columbus Parkway, Pataskala, OH 43062. Upon information and belief, Screen Machine manufactures and sells mobile screeners, shredders, screening plants, radial stacking conveyors, trommel screens and impact crushers for the aggregate, landscaping, construction, remediation, recycling, topsoil, mining, quarry, asphalt and concrete industries.

Subject Matter Jurisdiction

4. JCI-KPI bring this action under 28 U.S.C. §§ 2201 and 2202, Declaratory Judgments, to resolve unfounded accusations of patent infringement asserted against them by Screen Machine. The Court has subject matter jurisdiction over JCI-KPI's claims of non-infringement pursuant to 35 U.S.C. §§ 271, *et seq.*, invalidity under 35 U.S.C. § 102, and unenforceability under 37 C.F.R. § 1.56. Accordingly, the Court has federal question jurisdiction over these claims under 28 U.S.C. §§1331 and 1338.

Personal Jurisdiction and Venue

5. Screen Machine is subject to the personal jurisdiction of this Court because it has engaged in substantial business activities in Oregon. Furthermore, Screen Machine is subject to the personal jurisdiction of this Court because, either directly or through others, it has: solicited or transacted business, or otherwise intentionally injected itself into, Oregon commerce; and has threatened harm to JCI-KPI in Oregon. Also, Screen Machine is subject to the personal jurisdiction of this Court as this action arises out of the ownership, use or possession of tangible property or things of value in Oregon. Finally, Screen Machines is subject to the personal jurisdiction of this Court because prosecution of this action is not inconsistent with the Constitution of this state or the Constitution of the United States.

6. Venue is proper in this district under 28 U.S.C. §1391(b) in that a substantial part of the events giving rise to the claims occurred in this District. In addition, the accused screen plants were assembled, distributed and offered for sale in this District.

Pertinent Factual Background

7. For the past approximately four (4) years, JCI-KPI have continually marketed and sold track mounted screen plants, commonly referred to as Fast Trax® screen plants, in this judicial district.

8. Since 2004, JCI has continually manufactured Fast Trax® screen plants at its Eugene, Oregon manufacturing facility.

9. From approximately December 2007 to 2008 JCI-KPI's design team developed the track mounted incline screen plant identified as FT5162*i*. Since early 2008, JCI-KPI has offered for sale and distributed the FT5162*i* screen plant.

10. Screen Machine claims to be the owner of United States Patent No. 6,698,594 ("the '594 Patent") a copy of which is attached hereto as Exhibit 1.

11. Screen Machine has accused JCI-KPI of infringing the '594 Patent by their manufacture and sale of the FT5162*i* screen plant.

12. By letter dated March 10, 2008, counsel for Screen Machine demanded that JCI-KPI cease and desist from manufacturing, offering for sale or selling the FT5162*i* screen plant.

13. In the March 10, 2008 letter, counsel for Screen Machine referred to treble damages and costs including attorney's fees associated with litigation.

14. On or about March 13, 2008, Jeffery Elliott, President of JCI, Steve Cohen, President of Screen Machine, and Steve Anderson of Astec, Inc (a sibling company to JCI-KPI) had a face-to-face meeting at Mr. Cohen's booth at the Con Expo trade show in Las Vegas, Nevada.

15. During the face-to-face meeting, Mr. Cohen asserted that the FT5162*i* screen plant infringes the '594 Patent literally and under the Doctrine of Equivalents.

16. Also during the face-to-face meeting, Mr. Cohen informed Mr. Elliott and Mr. Anderson that Screen Machine is a substantial company that had won two previous patent infringement lawsuits.

17. Before concluding the face-to-face meeting, Mr. Cohen provided the following three options to Messrs. Elliott and Anderson: (1) advise him why the FT5162*i* screen plant does not infringe the '594 Patent; (2) reach a licensing agreement with Screen Machine; or (3) enter into litigation.

18. By letter dated April 3, 2008, JCI-KPI responded to Screen Machine's accusations and demands by asserting that they do not infringe any valid claim of the '594 Patents, either literally or under the Doctrine of Equivalents.

19. Screen Machine's conduct has put JCI-KPI in the position of either pursuing arguably illegal behavior or abandoning that which they have a right to do, and threatens the status of JCI's manufacturing operations in Eugene, Oregon, relative to the manufacture of the FT5162*i* screen plant.

20. As a result, an actual case or controversy exists between JCI-KPI and Screen Machine concerning the infringement, validity and enforceability of the '594 Patent.

21. JCI-KPI believe that they now have no choice but to file this action in order to resolve this dispute by having the Court declare the rights of the parties relative to Screen Machine's allegations.

COUNT I

(Non-Infringement of '594 Patent)

22. JCI-KPI hereby restate and incorporate by reference Paragraphs 1 through 21, above, as though fully set forth herein.

23. JCI-KPI's FT5162*i* product consists of design elements which were either in the public domain, or which were conceived and reduced to practice solely by JCI-KPI. Nevertheless, Screen Machine accuses JCI-KPI of infringing its '594 Patent.

24. JCI-KPI have not infringed the '594 Patent by their manufacture, offer for sale, sale, use or importation into the United States of the FT5162i product. Further, JCI-KPI have not induced or contributed to the infringement of the '594 Patent.

25. JCI-KPI seek a declaration by this Court that JCI-KPI's FT5162i product does not infringe any valid claim of the '594 Patent, either literally or under the Doctrine of Equivalents.

26. JCI-KPI further request that the Court enjoin and restrain Screen Machine from its continued allegations of patent infringement associated with JCI-KPI's FT5162i product. JCI-KPI seek this relief under 28 U.S.C. §2202.

COUNT II

(Invalidity of '594 Patent)

27. JCI-KPI hereby restate and incorporate by reference Paragraphs 1 through 26, above, as though fully set forth herein.

28. JCI-KPI further requests that the Court declare the '594 Patent invalid under 35 U.S.C. 101, *et seq.*

JURY DEMAND

29. JCI-KPI demand a jury to try all issues triable of right by a jury.

PRAYER FOR RELIEF

THEREFORE, JCI-KPI respectfully request that this Court enter an Order:

- (1) Declaring that JCI-KPI have not infringed any of the claims of the '594 Patent;
- (2) Declaring that Screen Machine's '594 Patent is invalid;
- (3) Enjoining and restraining Screen Machine from making any further allegations or claims against JCI-KPI for patent infringement, as described in this Complaint;

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(4) Determining that JCI-KPI's case for non-infringement is an exceptional case, and awarding costs of suit including reasonable attorney's fees to JCI-KPI pursuant to 35 U.S.C. § 285; and

(5) Awarding to JCI-KPI all other general or equitable relief to which they may be entitled.

DATED April 11, 2008.

HERSHNER HUNTER, LLP

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