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UNITED STATES DISTRICT COURT
 DISTRICT OF SOUTH DAKOTA
 SOUTHERN DIVISION

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CIV. 08-4195

LYNDON J. HURLEY, an individual, and :
 HURCO TECHNOLOGIES, INC., a South :
 Dakota corporation, :

Plaintiffs, :

**FIRST AMENDED
 COMPLAINT**

vs. :

AMERICAN MANUFACTURING & :
 MACHINE, INC., a Florida corporation, :
 VAC-TRON EQUIPMENT, LLC, a :
 Delaware limited liability company, and :
 DON M. BUCKNER, an individual, :

Defendants. :

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Plaintiffs, Lyndon J. Hurley and Hurco Technologies, Inc., for their First Amended Complaint against Defendants, American Manufacturing & Machine, Inc.; Vac-Tron Equipment, LLC; and Don M. Buckner, state and allege as follows:

PARTIES

1. Plaintiff Lyndon J. Hurley ("Hurley") owns Plaintiff Hurco Technologies, Inc., and resides in Harrisburg, South Dakota. Hurley is the inventor of a valve exercising system ("the Invention") that is highly suitable for exercising valves and fire hydrants in an efficient and effective manner. The Invention is the subject matter of

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United States Patent No. 7,455,124, entitled "Valve Tester Suspension Assembly" ("the '124 Patent").

2. Plaintiff Hurco Technologies, Inc. ("Hurco") is incorporated under the laws of South Dakota and its principal place of business is located in Harrisburg, South Dakota. Hurco manufactures and sells, among other things, devices that aid in exercising valves and fire hydrants.

3. Defendant American Manufacturing & Machine, Inc. ("American") is a corporation organized and existing under the laws of Florida, with its principal place of business in Okahumpka, Florida. American has manufactured and sold a variety of products, including valve-exercising equipment, throughout the United States.

4. Vac-Tron Equipment, LLC ("Vac-Tron"), a Delaware limited liability company, purchased certain assets from American, including assets related to the manufacture and sale of valve-exercising equipment. Vac-Tron manufactures and sells valve-exercising equipment throughout the United States.

5. Defendant Don M. Buckner ("Buckner") is domiciled in Florida, and is a shareholder, officer, and director of American. He was personally involved with the day-to-day operations of American, and had direct authority and control over American's manufacturing and sale of its products. Upon information and belief, Buckner is intimately involved with the operations of Vac-Tron.

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JURISDICTION AND VENUE

6. This Court has subject matter jurisdiction over all causes of action set forth herein pursuant to 28 U.S.C. §§ 1331 and 1338(a), because this is a civil action for patent infringement arising under the patent laws of the United States, including 35 U.S.C. §§ 271 and 281.

7. This Court has personal jurisdiction over Defendants. Defendants have done business and continue to do business in South Dakota. Defendants do business in the State of South Dakota by directly selling products in South Dakota and/or selling products in South Dakota through dealers located in South Dakota. For instance, Defendants market their products to and through Vermeer Manufacturing Co. and through Vermeer's dealers in South Dakota, including Vermeer Equipment of South Dakota, located in Tea, South Dakota, and Vermeer Equipment-Black Hills, located in Box Elder, South Dakota.

8. Venue is proper in this Court under 28 U.S.C. §§ 1391(b)(2) and 1391(c).

FACTS

9. On November 25, 2008, the '124 Patent was duly and legally issued to Hurley. A true and correct copy of the '124 Patent is attached hereto as Exhibit A.

10. The interests of Hurley in the '124 Patent have been assigned to Hurco. Hurco is the current owner of all right, title, and interest in the '124 Patent.

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11. Hurco manufactures and sells embodiments of the Invention. Each embodiment manufactured and sold by Hurco since the date of the '124 Patent's issuance has been prominently marked with statements that the product is manufactured under the '124 Patent.

12. Hurco has commercially exploited the Invention by manufacturing and selling these systems and will continue to do so.

13. Defendants have sold and continue to sell competing products, including their Flow Master series, that infringe one or more claims of the '124 Patent, including at least Claims 1 and 8.

14. Upon information and belief, Buckner was involved in American's day-to-day operations; is intimately involved in the operations of Vac-Tron; and supervises or controls Vac-Tron's infringing activity.

COUNT I: PATENT INFRINGEMENT

15. Plaintiffs restate all previous allegations and incorporate them herein by reference.

16. Defendants have directly infringed, and continue to directly infringe, one or more claims of the '124 Patent literally and/or under the doctrine of equivalents by making, using, offering to sell, and/or selling products, including but not limited to their

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Flow Master products, that infringe one or more claims of the '124 Patent in violation of 35 U.S.C. § 271(a).

17. Upon information and belief, Defendants have engaged in activities that constitute inducement to infringe and/or contributory infringement of the '124 Patent in violation of 35 U.S.C. § 271(b) and (c).

18. Upon information and belief, Defendants will continue their infringing activities unless enjoined by this Court as allowed by 35 U.S.C. § 283.

19. Upon information and belief, Defendants' infringement has been and will be deliberate, willful, intentional, and with full knowledge of the existence and validity of the '124 Patent.

20. Plaintiffs have suffered and will continue to suffer damages by reason of Defendants' infringement, either directly, contributorily, or by inducement, for which they are entitled to relief under 35 U.S.C. § 284.

REQUESTED RELIEF

WHEREFORE, Plaintiffs request a judgment against Defendants as follows:

1. Declaring that the '124 Patent is valid and enforceable;
2. Finding that Defendants have directly infringed one or more claims of the '124 Patent;
3. Finding that Defendants have contributorily infringed and/or induced the infringement of one or more claims of the '124 Patent;

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4. Declaring that American, Vac-Tron, and their officers, subsidiaries, parents, agents, servants, employees, attorneys, and all parties in active concert with American and Vac-Tron, including Buckner, be preliminarily and permanently enjoined from any further infringement of the '124 Patent pursuant to 35 U.S.C. § 283;

5. Awarding damages to Plaintiffs as a result of Defendants' infringement of the '124 Patent together with interest and costs pursuant to 35 U.S.C. § 284;

6. Increasing the damages assessed against Defendants to three times the amount found or assessed pursuant to 35 U.S.C. § 284 to the extent that Defendants' infringement is wilful;

7. Declaring that this is an exceptional case and ordering that Defendants pay to Plaintiffs their reasonable attorneys' fees and costs pursuant to 35 U.S.C. § 285;

8. Finding that Buckner is personally liable for the infringement of the '124 Patent because of his day-to-day control and supervisory authority over American's and Vac-Tron's infringement; and

9. Awarding such other and further relief to Plaintiffs as the Court deems just and equitable under the circumstances.

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Dated this 15th day of July, 2009.

WOODS, FULLER, SHULTZ & SMITH, PC

By 

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JURY DEMAND

Plaintiffs request a jury trial on all issues of fact.

Dated this 15th day of July, 2009.

WOODS, FULLER, SHULTZ & SMITH, PC

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