

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

IDQ OPERATING, INC.,

Plaintiff,

v.

NU-CALGON

Defendant.

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Civil Action No. _____

COMPLAINT

The Parties

1. Plaintiff IDQ Operating, Inc. (hereinafter "IDQ") is a corporation with its principal place of business at 2901 West Kingsley Road, Garland, Texas 75041.

2. Defendant Nu-Calgon ("Defendant") is a corporation with its principal place of business at 2008 Altom Court, St. Louis, Missouri 63146.

Jurisdiction and Venue

3. Jurisdiction is proper in this Court pursuant to 28 U.S.C. §§ 1331 and 1338 because this action is for patent infringement and arises under the Patent Laws of the United States, Title 35 of the United States Code.

4. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391 and 1400.

GENERAL AVERMENTS

Plaintiff's Patent Rights

5. IDQ makes and sells certain products, including air conditioning and refrigeration products.

6. United States Patent No. 6,438,970 ("the '970 Patent") was duly and legally issued (the "Patent").

7. IDQ is the owner of all rights in and to the Patent.
8. A true and correct copy of the Patent is attached hereto as **Exhibit A**.
9. IDQ has marked its products pursuant to 35 U.S.C. § 287(a).

Defendant and their Infringing Activity

10. Defendant has made, sold, imported, and/or used certain air conditioning and refrigeration products, including but not limited to Defendant's A/C EasySeal product (*e.g.*, with a parts number of 4050-06 and 4050-02) (the "Products"). *See, e.g.*, **Exhibit B**. Defendant also teaches a method whereby the Products are used in air conditioning and refrigeration products.

11. Upon information and belief, Defendant sells the Products and teaches a method for using the Products in a wide range of locations, including through Defendant's Internet web site at www.nucalgon.com, the relevant pages of which are attached hereto as composite **Exhibit C**.

12. Defendant seeks to directly and/or indirectly sell the Products, and teach a method to use the Products, to the general public, companies, distributors, and/or facilities in the state of Texas and this district.

13. Upon information and belief, Defendant has sold the Products and/or taught a method to use the Products in the state of Texas and this district.

14. The activities of Defendant with regard to their sales, importation, manufacture and/or use of the Products, and teaching of methods for use of the Products, are and have been without authorization from IDQ.

COUNT I - PATENT INFRINGEMENT

15. This cause of action arises under the Patent Laws of the United States, Title 35, United States Code.

16. IDQ repeats and realleges each and every allegation contained in Paragraphs 1 through 15 of this Complaint as if fully set forth herein.

17. Defendant has infringed and continues to infringe the Patent under 35 U.S.C. § 271 *et seq.* This infringement was and is willful and intentional.

18. Defendant has, without authority, consent, right or license, and in direct infringement of the Patent, imported, made, used, and/or sold products (*e.g.*, the Products) in this country, and used and/or disseminated/taught methods to use products (*e.g.*, the Products) in this country, and, upon information and belief, such products have been sold and used in the state of Texas, and such methods have been used and/or disseminated/taught in the state of Texas.

19. Defendant's infringing conduct is willful, intentional, and unlawful and, upon information and belief, will continue unless enjoined by this Court.

COUNT II - INDUCEMENT OF PATENT INFRINGEMENT

20. This cause of action arises under the Patent Laws of the United States, Title 35, United States Code, in particular under 35 U.S.C. § 271(b).

21. IDQ repeats and realleges each and every allegation contained in Paragraphs 1 through 20 of this Complaint as if fully set forth herein.

22. Defendant has, in this country, actively and/or intentionally induced others to (a) make, import, use and/or sell products (*e.g.*, the Products) that infringe the Patent, and/or (b) use methods that infringe the Patent.

23. Defendant's infringing conduct is willful, intentional, and unlawful and, upon information and belief, will continue unless enjoined by this Court.

COUNT III - CONTRIBUTORY PATENT INFRINGEMENT

24. This cause of action arises under the Patent Laws of the United States, Title 35, United States Code.

25. IDQ repeats and realleges each and every allegation contained in Paragraphs 1 through 24 of this Complaint as if fully set forth herein.

26. Defendant is furthermore liable for contributory infringement, pursuant to 35 U.S.C. § 271(c), in that Defendant has made, imported and/or sold within the United States a component of a patented machine, manufacture, composition, combination, or system, and/or a material or apparatus for use in practicing a patented method or process, including a material part of the invention, knowing the same to be especially made or adapted for use in the infringement of the Patent and not a staple article or commodity of commerce suitable for substantial non-infringing use.

27. Defendant's infringing conduct is willful, intentional, and unlawful and, upon information and belief, will continue unless enjoined by this Court.

DAMAGES

28. IDQ repeats and realleges each and every allegation contained in Paragraphs 1 through 27 of this Complaint as if fully set forth herein. IDQ has suffered, is suffering, and will continue to suffer irreparable harm and injury as a result of Defendant's aforesaid activities. Defendant will, unless restrained and enjoined, continue to act in the unlawful manner complained of herein, all to IDQ's irreparable damage. IDQ's remedy at law is not adequate to compensate it for the injuries suffered and threatened. By reason of Defendant's acts complained of herein, IDQ has suffered monetary damages in an amount that has not yet been determined.

REQUEST FOR JURY TRIAL

29. IDQ hereby demands that this cause be tried by a jury.

NOTICE OF REQUIREMENT OF LITIGATION HOLD

30. Defendant is hereby notified that it is legally obligated to locate, preserve and maintain all records, notes, drawings, documents, data, communications, materials, electronic recordings, audio/video/photographic recordings and digital files, and other information and tangible things that Defendant knows, or reasonably should know, may be relevant to actual or potential claims, counterclaims, defenses and damages by any party or potential party in this lawsuit, whether created or residing in hard copy form or in the form of electronically stored information (hereafter collectively referred to as "Potential Evidence").

31. As used above, the phrase "electronically stored information" includes without limitation: computer files (and file fragments), e-mail (both sent and received, whether internally or externally), information concerning e-mail (including but not limited to logs of e-mail history and usage, header information, and deleted but recoverable e-mails), text files (including drafts and revisions, and active and deleted word processing documents), instant messages, audio recordings and files, video footage and files, audio files, photographic footage and files, spreadsheets, databases, calendars, telephone logs, contact manager information, internet usage files, and all other information created, received or maintained on any and all electronic and/or digital forms, sources and media, including, without limitation, any and all hard disks, removable media, peripheral computer or electronic storage devices, laptop computers, mobile phones, personal data assistant devices, Blackberry devices, iPhones, video cameras and still cameras, and any and all other locations where electronic data is stored. These sources may also include the personal electronic, digital and storage devices of any and all of Defendant's agents or employees if Defendant's electronically stored information resides there.

32. Defendant is hereby further notified and forewarned that any alteration, destruction, negligent loss, or unavailability, by act or omission, of any Potential Evidence may

result in damages or a legal presumption by the Court and/or jury that the Potential Evidence is not favorable to Defendant's claims and/or defenses. To avoid such a result, Defendant's preservation duties include, but are not limited to, the requirement that Defendant's immediately notify their agents and employees to halt and/or supervise the auto-delete functions of Defendant's electronic systems and refrain from deleting Potential Evidence either manually or through a policy of periodic deletion.

PRAYER

33. WHEREFORE, IDQ demands:

A. That Defendant, its agents, officers, directors, employees, servants, representatives, privies, successors and assigns, and all holding by, through or under Defendant, and all those acting for or on the behalf of Defendant, or in active concert, participation, or combination with Defendant, be enjoined and restrained, immediately and preliminarily, during the pendency of this action and permanently thereafter from:

(1) making, using, selling and/or importing the Products, or any colorable imitation thereof, or teaching methods to use such Products,

(2) inducing others from infringing the Patent, and/or contributing to the infringement of the Patent by others; and

(3) otherwise infringing upon the Patent.

B. That this Court order Defendant, and its agents, officers, directors, employees, servants, representatives, privies, successors and assigns, and all holding by, through or under Defendant, and all those acting for or on the behalf of Defendant, or in active concert, participation, or combination with Defendant, to deliver up to this Court, and to permit the seizure by Officers appointed by the Court of all articles and materials infringing upon the rights of IDQ, and particularly, without limitation, all products or other merchandise which embodies

or includes the Products or teaches any methods to use the Products, and to be delivered up for destruction on the issuance of a final Order in this action, including all Products, and all equipment and other matter for reproducing such Products, and Defendant submit in writing, under oath, a description of all actions taken to comply with this portion of the Order.

C. That Defendant be required to pay to IDQ such damages as IDQ has sustained in consequence of Defendant's infringement of the Patent.

D. That, in the alternative, a reasonable royalty be awarded to IDQ pursuant to 35 U.S.C. § 284.

E. That Defendant be ordered to account for and pay over to IDQ all its respective gains, profits and advantages derived from the infringement of the Patent or such damages as to the Court shall appear proper within the patent laws.

F. That Defendant be ordered to pay IDQ enhanced damages (*e.g.*, treble damages).

G. That Defendant be ordered to pay to IDQ the costs of this action, prejudgment interest, and post-judgment interest.

H. That this case be found to be exceptional.

I. That Defendant be ordered to pay IDQ's reasonable attorneys' fees, experts' fees, and costs.

J. That IDQ be awarded such other and further relief as the Court may deem just and proper.

Respectfully submitted,

s/ Eric B. Meyertons

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