

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION**

Civil Action No.: _____

MORRIS & ASSOCIATES, INC.,)
 a North Carolina Corporation,)
)
 Plaintiff,)
)
v.)
)
COOLING & APPLIED)
TECHNOLOGY, INC.,)
 an Arkansas Corporation,)
)
 Defendant.)
_____)

COMPLAINT
(JURY TRIAL DEMAND)

Plaintiff, Morris & Associates, Inc. (“Morris”) states its Complaint against Cooling & Applied Technology, Inc. (“CAT” or “Defendant”) as follows:

INTRODUCTION

1. This is an action for patent infringement arising under the patent laws of the United States, Title 35, United States Code.

JURISDICTION AND VENUE

2. This Court has subject matter jurisdiction over all causes of action set forth herein pursuant to 28 U.S.C. §§ 1331 and 1338(a).

3. Venue is proper in this judicial district and division pursuant to 28 U.S.C. §§1391(b) and (c) and 1400(b).

4. The Court has personal jurisdiction over the Defendant due to Defendant's contacts with the State of North Carolina arising at least, on information and belief, from sales and/or offers to sell by Defendant of Defendant's products in North Carolina, including within this judicial district.

PARTIES

5. Morris is a North Carolina corporation having its principal place of business in Garner, North Carolina at 803 Morris Drive, Garner, North Carolina 27529, which is located in Wake County.

6. Upon information and belief, Defendant is an Arkansas corporation having its principal place of business in Russellville, Arkansas at 202 S. Erie, Russellville, Arkansas 72801.

7. Upon information and belief, Defendant maintains a presence in the State of North Carolina through its sales representative(s) responsible for sales of Defendant's products in the North Carolina, including past sales and/or offers for sale of Defendant's products to Defendant's existing customers located in North Carolina, including, on information and belief, the accused infringing product identified below.

THE CONTROVERSY

8. Since 1949, Morris has been a leading manufacturer of packaged refrigeration equipment, engaging both domestic and worldwide export markets.

9. Morris is involved in the development and sale of commercial poultry chillers, water rechillers, heat exchangers, ingredient pumps, industrial ice makers, and ice rakes and bins.

10. Morris is the owner, by assignment, of all right, title, and interest in and to U.S. Patent No. 7,470,173 B2, entitled "Post Chill Decontamination Tank," which issued from the United States Patent and Trademark Office on December 30, 2008, and is hereinafter referred to as "the '173 patent."

11. A copy of the '173 patent is attached herewith as Exhibit "A."

12. Morris' '173 patent describes that a post chill decontamination tank assembly may be positioned at the exit end of a chiller of a poultry processing line such that eviscerated birds enter the post chill decontamination tank. Paddles in the tank revolve about an axis and collect and lift the birds through liquid in the tank for discharge from the tank. An antimicrobial substance may be added to the liquid in the tank for treating the exposed surfaces of the birds while in the post chill decontamination tank.

13. On information and belief, Defendant sales, offers for sale, makes, has made, uses, and/or imports a chiller product identified as KILLCAT, which is a pathogen reduction system.

14. Defendant's web site (www.gocatgo.biz) includes the KILLCAT product as one of the chilling products offered for sale by CAT, which may be specifically found at www.gocatgo.biz/KillCat.htm.

15. On information and belief, Defendant has sold and/or made or attempted to make offers for sale, of its KILLCAT pathogen reduction system to current and/or potential customers located within the State of North Carolina.

16. On information and belief, Defendant's KILLCAT product consists of a chiller-like section having a windmill unloader and baffle, which is used to ensure that poultry product placed in the KILLCAT product has the necessary dwell time and is completely submerged to provide total coverage.

17. Defendant has in the past and continues to make, have made, offer for sale, sell, use, and/or import into the United States one or more products, services, and/or processes that constitute direct infringement, contributory infringement, and/or inducement to infringe one or more claims of the '173 patent in violation of 35 U.S.C. § 271, including without limitation its KILLCAT product.

18. In a letter dated January 18, 2008 sent to Defendant, which is attached hereto as Exhibit B, counsel for Morris placed Defendant on actual notice pursuant to 35 U.S.C. § 154(d) of the publication of the patent application that became the '173 patent, that is, Patent Application Publication No. 2007-0287371 A1.

19. Defendant never responded in writing to the January 18, 2008 letter.

COUNT ONE:
INFRINGEMENT OF U.S. PATENT NO. 7,470,173

20. Morris re-alleges and incorporates herein the allegations of the preceding paragraphs of this Complaint as if fully set forth herein.

21. Defendant has in the past and continues to make, have made, offer for sale, sell, use, and/or import into the United States one or more products, services, and/or processes that constitute direct infringement, contributory infringement, and/or inducement to infringe one or more claims of Morris' '173 patent in violation of 35 U.S.C. § 271, including, but not necessarily limited to, Defendant's KILLCAT pathogen reduction system product.

22. Defendant's infringement has been, and continues to be, willful.

23. Morris has and continues to suffer damages as a result of Defendant's infringement of Morris' '173 patent, and will suffer additional and irreparable damages unless Defendant is permanently enjoined by this Court from continuing its infringement. Morris has no adequate remedy at law.

24. Because of Defendant's infringement of Morris' '173 patent, Morris is entitled to: (1) damages adequate to compensate it for Defendant's infringement, which amounts to, at a minimum, a reasonable royalty; (2) treble damages; (3) its attorney fees and costs; and (4) a preliminary and permanent injunction.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Morris prays that the Court enter judgment in favor of Plaintiff and against Defendant as follows:

A. That Defendant, pursuant to 35 U.S.C. § 284, be ordered to pay damages adequate to compensate Morris for Defendant's infringement of Morris' United States Patent No. 7,470,173;

B. That Defendant, pursuant to 35 U.S.C. §§ 284 and 285, be ordered to pay treble damages and attorney's fees;

C. That Defendant, pursuant to 35 U.S.C. § 283, be enjoined from further infringement of Morris' United States Patent No. 7,470,173;

D. That Defendant be ordered to pay prejudgment interest and all costs associated with this action; and

E. That Morris be granted such other and additional relief as the Court deems just, equitable, and proper.

DEMAND FOR JURY TRIAL

Pursuant to Fed. R. Civ. P. 38(b), Plaintiff Morris demands a trial by jury of all issues triable of right by a jury.

This 22nd day of January, 2009

/s/ James P. West

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North Carolina Bar No. 18019

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