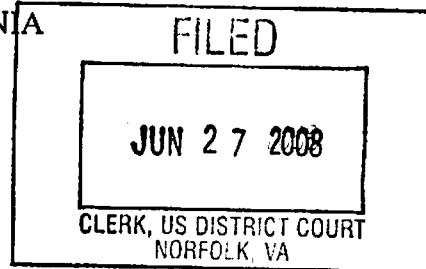


IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Norfolk Division



AMERICAN PILEDIVING  
EQUIPMENT, INC., a Washington  
corporation,

Plaintiff,

v.

Civil Action No.: 1:08CV667-TSE/JFA

GEOQUIP MACHINE CORPORATION,  
a Virginia corporation,

**Jury Trial Demanded**

Serve: VB Business Services LLC, R/A  
500 World Trade Center  
101 West Main Street  
Norfolk, Virginia 23510

Defendant.

**COMPLAINT FOR PATENT INFRINGEMENT**

Plaintiff, American Piledriving Equipment, Inc. ("APE"), complains against Defendant, Geoquip Machine Corporation ("Geoquip"), and alleges as follows:

**PARTIES**

1. APE is a corporation organized under the laws of the state of Washington, having a principal place of business at 7032 South 196<sup>th</sup>, Kent, Washington 98032.

2. On information and belief, Hydraulic Power Systems, Inc. ("HPSI") is a corporation organized under the laws of the state of Missouri, having a principal place of business at 1203 Ozark, North Kansas City, Missouri 64116. HPSI is a manufacturer and distributor of foundation construction equipment, such as piledrivers, earth augers, and pile driving leads.

3. On information and belief, Geoquip is an authorized dealer for and agent of HPSI. Geoquip is a corporation organized under the laws of the Commonwealth of Virginia, having a principal place of business at 1111 Cavalier Blvd., Chesapeake, Virginia 23323. Geoquip has done or is now doing business in Virginia regarding the subject matter of this action.

#### **JURISDICTION & VENUE**

4. This is an action for patent infringement, arising under the Patent Laws of the United States, 35 U.S.C. §§ 100 *et seq.*, and is brought to redress the infringement by defendant Geoquip of United States Patent No. 5,355,964 (hereinafter referred to as the “’964 Patent”).

5. Subject matter jurisdiction over the claims asserted in this Complaint arises under 28 U.S.C. § 1331 in that this action involves a federal question. Subject matter over the claims also arises under 28 U.S.C. § 1338(a) in that this action arises under the patent laws of the United States.

6. This Court has personal jurisdiction over Geoquip because Geoquip resides within this Judicial District in that it maintains a regular and established place of business within this Judicial District.

7. Venue is proper in this Judicial District under 28 U.S.C. §§ 1391(b) and (c) and § 1400(b). On information and belief, defendant Geoquip resides in this Judicial District because it maintains a regular and established place of business within this Judicial District and transacts business and/or has transacted business at the time this cause arose in this Judicial District, which business activities form the basis for this Complaint.

#### **FACTUAL BACKGROUND**

8. APE is a leading manufacturer and distributor of vibratory pile drivers/extractors, diesel hammers, drills, and other deep foundation construction equipment, and is known as an

innovative leader in this business and technical area. APE's innovation in the pile driving and pile extraction business has drawn recent attention in that APE has developed a vibratory apparatus for use in pile driving equipment that has enhanced the ability to drive and/or extract piles efficiently. APE's vibratory apparatus overcomes significant problems associated with other kinds of pile driving equipment.

9. On October 18, 1994, United States Patent No. 5,355,964 (the "'964 Patent") entitled "Pile Driving And/Or Pile Pulling Vibratory Assembly With Counterweights" was issued to John L. White. The '964 Patent was reexamined and the Ex Parte Reexamination Certificate issued April 24, 2007 with all claims being confirmed without amendment. The '964 Patent has been assigned to APE. APE, therefore, has the right to bring this action. A true and correct copy of the original '964 Patent along with the Reexamination Certificate is attached hereto as **Exhibit A** and is incorporated herein by reference.

10. The invention described and claimed in the '964 Patent is a pile driving and/or pile extracting vibratory assembly for imparting a vibratory force to a pile. The vibratory assembly claimed in the '964 Patent uses counterweights that include insert receiving areas for receiving a solid insert made of a metal having a melting point of 328° C or greater, such as tungsten.

11. On information and belief, Geoquip, as an agent and authorized dealer of HPSI, has used, leased, sold, offered for sale or lease, and/or distributed vibratory drivers/extractors that have counterweights that include tungsten inserts throughout the United States, including at least HPSI's Model 500 vibrator driver/extractor and/or HPSI's Model 250 vibrator driver/extractor. On information and belief, Geoquip obtains the infringing vibrator driver/extractors from HPSI.

12. On information and belief, Geoquip has used, sold, leased, and/or has offered for sale or lease one or more vibratory drivers/extractors that include tungsten inserts.

13. On information and belief, certain of HPSI's vibratory drivers/extractors, including at least HPSI's Model 500 and HPSI's Model 250, have performance characteristics which are indicative of vibratory drivers/extractors that have counterweights that include heavy metal inserts such as tungsten. A true and correct copy of the advertised performance characteristics for each of the HPSI's Model 500 and HPSI's Model 250 vibratory driver/extractors as appearing on HPSI's website, is attached hereto as **Exhibit B**.

14. On information and belief, Geoquip has used, sold, leased, and/or offered for sale or lease one or more of the HPSI Model 500 and/or HPSI Model 250 vibratory driver/extractors. A true and correct copy of photographs taken of an HPSI Model 500 vibratory driver/extractor and power unit, believed to be either sold or rented by Geopquip, located at a job site in this Judicial District is attached hereto as **Exhibit C**.

15. The use, sale, lease, offer for sale or lease of at least HPSI's Model 500 vibratory driver/extractor and/or HPSI's Model 250 vibratory driver/extractor infringes one or more claims of the '964 Patent under at least 35 U.S.C. § 271.

16. APE has not licensed either HPSI or Geoquip to practice the '964 Patent.

17. In a recent telephone conversation of April 3, 2008 between Robert Zimmerman, president of HPSI, and John L. White, president of APE, Mr. Zimmerman indicated that HPSI had sought legal advice regarding the '964 Patent some time well before the date of the conversation. Additionally, over the last several years Mr. White had repeatedly asked Mr. Zimmerman if HPSI was using tungsten in its counterweights. During this recent conversation, Mr. Zimmerman admitted that he had lied to Mr. White when he denied using tungsten in HPSI's

counterweights, and further admitted that HPSI does use tungsten in its counterweights, though Mr. Zimmerman claimed such use was not an infringement.

18. Independent of the admission made by Mr. Zimmerman, Mr. White has been informed by a person in the industry whom Mr. White believes has first-hand knowledge of the HPSI Model 500 that HPSI bores out the backside of the eccentric weight, places a tungsten insert into the bore, and bolts the gear to the backside of the eccentric weight to conceal the presence of the tungsten insert.

19. Geoquip's ongoing and continuous activity constitutes patent infringement and is occurring, directly and/or through intermediaries, within the United States.

20. Geoquip's use, sale, lease, and/or offer for sale or lease of at least HPSI's Model 500 vibratory driver/extractor and/or HPSI's Model 250 vibratory driver/extractor has caused and will continue to cause substantial damage, including lost revenues, to APE and irreparable injury for which APE has no adequate remedy at law. APE has expended considerable sums in developing its pile driving/extracting vibratory assembly and anticipates considerable revenue from its patented vibratory assembly. The existence in the market of the infringing vibratory drivers/extractors is causing, and will in the future cause, substantial damage to APE. In order to prevent further harm, APE seeks a preliminary and permanent injunction and requests that the Court promptly schedule a trial on the merits.

### **COUNT I**

#### **(Patent Infringement)**

21. The allegations of paragraphs 1 through 20 are incorporated herein by reference.

22. APE is the assignee of the entire interest in the '964 Patent.

23. At least HPSI's Model 500 vibratory driver/extractor incorporates the structural elements protected by the '964 Patent.

24. At least HPSI's Model 250 vibratory driver/extractor incorporates the structural elements protected by the '964 Patent.

25. Geoquip has for a time past and still is infringing, including infringement and/or contributing to the infringement of one or more of the claims of the '964 Patent, by using, selling, leasing and/or offering for sale or lease at least HPSI's Model 500 vibratory/driver extractor and/or HPSI's Model 250 vibratory/driver extractor. This infringement has occurred and continues to occur, directly or through intermediaries, throughout the United States, and will continue to occur unless enjoined by this Court.

26. Geoquip's conduct as set forth hereinabove gives rise to a cause of action for infringement of the '964 Patent, pursuant to 35 U.S.C. §§ 271 and 281.

27. Geoquip has been and still is causing APE foreseeable tortious injury by infringing the '964 Patent, by using, selling, leasing and/or offering for sale or lease vibratory drivers/extractors embodying the invention claimed in the '964 Patent, including at least HPSI's Model 500 and/or HPSI's Model 250, and will continue to do so unless enjoined by this Court.

#### **REQUEST FOR RELIEF**

WHEREFORE, APE requests judgment against Geoquip as follows:

A. That the Court decree and adjudge that United States Patent No. 5,355,964 entitled "Pile Driving And/Or Pile Pulling Vibratory Assembly With Counterweights" is valid, enforceable, and infringed by Geoquip using, selling, leasing and/or offering for sale or lease of at least HPSI's Model 500 vibratory driver/extractor;

B. That the Court decree and adjudge that United States Patent No. 5,355,964 is infringed by Geoquip using, selling, leasing and/or offering for sale or lease of at least HPSI's Model 250 vibratory driver/extractor;

C. An order of the Court temporarily, preliminarily, and permanently enjoining both Geoquip and its respective officers, agents, employees, and any and all parties or persons acting in concert with any of them, from directly or indirectly infringing in any manner the '964 Patent, whether by using, selling, leasing, or offering to sell or lease any infringing vibratory driver/extractor or any components thereof or otherwise, pursuant to at least 35 U.S.C. § 283;

D. An award of APE's lost profits and other damages, in an amount to be proven at trial, pursuant to at least 35 U.S.C. § 284;

E. An award of a reasonable royalty to APE, in an amount to be proven at trial, pursuant to at least 35 U.S.C. § 284;

F. Prejudgment interest, pursuant to at least 35 U.S.C. § 284;

G. An award of APE's costs in bringing this action, pursuant to at least 35 U.S.C. § 284;

H. That the Court find this action for patent infringement exceptional and that APE is entitled to an award of APE's attorney's fees, pursuant to 35 U.S.C. § 285;

I. Postjudgment interest, pursuant to at least 28 U.S.C. § 1961(a); and

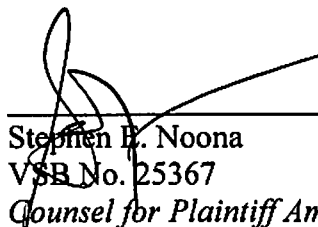
J. For such other and further relief as the Court deems just and equitable.

**JURY DEMANDED**

Plaintiff hereby demands a trial by jury in accordance with Rule 38 of the Federal Rules of Civil Procedure.

Dated: June 27, 2008

Respectfully submitted,



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Stephen B. Noona

VSB No. 25367

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