

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

CHEMICO SYSTEMS, INC.,
a Michigan Corporation

Plaintiff,

v.

GAGE PRODUCTS COMPANY,
a Michigan corporation, and
XENOPHON G. SAQUET
an individual

Defendants.

Civil Action No.

LAWRENCE P. ZATKOFF

Honorable
MAGISTRATE WALLACE CAPEL

DEMAND FOR JURY TRIAL

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U.S. DIST. COURT
EAST. DIST. MICHIGAN
DETROIT

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COMPLAINT AND JURY DEMAND

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COMPLAINT AND JURY DEMAND

Plaintiff, Chemico Systems, Inc. alleges as follows for its complaint:

PARTIES

1. Plaintiff, Chemico Systems, Inc. ("Chemico") is a Michigan Corporation having its principal place of business located at 2010 Cole Avenue, Birmingham, MI 48009.

2. Defendant, Gage Products Company ("Gage") is a Michigan corporation having its principal place of business at 821 Wanda Avenue, Ferndale, MI 48220.

3. Upon information and belief, Defendant, Xenophon G. Saquet ("Saquet") is residing in Troy, Michigan. Upon information and belief, Saquet was a Michigan resident during the events set forth below. His address is presently unknown, and Plaintiff Chemico will provide the address as soon as it is discovered.

JURISDICTION AND VENUE

4. This action arises under the patent laws of the United States, Title 35, United States Code.

5. This Court has personal jurisdiction over Gage and Saquet, collectively referred to as "Defendants".

6. This Court has subject matter jurisdiction under 28 U.S.C. §1338 and §1367.

7. Venue is proper pursuant to 28 U.S.C. §1391 and §1400.

GENERAL ALLEGATIONS

8. There was a great need in the automobile industry for protective paint coatings for use in assembly plants. Scratches to the paint inevitably occur during assembly, which are

costly to repair. This occurs because the paint is typically not sufficiently cured during assembly of components onto the vehicle body. To fill this need, Product-Sol expended considerable time and effort and incurred significant cost developing a composition for use in protecting automobile paint. After much experimentation, Product-Sol developed a protective paint composition.

9. Saquet was employed at Product-Sol during 1996 and was given access to Product-Sol proprietary protective paint coating information with the understanding that Saquet would maintain the information in a confidential manner.

10. Saquet, an employee of Product-Sol during 1996, obtained employment at Gage.

11. Product-Sol filed a patent application on June 6, 1997 for one of its paint protection compositions, which later matured into United States Patent No. 6,391,961 ("the '961 patent") entitled "Method For Protecting Paint on Article, Composition Useful Therefore and Method For Making Composition" (Exhibit A) issuing on May 21, 2002.

12. Without the knowledge of Product-Sol, Saquet filed for a paint protection composition in the name of Gage on August 26, 1997, which later matured into United States Patent No. 6,011,107 ("the '107 patent") entitled "Water Washable Protective Coating" (Exhibit B) issuing on January 4, 2000.

13. During 1998, Plaintiff Chemico purchased Product-Sol and its rights to the '961 patent.

14. Gage has been selling a product under the trade name G-2000 anti-scratch coating with a product code of CN71965. Gage provided to its customers a Material Safety Data Sheet (Exhibit C) for its anti-scratch coating. The product code corresponds to a protective paint formulation indicated in Table 1 of the '107 patent and utilizes BF Goodrich Carboset materials (Exhibit D). Gage appears to be relying upon incorrect information in the '107

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patent with respect to the molecular weights of the Carboset materials. Specifically, Gage erroneously sets forth lower molecular weights in the '107 patent for the Carboset materials than is the case.

15. During 2001, Plaintiff Chemico and Gage worked cooperatively in an effort to obtain new customer business unrelated to protective paint coating products. As a result of that cooperative business effort, Plaintiff Chemico executed a promissory note ("the Note") with Gage (Exhibit E).

16. Several times during 2001 and 2002, Plaintiff Chemico contacted Gage with respect to infringement of the '961 patent.

17. Plaintiff Chemico stopped paying Gage under the Note as a result of Gage's refusal to stop infringing the '961 patent.

18. Rather than address the infringement issue, Gage filed suit against Plaintiff Chemico in Oakland County Circuit Court on July 23, 2002 Docket No. 02-042536-CK for failure to pay under the promissory note.

COUNT I: PATENT INFRINGEMENT

19. Plaintiff Chemico incorporates the allegations of paragraphs 1 through 18.

20. Gage is in the business of making protective paint coating compositions. To facilitate this goal, and upon information and belief, Gage has manufactured, offered for sale, sold, and utilized methods infringing the '961 patent, including manufacturing, offering for sale, selling, and utilizing methods in this judicial district, as otherwise committed acts prohibited by 35 U.S.C. §271.

21. Plaintiff Chemico has notified Gage, in writing of the infringement and demanded that such infringement cease. Gage has ignored these pleas.

22. Upon information and belief, Gage continues to infringe the patent-in-suit.

23. Upon information and belief, Gage's infringement is willful and intentional.

24. As a result of Gage's activities and infringement, Plaintiff Chemico has suffered and will continue to suffer damages.

25. Gage's infringement of the patent-in-suit will continue unless and until enjoined by this court.

COUNT II: MISAPPROPRIATION OF INTELLECTUAL PROPERTY

26. Plaintiff Chemico incorporates the allegations of paragraphs 1 through 18.

27. Gage hired Saquet to assist in developing a protective paint coating for Gage.

28. During Saquet's relationship with Product-Sol, Product-Sol disclosed to Saquet drawings, specifications, methods, processes, and other proprietary information used in the development of Product Sol's protective paint coating.

29. Product-Sol gave Saquet access to this information with the understanding and agreement that Saquet would maintain the secrecy of this information and not disclose this information to anyone other than Product-Sol and its employees in the project.

30. This information was not known generally outside of Product-Sol's business.

31. Only a limited number of employees of Product-Sol have been given access to this information.

32. Product-Sol has taken significant measures to ensure the secrecy of this information.

33. This information has great value to Product-Sol and its competition.

34. Product-Sol has expended considerable resources in developing this information.

35. It would be extremely costly for others to duplicate or lawfully acquire this information.

36. Upon information and believe, Saquet disclosed information to Gage. Saquet has misappropriated this intellectual property by disclosing this information to Gage without the consent or permission of Product-Sol and otherwise exercising control over this information inconsistent with Product-Sol rights in the same.

37. Gage has misappropriated this intellectual property by unlawfully inducing Saquet to violate his business relationship with Product-Sol by hiring Saquet for purposes of obtaining Product-Sol's intellectual property and by otherwise receiving information known to be proprietary to Product-Sol.

38. As a consequence of Defendants' wrongful misappropriation, Product-Sol and Plaintiff Chemico has suffered damages.

COUNT III: UNJUST ENRICHMENT

39. Plaintiff Chemico incorporates the allegations of paragraphs 1 through 18.

40. Through a substantial investment of money and effort, Product-Sol invented and developed the protective paint coating and associated commercially valuable information.

41. Saquet was given an intimate understanding of this information by Product-Sol solely to fulfill his work responsibilities and otherwise perform tasks and duties for Product-Sol.

42. Saquet was given this information with the understanding that he would maintain this information in a confidential manner would not disclose, market, or sell this information to competitors of Product-Sol without its consent.

43. Defendants have directly benefited and will continue to benefit from the knowledge imparted to Saquet by Product-Sol.

44. Defendants have unjustly benefited from Product-Sol by failing to pay Product-Sol and Plaintiff Chemico the value of this information.

COUNT IV: DECLARATORY JUDGMENT ON BREACH OF CONTRACT

45. Plaintiff Chemico incorporates the allegations of paragraphs 1 through 18.

46. Plaintiff Chemico has suffered damages in excess of the amount alleged to be owed under the Note.

47. A set off is permitted under the Note and/or under Michigan common law.

48. Plaintiff Chemico seeks a declaratory judgment establishing that any amount owed Gage under the Note to be set off against the amount owed Plaintiff Chemico by Gage for infringement of the '961 patent, for its misappropriation of Product-Sol's intellectual property, and for Gage's unjust enrichment.

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DEMANDS FOR RELIEF

WHEREFORE, Plaintiff Chemico respectfully for a judgment against Defendants damages in excess of \$200,000.00 plus interest, cost and attorney fees and any other relief this court deems appropriate. Plaintiff Chemico further requests that this court enter a permanent injunction preventing Gage from employing, marketing, selling, or disclosing this information and other equitable relief, and in addition, Plaintiff Chemico seeks a declaratory judgment establishing that any amount owed Gage under the Note to be set off against the amount owed Plaintiff Chemico by Gage for infringement of the '961 patent, for its misappropriation of Product-Sol's intellectual property, and for Gage's unjust enrichment.

DEMAND FOR JURY TRIAL

Plaintiff Chemico hereby demands a trial by jury.

Respectfully submitted,

CARLSON, GASKEY & OLDS, P.C.



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Date: September 13, 2002

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ADDITIONAL
DOCUMENTS OR PAGES
THAT WERE NOT
SCANNED