

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
JEFFERSON CITY DIVISION

SEMCO INCORPORATED,)
a Missouri corporation,)
)
Plaintiff,)
)
v.)
)
VENMAR VENTILATION, INC.,)
a Canadian corporation,)
)
and)
)
VENMAR CES, INC.,)
a Canadian corporation,)
)
Defendants.)

JURY TRIAL DEMANDED

Case No.: 01-4193-CV-C-5

COMPLAINT

Comes now the plaintiff Semco Incorporated (hereinafter "Semco") and for its cause of action against defendants Venmar Ventilation, Inc. (hereinafter "Venmar Ventilation") and Venmar CES, Inc. (hereinafter "Venmar CES") herein states as follows:

THE PARTIES

1. Plaintiff Semco is a Missouri Corporation having its principal place of business located at 1800 East Pointe Drive, Columbia, Missouri 65201-3508.
2. Defendant Venmar Ventilation is, upon information and belief, a corporation organized and existing under the laws of Canada, with its principal place of business located at 550, Boul Lemire, Drummondville, Québec, Canada.

3. Defendant Venmar CES is, upon information and belief, a corporation organized and existing under the laws of Canada, with its principal place of business located at 2525 Wentz Avenue, Saskatoon, Canada.

JURISDICTION AND VENUE

4. Because this action arises under the Patent Laws of the United States (Title 35 U.S.C.), this Court has jurisdiction under 28 U.S.C. § 1338.

5. Venue in this Court is proper under 28 U.S.C. § 1391 and 28 U.S.C. § 1400. The defendants are aliens.

ALLEGATIONS OF INFRINGEMENT

6. On September 6, 1988 United States Letters Patent No. 4,769,053, with named inventor, John C. Fischer, Jr. (the "Fischer Patent"), was duly and legally issued to plaintiff SEMCO for an invention in "High Efficiency Sensible And Latent Heat Exchange Media With Selected Transfer For A Total Energy Recovery Wheel" and, since that date Semco has been, and still is, the owner of said Fischer Patent. (A true and correct copy of said Fischer Patent is attached hereto as Exhibit 1, and incorporated by reference herein).

7. Venmar Ventilation and Venmar CES have infringed the Fischer Patent and continue to commit such acts of infringement by making, using, selling, offering for sale, and/or importing into the United States sensible and latent heat exchange media embodying the claims of the Fischer Patent, and/or induced others to so infringe, and/or contributed to such infringement by others, all in violation of 35 U.S.C. § 271.

8. Venmar Ventilation and Venmar CES have infringed the Fischer Patent, and continue to commit such acts of infringement by making, using, selling, offering for sale, and/or importing into the United States energy recovery wheels embodying the claims of the Fischer

Patent, and/or induced others to so infringe, and/or contributed to such infringement by others, all in violation of 35 U.S.C. § 271.

9. Venmar Ventilation had notice of Semco's rights in the Fischer Patent at least as early as October 2, 2000, when Venmar Ventilation received a letter via telecopier dated October 2, 2000, from Robert Lancaster, counsel for Semco. This letter was also sent by certified mail. A true and accurate copy of the Fischer Patent was enclosed with the letter as sent by both telecopier and certified mail. (A copy of the October 2, 2000 letter is attached hereto as Exhibit 2, and incorporated by reference herein).

10. On December 20, 2000, Venmar Ventilation received further notice that Semco continued to advise Venmar Ventilation of the Fischer Patent through letter dated December 20, 2000, sent via telecopier and Federal Express on December 20, 2000, from Semco's present counsel, McPherson D. Moore, to counsel for Venmar Ventilation. (A copy of the December 20, 2000, letter is attached hereto as Exhibit 3, and incorporated by reference herein).

11. Despite such notice of the Fischer Patent, Venmar Ventilation has infringed and continues to infringe the Fischer Patent.

12. Unless enjoined by this Court, defendants will continue with the aforesaid infringement of the Fischer Patent.

13. The infringements of the Fischer Patent by Venmar Ventilation has been committed knowingly and willfully.

14. Semco has been, and will continue to be, irreparably harmed by the acts of the Defendants as complained of herein; wherefore Semco is without adequate remedy at law.

WHEREFORE, Plaintiff Semco prays:

- A. That Defendants, Venmar Ventilation and Venmar CES, their agents, servants and all those acting in concert and/or privity with defendants, be preliminarily and permanently enjoined from infringing (i.e. importing, making, using, selling, and/or offering to sell) any products or services covered by any or all of claims of the said Fischer Patent;
- B. That Semco be awarded damages for the Defendants' infringement of the Fischer Patent, together with all interest thereon including prejudgment interest, and that said damages be trebled in accordance with 35 U.S.C. § 285;
- C. That Semco be awarded its reasonable attorneys fees, and further that this case be declared an exceptional case under 35 U.S.C. § 285;
- D. That the cost of the action be assessed against the Defendants;
- E. That all the Defendants be held jointly and severally liable for all awards granted by this Court in favor of Semco; and
- F. That Semco be awarded such other and further relief as the Court may deem appropriate under the circumstances.

Semco hereby demands trial by jury on all issues triable by jury.

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