



**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

<p>TYCO FIRE PRODUCTS LP d/b/a TYCO FIRE & BUILDING PRODUCTS 451 North Cannon Avenue Lansdale, Pennsylvania 19446</p> <p style="text-align: right;">Plaintiff,</p> <p style="text-align: center;">v.</p> <p>THE VIKING CORPORATION 210 North Industrial Park Hastings, Michigan 49058</p> <p style="text-align: right;">Defendant.</p>	<p>⋮</p> <p>⋮</p> <p>⋮</p> <p>⋮</p> <p>⋮</p> <p>⋮</p> <p>⋮</p> <p>⋮</p> <p>⋮</p> <p>⋮</p> <p>⋮</p> <p>⋮</p>	<p>CIVIL ACTION</p> <p>No.: <u>07 - 0603</u></p> <p>JURY TRIAL DEMANDED</p>
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COMPLAINT

Plaintiff TYCO FIRE PRODUCTS LP d/b/a TYCO FIRE & BUILDING PRODUCTS (“Tyco”) avers as follows:

The Parties

1. Plaintiff Tyco is a limited partnership organized and existing under the laws of the State of Delaware, having its principal place of business at 451 North Cannon Avenue, Lansdale, Pennsylvania 19446.
2. Upon information and belief, defendant THE VIKING CORPORATION (“Viking”) is a corporation organized and existing under the laws of the State of Michigan, having its principal place of business at 210 North Industrial Park, Hastings, Michigan 49058.

Jurisdiction and Venue

3. This action is brought pursuant to the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, and presents an actual, present and substantial controversy between

the named parties that is within the jurisdiction of this Court, and that seeks a declaration of non-infringement, invalidity and unenforceability of United States Patent No. 6,585,054 (“the ‘054 Patent”) and United States Patent No. 7,036,603 (“the ‘603 Patent”) (collectively “the Viking Patents”).

4. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§1331, 1338 and 2201.

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

Facts

6. The ‘054 Patent for “Fast Response Sprinkler Head and Fire Extinguishing System” issued on July 1, 2003. The ‘054 Patent identifies Viking as its assignee and Peter W. Thomas, Thomas G. Deegan, Scott T. Franson, Michael J. Bosma, and Delwin G. Dornbos as its inventors. A copy of the ‘054 Patent is attached hereto as Exhibit A.

7. The ‘603 Patent for “Fast Response Sprinkler Head and Fire Extinguishing System” issued on May 2, 2006. The ‘603 Patent identifies Viking as its assignee and Peter W. Thomas, Thomas G. Deegan, Scott T. Franson, Michael J. Bosma, and Delwin G. Dornbos as its inventors. A copy of the ‘603 Patent is attached hereto as Exhibit B.

8. Viking has accused Tyco of infringing the Viking Patents. Specifically, Viking has alleged that that Tyco’s Model ESFR 17 Upright Sprinkler infringes the Viking Patents.

9. Viking has threatened formal action against Tyco to protect its rights under the Viking Patents.

10. On or about August 18, 2006, Ryan W. Massey, counsel for Viking, sent a letter to Robert Brinkman, the President of Tyco, alleging that Tyco's Model ESFR 17 Upright Sprinkler infringes the Viking Patents. A copy of Viking's letter is attached hereto as Exhibit C. In this letter, Viking demanded that Tyco "cease and desist the making, using, selling, offering for sale, and importing into the United States of its . . . Model ESFR 17 Upright Sprinkler or take a license under Viking's patents." Also in this letter, Viking threatened to take formal action against Tyco to protect its rights under the Viking Patents.

11. Since August 2006, the parties' representatives have had communications regarding Viking's allegations that Tyco infringes the Viking Patents. In these communications, representatives of Tyco have stated Tyco's belief that it does not infringe any valid or enforceable claim of the Viking patents. In response, Viking has maintained its position that Tyco infringes the Viking patents.

12. Since August 2006, the parties have engaged in discussions regarding a possible license under the Viking Patents. Viking has proposed specific license terms and indicated that, absent Tyco's agreement to those terms, it will enforce the Viking Patents. All of Viking's license proposals have been unacceptable to Tyco.

13. There is a thirteen (13) year history of patent litigation between Viking and Tyco's affiliate, Central Sprinkler Company ("Central"). Since 1994 there have been three (3) patent infringement lawsuits between Viking and Central, two of which were initiated by Viking.

14. On or before February 2, 2007, Viking's statements and actions created a reasonable apprehension and belief on the part of Tyco that Viking would soon sue for patent

infringement as a result of Tyco's manufacture and sale of the sale of its Model ESFR 17 Upright Sprinkler.

15. Since February 2, 2007, Viking's statements and actions have reinforced a reasonable apprehension on the part of Tyco that Viking will soon sue for patent infringement as a result of Tyco's manufacture and sale of the sale of its Model ESFR 17 Upright Sprinkler. Since February 2, 2007, Viking's representatives have approached Tyco personnel seeking Tyco's consideration of license terms that Viking proposed prior to February 2, 2007. On more than one occasion since February 2, 2007, Tyco representatives have confirmed to Viking that Viking's proposals have been and continue to be unacceptable to Tyco.

16. By reason of the foregoing, a substantial and continuing controversy exists between Tyco and Viking regarding the alleged infringement, validity and enforceability of the Viking Patents. Tyco has instituted this Declaratory Judgment for purposes of adjudicating that controversy.

CLAIMS FOR RELIEF

Count One - Non-Infringement Of United States Patent No. 6,585,054

17. Tyco hereby incorporates the allegations contained in paragraphs 1 through 15 as if fully set forth herein.

18. Upon information and belief, Viking is the owner of the '054 patent.

19. Viking has asserted that Tyco is infringing the '054 patent.

20. Tyco's Model ESFR 17 Upright Sprinkler does not, directly or indirectly, infringe any valid or enforceable claim of the '054 patent.

21. An actual, substantial and continuing justiciable controversy exists between Tyco and Viking as to whether Tyco infringes the '054 patent.

Count Two - Non-Infringement Of United States Patent No. 7,036,603

22. Tyco hereby incorporates the allegations contained in paragraphs 1 through 20 as if fully set forth herein.

23. Upon information and belief, Viking is the owner of the '603 patent.

24. Viking has asserted that Tyco is infringing the '603 patent.

25. Tyco's Model ESFR 17 Upright Sprinkler does not, directly or indirectly, infringe any valid or enforceable claim of the '603 patent.

26. An actual, substantial and continuing justiciable controversy exists between Tyco and Viking as to whether Tyco infringes the '603 patent.

Count Three - Invalidity Of United States Patent No. 6,585,054

27. Tyco hereby incorporates the allegations contained in paragraphs 1 through 25 as if fully set forth herein.

28. The '054 patent is invalid, and fails to meet at least one or more of the conditions of patentability as set forth in Title 35 U.S.C., including §§ 102, 103 and/or 112.

Count Four - Invalidity Of United States Patent No. 7,036,603

29. Tyco hereby incorporates the allegations contained in paragraphs 1 through 27 as if fully set forth herein.

30. The '603 patent is invalid, and fails to meet at least one or more of the conditions of patentability as set forth in Title 35 U.S.C., including §§ 102, 103 and/or 112.

Count Five - Unenforceability Of United States Patent Nos. 6,585,054 And United States Patent No. 7,036,603 Due To Inequitable Conduct

31. Tyco hereby incorporates the allegations contained in paragraphs 1 through 29 as if fully set forth herein.

32. The '054 patent issued from patent application number 09/579,552, filed on May 26, 2000, which is related to provisional patent application number 60/136,498, filed on May 28, 1999. The '603 patent issued from patent application number 10/435,845, filed on May 12, 2003, which was a division of patent application number 09/579,552, filed on May 26, 2000. Viking's conduct during at least the prosecution of the '054 patent, examples of which are provided herein, was inequitable.

33. Since at least July 7, 1997, Viking manufactured and sold an "Aquamiser B Model ESFR Upright Sprinkler." Since at least July 7, 1997, Viking published and distributed Technical Data Sheets detailing the Viking Corporation Aquamiser Model B ESFR Upright Sprinkler. These Data Sheets identify the Aquamiser B Model ESFR Upright Sprinkler as an ESFR sprinkler to be used in accordance with applicable standards. During the prosecution of the application that matured into the '054 patent, at least one of the inventors, employees of Viking and/or their counsel were aware of the Aquamiser B Model ESFR Upright Sprinkler and/or related Data Sheets.

34. Patent application number 60/136,498 was filed on May 28, 1999. Notwithstanding the existence of the Viking Aquamiser B Model ESFR Upright Sprinkler, Viking's counsel made the following representation in the application:

Since the advent of ESFR sprinklers in the 1970's, the sprinkler industry has attempted to design upright sprinklers having the ADD values necessary to adequately suppress a fire. Despite these attempts, heretofore, the industry has been unable to generate an upright sprinkler head capable of achieving ESFR standards, and has only produced pendent sprinklers having the requisite ADD criteria. The inability of the industry to generate an ESFR sprinkler having an upright design has presented problems in the industry, specifically, in the retrofitting of warehouses.

35. On May 26, 2000, Viking's counsel submitted patent application number 09/579,552, which claimed priority to provisional patent application number 60/136,498. Notwithstanding the existence of the Viking Aquamiser B Model ESFR Upright Sprinkler, Viking again represented in this application that the "industry has been unable to generate an upright sprinkler head capable of achieving ESFR standards"

36. On November 7, 2001, the United States Patent and Trademark Office ("USPTO") issued an Office Action that rejected all pending claims in application number 09/579,552. On February 7, 2002, Viking's counsel submitted its response to the USPTO's Office Action, and made the following arguments therein to overcome the Examiner's rejection:

As described in the application, the present invention is directed to an upright ESFR sprinkler, which can provide effective spray distribution patterns when in close proximity to obstructions and can meet industry standards for ESFR sprinklers. . . . As described in the specification, the sprinkler industry has been unable to generate an upright sprinkler head capable of achieving ESFR standards and has only produced pendent sprinklers having the requisite criteria.

37. Despite the existence of the Viking Aquamiser B Model ESFR Upright Sprinkler, at least one of the inventors of the '054 patent, in concert with their counsel, represented to the Examiner that there was no existing upright sprinkler capable of achieving ESFR standards.

38. On information and belief, Viking's misrepresentations in connection with '054 patent application were willful and intentional and, had the Examiner known the statements were false, at least one of the claims of the '054 patent would not have been allowed.

39. The willful and intentional material misrepresentations made to the USPTO are acts of inequitable conduct which render the '054 patent unenforceable.

40. The inequitable conduct in the '054 patent renders the '603 patent unenforceable.

WHEREFORE, Tyco demands judgment against Viking as follows:


- a. a declaration that Tyco does not infringe, contributorily infringe or induce infringement of any valid or enforceable claim of United States Patent No. 6,585,054 and/or United States Patent No. 7,036,603;
- b. a declaration that all pertinent claims of United States Patent No. 6,585,054 and United States Patent No. 7,036,603 are invalid;
- c. a declaration that United States Patent No. 6,585,054 and United States Patent No. 7,036,603 are unenforceable;
- d. a declaration that Viking, its officers, agents, employees, attorneys, and all persons in active concert or participation with them, be permanently enjoined from suing or threatening to sue, or making any charge against plaintiff, or its distributors, licensees or customers, concerning alleged infringement of United States Patent No. 6,585,054 and/or United States Patent No. 7,036,603; and
- e. such other and further relief as this Court deems just and proper.

JURY TRIAL DEMAND

Plaintiff TYCO FIRE PRODUCTS LP d/b/a TYCO FIRE & BUILDING PRODUCTS hereby demands a trial by jury for each and every issue so permitted by law and statute.

Respectfully Submitted,

DATED: February 13, 2007

BY: 

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