



UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS

THE HALL PATENT GROUP, LLC)
a limited liability company,)
)
Plaintiff,)
)
v.)
)
INDUSTRIAL NOISE CONTROL)
CORP., a Texas corporation,)
)
Defendant.)
_____)

Civil Action No. 305-CV 661-M
**SECOND AMENDED
COMPLAINT FOR PATENT
INFRINGEMENT AND JURY
DEMAND**

For its complaint, Plaintiff states:

INTRODUCTION

1. Plaintiff, The Hall Patent Group, LLC (hereafter referred to as "Hall"), is the owner of United States Patent No. 5,012,949 for "Fire Resistant Tank Construction" granted May 7, 1991 (hereinafter the '949 patent) and No. 5,103,996 for "Fire Resistant Tank Construction" granted April 14, 1992 (hereinafter the '996 patent). Hall hereby brings suit against Defendant, Industrial Noise Control Corp. (hereafter referred to as "INCC") for patent infringement because Defendant is currently making, using, offering for sale and/or selling above-ground storage tanks for flammable liquids, sometimes referred to as vaulted tanks, which infringe one or more claims of the Hall patents. Plaintiff seeks injunctive relief, damages, enhanced damages, costs, and attorney fees pursuant to 35 U.S.C. §§ 281 and 283-85.

JURISDICTION AND VENUE

1. This court has original and exclusive subject matter jurisdiction over these patent infringement claims pursuant to 28 U.S.C. §§ 1331 and 1338(a).
2. Events and actions giving rise to the claims in this Complaint have taken place in the Northern District of Texas. Defendant has a place of business in Garland,

Texas in the Northern District of Texas. Personal jurisdiction is proper in this district pursuant to 28 U.S.C. § 1391(b). Venue is proper under 28 U.S.C. § 1400(b).

PARTIES AND PATENT

3. Plaintiff Hall is a limited liability company doing business in the State of Texas with an office in Ennis, Texas.

4. Defendant INCC is a Texas corporation doing business in Texas with a place of business at 630 S. Jupiter Road, Garland, Texas 75042.

5. On May 7, 1991 the '949 patent was duly and legally issued to David McGarvey and Jerry Buffalini for an invention for a Fire Resistant Tank Construction. A copy of the '949 patent is attached as Exhibit 1. On April 14, 1992, the '996 patent was duly and legally issued to David McGarvey for a Fire Resistant Tank Construction. A copy of the '996 patent is attached as Exhibit 2. On or about March 23, 1989, David McGarvey and Jerry Buffalini assigned their entire right, title and interest in and to the application that matured into the '949 patent including the divisional application that matured into United States Patent No. 5,004,632 (the '632 patent) to LRS, Inc., by an assignment document attached as Exhibit 3. On or about September 21, 1990 McGarvey assigned the application that matured into the '996 patent to LRS, Inc. by an assignment document attached as Exhibit 4. On or about April 3, 1990 McGarvey, assigned the application that matured into United States Patent No. 4,989,750 (the '750 patent) to LRS, Inc. by an assignment document attached as Exhibit 5. On or about August 31, 1994, LRS, Inc. assigned its entire right, title and interest in and to all four patents ('949, '996, '632 and '750) to Hoover Containment Systems, Inc. by an assignment document attached as Exhibit 6. On or about October 12, 1995, Hoover Containment Systems, Inc. assigned its entire right, title and interest in and to all four patents to Hoover Containment, Inc. by an assignment document attached as Exhibit 7. On or about December 31, 1998, Hoover Containment, Inc. was merged into Containment Solutions, Inc.; the combined entity survived under the name Containment Solutions, Inc.; the merger is attested to by a Merger Certificate filed in the State of

Delaware and executed by an officer of Containment Solutions, Inc. attached as Exhibit 8. HPG is the owner, by assignment, of the entire right, title and interest in and to the four patents as evidenced by the assignment document attached as Exhibit 9. HPG is therefore currently the owner, by assignment, of the entire right, title and interest in and to the '949 and '996 patents which are infringed and United States Patent Nos. 4,989,750 and 5,004,632 that were the basis of the disclaimer in the '949 patent. The assignments include the right to sue for past and future infringement and to collect damages for past and future infringement.

COUNT I - '949 PATENT INFRINGEMENT

6. Hall incorporates by reference the allegations in Paragraphs 1 - 5.

7. Defendant manufactures, offers for sale, sells and has sold in the United States above-ground storage vaulted tanks which literally infringe, and in the alternative, infringe under the doctrine of equivalents, upon at least Claim 24 of the '949 patent. A tank that infringes the '949 patent was, on information and belief, sold by INCC to Holt Caterpillar and installed in Fort Worth, Texas, for the Countrywide Data Center.

COUNT II - '996 PATENT INFRINGEMENT

8. Hall incorporates by reference the allegations of Paragraphs 1 - 7.

9. The tanks identified in Paragraph 7 literally infringe, and in the alternative, infringe under the doctrine of equivalents, upon at least Claim 32 of the '996 patent. A tank that infringes the '949 patent was, on information and belief, sold by INCC to Holt Caterpillar and installed in Fort Worth, Texas, for the Countrywide Data Center.

FURTHER ALLEGATIONS OF INFRINGEMENT

10. Plaintiff has been damaged by the infringements described in Paragraphs 7 and 9 and is entitled to an award of damages adequate to compensate for such infringement, together with interest and costs.

11. Defendant has been infringing the '949 and '996 patents and will continue to do so unless enjoined by this Court.

12. Defendant has been notified of Plaintiff's '949 and '996 patents. On March 2, 2005 Plaintiff sent a letter to Defendant demanding that Defendant cease and desist from continuing to infringe the '949 and '996 patents. Defendant responded to that letter without committing to a definitive admission or denial regarding infringement.

13. Defendant has not received any authorization from Plaintiff to make Plaintiff's vaulted tanks covered by the '949 and '996 patents but has acted in defiance and disregard of Plaintiff's rights. Defendant has willfully infringed the '949 and '996 patents and the damages awarded to Plaintiff should be enhanced pursuant to 35 U.S.C. § 284.

14. Defendant's conduct presents an exceptional case under 35 U.S.C. § 285 and Plaintiff is therefore entitled to an award of its reasonable attorney fees.

PLAINTIFF HEREBY REQUESTS A JURY TRIAL.

WHEREFORE, Plaintiff demands:

A. A preliminary and final injunction against continued infringement, an award of damages, enhancement of damages and an assessment of interest, costs and Plaintiff's reasonable attorney fees and for all other relief to which Plaintiff is entitled; and

B. That Defendant be directed to file with this Court and serve on Plaintiff within thirty (30) days after the service of an injunction, a report in writing under oath, setting forth in detail the manner and form in which Defendant has complied with the injunction.

Dated this 20th day of August, 2005.

THE ADAMS LAW FIRM

By  _____

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