

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I (a) PLAINTIFFS

GRUMA Corporation

DEFENDANTS

APV North America, Inc.
JBS Process Engineering, Ltd.

ORIGINAL

3-02CV 0903R

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF Dallas County, TX
(EXCEPT IN U.S. PLAINTIFF CASES)

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT Cook County, IL
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

Dennis N. Ryan, Esq. (214) 659-4400
Andrews & Kurth L.L.P.
1717 Main Street, Suite 3700 See attached for complete list of attorneys
Dallas, Texas 75201

ATTORNEYS (IF KNOWN)

RECEIVED
APR 29

II. BASIS OF JURISDICTION (PLACE AN X IN ONE BOX ONLY)

- 1 U.S. Government Plaintiff
- 3 Federal Question (U.S. Government Not a Party)
- 2 U.S. Government Defendant
- 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (For Diversity Cases Only)

- | | | | | | |
|-----------------------------------------|----------------------------|----------------------------|---------------------------------------------------------------|----------------------------|----------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in this State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (PLACE AN "X" IN ONE BOX ONLY)

| CONTRACT | TORTS | FORFEITURE/PENALTY | BANKRUPTCY | OTHER STATUTES |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability | PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury | <input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 LISC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R R & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other | <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input checked="" type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) | <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/CC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions |
| REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property | CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights | PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence HABEAS CORPUS: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition | LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt Relations <input type="checkbox"/> 730 Labor/Mgmt Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl Ret Inc Security Act | <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/CC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions |

V. ORIGIN

(PLACE AN X IN ONE BOX ONLY)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from another district (specify)
- 6 Multidistrict Litigation
- 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY)

Patent infringement pursuant to 35 U.S.C. Section 271

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P.

DEMAND \$

Check YES only if demand in complaint
JURY DEMAND: YES NO

VIII. RELATED CASE(S) IF ANY

(See Instructions)

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

April 29, 2002

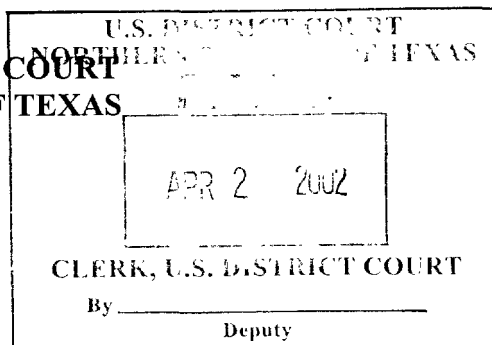
[Signature]

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

✓ CH
ORIGINAL

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**



GRUMA CORPORATION,

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Plaintiff,

v.

CIVIL ACTION NO. _____

APV NORTH AMERICA, INC.

and

JBS PROCESS ENGINEERING, LTD.,

3 - 0 2 C V 0 9 0 3 R

Defendants.

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff GRUMA Corporation for its complaint against defendants APV North America, Inc., and JBS Process Engineering, states as follows:

JURISDICTION AND VENUE

- 1. This is an action for patent infringement arising under the patent laws of the United States, Title 35, United States Code. Jurisdiction of this Court is based upon 28 U.S.C. § 1338 (a). Venue in this district is proper under 28 U.S.C. §§ 1391 and 1400 (b).

BACKGROUND AND PARTIES

2. Plaintiff, GRUMA Corporation ("GRUMA") is a Nevada corporation with its principal place of business at 1159 Cottonwood Lane, Suite 200, Irving, Texas 75038. GRUMA is the assignee of the patents-in-suit and holds all right and title in these patents.

3. Upon information and belief, defendant APV North America, Inc. ("APV") is a corporation organized and existing under the laws of the State of Delaware, having its principal place of business at 5100 River Road, 3rd Floor, Schiller Park, Illinois 60176. APV is registered to do business in the State of Texas. APV may be served by serving its registered agent, CT

Corporation Systems, 350 N. St. Paul Street, Dallas, Texas 75201. The ultimate parent of APV is INVENSYS PLC, London, England, which conducts its bakery machinery business through a number of subsidiary corporations and divisions using the name APV or APV Baker.

4. Upon information and belief, defendant JBS Process Engineering Ltd. (“JBS”) is a company organized and existing under the laws of England, having its principal place of business at Stirling Way, Northfields Industrial Estate, Market Deeping, Peterborough, PE6 8LG, England.

5. Upon information and belief, defendants APV and JBS have cooperated and are cooperating in a joint venture effort to sell tortilla making machinery which infringes the patents-in-suit.

THE PATENTS- IN-SUIT

6. On July 3, 1990, United States Letter Patent No. 4,938,126 (hereinafter the '126 Patent”) was issued. On August 9, 1991 United States Letter Patent No. 5,006,358 (the '358 Patent) was issued. Thereafter, the '126 and the '358 Patents were assigned to GRUMA which is the owner of the entire right, title to and interest in the '126 and '358 Patents. True and correct copies of the '126 and '358 Patents are attached hereto as Exhibit A and B.

COUNT I

INFRINGEMENT OF THE ‘126 AND ‘358 PATENTS

7. Upon information and belief, beginning at least as early as 2001 defendants have manufactured and/or sold and/or offered to sell in the United States and induced others to manufacture and/or sell and/or offer to sell tortilla presses which through their design and/or operation infringe one or more claims of the ‘126 and ‘358 Patents.

8. Defendants were on notice of the patents-in-suit at the time of their infringement.

9. Defendants' manufacture and sale or offer to sell infringing presses and to make or induce others to make tortillas by an infringing method are in violation of 35 U.S.C. § 271. Such acts of infringement will continue to occur unless this Court enjoins Defendants from further manufacture or use or sale or offers to sell the infringing presses from using the infringing presses to produce tortillas by an infringing method.

10. Upon information and belief, defendants have willfully and deliberately conducted the infringing activities described above, warranting the assessment of increased damages pursuant to 35 U.S.C. § 284, and the designation of this case as exceptional pursuant to 35 U.S.C. § 285.

11. GRUMA has been damaged by defendants' infringing activities and will continue to be damaged by the infringing activities of defendants. The harm to GRUMA resulting from defendants' infringement is irreparable, and cannot be remedied in its entirety by the recovery of money damages such that GRUMA has no adequate remedy at law.

WHEREFORE, GRUMA CORPORATION prays for judgment against defendants as follows:

A. That, pursuant to 35 U.S.C. § 283, an injunction be issued permanently enjoining defendants, their principals, officers, directors, agents, servants, employees and all those persons in active concert or participation with defendants from further infringement and/or contributing to and/or inducing the infringement of the '126 and '358 patents;

B. That, pursuant to 35 U.S.C. § 284, judgment be entered against defendants for damages for infringement in an amount to be determined;

C. That judgment be entered declaring defendants' infringement to be willful and an award of treble damages be made pursuant to 35 U.S.C. § 284;

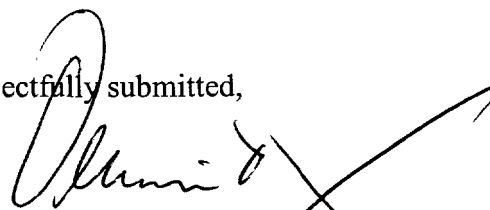
D. That, pursuant to 35 U.S.C. § 285, this case be declared an exceptional case and that GRUMA be awarded attorneys' fees and expenses in this action;

E. That GRUMA be awarded costs and prejudgment interest; and

F. That such other and further relief be granted to GRUMA as may be deemed necessary by the Court or as is to be just and proper under the circumstances.

Respectfully submitted,

By:



Dennis M. Ryan
State Bar No. 17470700
Darla K. Stockton
State Bar No. 24003011
ANDREWS & KURTH L.L.P.
1717 Main Street, Suite 3700
Dallas, Texas 75201
(214) 659-4400
(214) 659-4401 (fax)

**OF COUNSEL AND
ATTORNEY IN-CHARGE:**

Douglas V. Rigler
MD Fed. Bar No. 5653
Scott A. Richie
DC Bar No. 428647
Charles M. Crout
MD Fed. Bar No. 12644
L. Eden Burgess
MD Bar Member
ANDREWS & KURTH L.L.P.
1701 Pennsylvania Avenue NW
Suite 300
Washington, DC 20006
(202) 662-2700
(202) 662-2739 (fax)

Andrew J. Patch
VA Bar No. 29683
YOUNG & THOMPSON
745 South 23rd Street
Suite 200
Arlington, Virginia 22202

**ATTORNEYS FOR PLAINTIFF
GRUMA CORPORATION**

Dated: April 29, 2002