

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

**VALMONT INDUSTRIES, INC.;
FARMSCAN AG PTY LTD; and
BOARD OF REGENTS OF THE
UNIVERSITY OF IDAHO,**

Plaintiffs,

v.

LINDSAY CORPORATION,

Defendant.

CASE NO. 8:11-CV-00415-LES-TDT

JURY TRIAL DEMANDED

SECOND AMENDED COMPLAINT FOR PATENT INFRINGEMENT

Plaintiffs Valmont Industries, Inc. (“Valmont”), Farmscan AG Pty, Ltd. (“Farmscan”), and the Board of Regents of the University of Idaho (“University”) for their Complaint against Lindsay Corporation (“Lindsay”), allege as follows:

PARTIES

1. Valmont Industries, Inc. is a corporation organized under the laws of the State of Delaware with a principal place of business at One Valmont Plaza, Omaha, Nebraska 68154.
2. Farmscan AG Pty, Ltd. is an Australian corporation with a principal place of business at Unit 22, 489 South St., Toowoomba, Queensland, Australia 4350.
3. The Board of Regents of the University of Idaho is a public corporation and state educational institution organized under the laws of Idaho with a principal place of business in Moscow, Idaho 83843.

4. On information and belief, Defendant Lindsay is a Delaware corporation with a principal place of business at 2222 North 111th Street, Omaha, Nebraska 68164. Service upon Lindsay may be made by serving its registered agent for service of process, Michael M. Hupp, 1125 South 103rd Street, Suite 800, Omaha NE 68124. On information and belief, Lindsay is in the wholesale sales and distribution business, and derives a significant portion of its revenue from sales and distribution of the products at issue in Nebraska.

JURISDICTION AND VENUE

5. This action arises under the patent laws of the United States, Title 35 of the United States Code. This action was transferred to this Court from the United States District Court for the Eastern District of Texas, Tyler Division (Civil Action No. 6:11-cv-284). This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a). On information and belief, Lindsay is subject to this Court's jurisdiction because its principal place of business is located in Omaha, Nebraska. Further, on information and belief, Lindsay is subject to the Court's jurisdiction due at least to its substantial business in this forum.

6. Venue is proper under 28 U.S.C. §§ 1391(b), 1391(c), and 1400(b). Without limitation, on information and belief, Lindsay is subject to personal jurisdiction in this district. On information and belief, Lindsay is subject to this Court's jurisdiction because its principal place of business is located in Omaha, Nebraska. Further, on information and belief, Lindsay is subject to the Court's jurisdiction due at least to its substantial business in this forum.

COUNT I

INFRINGEMENT OF U.S. PATENT NO. 5,246,164

7. Plaintiffs hereby incorporate Paragraphs 1 through 6 by reference as if set forth fully herein.

8. Valmont is the exclusive sublicensee of the '164 Patent from Farmscan with respect to Lindsay and others, including the right to exclude Lindsay and to enforce, sue and recover damages for past and future infringement against Lindsay. A true and correct copy of the '164 Patent is attached as Exhibit A.

9. Farmscan is the exclusive licensee of the '164 Patent from University for all substantial rights in the '164 Patent, including the right to exclude others and to enforce, sue and recover damages for past and future infringement and is joined to satisfy standing requirements to bring this lawsuit for infringement of the '164 Patent. As set forth herein, Farmscan has sublicensed rights in the '164 Patent to Valmont on an exclusive basis.

10. University is the owner of all right, title and interest to United States Patent No. 5,246,164 ("the '164 Patent") entitled "Method and Apparatus for Variable Application of Irrigation Water and Chemicals," and is joined to satisfy standing requirements to bring this lawsuit for infringement of the '164 Patent.

11. The '164 Patent is valid, enforceable, and was duly issued on September 21, 1993, in full compliance with Title 35 of the United States Code.

12. On information and belief, Lindsay has been, and now is, directly infringing, jointly infringing, and indirectly infringing by way of inducing infringement and/or contributing to the infringement of the '164 Patent in this judicial district and elsewhere in Texas and the United States, without the consent or authorization of Plaintiffs, by or through its making, having made, sale, offer for sale, and/or use in the United States of the patented systems and methods which comprise a method or apparatus for variable application of irrigation water to a plurality of zones within a field of ground to be irrigated, including at least its Accuflow VRI products, which are covered by one or more claims of the '164 Patent.

13. To the extent that facts learned during the pendency of this case show that Lindsay's infringement is, or has been willful, Plaintiff Valmont reserves the right to request such a finding at time of trial.

14. Plaintiff Valmont has been damaged as a result of Lindsay's infringing conduct. Lindsay is, thus, liable to Plaintiff Valmont in an amount that adequately compensates it for Lindsay's infringements, which, by law, cannot be less than a reasonable royalty, together with interest and costs as fixed by this Court under 35 U.S.C. § 284.

15. Unless a preliminary and permanent injunction is issued enjoining Lindsay and its agents, servants, employees, representatives, affiliates, and all others acting in active concert therewith from infringing the '164 Patent, Plaintiff Valmont will be greatly and irreparably harmed.

COUNT II

INFRINGEMENT OF U.S. PATENT NO. 6,095,439

16. Plaintiffs hereby incorporate Paragraphs 1 through 6 by reference as if set forth fully herein.

17. Valmont is the exclusive owner by assignment of United States Patent 6,095,439 (the '439 Patent) entitled "Corner Irrigation System Including a GPS Guidance System" with respect to Lindsay and others, including the right to exclude Lindsay and to enforce, sue, and recover damages for past and future infringement against Lindsay. A true and correct copy of the '439 Patent is attached as Exhibit B.

18. The '439 Patent is valid, enforceable, and was duly issued on August 1, 2000, in full compliance with Title 35 of the United States Code.

19. On information and belief, Lindsay has been, and now is, directly infringing, jointly infringing, and indirectly infringing by way of inducing infringement and/or contributing to the infringement of the '439 Patent in this judicial district and elsewhere in Nebraska and the United States, without the consent or authorization of Plaintiffs, by or through its making, having made, sale, offer for sale, and/or use in the United States of the patented systems and methods which comprise a method or apparatus for GPS-controlled irrigation systems, including at least its Zimmatic System with MAXfield GPS Guidance products, which are covered by one or more claims of the '439 Patent.

20. To the extent that facts learned during the pendency of this case show that Lindsay's infringement is, or has been willful, Plaintiff Valmont reserves the right to request such a finding at time of trial.

21. Plaintiff Valmont has been damaged as a result of Lindsay's infringing conduct. Lindsay is, thus, liable to Plaintiff Valmont in an amount that adequately compensates it for Lindsay's infringements, which, by law, cannot be less than a reasonable royalty, together with interest and costs as fixed by this Court under 35 U.S.C. § 284.

22. Unless a preliminary and permanent injunction is issued enjoining Lindsay and its agents, servants, employees, representatives, affiliates, and all others acting in active concert therewith from infringing the '439 Patent, Plaintiff Valmont will be greatly and irreparably harmed.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully requests that this Court enter:

A. A judgment in favor of Plaintiffs that Lindsay has infringed the '164 Patent;

- B. A judgment in favor of Plaintiff Valmont that Lindsay has infringed the '439 Patent;
- C. A preliminary and permanent injunction enjoining Lindsay, and its officers, directors, agents, servants, affiliates, employees, divisions, branches, subsidiaries, parents, and all others acting in active concert therewith from infringement, inducing the infringement of, or contributing to the infringement of the '164 Patent and the '439 Patent;
- D. A judgment and order requiring Lindsay to pay Plaintiff Valmont its damages, costs, expenses, and prejudgment and post-judgment interest for Lindsay's infringement of the '164 Patent and the '439 Patent as provided under 35 U.S.C. § 284;
- E. An award to Plaintiff Valmont for enhanced damages as provided under 35 U.S.C. § 284;
- F. A judgment and order finding that this is an exceptional case within the meaning of 35 U.S.C. § 285 and awarding Plaintiffs their reasonable attorneys' fees; and
- G. Any and all other relief, at law or in equity, to which Plaintiffs may show themselves to be entitled.

DEMAND FOR JURY TRIAL

Plaintiffs hereby request a trial by jury pursuant to Rule 38 of the Federal Rules of Civil Procedure. Plaintiffs renew their request under NECivR 40.1(b) that, after and in light of the transfer, this matter be tried in Omaha, Nebraska.

Dated: January 24, 2012

Respectfully submitted,

By: /s/ Mark F. Enenbach

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**ATTORNEYS FOR PLAINTIFFS
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FARMSCAN AG PTY LTD; and
BOARD OF REGENTS OF THE
UNIVERSITY OF IDAHO**

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 24th day of January, 2012, I electronically filed the above and foregoing Second Amended Complaint for Patent Infringement with the Clerk of the Court using the CM/ECF system, which sent a copy by electronic mail to all counsel of record.

/s Mark F. Enenbach

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