

**IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF ILLINOIS**

LeRoy G. Hagenbuch,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 1:12-cv-01079-MMM-JAG
)	
Komatsu America Corporation,)	JURY TRIAL DEMANDED
)	
Defendant,)	

FIRST AMENDED COMPLAINT

Plaintiff LeRoy G. Hagenbuch (“Plaintiff “Mr. Hagenbuch”), by and through his attorneys, for its Complaint against Defendant Komatsu America Corporation (“Defendant Komatsu America”), demanding trial by jury, hereby alleges as follows:

I. THE PARTIES

1. Plaintiff Mr. Hagenbuch is an individual residing at 1425 East Glen Avenue, Peoria Heights, Illinois 61616.
2. Defendant Komatsu America is a corporation organized and existing under the laws of the State of Georgia, with its principal place of business located at 1701 Golf Road, Rolling Meadows, Illinois 60008.
3. Defendant Komatsu America maintains manufacturing facilities in Peoria Illinois at 2300 North East Adams Street.

II. JURISDICTION AND VENUE

4. This action includes claims for patent infringement and arises under the Patent Laws of the United States, in particular, 35 U.S.C. §§271, 281, 283, 284 and 285. This Court has jurisdiction over the subject matter of this action under 28 U.S.C. §§1331 and 1338(a).

5. This Court has personal jurisdiction over the Plaintiff Mr. Hagenbuch and the Defendant Komatsu America, and venue is proper in this Court pursuant to 28 U.S.C. §§1391(b), (c) and 1400.

III. FACTUAL ALLEGATIONS

6. Mr. Hagenbuch is a licensed professional engineer working for an engineering design firm that specializes in the design and manufacturing of various haulage attachments for haulage vehicles including specialty bodies.
7. Mr. Hagenbuch holds over 60 United States patents and numerous foreign patents primarily in technology areas related to haulage vehicles.
8. In 1984, Hagenbuch filed the first of several United States patent applications for a vehicle onboard data acquisition system known by the name OBDAS. OBDAS is an acronym for “onboard data acquisition system.”
9. An OBDAS system includes a processor and sensors for mounting to a haulage vehicle and preferably includes a sensor for determining the weight of a load carried by the haulage vehicle. Other sensors of the OBDAS system provide additional information about the operation of the vehicle. The OBDAS system operates to display information to an operator of the haulage vehicle. It can also be integrated into communications networks by way of a transceiver on-board the haulage vehicle, which connects the OBDAS system to the network that enables real time downloading of the information collected from the OBDAS system. Once the OBDAS system is network enabled, the real-time downloading of information from several haulage vehicles can be collected and analyzed to provide additional features such as the coordinated dispatching of the several haulage vehicles in an operation.
10. In mid 1988, Mr. Hagenbuch contacted Komatsu Ltd. (Japan) regarding the OBDAS system. Komatsu Ltd. is the Japanese parent company of the Defendant Komatsu America. Nothing came from this initial contact.
11. In early 1989, Mr. Hagenbuch contacted Komatsu-Dresser Company (Komatsu Dresser) regarding the OBDAS system, Komatsu-Dresser is the predecessor of

Defendant Komatsu America and at the time was a joint venture between Komatsu Ltd. and Dresser Industries. Nothing came from this contact.

12. Later in 1989, Mr. Hagenbuch wrote to Komatsu-Dresser advising that United States Patent Nos. 4,831,539 and 4,839,835 had issued in his name and concerned the technology embodied in the OBDAS system. Mr. Hagenbuch invited Komatsu-Dresser to enter into a license agreement for the technology protected by the patents. There was no immediate response.
13. In late 1990, Komatsu-Dresser wrote to Mr. Hagenbuch and inquired about “terms and conditions” of a license. At that time, Mr. Hagenbuch was engaged in licensing negotiations with Caterpillar Inc. that resulted in the execution of a license agreement with that company in 1991
14. In the late summer of 1991, Komatsu-Dresser renewed its previously expressed interest in “terms and conditions” of a license agreement.
15. Licensing negotiations between Mr. Hagenbuch and Komatsu-Dresser began in 1992. On September 8, 1992, a meeting occurred in Chicago between Mr. Hagenbuch and his attorney John Conklin and Komatsu-Dresser attorneys Michael Singer and Edward Fiorito and other Komatsu-Dresser employees. The meeting resulted in general agreement of terms and conditions for a royalty rate to license to Komatsu-Dresser Mr. Hagenbuch’s technology then used in Komatsu-Dresser’s existing commercial weighing system for its haulage vehicles. Details were left for representatives of each party to work out after the meeting. Mr. Hagenbuch began working with Mr. James Ballew of Komatsu-Dresser to prepare an outline of a formal written license agreement.
16. Mr. Hagenbuch in consultation with Mr. Ballew then authored a document entitled “Items for Consideration Regarding Hagenbuch and Komatsu Dresser Licensing Negotiations” (hereinafter called “Punch List”), which was intended to be the outline for the formal written license agreement with Komatsu.
17. Ultimately, the Punch List became Attachment F of an executed license agreement between Mr. Hagenbuch and Komatsu-Dresser (the “Patent License

Agreement”) that was executed by Mr. Hagenbuch and Komatsu-Dresser on March 25, 1994. The parties expressly agreed that Illinois law controls the “validity and interpretation” of the Patent License Agreement.

18. Upon information and belief, later in 1994, Komatsu Ltd. bought Dresser Industries share of Komatsu-Dresser and in 1996 it became Komatsu America International Company. In about 2002, Komatsu America International Company was re-named to Defendant Komatsu America Corporation.
19. Upon information and belief, in 1996, Komatsu America bought a controlling interest in Modular Mining Corporation (“Modular”). In a March 13, 1996 letter to Komatsu Ltd., which is the parent company of Defendant Komatsu America, Plaintiff Mr. Hagenbuch through his attorneys requested further information about the purchase of Modular and alerted Komatsu Ltd. to the relevance of the Patent License Agreement and any future cooperation between Komatsu and Modular. In a letter to Mr. Hagenbuch’s attorneys dated May 27, 1996, Komatsu Ltd. referred Mr. Hagenbuch to Komatsu America and stated Komatsu America’s General Counsel had been “notified” of the March 13, 1996 letter.
20. The last of the patents subject to the license agreement (Licensed Patents) issued in 1998. Fifteen (15) United States patents issued to Mr. Hagenbuch are Licensed Patents subject to the Patent License Agreement.
21. In a letter dated July 9, 2001 Mr. Hagenbuch notified Mr. Ballew that the last patent subject to the license agreement had issued and its expiration date is April 21, 2015 and, pursuant to Article VIII of the Patent License Agreement “the license will expire on April 21, 2015.”
22. In 2003, Mr. Hagenbuch and Defendant Komatsu America entered into an agreement acknowledging the transition of Komatsu-Dresser to Komatsu America and providing Komatsu Ltd. (Japan) with a sub-license to the Patent License Agreement.
23. The Patent License Agreement provides Komatsu America with a license to “Licensed Product,” which is defined to be Komatsu America’s “On-Board

Weighing System and any other system for transmitting or receiving Vehicle Management Information,” but limits the use of such systems to non-real-time downloading of information subject to two exceptions. The two exceptions are (1) when the Komatsu America system is used in networks providing real time downloading existing as of the effective date of the Patent License Agreement and (2) when the Komatsu America system is used in networks providing real time downloading that are custom made by the purchaser of the Komatsu America system.

24. Upon information and belief, Modular is now a subsidiary of Komatsu America.
25. Upon information and belief, Komatsu America introduced in 2006 a satellite-based tracking system called Komtrax. Komtrax is now and has been for some time standard equipment on all Komatsu America mobile construction equipment. Komtrax provides equipment production information such as fuel usage, idle time and load factors in real time to remote locations for remote monitoring of the equipment.
26. Upon information and belief Komatsu America is, and has been since at least the time of its purchase of a controlling interest in Modular, inducing its customers to transmit information in real time from Komatsu America’s on-board weighing systems or other systems on-board the Komatsu vehicles providing vehicle management information. Such use of these systems is not within the two noted Patent License Agreement exceptions and, therefore, violates the use restrictions of the Patent License Agreement and infringes several of the Licensed Patents. In fact, Modular is specifically identified as a “Third Party” at Article I (S) of the Patent License Agreement whose cooperation with Defendant Komatsu America is excluded from the scope of patent license grant.
27. Upon information and belief Komatsu America is, and has been since 2006, inducing its customers to transmit on-board vehicle information, including production information in “real time” from Komatsu America’s Komtrax systems to remote locations for monitoring vehicles. Use of the patented technology for real time downloading of vehicle information is excluded from the Patent License

Agreement except under limited situations not applicable to Komtrax. Komatsu America has not agreed to negotiate an amendment to the Patent License Agreement to account for Komtrax and its real time downloading of vehicle information. Because Komtrax's transmission of real time information is not within the scope of the license granted to Komatsu America in the Patent License Agreement, several of the Licensed Patents are infringed by Komtrax as well as at least one additional patent owned by the Defendant Mr. Hagenbuch.

28. Article XV of the Patent License Agreement provides:

A. Any controversy or claim arising out of or relating to this License Agreement or the breach thereof, including any dispute relating to patent validity or patent infringement or patent enforcement shall be settled by mediation in accordance with a format agreed upon by the parties.

B. If the parties fail to agree upon a format for mediation, or if the mediation does not result in a settlement of the controversy or claim, then the controversy or claim shall be settled by binding arbitration conducted in accordance with the procedures set forth in the Patent Arbitration Rules of the American Arbitration Association.

29. Pursuant to Article XV of the Patent License Agreement, on May 18, 2010, Plaintiff Mr. Hagenbuch contacted, through his attorneys, Mr. Edward Bathelt, who is General Counsel for Defendant Komatsu America, to notify the Defendant that Mr. Hagenbuch believes the Licensed Patents are infringed by Defendant Komatsu America's ongoing activities, including its real time transmission of information from vehicles to Modular's vehicle management systems (or other vehicle control systems).

30. On June 3, 2010, Plaintiff arranged for and conducted a conference call with Mr. Bathelt and one of Plaintiff Mr. Hagenbuch's attorneys at which time agreement was reached for a face-to-face meeting.

31. On June 18, 2010, Plaintiff Mr. Hagenbuch provided Mr. Bathelt with several binders of historical documents related to the Patent License Agreement to assist Mr. Bathelt in understanding Mr. Hagenbuch's infringement concerns.

32. On June 29, 2010, Plaintiff Mr. Hagenbuch and his attorney met with Mr. Bathelt and Defendant Komatsu America's outside counsel from the Chicago-based law firm of Brinks Hofer Gilson & Lione to discuss Mr. Hagenbuch's infringement

concerns. Mr. Hagenbuch gave a prepared presentation detailing his concerns. No reference was made by Komatsu America that it believed the last of the Licensed Patents expired in 2006.

33. On August 11, 2010, Plaintiff Mr. Hagenbuch and his attorney again met with Mr. Bathelt and Defendant Komatsu America's outside counsel to discuss Mr. Hagenbuch's infringement concerns. Mr. Hagenbuch gave another prepared presentation further detailing his concerns and made a settlement offer, which was presented in writing several days later. At the meeting, Mr. Bathelt asked for additional documents from Plaintiff Mr. Hagenbuch, which were provided on September 3 and September 9, 2010. No reference was again made by Komatsu America that it believed the last of Licensed Patents expired in 2006.
34. On August 18, 2010, Plaintiff Mr. Hagenbuch's settlement offer expired without a response from Defendant Komatsu America.
35. In September of 2010, outside counsel for Defendant Komatsu America proposed an October meeting to present results of its analysis of the concerns raised by Plaintiff Mr. Hagenbuch at the June 29 and August 11, 2010 meetings.
36. On October 1, 2010, outside counsel for Defendant Komatsu America contacted one of Plaintiff Mr. Hagenbuch's attorneys to inform Mr. Hagenbuch that Komatsu America had retained different outside counsel for the October meeting.
37. On October 6, 2010, Mr. Hagenbuch met with Mr. Bathelt and Defendant Komatsu America's new outside counsel, who are now among those of record in this lawsuit, in order for Komatsu America to present its analysis of Plaintiff Mr. Hagenbuch's concerns. At that meeting, Komatsu America announced, for the first time since the 1994 execution date of the Patent License Agreement, its position that all of the Licensed Patents lapsed no later than 2006 based on a novel legal theory, which Komatsu America admitted at the meeting was not supported by any known case law. Komatsu America had continuously made royalty payments pursuant to the Patent License Agreement since 1994.

38. Upon information and belief, Defendant Komatsu America repudiated the Patent License Agreement at the October 6, 2010 meeting, including Article XV that calls for mediation of “any controversy or claim arising out of or relating to this License Agreement or the breach thereof.” In keeping with its repudiation of the Patent License Agreement, Defendant Komatsu America demanded restitution of royalty payments made since 2006.
39. Subsequent to the October 6, 2010 meeting, Defendant Komatsu America refused to provide Mr. Hagenbuch with technical information supporting its assertion at that October 6, 2010 meeting that the Licensed Patents were not infringed by the real time downloading of information to Modular systems. In an e-mail message date October 20, 2010, Defendant Komatsu America’s outside counsel stated “the license is now terminated” and “Komatsu will not be making any further payments under the license.”
40. Since the October 6, 2010 meeting, Defendant Komatsu America has honored none of its obligations set forth in the Agreement and has provided no justification for its continued reliance on its novel legal theory, even after the United States Patent and Trademark Office rejected the theory.
41. In a letter to Plaintiff Mr. Hagenbuch dated November 24, 2010, Defendant Komatsu America threatened to seek “restitution” from Plaintiff Mr. Hagenbuch of royalty payments made pursuant to the Patent License Agreement. Komatsu America offered settlement at a reduced amount of its restitution demand in return for “a release and fully-paid up license to the entirety of Mr. Hagenbuch’s patent portfolio and the patent portfolios of any of his affiliated companies.”
42. In letters dated December 7, 2010, Plaintiff Mr. Hagenbuch requested (a) an explanation of the basis for Defendant Komatsu America’s novel legal theory and (b) that Defendant Komatsu America would agree to waive reliance on any statute of limitations defense to a claim for damages if Mr. Hagenbuch did not immediately file a lawsuit. The letters requested a response within 10 days and stated Plaintiff Mr. Hagenbuch would assume Defendant Komatsu America was

refusing the requests if the letters were not answered within 10 days. The letters were never answered.

43. On December 8, 2010, Plaintiff Mr. Hagenbuch made a counteroffer to the Defendant Komatsu America's November 24, 2010 demand.
44. On December 17, 2010, Defendant Komatsu America refused Plaintiff Mr. Hagenbuch's counteroffer and renewed its demand, while making no reference to Plaintiff Mr. Hagenbuch's December 7, 2010 information requests.
45. On April 7, 2011, in reliance on Defendant Komatsu America's repudiation of the Patent License Agreement and demand for restitution, Plaintiff Mr. Hagenbuch undertook the expense and invested the time to present Defendant Komatsu America's novel legal theory to the US Patent and Trademark Office in a request to reexamine one of the Licensed Patents Defendant Komatsu America had declared at the October 6, 2010 meeting to have expired in 2006.
46. On January 17, 2012, the United States Patent and Trademark Office issued a Reexamination Certificate No. 5,416,706 C1 that rejected Komatsu America's novel legal theory and stated that the Licensed Patent under reexamination had not lapsed in 2006. Defendant Komatsu America was immediately informed of this Patent Office decision, but has refused to reconsider its reliance on its novel legal theory and its 2010 repudiation of the Patent License Agreement.
47. Defendant Komatsu America waived any right to now enforce the mediation clause of the Patent License Agreement against Plaintiff Mr. Hagenbuch when on October 6, 2010 it repudiated the Agreement, threatened to seek "restitution" from Mr. Hagenbuch and then consistently ignored Mr. Hagenbuch's requests for further information and a waiver agreement to mitigate damages to him resulting from Komatsu America's repudiation.
48. By its conduct, Defendant Komatsu America has repudiated the mediation clause of the Patent License Agreement.

THE PATENTS IN-SUIT

49. Plaintiff Mr. Hagenbuch is the assignee and sole owner of all right, title and interest in and to:

- United States Patent No. 7,039,507, issued on May 2, 2006, for “Apparatus for tracking and recording vital signs and task-related information of a vehicle to identify operating patterns” (the ‘507 patent”), a true and correct copy of which is attached hereto as Exhibit 1.
- United States Patent No. 5,742,914, issued on April 21, 1998, for “Apparatus and Method for Responsive to the On-Board Measuring of Haulage Parameters of a Vehicle” (the ‘914 patent”), a true and correct copy of which is attached hereto as Exhibit 2;
- United States Patent No. 5,650,930, issued on July 22, 1997, for “Apparatus and Method Responsive to the On-Board Measuring of Haulage Parameters of a Vehicle” (the ‘930 patent”), a true and correct copy of which is attached hereto as Exhibit 3;
- United States Patent No. 5,650,928, issued on July 22, 1997, for “Apparatus and Method Responsive to the On-Board Measuring of Haulage Parameters of a Vehicle” (the ‘928 patent”), a true and correct copy of which is attached hereto as Exhibit 4;
- United States Patent No. 5,631,832, issued on May 20, 1997, for “Apparatus and Method Responsive to the On-Board Measuring of Haulage Parameters of a Vehicle” (the ‘832 patent”), a true and correct copy of which is attached hereto as Exhibit 5;
- United States Patent No. 5,528,499, issued on June 18, 1996, for “Apparatus and Method Responsive to the On-Board Measuring of Haulage Parameters of a Vehicle” (the ‘499 patent”), a true and correct copy of which is attached hereto as Exhibit 6;

- United States Patent No. 5,327,347, issued on July 5, 1994, for “Apparatus and Method Responsive to the On-Board Measuring of Haulage Parameters of a Vehicle” (the ‘347 patent”), a true and correct copy of which is attached hereto as Exhibit 7;
- United States Patent No. 4,839,835, issued on June 13, 1989, for “Apparatus and Method Responsive to the On-Board Measuring of the Load Carried by a Truck Body” (the ‘835 patent”), a true and correct copy of which is attached hereto as Exhibit 8; and
- United States Patent No. 4,831,539, issued on May 16, 1989, for “Apparatus and Method for Locating a Vehicle In A Working Area and for the On-Board Measuring of Parameters Indicative of Vehicle Performance” (the ‘539 patent”), a true and correct copy of which is attached hereto as Exhibit 9.

Collectively, these patents are referred to herein as the “Patents in Suit.”

50. Plaintiff Mr. Hagenbuch is the sole owner of all right, title and interest in and to the Patents in Suit.
51. The ‘914, ‘930, ‘928, ‘832, ‘499, ‘347, ‘835 and ‘539 patents are subject to the Patent License Agreement and are referred to collectively herein as the “Licensed Patents.”
52. The ‘507 patent is not subject to the Patent License Agreement.

IV. PLAINTIFF’S CLAIMS

COUNT ONE-BREACH OF CONTRACT

53. Plaintiff Mr. Hagenbuch re-alleges and incorporates herein paragraphs 1-52.
54. Plaintiff Mr. Hagenbuch and Defendant Komatsu America entered into a valid written contract in the form of the Patent License Agreement.
55. Defendant Komatsu America breached the Patent License Agreement by unilaterally terminating it without payment of the amounts required by Article VIII of the Agreement.

56. Upon information and belief, Defendant Komatsu America breached the Patent License Agreement by failing to account for all royalty bearing units as defined in the Patent License Agreement in previous annual royalty payments, including units incorporating the invention protected by Licensed Patent No. 5,416,706 that was reexamined by the United States Patent and trademark Office.
57. Defendant Komatsu America breached the Patent License Agreement by inducing its customers to infringe the Licensed Patents.
58. Notwithstanding the express restrictions set forth in the Patent License Agreement, Defendant Komatsu America has engaged in real-time downloading of information in a manner outside the grant provided by the Patent License Agreement, resulting in the infringement of the Licensed Patents.
59. Defendant Komatsu America has breached the Patent License Agreement by failing to negotiate and pay additional license fees owed to Mr. Hagenbuch there under for the use of the patented technology originally restricted from the Patent License Agreement.
60. Defendant Komatsu America has breached the Patent License Agreement by failing to honor an implied covenant of good faith and fair dealing.
61. Defendant Komatsu America's aforementioned acts have caused damage to Mr. Hagenbuch and will continue to do so unless and until enjoined.
62. By its conduct, Defendant Komatsu America has both repudiated and waived any right to require mediation or arbitration of this count pursuant to Article XV of the Patent License Agreement.

COUNT TWO-PATENT INFRINGEMENT

U.S. PATENT NO. 5,742,914

63. Plaintiff Mr. Hagenbuch re-alleges and incorporates herein paragraphs 1-62.
64. Defendant Komatsu America has directly infringed, induced infringement of, and/or contributed to the infringement of the '914 Patent.

65. Defendant Komatsu America has infringed the '914 patent willfully, and in knowing violation of Mr. Hagenbuch's patent rights.
66. Defendant Komatsu America's aforementioned acts have caused damage to Mr. Hagenbuch and will continue to do so unless and until enjoined.
67. By its conduct, Defendant Komatsu America has both repudiated and waived any right to require mediation or arbitration of this count pursuant to Article XV of the Patent License Agreement.

COUNT THREE-PATENT INFRINGEMENT

U.S. PATENT NO. 5,650,930

68. Plaintiff Mr. Hagenbuch re-alleges and incorporates herein paragraphs 1-62.
69. Defendant Komatsu America has directly infringed, induced infringement of, and/or contributed to the infringement of the '930 Patent.
70. Defendant Komatsu America has infringed the '930 patent willfully, and in knowing violation of Mr. Hagenbuch's patent rights.
71. Defendant Komatsu America's aforementioned acts have caused damage to Mr. Hagenbuch and will continue to do so unless and until enjoined.
72. By its conduct, Defendant Komatsu America has both repudiated and waived any right to require mediation or arbitration of this count pursuant to Article XV of the Patent License Agreement.

COUNT FOUR-PATENT INFRINGEMENT

U.S. PATENT NO. 5,650,928

73. Plaintiff Mr. Hagenbuch re-alleges and incorporates herein paragraphs 1-62.
74. Defendant Komatsu America has directly infringed, induced infringement of, and/or contributed to the infringement of the '928 Patent.
75. Defendant Komatsu America has infringed the '928 patent willfully, and in knowing violation of Mr. Hagenbuch's patent rights.
76. Defendant Komatsu America's aforementioned acts have caused damage to Mr. Hagenbuch and will continue to do so unless and until enjoined.

77. By its conduct, Defendant Komatsu America has both repudiated and waived any right to require mediation or arbitration of this count pursuant to Article XV of the Patent License Agreement.

COUNT FIVE-PATENT INFRINGEMENT

U.S. PATENT NO. 5,631,832

78. Plaintiff Mr. Hagenbuch re-alleges and incorporates herein paragraphs 1-62.
79. Defendant Komatsu America has directly infringed, induced infringement of, and/or contributed to the infringement of the '832 Patent.
80. Defendant Komatsu America has infringed the '832 patent willfully, and in knowing violation of Mr. Hagenbuch's patent rights.
81. Defendant Komatsu America's aforementioned acts have caused damage to Mr. Hagenbuch and will continue to do so unless and until enjoined.
82. By its conduct, Defendant Komatsu America has both repudiated and waived any right to require mediation or arbitration of this count pursuant to Article XV of the Patent License Agreement.

COUNT SIX-PATENT INFRINGEMENT

U.S. PATENT NO. 5,528,499

83. Plaintiff Mr. Hagenbuch re-alleges and incorporates herein paragraphs 1-62.
84. Defendant Komatsu America has directly infringed, induced infringement of, and/or contributed to the infringement of the '499 Patent.
85. Defendant Komatsu America has infringed the '499 patent willfully, and in knowing violation of Mr. Hagenbuch's patent rights.
86. Defendant Komatsu America's aforementioned acts have caused damage to Mr. Hagenbuch and will continue to do so unless and until enjoined.
87. By its conduct, Defendant Komatsu America has both repudiated and waived any right to require mediation or arbitration of this count pursuant to Article XV of the Patent License Agreement.

COUNT SEVEN-PATENT INFRINGEMENT

U.S. PATENT NO. 5,327,347

88. Plaintiff Mr. Hagenbuch re-alleges and incorporates herein paragraphs 1-62.
89. Defendant Komatsu America has directly infringed, induced infringement of, and/or contributed to the infringement of the '347 Patent.
90. Defendant Komatsu America has infringed the '347 patent willfully, and in knowing violation of Mr. Hagenbuch's patent rights.
91. Defendant Komatsu America's aforementioned acts have caused damage to Mr. Hagenbuch.
92. By its conduct, Defendant Komatsu America has both repudiated and waived any right to require mediation or arbitration of this count pursuant to Article XV of the Patent License Agreement.

COUNT EIGHT-PATENT INFRINGEMENT

U.S. PATENT NO. 4,839,835

93. Plaintiff Mr. Hagenbuch re-alleges and incorporates herein paragraphs 1-62.
94. Defendant Komatsu America has directly infringed, induced infringement of, and/or contributed to the infringement of the '835 Patent.
95. Defendant Komatsu America has infringed the '835 patent willfully, and in knowing violation of Mr. Hagenbuch's patent rights.
96. Defendant Komatsu America's aforementioned acts have caused damage to Mr. Hagenbuch.
97. By its conduct, Defendant Komatsu America has both repudiated and waived any right to require mediation or arbitration of this count pursuant to Article XV of the Patent License Agreement.

COUNT NINE-PATENT INFRINGEMENT

U.S. PATENT NO. 4,831,539

98. Plaintiff Mr. Hagenbuch re-alleges and incorporates herein paragraphs 1-62.

99. Defendant Komatsu America has directly infringed, induced infringement of, and/or contributed to the infringement of the '539 Patent.
100. Defendant Komatsu America has infringed the '539 patent willfully, and in knowing violation of Mr. Hagenbuch's patent rights.
101. Defendant Komatsu America's aforementioned acts have caused damage to Mr. Hagenbuch.
102. By its conduct, Defendant Komatsu America has both repudiated and waived any right to require mediation or arbitration of this count pursuant to Article XV of the Patent License Agreement.

COUNT TEN-PATENT INFRINGEMENT

U.S. PATENT NO. 7,039,507

103. Plaintiff Mr. Hagenbuch re-alleges and incorporates herein paragraphs 1-52.
104. Defendant Komatsu America has directly infringed, induced infringement of, and/or contributed to the infringement of the '507 patent.
105. Defendant Komatsu America has infringed the '507 patent willfully, and in knowing violation of Mr. Hagenbuch's patent rights.
106. Defendant Komatsu America's aforementioned acts have caused damage to Mr. Hagenbuch and will continue to do so unless and until enjoined.
107. The '507 Patent is not a Licensed Patent under the Patent License Agreement and consequently not subject to the Patent License Agreement's provisions in Article XV for mediation or arbitration of disputes.

V. EXCEPTIONAL CASE

108. This case is exceptional within the meaning of 35 U.S.C. § 285. Plaintiff Mr. Hagenbuch is entitled to an award of its reasonable attorneys' fees in connection herewith.

VI. VII. JURY DEMAND

109. Plaintiff Mr. Hagenbuch requests a jury for all issues so triable in connection with this matter.

VII. REQUEST FOR RELIEF

WHEREFORE, Plaintiff Mr. Hagenbuch respectfully requests that the Court:

- A. Award Plaintiff Mr. Hagenbuch past and future damages to compensate for Defendant Komatsu America's breach of contract, including actual and consequential damages;
- B. Permanently enjoin Defendant Komatsu America, its agents, servants and employees, and all those in privity with Defendant or in active concert and participation with Defendant, from engaging in acts of infringement of the '507, '914, '930, '928, '832 and the '499 Patents;
- C. Award Plaintiff Mr. Hagenbuch damages for the infringement by Defendant Komatsu America of the Patents In Suit in accordance with 35 U.S.C. §284, and increase such award by up to three times the amount found or assessed in accordance with 35 U.S.C. §284;
- D. Declare this case exceptional pursuant to 35 U.S.C. §285;
- E. Award Plaintiff Mr. Hagenbuch his costs, disbursements, attorneys' fees and such further and additional relief as is deemed appropriate by this Court;
- F. Award Plaintiff Mr. Hagenbuch his pretrial and post-judgment interest as provided by law; and
- G. Award Plaintiff Mr. Hagenbuch such other and further relief as to which he may be justly entitled, at law or in equity.

Mr. Hagenbuch DEMANDS TRIAL BY JURY.

/s/Robert W. Bach
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Dated: July 9, 2012

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CERTIFICATE OF MAILING

I hereby certify that on July 9, 2012, I electronically filed the foregoing pleading with the Clerk of the Court using CM/ECF system. I also certify that I will send by electronic mail and first class postage prepaid to:

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