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13
14 UNITED STATES DISTRICT COURT

15 EASTERN DISTRICT OF CALIFORNIA - FRESNO DIVISION

16 EAKIN ENTERPRISES, INC., a Washington
corporation,

17 Plaintiff,

18 vs.

19 SPECIALTY SALES LLC, a California
20 limited liability company,

21 Defendant.

22 SPECIALTY SALES LLC, a California
23 limited liability company,

24 Counter-Plaintiff,

25 vs.

26 EAKIN ENTERPRISES, INC., a Washington
corporation, and JOHN W. EAKIN, an
27 individual,

28 Counter-Defendants.

Case No.: 1:11-CV-02008-LJO-SKO

**FIRST AMENDED COMPLAINT FOR
INFRINGEMENT OF U.S. PATENT NO.
7,987,820, INJUNCTIVE RELIEF,
ATTEMPT TO MONOPOLIZE, UNFAIR
COMPETITION AND DAMAGES**

1 Plaintiff, Eakin Enterprises, Inc. (Eakin), by and through its undersigned counsel,
2 brings this action against Defendant, Specialty Sales LLC (Specialty), for Infringement of
3 U.S. Patent No. 7,987,820 (the '820 Patent), injunctive relief, unfair competition and
4 damages.

5
6 **PARTIES**

7 1. Eakin Enterprises, Inc. is a corporation organized under the laws of the State of
8 Washington, with its principal place of business in Selah, Washington.

9 2. Specialty Sales LLC is a limited liability company organized under the laws of
10 the State of California, with its principal place of business in Fresno, California.

11 **JURISDICTION AND VENUE**

12 3. This action arises under the patent laws of the United States, Title 35 U.S.C. §
13 1, *et seq.*, the California Unfair Practices Act, Bus. & Prof. Code § 17000 *et seq.* and the
14 California Unfair Competition Law § 17200 *et seq.* for unfair business acts and practices.
15 Plaintiff seeks equitable relief, damages, treble damages, costs of suit and reasonable
16 attorneys' fees and costs as allowed by federal and state law.

17
18 4. Plaintiff is the exclusive licensee of the '820 patent issued to John Eakin, who
19 is its sole shareholder, officer and director.

20
21 5. Plaintiff is informed and believes, and on that basis alleges that this Court has
22 personal jurisdiction over Defendant; that Defendant is duly formed and exists under the laws
23 of the state of California, has its principal place of business in this District, and, among other
24 things, sells, offers for sale and distributes a cattle foot bath system, including the chemicals
25 used therein, in the state of California and elsewhere that infringes the '820 Patent; that on
26 information and belief, Defendant offers its cattle foot bath system to farmers and ranchers in
27
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1 the state of California and elsewhere and/or otherwise has made or established contacts within
2 the state of California sufficient to permit the exercise of personal jurisdiction.

3 6. This Court has subject matter jurisdiction over this action under 28 U.S.C. §§
4 1331, 1338 and 1400(b) and supplemental or pendant jurisdiction over the remaining claims
5 under 28 U.S.C. § 1367(a).
6

7 7. Venue is proper in this District under 28 U.S.C. § 1931 (b) and (c).

8 **FACTUAL BACKGROUND**

9 8. Plaintiff manufactures and licenses the use of a cattle foot bath system that is
10 covered by the '820 Patent for use by its customers. The patented product and system is
11 designed to meet a long felt need in the market place to have a safe and precise means of
12 applying formaldehyde to the feet of cattle, and in particular dairy cattle being moved into
13 milking parlors, as a preventative treatment for certain diseases of the hoof, and to prevent
14 contamination of the work area from material being tracked in on the hooves of the cattle.
15 Generally, the equipment used in the system is provided to the farmer or rancher with the
16 understanding and expectation that the formaldehyde solution used in the system will be
17 purchased from Plaintiff. A copy of the '820 Patent, which is exclusively licensed to Plaintiff,
18 was attached to the original Complaint as Exhibit A.
19

20 9. Defendant manufactures, uses, sells and offers to sell, or provide for use, a
21 cattle foot bath system that infringes one or more claims of the '820 Patent.
22

23 10. On information and belief, Defendant offers formaldehyde solutions to farmers
24 and ranchers, to be used in connection with its cattle foot bath system, at prices substantially
25 below market value and uses said pricing to cause users of Plaintiff's cattle foot bath system
26 to stop doing business with Plaintiff and switch to Defendant's cattle foot bath system. On
27
28

1 information and belief, the sale of formaldehyde is tied to the customers continuing use of the
2 cattle foot bath system supplied by Defendant.

3
4 **FIRST CLAIM FOR RELIEF**
Infringement of U.S. Patent No. 7,987,820

5 11. Defendant infringes and continues to infringe the '820 Patent by manufacturing
6 or having manufactured, using, selling and offering to sell or authorizing to use a cattle foot
7 bath system, which device includes elements and methods that embody one or more of the
8 claims of the '820 Patent.

9
10 12. By selling or offering to sell the accused cattle foot bath system, Defendant
11 engages in activities that contribute to the infringement of or induce others to infringe the '820
12 Patent as proscribed by 35 U.S.C. § 271(f) .

13 13. On information and belief, Defendant has and has had full knowledge of the
14 '820 Patent before the initiation of this lawsuit and its actions are therefore willful and
15 deliberate.

16 14. Defendant will continue to willfully infringe the '820 Patent unless enjoined by
17 this Court. Plaintiff has no adequate remedy at law.

18
19 15. As a direct and proximate cause of Defendant's infringement of the '820
20 Patent, Plaintiff has been and will continue to be damaged in an amount yet to be determined.

21 16. As a result of Defendant's willful infringement the case is exceptional.

22 **SECOND CLAIM FOR RELIEF**
23 **Attempt to Monopolize**

24 17. The acts of Defendant to undercut the prices offered by Plaintiff of
25 formaldehyde used in the cattle foot bath system constitute a direct attempt to monopolize the
26 industry and violate Sections 4 and 16 of the Clayton Act, 15 U.S.C §§ 15 and 26 and Section
27 2 of the Sherman Act, 15 U.S. C. § 2, *et. seq.*

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for a judgment as follows:

A. For a decree that Defendant, Specialty Sales LLC, has infringed United States Patent No. 7,987,820, and that said patent is not invalid and enforceable.

B. For a preliminary and permanent injunction restraining and enjoining Defendant, its agents, servants, employees, officers, and those persons in active concert or participation therewith from further infringement of the '820 Patent.

C. For an accounting and determination of gains and profits of Defendant from the sales of the accused cattle foot bath system and all "caravan" products that are sold from the use of the cattle foot bath system.

D. For damages under 35 U.S.C. § 284 adequate to compensate for the infringement, but in no event less than a reasonable royalty for the use of the invention by the infringer, together with interest and costs as fixed by the court.

E. For injunctive and other equitable relief as provided for under the Sherman and Clayton Acts for Defendant's attempts to monopolize.

F. For damages allowed to Plaintiff for Defendant's activities that violate the Sherman and Clayton Acts.

G. For enhanced damages and/or statutory damages in accordance with violations of the California Unfair Practices Act, Bus. & Prof. Code § 17000 *et. seq.* and injunctive and restitution pursuant to the California Unfair Competition Law, Bus. & Prof. Code § 17200 *et. seq.*

H. For an award of reasonable attorneys' fees and costs against Defendant under all applicable statutes.

1 I. For such other and further relief on all counts as may be just, proper, or
2 allowed by law or equity.

3
4 Dated: April 13, 2012

STRATTON LAW & MEDIATION P.S.

5 By /s/ Rex B. Stratton

Rex B. Stratton

Attorneys for Plaintiff Eakin Enterprises, Inc.

(Pro Hac Vice)

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7
8 Dated: April 13, 2012

SVENDSEN LEGAL, LLC

9 By /s/ Chris E. Svendsen

Chris E. Svendsen

Attorneys for Plaintiff Eakin Enterprises, Inc.

(Pro Hac Vice)

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12 Dated: April 13, 2012

FITZGERALD ABBOTT & BEARDSLEY LLP

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14 By /s/ David C. Lee

David C. Lee

Attorneys for Plaintiff Eakin Enterprises, Inc.

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