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13				
14	UNITED STATES DISTRICT COURT			
15	EASTERN DISTRICT OF CALIFORNIA - FRESNO DIVISION			
16	EAKIN ENTERPRISES, INC., a Washington corporation,	Case No.: 1:11-CV-02008-LJO-SKO		
17	Plaintiff,	FIRST AMENDED COMPLAINT FOR		
18	VS.	INFRINGEMENT OF U.S. PATENT NO. 7,987,820, INJUNCTIVE RELIEF,		
19 20	SPECIALTY SALES LLC, a California limited liability company,	ATTEMPT TO MONOPOLIZE, UNFAIR COMPETITION AND DAMAGES		
21	Defendant.			
22	SPECIALITY SALES LLC, a California limited liability company,			
23	Counter-Plaintiff,			
24	VS.			
25	EAKIN ENTERPRISES, INC., a Washington			
26	corporation, and JOHN W. EAKIN, an individual,			
27 28	Counter-Defendants.			
20	FIRST AMENDED COMPLAINT -	CASE NO. 1:11-CV-02008-LJO-SKO		

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Plaintiff, Eakin Enterprises, Inc. (Eakin), by and through its undersigned counsel, 1 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 **PARTIES** 6 1. Eakin Enterprises, Inc. is a corporation organized under the laws of the State of 7 Washington, with its principal place of business in Selah, Washington. 8 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 17 attorneys' fees and costs as allowed by federal and state law. 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 5. Plaintiff is informed and believes, and on that basis alleges that this Court has 21 personal jurisdiction over Defendant; that Defendant is duly formed and exists under the laws 22 of the state of California, has its principal place of business in this District, and, among other 23 things, sells, offers for sale and distributes a cattle foot bath system, including the chemicals 24 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 28 2 FIRST AMENDED COMPLAINT - CASE NO. 1:11-CV-02008-LJO-SKO

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the state of California and elsewhere and/or otherwise has made or established contacts within
 the state of California sufficient to permit the exercise of personal jurisdiction.

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

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

#### 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 16 Generally, the equipment used in the system is provided to the farmer or rancher with the 17 understanding and expectation that the formaldehyde solution used in the system will be 18 purchased from Plaintiff. A copy of the '820 Patent, which is exclusively licensed to Plaintiff, 19 was attached to the original Complaint as Exhibit A.

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

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

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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.

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#### 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.

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12. By selling or offering to sell the accused cattle foot bath system, Defendant
engages in activities that contribute to the infringement of or induce others to infringe the '820
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.

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

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.

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

#### SECOND CLAIM FOR RELIEF Attempt to Monopolize

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

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1	18. The above-mentioned attempt to monopolize and monopolization, by means of		
2	the illegal acts and activities, have been carried out in part with the objectives of:		
3	i. Forcing Plaintiff out of the business of providing cattle foot bath systems		
4	and services, including the sale of formaldehyde and		
5	ii. Establishing Defendant as the sole source of equipment and supply in the		
6 7	farm and ranch market.		
8	19. Damages to Plaintiff caused by the injurious impact on its business and		
9	property by Defendant's violations of the antitrust laws are in such amount as to be proven at		
10	trial.		
11	THIRD CLAIM FOR RELIEF		
12	Violation of the California Unfair Practices Act Bus. & Prof. Code § 17000 <i>et. seq</i> .		
13			
14	20. The acts of Defendant have been made with purpose and impact the public		
15 16	interest, constitute repeated violations of property rights and have a great likelihood of future		
10	repetition, which practices constitute a violation of the California Unfair Practices Act, Bus. &		
18	Prof. Code § 17000 et. seq. In particular, Defendant violates the Unfair Practices Act by		
19	selling before cost in violation of Section 17043 and/or using loss leaders in violation of		
20	Section 17044.		
21	21. As a direct and proximate result of Defendant's violation of the Unfair		
22	Practices Act, Plaintiff has suffered damages in an amount it has not yet ascertained. Plaintiff		
23	will present proof of such damages at trial.		
24	22. In accordance with the Unfair Practices Act, Plaintiff is entitled to recover		
25 26	from Defendant (a) treble damages; (b) Plaintiff's costs of suit; and (c) Plaintiff's attorneys'		
20	fees.		
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1	23. The violations by Defendant of the Unfair Practices Act have caused and are		
2	causing irreparable injury to the value of the '820 Patent as well injury to Plaintiff's trade,		
3	prestige, business reputation, and goodwill. Plaintiff has no adequate remedy at law, and		
4	Defendant's wrongful acts will continue unless restrained and enjoined by this court.		
5			
6 7	FOURTH CLAIM FOR RELIEF Violation of the California Unfair Competition Law		
8	Bus. & Prof. Code § 17200 <i>et. seq.</i>		
9	24. The acts of Defendant have been made with purpose and impact the public		
10	interest, constitute repeated violations of property rights and have a great likelihood of future		
11	repetition, which practices constitute a violation of the California Unfair Competition Law,		
12	Bus. & Prof. Code § 17200 et. seq. In particular, Defendant violates the California Unfair		
13	Competition Law by acts that are unlawful, unfair or are fraudulent business acts or practices,		
14 15	including patent infringement and predatory practices.		
15	25. As a direct and proximate result of Defendant's violation of the Unfair		
17	Competition Law, Plaintiff has suffered damages in an amount it has not yet ascertained.		
18	Plaintiff will present proof of such damages at trial.		
19	26. In accordance with the Unfair Competition Law, Plaintiff is entitled to		
20	injunctive relief against Defendant and restitution.		
21	27. The violations by Defendant of the Unfair Competition Law have caused and		
22	are causing irreparable injury to the value of the '820 Patent as well injury to Plaintiff's trade,		
23 24	prestige, business reputation, and goodwill. Plaintiff has no adequate remedy at law, and		
24	Defendant's wrongful acts will continue unless restrained and enjoined by this court.		
26	berendant s wrongruf acts will continue unless restranted and enjoined by this court.		
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1	PRAYER FOR RELIEF			
2	WHEREFORE, Plaintiff prays for a judgment as follows:			
4	A. For a decree that Defendant, Specialty Sales LLC, has infringed United States			
5	Patent No. 7,987,820, and that said patent is not invalid and enforceable.			
6	B. For a preliminary and permanent injunction restraining and enjoining			
7	Defendant, its agents, servants, employees, officers, and those persons in active concert or			
8	participation therewith from further infringement of the '820 Patent.			
9	C. For an accounting and determination of gains and profits of Defendant from			
10 11	the sales of the accused cattle foot bath system and all "caravan" products that are sold from			
12	the use of the cattle foot bath system.			
13	D. For damages under 35 U.S.C. § 284 adequate to compensate for the			
14	infringement, but in no event less than a reasonable royalty for the use of the invention by the			
15	infringer, together with interest and costs as fixed by the court.			
16	E. For injunctive and other equitable relief as provided for under the Sherman and			
17 18	Clayton Acts for Defendant's attempts to monopolize.			
10	F. For damages allowed to Plaintiff for Defendant's activities that violate the			
20	Sherman and Clayton Acts.			
21	G. For enhanced damages and/or statutory damages in accordance with violations			
22	of the California Unfair Practices Act, Bus. & Prof. Code § 17000 et. seq. and injunctive and			
23	restitution pursuant to the California Unfair Competition Law, Bus. & Prof. Code § 17200 <i>et</i> .			
24 25	seq.			
23 26	H. For an award of reasonable attorneys' fees and costs against Defendant under			
27	all applicable statutes.			
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1	I. For such other and f	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 6		By <u>/s/ Rex B. Stratton</u> Rex B. Stratton Attorneys for Plaintiff Eakin Enterprises, Inc.
7		(Pro Hac Vice)
8 9	Dated: April 13, 2012	SVENDSEN LEGAL, LLC
9		By <u>/s/ Chris E. Svendsen</u> Chris E. Svendsen
11		Attorneys for Plaintiff Eakin Enterprises, Inc. ( <i>Pro Hac Vice</i> )
12	Datadi Amiil 12, 2012	FITZGERALD ABBOTT & BEARDSLEY LLP
13	Dated: April 13, 2012	FIIZUERALD ADDUIT & DEARDSLET LLP
14		By /s/ David C. Lee
15		David C. Lee Attorneys for Plaintiff Eakin Enterprises, Inc.
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