

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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ITT MANUFACTURING ENTERPRISES, LLC  
and GOULDS PUMPS, INC.,

Plaintiffs,

Case No. 12-cv-06441 CJS

v.

SUMMIT PUMP, INC.,

**JURY TRIAL DEMANDED**

Defendant.

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**FIRST AMENDED COMPLAINT FOR PATENT INFRINGEMENT**

Plaintiffs ITT Manufacturing Enterprises, LLC and Goulds Pumps, Inc., for their complaint for patent infringement against Summit Pump, Inc., allege as follows:

**THE PARTIES**

1. Plaintiff ITT Manufacturing Enterprises, LLC (“ITT Manufacturing”) is a Delaware limited liability company with its principal place of business in Wilmington, Delaware.

2. Plaintiff Goulds Pumps, Inc. (“Goulds”) is a Delaware corporation with its principal place of business in Seneca Falls, New York.

3. Upon information and belief, defendant Summit Pump, Inc. (“Summit”) is a Wisconsin corporation with its principal place of business at 3168 South Pine Tree Road in Oneida, Wisconsin.

**JURISDICTION AND VENUE**

4. This action arises under the patent laws of the United States, 35 U.S.C. §§ 101, *et seq.* This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338.

5. On information and belief, Summit transacts business within this judicial district by, among other things, selling and offering to sell pumps, pump bearing frames, and other pump components in this judicial district.

6. On information and belief, Summit has committed acts of patent infringement within this judicial district including, but not limited to, selling and offering to sell certain pumps and pump bearing frames.

7. As a result of its activities in this district, the Court has personal jurisdiction over Summit.

8. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391(b)-(c) and 1400(b).

**U.S. PATENT NO. D583,396**

9. On December 23, 2008, the United States Patent and Trademark Office issued U.S. Design Patent No. D583,396 (“the ‘396 patent”), entitled “ANSI STI Bearing Frame.”

10. A true and correct copy of the ‘396 patent is attached to this complaint as Exhibit A.

11. The ‘396 patent is presumed valid and enforceable, pursuant to 35 U.S.C. § 282.

12. ITT Manufacturing is the owner by assignment of all right, title, and interest in and to the ‘396 patent.

13. Goulds is the exclusive licensee of the ‘396 patent in the United States and has the right to exclude others in the United States from making, using, selling, offering to sell, and/or importing the invention disclosed and claimed in the ‘396 patent.

14. Plaintiffs and their counsel have provided notice of the ‘396 patent to Summit and its counsel, pursuant to 35 U.S.C. § 287(a).

**U.S. PATENT NO. 5,336,048**

15. On August 9, 1994, the United States Patent and Trademark Office issued U.S. Patent No. 5,336,048 (“the ‘048 patent”), entitled “Fluid Directing Device for Seal Chamber.”

16. A true and correct copy of the ‘048 patent is attached to this complaint as Exhibit B.

17. Summit and its President, Scott Keller, had knowledge of the ‘048 patent at least as early as March 12, 2003.

18. The ‘048 patent is presumed valid and enforceable, pursuant to 35 U.S.C. § 282.

19. ITT Manufacturing is the owner by assignment of all right, title, and interest in and to the ‘048 patent.

20. Goulds is the exclusive licensee of the ‘048 patent in the United States and has the right to exclude others in the United States from making, using, selling, offering to sell, and/or importing the invention disclosed and claimed in the ‘048 patent.

21. Plaintiffs have provided notice of the ‘048 patent to Summit and the public pursuant to the provisions of 35 U.S.C. § 287(a).

**SUMMIT’S INFRINGEMENT OF U.S. PATENT NO. D583,396**

22. Plaintiffs restate and reallege the allegations set forth in paragraphs 1 through 14 above and incorporates them by reference.

23. Summit has infringed and is infringing the ‘396 patent, within this judicial district and elsewhere, by making, using, offering to sell, selling, and/or importing certain pump bearing frames, including a bearing frame for the Summit Model 2196-STO pump and other pump

bearing frames having the same or similar ornamental design including, upon information and belief, bearing frames for the Summit Model 2796-STO pumps.

24. Summit's infringement has been, and continues to be, willful and with knowledge of the '396 patent.

25. Upon information and belief, Summit's infringement of the '396 patent will continue unless enjoined by this Court.

26. As a direct and proximate cause of Summit's infringement of the '396 patent, Plaintiffs have suffered and will continue to suffer irreparable injury and damages in an amount not yet determined, for which Plaintiffs are entitled to relief.

**SUMMIT'S INFRINGEMENT OF U.S. PATENT NO. 5,336,048**

27. Plaintiffs restate and reallege the allegations set forth in paragraphs 1 through 21 above and incorporates them by reference.

28. Summit has infringed and is infringing the '048 patent, within this judicial district and elsewhere, by making, using, offering to sell, selling, and/or importing certain vaned seal chambers (and pumps incorporating such seal chambers) including, upon information and belief, vaned seal chambers for the Summit Model 2196-STO pump and vaned seal chambers marked with the numerical designation "4004."

29. Summit's infringement has been, and continues to be, willful and with knowledge of the '048 patent.

30. Upon information and belief, Summit's infringement of the '048 patent will continue unless enjoined by this Court.

31. As a direct and proximate cause of Summit's infringement of the '048 patent, Plaintiffs have suffered and will continue to suffer irreparable injury and damages in an amount not yet determined, for which Plaintiffs are entitled to relief.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs request that the Court:

1. Enter judgment that Summit has infringed and is infringing the '396 and '048 patents, pursuant to 35 U.S.C. § 271;
2. Enter judgment that Summit's infringement has been and is willful;
3. Enter and order a permanent injunction restraining and enjoining Summit and its officers, agents, servants, employees, attorneys, and those persons in active concert or participation with Summit who receive actual notice of the order by personal service or otherwise, from any further manufacture, sales, offers to sell, and/or use of Summit's infringing products and any other infringement of the '396 and '048 patents, whether direct or indirect;
4. Award Plaintiffs monetary damages, plus interest and costs, for Summit's infringement of the '396 and '048 patents, pursuant to 35 U.S.C. §§ 284 and/or 289;
5. Award Plaintiffs enhanced damages for Summit's willful infringement of the '396 and '048 patents, pursuant to 35 U.S.C. § 284;
6. Find this case exceptional and award Plaintiffs their reasonable attorneys' fees, pursuant to 35 U.S.C. § 285; and
7. Grant Plaintiffs such other and further relief as this Court deems just and proper.

**DEMAND FOR JURY TRIAL**

Plaintiffs demand a trial by jury on all issues so triable.

Dated: October 19, 2012

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