

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

HENRYK OLEKSY,)	
)	
Plaintiff,)	Case No. 06-CV-01245
)	
vs.)	JURY TRIAL DEMANDED
)	
GENERAL ELECTRIC COMPANY d/b/a)	Judge Virginia M. Kendall
G.E. ENERGY)	Magistrate Judge Arlander Keys
)	
Defendant.)	

**THIRD AMENDED AND SUPPLEMENTAL
COMPLAINT FOR PATENT INFRINGEMENT**

Plaintiff Henryk Oleksy (“Oleksy”) files this Third Amended Complaint against Defendant General Electric Company d/b/a GE Energy f/k/a Power Systems (“GE”) and for his cause of action alleges as follows:

THE PARTIES

1. Oleksy is an individual residing at 1308 Drawbridge Lane, Lemont, IL 60439.
2. GE is a corporation organized and existing under the laws of the State of New York. GE is doing business in this judicial district and has its principal place of business at 3135 Easton Turnpike, Fairfield, CT 06828. GE may be served with process by serving its registered agent, CT Corporation System at 208 South LaSalle St., Suite 814, Chicago, IL 60604-1101.

JURISDICTION AND VENUE

3. This action arises under the patent laws of the United States, Title 35 United States Code, particularly §§ 271 and 281. This Court has jurisdiction over the claims for patent infringement under 28 U.S.C. §1338(a). Venue is proper in this Court under Title 28 United States Code §§ 1391(b) and (c) and 1400(b).

THE PATENT AND RELEVANT BACKGROUND

4. On January 5, 2000, Oleksy filed an application for a United States patent covering certain improvements to the machining of metal blocks. On September 10, 2002, U.S. Patent No. 6,449,529 B1 (“the ’529 patent”) was duly and legally issued for a “Process for Contour Machining of Metal Blocks.” A copy of the ’529 patent is attached to the Original Complaint, Docket No. 1.

5. The ’529 patent, in general, relates to a method and process which improves the machining of metal objects, including metal blades utilized in turbines. Specifically, the claims of the ’529 patent relate to a method and process for contour control machining of metal blocks into blades for use in turbine engines, among other things, by providing a control procedure for standard computer numerical control conventional milling machines in order to machine complex curved shapes and/or multiple complex curved surfaces in a single engineered component such as the root section of turbine blades.

6. Oleksy is the owner of the ’529 patent and has the right to enforce the ’529 patent and collect damages for all relevant times.

7. Pursuant to 35 U.S.C § 282, the ’529 patent is presumed valid.

8. On March 8, 2006, Plaintiff Henryk Oleksy filed the present action alleging infringement of the ’529 patent by GE and Alin Machining Company, Inc. Alin Machining Company, Inc. was dismissed from this action on October 1, 2009 after reaching a settlement agreement with Oleksy.

9. On October 2, 2006, GE filed a third-party request for Ex Parte Reexamination of all claims (1 through 4) of the ’529 patent. The Request was given Reexam Control Number

90/,008,244. GE's request purported to raise several substantial new questions of patentability for all claims of the '529 patent.

10. On December 22, 2006, the United States Patent and Trademark Office ("USPTO") granted GE's request for Ex Parte Reexamination.

11. On February 3, 2009, the USPTO issued an Ex Parte Reexamination Certificate which states that "NO AMENDMENTS HAVE BEEN MADE TO THE PATENT" and "AS A RESULT OF REEXAMINATION, IT HAS BEEN DETERMINED THAT: The patentability of claims 1-4 is confirmed."

12. GE machines and manufactures, and has others machine and manufacture, metal blades for use in various applications, including in jet turbine engines, gas turbines, and steam turbines. When manufacturing these blades, GE is infringing directly, by inducing, or by contributing to the infringement of all claims of the '529 patent.

13. GE also sells replacement blades for turbines and refurbishes turbines with new turbine blades. Through these various activities—manufacture and sale of blades in new turbines and replacement of blades in existing turbines—GE infringes and has infringed the '529 patent literally, and according to the doctrine of equivalents.

14. GE's infringing activities, either literally or under the doctrine of equivalents, violate and have violated various provisions of 35 U.S.C. §271, and have included and include: using the infringing method to make blades, having blades made according to the infringing method, selling turbines including blades made according to the infringing method, selling blades made according to the infringing method, selling refurbished turbine components including blades made according to the infringing method, offering for sale in the United States turbines incorporating blades made according to the infringing method, importing turbines that have blades

made according to the infringing method, importing blades made according to the infringing method, inducing others to infringe the '529 patent, and contributing to the infringement of the '529 patent by others.

15. GE has known about the '529 patent since at least September 10, 2002, the issue date of the patent, when Oleksy telephoned Frank Schreier and sent Mr. Schreier an electronic message on or about the same day. Yet, GE has continued its actions despite an objectively high likelihood that these actions constituted infringement of the '529 patent. For instance, in response to the filing of this action, GE asserted counterclaims and defenses including, among others, 1) invalidity of the '529 patent and 2) that GE is the beneficial owner of the '529 patent or has an implied license or shop right to practice the inventions of the '529 patent. However, GE's subsequent request for ex parte reexamination of the '529 patent resulted in confirmation of the patentability of all of the '529 patent's claims without amendment. Such confirmation from the USPTO substantially undermines GE's invalidity counterclaim. Additionally, this Court has rejected GE's claim that GE owns or has the right to practice the inventions of the '529 patent.

16. Finally, upon information and belief, and GE's document production, GE took affirmative actions to copy the inventions claimed in the '529 patent. For at least these reasons, the likelihood that GE's actions constituted infringement of the '529 patent was known or was so obvious that it should have been known by GE. Accordingly, GE's direct infringement and inducement to infringe has been and continues to be willful and deliberate.

17. To the extent required by law, Oleksy has complied with the marking requirements of 35 U.S.C. § 287.

18. As a result of GE's infringing conduct, GE has damaged Oleksy. GE is liable to Oleksy in an amount that adequately compensates Oleksy for its infringement, which, by law, can

in no event be less than a reasonable royalty, together with interest and costs as fixed by this Court under 35 U.S.C § 284.

19. As a consequence of GE's infringement of the '529 patent, Oleksy has been irreparably damaged and such damage will continue without the issuance of an injunction by this Court under 35 U.S.C § 283.

COUNT 1 – WILLFUL DIRECT INFRINGEMENT OF U.S. PATENT NO.6,449,529

20. Oleksy repeats and realleges the allegations in paragraphs 1–19, inclusive.

21. GE has directly infringed, and is continuing to directly infringe, one or more of the '529 patent claims, including but not limited to claims 1–4, by making, having made, importing, selling, and offering for sale blades made according to the methods claimed in the '529 patent. These blades include, but are not limited to B25N, B403, B407, b47s, b49xb, B50, B503, b504, B506, b508, b510, B515, B516, B520, B53, b53s, B53SD, B603, b604, b605, B62, B64, B65, b66, B68, B70, B70A, B71, b72, B76, B78, B80, b82, B84, B92, b93, B93S, B95, B97, BFG1, BFG14, BFG15, BFG16, BFG17, BFG19, BFG2, BFM2, BFM3, BFM4, BFM6, BG15, BG16, bg17, BG19, BG2, BM2, BM3, BSG1, BSG14, BSG16, BSG17, BSG19, FG1, FG14, FG-14, FG15, FG-15, FG16, FG17, FG-17, FG19, FG22, FG22A, FG3, FL2, FM2, FM-2, FM3, FM-3, FM6, fm7, G1, g14, g15, G16, G17, G19, G2, G22, G22A, G3, G4C, G61, M2, M3, M4, SG14, SG17, and SG19.

22. GE is liable for its infringement of the '529 patent pursuant to 35 U.S.C. § 271, including 35 U.S.C. §271(g).

23. GE's direct infringement of the '529 patent has damaged and will continue to damage Oleksy.

24. GE's direct infringement of the '529 patent is willful.

25. GE's willful direct infringement of the '529 patent has caused and will continue to cause Oleksy irreparable harm unless enjoined by the Court. Oleksy has no adequate remedy at law. Oleksy's damages from the infringing activities of GE are not yet determined.

**COUNT 2 – WILLFUL INDUCED INFRINGEMENT OF
U.S. PATENT NO. 6,449,529**

26. Oleksy repeats and realleges the allegations in paragraphs 1–19, inclusive.

27. GE has induced infringement of, and is continuing to induce infringement of, one or more of the '529 patent claims, including but not limited to claims 1–4, by having blades made according to the methods claimed in the '529 patent. These blades include, but are not limited to B25N, B403, B407, b47s, b49xb, B50, B503, b504, B506, b508, b510, B515, B516, B520, B53, b53s, B53SD, B603, b604, b605, B62, B64, B65, b66, B68, B70, B70A, B71, b72, B76, B78, B80, b82, B84, B92, b93, B93S, B95, B97, BFG1, BFG14, BFG15, BFG16, BFG17, BFG19, BFG2, BFM2, BFM3, BFM4, BFM6, BG15, BG16, bg17, BG19, BG2, BM2, BM3, BSG1, BSG14, BSG16, BSG17, BSG19, FG1, FG14, FG-14, FG15, FG-15, FG16, FG17, FG-17, FG19, FG22, FG22A, FG3, FL2, FM2, FM-2, FM3, FM-3, FM6, fm7, G1, g14, g15, G16, G17, G19, G2, G22, G22A, G3, G4C, G61, M2, M3, M4, SG14, SG17, and SG19.

28. GE's vendors include Preferred Machine and Tool Products Corp. ("Preferred").

29. On information and belief, GE provides its vendors with materials, including datasheets, user's manuals, specifications, computer programs, reference designs, and/or engineering support for its making of blades. These materials demonstrate that GE specifically intends that its vendors use the accused method to directly infringe the '529 patent.

30. GE's vendors, including Preferred, directly infringe the '529 patent.

31. GE knew or should have known that its actions would induce direct infringement of the '529 patent by its vendors.

32. Thus, GE has induced infringement and is continuing to induce infringement of the '529 patent.

33. GE's induced infringement of the '529 patent was and is willful.

34. GE is liable for its willful induced infringement of the '529 patent pursuant to 35 U.S.C. § 271.

35. GE's willful induced infringement of the '529 patent was and is being done and has been done with knowledge of the '529 patent.

36. GE's willful induced infringement of the '529 patent has damaged and will continue to damage Oleksy.

37. GE's willful induced infringement of the '529 patent has caused and will continue to cause Oleksy irreparable harm unless enjoined by the Court. Oleksy has no adequate remedy at law. Oleksy's damages from the infringing activities of GE are not yet determined.

**COUNT 3 – WILLFUL CONTRIBUTORY INFRINGEMENT OF
U.S. PATENT NO. 6,449,529**

38. Oleksy repeats and realleges the allegations in paragraphs 1–19, inclusive.

39. At least the following GE blades and similar blades are made by a method claimed in the '529 patent: B25N, B403, B407, b47s, b49xb, B50, B503, b504, B506, b508, b510, B515, B516, B520, B53, b53s, B53SD, B603, b604, b605, B62, B64, B65, b66, B68, B70, B70A, B71, b72, B76, B78, B80, b82, B84, B92, b93, B93S, B95, B97, BFG1, BFG14, BFG15, BFG16, BFG17, BFG19, BFG2, BFM2, BFM3, BFM4, BFM6, BG15, BG16, bg17, BG19, BG2, BM2, BM3, BSG1, BSG14, BSG16, BSG17, BSG19, FG1, FG14, FG-14, FG15, FG-15, FG16, FG17, FG-17, FG19, FG22, FG22A, FG3, FL2, FM2, FM-2, FM3, FM-3, FM6, fm7, G1, g14, g15, G16, G17, G19, G2, G22, G22A, G3, G4C, G61, M2, M3, M4, SG14, SG17, and SG19.

40. GE knows the process for making the blades to be especially made or especially adapted for use in an infringement of such patent, and this method is not a staple article or commodity of commerce.

41. GE provides its vendors, including Preferred, with materials, including datasheets, user's manuals, specifications, computer programs, reference designs, and/or engineering support for its making of blades. These materials constitute a material part of the invention and have no substantial non-infringing use. These materials are not staple articles of commerce.

42. Thus, GE has contributed to the infringement of, and is continuing to contribute to the infringement of, one or more of the '529 patent claims, including but not limited to claims 1–4 of the '529 patent.

43. GE is liable for its contributory infringement of the '529 patent pursuant to 35 U.S.C. § 271.

44. GE's contributory infringement of the '529 patent is willful.

45. GE's willful contributory infringement of the '529 patent has damaged and will continue to damage Oleksy.

46. GE's willful contributory infringement of the '529 patent has caused and will continue to cause Oleksy irreparable harm unless enjoined by the Court. Oleksy has no adequate remedy at law. Oleksy's damages from the infringing activities of GE are not yet determined.

DEMAND FOR JURY TRIAL

47. Oleksy demands a jury trial on all claims and issues.

PRAYER OF RELIEF

WHEREFORE, Oleksy prays for entry of judgment:

- a. That at least claims 1, 2, 3 and 4 of U.S. Patent 6,449,529 B1 have been directly infringed by GE and by others whose infringement has been contributed to or induced by GE;
- b. A finding that GE's infringement has been willful and an award of increased damages as provided by 35 U.S.C. § 284;
- c. That a permanent injunction be issued enjoining GE and those in privity with GE from further infringement of the '529 patent until the date of its expiration;
- d. That this is an exceptional case under 35 U.S.C. §285 and that GE account for and pay to Oleksy all damages and costs caused by GE's activities complained of herein;
- e. That Oleksy be granted pre-judgment and post-judgment interest on the damages caused by reason of GE's activities complained of herein;
- f. That Oleksy be granted its attorneys' fees in this action;
- g. That costs be awarded to Oleksy; and
- h. That Oleksy be granted such other and further relief that is just and proper under the circumstances.

December 21, 2012

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on December 21, 2012, I caused a copy of the foregoing THIRD AMENDED AND SUPPLEMENTAL COMPLAINT FOR PATENT INFRINGEMENT to be electronically filed with the Clerk of the Court using the ECF system that will send notification of such filing to the attorneys of record.

By: /s/ Randal S. Alexander
Randal S. Alexander