

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN

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LINEAR GROUP SERVICES, LLC,

Plaintiff,

vs.

ATTICA AUTOMATION, INC.,

Defendant.

vs.

ND INDUSTRIES, INC.,

Counter defendant.

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Case No. 13-cv-10108

Hon. Gershwin A. Drain

**FIRST AMENDED COMPLAINT**

For its first amended complaint, plaintiff complains against defendant as follows:

1. This is an action arising under the patent laws of the United States, Title 35 of the United States Code. Defendant Attica Automation, Inc. (Attica) has asserted against plaintiff Linear Group Services, LLC (Linear) rights under U.S. Patent No. 6,787,724 (the Patent), of which Attica is the purported assignee, based on Linear's sale of its sorting machine. A copy of the Patent is attached as Exhibit A. Linear seeks a declaration that it does not infringe the Patent or that the Patent is invalid, as well as damages for false marking.

2. Linear is a Michigan limited liability company. Linear's headquarters and principal place of business are in Clawson, Michigan.

3. Attica is a Michigan corporation. Attica's headquarters and principal place of business are in Rochester, Michigan.

4. Linear seeks relief under the Declaratory Judgment Act. The Court has jurisdiction pursuant to 28 U.S.C. §§ 1331, 1338 and 2201. Venue is proper under 28 U.S.C. §§ 1391 and 1400.

5. There exists an actual controversy between Linear and Attica. Attica has charged Linear with infringement of the Patent due to Linear's ongoing sale of its sorting machine, and Attica is making misrepresentations to Linear's customers to the effect that Linear is infringing. Linear contends that it has the right to sell its machine without license from Attica.

### **COUNT I**

6. Linear incorporates the allegations in paragraphs 1-5 above.

7. Attica contends that Linear is infringing the Patent.

8. Linear is not infringing the Patent because its machine does not fall within the scope of the Patent claims.

**COUNT II**

9. Linear incorporates the allegations in paragraphs 1-8 above.

10. To the extent that any claim of the Patent can be construed to cover Linear's machine, the claim is invalid for failure to meet the requirements for patentability under Title 35 of the United States Code.

**COUNT III**

11. Linear incorporates the allegations in paragraphs 1-10 above.

12. Attica has violated and is continuing to violate the federal False Marking Statute, 35 U.S.C. § 292, by using in advertising in connection with an unpatented item the word "patent" for the purpose of deceiving the public, and Linear has suffered and will continue to suffer a competitive injury as a result.

13. Specifically, Linear and Attica are direct competitors in the sorting machine market. Linear and Attica compete for the same dollars from the same potential purchasers of sorting machines.

14. Each claim in Attica's Patent claims a sorting machine having a "reject mechanism." Each claim in the Patent states that the function of the reject mechanism is "to remove the respective one of the plurality of workpieces from the transport system if the respective one of the plurality of workpieces is nonconforming." Further, the only structure for the reject mechanism disclosed in the Patent consists of a flipper, an electromagnet or a permanent magnet.

15. Linear developed a sorting machine superior to the sorting machine Attica claimed in its Patent. As opposed to a reject mechanism that removes nonconforming parts as claimed in the Patent, Linear's machine ejects conforming parts and transports nonconforming

parts to the end of the transport system. This is superior to the machine claimed in the Patent because a malfunction or irregularity in the sorting process does not contaminate conforming parts with nonconforming parts. Further, as opposed to the flipper, electromagnet or permanent magnet for the reject mechanism as disclosed in the Patent, Linear's machine ejects conforming parts using a blast of air from an air nozzle. This is superior to the machine disclosed in the Patent because it allows for a higher inspection rate and conserves space.

16. After Linear developed its superior machine, Attica copied Linear's machine in all material aspects in order to compete with Linear. Attica began selling the copied machine as Attica's model number AV-B100.<sup>1</sup> Like Linear's machine, but unlike the machine in the Patent, Attica's model number AV-B100 ejects conforming parts and transports nonconforming parts to the end of the transport system. Like Linear's machine, but unlike the machine in the Patent, Attica's model number AV-B100 ejects conforming parts using a blast of air from an air nozzle.

17. In connection with advertising its model number AV-B100, Attica uses the word "patent" as a selling point for purposes of deceiving the public that the machine is covered by the Patent. Attica began doing so in December 2012, if not earlier. Attached as Exhibit B are examples of such false advertising and false marking.

18. William Bennett has been the principal owner and officer of Attica at all relevant times. Bennett is also the named inventor for the Patent. Accordingly, Bennett knew what was and was not covered by the Patent, and Bennett knew that the AV-B100 machine was not covered. Nonetheless, on information and belief, Bennett was responsible for or approved of Attica's use of the word "patent" in its advertising. Thus, Bennett's position and conduct demonstrate deceptive intent.

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<sup>1</sup> In some instances, Attica referred to the machine as model number AVF-100.

19. Linear has suffered a competitive injury as a result of Attica's violation of the False Marking Statute. Linear's machine and Attica's AV-B100 machine are direct competitors, and Attica's violation has a tendency wrongfully to mislead consumers. Attica's violation upsets the competitive relationship between the parties because consumers have been and are being presented with an allegedly patented product in competition with Linear's machine. Further, Attica is not an innovator having superior patented products as its violation portrays. And, upon information and belief, Attica has unjustly gained market share as a result of its violation.

WHEREFORE, Linear requests that the Court:

- (a) Enter judgment declaring that Linear is not infringing the Patent, or that the Patent claims are invalid;
- (b) Award Linear damages for false marking; and
- (c) Award Linear all additional relief to which it is entitled.

WARNER NORCROSS & JUDD LLP

Dated: May 23, 2013

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