

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

BETTCHER INDUSTRIES, INC.,

Plaintiff,

v.

HANTOVER, INC.

and

HEARTLAND FABRICATION &
MACHINE, INC.

Defendants.

Civil Action No. 3:14-cv-406

COMPLAINT
FOR PATENT INFRINGEMENT

JURY DEMANDED

Plaintiff Bettcher Industries, Inc. (“Bettcher”) sets forth the following Complaint against defendants Hantover, Inc., (“Hantover”) and Heartland Fabrication & Machine, Inc. (“Heartland”):

Nature Of The Case and Jurisdiction

1. Bettcher was founded in 1944, and is a corporation organized and operating under the laws of the State of Delaware, with its principal place of business at 6801 State Route 60, Birmingham, Ohio 44816. Bettcher actively practices the inventions of the patents at issue in this Complaint, employing people in the United States to engage in the research and development necessary to devise and perfect the inventions, and to manufacture, service and sell products that incorporate the inventions, throughout the United States and in nearly fifty

countries worldwide. In particular, Bettcher has incorporated the inventions of the patents at issue in this Complaint into its highly-successful Whizard® Trimmers, used for the commercial trimming of meat. Examples of Whizard® Trimmers are shown below:



2. On information and belief, HANTOVER, INC., is a Missouri corporation with principal place of business in Overland Park, Kansas, at 5200 W. 110th St., Suite 200, Overland Park, KS 66211-1205.

3. On information and belief, HEARTLAND FABRICATION & MACHINE, INC. is a Missouri corporation with principal place of business in Raytown Missouri, at 10220 East 65th Street, Suite A, Raytown, MO 64133.

4. Bettcher's claims arise under the patent laws of the United States, specifically 35 U.S.C. §§ 154(d), 271, 281, 283, 284 and 285, for infringement of U.S. patents Nos. 6,769,184, 7,000,325, 8,074,363 (the "'184"' "'325"' and "'363"' patents, respectively; collectively, the "Blade Patents") and for infringement of U.S. patent Nos. 6,662,452 and 6,978,548 (the "'452"' and "'548"' patents, respectively, collectively the "Housing Patents"). Copies of the '184, '325 and '363 patents are attached hereto as EXHIBITS A, B and C, respectively. Copies of the '452

and ‘548 patents are attached hereto as EXHIBITS D and E, respectively. Taken together, the Blade Patents and the Housing Patents are referred to as the “Bettcher Patents.”

5. Bettcher’s claims also arise from the breach of a Settlement Agreement that had resulted from the resolution of a previous action between the parties before this Court, *Bettcher Industries, Inc. v Hantover, Inc.*, Case No. 3:06-cv-741-DAK, concerning the ‘184 and ‘325 patents. That Settlement Agreement is attached hereto as EXHIBIT F.

6. This action is authorized by 35 U.S.C. § 281. The federal courts have original and exclusive jurisdiction of the action pursuant to 28 U.S.C. §§ 1332 and 1338(a). Venue in this Court is appropriate pursuant to 28 U.S.C. §§ 1391(b)(2) and 1400(b).

Bettcher’s Products And The “Accused Products”

7. Bettcher manufactures and sells food processing equipment and hand tools, including trimming knife handles, the blades utilized therewith, and the housings used to accommodate the blades in the knife handles. Its products are used for various applications in the meat processing industry. Bettcher currently sells and offers for sale Whizard® rotary trimming knives and accessories, including the Whizard® Trimmer Series II products. Bettcher sells its products directly to end users through its sales network.

8. The expected life of a Whizard® Trimmer Series II knife handle is substantially longer than the expected life of the blades and housings associated therewith. When Bettcher sells a knife handle to a customer, it reasonably expects that a substantial number of blades and housings for replaceable use with the handle will be sold over the course of the life of the handle.

9. Hantover competes directly with Bettcher in the food processing equipment market. Among other products, Hantover has made, sells and offers for sale in the United States and outside the United States, “TrimIt™” rotary knife blades of the variety depicted below:



10. The above-depicted variety of TrimIt™ blades – and others like them that refer explicitly to the blade “fitting” an “M2” size – are not designed or intended to operate in any knife handle that Hantover sells. As the packaging shown above indicates, Hantover intends that such “M2” variety TrimIt™ rotary knife blades will be used in Bettcher Whizard Series II knives. By this packaging and through other marketing efforts, Hantover instructs its customers to use these TrimIt™ rotary knife blades in Bettcher Whizard Series II knives

11. Hantover also has made, sells and offers for sale in the United States and outside the United States, “TrimIt™” rotary knife housings that accommodate use of the TrimIt™ rotary knife blades in Bettcher Series II knives.

12. On information and belief, Heartland manufactures the previously-described blades and housings that Hantover sells.

13. On information and belief, Heartland has had knowledge prior to its manufacture of the Accused Products described in this Complaint of the Bettcher Patents.

14. On information and belief, Hantover instructs Heartland to manufacture the previously-described blades and housings that Hantover sells, controls the specifics of the internal design of the such blades and housings, and is the exclusive purchaser and reseller of such blades and housings.

15. On information and belief, the TrimIt™ knife blades and housings have slightly different internal designs, the majority of which infringe the Bettcher Patents described herein, including at least blade model numbers 93526, 93527, 93528, 935282, 93614, 93616, 93617, 93723, 93724, 93725, 93872, and 93873, and housing model numbers 93726, 93875, and 93975. Bettcher reserves the right to add to or modify this list of model numbers as it gains additional information about the designs of the various TrimIt™ knife blades and housings that have been or are currently commercially available. The identified TrimIt™ knife blades and housings, as they may be supplemented hereafter, are referred to herein as the “Accused Products.”

The Patents At Issue

16. On August 3, 2004, the United States Patent and Trademark Office issued U.S. patent No. 6,769,184 B1, to Jeffrey A. Whited of Amherst, Ohio, entitled “Low Friction Rotary Knife.” Figure 1, depicting the rotary knife of the invention, appears below:

21. Bettcher is the assignee of all rights in the '184, '325, '363, '452 and '548 patents and Bettcher has not granted any rights to Hantover or to Heartland to practice the '184, '325, '363, '452 and '548 patents.

22. Bettcher marks all of its blades and housings that practice the inventions described in the Bettcher Patents with the appropriate respective patent numbers, and has done so roughly since the time of the issuance of the patents.

The 2006 Action

23. In 2006, Bettcher sued Hantover for infringement of the '184 and '325 Patents in a matter docketed as *Bettcher Industries, Inc. v Hantover, Inc.*, Case No. 3:06-cv-741-DAK. That matter was resolved by a Settlement Agreement dated June 5, 2007, attached hereto as EXHIBIT F.

24. As a result of the 2006 action Hantover has known at least since the time of the filing of the Complaint therein of the existence of the '184 and '325 Patents.

25. In paragraph 3 of the Settlement Agreement, Hantover agreed that it would thereafter cease the manufacture, use, sale or offer for sale in, or importation into, the United States of rotary blades having frustoconical bearing surfaces as shown in Exhibit C of that Agreement, or having semi-circular bearing surfaces as shown in Exhibit D of that Agreement, or blades having bearing races with bearing surfaces of substantially identical design to those shown in those exhibits to that Agreement.

26. In paragraph 8 of the 2007 Settlement Agreement, Hantover admitted that blades it had previously sold to be used in Bettcher Whizard Series II rotary knife handles infringed at least one claim of the '325 patent.

27. In paragraph 9 of the 2007 Settlement Agreement, Hantover agreed that it would not use the phrase “M2” in the model name of any of the rotary blades it offered for sale after the effective date of the agreement.

28. Hantover’s sale of the Accused Products is in violation of paragraphs 3, 8 and 9 of the 2007 Settlement Agreement.

29. In paragraph 11 of the 2007 Settlement Agreement, the parties agreed to raise claims “associated with the sales of blades” that they might have against the other in a mediation proceeding prior to instituting litigation. Bettcher has raised all of the issues set out in this Complaint with Hantover as may be required by paragraph 11 of the 2007 Settlement Agreement; the issues raised were not resolved in the consequent mediation proceeding and are ripe to be asserted in this action. At least as a result of that mediation, and at least since the time thereof, Hantover has had actual knowledge of all of the Bettcher Patents and further that it infringes all of the Bettcher Patents.

30. In paragraph 13 of the 2007 Settlement Agreement, the parties agreed that this Court has jurisdiction to enforce that Agreement.

Claim One – The ‘184 patent

31. The foregoing allegations are incorporated by reference into the allegations of Claim One of this Complaint.

32. Hantover directly infringes claims of the ‘184 patent, induces others so to infringe, and/or contributes to the infringement thereof by others, by having made, selling and/or offering for sale in the United States the Accused Products, either literally or by virtue of the Doctrine of Equivalents.

33. Heartland directly infringes claims of the ‘184 patent, induces others so to infringe, and/or contributes to the infringement thereof by others, by making, selling and/or

offering for sale in the United States the Accused Products, either literally or by virtue of the Doctrine of Equivalents.

34. Hantover and Heartland are not authorized to practice the invention of the '184 patent.

35. If Hantover and Heartland are permitted to continue to make, sell and offer for sale in the United States the invention claimed in the '184 patent, Bettcher will suffer irreparable injury from the erosion of its patent rights in the '184 patent.

36. Bettcher has suffered injury from Hantover's and Heartland's infringement and is entitled to be made whole to the extent possible by an award of money damages in its favor, as well as the award of preliminary and permanent injunctive relief.

37. Hantover's and Heartland's past, present and expected future infringement of the '184 patent, with knowledge of that patent, is willful and objectively reckless, entitling Bettcher to enhanced damages pursuant to 35 U.S.C. § 284, and to an award of its attorneys' fees and costs in the bringing and maintaining of this action pursuant to 35 U.S.C. § 285.

Claim Two – The '325 patent

38. The foregoing allegations are incorporated by reference into the allegations of Claim Two of this Complaint.

39. Hantover directly infringes claims of the '325 patent, induces others so to infringe, and/or contributes to the infringement thereof by others, by having made, selling and/or offering for sale in the United States the Accused Products, either literally or by virtue of the Doctrine of Equivalents.

40. Heartland directly infringes claims of the '325 patent, induces others so to infringe, and/or contributes to the infringement thereof by others, by making, selling and/or

offering for sale in the United States the Accused Products, either literally or by virtue of the Doctrine of Equivalents.

41. Hantover and Heartland are not authorized to practice the invention of the '325 patent.

42. If Hantover and Heartland are permitted to continue to make, sell and offer for sale in the United States the invention claimed in the '325 patent, Bettcher will suffer irreparable injury from the erosion of its patent rights in the '325 patent.

43. Bettcher has suffered injury from Hantover's and Heartland's infringement and is entitled to be made whole to the extent possible by an award of money damages in its favor, as well as the award of preliminary and permanent injunctive relief.

44. Hantover's and Heartland's past, present and expected future infringement of the '325 patent, with knowledge of that patent, is willful and objectively reckless, entitling Bettcher to enhanced damages pursuant to 35 U.S.C. § 284, and to an award of its attorneys' fees and costs in the bringing and maintaining of this action pursuant to 35 U.S.C. § 285.

Claim Three – The '363 patent

45. The foregoing allegations are incorporated by reference into the allegations of Claim Three of this Complaint.

46. Hantover directly infringes claims of the '363 patent, induces others so to infringe, and/or contributes to the infringement thereof by others, by having made, selling and/or offering for sale in the United States the Accused Products, either literally or by virtue of the Doctrine of Equivalents.

47. Heartland directly infringes claims of the '363 patent, induces others so to infringe, and/or contributes to the infringement thereof by others, by making, selling and/or

offering for sale in the United States the Accused Products, either literally or by virtue of the Doctrine of Equivalents.

48. Hantover and Heartland are not authorized to practice the invention of the '363 patent.

49. If Hantover and Heartland are permitted to continue to make, sell and offer for sale in the United States the invention claimed in the '363 patent, Bettcher will suffer irreparable injury from the erosion of its patent rights in the '363 patent.

50. Bettcher has suffered injury from Hantover's and Heartland's infringement and is entitled to be made whole to the extent possible by an award of money damages in its favor, as well as the award of preliminary and permanent injunctive relief.

51. Hantover's and Heartland's past, present and expected future infringement of the '363 patent, with knowledge of that patent, is willful and objectively reckless, entitling Bettcher to enhanced damages pursuant to 35 U.S.C. § 284, and to an award of its attorneys' fees and costs in the bringing and maintaining of this action pursuant to 35 U.S.C. § 285.

Claim Four – The '452 patent

52. The foregoing allegations are incorporated by reference into the allegations of Claim Four of this Complaint.

53. Hantover directly infringes claims of the '452 patent, induces others so to infringe, and/or contributes to the infringement thereof by others, by having made, selling and/or offering for sale in the United States the Accused Products, either literally or by virtue of the Doctrine of Equivalents.

54. Heartland directly infringes claims of the '452 patent, induces others so to infringe, and/or contributes to the infringement thereof by others, by making, selling and/or

offering for sale in the United States the Accused Products, either literally or by virtue of the Doctrine of Equivalents.

55. Hantover and Heartland are not authorized to practice the invention of the '452 patent.

56. If Hantover and Heartland are permitted to continue to make, sell and offer for sale in the United States the invention claimed in the '452 patent, Bettcher will suffer irreparable injury from the erosion of its patent rights in the '452 patent.

57. Bettcher has suffered injury from Hantover's and Heartland's infringement and is entitled to be made whole to the extent possible by an award of money damages in its favor, as well as the award of preliminary and permanent injunctive relief.

58. Hantover's and Heartland's past, present and expected future infringement of the '452 patent, with knowledge of that patent, is willful and objectively reckless, entitling Bettcher to enhanced damages pursuant to 35 U.S.C. § 284, and to an award of its attorneys' fees and costs in the bringing and maintaining of this action pursuant to 35 U.S.C. § 285.

Claim Five – The '548 patent

59. The foregoing allegations are incorporated by reference into the allegations of Claim Five of this Complaint.

60. Hantover directly infringes claims of the '548 patent, induces others so to infringe, and/or contributes to the infringement thereof by others, by having made, selling and/or offering for sale in the United States the Accused Products, either literally or by virtue of the Doctrine of Equivalents.

61. Heartland directly infringes claims of the '548 patent, induces others so to infringe, and/or contributes to the infringement thereof by others, by making, selling and/or

offering for sale in the United States the Accused Products, either literally or by virtue of the Doctrine of Equivalents.

62. Hantover and Heartland are not authorized to practice the invention of the '548 patent.

63. If Hantover and Heartland are permitted to continue to make, sell and offer for sale in the United States the invention claimed in the '548 patent, Bettcher will suffer irreparable injury from the erosion of its patent rights in the '548 patent.

64. Bettcher has suffered injury from Hantover's and Heartland's infringement and is entitled to be made whole to the extent possible by an award of money damages in its favor, as well as the award of preliminary and permanent injunctive relief.

65. Hantover's and Heartland's past, present and expected future infringement of the '548 patent, with knowledge of that patent, is willful and objectively reckless, entitling Bettcher to enhanced damages pursuant to 35 U.S.C. § 284, and to an award of its attorneys' fees and costs in the bringing and maintaining of this action pursuant to 35 U.S.C. § 285.

Claim Six – The 2007 Settlement Agreement

66. The foregoing allegations are incorporated by reference into the allegations of Claim Six of this Complaint.

67. By having made, offering for sale and selling the Accused Products, as detailed above, Hantover had breached the provisions of Sections 3, 8 and 9 of the 2007 Settlement Agreement.

68. If Hantover is permitted to continue to breach the 2007 Settlement Agreement, Bettcher will suffer irreparable injury from the erosion of its intellectual property rights and position in the marketplace.

69. Bettcher has suffered injury from Hantover's actions in breach of the 2007 Settlement Agreement and is entitled to be made whole to the extent possible by an award of money damages in its favor, as well as the award of preliminary and permanent injunctive relief.

Request For Relief

WHEREFORE, Bettcher demands a trial by jury and demands judgment, jointly and severally, against Hantover and Heartland as follows:

A. For a preliminary and a permanent injunction enjoining Hantover and Heartland, their successors and assigns, and their officers, directors, agents, servants, employees, and all entities and individuals acting in concert with them or on their behalf, from continued infringement of the Bettcher Patents;

B. For an award reasonably compensating Bettcher for Hantover's and Heartland's exploitation of the invention claimed in the Bettcher Patents.

C. For an accounting of all damages and a judgment for general damages against Hantover and Heartland, jointly and severally, as compensation for each of their use, exploitation and infringement of the Bettcher Patents;

D. For an increase of all such monetary damages described above to three times their amount, pursuant to 35 U.S.C. § 284, for willful infringement of the Bettcher Patents;

E. For the cost of this action, together with an assessment of interest and reasonable attorney fees pursuant to 35 U.S.C. § 285;

F. For an award of pre-judgment interest; and

G. For such other and further relief as this Court may deem just and proper.

Demand For Jury Trial

Bettcher demands a trial by jury as to all issues tryable by a jury in this action.

February 21, 2014

BETTCHER INDUSTRIES, INC.

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One of Its Attorneys

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