

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN**

H&S Manufacturing Company, Inc.,

Civil Case No: 15-cv-574

Plaintiff,

vs.

Kuhn North America, Inc.,

Defendant.

**COMPLAINT FOR DECLARATORY JUDGMENT OF
PATENT NONINFRINGEMENT**

Plaintiff, H&S Manufacturing Company, Inc. (“H&S”) sues Defendant, Kuhn North America, Inc. (“Kuhn”) and alleges:

Nature of Action

1. This is an action for declaratory relief in which H&S requests entry of judgment of patent noninfringement for the reasons set forth below.

Parties and Jurisdiction

2. Plaintiff H&S is a corporation organized under the laws of the State of Wisconsin and having a principal place of business at 2608 S. Hume Ave., Marshfield, WI 54449.

3. Upon information and belief, Defendant Kuhn is a corporation organized and existing under the laws of the State of Delaware and having a principal place of business at 1501 West Seventh Avenue, Brodhead, WI 53520.

4. Upon information and belief, Kuhn was formed in 2008 and is a subsidiary of Kuhn S.A., a corporation headquartered in Saverne, France.

5. Kuhn contends that it owns all rights in and to U.S. Patent No. 8,402,730 (the “Kuhn Patent”) (Exhibit A).

6. There is an immediate, real, and substantial controversy between the parties because Kuhn has alleged that H&S infringes the Kuhn Patent and H&S disputes this allegation.

7. Examples of Kuhn’s allegations that give rise to such a controversy are found in Kuhn’s original letter to H&S dated May 26, 2015, and subsequent correspondences between Kuhn and H&S dated June 16, 2015, July 7, 2015, July 22, 2015, and August 20, 2015 (Exhibit B).

8. Kuhn’s allegations giving rise to such a controversy relate to H&S’s Tri-Flex triple head merger.

9. On information and belief, the earliest priority date for the Kuhn Patent is March 26, 2008.

10. This court has subject matter jurisdiction in accordance with 28 U.S.C. §§ 2201, 2202, and 1338.

11. This court has personal jurisdiction over Kuhn, because Kuhn is an entity having a principal place of business in the State of Wisconsin and has conducted business in the state of Wisconsin, and has therefore consented to be sued in this District.

12. During prosecution of the patent application for the Kuhn patent, the U.S. Patent and Trademark Office rejected claim one under 35 U.S.C. 102(b) as anticipated by U.S. Patent No. 5,203,154 to Leshner et al. (“Leshner Reference”) in a June 12, 2012 Office Action.

13. In response to the June 12, 2012 Office Action and an Advisory Action of October 1, 2012, Kuhn amended claim one of the patent application for the Kuhn patent adding the claim limitation “wherein the suspension assembly includes a pivot frame extending from the

trailer frame to the header assembly, the pivot frame being coupled to the header assembly via a first pivot that allows the header assembly to pivot about the first axis of rotation, the pivot frame being coupled to the trailer frame via a second pivot that allows the header assembly to pivot about the second axis of rotation.”

14. Kuhn admitted during prosecution of the Kuhn patent that the Leshar Reference discloses “[a] parallelogram linkage including links (42, 43) interconnect vertically extending frame members (44) connected to the frame support (20) to brackets welded to corresponding frame members (45) which support the rake (30) and conveyor (36), for the purposes of vertically positioning the rake (30) and conveyor (36).”

15. In response to the Office Action having a notification date of June 12, 2012 and an Advisory Action of October 1, 2012, Kuhn asserted that:

Leshar fails to describe that the links (42, 43), tension spring (46), and hydraulic cylinder (48) with slotted clevis (50), cited for the suspension assembly, includes a pivot frame extending from the transversely extending frame support (20) to the rake (30) and the conveyor (36), much less a pivot frame that is coupled to the rake (30) and the conveyor (36) via a first pivot that allows the rake (30) and the conveyor (36) to pivot about a first axis of rotation, and that is coupled to the transversely extending frame support (20) via a second pivot that allows the rake (30) and the conveyor (36) to pivot about a second axis of rotation. Instead, Leshar fails to disclose or suggest the claimed pivot frame.

16. The parallelogram linkage disclosed in the Leshar Reference is a four-arm parallel linkage mechanism.

17. Kuhn’s statement, as recited in paragraph 15 of this Complaint, provided that a four-arm parallel linkage mechanism as disclosed in the Leshar Reference does not meet the limitation of a pivot frame extending from the trailer frame to the header assembly as required by claim one.

18. H&S's Tri-Flex triple head merger utilizes a four-arm parallel linkage mechanism.

19. The parallel linkage mechanism in H&S's Tri-Flex triple head merger vertically positions the rake and conveyor of the center header assembly.

20. The four-arm parallel linkage mechanism of H&S's Tri-Flex triple head merger does not allow the center header assembly to follow a field surface contour.

Count I
Declaration of Noninfringement of the Kuhn Patent

21. H&S realleges the preceding paragraphs as though fully alleged herein.

22. Claim one of the Kuhn Patent requires a suspension assembly disposed between the trailer frame and header assembly, the suspension assembly being coupled to the header assembly and trailer frame and configured to allow the header assembly to pivot, relative to the trailer frame, about a first axis of rotation perpendicular to the main axis of rotation of the at least one wheel and to pivot about a second axis of rotation parallel to the main axis of rotation of the at least one wheel to follow a contour of the field surface.

23. Claim one of the Kuhn Patent requires that the suspension assembly include a pivot frame extending from the trailer frame to the header assembly, the pivot frame being coupled to the header assembly via a first pivot that allows the header assembly to pivot about the first axis of rotation, the pivot frame being coupled to the trailer frame via a second pivot that allows the header assembly to pivot about the second axis of rotation.

24. H&S's Tri-Flex triple head merger does not have a suspension assembly being coupled to the header assembly and trailer frame and configured to allow the header assembly to pivot, relative to the trailer frame, about a first axis of rotation perpendicular to the main axis of

rotation of the at least one wheel and to pivot about a second axis of rotation parallel to the main axis of rotation of the at least one wheel to follow a contour of the field surface.

25. H&S's Tri-Flex triple head merger does not have a pivot frame extending from the trailer frame to the header assembly, the pivot frame being coupled to the header assembly via a first pivot that allows the header assembly to pivot about the first axis of rotation, the pivot frame being coupled to the trailer frame via a second pivot that allows the header assembly to pivot about the second axis of rotation.

26. Based on the reasons described above, all of which are based upon publicly available information, the H&S's Tri-Flex triple head merger does not infringe the Kuhn patent.

27. Kuhn has failed to identify the factual bases supporting its assertion that the H&S Tri-Flex merger meets the two claim limitations recited in paragraphs 22 and 23 of this Complaint.

28. For the reasons described above and as will be further demonstrated at trial, H&S does not infringe any claim of the Kuhn Patent.

Prayer for Relief

H&S requests judgment that:

1. Plaintiff H&S has not directly infringed, willfully infringed, induced infringement, or contributorily infringed the Kuhn Patent;

2. Kuhn, and those in active concert of participation with Kuhn, are permanently enjoined from initiating litigation against H&S, or threatening H&S, or any of its customers, dealers, licensees, subsidiaries, parents, agents, servants, or employees, or any prospective or present sellers, dealers, licensees, distributors, customers, or users of H&S's products or services,

alleging infringement of the Kuhn Patent, or charging any of them with infringement of the Kuhn Patent;

3. A judgment awarding to H&S its costs, disbursements, and attorneys' fees incurred in prosecuting this action, with interest, including damages for an exceptional case, pursuant to 35 U.S.C. § 285, costs pursuant to 28 U.S.C. § 1920, 28 U.S.C. § 1927, and otherwise according to law; and

4. For such other relief as the Court may deem just, equitable, and proper.

Respectfully submitted,

Dated: September 11, 2015

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