

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

WHIRLPOOL CORPORATION,

Plaintiff,

v.

TST WATER, LLC,

Defendant.

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Civil Action No. 2:15-cv-1528

JURY TRIAL DEMANDED

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff Whirlpool Corporation (“Whirlpool”) by and through its undersigned attorneys, based upon personal knowledge with respect to its own actions and on information and belief as to other matters, for its complaint avers as follows:

PARTIES

1. Whirlpool is a corporation organized and existing under the laws of the state of Delaware, having its corporate offices and principal place of business at 2000 North M-63, Benton Harbor, Michigan.

2. Upon information and belief, Defendant TST Water, LLC (“TST Water”) is a limited liability corporation organized and existing under the laws of the state of California, having its principal place of business at 42188 Rio Nedo, Temecula, California.

THE PATENT-IN-SUIT

3. On February 21, 2006, the United States Patent and Trademark Office (“USPTO”) duly and legally issued United States Patent No. 7,000,894 (“the ’894 patent”), entitled “*Fluidic Cartridges and End Pieces Thereof*.” On March 3, 2014, the USPTO issued an ex parte reexamination certificate for the ’894 patent.

4. Whirlpool is the owner of the ’894 patent by assignment and has the right to

enforce the '894 patent. A true and correct copy of the '894 patent is attached as Exhibit A.

5. Whirlpool manufactures products that practice the '894 patent, including Whirlpool "Filter 3" refrigerator filters. In addition, Whirlpool manufactures refrigerators compatible with Filter 3. A copy of Whirlpool's Filter Guide is attached as Exhibit B. Attached as Exhibit C is a photograph of a Filter 3, the EveryDrop Ice & Water Refrigeration Filter 3.

6. Whirlpool has marked its Filter 3 products with the '894 patent. For example, the packaging for the EveryDrop Ice & Water Refrigeration Filter 3, SKU Number EDR3RXD1, refers to the website, www.patent-listing.com, which identifies the '894 patent. Attached as Exhibits D and E, respectively, are a picture of the EDR3RXD1 packaging and the www.patent-listing.com webpage for EDR3RXD1.

JURISDICTION AND VENUE

7. This is an action arising under the patent laws of the United States, codified at 35 U.S.C. §§ 1, et seq., over which this Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a), for infringement of the '894 patent. The action arises out of the manufacture, use, sale, and offer for sale by TST Water of replacement water filters in violation of the '894 patent.

8. This action arises under the patent laws of the United States, Title 35 of the United States Code. This Court has subject-matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a).

9. TST Water is subject to personal jurisdiction in the Eastern District of Texas because, among other things, it distributes and sells its refrigerator water filters throughout the United States, including in the Eastern District of Texas. TST Water offers refrigerator filters through distribution channels that include home improvement stores and online stores. TST Water's accused filters have been sold or offered for sale in the Eastern District of Texas. TST Water has committed and continues to commit acts of patent infringement in the Eastern District, and has harmed and continues to harm Whirlpool by offering to sell or selling infringing products there.

10. Venue is proper in this Court under 28 U.S.C. §§ 1391 and 1400(b).

NATURE OF THE ACCUSED PRODUCTS

11. TST Water manufactures replacement water filters compatible with Whirlpool refrigerators. TST Water manufactures such replacement filters under the brand name WaterSentinel. On information and belief, TST Water also manufactures Whirlpool-compatible replacement filters that are distributed under the label “HDX.”

12. TST Water manufactures replacement filters that it intends to be compatible with Filter 3. TST Water’s purported Filter 3 products include, on information and belief, at least the WSW-5 filter and the HDX FMW-5. WaterSentinel’s website states that the WSW-5 will fit in place of Whirlpool “FILTER3.” Attached as Exhibit F is a copy of the WaterSentinel webpage for WSW-5. Attached as Exhibits G and H are the brochure and installation instructions for the WSW-5, which TST makes available on the WaterSentinel website. Moreover, the WaterSentinel website confirms that all its filters are “guaranteed to fit” the respective refrigerator filter assemblies, including the Whirlpool refrigerator assembly. Attached as Exhibit I is a copy of the WaterSentinel webpage stating the WaterSentinel filters are “guaranteed to fit”.

13. Likewise, the HDX FMW-5 is intended to be compatible with Filter 3. Attached as Exhibit J is a photograph of part of the HDX FMW-5 packaging. The HDX FMW-5 packaging states that the HDX FMW-5 is compatible with Whirlpool “FILTER3.” The FMW-5 includes installation instructions.

14. On information and belief, TST Water intentionally copied Whirlpool’s Filter 3 design when developing at least the WSW-5 and HDX FMW-5 refrigerator filters.

15. Through materials such as its instructions, TST Water encourages its customers to install the infringing filters into the water filter assemblies in their existing Whirlpool refrigerators.

COUNT I - PATENT INFRINGEMENT

16. Whirlpool incorporates by reference paragraphs 1-15, herein.

17. On information and belief, in violation of 35 U.S.C. § 271, TST Water directly

infringes one or more claims of the '894 patent, including but not limited to claims 1-4, by making, using, selling, and/or offering to sell in the United States or importing into the United States the infringing filters. TST Water literally infringes these claims of the '894 patent or does so under the doctrine of equivalents.

18. TST Water will continue to do so unless enjoined by this Court. As a direct and proximate result of TST Water's direct infringement of the '894 patent, Whirlpool has been and continues to be damaged.

19. TST Water indirectly infringes, through induced and/or contributory infringement, the '894 patent. TST Water has had actual notice of the '894 patent no later than the filing date of this Complaint. On information and belief, TST Water had prior knowledge of the '894 patent, such as through Whirlpool's marking of Filter 3 products and TST Water's development of its infringing WSW-5 and HDX FMW-5 refrigerator filters.

20. Despite TST Water's notice of infringement, TST Water continues to make, use, sell, and offer to sell, and provide installation, operational support, and instructions for infringing filters, including with the knowledge or willful blindness that its conduct will induce TST Water's customers to infringe the '894 patent. TST Water engages in activities that encourage its customers to infringe the '894 patent, including advertising its specially-designed WSW-5 filters as replacements for Whirlpool filters, and guaranteeing that such replacement filters will fit. Through such activities, TST Water specifically intends that its customers directly infringe the '894 patent.

21. On information and belief, TST Water is contributorily infringing and will continue to contributorily infringe the '894 patent for the following reasons. TST Water has had actual notice of the '894 patent no later than the filing date of this Complaint. On information and belief, TST Water had prior knowledge of the '894 patent, for instance, due to Whirlpool's marking of Filter 3 products. TST Water provides to its customers, the direct infringers, the replacement filters, such as the WaterSentinel WSW-5 filters, that lack substantial non-infringing uses and that lead to infringement when installed into the refrigerators' water filter assemblies.

These infringing components are a material part of the installation of a replacement filter into the refrigerator's water filter assembly, whose water filtering system would not function properly without them.

22. TST Water's infringement occurred with knowledge of and/or objective recklessness and thus has been and will continue to be willful and deliberate. On information and belief, TST Water copied Whirlpool's Filter 3 design while developing the WSW-5 and FMW-5 filters. Moreover, Whirlpool Filter 3 products have been marked to give competitors notice of the '894 patent. TST Water's willful and deliberate infringement entitles Whirlpool to enhanced damages under 35 U.S.C. § 285.

PRAYER FOR RELIEF

WHEREFORE, Whirlpool respectfully requests the following relief:

1. A judgment that TST Water directly and/or indirectly infringes the '894 patent;
2. A preliminary and permanent injunction preventing TST Water and its respective officers, directors, agents, servants, employees, attorneys, licensees, successors, and assigns, and those in active concert or participation with any of them, from engaging in infringing activities with respect to the '894 patent;
3. A judgment that TST Water's infringement has been willful;
4. A ruling that this case is exceptional under 35 U.S.C. § 285;
5. A judgment and order requiring TST Water to pay Whirlpool damages under 35 U.S.C. § 284, including supplemental damages for any continuing post-verdict infringement up until entry of judgment, with an accounting, as needed, as well as treble damages for willful infringement under 35 U.S.C. § 285;
6. A judgment and order requiring TST Water to pay Whirlpool's attorney's fees and costs of this action (including all disbursements);
7. A judgment and order requiring TST Water to pay pre-judgment and postjudgment interest on damages awarded; and
8. Such other and further relief as the Court may deem just and proper.

JURY TRIAL DEMANDED

Plaintiff hereby demands a trial by jury on all issues appropriately triable by a jury.

Dated: September 15, 2015

Respectfully submitted,

By: /s/ Richard S.J. Hung

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WHIRLPOOL CORPORATION

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing document was filed electronically in compliance with Local Rule CV-5(a). As such, this document was served on all counsel who have consented to electronic service, on September 15, 2015.

/s/ Melissa Smith

Melissa Smith