

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

J&M MFG. CO., INC.,
284 Railroad Street
Ft. Recovery, Ohio 45846

Plaintiff

-V-

UNVERFERTH MFG. CO., INC.,
601 South Broad Street
Kalida, Ohio 45853

Defendant.

Civil Action No. 1:12cv931-SJD

JURY TRIAL DEMANDED

SECOND AMENDED COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff, J&M Manufacturing Company, Inc. (“J&M”), by and through the undersigned counsel, files this Second Amended Complaint for patent infringement against Defendant, Unverferth Manufacturing Company, Inc. (“Unverferth”), and hereby alleges as follows:

NATURE OF THE ACTION

1. This is a civil action for patent infringement. Plaintiff's claims are based on the unauthorized, infringing manufacture, use, importation, offer for sale and/or sale by Defendant of its grain cart products denominated the X-TREME grain cart models 1015, 1017, 1115, 1117, 1315, and 1317.

THE PARTIES

2. Plaintiff J&M is a corporation organized and existing under the laws of the State of Ohio having a principal place of business at 284 Railroad Street, Ft. Recovery, Ohio, 45846.

3. Defendant Unverferth is a corporation organized and existing under the laws of the State of Ohio having a principal place of business at 601 South Broad Street, Kalida, Ohio, 45853.

JURISDICTION AND VENUE

4. This is an action for patent infringement arising under the provisions of the Patent Laws of the United States, 35 U.S.C. §§ 271, 281 and 283-285. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a).

5. Upon information and belief, Defendant has solicited business in this judicial district, has transacted continuous and systematic business within this judicial district and has derived significant financial benefit and revenues from transacting business in this judicial district.

6. Upon information and belief, Defendant transacts continuous and systematic business in this judicial district through Unverferth authorized dealers, including, e.g., Five Points Implement Co., Inc., 6720 U.S. 50W, Hillsboro, Ohio 45133, and Equipment Superstore LLC, 9762 U.S. 68, Georgetown, Ohio 45121, which are located in this judicial district and division.

7. This Court has personal jurisdiction over Defendant.

8. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391 and 1400(b).

PATENT-IN-SUIT

9. On November 1, 2011, the United States Patent and Trademark Office duly and legally issued United States Patent No. 8,047,757 (“the ‘757 patent”), a copy of which is attached hereto as Exhibit A.

10. Plaintiff J&M is the owner of all right, title and interest in and to the ‘757 patent, including the right to sue for and recover all past, present and future damages for infringement of the ‘757 patent.

UNVERFERTH'S NOTICE OF THE '757 PATENT

11. Plaintiff provided notice of the '757 patent to Defendant in December, 2011.

12. In a letter dated December 20, 2011, Plaintiff's intellectual property counsel asked Defendant to investigate whether Defendant's X-TREME grain carts infringe the '757 patent. A copy of the '757 patent was included with the December 20, 2011 letter. Exhibit B: December 20, 2011 letter from Alan F. Meckstroth to Unverferth Manufacturing Company, Inc.

13. Plaintiff's December 20, 2011 letter was sent within two months of the November 1, 2011 issue date of the '757 patent.

14. Defendant's intellectual property counsel acknowledged on behalf of Defendant receiving Plaintiff's December 20, 2011 letter and was aware of the '757 patent.

15. In a letter dated January 6, 2012, Defendant's intellectual property counsel acknowledged Plaintiff's December 20, 2011 letter and referred to the '757 patent. Exhibit C: January 6, 2012 letter from Jason M. Shapiro to Alan F. Meckstroth.

16. Defendant's January 6, 2012 letter indicated that Defendant was investigating Defendant's alleged infringement of the '757 patent by Defendant's X-TREME grain carts, and that Defendant would provide a reply to Plaintiff's December 20, 2011 letter "as soon as possible."

17. Having received no reply from Defendant as promised, Plaintiff's counsel wrote to Defendant on February 24, 2012 to follow up on Plaintiff's December 20, 2011 letter and to inquire about Defendant's investigation of the alleged infringement of the '757 patent by Defendant's X-TREME grain carts. Exhibit D: February 24, 2012 letter from Alan F. Meckstroth to Jason M. Shapiro.

18. Defendant's counsel responded to Plaintiff's counsel in a one-page letter dated April 30, 2012. Exhibit E: April 30, 2012 letter from Jason M. Shapiro to Alan F. Meckstroth.

19. Defendant's counsel April 30, 2012 letter simply asserted that "the X-TREME grain cart does not infringe any valid claim of the '757 patent." Defendant's counsel's April 30, 2012 letter did not identify any reason whatsoever as to why the Defendant's X-TREME grain cart does not infringe the claims of the '757 patent. Defendant's April 30, 2012 letter also did not identify any reason whatsoever why the claims of the '757 were not valid.

20. Plaintiff's counsel wrote to Defendant again in a letter dated May 21, 2012. Plaintiff's May 21, 2012 letter included a detailed claim chart comparing claim 1 of the '757 patent with features of Defendant's X-TREME grain cart. Exhibit F: May 21, 2012 letter from J. Robert Chambers to Jason M. Shapiro.

21. Plaintiff's counsel's May 21, 2012 letter requested that Defendant provide the details to support Defendant's position that the X-TREME grain carts did not infringe the '757 patent's claims.

22. Plaintiff's counsel's May 21, 2012 letter also requested that Defendant send any prior art or other grounds that Defendant believed established the invalidity of the '757 patent's claims as alleged.

23. Having again received no reply from Defendant's counsel to Plaintiff's May 21, 2012 letter, Plaintiff's counsel wrote to Defendant's counsel again on June 28, 2012 to follow up on Plaintiff's May 21, 2012 letter and to request that Defendant provide a response. Exhibit G: June 28, 2012 letter from J. Robert Chambers to Jason M. Shapiro.

24. Defendant's counsel wrote to Plaintiff's counsel in a letter dated June 29, 2012 and acknowledged receipt of Plaintiff's counsel's May 21, 2012 and June 28, 2012 letters. Defendant's counsel's June 29, 2012 letter stated that Defendant was still evaluating the

information Plaintiff's counsel had supplied, and that Defendant would respond "shortly."

Exhibit H: June 29, 2012 letter from Jason M. Shapiro to J. Robert Chambers.

25. Defendant's counsel wrote to Plaintiff's counsel in a letter dated August 20, 2012. Defendant's August 20, 2012 letter offered only conclusory statements that Defendant believed its X-TREME grain carts did not infringe the '757 patent's claims when in fact they clearly did infringe the '757 patent's claims. Defendant's August 20, 2012 letter also stated that the "claims of the '757 patent may be invalid," but did not identify any prior art or other grounds in support of that position even though Plaintiff's counsel had specifically requested the Defendant provide any alleged prior art or other grounds relied upon by Defendant rendering the '757 patent claims not valid. Exhibit I: August 20, 2012 letter from Jason M. Shapiro to J. Robert Chambers.

COUNT 1
(INFRINGEMENT OF THE '757 PATENT)

26. Plaintiff repeats and realleges the allegations of Paragraphs 1 to 25 above, as if set forth herein.

27. Upon information and belief, Defendant has infringed and is infringing the '757 patent by making, using, importing, offering for sale and/or selling infringing product(s), X-TREME grain cart model 1015, 1017, 1115, 1117, 1315, and 1317 products, and will continue to do so unless enjoined by this Court.

28. Defendant's infringement of the '757 patent has damaged Plaintiff and will continue to cause Plaintiff substantial and irreparable harm unless enjoined by this Court.

29. Upon information and belief, Defendant is deliberately and willfully infringing the '757 patent in that Defendant's failure to articulate factually any valid basis for its position that Defendant's X-TREME grain carts do not infringe the '757 patent's claims and its failure to

produce to Plaintiff's counsel the prior art or other grounds that it represented it possessed rendering the '757 patent claims not valid, coupled with its continued delay in responding to Plaintiff's counsel's inquiries as to why Defendant was not infringing the '757 patent claims, leads to the conclusion that Defendant's infringement of the '757 patent was undertaken or continued despite an objectively high likelihood that its actions constituted infringement of the '757 patent.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that this Court enter judgment that:

- A. U.S. Patent No. 8,047,757 is infringed by Defendant;
- B. Defendant be permanently enjoined from manufacturing, using, importing, offering to sell and selling the infringing products in the United States prior to the expiration of the '757 patent;
- C. Plaintiff be awarded damages adequate to compensate it for Defendant's infringement of the '757 patent in an amount no less than a reasonable royalty, and that such damages be trebled according to 35 U.S.C. § 284;
- D. This case is exceptional within the meaning of 35 U.S.C. § 285, and that all costs and expenses of this action, including reasonable attorneys' fees, be awarded to Plaintiff; and
- E. Plaintiff be awarded such further relief as the Court may deem just, necessary, and/or proper.

JURY DEMAND

Plaintiff demands a trial by jury.

Dated: October 6, 2015

Respectfully submitted,

/s/ J. Robert Chambers

J. Robert Chambers

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ATTORNEYS FOR PLAINTIFF

J&M MFG. CO., INC.

CERTIFICATE OF SERVICE

I certify that on October 6, 2015, a copy of the foregoing **SECOND AMENDED COMPLAINT FOR PATENT INFRINGEMENT** was filed electronically. Notice of this filing will be sent to the parties in the Court's electronic filing system. Parties may access this filing through the Court's system.

/s/ J. Robert Chambers