

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

MARK MARTIN,)	
)	
Plaintiff,)	
v.)	CASE NO.
)	
MICHAEL THOMAS, RAYEMAN)	JURY TRIAL DEMANDED
ELEMENTS, INC. and)	
NATIONWIDE 5 LLC,)	
)	
Defendants.)	
_____)	

COMPLAINT

This is the complaint of plaintiff Mark Martin ("Martin"), against defendants Michael Thomas ("Thomas"), Rayeman Elements, Inc. ("REI"), and Nationwide 5, LLC ("Nationwide 5"). REI, Thomas, and Nationwide 5 are collectively referred to herein as defendants. For his complaint, Martin states:

INTRODUCTION

This is a lawsuit, in part, for breach of contract and fraud brought by Martin as successor in interest to a now-defunct entity, M3 Technologies, Inc. ("M3"). M3 held rights in technology developed by Thomas through a broad exclusive license granted by Thomas to M3 (the "License"). A copy of the License is attached to the complaint as Exhibit 1. At the time of the License, Martin was an investor in M3 and Thomas was the founder, an officer and an equity owner in M3, a company formed primarily to commercialize extrusion innovations. M3 is no longer an ongoing concern and all the assets of M3, including all right, title and interest to the License, have been purchased by Martin. A copy of the asset purchase agreement reflecting the transfer of assets is attached to the complaint as Exhibit 2. Thomas has breached the License by authorizing third parties to commercialize and/or practice his innovations, in violation of the exclusive rights originally given to M3. Further, as a result of discussions between Martin and defendants concerning the License, there is now

a present dispute between Martin and defendants concerning the scope of the License. Martin seeks a declaration from this Court that the License grants to the Licensee (formerly M3, now Martin) an exclusive license to patents specifically identified by number in the License *and* after-applied-for technologies based on technical information possessed by Thomas. Also, representations by Thomas to Martin, among other things, that he would promote extrusion technologies exclusively through M3, and then licensing and/or selling that very technology to third parties despite the License, constitute fraud. Further, commercialization of innovations through defendants Rayeman Elements and Nationwide 5 in the making, using, selling, or offering for sale of certain extrusion components constitutes patent infringement in violation of the exclusive rights of Martin in and to the Thomas patents. These actions include licensing Grain Densification International, LLC (“GDI”) to use the Thomas extrusion technology and selling equipment into this district.

JURISDICTION AND VENUE

1. Plaintiff Mark Martin is a Missouri resident located in St. Louis, Missouri.
2. On information and belief, defendant Michael Thomas is a Missouri resident located in St. Clair, Missouri.
3. On information and belief, defendant Rayeman Elements, Inc. is a Maryland corporation with a principal place of business at 320 Gateway Dr., Berthoud, Colorado 80513.
4. On information and belief, defendant Nationwide 5 LLC is a Nebraska limited liability company with a principal place of business at 1501 M Street, P.O. Box 347, Ord, Nebraska 68862.
5. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 and 1338(a). The federal claims arise under the patent laws of the United States, specifically 35 U.S.C. §§ 1 *et seq.* (the Patent Act). Subject matter jurisdiction exists over any remaining claims under 28 U.S.C. § 1367(a) because the claims are so related that they form part of the same case or controversy.

6. This Court has personal jurisdiction over defendants because Thomas is a resident of this district and the remaining defendants have either committed tortious acts in Missouri and this judicial district, or otherwise established contacts with Missouri sufficient to make the exercise of personal jurisdiction proper.

7. Venue is proper in this District pursuant to 28 U.S.C. § 1391, in that a substantial part of the events or omissions giving rise to the claims occurred in this judicial district, and a substantial part of property that is the subject of the action is situated in this judicial district.

THE PARTIES

8. Martin is a successful businessman who was convinced by Thomas and others to invest in M3. After Thomas and others left the company, M3 ceased to be an ongoing concern. By an asset purchase agreement attached hereto as Exhibit 2, Martin purchased all right, title, and interest to the assets of M3, including the License.

9. Thomas is an innovator in the field of extrusion technologies. Thomas was originally the founder, an officer, and equity owner of M3, but later left the company. Despite the exclusive License granted to M3, Thomas later commercialized his innovations through third parties without consent from Martin or M3. On information and belief, Thomas has induced multiple individuals to invest with him only to leave those individuals without appropriate compensation when he decided to move on to the next business opportunity.

10. REI is a company formed by Thomas and Samantha Western to commercialize the technology developed by Thomas. REI was formed after Thomas left M3. On information and belief, the principal business of REI is to commercialize those technologies to which M3 (and now Martin) has an exclusive license.

11. Nationwide 5 is another company formed to commercialize the technology developed by Thomas. On information and belief, REI is a member of Nationwide 5 and both REI and Nationwide 5 participate in the sale/licensing of extrusion technology developed by Thomas.

BACKGROUND

12. Thomas is an innovator in the field of extrusion technology. Thomas first developed techniques related to hardening metals via liquid nitrogen. He later developed several technologies related to the extrusion and manufacture of plastics, wood composites, rubber and other materials. This intellectual property, the patents and the know-how, were core initial assets of M3.

13. On information and belief, during the early operation of M3 with Thomas in control, M3 took on significant operating debt. This operating debt caused M3 to seek additional investors. One such investor was Martin.

14. At the time of the investment by Martin and others, Thomas stated to M3 and Martin that he would commercialize his innovations through M3.

15. Martin (and others) made significant contributions to M3 in money, time, and business acumen. As a result of, and in an effort to protect, his investment, Martin gained operational control of M3. Martin then reorganized M3 operations, trying to restore profitability.

Thomas Enters Into The License with M3

16. To incentivize Thomas to perform, Martin and M3 tied compensation of Thomas to his efforts to commercialize his innovations. This resulted in the License, which granted M3 a broad, exclusive license to intellectual property of Thomas. This License granted M3 “an exclusive, transferable, and perpetual license under the PATENTS and TECHNICAL INFORMATION to make, have made, use, offer for sale, and import the LICENSED APPARATUS throughout the world and to practice the LICENSED METHODS throughout the world, and to grant sublicenses under the PATENTS and TECHNICAL INFORMATION.” Further, the License grants to M3 “the sole right to exclude others from making, using, selling, offering for sale and importing the inventions claimed in the PATENTS and the sole right to institute legal proceedings...”

17. The License incentivized Thomas to bring money and business deals into M3, because any deals consummated using any technology developed by Thomas that was covered by the License resulted in money that first went to pay off M3's debt (caused by Thomas) and then went in his pocket in the form of royalties. It was therefore in Thomas' interest (at the time) to accept a License that broadly encompassed all possible sources of technology – exactly what happened.

18. The License covers both patents specified by name (such as U.S. Patent Nos. 6,658,864; 6,389,828; 8,287,786¹ and patents related thereto) and patents or applications based on TECHNICAL INFORMATION. Exhibit 1. TECHNICAL INFORMATION is defined by the License as “unpublished research and development information, unpatented inventions, know-how, trade secrets, and technical data in the possession of LICENSOR at the EFFECTIVE DATE of this AGREEMENT that is beneficial to making, using, selling or offering for sale LICENSED APPARATUS, or to practicing LICENSED METHODS.” *Id.* “TECHNICAL INFORMATION shall also encompass development information, unpatented inventions, know-how, trade secrets, and technical data related [*sic*] any cooling or heating system or product later developed or acquired by LICENSOR.” *Id.*

19. Thus, the language of the License covers patents existing as of the EFFECTIVE DATE, as well as patents later derived from TECHNICAL INFORMATION, whether Thomas was in possession of the knowledge on the EFFECTIVE DATE or he acquired the knowledge later.

20. Many, if not all, of the innovations of Thomas relate to “cooling or heating systems or products.”

21. Thus, the exclusive license granted under the License includes, but is not limited to, the following *issued* patents: U.S. Patent Nos. 8,287,786; 8,876,509²; 8,282,384; 8,580,175; 9,162,402; 8,287,268; 8,652,555; 9,282,764; 9,480,281; 9,481,120. The License covers any

¹ This patent is the result of U.S. Patent Application Serial No. 11/941,930, which is expressly identified in the License.

² This patent is a continuation of 8,287,786, the product of U.S. Patent Application Serial No. 11/941,930.

U.S. patent or patent applications related to one or more of the foregoing. The License also covers any other patent on which Thomas is the inventor related to “any cooling or heating system or product” as well as his know how related to same. This intellectual property is collectively referred to as the “Thomas Patents.”

22. After executing the License, Thomas left M3. The obligations of Thomas to M3, including the License, continued after he left M3.

After Leaving M3, Thomas Commercializes His Innovations Without Regard to the License

23. Defendants continued to acquire patent rights based on TECHNICAL INFORMATION, leading to the issuance of several of the Thomas Patents and the filing of several more patent applications that are part of the Thomas Patents. The License grants exclusive rights to make, have made, use, sell, offer for sale, or import devices and/or practice methods covered by the Thomas Patents. The License also grants the Licensee the exclusive right to bring enforcement actions based on the Thomas Patents.

24. Ultimately, Thomas and Western formed REI to commercialize the innovations.

25. On information and belief, Western and Thomas are officers and owners of REI.

26. Their efforts under REI focus on the processing of distiller grains, which are created as a byproduct in the waste streams of ethanol plants. Essentially, the distilling process removes the ethanol but leaves the distiller grains, which still have significant nutritional content. These distiller grains can be used as livestock feed, but the product spoils rapidly if they are not dried properly. Further, there is additional value being able to shape the product without having to add non-nutritious additives like binders and fillers. The process marketed by REI adapts extrusion technology developed by Thomas to 1) dry distiller grains and 2) shape the distiller grains into commercially viable forms, purportedly without the use of binders or fillers. On information and belief, this technology has other commercially viable uses as well, including application involving other inputs besides distiller grains.

Defendants Market and Sell Innovations to Others, Including GDI

27. To market the technology developed by Thomas, REI partnered with a company called V-3 Nutrition LLC, ultimately leading to the formation of Nationwide 5.

28. Nationwide 5 and REI cooperate in promoting the technologies embodied by the Thomas Patents and have attempted to authorize third parties to practice one or more of the Thomas Patents.

29. Among these third parties is a soon to be processor of distiller grains, GDI. On information and belief, GDI is a Texas Corporation with a principal place of business in St. Louis, Missouri. Contracts involving GDI and one or more defendants have involved extensive negotiation with individuals located in St. Louis, Missouri.

30. On information and belief, GDI has purchased equipment based on the Thomas technology from REI/Nationwide 5 that was shipped into this district.

31. On information and belief, defendants have attempted to broadly license GDI to make, have made, use, sell, have sold, and import articles under the Thomas Patents and to practice methods covered by same.

32. On information and belief, GDI intends to use the equipment purchased from REI/Nationwide 5 to process distiller grains into livestock feed in the St. Louis metropolitan area.

33. On information and belief, through these operations, GDI intends to practice one or more claims of several of the Thomas Patents, specifically U.S. Patent Nos. 8,287,268; 8,652,555; 9,282,764, 9,480,281; and 9,481,120.

34. At no time has Martin or M3 authorized GDI to practice the Thomas Patents.

35. At no time has Martin or M3 authorized the Defendants to practice the Thomas Patents or to license others to do so.

36. At no time has Martin or M3 authorized REI or Nationwide 5 to practice the Thomas Patents or to license others to do so.

Count I – Breach of the License Agreement

37. Martin incorporates by reference the foregoing paragraphs as if fully set forth herein.

38. The License, between Thomas (as LICENSOR) and M3, and now Martin (as LICENSEE) constitutes a binding and enforceable contract, the terms of which are definite.

39. This License granted LICENSEE the *exclusive* right “to make, have made, use, offer for sale, and import the LICENSED APPARATUS throughout the world and to practice the LICENSED METHODS throughout the world, and to grant sublicenses under the PATENTS and TECHNICAL INFORMATION.”

40. The License granted to LICENSEE “the sole right to exclude others from making, using, selling, offering for sale and importing the inventions claimed in the PATENTS and the sole right to institute legal proceedings...”

41. The License granted to LICENSEE provides “LICENSOR shall not disclose any TECHNICAL INFORMATION or PATENTS to third parties during the term of this AGREEMENT...provided, however that disclosure may be made of any such TECHNICAL INFORMATION or PATENTS at any time: (1) with the consent of LICENSEE....” On information and belief, Thomas and others have shared TECHNICAL INFORMATION with one or more entities in China for the purpose of manufacturing components used in the systems that implement the innovations of Thomas or to develop markets in China for those systems.

42. As the named inventor on the Thomas Patents and the source of the TECHNICAL INFORMATION, Thomas is the initial right holder for all the innovations covered by the License. The License, therefore, attaches to each of the Thomas Patents and the TECHNICAL INFORMATION.

43. The License was never terminated by LICENSEE.

44. The License has not expired and is exclusive to LICENSEE.

45. LICENSEE initially tendered performance on the License by providing the consideration identified in the License. LICENSEE further was ready and willing to compensate Thomas for any sales made under the License, according to the provisions of the License. Yet Thomas only made limited sales under the License at M3 and never made any sales for the benefit of M3 under the License after he left M3. Thomas ultimately left M3, with an intent to commercialize his innovations outside of M3.

46. Thomas has breached his obligations under the License by authorizing others “to make, have made, use, offer for sale, and import the LICENSED APPARATUS throughout the world.” Such breaches relate to the commercialization of the Thomas Patents and the TECHNICAL INFORMATION through Nationwide 5 and REI.

47. Thomas has breached his obligations under the License by granting and/or authorizing others to “grant sublicenses under the PATENTS and TECHNICAL INFORMATION.” Such breaches relate to the commercialization of the Thomas Patents and the TECHNICAL INFORMATION through Nationwide 5 and REI.

48. Thomas has breached his obligations under the License by exercising by himself or through others the “right to exclude others from making, using, selling, offering for sale and importing the inventions claimed in the PATENTS.”

49. LICENSEE has not authorized, ratified, or acquiesced to the foregoing breaches.

50. By virtue of the activities and omissions described herein, Thomas has damaged Martin, through his actions and his unjust enrichment, in an amount to be determined by a jury at trial.

Count II – Declaratory Judgment Concerning the License

51. Martin incorporates by reference the foregoing paragraphs as if fully set forth herein.

52. The dispute between Martin and defendants concerning the scope of License, creates a substantial, immediate, and real controversy between Martin and defendants.

53. Pursuant to the Declaratory Judgment Act, 28 U.S.C. §§ 2201-2202, and Rule 57 of the Federal Rules of Civil Procedure, Martin is entitled to a declaratory judgment setting forth the intellectual property to which he holds an exclusive license.

54. Martin contends that the License covers both patents specified by name (such as U.S Patent Nos. 6,658,864; 6,389,828; 8,287,786 and patents related thereto) and patents or applications based on TECHNICAL INFORMATION. Exhibit 1. On information and belief, defendants dispute this contention.

55. TECHNICAL INFORMATION is defined by the License as “unpublished research and development information, unpatented inventions, know-how, trade secrets, and technical data in the possession of LICENSOR at the EFFECTIVE DATE of this AGREEMENT that is beneficial to making, using, selling or offering for sale LICENSED APPARATUS, or to practicing LICENSED METHODS.” *Id.* “TECHNICAL INFORMATION shall also encompass development information, unpatented inventions, know-how, trade secrets, and technical data related [*sic*] any cooling or heating system or product later developed or acquired by LICENSOR.” *Id.*

56. The scope of the License includes those patents derived from “TECHNICAL INFORMATION,” whether Thomas was in possession of the knowledge on the EFFECTIVE DATE or he acquired the knowledge later. On information and belief, defendants dispute this assertion.

57. Because the License grant covers three categories of patents 1) patents specifically identified in the License, 2) patents based on TECHNICAL INFORMATION, and 3) patents related to patents that fall into categories 1 and 2, the License covers patents then existing as of the EFFECTIVE DATE and patents later obtained. On information and belief, defendants dispute this assertion.

58. On information and belief, the exclusive license granted under the License also includes certain U.S. patent applications that have not issued as patents.

59. Many, if not all, of the innovations of Thomas relate to cooling or heating systems or products.

60. The exclusive license granted under the License includes, but is not limited to, the Thomas Patents.

61. Martin seeks from this Court a declaration that he is the exclusive licensee of patents and patent applications on which Thomas is the named inventor, and where the technology is related to “any cooling or heating system or product,” including, but not limited to, the Thomas Patents.

Count III – Patent Infringement of Patents in Thomas Patent Family

62. Martin incorporates by reference the foregoing paragraphs as if fully set forth herein.

63. Martin, as LICENSEE, is the exclusive licensee to the Thomas Patents by virtue of the License.

64. This License gives LICENSEE the “exclusive right to exclude others from making, using, selling, offering for sale and importing the inventions claimed in the PATENTS.”

65. Despite this exclusive License, defendants persist in attempting to commercialize the Thomas Patents.

66. On information and belief, defendants have been and are infringing the Thomas Patents, specifically U.S. Patent Nos. 8,287,268; 8,652,555; 9,282,764, 9,480,281; and 9,481,120, under one or more subsections of 35 U.S.C. § 271.

67. Defendants, and/or their customers, directly infringe one or more claims of U.S. Patent Nos. 8,287,268; 8,652,555; 9,282,764, 9,480,281; and 9,481,120 by making, using, selling and/or offering for sale equipment for extruding dried distiller grain within the United States, and/or importing same into the United States.

68. On information and belief, defendants know of U.S. Patent Nos. 8,287,268; 8,652,555; 9,282,764, 9,480,281; and 9,481,120 and know of the rights granted by the License.

69. Defendants' conduct has damaged and will continue to damage Martin in an amount to be determined at trial.

Count IV – Fraud

70. Martin incorporates by reference the foregoing paragraphs as if fully set forth herein.

71. During his tenure with M3, Thomas stated to one or more employees of M3 (including to Martin) that he would commercialize his innovations exclusively through M3. These statements triggered M3 to enter into the License, which bound him to M3. Based on these assertions, M3 agreed to assume debts of Thomas. M3 and its investors never received any repayment for those debts because Thomas ignored the rights granted in the License to commercialize the innovations with others.

72. When these statements were made by Thomas, they were false.

73. These statements were material to the relationship between Martin/M3 (and its employees) and Thomas, because it was based on these assertions that Martin, through M3, agreed to continue to finance the debt that permitted M3 to continue operations.

74. The employees of M3, including Martin, were not aware these statements were false when made.

75. On information and belief, Thomas intended that Martin, and others, rely on the statements.

76. Martin, and others, reasonably relied on the assertions of Thomas and had a reasonable right to do so.

77. As a consequent and proximate result of statements by Thomas to Martin and others concerning the commercialization of his innovations, Martin was damaged in an amount to be determined at trial.

JURY TRIAL DEMANDED

78. Mark Martin hereby demands a jury on all triable issues.

PRAYER FOR RELIEF

WHEREFORE, Mark Martin respectfully prays that this Court enter judgment in his favor, and against Michael Thomas, Rayeman Elements, Inc., and Nationwide 5 LLC on all counts and:

- A. Award damages in an amount to be determined at trial based on the foregoing Counts;
- B. Issue a declaration that Martin is the exclusive licensee of U.S. Patent Nos. 8,287,786; 8,876,509; 8,282,384; 8,580,175; 9,162,402; 8,287,268; 8,652,555; 9,282,764; 9,480,281; 9,481,120; any U.S. patent applications related to one or more of the foregoing U.S. Patents; and any other patent on which Thomas is the inventor related to "any cooling or heating system or product."
- C. Enter an order preliminarily and permanently enjoining defendants and any person acting in concert with them from further infringement of U.S. Patent Nos. U.S. Patent Nos. 8,287,268; 8,652,555; 9,282,764, 9,480,281; and 9,481,120;
- D. Declare Defendants' actions willful;
- E. Find the case to be exceptional and award appropriate relief thereunder including attorneys' fees and costs;
- F. Award punitive and enhanced damages based on the conduct as plead herein;
- G. Pre-judgment interest in an amount as allowed by law;
- H. Costs of this suit;
- I. Post-judgment interest allowed by law on the total sum of these awards until judgment is satisfied; and
- J. Such other and further relief as the Court deems just under the circumstances.

Respectfully Submitted

Thompson Coburn LLP

By: /s/ Dean L. Franklin
Dean L. Franklin
Jonathan G. Musch
One US Bank Plaza
St. Louis, MO 63101
(314) 552-6000
(314) 552-7000 (fax)

Attorneys for Mark Martin