

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
MIDDLE DIVISION**

THE HEIL CO.,

Plaintiff,

v.

Case No:

McNEILUS COMPANIES, INC. and
McNEILUS TRUCK AND
MANUFACTURING, INC.,

Defendants.

COMPLAINT

Plaintiff The Heil Co. (“Heil” or “Plaintiff”) states the following Complaint against Defendants McNeilus Companies, Inc. (“McNeilus Companies”) and McNeilus Truck & Manufacturing, Inc. (“McNeilus Truck”) (McNeilus Companies and McNeilus Truck are sometimes collectively referred to as “McNeilus”):

INTRODUCTION

1. This is a patent infringement action by Heil against its direct competitor McNeilus.

2. Both Heil and McNeilus are in the business of manufacturing refuse collection bodies that are mounted on chassis manufactured by third parties, and which together (i.e., the chassis and refuse body) make a garbage truck.

3. All Heil garbage truck bodies are manufactured at Heil's manufacturing facility in Fort Payne, Dekalb County, Alabama, at which Heil not only builds the units, but also conducts engineering, development, design, testing, marketing, sales, customer service, and other work related to its refuse collection bodies, including the refuse collection bodies that are the subject of this lawsuit.

4. In January 2017, Heil was issued a patent by the U.S. Patent and Trademark Office directed to a tailgate system (and garbage truck containing that system) developed by Heil to house and utilize compressed natural gas ("CNG") tanks for purposes of fueling the unit. As more fully discussed below, the patent is directed to a CNG tailgate system and configuration, as well as a refuse truck having a structurally integrated CNG tailgate system.

5. McNeilus, a direct competitor of Heil, without the authority or permission of Heil, is infringing upon the patent by manufacturing, offering for sale, and selling infringing CNG tailgate systems and refuse trucks having structurally integrated CNG tailgate systems, all under the name McNeilus.

THE PARTIES

6. Plaintiff Heil is a Delaware company with its manufacturing operations located at a 106 45th St., Fort Payne, Dekalb County, Alabama 35967, and with its principal place of business located in Chattanooga, Tennessee.

7. Defendant McNeilus Companies is a Minnesota corporation and has its principal place of business at 524 E. Highway Street, Dodge Center, Minnesota 55927-9181. McNeilus Companies' Registered Agent is CT Corporation System, Inc., located at 1010 Dale Street N., St. Paul, Minnesota 55117.

8. Defendant McNeilus Truck is a Minnesota corporation and has its principal place of business at 524 E. Highway Street, Dodge Center, Minnesota 55927-9181. McNeilus Truck's Registered Agent is CT Corporation System, Inc., located at 1010 Dale Street N., St. Paul, Minnesota 55117.

JURISDICTION AND VENUE

9. This is an action for patent infringement arising under the patent laws of the United States, 35 U.S.C. § 1, et seq. This Court has original jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

10. McNeilus is subject to personal jurisdiction in this district because, *inter alia*, and consistent with the principles of due process and the Alabama Long Arm Statute, McNeilus directly and/or through related entities or intermediaries, regularly conducts, solicits, and transacts business in this State and District. For

example, McNeilus is directly selling or offering to sell product (under the name McNeilus) in this State and District, including CNG tailgate systems and refuse trucks with CNG tailgate systems which infringe upon Heil's patent. McNeilus is directly selling or offering to sell infringing product into this State and District and/or has placed or is attempting to place product into a stream of commerce that ends or is expected to end in this State and District. According to its website, McNeilus has at least five sales and support representatives (including a Regional Sales Manager, Sales Director, and others) that regularly conduct business in the State of Alabama.

11. Venue is proper in this District pursuant to 28 U.S.C. §§1391(b) and (c) and § 1400(b), as the wrongful acts giving rise to Heil's claims have occurred in this District and, further, McNeilus "resides" in this District as an entity "subject to the Court's personal jurisdiction with respect to the civil action in question."

GENERAL ALLEGATIONS

12. On January 3, 2017, the U.S. Patent and Trademark Office duly and legally issued U.S. Patent No. 9,533,569 ("the '569 Patent"), entitled TAILGATE WITH STRUCTURALLY INTEGRATED CNG SYSTEM, to The Heil Co. A copy of the '569 Patent is attached at Exhibit A.

13. The '569 Patent is presumed valid under 35 U.S.C. § 282.

14. Heil is the assignee and owner of all right, title, and interest in and to the '569 Patent. A true and accurate copy of the assignment record to Heil is attached at Exhibit B.

15. Possessing all right, title, and interest in and to the '569 Patent, and the '569 Patent being in full force and effect, Heil has the right to sue for any infringement thereof and to recover all past and future damages.

BACKGROUND

16. McNeilus is also currently making, offering for sale, and selling CNG tailgate systems and refuse trucks with structurally integrated CNG tailgate systems, including those identified as the "NGEN CNG System."

17. The NGEN CNG system is offered for sale by McNeilus and sold directly and/or through intermediaries and others across the country, including in this State or District.

18. On McNeilus's website, it advertises, markets, and promotes its NGEN CNG system with respect to refuse vehicles. Exhibit C and D.

19. An example of McNeilus's NGEN CNG system integrated into a McNeilus refuse vehicle is depicted below:



20. McNeilus's NGEN CNG system integrated into a McNeilus refuse vehicle is also identified on its website. Exhibit E.

COUNT I: INFRINGEMENT OF U.S. PATENT NO. 9,533,569

21. Heil hereby incorporates by reference the allegations set forth in paragraphs 1 through 20 as if fully set forth herein.

22. McNeilus is infringing the '569 Patent, by making, having made, using, offering to sell, and/or selling tailgate CNG systems and refuse vehicles

with integrated CNG tailgate systems, specifically the NGEN CNG system, without the authority of Heil and in violation of 35 U.S.C. § 271 et seq., and will continue to do so unless enjoined by this Court.

23. McNeilus's NGEN CNG system includes a frame having an arcuate portion, the frame extending between a top terminal end of the tailgate and a bottom terminal end of the tailgate.

24. McNeilus's NGEN CNG system also includes a plurality of compressed natural gas tanks coupled with the frame, the plurality of compressed natural gas tanks positioned onto the frame from the top of the frame to the bottom of the frame such that the plurality of compressed natural gas tanks are aligned one after the other in a single file pattern so that the single file pattern of the plurality of compressed natural gas tanks define an arcuate line along the frame from the top of the tailgate to the bottom of the tailgate, and the plurality of tanks extend from the top of the tailgate to the bottom of the tailgate.

25. McNeilus's NGEN CNG system also includes a cover covering the frame.

26. McNeilus's refuse trucks carrying the NGEN CNG system include a vehicle chassis with a container secured with the vehicle chassis.

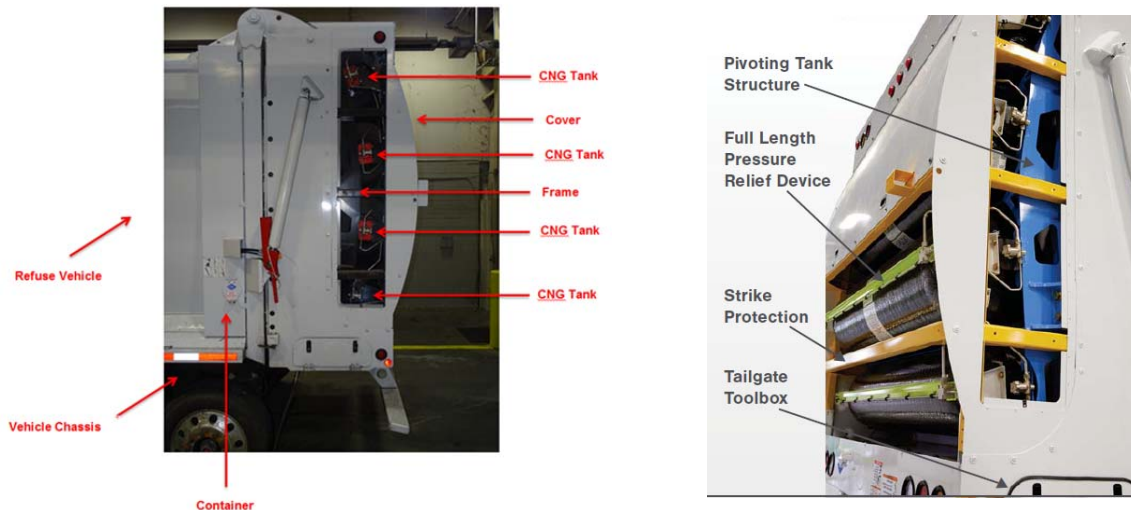
27. McNeilus's refuse trucks carrying the NGEN CNG system also include a tailgate coupled with the container, the tailgate comprising a frame

having an arcuate portion, and the frame extending between a top terminal end of the tailgate and a bottom terminal end of the tailgate.

28. McNeilus's refuse trucks carrying the NGEN CNG system also include a plurality of compressed natural gas tanks coupled with the frame, the plurality of compressed natural gas tanks being positioned onto the frame such that the plurality of compressed natural gas tanks are aligned one after the other in a single file pattern so that the single file pattern of the plurality of compressed natural gas tanks define an arcuate line along the frame from the top of the tailgate to the bottom of the tailgate.

29. McNeilus's refuse trucks carrying the NGEN CNG system also include a cover covering the frame.

30. A pictorial highlighted representation of McNeilus's NGEN CNG system integrated adjacent to an excerpt taken from Exhibit E is as follows:



31. McNeilus has been and is infringing, literally or under the doctrine of equivalents, at least claims 1 and 5 of the '569 Patent under 35 U.S.C. § 271(a), by making, using, offering for sale, and/or selling structurally integrated CNG systems, known as the NGEN CNG System and refuse trucks with tailgates having a structurally integrated CNG system, all in the United States.

32. McNeilus has contributed to infringement, literally or under the doctrine of equivalents, of at least claims 1 and 5 of the '569 Patent under 35 U.S.C. § 271(c), by having made, making, selling, offering for sale, NGEN CNG systems and providing the refuse trucks carrying NGEN CNG systems and encouraging, instructing, providing, and aiding others to use the NGEN CNG system in an infringing manner. Upon information and belief, McNeilus has engaged in these activities knowing that the NGEN CNG systems and especially refuse trucks carrying the NGEN CNG system are made and adapted for use, and are in fact used, in a manner that constitutes infringement of the '569 Patent.

33. The NGEN CNG system is a material part of the invention described in the '569 Patent. The NGEN CNG system is not a staple article or commodity of commerce suitable for substantial non-infringing use.

34. Heil has complied with the marking notice requirements of 35 U.S.C. § 287 for the '569 Patent.

35. McNeilus's current and continued infringement of the '569 Patent is willful and deliberate.

36. McNeilus had actual knowledge of the '569 Patent prior to the filing of this Complaint. On October 6, 2015, counsel for Heil forwarded correspondence putting McNeilus on notice of U.S. Application Publication No. 2014/0367954, which later issued as the '569 Patent. On February 3, 2017, counsel for Heil forwarded follow-on correspondence, specifically identifying the '569 Patent.

37. As a result of McNeilus's infringement, Heil has suffered and will continue to suffer monetary damages, including lost profits and/or a reasonable royalty, that are compensable under 35 U.S.C. § 284.

38. Upon information and belief, McNeilus's infringement of the '569 Patent has been and continues to be deliberate, willful, intentional, and with knowledge, such that Heil is entitled to enhanced damages and to recover its attorneys' fees and other expenses of litigation pursuant to 35 U.S.C. §§ 284 and 285.

39. Unless an injunction issues enjoining McNeilus, its agents, servants, employees, attorneys, representatives, affiliates, and all others acting on its behalf from infringing the '569 Patent, Heil will continue to be irreparably harmed.

RELIEF REQUESTED

WHEREFORE, Heil requests the following relief:

- A. A judgment declaring that McNeilus has infringed the '569 Patent in violation of 35 U.S.C. § 271;
- B. A preliminary and a permanent injunction prohibiting McNeilus and its respective parents, subsidiaries, principals, officers, directors, agents, attorneys, employees, and all others in privity and concert therewith, from infringing the '569 Patent, pursuant to 35 U.S.C. § 283;
- C. A judgment awarding Heil its damages for patent infringement, together with prejudgment interest, post-judgment interest, and costs, against McNeilus pursuant to 35 U.S.C. § 284;
- D. An order increasing awarded damages by three times the amount found or assessed under 35 U.S.C. § 284;
- E. A judgment declaring this an exceptional case and awarding Heil its reasonable attorneys' fees under 35 U.S.C. § 285;
- F. Such other and further relief as the Court may deem just and proper.

JURY DEMAND

Pursuant to Federal Rule of Civil Procedure 38(b), Heil hereby demands a trial by jury for each and every issue so permitted by law and statute.

Dated: March 23, 2017

s/ M. Todd Lowther

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PLEASE SERVE DEFENDANTS AS FOLLOWS:

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McNeilus Truck and Manufacturing, Inc.
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St. Paul, Minnesota 55117