

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN

LECO CORPORATION,
a Michigan corporation,

Plaintiff,

v.

ZWICK CORPORATION,
a Georgia corporation,
ZWICK USA LP,
a Georgia limited partnership,

Defendants.

Case No. _____

Hon. _____

COMPLAINT AND JURY DEMAND

Plaintiff Leco Corporation, a corporation of the State of Michigan, (hereinafter “Leco”) as and for its Complaint against Defendants Zwick Corporation, a Georgia corporation, and Zwick USA LP, a Georgia limited partnership (collectively hereinafter “Zwick”) hereby alleges as follows:

NATURE OF ACTION

1. This is an action in law and equity for patent infringement arising out of infringement of Leco’s U.S. Patent Nos. 7,139,422 and 6,996,264 in violation of the patent laws of the United States, 35 U.S.C. §§ 271 et seq.

THE PARTIES

2. Plaintiff Leco is a corporation of the state of Michigan and has a principal place of business at 3000 Lakeview Avenue, St. Joseph, Michigan 49085.

3. Upon information and belief, Defendant Zwick Corporation is a Georgia corporation and Defendant Zwick USA LP is a Georgia limited partnership, both with a principal place of business at 2125 Barrett Park Drive Suite 107, Kennesaw, Georgia 30144.

4. Upon information and belief, Zwick offers to sell its products, including the infringing products, in Michigan, including within this district.

JURISDICTION AND VENUE

5. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

6. This Court has jurisdiction over Zwick because, upon information and belief, Zwick transacts business in the state of Michigan and in the district and is subject to personal jurisdiction under Michigan Comp. Laws §§ 600.711, 600.715, and related law.

7. Venue is proper in this judicial district under 28 U.S.C. § 1391(b) and (c) and § 1400(b).

BACKGROUND FACTS

8. Leco is a manufacturer and marketer of numerous sophisticated scientific instruments which are sold worldwide to a variety of industries and educational institutions.

9. Leco is an innovator of many significant advances in the design of such instruments and is the owner, through over 75 years of its business, of more than 100 patents.

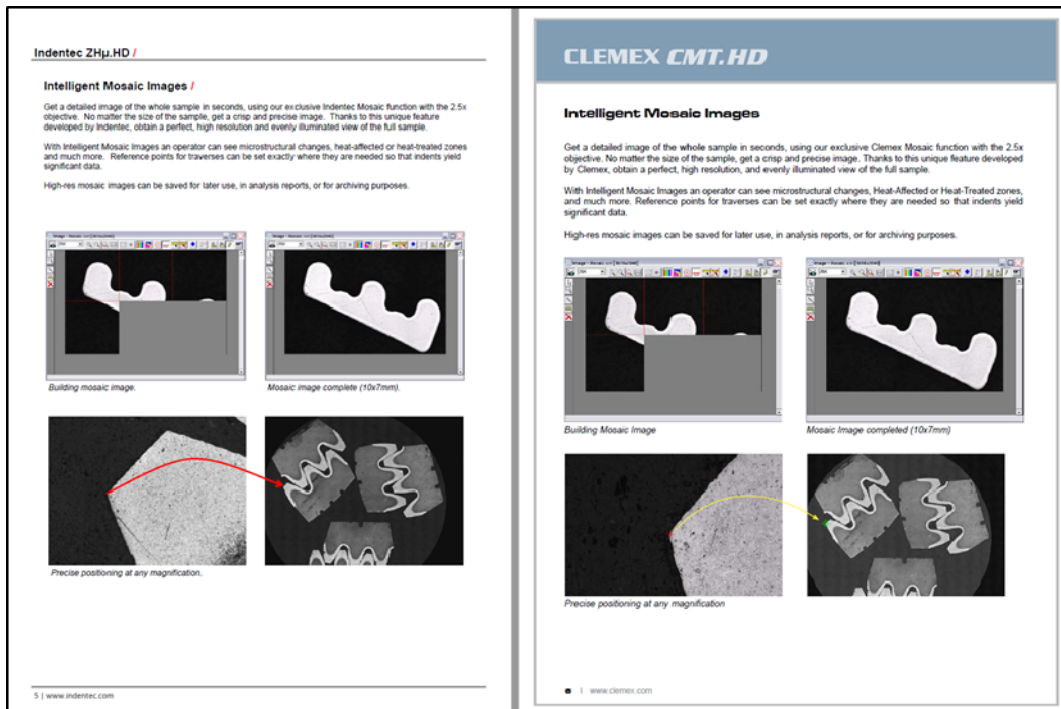
10. One of its numerous innovative instruments relates to an indentation hardness test system. The system has been sold as either the Leco AMH55 Hardness Testing System or the Leco AMH43 Hardness Testing System.

11. Leco is the owner of U.S. Patent No. 7,139,422 duly and legally issued on November 21, 2006 (hereinafter the '422 Patent). A true copy of the '422 Patent is attached as Exhibit A.

12. Leco is the owner of U.S. Patent No. 6,996,264 duly and legally issued on February 7, 2006 (hereinafter the '264 Patent). A true copy of the '264 Patent is attached as Exhibit B.

13. The '422 Patent and '264 Patent have claims which cover features of the Leco Hardness Testing Systems, such as the Leco AMH55 and AMH43 systems. Those patents are marked in connection with both the hardware (such as the Leco LM-248AT machine) (see Exhibit C) and software of those systems pursuant to 35 U.S.C. § 287. Upon information and belief, Zwick is aware that the '422 Patent and '264 Patent are marked by Leco in connection with Leco's Hardness Testing Systems.

14. Zwick has begun the manufacture, importation, offer for sale, and/or sale of a computerized hardness tester using the Indentec software, incorporate the subject matter of Leco's '264 and '422 patents. See Exhibit D and www.youtube.com/watch?v=cw5xHWzyBJw (Micro Vickers hardness tester – Mikro-Vickers-Härteprüfer ZHV μ). Notably, this is essentially the same software that Clemex Technologies, Inc. ("Clemex") used in its Clemex CMT hardness tester, which was the subject of Case No. 1:10-cv-13 in this District.



Zwick is now related to Clemex.

15. The hardness tester with the Indentec software is an indentation hardness test system that includes, among other things: a frame with an attached indenter; a movable stage for receiving a part attached to the frame; a camera for capturing images of the part; a display; a processor electrically coupled to the movable stage, the camera, and display; and a memory subsystem coupled to the processor which stores code that when executed instructs the processor to capture a series of real-time images of the part using the camera, obtaining associated stage coordinates for each real-time image, and displaying a composite image of the part, wherein the composite image include a series of the real-time images assembled according to the associated stage coordinates. In addition, the tester overlays and indicates a current position image of the part in the composite image. As shown by Zwick's own materials, its tester infringes at least independent claims 1, 10, 13, and 19 of the '422 Patent and at least independent claims 1, 9, 16,

and 22 of the '264 Patent. These acts of infringement are a violation of the United States patent laws, including, but not limited to, 35 U.S.C. § 271.

16. Zwick's aforesaid infringement has been and continues to be willful and deliberate and is ongoing.

17. Leco has in the past been damaged and continues to suffer irreparable injury as a result of Zwick's actions. Infringement of the '422 Patent and the '264 Patent by Zwick will continue unless and until enjoined by this Court.

COUNT I: INFRINGEMENT OF THE '422 PATENT

18. Plaintiff Leco realleges each and every allegation contained in paragraphs 1 through 17 as though fully set forth herein.

19. Zwick's aforementioned acts constitute willful infringement of Leco's '422 Patent in violation of 35 U.S.C. §§ 271 et seq.

COUNT II: INFRINGEMENT OF THE '264 PATENT

20. Plaintiff Leco realleges each and every allegation contained in paragraphs 1 through 17 as though fully set forth herein.

21. Zwick's aforementioned acts constitute willful infringement of Leco's '264 Patent in violation of 35 U.S.C. §§ 271 et seq.

PRAYER FOR RELIEF

WHEREFORE, Leco prays that this Court enter a judgment and order that:

- A. Zwick has infringed the '422 Patent and the '264 Patent;
- B. the infringement of the '422 Patent and the '264 Patent by Zwick is willful;
- C. Zwick and its officers, agents, representatives, employees, and all others in concert or participation with them, directly or indirectly, be permanently enjoined from infringing,

inducing others to infringe, or contributing to the infringement of the '422 Patent and the '264 Patent pursuant to 35 U.S.C. § 283;

D. Leco be awarded damages adequate to compensate for Zwick's infringement of the '422 Patent and '264 Patent, together with pre-judgment and post-judgment interest pursuant to 35 U.S.C. § 284;

E. said damages be trebled pursuant to 35 U.S.C. § 284 because such infringement has been willful and deliberate;

F. Leco be awarded its costs, including reasonable attorney fees and expenses, in accordance with 35 U.S.C. §§ 284 and 285; and

G. Leco be awarded such other and further relief as this Court may deem just and proper.

DEMAND FOR JURY TRIAL

Leco demands trial by jury on all issues in this action.

Respectfully submitted,

Dated: April 12, 2017

s/Matthew J. Gipson
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