

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

SOLICITOR

SEP 20 2007

U.S. PATENT & TRADEMARK OFFICE

Cimline, Inc.,

Plaintiff,

vs.

Crafco, Inc.

Defendant.

Case No.

07W 3997 RHK/JSM

Pat. # 5,967,375

Jury Trial Demanded

Complaint

Plaintiff, Cimline, Inc. ("Cimline"), by and through its attorneys, Abrams & Smith, P.A., hereby files its Complaint against Defendant Crafco, Inc. ("Crafco"). In support of its Complaint, Plaintiff states as follows:

Parties

1. Plaintiff Cimline is a manufacturer of commercial pavement maintenance equipment and is a Minnesota corporation with its principal place of business in Plymouth, Minnesota.
2. Defendant Crafco is a manufacturer of commercial pavement maintenance equipment and is an Arizona corporation with its principal place of business in Chandler, Arizona.

Jurisdiction and Venue

3. Count I of the Complaint is a civil action seeking a declaratory judgment that Unites States Patent No. 5,967,375 (attached hereto as Exhibit A and hereafter

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referred to as the "'375 patent") is invalid, unenforceable and otherwise void.

This court has subject matter jurisdiction of this cause of action under 28 USC §§2201(a), 2202, 1331 and 1338(a).

4. Count II of the Complaint alleges that Defendant Crafc0 used its inappropriately obtained, invalid and/or unenforceable patent to engage in unfair competition. This court has subject matter jurisdiction of this cause of action under 28 USC §1338(b). As well, in that the damages claimed are in excess of \$75,000 and that Plaintiff and Defendant are diverse, this court has subject matter jurisdiction pursuant to 28 USC §1332.
5. Count III of the Complaint is a civil action seeking a declaratory judgment that a melter with autoloader currently marketed and sold by Cimline does not infringe on any patent of Crafc0's. The court has subject matter jurisdiction of this cause of action under 28 USC §§2201(a), 2202, 1331 and 1338(a).
6. Count IV of the Complaint alleges that Defendant Crafc0 has engaged in conduct violative of Section II of the Sherman Act (15 USC §2). The court has subject matter jurisdiction of this cause of action under 28 USC §1331.
7. This Court has personal jurisdiction over Crafc0 because Crafc0 actively and regularly conducts business in the state of Minnesota.
8. Venue within this judicial district is proper pursuant to 28 U.S.C. 1391(b), 1391(c) and/or 1400.

Factual Background

9. Both Cimline and Crafc0 manufacture "Melters" (sometimes referred to as 'sealant melters' or 'sealant melter applicators' or 'melter applicators'; hereafter this equipment is referred to as a 'melter'). Melters are used in the maintenance

of pavement. They are mounted on trailers and, generally, they heat and thereby melt blocks of sealant material in a reservoir tank (of various sizes but usually 200 gallons or so). The melted material is then dispensed from the equipment's tank via a pipe or hose and used to seal cracks in pavement or otherwise maintain the integrity of paved surfaces. In the main, melters are used by either contractors or governmental entities to maintain the nation's roads and other surfaces upon which motor vehicles are operated.

10. On August 7, 1997, Crafcoc filed an application to patent a 'Sealant Melter with Retrofittable Sealant Block Feed Assembly'. That application was ultimately granted under patent #5,967,375, with a patent date of October 19, 1999. The inventor was listed as David Barnes, then a Crafcoc employee. Crafcoc is the assignee of the patent.
11. Significant to that patent and the instant Complaint was the incorporation therein of a sealant block feed assembly (sometimes referred to as an 'autoloader') utilized to feed blocks of sealant into the Melter and which would be retrofittable.
12. The retrofitting of an autoloader to a Crafcoc Melter was not the invention of David Barnes.
13. Beginning at least by the mid-90's, owners of Crafcoc melters were modifying them by adding autoloaders of the owner's own design. One such owner was the Pennsylvania Department of Transportation (hereafter 'PennDOT').
14. PennDOT's engineers and/or maintenance workers had previously modified Crafcoc Melters (the BC220 model) with an unpowered roller conveyor. Upon information and belief, that PennDOT was modifying the BC220 model was known to Crafcoc.

15. PennDOT continued its practice of modifying CrafcO's melters when CrafcO's successor to the BC220, the EZ Pour, was introduced. These modifications included roller conveyors which extended from a housing above the sealant tank towards the front of the melter's trailer. Beginning in the mid-90's, upon information and belief, PennDOT began approaching CrafcO and requesting that CrafcO build the PennDOT modifications into their products.
16. CrafcO resisted PennDOT's efforts and instead had PennDOT informed in October of 1995 that the alterations could constitute a violation of CrafcO's warranty. Prior to October of 1995, CrafcO was aware of and had examined PennDOT's autoloader modifications.
17. Eventually, in 1996, CrafcO decided to manufacture a melter incorporating a retrofittable autoloader to meet PennDOT's needs in that regard. As part of that process, CrafcO employees and/or agents, prior to August 7 of 1996, became fully aware of PennDOT's invention of an autoloader modification of the CrafcO EZ Pour melter and that the invention was in public use.
18. In its application to the Patent Office, and in all subsequent proceedings before that Office, CrafcO never disclosed the existence of the PennDOT invention (nor its inventor) or any of the information it had regarding prior modifications involving retrofitting an autoloader onto a melter.

Count I (Declaratory Judgment of Invalidity and Unenforceability)

19. Cimline re-alleges and incorporates by reference the allegations set forth in paragraphs 1-18 of the Complaint as fully set forth herein.
20. CrafcO has asserted that Cimline has infringed upon patent '375.

28. Cimline is currently marketing and selling a melter with an autoloader which is also retrofittable to other melters. Its delivery into the marketplace is imminent.
29. CrafcO has previously alleged patent infringement for every prior Cimline attempt to market and sell a melter with autoloader. Based upon that and the prior interaction(s) between Cimline and CrafcO, Cimline has a reasonable apprehension that it will face a patent infringement lawsuit when its product enters the marketplace.
30. An actual controversy exists between Cimline and CrafcO with respect to the infringement of the '375 patent by the Cimline melter with autoloader.
31. Cimline does not infringe, has not induced infringement, and has not contributed to infringement of any valid claims of the '375 patent and seeks a declaratory judgement to such effect.

Count IV (Sherman Act)

32. Cimline re-alleges and incorporates by reference the allegations set forth in paragraphs 1-31 of the Complaint as fully set forth herein.
33. At the time CrafcO applied to the Patent Office it knew, at minimum, of prior invention(s), modifications, inventor identity, and public use information that it also knew or should have known was material.
34. The failure to disclose the material information was a substantial cause of the issuance of patent '375.
35. The failure to make the required disclosures was intentional and/or grossly negligent
36. CrafcO had a sufficient share of the relevant market to use the improperly procured patent '375 in violation of the Sherman Act (15 USC §2) and in fact did

so repeatedly through its efforts to monopolize and dominate that market by actions including, but not limited to, excluding competitors by threats of suit, claims of infringement, and including supposedly patented elements in contract requirements.

37. The activities of Crafc0 in violation of the Sherman Act have proximately caused damage to Cimline. Those damages are subject to trebling pursuant to the Clayton Act (15 U.S.C. §4).

Wherefore, Cimline prays for the following relief:

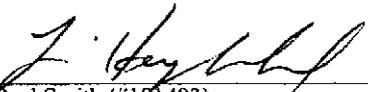
- A. A declaration that the '375 patent is invalid, unenforceable, and/or void;
- B. A declaration that Cimline does not infringe, either directly, contributorily, by inducement or otherwise, any valid claim of the '375 patent;
- C. That Crafc0 be estopped or precluded from enforcing the '375 patent;
- D. That the Court enter judgment in Cimline's favor and against Crafc0 on each and every Count in the Complaint;
- E. That Cimline be awarded its costs, fees, and expenses in this action;
- F. That Cimline be awarded its damages, including the trebling thereof; and
- G. That Cimline be awarded such other and further relief as this Court may deem just, equitable and proper.

Jury Demand

A jury trial is demanded on all issues so triable, pursuant to Rule 38 of the Federal Rules of Civil Procedure and Local Rule 38.1 of the United States District Court for the District of Minnesota.

Dated: September 17, 2007

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