

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

DUESENFELD GMBH,	)	
	)	
Plaintiff,	)	
	)	C.A. No. 23-1194-RGA
v.	)	
	)	JURY TRIAL DEMANDED
ASCEND ELEMENTS, INC.,	)	
	)	
Defendant.	)	

**DEFENDANT ASCEND ELEMENTS, INC.'S
ANSWER, AFFIRMATIVE DEFENSES, AND COUNTERCLAIMS**

Defendant Ascend Elements, Inc. ("Ascend"), by and through its undersigned counsel, hereby answers and responds to each of the allegations of Plaintiff Duesenfeld GmbH ("Duesenfeld" or "Plaintiff") in its Complaint dated October 20, 2023 (the "Complaint") (D.I. 1) as follows:

ANSWER

NATURE OF THE ACTION

1. Ascend denies that Duesenfeld is a pioneer in the field of recycling lithium-ion batteries from electric vehicles. Ascend lacks knowledge or information sufficient to form a belief as to the remaining allegations of paragraph 1 of the Complaint, and on that basis denies them.

2. To the extent that the allegations of paragraph 2 of the Complaint incorporate legal conclusions regarding the scope, validity, or enforceability of U.S. Patent No. 11,050,097 ("the '097 patent"), they do not require a response. To the extent that any response to such allegations is required, Ascend denies those allegations. Ascend lacks knowledge or information

sufficient to form a belief as to the remaining allegations of paragraph 2 of the Complaint, and on that basis denies them.

3. To the extent that the allegations of paragraph 3 of the Complaint incorporate legal conclusions regarding the scope, validity, or enforceability of the '097 Patent, they do not require a response. To the extent that any response to such allegations is required, Ascend denies those allegations. Ascend lacks knowledge or information sufficient to form a belief as to the remaining allegations of paragraph 3 of the Complaint, and on that basis denies them.

4. Ascend admits that Exhibit 1 to the Complaint purports to include a copy of the '097 Patent, which lists Christian Hanisch as an inventor. Ascend denies that the '097 Patent was issued "[i]n recognition of the groundbreaking nature of [any] invention." Ascend lacks knowledge or information sufficient to form a belief as to the remaining allegations of paragraph 4 of the Complaint, and on that basis denies them.

5. Ascend denies that the '097 Patent is valid and enforceable. Ascend lacks knowledge or information sufficient to form a belief as to the remaining allegations of paragraph 5 of the Complaint, and on that basis denies them.

6. Ascend admits that it is a company incorporated in the State of Delaware. Ascend denies that the '097 Patent is valid and enforceable. Because paragraph 6 of the Complaint fails to identify specific statements, Ascend lacks knowledge or information sufficient to form a belief as to the allegations of the third sentence of paragraph 6 of the Complaint, and on that basis denies them. The remaining allegations of paragraph 6 of the Complaint are legal conclusions to which no response is required. To the extent that any response to such allegations may be deemed required, Ascend denies such allegations.

7. Ascend denies the final sentence of paragraph 7 of the Complaint. Ascend denies that it is using Duesenfeld's patented technology. Ascend denies that the '097 Patent is valid and enforceable. Ascend admits that it has purchased certain equipment from URT Umwelt-und Recyclingtechnik GmbH. Ascend lacks knowledge or information sufficient to form a belief as to the remaining allegations of paragraph 7 of the Complaint, and on that basis denies them.

8. Ascend denies that it has engaged in any unauthorized use of Duesenfeld's patented technology, or that Duesenfeld is entitled to relief of any kind.

THE PARTIES

9. To the extent that the second sentence of paragraph 9 of the Complaint incorporates legal conclusions regarding the scope, validity, or enforceability of the '097 Patent, it does not require a response. To the extent that any response to such allegations is required, Ascend denies those allegations. Ascend lacks knowledge or information sufficient to form a belief as to the remaining allegations of paragraph 9 of the Complaint, and on that basis denies them.

10. Ascend admits the first three sentences of paragraph 10 of the Complaint. Ascend admits that it maintains a place of business at 133 Flanders Road, Westborough, MA 01581. Ascend denies the final sentence of paragraph 10 of the Complaint.

JURISDICTION AND VENUE

11. Ascend admits that the Complaint purports to raise claims brought under the Patent Laws of the United States. The remaining allegations of paragraph 11 of the Complaint are legal conclusions to which no response is required.

12. Ascend admits that it is incorporated in the State of Delaware. The remaining allegations of paragraph 12 of the Complaint are legal conclusions to which no response is

required. To the extent that any response to such allegations may be deemed required, Ascend denies the allegations of paragraph 12 of the Complaint.

13. The allegations of paragraph 13 of the Complaint are legal conclusions to which no response is required.

DUESENFELD'S DESCRIPTION OF ITS ALLEGED TECHNOLOGY

14. To the extent that the first sentence of paragraph 14 of the Complaint incorporates legal conclusions regarding the scope, validity, or enforceability of the '097 Patent, it does not require a response. To the extent that any response to such allegations is required, Ascend denies those allegations. Ascend lacks knowledge or information sufficient to form a belief as to the remaining allegations of paragraph 14 of the Complaint, and on that basis denies them.

15. Ascend lacks knowledge or information sufficient to form a belief as to the allegations of paragraph 15 of the Complaint, and on that basis denies them.

16. Ascend lacks knowledge or information sufficient to form a belief as to the allegations of paragraph 16 of the Complaint, and on that basis denies them.

17. To the extent that the allegations of paragraph 17 of the Complaint incorporate legal conclusions regarding the scope, validity, or enforceability of the '097 Patent, they do not require a response. To the extent that any response to such allegations is required, Ascend denies those allegations. Ascend lacks knowledge or information sufficient to form a belief as to the remaining allegations of paragraph 17 of the Complaint, and on that basis denies them.

18. Ascend lacks knowledge or information sufficient to form a belief as to the allegations of paragraph 18 of the Complaint, and on that basis denies them.

19. To the extent that the allegations of paragraph 19 of the Complaint incorporate legal conclusions regarding the scope, validity, or enforceability of the '097 Patent, no response is required to those allegations. To the extent that any response to such allegations may be deemed required, Ascend denies such allegations. Ascend lacks knowledge or information sufficient to form a belief as to the remaining allegations of paragraph 19 of the Complaint, and on that basis denies them.

20. Ascend lacks the knowledge or information sufficient to form a belief as to the allegations of paragraph 20 of the Complaint, and on that basis denies them.

21. Ascend lacks knowledge or information sufficient to form a belief as to the allegations of paragraph 21 of the Complaint, and on that basis denies them.

22. Ascend lacks knowledge or information sufficient to form a belief as to the allegations of paragraph 22 of the Complaint, and on that basis denies them.

23. Ascend denies that the U.S. Patent and Trademark Office issued the '097 Patent "[i]n recognition of the novelty of [any] invention." Ascend denies that the '097 Patent is valid and enforceable. Ascend admits that paragraph 23 of the Complaint purports to reproduce the language of Claim 1 of the '097 Patent. Ascend lacks knowledge or information sufficient to form a belief as to the remaining allegations of paragraph 23 of the Complaint, and on that basis denies them.

24. Ascend denies the allegations of the first sentence of paragraph 24 of the Complaint. The remaining allegations of paragraph 24 of the Complaint are legal conclusions to which no response is required. To the extent that any response to such allegations may be deemed required, Ascend denies the remaining allegations of paragraph 24 of the Complaint.

DUESENFELD GMBH

25. Ascend lacks knowledge or information sufficient to form a belief as to the allegations of paragraph 25 of the Complaint, and on that basis denies them.

26. Ascend denies that Duesenfeld is a leader in the research and development of improved techniques for electric vehicle battery recycling. Ascend lacks knowledge or information sufficient to form a belief as to the remaining allegations of paragraph 26 of the Complaint, and on that basis denies them.

27. To the extent that the allegations of paragraph 27 of the Complaint incorporate legal conclusions regarding the scope, validity, or enforceability of the '097 Patent, no response is required to those allegations. To the extent that any response to such allegations may be deemed required, Ascend denies such allegations. Ascend lacks knowledge or information sufficient to form a belief as to the remaining allegations of paragraph 27 of the Complaint, and on that basis denies them.

28. Ascend lacks knowledge or information sufficient to form a belief as to the allegations of paragraph 28 of the Complaint, and on that basis denies them.

29. Ascend lacks knowledge or information sufficient to form a belief as to the allegations of paragraph 29 of the Complaint, and on that basis denies them.

URT UMWELT-UND RECYCLINGTECHNIK GMBH

30. Ascend lacks knowledge or information sufficient to form a belief as to the allegations of paragraph 30 of the Complaint, and on that basis denies them.

31. Ascend lacks knowledge or information sufficient to form a belief as to the allegations of paragraph 31 of the Complaint, and on that basis denies them.

32. Ascend lacks knowledge or information sufficient to form a belief as to the allegations of paragraph 32 of the Complaint, and on that basis denies them.

33. Ascend lacks knowledge or information sufficient to form a belief as to the allegations of paragraph 33 of the Complaint, and on that basis denies them.

34. Ascend lacks knowledge or information sufficient to form a belief as to the allegations of paragraph 34 of the Complaint, and on that basis denies them.

DUESENFELD'S ALLEGED COMMUNICATIONS WITH ASCEND

35. Ascend admits that it is a company incorporated in the State of Delaware. Ascend denies the remaining allegations of paragraph 35 of the Complaint.

36. Because paragraph 36 of the Complaint fails to identify specific statements, Ascend lacks knowledge or information sufficient to form a belief as to the allegations of the first sentence of paragraph 36 of the Complaint, and on that basis denies them. Ascend denies the allegations of the final sentence of paragraph 36 of the Complaint.

37. Ascend admits that it has engaged in certain communications with Duesenfeld. Because paragraph 37 of the Complaint fails to identify specific statements, Ascend lacks knowledge or information sufficient to form a belief as to the allegations of paragraph 37 of the Complaint, and on that basis denies them. To the extent that the allegations of paragraph 37 of the Complaint incorporate legal conclusions regarding the scope, validity, or enforceability of the '097 Patent those allegations do not require a response. To the extent that any response to such allegations is required, Ascend denies those allegations.

38. Ascend admits that it has engaged in certain communications with Duesenfeld. Because paragraph 38 of the Complaint fails to identify specific statements, Ascend lacks knowledge or information sufficient to form a belief as to the allegations of paragraph 38 of the

Complaint, and on that basis denies them. To the extent that the allegations of paragraph 38 of the Complaint incorporate legal conclusions regarding the scope, validity, or enforceability of the '097 Patent those allegations do not require a response. To the extent that any response to such allegations is required, Ascend denies those allegations.

ASCEND'S ALLEGED GEORGIA BATTERY RECYCLING PLANT

39. Ascend admits that statements relating to the operations of its facility located in Covington, Georgia can be found at a website accessible at <https://ascendelements.com/ascend-elements-base-1-grand-opening/> as of the date of this Answer. Ascend states that the contents of that website speak for themselves.

40. Ascend admits that the URL <https://www.youtube.com/watch?v=jxIIU41DuCU> purports to provide a video published by Canary Media, which purports to depict Ascend's Covington Plant. Except as expressly admitted, Ascend denies the allegations of paragraph 40 of the Complaint.

41. Ascend lacks knowledge or information sufficient to form a belief as to the allegations of paragraph 41 of the Complaint, and on that basis denies them.

42. Ascend lacks knowledge or information sufficient to form a belief as to the allegations of paragraph 42 of the Complaint, and on that basis denies them.

43. Ascend lacks knowledge or information sufficient to form a belief as to the allegations of paragraph 43 of the Complaint, and on that basis denies them.

44. Ascend lacks knowledge or information sufficient to form a belief as to the allegations of paragraph 44 of the Complaint, and on that basis denies them.

45. Ascend lacks knowledge or information sufficient to form a belief as to the allegations of paragraph 45 of the Complaint, and on that basis denies them.

46. Ascend lacks knowledge or information sufficient to form a belief as to the allegations of paragraph 46 of the Complaint, and on that basis denies them.

47. Ascend lacks knowledge or information sufficient to form a belief as to the allegations of paragraph 47 of the Complaint, and on that basis denies them.

48. Ascend lacks knowledge or information sufficient to form a belief as to the allegations of paragraph 48 of the Complaint, and on that basis denies them.

49. Ascend admits that Exhibit 2 to the Complaint purports to be an article dated August 9, 2023 from a publication titled Recycling International. Ascend states that the contents of Exhibit 2 to the Complaint speak for themselves.

50. Ascend admits that Exhibit 2 to the Complaint includes the language "eight projects on four different continents" and "One plant has already been commissioned in Georgia, USA." Ascend states that the contents of Exhibit 2 to the Complaint speak for themselves.

51. Ascend admits that Exhibit 2 to the Complaint includes the language quoted in paragraph 51 of the Complaint. Ascend states that the contents of Exhibit 2 to the Complaint speak for themselves.

52. Ascend lacks knowledge or information sufficient to form a belief as to the allegations of paragraph 52 of the Complaint, and on that basis denies them.

ASCEND'S ALLEGED INFRINGEMENT

53. Ascend denies the allegations of paragraph 53 of the Complaint.

54. The allegations of paragraph 54 of the Complaint are legal conclusions to which no response is required. To the extent that any response to such allegations is required, Ascend denies those allegations.

55. The allegations of the first sentence of paragraph 55 of the Complaint are legal conclusions to which no response is required. To the extent that any response to such allegations is required, Ascend denies those allegations. Ascend denies the allegations of the second sentence of paragraph 55 of the Complaint.

56. The allegations of paragraph 56 of the Complaint are legal conclusions to which no response is required. To the extent that any response to such allegations is required, Ascend denies those allegations.

57. The allegations of paragraph 57 of the Complaint are legal conclusions to which no response is required. To the extent that any response to such allegations is required, Ascend denies those allegations.

58. The allegations of paragraph 58 of the Complaint are legal conclusions to which no response is required. To the extent that any response to such allegations is required, Ascend denies those allegations.

59. Ascend lacks knowledge or information sufficient to form a belief as to the allegations of paragraph 59 of the Complaint, and on that basis denies them.

60. The allegations of paragraph 60 of the Complaint are legal conclusions to which no response is required. To the extent that any response to such allegations is required, Ascend denies those allegations.

61. The allegations of paragraph 61 of the Complaint are legal conclusions to which no response is required. To the extent that any response to such allegations is required, Ascend denies those allegations.

COUNT I
ALLEGED INFRINGEMENT OF THE '097 PATENT

62. Ascend incorporates by reference its responses to the allegations of paragraphs 1 through 61 as though fully set forth herein.

63. The allegations of paragraph 63 of the Complaint are legal conclusions to which no response is required. To the extent that any response to such allegations is required, Ascend denies those allegations.

64. Ascend denies the allegations of paragraph 64 of the Complaint.

65. Ascend denies the allegations of paragraph 65 of the Complaint.

GENERAL DENIAL

Except as specifically admitted herein, Ascend denies the remaining allegations in the Complaint.

RESPONSE TO PLAINTIFF'S PRAYER FOR RELIEF

Ascend denies that Plaintiff is entitled to any relief whatsoever in this Action, either as requested in the Complaint or otherwise.

ASCEND'S AFFIRMATIVE DEFENSES

Under Federal Rule of Civil Procedure 8(c), and without altering any applicable burdens of proof, Ascend asserts the following defenses to the Complaint and reserves the right to assert additional defenses.

First Affirmative Defense
(Failure to State a Claim)

The Complaint fails to state a claim upon which relief can be granted.

Second Affirmative Defense
(Patent Invalidity/Unenforceability)

Each of the claims of the '097 Patent is invalid and/or unenforceable for failing to comply with one or more of the requirements for patentability under the Patent Laws of the United States as set forth in 35 U.S.C. §§ 101 et seq., including but not limited to 35 U.S.C. §§ 101, 102, 103, 112, 116, and 282.

Third Affirmative Defense
(Prosecution History Estoppel)

Plaintiff is estopped, based on statements, representations, and admissions made in the specification of the patent applications, made during prosecution of the patent applications that led to the '097 Patent, and/or made during prosecution of related applications, from asserting that the claims of the '097 Patent are infringed by Ascend, or by Ascend's products or services, either directly, indirectly, contributorily, through the doctrine of equivalents, or otherwise.

Fourth Affirmative Defense
(Doctrine of Equivalents)

Ascend's accused methods, systems, products, and/or features operate and/or are configured in ways substantially different in principle from the purported invention(s) described in the '097 Patent, and Plaintiff cannot sustain their burden of proving otherwise.

Fifth Affirmative Defense
(Equitable Defenses)

Plaintiff's claims are barred in whole or in part under principles of equity, including without limitation waiver, estoppel, acquiescence, and/or unclean hands.

Sixth Affirmative Defense
(No Willfulness)

Ascend has not engaged in any conduct that constitutes willful infringement or that would otherwise entitle Plaintiff to an award of enhanced damages under 35 U.S.C. § 284. Ascend does

not, did not, and could not believe that it infringes any valid and enforceable claim of the '097 Patent either literally or under the doctrine of equivalents.

Seventh Affirmative Defense
(No Damages)

Plaintiff's claims are barred, in whole or in part, because Ascend has not caused Plaintiff any damages and Plaintiff have suffered no damages, or, if Plaintiff did suffer any injury or damages, which is expressly denied, then said injury or damages resulted from Plaintiff's own acts and/or omissions.

Eighth Affirmative Defense
(Limitation on Damages)

Plaintiff is barred or limited in recovery, in whole or in part, by failing to meet the requirements of 35 U.S.C. §§ 287 and/or 288. For example, Plaintiff is barred or limited in recovery, in whole or in part, by failing to meet the requirements of 35 U.S.C. § 287(a) due to Plaintiff's and Plaintiff's licensees' failure to mark products embodying the '097 Patent.

Ninth Affirmative Defense
(No Exceptional Case)

Plaintiff cannot prove that this is an exceptional case justifying an award of attorneys' fees against Ascend pursuant to 35 U.S.C. § 285.

Tenth Affirmative Defense
(No Injunctive Relief)

Plaintiff is not entitled to injunctive relief because any alleged injury to Plaintiff is not immediate or irreparable, Plaintiff would have an adequate remedy at law if it could establish liability, and/or public policy concerns would weigh against any injunctive relief.

Additional Defenses

Ascend's investigation of its defenses is ongoing, and Ascend expressly reserves the right to allege and assert any additional defenses under Rule 8 of the Federal Rules of Civil Procedure,

the Patent Laws of the United States, and any other defense, at law or in equity, that may now exist or may in the future be available based upon discovery and further investigation in this case.

ASCEND'S PRAYER FOR RELIEF

WHEREFORE, Ascend requests the following judgments and relief against Plaintiff:

- a. a judgment in favor of Ascend, and against Plaintiff, on all of Plaintiff's claims against Ascend, with Plaintiff being awarded no relief of any kind, including but not limited to their request for damages and injunctive relief;
- b. an order that the '097 Patent is invalid;
- c. an order finding that this is an exceptional case and awarding Ascend its costs, expenses, disbursements, and reasonable attorneys' fees in defending against Plaintiff's claims under 35 U.S.C. § 285 and all other applicable statutes, rules, and common law; and
- d. such other relief, in law or equity, as this Court deems just and proper.

JURY DEMAND

Ascend joins Plaintiff's request for a jury trial on all issues triable by jury.

ASCEND'S COUNTERCLAIMS

1. Ascend Elements, Inc. ("Ascend") brings these counterclaims against Duesenfeld GmbH ("Duesenfeld" or "Counterclaim-Defendant") for a judgment arising under the Declaratory Judgment Act, 28 U.S.C. §§ 2201 *et seq.*, and the Patent Laws of the United States, 35 U.S.C. §§ 1 *et seq.*, declaring that (1) all claims of U.S. Patent No. 11,050,097 ("the '097 patent") are not infringed and are invalid.

THE PARTIES

2. Ascend is a Delaware corporation with a place of business at 133 Flanders Road, Westborough, MA 01581.

3. Duesenfeld alleges in paragraph 9 of the Complaint that it is a corporation organized and existing under the laws of Germany, with its principal place of business at Rothbergstraße 8, 38176 Wendeburg, Germany.

JURIDICTION AND VENUE

4. This action arises under the Patent Laws of the United States, Title 35 of the United States Code. This Court has subject-matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1338, 2201, and 2202.

5. Personal jurisdiction and venue in this District are proper at least given Counterclaim-Defendant's claim against Ascend. Venue is also proper under 28 U.S.C. § 1391.

BACKGROUND

6. Counterclaim-Defendant has filed suit alleging that Ascend infringes and has infringed the '097 Patent.

7. Ascend has denied that it infringes or has infringed any valid claim of the '097 Patent.

8. Ascend has further contested the validity and enforceability of the '097 Patent.

9. Based on the foregoing, there is an actual, immediate, and justiciable controversy between Counterclaim-Defendant and Ascend as to infringement, invalidity, and unenforceability of the '097 Patent.

FIRST COUNTERCLAIM
DECLARATORY JUDGMENT OF NO INFRINGEMENT OF THE '097 PATENT

10. Ascend incorporates by reference all preceding and succeeding paragraphs of these Counterclaims and Ascend's Answer.

11. Ascend has not infringed and does not infringe any valid claim of the '097 Patent, either directly, indirectly, literally, or under the doctrine of equivalents.

12. Accordingly, Ascend is entitled to a declaration that it has not infringed and does not infringe any valid claim of the '097 Patent, either directly, indirectly, literally, or through the doctrine of equivalents.

SECOND COUNTERCLAIM
DECLARATORY JUDGMENT OF INVALIDITY OF THE '097 PATENT

13. Ascend incorporates by reference all preceding and succeeding paragraphs of these Counterclaims and Ascend's Answer.

14. The asserted claims of the '097 Patent are invalid for failure to meet the conditions of patentability, including but not limited to those set forth in 35 U.S.C. §§ 101, 102, 103, and/or 112.

15. Accordingly, Ascend is entitled to a declaration that the asserted claims of the '097 Patent are invalid under 35 U.S.C. §§ 101, 102, 103, and/or 112.

PRAYER FOR RELIEF AS TO ASCEND'S COUNTERCLAIMS

16. Ascend requests the following relief:

- a. a judgment in favor of Ascend and against Counterclaim-Defendant, on all of Ascend's claims against Counterclaim-Defendant;
- b. an order finding, declaring, and adjudging that Ascend does not infringe any valid and enforceable claim of the '097 Patent, directly, indirectly, literally, or under the doctrine of equivalents, and has never done so;

- c. an order finding, declaring, and adjudging that Ascend does not willfully infringe, and does not willfully induce infringement by others of any valid and enforceable claim of the '097 Patent, directly, indirectly, literally, or under the doctrine of equivalents, and has never done so;
- d. an order finding, declaring, and adjudging that all claims of the '097 Patent are invalid;
- e. an order finding that this is an exceptional case and awarding Ascend its respective costs, expenses, disbursements, and reasonable attorneys' fees in defending against Counterclaim-Defendant's claims under 35 U.S.C. § 285 and all other applicable statutes, rules, and common law;
- f. such other relief, in law or equity, as this Court deems just and proper.

DEMAND FOR JURY TRIAL AS TO ASCEND'S COUNTERCLAIMS

17. Ascend respectfully requests a jury trial on all issues so triable with respect to its Counterclaims.

Respectfully submitted,
POTTER ANDERSON & CORROON LLP

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