UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

VERMEER MANUFACTURING COMPANY, *Plaintiff*, v. KUBOTA NORTH AMERICA CORPORATION and KUBOTA TRACTOR CORPORATION, *Defendants.*	Civil Action No. 4:24-cv-00799-P

DEFENDANTS KUBOTA NORTH AMERICA CORPORATION'S AND KUBOTA TRACTOR CORPORATION'S AMENDED ANSWER AND AFFIRMATIVE DEFENSES TO PLAINTIFF'S FIRST AMENDED COMPLAINT

Kubota North America Corporation and Kubota Tractor Corporation ("Kubota") submit their Amended Answer and Affirmative Defenses to Plaintiff Vermeer Manufacturing Company's ("Plaintiff" or "Vermeer") First Amended Complaint (the "Amended Complaint"). (ECF No. 29.) Except as otherwise expressly admitted in this Answer, Kubota denies each and every allegation in the Amended Complaint.

ANSWER

Nature of the Action

1. To the extent Paragraph 1 calls for a legal conclusion, no response is required. To the extent a response is required, Kubota lacks knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 1 of the Amended Complaint, and therefore denies those allegations.

Parties

2. Kubota lacks knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 2 of the Amended Complaint, and therefore denies those allegations.

3. Kubota admits that Kubota North America Corporation is a Delaware corporation with its principal place of business at 1000 Kubota Drive, Grapevine, Texas 76051.

4. Kubota admits that Kubota Tractor Corporation is a California corporation with its principal place of business at 1000 Kubota Drive, Grapevine, Texas 76051.

Jurisdiction and Venue

5. Kubota admits that this Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a). Kubota denies any remaining allegations in Paragraph 5 of the Amended Complaint.

6. For the purposes of this action only, Kubota does not contest that the Northern District of Texas has personal jurisdiction over Kubota North America Corporation but denies that it committed acts of patent infringement in Texas or elsewhere. Kubota denies any remaining allegations in Paragraph 6 of the Amended Complaint.

7. For the purposes of this action only, Kubota does not contest that the Northern District of Texas has personal jurisdiction over Kubota Tractor Corporation but denies that it committed acts of patent infringement in Texas or elsewhere. Kubota denies any remaining allegations in Paragraph 7 of the Amended Complaint.

8. For the purposes of this action only, Kubota does not contest that venue is proper in this District but denies that it has committed acts of infringement in this District or elsewhere. Kubota denies any remaining allegations in Paragraph 8 of the Amended Complaint.

Patents-in-Suit

9. Kubota admits that U.S. Patent No. 9,321,386 (the "'386 Patent") is entitled "Low Profile Compact Tool Carriers" and that a copy of the '386 Patent and an *Ex Parte* Reexamination Certificate for the '386 Patent are attached to the Amended Complaint as Exhibit A. To the extent Paragraph 9 calls for a legal conclusion, no response is required. To the extent a further response is required, Kubota lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations in Paragraph 9 of the Amended Complaint, and therefore denies those allegations.

10. Kubota admits that U.S. Patent No. 9,975,750 (the "'750 Patent") is entitled "Low Profile Compact Tool Carriers" and that a copy of the '750 Patent and an *Ex Parte* Reexamination Certificate for the '750 Patent are attached to the Amended Complaint as Exhibit B. To the extent Paragraph 10 calls for a legal conclusion, no response is required. To the extent a further response is required, Kubota lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations in Paragraph 10 of the Amended Complaint, and therefore denies those allegations.

11. Kubota admits that U.S. Patent No. 10,202,266 (the "'266 Patent") is entitled "Low Profile Compact Tool Carriers" and that a copy of the '266 Patent and an *Ex Parte* Reexamination Certificate for the '266 Patent are attached to the Amended Complaint as Exhibit C. To the extent Paragraph 11 calls for a legal conclusion, no response is required. To the extent a further response is required, Kubota lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations in Paragraph 11 of the Amended Complaint, and therefore denies those allegations.

12. Kubota admits that U.S. Patent No. 11,465,891 (the "'891 Patent") is entitled "Loader Apparatus Configured for Standing Operator Control" and that a copy of the '891 Patent is attached to the Amended Complaint as Exhibit D. To the extent Paragraph 12 calls for a legal conclusion, no response is required. To the extent a further response is required, Kubota lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations in Paragraph 12 of the Amended Complaint, and therefore denies those allegations.

13. Kubota admits that U.S. Patent No. 12,098,063 (the "'063 Patent") is entitled "Compact Tool Carrier and Mainframes for a Self-Propelled Machine" and that a copy of the '063 Patent is attached to the Amended Complaint as Exhibit E. To the extent Paragraph 13 calls for a legal conclusion, no response is required. To the extent a further response is required, Kubota lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations in Paragraph 13 of the Amended Complaint, and therefore denies those allegations.

14. To the extent Paragraph 14 calls for a legal conclusion, no response is required. To the extent a response is required, Kubota lacks knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 14 of the Amended Complaint, and therefore denies those allegations.

15. To the extent Paragraph 15 calls for a legal conclusion, no response is required. To the extent a response is required, Kubota lacks knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 15 of the Amended Complaint, and therefore denies those allegations.

Infringement of the Asserted Patents

16. Kubota denies the allegations in paragraph 16 of the Amended Complaint.

17. Kubota admits that Vermeer provided Kubota with certain claim charts on May 15, 2023. To the extent Paragraph 17 calls for a legal conclusion, no response is required. Kubota denies any remaining allegations in Paragraph 17 of the Amended Complaint.

18. Kubota admits that Vermeer filed its original Complaint (ECF No. 1) and the Amended Complaint (ECF No. 29) with this Court. To the extent Paragraph 18 calls for a legal conclusion, no response is required. To the extent a response is required, Kubota lacks knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 18 of the Amended Complaint, and therefore denies those allegations.

19. Kubota denies the allegations in paragraph 19 of the Amended Complaint.

Count I – Infringement of the '386 Patent

20. Kubota incorporates by reference and restates each and every response to the preceding paragraphs of the Amended Complaint as though fully set forth herein.

21. Kubota denies the allegations in paragraph 21 of the Amended Complaint.

22. Kubota denies the allegations in paragraph 22 of the Amended Complaint.

23. Kubota denies the allegations in paragraph 23 of the Amended Complaint.

24. Kubota denies the allegations in paragraph 24 of the Amended Complaint.

25. Kubota admits that Exhibit F to the Amended Complaint includes a claim chart. Kubota denies any remaining allegations in Paragraph 25 of the Amended Complaint.

Count II – Infringement of the '750 Patent

26. Kubota incorporates by reference and restates each and every response to the preceding paragraphs of the Amended Complaint as though fully set forth herein.

27. Kubota denies the allegations in paragraph 27 of the Amended Complaint.

28. Kubota denies the allegations in paragraph 28 of the Amended Complaint.

29. Kubota denies the allegations in paragraph 29 of the Amended Complaint.

30. Kubota denies the allegations in paragraph 30 of the Amended Complaint.

31. Kubota admits that Exhibit G to the Amended Complaint includes a claim chart. Kubota denies any remaining allegations in Paragraph 31 of the Amended Complaint.

Count III – Infringement of the '266 Patent

32. Kubota incorporates by reference and restates each and every response to the preceding paragraphs of the Amended Complaint as though fully set forth herein.

33. Kubota denies the allegations in paragraph 33 of the Amended Complaint.

34. Kubota denies the allegations in paragraph 34 of the Amended Complaint.

35. Kubota denies the allegations in paragraph 35 of the Amended Complaint.

36. Kubota denies the allegations in paragraph 36 of the Amended Complaint.

37. Kubota admits that Exhibit H to the Amended Complaint includes a claim chart. Kubota denies any remaining allegations in Paragraph 37 of the Amended Complaint.

Count IV – Infringement of the '891 Patent

38. Kubota incorporates by reference and restates each and every response to the preceding paragraphs of the Amended Complaint as though fully set forth herein.

39. Kubota denies the allegations in paragraph 39 of the Amended Complaint.

40. Kubota denies the allegations in paragraph 40 of the Amended Complaint.

41. Kubota denies the allegations in paragraph 41 of the Amended Complaint.

42. Kubota denies the allegations in paragraph 42 of the Amended Complaint.

43. Kubota admits that Exhibit I to the Amended Complaint includes a claim chart. Kubota denies any remaining allegations in Paragraph 43 of the Amended Complaint.

Count V – Infringement of the '063 Patent

44. Kubota incorporates by reference and restates each and every response to the preceding paragraphs of the Amended Complaint as though fully set forth herein.

45. Kubota denies the allegations in paragraph 45 of the Amended Complaint.

46. Kubota denies the allegations in paragraph 46 of the Amended Complaint.

47. Kubota denies the allegations in paragraph 47 of the Amended Complaint.

48. Kubota denies the allegations in paragraph 48 of the Amended Complaint.

49. Kubota admits that Exhibit J to the Amended Complaint includes a claim chart. Kubota denies any remaining allegations in Paragraph 49 of the Amended Complaint.

[RESPONSE TO] PRAYER FOR RELIEF

Kubota denies that Vermeer is entitled to any relief from Kubota, whether sought in the Prayer for Relief or otherwise. Vermeer's Prayer for Relief should, therefore, be denied in its entirety and with prejudice, including its subsections A-H, and Vermeer should take nothing from Kubota.

AFFIRMATIVE DEFENSES

Kubota asserts the following affirmative defenses to Vermeer's claims, without assuming the burden of proof when such burden would otherwise be on Vermeer.

FIRST DEFENSE

(Failure to State a Claim)

Vermeer fails to allege facts sufficient to state a claim upon which relief may be granted against Kubota.

SECOND DEFENSE

(Invalidity of the Asserted Patents)

The claims of the ’386 Patent, the ’750 Patent, the ’266 Patent, the ’891 Patent, and the ’063 Patent are invalid for failure to meet the requirements of one or more of sections of Title 35, United States Code, including but not limited to §§ 101, 102, 103, and/or 112, and/or non-statutory obviousness type double patenting.

THIRD DEFENSE

(Non-infringement)

Kubota has not infringed and does not infringe any valid and enforceable claim of the Asserted Patents, either directly or indirectly, either literally or under the doctrine of equivalents.

FOURTH DEFENSE

(Prosecution History Estoppel and Disclaimer)

Vermeer’s claims are barred in whole or in part by prosecution history estoppel and disclaimer. Vermeer is estopped, and has disclaimed claim scope, based on statements, representations, and admissions made during the prosecution before the United States Patent and Trademark Office of the patent families resulting in the Asserted Patents.

FIFTH DEFENSE

(Limitations on Damages and Costs)

Vermeer’s recovery for alleged infringement of the Asserted Patents, if any, is limited by Title 35 of the United States Code, including, without limitation, 35 U.S.C. §§ 284, 285, 286, 287, and/or 288.

SIXTH DEFENSE

(No Equitable Relief)

Vermeer is not entitled to equitable relief as it has an adequate remedy at law and cannot show that it has suffered or will suffer any immediate or irreparable harm from Kubota's actions.

SEVENTH DEFENSE

(No Exceptional Case)

Kubota has have not engaged in any conduct that would make this an exceptional case that would entitle Vermeer to an award of attorneys' fees under 35 U.S.C. § 285 or otherwise.

EIGHTH DEFENSE

(Lack of Standing)

To the extent that Vermeer lacks all substantive rights to bring suit and to exclude others from practicing the claims of any of the Asserted Patents, Vermeer's claims are barred by a lack of standing.

NINTH DEFENSE

(Preclusion/Collateral Estoppel)

Vermeer's claims are barred in whole or in part by issue preclusion/collateral estoppel, claim preclusion/res judicata, and/or the Kessler doctrine.

TENTH DEFENSE

(Lack of Knowledge)

Vermeer's claims are limited and/or barred in whole or in part because Kubota is not liable for damages for acts alleged to have been performed before Kubota received adequate notice of the Patents-in-Suit.

ELEVENTH DEFENSE

(Equitable Defenses)

Vermeer's claims are limited and/or barred in whole or in part by the doctrines of waiver, acquiescence, estoppel, patent misuse, and/or unclean hands.

RESERVATION OF DEFENSES

Kubota reserves all defenses, including affirmative defenses, under Rule 8(c) of the Federal Rules of Civil Procedure, the Patent Laws of the United States, and any other defenses at law or in equity that may exist now or that may be available in the future based on discovery and further factual investigation in this action.

PRAYER

WHEREFORE, Kubota requests that the Court:

1. Dismiss all claims asserted by Vermeer with prejudice;

2. Award Kubota its costs, expenses, and attorneys' fees incurred defending this lawsuit pursuant to 35 U.S.C. § 285; and

3. Grant Kubota such other and further relief to which it may be entitled at law or equity.

KUBOTA NORTH AMERICA CORPORATION'S COUNTERCLAIMS

Pursuant to Rule 13 of the Federal Rules of Civil Procedure, Defendant-Counterclaim Plaintiff Kubota North America Corporation ("KNA") avers and asserts these counterclaims against Plaintiff-Counterclaim Defendant Vermeer Manufacturing Company ("Vermeer") as follows:

Parties, Jurisdiction, and Venue

1. Defendant-Counterclaim Plaintiff KNA is a Delaware corporation, having its principal place of business in Grapevine, Texas.

2. On information and belief, Plaintiff-Counterclaim Defendant Vermeer Manufacturing Company is an Iowa corporation with a principal place of business at 1210 E. Vermeer Road, Pella, Iowa 50219.

3. This Court has subject matter jurisdiction over the Counterclaims pursuant to 28 U.S.C. §§ 1331 and 1338(a).

4. This Court has personal jurisdiction over Plaintiff-Counterclaim Defendant Vermeer at least because Plaintiff-Counterclaim Defendant Vermeer availed itself of the rights and privileges of this forum by bringing this civil action in this judicial district through its Complaint (ECF No. 1) and First Amended Complaint (ECF No. 29). Additionally, on information and belief, Vermeer routinely, systematically, and continuously conducts business in the State of Texas; has either directly or indirectly marketed, distributed, offered for sale, and/or sold its infringing products in the State of Texas; and has otherwise made or established contacts within the State of Texas sufficient to permit the exercise of personal jurisdiction by this Court.

5. Vermeer consented to venue in this Court by bringing its action against KNA. To the extent this Court finds venue to be proper in this judicial district for the resolution of Plaintiff's

claims, venue would also be proper pursuant to 28 U.S.C. §§ 1391 and 1400(b) to resolve the Counterclaims of KNA.

Counterclaim Patents

6. On January 30, 2024, the U.S. Patent and Trademark Office duly and legally issued U.S. Patent No. 11,885,095 ("the '095 Patent"), entitled "Loader with Improved Arm Path" to Jason Carlson, John Relph, Matthew Shobe, and Jeff Welsh. A copy of the '095 Patent is attached as Exhibit A. The '095 Patent is valid and enforceable.

7. On June 4, 2024, the U.S. Patent and Trademark Office duly and legally issued U.S. Patent No. 12,000,107 ("the '107 Patent"), entitled "Loader with Improved Arm Path" to Jason Carlson, John Relph, Matthew Shobe, and Jeff Welsh. A copy of the '107 Patent is attached as Exhibit B. The '107 Patent is valid and enforceable.

8. On October 22, 2024, the U.S. Patent and Trademark Office duly and legally issued U.S. Patent No. 12,123,161 ("the '161 Patent"), entitled "Loader with Improved Arm Path" to Jason Carlson, John Relph, Matthew Shobe, and Jeff Welsh. A copy of the '161 Patent is attached as Exhibit C. The '161 Patent is valid and enforceable.

9. Collectively, the '095 Patent, the '107 Patent, and the '161 Patent are referred to herein as the Counterclaim Patents.

10. KNA is the owner by assignment of all right, title, and interest in the Counterclaim Patents.

Background

11. Vermeer makes, uses, offers to sell, sells, and/or imports into the United States mini skid steers (the "Accused Vermeer Products"), including at least Vermeer's CTX160 Mini Skid Steer (the "CTX160") (the "Exemplary Vermeer Product").

12. Vermeer has had knowledge of the Counterclaim Patents since at least the filing date of these Counterclaims.

Count I: Infringement of the '095 Patent

13. KNA realleges and incorporates by reference herein the allegations in each of the preceding paragraphs as if fully set forth herein.

14. The '095 Patent is a valid, enforceable patent duly issued by the U.S. Patent and Trademark Office on January 30, 2024.

15. KNA is the assignee of the '095 Patent with ownership of all substantial rights in the '095 Patent, including the right to exclude others and to enforce, sue, and recover damages for past and future infringements.

16. Vermeer has infringed and continues to directly infringe, literally or under the doctrine of equivalents, one or more claims of the '095 Patent including at least claim 17 in violation of 35 U.S.C. § 271(a) by, for example, making, using, offering to sell, selling, and/or importing the Accused Vermeer Products, including at least the Exemplary Vermeer Product.

17. A detailed analysis of Vermeer's infringement of the '095 Patent is provided in Exhibit D, which is incorporated by reference herein in its entirety as if set forth herein.

18. Vermeer has actively induced others to infringe at least claim 17 of the '095 Patent in violation of 35 U.S.C. § 271(b) by instructing others to make, use, sell, offer to sell, and/or import into the United States the Accused Vermeer Products.

19. Vermeer has also contributed, and continues to contribute, to its customers' and end users' direct infringement of the '095 Patent in violation of 35 U.S.C. § 271(c) by offering for sale and providing the Accused Vermeer Products to its customers and end-users, as well as by distributing product literature and website materials inducing its customers, end users, and others

to use the Accused Vermeer Products in a manner that infringes one or more claims of the ’095 Patent.

20. KNA has suffered and continues to suffer economic harm because of Vermeer’s infringing activities in an amount to be proven at trial, but in no case less than a reasonably royalty.

21. Vermeer has caused, and unless restrained and enjoined, will continue to cause, irreparable injury and damage to KNA for which there is no adequate remedy at law. Unless enjoined by this Court, DePuy will continue to infringe the ’095 Patent.

Count II: Infringement of the ’107 Patent

22. KNA realleges and incorporates by reference herein the allegations in each of the preceding paragraphs as if fully set forth herein.

23. The ’107 Patent is a valid, enforceable patent duly issued by the U.S. Patent and Trademark Office on June 4, 2024.

24. KNA is the assignee of the ’107 Patent with ownership of all substantial rights in the ’107 Patent, including the right to exclude others and to enforce, sue, and recover damages for past and future infringements.

25. Vermeer has infringed and continues to directly infringe, literally or under the doctrine of equivalents, one or more claims of the ’107 Patent including at least claim 1 in violation of 35 U.S.C. § 271(a) by, for example, making, using, offering to sell, selling, and/or importing the Accused Vermeer Products, including at least the Exemplary Vermeer Product.

26. A detailed analysis of Vermeer’s infringement of the ’107 Patent is provided in Exhibit E, which is incorporated by reference herein in its entirety as if set forth herein.

27. Vermeer has actively induced others to infringe at least claim 1 of the ’107 Patent in violation of 35 U.S.C. § 271(b) by instructing others to make, use, sell, offer to sell, and/or import into the United States the Accused Vermeer Products.

28. Vermeer has also contributed, and continues to contribute, to its customers’ and end users’ direct infringement of the ’107 Patent in violation of 35 U.S.C. § 271(c) by offering for sale and providing the Accused Vermeer Products to its customers and end-users, as well as by distributing product literature and website materials inducing its customers, end users, and others to use the Accused Vermeer Products in a manner that infringes one or more claims of the ’107 Patent.

29. KNA has suffered and continues to suffer economic harm because of Vermeer’s infringing activities in an amount to be proven at trial, but in no case less than a reasonably royalty.

30. Vermeer has caused, and unless restrained and enjoined, will continue to cause, irreparable injury and damage to KNA for which there is no adequate remedy at law. Unless enjoined by this Court, DePuy will continue to infringe the ’107 Patent.

Count III: Infringement of the ’161 Patent

31. KNA realleges and incorporates by reference herein the allegations in each of the preceding paragraphs as if fully set forth herein.

32. The ’161 Patent is a valid, enforceable patent duly issued by the U.S. Patent and Trademark Office on October 22, 2024.

33. KNA is the assignee of the ’161 Patent with ownership of all substantial rights in the ’161 Patent, including the right to exclude others and to enforce, sue, and recover damages for past and future infringements.

34. Vermeer has infringed and continues to directly infringe, literally or under the doctrine of equivalents, one or more claims of the '161 Patent including at least claim 13 in violation of 35 U.S.C. § 271(a) by, for example, making, using, offering to sell, selling, and/or importing the Accused Vermeer Products, including at least the Exemplary Vermeer Product.

35. A detailed analysis of Vermeer's infringement of the '161 Patent is provided in Exhibit F, which is incorporated by reference herein in its entirety as if set forth herein.

36. Vermeer has actively induced others to infringe at least claim 13 of the '161 Patent in violation of 35 U.S.C. § 271(b) by instructing others to make, use, sell, offer to sell, and/or import into the United States the Accused Vermeer Products.

37. Vermeer has also contributed, and continues to contribute, to its customers' and end users' direct infringement of the '161 Patent in violation of 35 U.S.C. § 271(c) by offering for sale and providing the Accused Vermeer Products to its customers and end-users, as well as by distributing product literature and website materials inducing its customers, end users, and others to use the Accused Vermeer Products in a manner that infringes one or more claims of the '161 Patent.

38. KNA has suffered and continues to suffer economic harm because of Vermeer's infringing activities in an amount to be proven at trial, but in no case less than a reasonably royalty.

39. Vermeer has caused, and unless restrained and enjoined, will continue to cause, irreparable injury and damage to KNA for which there is no adequate remedy at law. Unless enjoined by this Court, DePuy will continue to infringe the '161 Patent.

PRAYER FOR RELIEF

WHEREFORE, Defendant-Counterclaim Plaintiff KNA respectfully requests that the Court grant the following relief and judgment:

1. Entry of judgment holding Plaintiff-Counterclaim Defendant Vermeer takes nothing by way of its Complaint and that the Complaint be dismissed with prejudice;

2. Denial of all damages, costs, expenses, attorneys' fees, pre- and/or post-judgment interest, and other relief sought by Vermeer;

3. Entry of judgment holding Vermeer liable for infringement of the Counterclaim Patents;

4. An order permanently enjoining Vermeer, its officers, agents, servants, employees, attorneys, and affiliated companies, its assigns and successors in interest, and those persons in active concert or participation with Vermeer, from continued acts of infringement of the Counterclaim Patents;

5. An order awarding Vermeer statutory damages and damages according to proof resulting from Vermeer's past, current, and future infringement of the Counterclaim Patents, in an amount sufficient to compensate KNA for the harm caused by Vermeer's infringement, not less than a reasonable royalty for the use made of the invention, together with pre- and post-judgment interest pursuant to 35 U.S.C. § 284;

6. Enter judgment that Vermeer's infringement of the Counterclaim Patents has been willful;

7. A declaration that this case is exceptional under 35 U.S.C. § 285, and an award of Vermeer's reasonable attorneys' fees; and

8. Any and all other legal and/or equitable relief as may be available under law and which the Court may deem just and proper.

JURY TRIAL DEMANDED

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Kubota respectfully demands

a jury trial on all claims and issues so triable by right.

DATED: January 6, 2025

By: */s/ John R. Emerson*

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this day, a true and correct copy of the foregoing document was served by filing the same via the Court's CM/ECF system, which will provide notice of the filing of same to all counsel of record.

Date: January 6, 2025

/s/ Brian Singleterry
Brian Singleterry