IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS

KERR MACHINE CO., PLAINTIFF, V. SPM OIL & GAS INC. AND S.P.M FLOW CONTROL, INC. Defendant.	C.A. No.: 4:21-cv-1191 JURY TRIAL DEMANDED

ORIGINAL COMPLAINT

Plaintiff Kerr Machine Co. ("Kerr") files this Complaint against Defendants SPM Oil & Gas Inc. and S.P.M Flow Control, Inc. ("SPM"). Kerr seeks a declaration of noninfringement under the Declaratory Judgment Act regarding United States Patent Numbers 10,663,071 (the "'071 Patent"), 9,879,659 (the "'659 Patent"), and 10,520,037 (the "'037 Patent").

Nature Of Action

1. This is an action arising under the Declaratory Judgment Act, 28 U.S.C. §§ 2201 *et seq*., and the patent laws of the United States, Title 35 of the United States Code, seeking a declaratory judgment of non-infringement of all claims of United States Patent Numbers 10,663,071 (the "'071 Patent"), 9,879,659 (the "'659 Patent"), and 10,520,037 (the "'037 Patent").

Jurisdiction And Venue

2. This action arises under the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, and 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, 1338(a), 2201 and 2202.

3. This Court has personal jurisdiction over Defendants because, *inter alia*, they are

KERR MACHINE COMPANY
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incorporated in Texas.

4. Venue is proper in this District because, *inter alia*, Defendants reside in this District. *See* 28 U.S.C. § 1391(b)(1); *see also* 28 U.S.C. § 1400(b).

5. An actual case or controversy exists between the parties and is currently ripe for adjudication. SPM has sent cease and desist letters to Kerr threatening legal action. The letters assert that Kerr's production and sale of its Super Seat product and products containing a particular skid assembly infringe multiple patents held by SPM. SPM has demanded that Kerr immediately cease and desist from producing or selling the accused products and provide an accounting of all prior sales.

6. Kerr's products do not infringe the asserted patents.

7. SPM's demands and the underlying assertions of patent infringement threaten injury to Kerr, have created a reasonable apprehension of litigation, and have placed a cloud over Kerr's rights to continue producing and selling its Super Seat product and products containing the accused skid assembly "feet."

The Parties

8. Plaintiff Kerr Machine Co. is a corporation organized and existing under the laws of Oklahoma, with its principal place of business at 2214 West 14th Street, Sulphur, Oklahoma 73086.

9. Defendant SPM Oil & Gas Inc. is a corporation organized and existing under the laws of Texas and has its principal place of business in Fort Worth, Texas.

10. Defendant S.P.M Flow Control, Inc. is a corporation organized and existing under the laws of Texas and has its principal place of business in Fort Worth, Texas.

Background

11. Kerr Machine Company is an Oklahoma-based oil field supply company and a leading manufacturer of high-pressure piston and plunger pumps since 1946. Kerr has developed a significant market share through a strong commitment to innovation, which in turn has allowed Kerr to offer better products with increased operating hours at lower prices compared to its competitors, including SPM. These innovative products include Kerr's EF5 pump containing, among other features, a stepped stay rod design and Kerr's F1X fluid end containing, among other features, the wear-transferring Super Seal design and the long-lasting Super Seat valve seat.

12. Hydraulic fracturing pumps generally consist of a fluid end and a power end. In a typical fluid end, there are two internal conduits, which are usually in a "valve-over valve" design. The bores are at right angles to one another, and each passes completely through the housing from one side to the other. The vertical conduit is called the "discharge bore," though fluid enters the bottom of the discharge bore. Horizontally, there are the "plunger" and "suction" bores.

13. The power end moves fluid through the fluid end by way of a reciprocating plunger. Valve assemblies are included in the vertical or discharge bore of the "valve" over "valve" design and control the movement of fluid through the fluid end. On the suction or back stroke, the plunger retracts and an intake valve opens, allowing fluid to enter an internal chamber from an intake manifold. On the discharge or forward stroke, the plunger pushes forward, causing the intake valve to close and pushing the fluid in the internal chamber out through the discharge valve, which opens. The fluid exits the pump housing from a fluid outlet in communication with the discharge bore. The valve assemblies each include a valve body positioned above a valve seat. The valve assemblies close as the valve body comes into contact with the valve seat and open as the valve body separates from the valve seat.

14. Kerr developed its "Super Seat" valve seat product after recognizing valve seats are exposed to significant wear from the continual contact with the valve body. Kerr began experimenting with valve seats made entirely out of tungsten carbide, which could better withstand contact from the valve body and fluid abrasives. Kerr then developed a seat design containing a tapered tungsten carbide insert with a unique assembly design, reducing the overall cost of the valve seat while maintaining improved wear resistance. The Super Seat product has been well-received by the market.

SPM'S Threats Against Kerr

15. On August 11, 2021, SPM through its attorneys at Foley & Lardner LLP, sent a letter to Kerr. The letter identified the '071 Patent and stated, "Based on our most recent review of Kerr's SUPER SEAT product, we have concluded that Kerr is infringing at least one claim of the '071 patent, by making, offering to sell, and/or selling the SUPER SEAT product. In particular, the SUPER SEAT product meets each and every limitation of at least claims 1, 11, 16, and 18 of the '071 patent, thereby resulting in infringement under Section 271 of the Patent Act."

16. SPM's letter demanded that Kerr "Cease manufacturing, using, offering to sell, and/or selling valve seats that infringe any claim of the '071 patent, including the SUPER SEAT product;" "Provide SPM with an accounting of all sales of any infringing valve seats to enable SPM to determine the full amount of gross revenues and profits derived from the use of SPM' s intellectual property;" and "Destroy any and all valve seats that infringe the '071 patent that are in Kerr's inventory and cause all distributors and resellers to do the same."

17. Further, SPM threatened the prospect of seeking "legal and equitable rights and remedies, including the right to seek injunctive relief and monetary damages."

18. On September 7, 2021, Kerr requested a claim chart to evaluate SPM's claims. Kerr

noted, "We are struggling to understand how SPM is applying the claim language of the '071 Patent to the geometry of Kerr's valve seat SPM has identified."

19. On September 13, 2021, SPM provided Kerr with a claim chart it had prepared. In response, Kerr explained it had questions about SPM's interpretation of Claim 1 of the '071 Patent, because it was clear to Kerr that it did not infringe. Kerr stated, "Claim 1 requires that the 'the valve seat body [has] an inner surface forming a fluid bore extending between a first end and a second end of the valve seat body.' As shown below, SPM identified the first and second ends of Kerr's valve seat as the outermost edges of the valve seat. Will you clarify where you contend the "inner surface" required by claim 1 begins and ends on Kerr's valve seat? Claim 1 also requires 'a seating surface extending radially from the inner surface and facing the valve member, the seating surface having a recessed area.' Will you clarify where you contend the "seating surface" begins to extend from the inner surface on Kerr's valve seat? Additionally, will you clarify where you contend the 'recessed area' begins and ends within the seating surface on Kerr's valve seat?"

20. On October 22, 2021, SPM sent a letter in response to Kerr's request for information. SPM, however, rejected Kerr's request, stating that its prior claim chart "unambiguously illustrated SPM's basis for infringement" and that "SPM is not interested in any further delays and wishes to move this matter to a quick and final resolution. Accordingly, SPM repeats its August 11, 2021 demands, including its demand that Kerr **immediately** cease manufacturing, using, offering to sell, and/or selling the infringing valve seat."

21. Not only did SPM respond to Kerr's request by refusing to explain its unreasonable interpretation of the claim language in the '071 Patent, SPM also threatened two new patents: the '659 Patent and the '037 Patent. SPM stated, "Based on our review of the Skid Assembly, we have concluded that Kerr is infringing at least one claim of each patent by making, offering to sell,

and/or selling the Skid Assembly." SPM's letter included an attachment of examples of the accused Kerr "Skid Assembly." The examples were the "feet" on Kerr's pumps, variations of which Kerr has used since the 1940s and that nearly every hydraulic fracturing pump on the market uses. SPM then made the same demands of Kerr it had made regarding the '071 Patent and again concluded by threatening the prospect of seeking "legal and equitable rights and remedies, including the right to seek injunctive relief and monetary damages."

22. Kerr has not infringed, and does not infringe, SPM's asserted patents.

23. SPM's allegations and threats provide a substantial controversy between parties having adverse legal interests, of sufficient immediacy and reality to warrant the issuance of a declaratory judgment. Without a judicial declaration that SPM's claims are false, Kerr will suffer prejudice and harm operating under a cloud of uncertainty as to whether its acts are lawful.

First Claim For Relief

(Declaratory Judgment of No Infringement of '071 Patent)

24. Kerr realleges and incorporates the preceding paragraphs as if fully set forth herein.

25. SPM has accused Kerr's Super Seat product of infringing claims 1, 11, 16, and 18 of the '071 Patent and has threatened legal action against Kerr on this basis. SPM has not accused Kerr of infringing any other claims.

26. Kerr's Super Seat and any similar products do not infringe on the '071 Patent.

27. As examples of the flaws in SPM's assertions, Kerr's Super Seat design does not practice many of the limitations in Claim 1. Claim 1 requires "a seating surface extending radially from the inner surface and facing the valve member, the seating surface having a recessed area, the recessed area having an outer diameter length." The only seating surfaces extending radially from the inner surface of the Super Seat do not contain the required recessed area.

28. Claim 1 also requires an insert in the valve assembly that "is frictionally secured inside the recessed area and forming at least a portion of the inner surface and at least a portion of the seating surface contacting the valve member when the valve assembly is in a closed position." Because Kerr's Super Seat does not have a recess formed in any surface extending radially from the inner surface, Kerr's Super Seat does not have an insert installed within the claimed recess.

29. Paragraphs 27 and 28 are only intended as examples and do not cover every way in which Kerr's products differ from claims in the '071 Patent. Moreover, Kerr's non-infringement positions set forth herein are based on its current understanding of SPM's claims and claim interpretations. As SPM has refused to provide further explanation of its assertions, Kerr's understanding may be incomplete. Kerr accordingly reserves the right to revise or supplement its non-infringement positions as it gains further understanding of SPM's assertions through discovery.

30. An actual, present, and justiciable controversy has arisen between Kerr and SPM concerning Kerr's right to produce and sell the Super Seat and any similar products.

31. Kerr seeks declaratory judgment from this Court that its production and sale of the Super Seat and any similar products do not infringe on SPM's patents cited above under federal law.

32. Kerr seeks declaratory judgment that SPM has suffered no, and will not suffer any, cognizable damages or loss of goodwill because of Kerr's production and sale of the Super Seat and similar products.

33. Kerr seeks a declaratory judgment that SPM is not entitled to injunctive relief or damages under 35 U.S.C. §§ 283-84.

34. Such declarations are necessary and appropriate at this time so that Kerr may

confirm its rights with respect to the production and sale of the Super Seat and similar products.

Second Claim For Relief

(Declaratory Judgment of No Infringement of ’037 and ’659 Patents)

35. Kerr realleges and incorporates the preceding paragraphs as if fully set forth herein.

36. SPM has accused the skid assembly on Kerr’s reciprocating pumps of infringing Claim 16 of the ’037 Patent and Claim 1 of the ’659 Patent and has threatened legal action against Kerr on this basis.

37. Kerr’s skid assembly does not infringe the ’037 and ’659 Patents.

38. As an example of the flaws in SPM’s assertions, Claim 1 of the ’659 Patent requires “a plurality of pads extending from the base, at least a portion of the plurality of pads corresponding to the end plate feet and at least another portion of the plurality of pads corresponding to the at least one foot of each middle plate.” While Kerr’s power end has multiple feet, they sit directly on a singular rectangular piece welded to the base. Thus, Kerr’s skid assembly does not include a “plurality of pads extending from the base” or a “plurality of pads corresponding to the end plate feet.”

39. Similarly, as another example of SPM’s flawed assertions, Claim 16 of the ’037 Patent requires “a plurality of spaced apart pads extending from the support surface, the plurality of pads corresponding to the feet on the end plate segment and at least another portion of the plurality of pads corresponding to the at least one foot of each middle plate segment, the pads disposed between the support surface and the respective feet on the power end frame assembly.” Kerr’s skid assembly does not include a “plurality of pads extending from the base” or a “plurality of pads corresponding to the end plate feet.”

40. Paragraphs 38 and 39 are only intended as examples and do not cover every way in which Kerr's products differ from claims in the '037 and '659 Patents. Moreover, Kerr's non-infringement positions set forth herein are based on its current understanding of SPM's claims and claim interpretations. Kerr accordingly reserves the right to revise or supplement its non-infringement positions as it gains further understanding of SPM's assertions through discovery.

41. An actual, present, and justiciable controversy has arisen between Kerr and SPM concerning Kerr's right to produce and sell products with Kerr's skid assembly.

42. Kerr seeks declaratory judgment from this Court that its production and sale of products with Kerr's skid assembly do not infringe on SPM's patents cited above under federal law.

43. Kerr seeks declaratory judgment that SPM has suffered no, and will not suffer any, cognizable damages or loss of goodwill because of Kerr's production and sale of products with Kerr's skid assembly.

44. Kerr seeks a declaratory judgment that SPM is not entitled to injunctive relief or damages under 35 U.S.C. §§ 283-84.

45. Such declarations are necessary and appropriate at this time so that Kerr may confirm its rights with respect to the production and sale of products with Kerr's skid assembly.

Prayer For Relief

WHEREFORE, Plaintiff Kerr prays for judgment in its favor and against SPM and specifically for the following relief:

1. A trial by jury;
2. Entry of judgment according to the declaratory relief sought, in favor of Kerr and against SPM on all counts;
3. Declaratory judgment that Kerr's production and sale of the Super Seat and similar

products do not infringe the ’071 Patent and that that Kerr’s production and sale of products containing Kerr’s skid assembly do not infringe the ’037 and ’659 Patents.

4. Declaratory judgment that SPM is not entitled to any injunctive relief with respect to the sale of Kerr’s Super Seat, products containing Kerr’s skid assembly, or any similar products;
5. Declaratory judgment that SPM has not suffered any, and will not suffer any, cognizable damages because of Kerr’s production and sale of the Super Seat, products containing Kerr’s skid assembly, or any similar products, and thus is not entitled to any relief under federal patent law.
6. An award of reasonable attorney’s fees, to the extent authorized by law;
7. An award of Kerr’s costs in this action; and
8. All such other and further costs and relief as to which Kerr may be entitled as a matter of law or equity, or which the Court determines to be just and proper.

Dated: October 28, 2021

By: /s/ *Brian D. Melton*

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