

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

PARKER-HANNIFIN CORP., and	)	
PARKER INTANGIBLES, LLC,	)	
	)	
<i>Plaintiffs,</i>	)	Civil Action No.: 22-cv-00135
	)	
v.	)	
	)	
TESTO, INC.,	)	<b>COMPLAINT FOR</b>
a/k/a TESTO NORTH AMERICA, and	)	<b><u>PATENT INFRINGEMENT</u></b>
TESTO SE & Co. KGaA	)	
	)	
<i>Defendants,</i>	)	<b>JURY TRIAL DEMANDED</b>
	)	
	)	
	)	

For their Complaint herein, Plaintiffs, Parker-Hannifin Corporation (“Parker”) and Parker Intangibles, LLC (“PI”), by and through undersigned counsel, aver as follows:

**I. INTRODUCTION**

1. This is an action in law and equity for patent infringement arising out of the infringement by Defendants, Testo SE & Co. KGaA and Testo, Inc. (hereinafter collectively, “Testo”), of U.S. Patent No. 10,281,183 entitled “Hose Free Sensor System for Refrigerant Unit” (“the ‘183 Patent”) issued May 7, 2019, and U.S. Patent No. 10,739,051 (“the ‘051 Patent”), entitled “Hose Free System for Refrigerant Unit” issued August 11, 2020, in violation of the Patent Laws of the United States as set forth in 35 U.S.C. § 271 and § 281 to § 285. True and correct copies of the ‘183 Patent and the ‘051 Patent are attached hereto as **EXHIBITS 1 and 2** and incorporated herein by reference.

**II. JURISDICTION AND VENUE**

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

3. This Court has personal jurisdiction over Testo SE & Co. KGaA by its sales of monitoring instruments that literally infringe one or more claims of the '183 Patent and the '051 Patent to Testo, Inc., for resale to the purchasing public, in this judicial district and elsewhere, thereby establishing minimum contacts with this forum such that the exercise of jurisdiction will not offend traditional notions of fair play and substantial justice. Upon information and belief, Testo SE & Co. KGaA has and is inducing the importation and/or manufacture, offer for sale and sale of monitoring instruments by Testo, Inc., in this judicial district and elsewhere that literally infringe one or more claims of the '183 Patent and the '051 Patent.

4. This Court has personal jurisdiction over Testo, Inc. by virtue of it having a regular place of business within this judicial district. Testo, Inc. has imported, offered for sale and sold products in this judicial district and elsewhere that literally infringe one or more claims of the '183 Patent and the '051 Patent.

5. Venue is proper in this district pursuant to 28 U.S.C. § 1391(c)(3) as to Testo SE & Co KGaA as it is an alien corporation that may be sued in any judicial district, and pursuant to 28 U.S.C. § 1400(b) as to Testo, Inc. as it resides in this district and/or has a regular and established place of business in this district and has committed acts of infringement in this district.

**III. PARTIES**

6. Parker is a corporation organized and existing under the laws of the state of Delaware and having its principal place of business at 6035 Parkland Boulevard, Cleveland,

Ohio 44124-4141. Parker, through its Sporlan Division, is a leading global manufacturer of control systems for the heating, ventilation, air conditioning and refrigeration (HVAC/R) industry.

7. PI is a limited liability company organized and existing under the laws of the state of Delaware and having its principal place of business at 6035 Parkland Boulevard, Cleveland, Ohio 44124-4141.

8. Upon information and belief, Testo SE & Co. KGaA is a company founded in Germany, having its headquarters at Celsiusstr. 2 79822, Titisee-Neustadt, Baden-Württemberg, Germany. Testo SE & Co. KGaA is a global supplier to diverse markets of HVAC, critical HVAC, refrigeration, airflow, and environmental monitoring instruments.

9. Upon information and belief, Testo Inc. is the North American Subsidiary of Testo SE & Co. KGaA. Testo, Inc. is incorporated in the state of Delaware and has regular and established places of business at 2 West Market Street, Suite 500, West Chester, PA 19382, and 40 White Lake Road, Sparta, NJ 07871.

10. Upon information and belief Testo, Inc. is wholly owned by Testo SE & Co. KGaA.

11. Upon information and belief, Testo, Inc. both imports into the United States, offers for sale, and sells monitoring instruments made by Testo SE & Co. KGaA, and manufactures, offers for sale and sells monitoring instruments designed by Testo SE & Co. KGaA.

#### **IV. FACTS**

12. By way of assignment from the inventors, Christian D. Parker, Timothy A. Plassmeyer, James D. Ruether, Jason T. Dunn and Shawn D. Ellis, PI is the owner of all right,

title and interest in and to the '183 Patent, which was duly and legally issued by the United States Patent Office, and at all relevant times in the past has been and remains in full force and effect.

13. The '183 Patent discloses and claims both a sensor system for a refrigerant unit that includes a plurality of sensors for sensing system parameters of the refrigerant unit, and a portable electronic device configured to receive the system parameters and to calculate system conditions for the refrigerant based on the system parameters; and a temperature sensor clamp for sensing temperature in a refrigerant unit. See **EXHIBIT 1**.

14. By way of assignment from the inventors, Christian D. Parker, Timothy A. Plassmeyer, James D. Ruether, Jason T. Dunn and Shawn D. Ellis, PI is the owner of all right, title and interest in and to the '051 Patent, which was duly and legally issued by the United States Patent Office, and at all relevant times in the past has been and remains in full force and effect.

15. The '051 Patent issued from a continuation of the application that is now the '183 Patent and discloses and claims sensor systems for a refrigerant unit comprising a plurality of sensors for sensing system parameters of the refrigerant unit for which there are no external physical electric connections or physical fluidic connection; and a temperature sensor clamp for sensing temperature in a refrigerant unit. See **EXHIBIT 2**.

16. At all times relevant, Parker is and has been the exclusive licensee of both the '183 Patent and the '051 Patent, with all right to sue for past, present, and future infringement of each, and the right to seek injunctive relief and monetary damages.

17. Parker, through its Sporlan Division, offers for sale and sells products under the claims of the '183 and the '051 Patents ("the Patented Products").

18. By way of non-limiting example, Testo, Inc. imports and/or manufactures, offers for sale and sells a “testo Smart Probes HVAC/R Ultimate kit.” See, the webpage of **EXHIBIT 3**.

19. By way of a further non-limiting example, Testo, Inc. imports and/or manufactures, offers for sale and sells a “testo Smart Probes Refrigeration Set/Kälte-Set.” See, the photographs of **EXHIBIT 4**.

20. Both “testo” products (the “Accused Products”) have features/characteristics consistent with the elements of at least independent claims 1 and 12 of the ‘183 Patent. See **EXHIBIT 5 and EXHIBITS 3, 4, 8, 9, 10 and 11 referenced therein**.

21. The Accused Products have features/characteristics consistent with the elements of at least independent claims 1, 10, 15, and 20 of the ‘051 Patent. See **EXHIBIT 6 and EXHIBITS 3, 4, 8, 9, 10 and 11 referenced therein**.

## **V. CLAIMS**

### **COUNT I—INFRINGEMENT OF THE ‘183 PATENT—TESTO, INC.**

22. Parker and PI repeat the allegations set forth in Paragraphs 1-21 above as if fully rewritten.

23. When Testo, Inc.’s customers use the Accused Products as intended, that is by loading the testo Smart Probe App onto a portable device as instructed by Testo, Inc., those customers directly infringe claim 1 of the ‘183 Patent.

24. By instructing that the testo Smart Probe App be loaded onto a portable device such as a smartphone/tablet as instructed by Testo, Inc., while having actual knowledge of the ‘183 Patent and such infringement by way of notice of the same being given to it by Parker more

than a year prior to the filing of the Complaint, Testo, Inc. is inducing infringement of at least claim 1 of the '183 Patent.

25. Testo, Inc. has been and is directly infringing at least independent claim 12 of the '183 Patent by manufacturing or importing, and offering to sell and selling the Accused Temperature Sensor Clamp Product within this judicial district and elsewhere, with full knowledge that such manufacture/importation, offers for sale, sales and use infringe at least that claim, Testo, Inc. having been given actual notice of the same by Parker more than a year prior to the filing of this Complaint.

26. Sales of the Patented Products have declined with Testo, Inc.'s sales of the Accused Products.

27. Testo, Inc.'s sales of the Accused Products have eroded the price at which Parker can sell its Patented Products.

28. As a result of Testo, Inc.'s direct infringement, Parker and PI have suffered and will continue to suffer damages, including diversion of customers, lost sales, and lost profits.

29. Testo, Inc. will continue to make/import, offer to sell and sell the Accused Product unless and until enjoined by this Court.

30. Parker and PI are without an adequate remedy at law.

#### **COUNT II—INFRINGEMENT OF THE '051 PATENT**

31. Parker and PI repeat the allegations set forth in Paragraphs 1-30 above as if fully rewritten.

32. When Testo, Inc.'s customers use the Accused Products as intended, that is by loading the testo Smart Probe App onto a portable device as instructed by Testo, Inc., those customers directly infringe claim 20 of the '051 Patent.

33. By instructing that the testo Smart Probe App be loaded onto a portable device such as a smartphone/tablet as instructed by Testo, Inc., while having actual knowledge of the '051 Patent and such infringement by way of notice of the same being given to it by Parker more than a year prior to the filing of the Complaint, Testo, Inc. is inducing infringing of at least claim 20 of the '051 Patent.

34. Testo, Inc. has been and is directly infringing at least independent claims 1, 10 and 15 of the '051 Patent by manufacturing or importing, and offering to sell and selling the Accused Products within this judicial district and elsewhere, with full knowledge that such manufacture/importation, offers for sale, sales and use infringe at least those claims, Testo, Inc. having been given actual notice of the same by Parker more than a year prior to the filing of this Complaint.

35. Sales of the Patented Products have declined with Testo, Inc.'s sales of the Accused Products.

36. Testo, Inc.'s sales of the Accused Products have eroded the price at which Parker can sell its Patented Products.

37. As a result of Testo, Inc.'s infringement, Parker has suffered and will continue to suffer damages, including diversion of customers, lost sales, and lost profits.

38. Testo, Inc. will continue to make/import, offer to sell and sell the Accused Product unless and until enjoined by this Court.

39. Parker and PI are without an adequate remedy at law.

### **COUNT III—WILLFUL INFRINGEMENT**

40. Parker and PI repeat the allegations set forth above in Paragraphs 1-39 as if fully rewritten.

41. Parker gave Testo, Inc. notice of the '183 Patent and the '051 Patent and the infringement over one year ago, and in May of 2021 offered Testo, Inc. a license under the patents, but to no avail.

42. Testo, Inc.'s infringing conduct has been and is willful, with actual knowledge of the '183 Patent and the '051 Patent, and with knowledge that the manufacture/importation, offer for sale, sales and use of the Accused Products infringes both patents.

**COUNT IV—INDUCEMENT OF INFRINGEMENT—TESTO SE & CO. KGaA**

43. Parker and PI repeat the allegations set forth above in Paragraphs 1-42 as if fully rewritten.

44. Testo, Inc.'s Internet publications acknowledge the design of the Accused Products as being that of Testo SE & Co. KGaA. See **EXHIBITS 3 and 7**.

45. Testo SE & Co. KGaA's Internet publications acknowledge that it supplies product to Testo, Inc. See **EXHIBITS 7 and 8**.

46. Upon information and belief, at least some of the Accused Products are being made in Germany. Scanning the QR Code on the packaging leads to an app that is provided by Testo SE & Co. KGaA. At least two Testo brochures picturing the Accused Products state that "For more than 55 years, Testo has stood for innovative measuring solutions made in Germany." Testo brochures reference the website [www.testo.com](http://www.testo.com), which is Testo SE & Co. KGaA's website. See **EXHIBITS 7 and 8**.

47. Upon information and belief, such Internet publications are made by Testo SE & Co. KGaA with the specific intent to encourage infringing importation and sales of the Accused Products by Testo, Inc.

48. Testo SE & Co. KGaA and Parker are competitors in the relevant product market.



49. Upon information and belief, as a competitor of Parker in the relevant product market, Testo SE & Co. KGaA has had knowledge of the '183 Patent and the '051 Patent since their respective dates of issue.

50. Upon information and belief, Testo SE & Co. KGaA, as the parent company and supplier of the Accused Products to Testo, Inc., has had actual knowledge of the '183 Patent and '051 Patent and the alleged infringement since Parker notified Testo, Inc. of the same.

51. Upon information and belief, notwithstanding its knowledge, Testo SE & Co. KGaA continues to advertise that the Accused Products are available in the United States through Testo, Inc., and continues to supply the Accused Products to Testo, Inc.

52. Testo SE & Co. KGaA's conduct constitutes active inducement of infringement in violation of 35 U.S.C. § 271(b).

53. Testo SE & Co. KGaA's active inducement of infringement is willful.

54. Testo SE & Co. KGaA's active inducement of infringement will continue unless enjoined by the Court.

55. Parker and PI are without an adequate remedy at law.

## **VI. PRAYER FOR RELIEF**

WHEREFORE, Parker and PI pray that this Court enter judgment to:

A. Enjoin Testo, Inc., its directors, officers, employees, and all others acting in concert with them, from further infringement of the '183 Patent and the '051 Patent;

B. Order Testo, Inc. to account for its sales and profits from such infringement to Parker and PI;

C. Award Parker and PI damages from Testo, Inc. for direct infringement, together with pre-judgment and post-judgment interest;

D. Adjudge Testo, Inc. to be a willful infringer and treble the aforesaid damages pursuant to 35 U.S.C. § 284;

E. Enjoin Testo SE & Co. KGaA from further Internet advertising of the Accused Product as being available from Testo, Inc. or other U.S. supplier thereby inducing said supplier to import the same;

F. Adjudge this case to be exceptional and award Parker and PI their reasonable attorneys' fees from Testo pursuant to 35 U.S.C. § 285;

G. Assess costs and interest against Testo; and

H. Grant Parker and PI such other and further relief as is just.

**JURY DEMAND**

Parker and PI request a jury as to all matters so triable.

Dated: January 12, 2022

/s/ Matthew R. Lechner

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