

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF IOWA
CEDAR RAPIDS DIVISION**

VTI, LLC,

Plaintiff,

v.

ZOSKE'S SALES & SERVICES, INC.;
ZOSKE'S MFG. Inc.; MICK ZOSKE;
AG PREMIER, INC.; and BILL
PEARCE d/b/a AG PREMIER.

Defendants.

Case No.

**COMPLAINT FOR PATENT
INFRINGEMENT**

VTI, LLC for its Complaint states as follows:

PARTIES

1. VTI, LLC, is an Iowa company with located in Washington, Iowa.
2. Zoske's Sales and Service Inc. is an Iowa corporation located in Iowa Falls, Iowa.
3. Zoske's MFG., Inc. is an Iowa corporation located in Iowa Falls, Iowa.
4. Mick Zoske is a resident of Alden, Iowa.
5. Ag Premier, Inc., is an Iowa business entity¹ doing business in Iowa Falls, Iowa.
6. Bill Pearce is a resident of Iowa Falls and is the sole proprietor of Ag Premier.

JURISDICTION AND VENUE

7. The United States district courts have original subject matter jurisdiction over actions arising from the laws of the United States pursuant to 28 U.S.C. §§ 1331 and 1338(a).

The cause of action for patent infringement stated in Count I below arises under the Patent Laws of the United States, 35 U.S.C. §§ 271 et seq.

¹ Ag Premiere filed Articles of Incorporation on or about April 5, 2018. The Iowa Secretary of State administratively dissolved Ag Premiere on or about October 13, 2020.

8. The United Courts district courts have supplemental jurisdiction over all other claims that are so related to the claim in the action as to form part of the same case or controversy. 28 USC §1367. *See Cardiovascular Sys., Inc. v. Cardio Flow, Inc.*, 498 F. Supp. 3d 1080, 1093 (D. Minn. 2020) (finding that patent rights against an assignee of a settlement agreement were enforceable by way of a patent infringement action.). Counts II through IV based upon the underlying infringement of plaintiff's United States Patents.

FACTS

9. VTI is the owner, by way of assignment from the inventor, of US patent numbers 8,550,019, 8,875,640, and 9,769,980 and any applications claiming priority thereto, collectively VTI's Patents and attached as Exhibit 1, 2 and 3.

10. On February 12, 2014, VTI filed a patent infringement lawsuit in the United States District Court for the Northern District of Iowa against Zoske's Sales and Service Inc., and Mick Zoske of Alden Iowa (collectively "Zoske"), assigned CASE NO.: 11:14-cv-00018.

11. The basis of the infringement suit was Zoske's manufacturing, selling and offering for sale its Cyclone Injector No-till manure injector (the "Infringing Machine").

12. On or about December 18-19, 2014, VTI and Zoske entered into a Settlement Agreement relating to the allegations contained in the patent infringement suit.

13. On December 22, 2014, VTI and Zoske filed a Joint Stipulation of Dismissal with Prejudice in CASE NO.: 11:14-cv-00018.

14. As part of the Settlement Agreement, VTI issued to Zoske a license for VTI's Patents as outlined in and attached exhibit (the "License Agreement").

15. The License Agreement was amended shortly after it was executed to add Zoske's MFG as an authorized licensee with both Zoske's Sales and Service and Zoske's MFG having equal rights and obligations and each being jointly and severally liable for royalties under the

license. (Zoske's Sales and Service Inc., Zoske's MFG and Mick Zoske are referred to collectively as the Zoske Defendants.)

16. As part of the License Agreement, the Zoske Defendants agreed to pay VTI a royalty for every Infringing Machine sold on or after November 19, 2014 through the end of the license term.

17. As part of the License Agreement, the Zoske Defendants agreed to provide VTI with auditing rights to substantiate the accuracy of reports related to the sales of the Infringing Machine.

18. The Zoske Defendants agreed the License Agreement was not assignable or transferable (with an exception that does not apply in this matter).

19. At some point, the Zoske Defendants stopped reporting sales and stopped making license royalty payments.

20. At some point, Bill Pearce d/b/a Ag Premier or Ag Premier (collectively "Pearce/Ag Premier") began manufacturing the Infringing Machine that is subject to the License Agreement.

21. Upon information and belief, the Zoske Defendants have assigned or otherwise transferred the License Agreement to Pearce/Ag Premier.

22. Pearce/Ag Premier has acknowledged that it assumed the rights and obligations of the License Agreement by acknowledging that it is aware of the License Agreement before assuming such rights and obligations, reporting and paying royalties to VTI for its sales of the Infringing Machine covered by VTI's patents dating back to the second calendar quarter of 2019, and requesting and obtaining a temporary amendment to the License Agreement of an additional 60 days to report and pay royalties under the License Agreement.

23. Despite the provisions in the License Agreement that prohibit the Zoske Defendants from assigning the License Agreement without consent, VTI assented to the assignment after it learned of its transfer.

24. In reliance on Ag Premier's assumption of all of the rights and obligations under the License Agreement by virtue of the assignment of the License Agreement from the Zoske Defendants, VTI did not seek to enforce its rights to terminate the License Agreement due to an unauthorized transfer and has allowed Ag Premier the full benefit and enjoyment of an authorized licensee under the License Agreement.

25. Ag Premier has not provided any reports or royalty payments due under the License Agreement since the fourth calendar quarter of 2020.

26. On August 27, 2021, VTI sent to an Audit Notice to the Zoske Defendants and Pearce/Ag Premier, Inc. of its desire and intent to conduct an audit of its books and records relating to the manufacture, sale, use, and transfer of the machine licensed under the License Agreement with a specific request of certain documents necessary for the audit and for those documents to be produced to VTI's counsel by September 03, 2021.

27. The Zoske Defendants and Pearce/Ag Premier have not responded to VTI's Audit Request.

28. The Defendants are manufacturing, selling and offering for sale the Infringing Machine in the same or in a colorable imitation or variation of the same form as that which gave rise to the prior litigation and in the same form that gave rise to the payment of the royalties under the License Agreement. The Defendants or All Defendants have made no changes to the Infringing Machine that would avoid infringing VTI's Patents.

COUNT I: PATENT INFRINGEMENT
by Ag Premier Inc., and Pearce

29. Ag Premier, Inc., and Bill Pearce are selling products that infringe upon the United States Patents identified above.

30. VTI has suffered and will continue to suffer damages from the infringement in the form of lost royalties and the dilution of intellectual property.

31. Ag Premier, Inc., and Bill Pearce are infringing upon the above listed Patents with knowledge of the Settlement Agreement and the License Agreement and in willful disregard for the rights of VTI.

32. The Zoske Defendants are estopped from challenging the validity of the Patents by virtue of the prior suit and settlement agreement, in which the Zoske Defendants acknowledged the validity of the Patents.

33. Ag Premier, Inc., and Bill Pearce are also estopped from challenging the validity of the patents by virtue of their assignment agreement with the Zoske Defendants.

34. The fact that VTI has already had to litigate this matter once before and has obtained a Settlement Agreement and License Agreement with some or all of the same parties makes this the exceptional case, thus meriting an award of attorney fees.

WHEREFORE, VTI prays that the Court enter an order enjoining Pearce and Ag Premier from further infringement and awarding damages for lost royalties and awarding attorney fees.

COUNT II: BREACH OF SETTLEMENT AND LICENSE AGREEMENTS
By the Zoske defendants, Ag Premier and Pearce

35. The Zoske defendants breached the terms of the Settlement Agreement and License Agreement by reportedly assigning its rights to Ag Premier and Pearce.

36. To the extent that the Settlement Agreement and License Agreement were effectively assigned or otherwise transferred to Ag Premier and Pearce, then Ag Premier and Pearce have breached the terms of the License Agreement by failure to pay royalties and or failure to cooperate with an audit as require under the License Agreement.

37. The License Agreement provides that the parties could enforce the License Agreement by injunction, specific performance, or other equitable relief without prejudice to the rights and remedies of either party and without the necessity of posting bond. The remedy also includes the right to reasonable attorney fees and costs relating to the claim in addition to all other damages and remedies available in law or equity.

WHEREFORE, VTI prays that the Court enter an order enjoining all Defendants from further infringement and awarding damages for lost royalties and awarding attorney fees.

COUNT III: PROMISSORY ESTOPPEL
By Ag Premier and Pearce

38. Pearce/Ag Premier agreed to assume the Zoske Defendants' rights and responsibilities stated in the License Agreement by acknowledging its awareness of the License Agreement, by reporting and paying royalties to VTI for its sales of the Infringing Machine covered by VTI's Patents dating back to the second calendar quarter of 2019, and by requesting and receiving an additional 60 days to report and pay royalties under the License Agreement.

39. VTI acted in reliance on Pearce/Ag Premier's agreement to assume the rights and obligations under the License Agreement by declining to enforce its rights to terminate the

License Agreement due to the unauthorized assumption, and by delaying other means to enforcing its rights under the License Agreement.

40. VTI reliance upon the agreement with Pearce/Ag Premier has been detrimental Pearce/Ag Premier has not provided any reports or royalty payments due under the License Agreement since the fourth calendar quarter of 2020.

41. It would be inequitable for Pearce/Ag Premier to profit from the sale of the Infringing Machine.

WHEREFORE, VTI prays that the Court enter an order enjoining all Defendants from further infringement and awarding damages for lost royalties and awarding attorney fees.

COUNT IV: INDIVIDUAL LIABILITY OF BILL PEARCE

42. Ag Premiere filed Articles of Incorporation on or about April 5, 2018. The Iowa Secretary of State administratively dissolved Ag Premiere on or about October 13, 2020.

43. Bill Pearce is individually liable for Count I though III because he agreed with both VTI and the Zoske Defendants to assume the Zoske rights and responsibilities under the License Agreement.

44. Bill Pearce is individually liable for the any judgment against Ag Premier to the extent of all distributions made from Ag Premier to Pearce after the dissolution of Ag Premier under the applicable Iowa Code provision.

45. Bill Pearce is individually liable for the judgment against Ag Premier because corporate structure of Ag Premier was a mere shell serving no legitimate corporate purpose as evidenced by the failure to follow the corporate formalities resulting in its dissolution.

WHEREFORE, VTI prays that the Court enter an order enjoining all Defendants from further infringement and awarding damages for lost royalties and awarding attorney fees.

/s/Kevin J. Caster

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for

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