

UNITED STATES DISTRICT COURT-NORTHERN DISTRICT OF IOWA

J&M MANUFACTURING CO., INC.,

Plaintiff,

v.

KINZE MANUFACTURING, INC.,

Defendant.

Case No. 1:22-cv-94

COMPLAINT
JURY TRIAL DEMANDED

COMES NOW Plaintiff, J&M Manufacturing Co., Inc. (“J&M”), for its Complaint against Defendant, Kinze Manufacturing, Inc. (“Kinze”), and states as follows:

NATURE OF THE ACTION

1. This is an action for patent infringement arising under the patent laws of the United States, Title 35 of the United States Code.

PARTIES

2. J&M is a corporation organized and existing under the laws of Ohio, with its corporate headquarters and principal place of business located at 284 Railroad St., Fort Recovery, Ohio 45846.

3. J&M is a leading manufacturer of farm equipment since 1960 engaged in the development and sale of products such as, but not limited to, gravity wagons, seed tenders, nitrogen applicators, header transports, soil conditioners, tracks, and, most relevant to the present matter, grain carts.

4. J&M is the owner of right, title and interest in U.S. Patent No. 9,113,598 entitled “Grain Cart Having an Inclined Folding Unloading Auger Conveyor with an Askewed Flow Control Spout” (the “J&M Patent”). This includes the right to sue and recover past, present, and future damages for infringement.

5. Kinze is a corporation organized and existing under the laws of Iowa, with its corporate headquarters and principal place of business located at 2172 M Avenue, Williamsburg, Iowa 52361.

JURISDICTION AND VENUE

6. J&M’s claims for patent infringement against Kinze arise under the patent laws of the United States, including 35 U.S.C. §§ 271 and 281-85.

7. This Court has subject matter jurisdiction over this action under 28 U.S.C. §§ 1331 and 1338.

8. This Court has personal jurisdiction over this action because the Kinze is an Iowa corporation having its principal place of business in Iowa.

9. On information and belief, Kinze has committed acts of infringement in Iowa and in this District.

10. In addition, Kinze has, directly or through agents, subsidiaries or intermediaries, committed acts within Iowa giving rise to this action and/or have established minimum contacts with Iowa such that this Court’s exercise of jurisdiction would not offend traditional notions of fair play and substantial justice.

11. On information and belief, Kinze has regularly and systematically transacted business in Iowa, including within this District, directly or through agents, subsidiaries, or

intermediaries, and/or committed acts of patent infringement in Iowa, as alleged in this Complaint, that will lead to foreseeable harm and injury to J&M.

12. On information and belief, Kinze has placed, and continues to place, infringing products into the stream of commerce by making, using, offering to sell, and selling, without authority or license, products that infringe the J&M Patent (“Accused Devices”).

13. On information and belief, Kinze has placed, and continues to place, infringing products into the stream of commerce by making these products in, and/or shipping those products into this District and/or knowing that the products were made in this District and/or shipped into this District.

14. On information and belief, Kinze has purposefully availed itself of the privilege of doing business in Iowa and within this District and maintained such continuous and systematic contacts so as to authorize this Court’s exercise of personal jurisdiction over it in this matter.

15. Venue is proper in this District under 28 U.S.C. §§ 1391 and 1400 because, among other reasons, Kinze is a corporation organized under the laws of Iowa and maintains its principal place of business in Iowa and therefore “resides” in this district.

16. In addition, a substantial part of the events or omissions giving rise to J&M’s claims have occurred in this District. Specifically, on information and belief, Kinze has made, used, offered to sell, sold, and continues to make, use, offer to sell, and sell the Accused Devices within this District.

THE ASSERTED PATENT

17. On August 25, 2015, the U.S. Patent and Trademark Office (“USPTO”) duly and legally issued U.S. Patent No. 9,113,598, entitled “Grain Cart Having an Inclined Folding

Unloading Auger Conveyor with an Askewed Flow Control Spout” (the “J&M Patent”). A copy of the J&M Patent is attached as **Exhibit 1**.

18. J&M engineered, designed, and invested in the technology disclosed and claimed in the J&M Patent. J&M is the owner of all right, title, and interest in the J&M Patent and has the right to sue for infringement thereof.

19. The J&M Patent is valid and enforceable.

BACKGROUND

20. J&M repeats and realleges all the facts and allegations of the preceding paragraphs as if fully set forth herein.

21. The J&M Patent was issued on August 25, 2015, with a patent term adjustment of 690 days, and is derived from Application No. 13/506,009 filed on March 20, 2012.

22. In 2021, on information and belief, Kinze planned to show infringing grain carts at the Louisville National Farm Machinery Show. Although this trade show was eventually cancelled, Kinze published a flyer depicting grain carts that infringe the J&M patent. A copy of the flyer is attached as **Exhibit 2**. Moreover, on information and belief, Kinze showed a poster display, during the 2022 Louisville National Farm Machinery Show, that further depicted grain carts that infringe the J&M Patent. A photograph of this poster display is attached as **Exhibit 3**.

23. On January 5, 2022, Jim Wood, the Engineering Manager at J&M, reached out to Susanne Veatch, President of Kinze, to discuss the implications of Kinze’s products related to the J&M Patent. Although Susanne Veatch was unavailable that day, Jim Wood and Susanne Veatch had conversations the two following days, on January 6 and January 7, 2022, to discuss this topic. Subsequently, on January 10, 2022, Jim Wood sent an email to Susanne Veatch attaching a copy of the J&M Patent. A copy of the email is attached as **Exhibit 4**.

24. On January 26, 2022, Susanne Veatch responded to Jim Wood's email via email, stating that Kinze reviewed the J&M patent and "Kinze's single auger cart does not violate J&M's patent." A copy of the response e-mail from Susanne Veatch to Jim Wood is attached as **Exhibit 5**. Ms. Veatch failed to address anything related to grain carts other than single auger grain carts, such as Kinze's dual auger grain carts, which are covered by the J&M patent. Instead, she simply referenced Kinze's single auger grain carts.

25. Subsequently, on July 22, 2022, counsel for J&M sent a Cease and Desist letter to Kinze outlining Kinze's infringement of the J&M Patent and requesting confirmation of Kinze's intention to comply with the demands of the Cease and Desist letter within twenty (20) days, but Kinze has yet to respond or even acknowledge the J&M's Cease and Desist letter. A copy of the Cease and Desist letter is attached as **Exhibit 6**.

COUNT I - INFRINGEMENT OF THE J&M PATENT

26. J&M repeats and realleges all the facts and allegations of the preceding paragraphs as if fully set forth herein.

27. The J&M patent, entitled "Grain Cart Having an Inclined Folding Unloading Auger Conveyor with an Askewed Flow Control Spout" and naming James E. Wood and Joshua P. Gaerke as its inventors, was duly and legally issued on August 25, 2015. Since that date, J&M has been and is still the owner and possessor of all right, title and interest in and pertaining to the J&M Patent, and the J&M is active and unexpired.

28. The J&M Patent is valid, enforceable, and currently in full force and effect.

29. Claim 1 of the J&M Patent recites the following:

In a grain cart adapted to be pivotally connected to a tow tractor for transferring grain from a field to an elongated rectangular open-top semi-trailer, said cart including

a frame supported for traversing the ground and having a hitch for pivotally connecting said frame to the tow tractor,

a container supported by said frame for receiving a volume of grain and including a left side wall and a right side wall connected by a front wall and a rear wall,

an elongated inclined auger unloading conveyor including a motor driven auger with a helical flight within a tubular auger housing, with said conveyor having an inclined lower section and an upper section,

said lower section of said auger conveyor mounted on said container and positioned to receive grain from said container,

said upper section of said auger conveyor supported for folding movement between a retracted stored position adjacent said container and an extended operating discharge position inclined upwardly and forwardly and laterally outwardly from a front corner portion of said container, the improvement wherein

said housing of said upper section of said auger conveyor in said discharge position inclined upwardly and forwardly and laterally outwardly including a discharge spout projecting laterally at an askewed angle from said housing,

said discharge spout supporting a flow control spout for tilting movement on a substantially horizontal axis askewed with respect to an axis of said auger within said upper section, with said horizontal axis extending substantially parallel to a side wall of said container,

said control spout movable on said horizontal axis in a vertical plane spaced forwardly of said front wall of said container and perpendicular to said side wall of

said container between a downwardly projecting first position and a laterally outwardly projecting second position, and a remotely controllable actuator connected to tilt said flow control spout between said first and second positions on said horizontal axis when said upper conveyor section is in said inclined discharge position for uniformly filling and topping off the semi-trailer with grain including the filling of all four corner portions of the rectangular semi-trailer.

30. On information and belief, the Accused Devices infringe, at least, Claim 1 of the J&M Patent.

31. The figure referred to herein is a screenshot taken from Kinze's website showing a representative one of the Accused Devices and demonstrating its functions.

32. Kinze infringes the J&M Patent when it manufactures, has manufactured, sells, offers to sell, and/or uses in the United States at least its Kinze 1421 Grain Cart and possibly other Kinze grain carts (the "Accused Devices").

33. The Accused Devices include, but are not limited to, a Kinze 1421 grain cart as shown in Figure 1.



Figure 1

34. Kinze infringes and has infringed literally or under the doctrine of equivalents at least claim 1 of the J&M patent by making, using, selling and/or offering for sale the Accused Devices in or into the United States, without authority. Thus, Kinze is liable for its infringement of the J&M patent in violation of 35 U.S.C. § 271(a).

35. On information and belief, Kinze has been taking orders with the intention of beginning to deliver Kinze's Accused Devices.

36. J&M has been, is, and will be irreparably harmed by Kinze's continued infringing conduct.

37. Kinze's actions have caused harm to J&M, which will not be fully compensable by monetary damages.

38. Kinze's infringement has occurred with knowledge of the J&M Patent and has been willful and deliberate.

39. Kinze's past infringement has caused damage to J&M and its future sales will result in additional such damage.

PRAYER FOR RELIEF

WHEREFORE, on motion or after a trial by jury, J&M requests that the Court grant the following relief:

- A. A judgment that Kinze infringes the J&M Patent, and unless enjoined, will continue to infringe the J&M Patent;
- B. A preliminary and permanent injunction to enjoin Kinze and those in active concert or participation with them from further infringing the J&M Patent;
- C. A judgment of willful infringement against Kinze;
- D. An award to J&M of monetary damages in an amount sufficient to compensate J&M for the harm caused by Kinze's infringement, not less than a reasonable royalty for the use made of the inventions, along with pre- and post-judgment interest pursuant to 35 U.S.C. § 284.
- E. An award to J&M of enhanced damages for Kinze's willful infringement pursuant to 35 U.S.C. § 284.
- F. An award to J&M of supplemental monetary damages for any infringing acts after judgment and before entry of a permanent injunction;
- G. A declaration that this case is exceptional and an award to J&M of its costs, expenses, and attorneys' fees pursuant to 35 U.S.C. §§ 284 and 285; and
- H. An award to J&M of such other and further relief as this Court deems just and proper.

PRO HAC VICE ADMISSION

Motions for Admission Pro Hac Vice will be filed for the following counsel on behalf of Plaintiff J&M Manufacturing Co., Inc.

1. William B. Markovits, Markovits, Stock & DeMarco, LLC, 119 East Court Street, Suite 530, Cincinnati, OH 45202.
2. Kevin Rooney, Rooney IP, LLC, 8044 Montgomery Road, Suite 410, Cincinnati, OH 45236.
3. Gopal Gannamraj, Rooney IP, LLC, 8044 Montgomery Road, Suite 410, Cincinnati, OH 45236.

JURY TRIAL DEMAND

Pursuant to Federal Rule of Civil Procedure 38(b), J&M respectfully demands a jury trial on all claims and issues so triable.

SIMMONS PERRINE MOYER BERGMAN PLC

By  _____
Thomas D. Wolle AT0008564
115 3rd St. SE, Suite 1200
Cedar Rapids IA 52401
Telephone: 319-366-7641
Facsimile: 319-366-1917
Email: twolle@simmonsperrine.com

ATTORNEY FOR PLAINTIFF