

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

GENERAL ELECTRIC COMPANY,	)	
	)	
Plaintiff,	)	
	)	C.A. No. _____
v.	)	
	)	<b>JURY TRIAL DEMANDED</b>
LPP COMBUSTION, LLC,	)	
	)	
Defendant.	)	

**COMPLAINT FOR DECLARATORY JUDGMENT**

Plaintiff General Electric Company (“GE”), by and through its attorneys, hereby files this Complaint for Declaratory Judgment of patent non-infringement and invalidity against Defendant LPP Combustion, LLC (“LPP”) and alleges as follows:

**INTRODUCTION**

1. Incorporated in 1892, GE traces its roots back to Thomas Edison. Through its various business divisions, GE operates in diverse segments, including aeronautics, medical, and power generation. Power plants have a long history of using combustion turbines to generate electricity. GE contributed significantly to that history: in 1949, GE installed the first gas turbine used to generate electricity in the United States. Since that first turbine over seventy years ago, GE has invested and innovated in technology used by power plants around the world.

2. On March 18, 2022, LPP filed a First Amended Complaint (“FAC”) (**Ex. A**) for patent infringement against GE and two of its subsidiaries claiming that GE infringed LPP’s patents. *LPP Combustion, LLC v. General Electric Co., et al.*, C.A. No. 6:21-cv-01343-ADA, Dkt. No. 22 (W.D. Tex. Mar. 18, 2022) (“Infringement Action”). In particular, LPP accused a single GE product—a one-of-a-kind gas turbine with dual ethane and natural gas capabilities

unique to the Competitive Power Ventures power plant in Pennsylvania (“CPV Fairview”)—of infringing LPP’s patents.

3. Contrary to LPP’s allegations in the Infringement Action, LPP played no part in GE’s successes in the gas turbine industry—including GE’s development of the CPV Fairview turbine—and the patents LPP has asserted against GE previously have no relevance to GE’s innovation and technology. These developments were the result of GE’s own efforts, rather than any alleged “long history” between the parties. Indeed, LPP only had a brief set of interactions with GE long ago regarding a different technology.

4. Over the decade or more since that “history” ended, LPP’s business wilted. The failure of LPP to flourish in the market both demonstrates how little value LPP’s alleged invention possesses and explains the real impetus for the Infringement Action. The so-called evidence LPP supplied to support its contention that GE stole its technology has only proven the opposite: GE never used any LPP technology, and GE’s own designs bear no resemblance to LPP’s patented inventions.

5. GE now files this Complaint for Declaratory Judgment to resolve the allegations raised by LPP in a proper venue, and to remove the cloud of litigation LPP has placed over GE. LPP’s patents are invalid, ineligible for patenting, and they are not infringed by GE whether by way of the accused CPV Fairview system or any other system.

#### **PARTIES**

6. Plaintiff General Electric Company is a New York corporation with a principal place of business at 33-41 Farnsworth Street, Boston, Massachusetts 02210.

7. Defendant LPP is a Delaware limited liability company with its principal place of business at 8940 Old Annapolis Road Suite K, Columbia, Maryland 21045.

## JURISDICTION & VENUE

8. The Court has jurisdiction over the subject matter of these claims pursuant to 28 U.S.C. §§ 1331, 1338(a), 2201, and 2202.

9. There is an actual case or controversy between GE and LPP regarding the validity of certain patents discussed below allegedly owned by LPP and LPP's allegations that GE has infringed those patents. On December 22, 2021, LPP filed its Original Complaint (**Ex. B**) in the Western District of Texas, alleging that GE and two other GE-related defendants infringe U.S. Patent No. 7,770,396 ("the '396 Patent") (**Ex. C**), U.S. Patent No. 7,934,924 ("the '924 Patent") (**Ex. D**), and U.S. Patent No. 7,435,080 ("the '080 Patent") (**Ex. E**) (collectively, the "Asserted Patents") through the manufacture, use, sale, or offer to sell gas turbines and associated software that allegedly permit vaporizing ethane and mixing that vapor into a natural gas stream such that the mixture is combusted in those turbines. Original Complaint, ¶¶ 19, 27, & 35; *see also* FAC, ¶¶ 19, 27, & 35.

10. LPP alleges that GE had meetings with LPP in 2012 that "were focused on using LPP's technology to power lean natural gas turbine power plants with a mix of ethanol with natural gas." FAC, ¶ 12. LPP alleges that based on those meetings, GE was aware of LPP's patent portfolio. *Id.* LPP also alleges that three years later, in 2015, GE began making claims in publications that concerned "the same blend [of alternative fuels that] the parties planned to implement with LPP's patented technology years earlier," seemingly implying that certain technology developed by GE was based on its discussions with LPP. *Id.*, ¶ 13. LPP further claims that by March 2020, GE had incorporated similar technology at CPV Fairview in Pennsylvania. *Id.*, ¶ 14. LPP specifically identifies CPV Fairview as an "Accused System" in the FAC. *Id.* While GE disagrees with each of these assertions, they demonstrate individually and, in their

totality, that there exists an actual case or controversy between GE and LPP regarding whether GE has infringed LPP's Asserted Patents, at least with respect to CPV Fairview and GE's involvement with CPV Fairview.

11. In the Infringement Action, GE has offered its contentions as to the several reasons why every Asserted Patent, and every asserted claim of the Asserted Patents, is both invalid and ineligible for patenting. LPP has not stipulated to invalidity or ineligibility, nor has LPP dismissed its action. Consequently, there is an actual case or controversy whether the Asserted Patents are valid or eligible for patenting.

12. LPP has pursued the Infringement Action in an improper venue. *See* Infringement Action, Dkt. 24 (Defendants' Motion to Dismiss). The parties completed venue-related discovery pursuant to the Local Rules of that court on May 12, 2022. The results of that discovery confirmed that venue is improper in the Western District of Texas. Accordingly, GE expects the Infringement Action to be dismissed in due course by that court for, *inter alia*, improper venue. However, for at least the reasons discussed above, dismissal of the Infringement Action will not remove the cloud of litigation cast by LPP on GE. Furthermore, LPP has never expressed any intention to abandon its enforcement efforts, nor have the parties reached any agreements regarding a potential settlement or license.

13. This Court has personal jurisdiction over LPP at least because LPP is a Delaware limited liability company.

14. Venue is proper in this district under 28 U.S.C. §§ 1391(b) and 1400(b) because LPP is a Delaware limited liability company and therefore resides in this district. *See TC Heartland LLC v. Kraft Foods Grp. Brands LLC*, 137 S. Ct. 1514, 1520 (2017).

### LPP'S ASSERTED PATENTS

15. LPP alleges that it is the owner of and has the right to sue to recover damages for infringement of the '396 Patent, the '924 Patent, and the '080 Patent. *See* Infringement Action, Dkt. 22, ¶¶ 18, 26 and 34. On information and belief, no person or entity other than LPP has an ownership interest in any of the Asserted Patents.

16. The '396 Patent was filed October 30, 2007 and is entitled "System for vaporization of liquid fuels for combustion and method of use." The '396 Patent claims priority to a provisional application filed on December 4, 2002 as well as a provisional application filed on October 10, 2002.

17. LPP has accused GE of infringing, either directly or indirectly, claims 1–18 of the '396 Patent. *Id.*, ¶ 19.

18. The '080 and '924 Patents share a common specification and are entitled "System and method for flame stabilization and control." The '080 Patent was filed on January 12, 2005, whereas the '924 Patent was filed on October 14, 2008. Both patents claim priority to a provisional application filed on December 9, 2004 as well as a provisional application filed on January 12, 2004.

19. LPP has accused GE of infringing, either directly or indirectly, claims 1, 2, 4, 5, 8, 9, 11, 12, 16, 17, and 19 of the '924 Patent. *Id.*, ¶ 27.

20. LPP has accused GE of infringing, either directly or indirectly, claims 1, 2, 4, 8–10, 12–14, 16, 19–20, and 22 of the '080 Patent. *Id.*, ¶ 35.

**COUNT I**

**Declaratory Judgment of Non-infringement of the '396 Patent**

21. The foregoing paragraphs are realleged and incorporated by reference as if fully stated herein.

22. As demonstrated *supra*, including at paragraphs 9–12, there is an actual, substantial, continuing, and justiciable controversy between the parties regarding whether GE has, either directly or indirectly, infringed any valid and enforceable claim of the '396 Patent. GE, therefore, has standing to seek declaratory judgment of non-infringement.

23. GE has neither directly nor indirectly infringed any valid and enforceable claim of the '396 Patent and is not liable for any alleged infringement of the same because, among other reasons, the '396 Patent claims and disclosure are limited to producing a fuel gas using a liquid fuel comprising hydrocarbon molecules and a diluent gas, wherein the diluent gas is inert. GE does not make, use, import, sell, or offer to sell a system which produces a fuel gas using a liquid fuel comprising hydrocarbon molecules and a diluent gas, wherein the diluent gas is inert. Furthermore, because GE does not make, use, import, sell, or offer to sell a system which produces a fuel gas using a liquid fuel comprising hydrocarbon molecules and a diluent gas, wherein the diluent gas is inert, GE has not actively encouraged, instructed or contributed to any acts by its customers that could be alleged to directly infringe the '396 patent. As such, GE does not induce or contribute to the infringement of others regarding any claim of the '396 Patent. GE additionally does not infringe any valid and enforceable claim of the '396 Patent because the '396 Patent is invalid and ineligible for patenting.

24. GE is entitled to a declaratory judgment that it has not infringed, contributed to the infringement of, nor induced the infringement of the '396 Patent.

## COUNT II

### **Declaratory Judgment of Invalidity of the '396 Patent**

25. The foregoing paragraphs are realleged and incorporated by reference as if fully stated herein.

26. As demonstrated *supra*, including at paragraphs 9–12, there is an actual, substantial, continuing, and justiciable controversy between the parties regarding whether any claim of the '396 patent is valid or eligible for patenting. In the Infringement Action, GE provided contentions that explain in detail why each of the asserted claims of the '396 Patent is invalid. Those contentions that address the '396 Patent are attached as **Exhibit F** hereto. GE, therefore, has standing to seek declaratory judgment of invalidity.

27. As demonstrated by **Exhibit F**, each claim of the '396 Patent is invalid for failure to meet one or more of the requirements for patentability under 35 U.S.C. §§ 101, 102, 103 and/or 112, and the judicial doctrine of nonstatutory double patenting. For example, the '396 Patent claims are invalid in view of the prior art, including, but not limited to, the references cited on the face of the '396 Patent and other articles and/or products that were publicly available or disclosed before the priority date of the '396 Patent.

28. In addition, as also explained in **Exhibit F**, the '396 Patent claims are invalid because the full scope of those claims is not enabled, nor described, by the written description of the '396 Patent, and those claims are furthermore indefinite. For example, one of ordinary skill in the art would not be able to practice the full scope of the claimed requirement of “producing a fuel gas using a liquid fuel comprising hydrocarbon molecules and” an “inert” “diluent gas” without undue experimentation, and thus the claims are not enabled. Additionally, because LPP contends in the Infringement Action that natural gas, which is highly reactive, constitutes an “inert” gas,

one of ordinary skill in the art would not be able to determine the scope of the claims insofar as they require the use of an “inert” gas to dilute the fuel gas, and therefore the claims are invalid.

29. Furthermore, and as also explained in **Exhibit F**, the '396 Patent claims are not eligible for patenting because they are directed to a patent-ineligible law of nature, reciting nothing more than natural law of how fuel reacts when gas containing oxygen is introduced. Additionally, the asserted claims are directed to the ineligible abstract idea of mixing fuel gas with a gas containing oxygen and combusting the gas mixture. The asserted claims fail to contain an inventive concept to transform the nature of the claim into patent-eligible subject matter, as all claim elements were well-understood, routine, and/or conventional.

30. GE is entitled to a declaratory judgment that all of the claims of the '396 Patent are invalid.

### **COUNT III**

#### **Declaratory Judgment of Non-infringement of the '080 Patent**

31. The foregoing paragraphs are realleged and incorporated by reference as if fully stated herein.

32. As demonstrated *supra*, including at paragraphs 9–12, there is an actual, substantial, continuing, and justiciable controversy between the parties regarding whether GE has, either directly or indirectly, infringed any valid and enforceable claim of the '080 Patent. GE, therefore, has standing to seek declaratory judgment of non-infringement.

33. GE has neither directly nor indirectly infringed any valid and enforceable claim of the '080 Patent and is not liable for any alleged infringement of the same because, among other reasons, the '080 Patent claims and disclosure are limited to feeding an additive including a combustion enhancer or a combustion retardant depending on whether a sensed fuel characteristic



is above or below an acceptable range. GE does not make, use, import, sell, or offer to sell a system which feeds an additive including a combustion enhancer or a combustion retardant depending on whether a sensed fuel characteristic is above or below an acceptable range. Furthermore, because GE does not make, use, import, sell, or offer to sell a system which feeds an additive including a combustion enhancer or a combustion retardant depending on whether a sensed fuel characteristic is above or below an acceptable range, GE has not actively encouraged, instructed or contributed to any acts by its customers that could be alleged to directly infringe the '080 Patent. As such, GE does not induce or contribute to the infringement of others regarding the same. GE additionally does not infringe any valid and enforceable claim of the '080 Patent because the '080 Patent is invalid and ineligible for patenting.

34. GE is entitled to a declaratory judgment that it has not infringed, contributed to the infringement of, nor induced the infringement of the '080 Patent.

#### **COUNT IV**

##### **Declaratory Judgment of Invalidity of the '080 Patent**

35. The foregoing paragraphs are realleged and incorporated by reference as if fully stated herein.

36. As demonstrated *supra*, including at paragraphs 9–12, there is an actual, substantial, continuing and justiciable controversy between the parties regarding whether any claim of the '080 patent is valid or eligible for patenting. In the Infringement Action, GE provided contentions that explain in detail why each of the asserted claims of the '080 Patent is invalid. Those contentions that address the '080 Patent are attached as **Exhibit F** hereto. GE, therefore, has standing to seek declaratory judgment of invalidity.

37. As demonstrated by **Exhibit F**, each claim of the '080 Patent is invalid for failure to meet one or more of the requirements for patentability under 35 U.S.C. §§ 101, 102, 103 and/or 112, and the judicial doctrine of nonstatutory double patenting. For example, the '080 Patent claims are invalid in view of the prior art, including, but not limited to, the references cited on the face of the '080 Patent and other articles and/or products that were publicly available or disclosed before the priority date of the '080 Patent.

38. In addition, as also explained in **Exhibit F**, the '080 Patent claims are invalid because the full scope of those claims is not enabled, nor described, by the written description of the '080 Patent, and those claims are furthermore indefinite. For example, insofar as claims require “a sensor for sensing a sensed fuel characteristic” where the “sensed fuel characteristic being indicative of a fuel combustion property,” they are neither enabled nor described over their full scope. Additionally, one of ordinary skill in the art would not be able to determine the scope of the claims insofar as they require an “additive” that “includes a combustion enhancer or a combustion retardant.”

39. Furthermore, and as also explained in **Exhibit F**, the '080 Patent claims are not eligible for patenting because they are directed to the ineligible abstract idea of data collection or sensing of fuel characteristics, comparing the sensed fuel characteristics to a predetermined range, and adding an additive to the fuel based on these data. The asserted claims fail to contain an inventive concept to transform the nature of the claim into patent-eligible subject matter, as all claim elements were well-understood, routine, and/or conventional.

40. GE is entitled to a declaratory judgment that all of the claims of the '080 Patent are invalid.

**COUNT V**

**Declaratory Judgment of Non-infringement of the '924 Patent**

41. The foregoing paragraphs are realleged and incorporated by reference as if fully stated herein.

42. As demonstrated *supra*, including at paragraphs 9–12, there is an actual, substantial, continuing, and justiciable controversy between the parties regarding whether GE has, either directly or indirectly, infringed any valid and enforceable claim of the '924 Patent. GE, therefore, has standing to seek declaratory judgment of non-infringement.

43. GE has neither directly nor indirectly infringed any valid and enforceable claim of the '924 Patent and is not liable for any alleged infringement of the same because, among other reasons, the '924 Patent claims and disclosure are limited to feeding an additive including a combustion enhancer or a combustion retardant depending on whether a sensed combustion characteristic is above or below an acceptable range. GE does not make, use, import, sell, or offer to sell a system which feeds an additive including a combustion enhancer or a combustion retardant depending on whether a sensed combustion characteristic is above or below an acceptable range. Furthermore, because GE does not make, use, import, sell, or offer to sell a system which feeds an additive including a combustion enhancer or a combustion retardant depending on whether a sensed combustion characteristic is above or below an acceptable range, GE has not actively encouraged, instructed or contributed to any acts by its customers that could be alleged to directly infringe the '924 Patent. As such, GE does not induce or contribute to the infringement of others regarding the same. GE additionally does not infringe any valid and enforceable claim of the '924 Patent because the '924 Patent is invalid and ineligible for patenting.

44. GE is entitled to a declaratory judgment that it has not infringed, contributed to the infringement of, nor induced the infringement of the '924 Patent.

### COUNT VI

#### **Declaratory Judgment of Invalidity of the '924 Patent**

45. The foregoing paragraphs are realleged and incorporated by reference as if fully stated herein.

46. As demonstrated *supra*, including at paragraphs 9–12, there is an actual, substantial, continuing, and justiciable controversy between the parties regarding whether any claim of the '924 patent is valid or eligible for patenting. In the Infringement Action, GE provided contentions that explain in detail why each of the asserted claims of the '924 Patent is invalid. Those contentions that address the '924 Patent are attached as **Exhibit F** hereto. GE, therefore, has standing to seek declaratory judgment of invalidity.

47. As demonstrated by **Exhibit F**, each claim of the '924 Patent is invalid for failure to meet one or more of the requirements for patentability under 35 U.S.C. §§ 101, 102, 103 and/or 112, and the judicial doctrine of nonstatutory double patenting. For example, the '924 Patent claims are invalid in view of the prior art, including, but not limited to, the references cited on the face of the '924 Patent and other articles and/or products that were publicly available or disclosed before the priority date of the '924 Patent.

48. In addition, as also explained in **Exhibit F**, the '924 Patent claims are invalid because the full scope of those claims is not enabled, nor described, by the written description of the '924 Patent, and those claims are furthermore indefinite. For example, insofar as claims require “a sensor for sensing a combustion characteristic for the combustion device,” they are neither enabled nor described over their full scope. Additionally, one of ordinary skill in the art would

not be able to determine the scope of the claims insofar as they require an “additive” that “includes a combustion enhancer or a combustion retardant.”

49. Furthermore, and as also explained in **Exhibit F**, the '924 Patent claims are not eligible for patenting because they are directed to the ineligible abstract idea of data collection or sensing of a combustion characteristic, comparing the sensed combustion characteristic to a predetermined range, and adding an additive to the fuel based on these data. The asserted claims fail to contain an inventive concept to transform the nature of the claim into patent-eligible subject matter, as all claim elements were well-understood, routine, and/or conventional.

50. GE is entitled to a declaratory judgment that all of the claims of the '924 Patent are invalid.

#### **PRAYER FOR RELIEF**

FOR THESE REASONS, GE respectfully requests that this Court enter judgment in its favor and grant the following relief:

- A. A determination and declaratory judgment that GE does not infringe any valid and enforceable claim of any of the '396, '080, and '924 Patents;
- B. A determination and declaratory judgment that the claims of the '396, '080, and '924 Patents are invalid;
- C. An order declaring that this is an exceptional case and awarding GE its costs, expenses, reasonable attorney fees under 35 U.S.C. § 285 and all other applicable statutes, rules, and common law;
- D. All costs be taxed against LPP; and
- E. Any such other relief as the Court may deem appropriate and just under the circumstances.

**JURY DEMAND**

GE demands a trial by jury on all issues so triable.

Respectfully submitted,

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