

UNITED STATES DISTRICT COURT
DISTRICT OF NEBRASKA

NELSON IRRIGATION CORPORATION,

Plaintiff,

v.

KOMET IRRIGATION CORPORATION;
KOMET AUSTRIA GMBH,

Defendants.

Civil Action No.

**COMPLAINT FOR PATENT
INFRINGEMENT**

JURY DEMAND

Plaintiff Nelson Irrigation Corporation alleges the following causes of action against Defendants Komet Irrigation Corporation and Komet Austria GmbH.

I. PARTIES

A. PLAINTIFF

1. Plaintiff Nelson Irrigation Corporation (“Nelson”) is an Illinois corporation with its principal place of business at 848 Airport Road, Walla Walla, WA 99362.

B. DEFENDANTS

2. Defendant Komet Irrigation Corporation is a Nebraska corporation with its principal place of business at 4501 N. Paden Road, Fremont, NE 68025.

3. Defendant Komet Austria GmbH is an Austria company with an address at Julius Durst-Straße 10, 9900 Lienz, Austria.

4. Komet Irrigation Corporation and Komet Austria GmbH are owned and controlled by three individuals: Arno Drechsel, Viktor Drechsel and Hugo Drechsel. For Komet Austria

GmbH, Arno Drechsel is the CEO & Head of R&D, Viktor Drechsel is the CFO & Head of Operations and Hugo Drechsel is the CSO and Head of Marketing. For Komet Irrigation Corporation, Viktor Drechsel is President and a Director, and Arno Drechsel is Treasurer and a Director. The actions of Komet Irrigation Corporation are controlled by Komet Austria GmbH. Komet Irrigation Corporation exists for the purpose of importing, offering for sale and selling products manufactured and imported into the United States by Komet Austria GmbH. The two companies jointly produce, import, offer for sale, and sell irrigation products in the United States, including the accused products identified in this complaint.

II. JURISDICTION AND VENUE

5. This action arises under the patent laws of the United States, including 35 U.S.C. §§ 271 and 281. Accordingly, original jurisdiction is conferred upon this Court pursuant to 28 U.S.C. §§ 1331 and 1338(a).

6. Defendants are subject to personal jurisdiction in Nebraska. Komet Irrigation Corporation is a resident of this judicial district. Komet Irrigation further imports, offers for sale, sells, and/or exports products in the United States and within this judicial district.

7. Komet Austria GmbH purposefully directs its activities related to the manufacture, importation, offer for sale, and sale of the accused irrigation products in this judicial district, and throughout the United States. Komet Austria GmbH, including through its officers and directors, established and formed Komet Irrigation Corporation for the purpose of selling in the United States the irrigation products manufactured by Komet Austria GmbH. Komet Austria GmbH manufactures the accused products with the express purpose and intention of importing them into the United States so that they can be offered, sold, or exported by Komet Irrigation Corporation.

8. Komet Austria GmbH and Komet Irrigation Corporation act jointly on behalf of one another and for the benefit of one another for the sale of the accused products in the United States. Upon information and belief, Komet Austria GmbH licenses Komet Irrigation Corporation

to use sprinkler technologies including products which may be covered by patents owned or controlled by Komet Austria GmbH. Komet Austria GmbH further produces user manuals and product literature specifically directed to the sale of products within the United States, and provides a warranty covering its irrigation products, including those sold by Komet Irrigation Corporation in the United States. Upon information and belief, Komet Austria GmbH has agreed to indemnify Komet Irrigation Corporation for any claims asserted by third parties related to the Komet Austria GmbH products sold by Komet Irrigation Corporation. In order to facilitate the sale of the accused products in the United States, Komet Austria GmbH produces literature containing performance data described as being “Performance Data in U.S. Units,” which it knows and intends will be used by U.S. customers for the purchase of products manufactured by Komet Austria GmbH and imported into the U.S. for subsequent resale or distribution by Komet Irrigation Corporation. Komet Austria GmbH produces the sales materials for use by Komet Irrigation Corporation, and containing the address of Komet Irrigation Corporation, as part of the joint effort by the two entities to import, offer for sale, and sell products in the U.S. Komet Austria GmbH further owns, controls, or operates the website at www.kometirrigation.com, which is shared by both Komet Austria GmbH and Komet Irrigation Corporation to enable the companies to jointly import, offer for sale, sell, or export the accused irrigation products in the U.S. All of the foregoing actions are knowingly and purposefully directed by Komet Austria GmbH into the United States and specifically into this judicial district.

9. The products imported, offered for sale, and sold by Komet Irrigation Corporation are controlled by Komet Austria GmbH. Komet Austria GmbH provides the product design, engineering, and manufacturing activities which Komet Irrigation Corporation must offer for sale and sell, knowing and intending that Komet Irrigation Corporation will import, offer for sale, and sell the accused products from within this judicial district. Upon information and belief, officers, directors, and employees of Komet Austria GmbH routinely interact with Komet Irrigation

Corporation personnel to encourage, aid, support, and facilitate the sale of the accused products in the United States and this judicial district.

10. Komet Austria GmbH regularly and systematically does business with residents in Nebraska, and in this judicial district, including, but not limited to, (a) advertising the infringing products to residents in Nebraska through the website www.kometirrigation.com; (b) soliciting and allowing Nebraska residents to provide contact information and request information on the www.kometirrigation.com website; (c) directing customers to numerous authorized dealers, distributors, and retailers in Nebraska, among others, through the website and via other marketing means; (d) offering for sale, selling, or making the infringing products available for sale in Nebraska, the United States and the world by knowingly and intentionally directing products into the stream of commerce, with the purpose and knowledge that they would be resold to others from within this judicial district, through one or more central shipping points, including those located in this judicial district, and/or (e) attending and publicly displaying the infringing products in Nebraska at tradeshow.

11. Jurisdiction over Komet Austria GmbH is further proper in this judicial district under Federal Rule of Civil Procedure 4(k)(2). The cause of action of this complaint arises under federal law. If the Court finds that Komet Austria GmbH is not subject to the jurisdiction of the courts of general jurisdiction of any particular state, Komet Austria GmbH has at least minimum contacts with the United States because, among other things, Komet Austria GmbH has (a) imported, or caused to be imported, into the United States and sold, or caused to be sold, its products throughout the United States and thereafter to the world; (b) advertised its products to residents in the United States through its website at www.kometirrigation.com; (c) allowed United States residents to provide contact information and solicit information on Defendants' website; (d) attended and publicly displayed its infringing products in the United States at various trade shows, and (e) further engaged in the additional acts as set forth above.

12. Venue in this district is proper pursuant to 28 U.S.C. §§ 1391(b) and 1400(b) because Defendants are subject to personal jurisdiction in this district and have committed acts of infringement in this district.

III. FACTUAL ALLEGATIONS

A. ASSERTED PATENTS

13. With roots in irrigation for over 100 years, Nelson is a pioneer and world leader in manufacturing irrigation equipment for agricultural and industrial applications. Among its many patented innovations, Nelson designed, developed and commercialized the first pressure regulator having a single strut seat, which provides significant benefits in product quality and operation. This resulted in several patents issued in the mid-2000s directed to pressure regulators with single strut regulator seats. More recently, Nelson designed, developed and commercialized the first pressure regulator having an improved single strut seat where the strut is coaxial to the plunger, which resulted in additional issued patents. As is typical in the industry, Nelson designs, markets and sells its innovative pressure regulators packaged with corresponding and complementary pivot sprinklers and accessories. The following Asserted Patents are directed to certain of these innovations.

14. On June 14, 2016, United States Patent and Trademark Office (“USPTO”) duly and lawfully issued United States Patent No. 9367070 (“the 070 Patent”) entitled “Pressure Regulator Having Single Strut Seat with Strut Coaxial to Plunger.” The patent is attached as Exhibit A. Nelson is the owner by assignment of the 070 Patent.

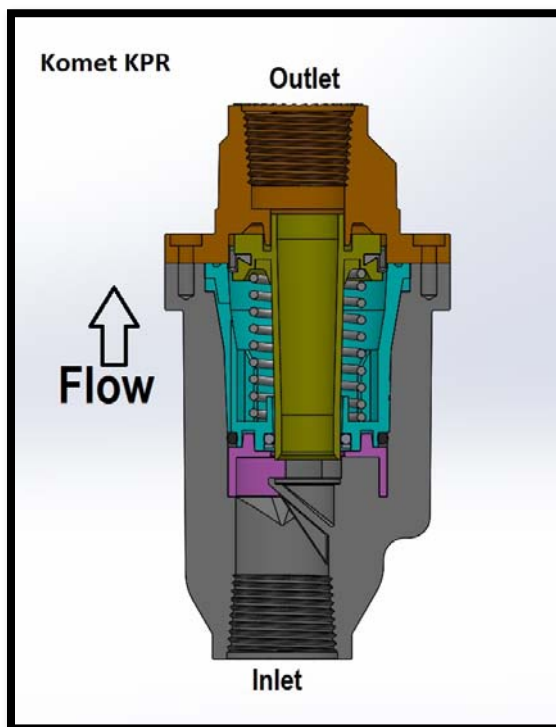
15. On May 15, 2018, the USPTO duly and lawfully issued United States Patent No. 9971361 (“the 361 Patent”) entitled “Pressure Regulator Having Single Strut Seat with Strut Coaxial to Plunger.” The patent is attached as Exhibit B. Nelson is the owner by assignment of the 361 Patent.

16. On September 17, 2019, the USPTO duly and lawfully issued United States Patent No. 10416689 (“the 689 Patent”) entitled “Pressure Regulator Having Single Strut Seat with Strut Coaxial to Plunger.” The patent is attached as Exhibit C. Nelson is the owner by assignment of the 689 Patent.

B. DEFENDANTS’ INFRINGING PRODUCTS

17. Defendants manufacture, import, export, offer for sale, sell and distribute irrigation products primarily through various third party retailers and distributors in the United States and throughout the world. Among the products sold by the Defendants are pressure regulators packaged with corresponding and complementary pivot sprinklers and accessories, including pressure regulators having a single strut seat, marketed as the Komet “KPR.” Defendants have and on information and belief continue to package and sell the KPR products with conveyed goods, including corresponding and complementary pivot sprinklers and accessories.

18. The KPR pressure regulators include a housing, a plunger reciprocally mounted in the housing within a plunger flow passage, a stationary valve seat within the housing, which may also include a supporting strut, and wherein the valve seat is positioned between an inlet flow passage and an inlet to the plunger flow passage, and further where two or more centerlines of the inlet flow passage, an outlet flow passage, and the inlet to the plunger flow passage are offset from each other, and may extend through or intersect the valve seat or other of the centerlines.



19. The KPR pressure regulators meet all the limitations of one or more claims of the Asserted Patents either literally or under the doctrine of equivalents.

C. DEFENDANTS' KNOWLEDGE OF NELSON'S ASSERTED PATENTS

20. Nelson has consistently marked commercial embodiments of its Asserted Patents with the corresponding patent numbers at least as of the issuance of each patent.

21. Nelson contacted Defendants years prior to the filing of this complaint, informing them about the Asserted Patents identified in this complaint. This contact constituted notice to the Defendants of the Asserted Patents, and that the KPR pressure regulators infringe at least one of the claims of each Asserted Patent.

22. Despite the fact that Defendants have had actual knowledge of Nelson's patent rights, Defendants have acted deliberately and in disregard of the Asserted Patents, and with objective recklessness, by infringing the Asserted Patents through continued manufacture, use, import, sale, or offer for sale in the United States of the KPR pressure regulator, as well as conveyed goods.

23. Defendants' infringement of the Asserted Patents is willful and deliberate.

IV. CAUSES OF ACTION

A. Infringement of the 070 Patent

24. Nelson repeats the allegations above.

25. Defendants have infringed at least claim 30 of the 070 Patent, either literally or under the doctrine of equivalents, by making, using, selling, offering to sell, and/or importing the KPR pressure regulator into the United States.

26. Defendants have not been granted any license or other authority from Nelson to make, import, use, offer for sale, or sell the accused pressure regulator.

27. The activities by Defendants with regard to their accused pressure regulator constitute direct infringement of the 070 Patent pursuant to 35 U.S.C. § 271.

28. As a direct result of the infringing activity by Defendants, Nelson has suffered, and will continue to suffer, damages in an amount to be established at trial. In addition, Nelson has suffered, and continues to suffer, irreparable harm for which there is no adequate remedy at law.

29. The infringement by Defendants was with full knowledge of the 070 Patent, and has continued despite that knowledge. Defendants' infringement is in willful disregard of Nelson's patent rights.

B. Infringement of the 361 Patent

30. Nelson repeats the allegations above.

31. Defendants have infringed at least one of claims 1, 17, 32 and 33 of the 361 Patent, either literally or under the doctrine of equivalents, by making, using, selling, offering to sell, and/or importing the KPR pressure regulator into the United States.

32. Defendants have not been granted any license or other authority from Nelson to make, import, use, offer for sale, or sell the accused pressure regulator.

33. The activities by Defendants with regard to their accused pressure regulator constitute direct infringement of the 361 Patent pursuant to 35 U.S.C. § 271.

34. As a direct result of the infringing activity by Defendants, Nelson has suffered, and will continue to suffer, damages in an amount to be established at trial. In addition, Nelson has suffered, and continues to suffer, irreparable harm for which there is no adequate remedy at law.

35. The infringement by Defendants was with full knowledge of the 361 Patent, and has continued despite that knowledge. Defendants' infringement is in willful disregard of Nelson's patent rights.

C. Infringement of the 689 Patent

36. Nelson repeats the allegations above.

37. Defendants have infringed at least one of claims 1, 16, 23, 25, 41 and 42 of the 689 Patent, either literally or under the doctrine of equivalents, by making, using, selling, offering to sell, and/or importing the KPR pressure regulator into the United States.

38. Defendants have not been granted any license or other authority from Nelson to make, import, use, offer for sale, or sell the accused pressure regulator.

39. The activities by Defendants with regard to their accused pressure regulator constitute direct infringement of the 689 Patent pursuant to 35 U.S.C. § 271.

40. As a direct result of the infringing activity by Defendants, Nelson has suffered, and will continue to suffer, damages in an amount to be established at trial. In addition, Nelson has suffered, and continues to suffer, irreparable harm for which there is no adequate remedy at law.

41. The infringement by Defendants was with full knowledge of the 689 Patent, and has continued despite that knowledge. Defendants' infringement is in willful disregard of Nelson's patent rights.

V. PRAYER FOR RELIEF

Nelson requests the following alternative and cumulative relief as judgment against Defendants:

- a. Defendants have and continue to directly and literally infringe the Asserted Patents;
- b. Defendants be preliminarily and permanently enjoined and restrained from directly or indirectly making, using, importing, exporting, offering for sale, or selling pressure regulators or colorable imitations thereof that infringe the Asserted Patents;
- c. Defendants pay damages adequate to compensate Nelson for the infringement by Defendants, in no event less than a reasonable royalty for the use of the inventions;
- d. The case be declared exceptional, that the damages award be trebled pursuant to 35 U.S.C. § 284, and that Nelson be granted its reasonable attorney's fees pursuant to 35 U.S.C. § 285 or other applicable laws;
- e. Nelson be awarded prejudgment interest, post-judgment interest, and costs; and

f. Such other and further relief as the Court may deem just and proper.

RESPECTFULLY SUBMITTED on January 13, 2022.

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