UNITED STATES DISTRICT COURT DISTRICT OF SOUTH DAKOTA SOUTHERN DIVISION

HYDRAASSIST LLC, d/b/a CATTLEVACBOX,

Civ. 4:22-cv-4004

Plaintiff,

VS.

RK PARTNERSHIP LLC, d/b/a CROSS FIVE CATTLE COOLERS, and

BIG FRIG, LLC,

Defendants.

COMPLAINT AND REQUEST FOR JURY TRIAL

COMPLAINT

Plaintiff HydraAssist LLC, doing business as CattleVacBox (hereinafter "Plaintiff"), brings this Complaint for patent infringement arising under the patent laws of the United States of America, 35 U.S.C. §§ 271 et seq., against Defendant RK Partnership LLC, doing business as Cross Five Cattle Coolers, and Defendant Big Frig, LLC (hereinafter "Big Frig"), and states as follows:

THE PARTIES

- Plaintiff HydraAssist LLC is a limited liability company organized under the laws
 of the State of Minnesota, with its principal place of business located at 8095 215th Street W,
 Lakeville, Minnesota 55044.
- 2. Plaintiff HydraAssist LLC is the owner of U.S. Patent No. 10,322,866; U.S. Patent No. 10,807,786; and U.S. Design Patent No. D836,859.

- 3. Upon information and belief, Defendant RK Partnership LLC is a limited liability company organized under the laws of the State of South Dakota, with its principal place of business located at 3491 Whitewood Service Road, Sturgis, South Dakota 57785.
- 4. Upon information and belief, Defendant Big Frig, LLC is a limited liability company organized under the laws of the State of South Dakota, with its principal place of business located at 610 Freedom Drive Suite 2, North Sioux City, South Dakota 57049.

JURISDICTION AND VENUE

- 5. This action arises under the patent laws of the United States, 35 U.S.C. § 100 *et seq.*, and this Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1332, and 1338(a).
- 6. This Court has personal jurisdiction over the Defendant RK Partnership LLC consistent with the due process clause of the United States Constitution. On information and belief, Defendant RK Partnership LLC is a limited liability company organized under the laws of the State of South Dakota and has its principal place of business in this State and in this District. On information and belief, Defendant RK Partnership LLC has regularly and systematically transacted business in South Dakota and has committed acts of patent infringement in South Dakota as alleged more particularly below.
- 7. This Court has personal jurisdiction over the Defendant Big Frig consistent with the due process clause of the United States Constitution. On information and belief, Defendant has a regular and established place of business in this State and in this District. On information and belief, Defendant has regularly and systematically transacted business in South Dakota and has committed acts of patent infringement in South Dakota as alleged more particularly below.

8. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391 and § 1400(b) because Defendant RK Partnership LLC resides within the District, has a regular and established place of business in this district, and has committed acts of infringement in this District. Further, venue is proper in this judicial district pursuant to 28 U.S.C. § 1391 and § 1400(b) because Defendant Big Frig resides within the District, has a regular and established place of business in this district, and has committed acts of infringement in this District.

THE ASSERTED PATENTS AND BACKGROUND

- 9. On January 12, 2017, Darla Bramwell filed U.S. Provisional Patent Application Serial No. 62/445,369 with the United States Patent and Trademark Office (hereinafter "USPTO"), for a thermally insulated livestock container. On July 6, 2017, Bramwell filed a non-provisional patent application claiming priority to the aforementioned U.S. Provisional Patent Application Serial No. 62/445,369. The non-provisional patent application filed July 6, 2017, U.S. Patent Application Serial No. 15/642,532, was for an invention by Bramwell for a new, useful, and nonobvious livestock medication container.
- 10. On the basis of U.S. Patent Application Serial No. 15/642,532, filed July 6, 2017, the USPTO legally issued to Bramwell U.S. Patent No. 10,322,866 ("the '866 Patent") on June 18, 2019.
- 11. The '866 Patent is valid and enforceable. A true and accurate copy of the '866 Patent is attached hereto as **Exhibit A**.
- 12. On June 17, 2019, prior to issuance of the '866 Patent, Bramwell filed U.S. Patent Application Serial No. 16/442,998 with the USPTO as a continuation of U.S. Patent Application Serial No. 15/642,532.
 - 13. On the basis of U.S. Patent Application Serial No. 16/442,998, the USPTO legally

issued to Bramwell U.S. Patent No. 10,807,786 ("the '786 Patent") on October 20, 2020.

- 14. The '786 Patent is valid and enforceable. A true and accurate copy of the '786 Patent is attached hereto as **Exhibit B**.
- 15. On May 21, 2018, Bramwell filed U.S. Design Patent Application Serial No. 29/648,380 with the USPTO as a continuation of U.S. Design Patent Application Serial No. 29/599,965, filed April 7, 2017.
- 16. On the basis of U.S. Patent Application Serial No. 29/648,380, the USPTO legally issued to Bramwell U.S. Design Patent No. D836,859 ("the '859 Design Patent") on December 25, 2018.
- 17. The '859 Design Patent is valid and enforceable. A true and accurate copy of the '859 Design Patent is attached hereto as **Exhibit C**.

THE ACCUSED PRODUCTS

18. Upon information and belief, Defendants make, use, sell, and/or offer for sale thermally insulated livestock medication containers, including the 3 Holster Ranch Hand Cross Vaccine Cooler (pictured nearby as **Figure 1**), the 2 Holster Chute Side Cooler, and the 4 Holster Ranch Hand Vaccination Cooler (collectively "the Accused Products").



Figure 1

NOTICE OF INFRINGEMENT

- 19. Upon information and belief, Defendants have had actual knowledge of Plaintiff's patent rights.
- 20. On or about August 10, 2021, counsel for Plaintiff notified Defendant RK Partnership LLC that the Accused Products infringed the '866 Patent, the '786 Patent, and the '859 Design Patent.
- 21. Upon information and belief, Defendants have continued to make, use, sell, or offer to sell the Accused Products with complete disregard for Plaintiff's patent rights in the '866 Patent, the '786 Patent, and the '859 Design Patent. Defendants knew or should have known that its actions constituted infringement of the '866 Patent, the '786 Patent, and the '859 Design Patent.

COUNT I: INFRINGEMENT OF U.S. PATENT NO. 10,322,866

- 22. Plaintiff incorporates by reference Paragraphs 1 through 21 of the Complaint.
- 23. Defendants have infringed and continue to infringe the '866 Patent by making, using, selling, and offering to sell the Accused Products, which infringe at least claims 1-5 and 15 of the '866 Patent. Defendants are infringing the '866 Patent and will continue to infringe the '866 Patent unless enjoined by this Court.
- 24. The Accused Products embody the patented invention and infringe at least claims 1-5 and 15 of the '866 Patent, literally, directly or indirectly, or under the doctrine of equivalents.
- 25. Upon information and belief, the Accused Products provide a livestock medication container that includes a thermally insulated body having a plurality of upstanding sidewalls, a bottom wall interconnecting the plurality of upstanding sidewalls to define an interior cavity, and a top opening; a lid movably attached to at least one of the plurality of

upstanding sidewalls, the lid configured to provide a closure of the top opening when placed in a closed position; and one or more sleeves forming apertures extending through the lid, wherein the one or more sleeves extend from an interior of the lid and are dimensioned to holster a dispensing end of a livestock medication delivery device in an upright orientation.

- 26. Upon information and belief, the Accused Products include one or more dividers removably received within the interior cavity, to define a plurality of interior compartments.
- 27. Upon information and belief, the Accused Products include a top lid that includes a first lid portion covering a first portion of the top opening; and a second lid portion covering a second portion of the top opening.
- 28. Upon information and belief, the Accused Products include a first lid portion that covers at least one of the plurality of interior compartments.
- 29. Upon information and belief, the Accused Products include a second lid portion that covers another of the plurality of interior compartments.
- 30. Upon information and belief, the Accused Products provide a livestock medication container, comprising: a thermally insulated body having a plurality of upstanding sidewalls, a bottom wall interconnecting the plurality of upstanding sidewalls to define an interior cavity, and a top opening; a first lid segment and a second lid segment configured to provide a closure of a first end and a second end of the top opening when placed in a closed position, each of the first lid segment and the second lid segment movably attached to at least one of the plurality of upstanding sidewalls; and one or more sleeves forming apertures extending through the second lid segment, wherein the one or more sleeves extend from an interior of the lid and are dimensioned to retain a dispensing end of a livestock medication

delivery device in an upright orientation with a delivery tip of the livestock medication device received within the interior cavity.

- 31. As a result of Defendants' infringement of the '866 Patent, Plaintiff is entitled to monetary damages in an amount adequate to compensate for Defendants' infringement, but in no event less than a reasonable royalty for the use made of the invention by Defendants, together with interest and costs as fixed by the Court.
- 32. Defendants' activities in infringing the '866 Patent are willful and deliberate, entitling Plaintiff to enhanced damages under 35 U.S.C. § 284 and to attorneys' fees and costs incurred in prosecuting this action under 35 U.S.C. § 285.
- 33. Plaintiff has been irreparably damaged and will continue to be irreparably damaged by reason of Defendants' infringement of the '866 Patent unless this Court restrains the infringing acts of Defendants. Plaintiff is without an adequate remedy at law.

COUNT II: INFRINGEMENT OF U.S. PATENT NO. 10,807,786

- 34. Plaintiff incorporates by reference Paragraphs 1 through 33 of the Complaint.
- 35. Defendants have infringed and continue to infringe the '786 Patent by making, using, selling, and offering to sell the Accused Products, which infringe at least claims 1-3, 15, and 18 of the '786 Patent. Defendants are infringing the '786 Patent and will continue to infringe the '786 Patent unless enjoined by this Court.
- 36. The Accused Products embody the patented invention and infringe at least claims 1-3 and 15-18 of the '786 Patent, literally, directly or indirectly, or under the doctrine of equivalents.
- 37. Upon information and belief, the Accused Products provide an insulated container that includes a thermally insulated body having a plurality of upstanding sidewalls, a bottom wall

opening; a lid movably attached to at least one of the plurality of upstanding sidewalls, the lid configured to provide a closure of the top opening when placed in a closed position; and one or more sleeves extend from a bottom surface of the lid, wherein the one or more sleeves surround an aperture extending from an interior face of the lid and are dimensioned to holster an end of a cylindrical device in an upright orientation when received through the one or more sleeves.

- 38. Upon information and belief, the Accused Products include one or more dividers removably received within the interior cavity, to define a plurality of interior compartments.
- 39. Upon information and belief, the Accused Products include a lid that includes a first lid portion covering a first portion of the top opening; and a second lid portion covering a second portion of the top opening.
- 40. Upon information and belief, the Accused Products provide lid for an insulated container, including a first lid segment and a second lid segment configured to provide a closure of a first end and a second end of a top opening of the insulated container when placed in a closed position; and one or more sleeves extending from a bottom surface of the second lid segment and an aperture defined through an interior face of the second lid segment, wherein the one or more sleeves are dimensioned to retain a cylindrical shaft received through the aperture in an upright orientation relative to the lid with an end of the cylindrical shaft carried above a bottom of the insulated container.
- 41. Upon information and belief, the Accused Products provide a lid segment dimensioned to cover a portion of a top opening of the insulated container when placed in a closed condition; an aperture vertically extending through a top surface and a bottom surface of the lid segment; and a sleeve extending from the bottom surface of the lid segment and aligned

with the aperture, wherein the aperture and the sleeve are dimensioned to holster a cylindrical shaft in an upright orientation when received through the aperture.

- 42. As a result of Defendant's infringement of the '786 Patent, Plaintiff is entitled to monetary damages in an amount adequate to compensate for Defendant's infringement, but in no event less than a reasonable royalty for the use made of the invention by Defendant, together with interest and costs as fixed by the Court.
- 43. Defendants' activities in infringing the '786 Patent are willful and deliberate, entitling Plaintiff to enhanced damages under 35 U.S.C. § 284 and to attorneys' fees and costs incurred in prosecuting this action under 35 U.S.C. § 285.
- 44. Plaintiff has been irreparably damaged and will continue to be irreparably damaged by reason of Defendants' infringement of the '786 Patent unless this Court restrains the infringing acts of Defendants. Plaintiff is without an adequate remedy at law.

COUNT III: INFRINGEMENT OF U.S. DESIGN PATENT NO. D836,859

- 45. Plaintiff incorporates by reference Paragraphs 1 through 46 of the Complaint.
- 46. Defendants have infringed and continue to infringe the '859 Design Patent by making, using, selling, and offering to sell the Accused Products. Defendants are infringing the '859 Design Patent and will continue to infringe the '859 Design Patent unless enjoined by this Court.
- 47. Defendants have infringed and continue to infringe the '859 Design Patent in so far as at least some of the Accused Products, sold or offered for sale in the United States, including within this District, infringe the design covered by the '859 Design Patent in violation of 35 U.S.C. § 271.

- 48. Defendants have infringed and continue to infringe the '859 Design Patent because, in the eye of an ordinary observer, giving such attention as a purchaser usually gives, at least some of the Accused Products incorporate substantially the same design covered by the '859 Design Patent, the resemblance being such as to deceive such an ordinary observer, inducing such an ordinary observer to purchase Defendants' product while supposing it to be Plaintiff's product.
- 49. As a result of Defendants' infringement of the '859 Design Patent, Plaintiff is entitled to monetary damages in an amount adequate to compensate for Defendant's infringement, but in no event less than a reasonable royalty for the use made of the invention by Defendant, together with interest and costs as fixed by the Court.
- 50. As a result of Defendants' infringement of the '859 Design Patent, Plaintiff is entitled to recover Defendants' profits from the sale of Accused Products that infringe the '859 Design Patent under 35 U.S.C. § 289.
- 51. Defendants' activities in infringing the '859 Design Patent are willful and deliberate, entitling Plaintiff to enhanced damages under 35 U.S.C. § 284 and to attorneys' fees and costs incurred in prosecuting this action under 35 U.S.C. § 285.
- 52. Plaintiff has been irreparably damaged and will continue to be irreparably damaged by reason of Defendants' infringement of the '859 Design Patent unless this Court restrains the infringing acts of Defendants. Plaintiff is without an adequate remedy at law.

WHEREFORE, Plaintiff Prays:

- A. That this Court enter a judgment that Defendants have infringed U.S. Patent No. 10,322,866, U.S. Patent No. 10,807,786, and U.S. Design Patent No. D836,859, and that such infringement was willful;
- B. That Defendants, their officers, employees, agents, and those persons in active participation or concert with them be permanently enjoined from infringing U.S. Patent No. 10,322,866, U.S. Patent No. 10,807,786, and U.S. Design Patent No. D836,859;
- C. That Defendants be ordered to pay damages to Plaintiff pursuant to 35 U.S.C. § 284, including interest from the dates of infringement, resulting from Defendant's infringement of U.S. Patent No. 10,322,866, U.S. Patent No. 10,807,786, and U.S. Design Patent No. D836,859;
- D. That Defendants be ordered to pay to Plaintiff treble damages pursuant to 35 U.S.C. § 284, resulting from Defendant's willful infringement of U.S. Patent No. 10,322,866, U.S. Patent No. 10,807,786, and U.S. Design Patent No. D836,859;
- E. That Plaintiff be awarded its costs of this action and reasonable attorneys' fees pursuant to 35 U.S.C. §§ 284 and 285; and
- F. That Plaintiff be awarded such further relief as this Court may deem just and proper.

[Remainder of Page Intentionally Left Blank]

Dated at Sioux Falls, South Dakota, this 11th day of January, 2022.

DAVENPORT, EVANS, HURWITZ & SMITH, L.L.P.

/s/ Ashley R. Brost

Ashley R. Brost 206 West 14th Street, P.O. Box 1030 Sioux Falls, SD 57101-1030 Telephone (605) 336-2880 Facsimile (605) 335-3639

E-mail: <u>abrost@dehs.com</u>
Attorneys for Plaintiff

DEMAND FOR JURY TRIAL

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiff hereby requests a trial by jury for all issues triable by a jury.

/s/ Ashley R. Brost
Ashley R. Brost

JS 44 (Rev. 02/19)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

DEFENDANTS

I. (a) PLAINTIFFS HydraAssist LLC, d/b/a CattleVacBox (b) County of Residence of First Listed Plaintiff (EXCEPT IN U.S. PLAINTIFF CASES) Dakota County, MN				DEFENDANTS RK Partnership LLC, d/b/a Cross Five Cattle Coolers, and Big Frig, LLC						
										County of Residence
				(c) Attorneys (Firm Name, Address, and Telephone Number) Ashley Brost, Davenport, Evans, Hurwitz & Smith LLP 206 W 14th Street, P.O. Box 1030 Sioux Falls, SD 57101-1030				Attomeys (If Known)		
II. BASIS OF JURISD	ICTION (Place an "X" in C	ne Box Only)		TIZENSHIP OF P	RINCIPA	L PARTIES				
☐ 1 U.S. Government Plaintiff	3 Federal Question (U.S. Government Not a Party)				TF DEF	Incorporated or Pr of Business In T		for Defend PTF	lant) DEF	
☐ 2 U.S. Government Defendant	Diversity (Indicate Citizenship of Parties in Item III)		Citîze	en of Another State	2 🗇 2	of Business In		[] 5	□ 5	
				en or Subject of a 💢 reign Country	3 📑 3	Foreign Nation		<u> </u>	1 6	
IV. NATURE OF SUIT (Place an "X" in One Box Only)				Click here for: Nat FORFEITURE/PENALTY BANKRUPTCY			re of Suit Code Descriptions. OTHER STATUTES			
CONTRACT 110 Insurance 120 Marine 130 Miller Act 140 Negotiable Instrument 150 Recovery of Overpayment & Enforcement of Judgment 151 Medicare Act 152 Recovery of Defaulted Student Loans (Excludes Veterans) 153 Recovery of Overpayment of Veteran's Benefits 160 Stockholders' Suits 190 Other Contract 195 Contract Product Liability 196 Franchise REAL PROPERTY 210 Land Condemnation 220 Foreclosure 230 Rent Lease & Ejectment 240 Torts to Land 245 Tort Product Liability 290 All Other Real Property	PERSONAL INJURY 310 Airplane 315 Airplane Product Liability 320 Assault, Libel &	PERSONAL INJURY 365 Personal Injury - Product Liability 367 Health Care/ Pharmaceutical Personal Injury Product Liability 368 Asbestos Personal Injury Product Liability PERSONAL PROPER 370 Other Fraud 371 Truth in Lending 380 Other Personal Property Damage 385 Property Damage 385 Property Damage Product Liability PRISONER PETITION Habeas Corpus: 463 Alien Detainee 510 Motions to Vacate Sentence 530 General 535 Death Penalty Other: 540 Mandamus & Other 550 Civil Rights 555 Prison Condition 560 Civil Detainee - Conditions of Confinement	TY	2.5 Drug Related Seizure of Property 21 USC 881 of Other 21 USC 88	422 Appc 423 With 28 U PROPE 320 Copp 830 Pater New 840 Trade 861 HiA 862 Black 863 DIW 864 SSID 865 RSI (870 Taxe or D 871 IRS—26 U	cal 28 USC 158 drawal ISC 157 RTY RIGHTS rrights at at - Abbreviated Drug Application emark SECURITY (1395ff) ac Lung (923) C/DIWW (405(g))	□ 375 False Claims Act □ 376 Qui Tam (31 USC □ 3729(a)) □ 400 State Reapportionment □ 410 Antitrust □ 430 Banks and Banking □ 450 Commerce □ 460 Deportation □ 470 Racketeer Influenced and □ Corrupt Organizations □ 480 Consumer Credit □ 485 Telephone Consumer □ Protection Act □ 490 Cable/Sat TV □ 850 Securities/Commodities/ □ Exchange □ 890 Other Statutory Actions □ 891 Agricultural Acts □ 893 Environmental Matters □ 895 Freedom of Information □ Act □ 896 Arbitration □ 899 Administrative Procedure □ Act/Review or Appeal of □ Agency Decision □ 950 Constitutionality of □ State Statutes		oment ng nced and tions mer odities/ ctions atters mation	
	moved from	Remanded from C Appellate Court	J 4 Rein Reop		r District	☐ 6 Multidistr Litigation Transfer		Multidis Litigatio Direct Fi	on -	
VI. CAUSE OF ACTIO	I 35 U.S.C. § 100 €	et seq.	e filing (I	Oo not cite jurisdictional sta	tutes unless di	versity):				
VII. REQUESTED IN COMPLAINT: One of the control of			D	EMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: X Yes ONo						
VIII. RELATED CASE IF ANY	(See instructions):	JUDGE			DOCKE	T NUMBER				
DATE 01/11/2022 FOR OFFICE USE ONLY		SIGNATURE OF ATT	ORNEY	of record	-					
RECEIPT #AN	40UNT	APPLYING IFP _		JUDGE		MAG. JUD	GE			