

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

R421A LLC, and RMS of Georgia,
LLC d/b/a Choice Refrigerants,

Plaintiffs,

v.

BMP USA, Inc., iGAS USA, Inc.,
L.M. Supply Inc., Cool Master
U.S.A., L.L.C., and Xianbin Meng,

Defendants.

CIVIL ACTION NO:

JURY TRIAL DEMANDED

COMPLAINT

Plaintiffs R421A LLC and RMS of Georgia, LLC d/b/a Choice Refrigerants (collectively, “Plaintiffs” or “Choice”), by and through their undersigned attorneys, file this Complaint against Defendants BMP USA, Inc., iGAS USA, Inc., L.M. Supply Inc., Cool Master U.S.A., L.L.C., and Xianbin Meng (collectively, “Defendants”) and in support thereof alleges as follows:

NATURE AND BASIS OF ACTION

1. This is an action for patent infringement under the patent laws of the United States, 35 U.S.C. § 1 *et seq.*, and for unjust enrichment under Florida Law. Choice seeks injunctive relief, damages, and recovery of its reasonable costs and attorneys’ fees.

THE PARTIES

2. Plaintiff R421A LLC (“R421A”) is a limited liability company organized and existing under the laws of the State of Georgia having its principal place of business at 610 McFarland 400 Drive, Alpharetta, Georgia, 30004.

3. Plaintiff RMS of Georgia, LLC d/b/a Choice Refrigerants LLC (“Choice”) is a limited liability company organized and existing under the laws of the State of Georgia having its principal place of business at 610 McFarland 400 Drive, Alpharetta, Georgia, 30004.

4. Defendant BMP USA, Inc. (“BMP”) is a Florida corporation organized and existing under the laws of the State of Florida having its principal place of business at 8105 Anderson Road, Tampa, Florida, 33634. Upon information and belief, BMP may be served by serving its Registered Agent, Xianbin Meng, at 8105 Anderson Road, Tampa, Florida 33634.

5. Defendant iGas USA, Inc. (“iGas”) is a Florida corporation organized and existing under the laws of the State of Florida having its principal place of business at 8105 Anderson Road, Tampa, Florida, 33634. Upon information and belief, iGas is a successor in interest to one or more of Defendants BMP, LM Supply, and/or Cool Master, and may be served by serving its Registered Agent, Xianbin Meng, at 8105 Anderson Road, Tampa, Florida 33634.

6. Defendant L.M. Supply, Inc. (“LM Supply”) is a Florida corporation organized and existing under the laws of the State of Florida having its principal place of business at 8105 Anderson Road, Tampa, Florida, 33634. Upon information and belief, LM Supply may be served by serving its Registered Agent, Xianbin Meng, at 8105 Anderson Road, Tampa, Florida 33634.

7. Defendant Cool Master U.S.A., L.L.C. (“Cool Master”) is a limited liability company organized and existing under the laws of the State of Florida having its principal place of business at 8105 Anderson Road, Tampa, Florida, 33634. Upon information and belief, Cool Master may be served by serving its Registered Agent, Xianbin Meng, at 8105 Anderson Road, Tampa, Florida 33634.

8. Defendant Xianbin Meng is the President of Defendants BMP USA, iGAS USA, and LM Supply, and the Manager of Defendant Cool Master U.S.A. Upon information and belief, Defendant Meng resides at 5814 Mariner Street, Tampa, Florida 33609.

JURISDICTION AND VENUE

9. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1338 because this Complaint includes a cause of action for patent infringement under the patent laws of the United States, including but not limited to, 35 U.S.C. §§ 271, 281, 283-285, and 287.

10. This Court has personal jurisdiction over Defendants by virtue of the fact that each of Defendants resides in this District, has transacted business in this District, has derived substantial revenue from goods offered for sale and/or sold in this District, and/or has established sufficient minimum contacts with the State of Florida such that each of Defendants is subject to the personal jurisdiction of this Court. Personal jurisdiction in Florida over each of Defendants is also consistent with the requirements of due process.

11. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391(b) and 1400(b) because each of Defendants resides in this District and/or has a regular and established place of business in this District located at 8105 Anderson Road, Tampa, Florida 33634 and has committed acts of infringement in this District, and because a substantial part of the events or omissions giving rise to the claims occurred in this District.

CHOICE'S INNOVATIVE REFRIGERANT

12. Choice is an innovative manufacturer and distributor of heating, ventilation, and air conditioning (HVAC) products, namely refrigerants, based in Alpharetta, Georgia.

13. One of Choice's earliest and most innovative refrigerants is a R-22 replacement refrigerant known as Choice® R-421A.

14. For years, chlorodifluoromethane (also known as R-22 or Freon), was the major refrigerant used in residential air conditioners, refrigerators,

freezers, and window air conditioning units in the United States. R-22 is a refrigerant within the class of chemicals known as hydrochlorofluorocarbons or “HCFCs.”

15. However, beginning January 1, 2010, the use of R-22 in the United States was phased out by the U.S. Environmental Protection Agency (“EPA”) pursuant to the Montreal Protocol on substances that Deplete the Ozone Layer (the “Montreal Protocol”), a protocol to the Vienna Convention for the Protection of the Ozone Layer, and domestic legislation under the federal Clean Air Act, 42 U.S.C. §§ 7671-7671q, and the Stratospheric Ozone Protection regulations promulgated by the EPA in Title 40, Code of Federal Regulations, Part 82.

16. Ultimately, as of January 1, 2020, the production and importation of R-22 was banned in the United States by the EPA under the Clean Air Act.

17. Because of the phaseout and ultimate ban on the production and importation of R-22, millions of equipment owners with R-22 based cooling units were required to use replacement refrigerants to service their existing equipment.

18. In the 2000s, in anticipation of the phaseout and ultimate ban on the production and importation of R-22, Choice designed and developed an R-22 replacement refrigerant that consists of a novel blend of two gases, known

as R-125 and R134a. R-125 is a gas known as pentafluoroethane, and R-134a is a gas known as tetrafluoroethane, in particular 1,1,1,2-tetrafluoroethane.

19. Choice applied to the American Society of Heating, Refrigerating and Air- Conditioning Engineers (ASHRAE) to receive a new refrigerant designation for this novel refrigerant blend and for approval as a substitute refrigerant and replacement for R-22.

20. ASHRAE approved Choice's new refrigerant and assigned the refrigerant a "R" number designation, R-421A. As a result, this novel replacement refrigerant became known in the industry as R-421A.

21. For a refrigerant to be called R-421A in accordance with ASHRAE's designated standard, the refrigerant must include 58% (plus or minus 1%) R-125 gas and 42% (plus or minus 1%) R-134a gas, wherein the combined weights of R-125 and R-134a total 100% by mass of the two gasses in the refrigerant composition.

22. Choice also applied to the Environmental Protection Agency (EPA) for approval of Choice® R-421A under the EPA's Significant New Alternatives Policy (SNAP) program. SNAP is a program under which the EPA evaluates and has authority to approve new refrigerants as substitutes for ozone-depleting substances, such as R-22.

23. The EPA approved Choice® R-421A and Choice® R-421A is an EPA SNAP-approved R-22 substitute and replacement refrigerant.

24. Choice® R-421A is at the core of Choice’s business, and Choice has spent a substantial amount of time and resources designing, developing, and bringing this innovative refrigerant to the market.

25. As a result of these efforts, Choice’s founder, Ken Ponder, was granted several U.S. patents on this innovative refrigerant blend, including U.S. Patent Nos. 8,197,706 (“the ’706 Patent”) and 9,982,179 (“the ’179 Patent”).

26. The ’706 Patent, entitled “Refrigerant with Lubricating Oil for Replacement of R22 Refrigerant,” was filed on December 6, 2010, and after a full and fair examination, was duly and legally issued by the United States Patent and Trademark Office (PTO) on June 12, 2012. A true and correct copy of the ’706 Patent is attached hereto as Exhibit A.

27. Plaintiff R-421A LLC is the owner of all right, title, and interest in and to the ’706 Patent by assignment from Ponder, including the right to make, use, offer for sale, sell, import, and enforce the ’706 Patent.

28. Plaintiff RMS of Georgia LLC is the exclusive licensee of the ’706 Patent and has been assigned and delegated the right to enforce the ’706 Patent.

29. The ’179 Patent, entitled “Refrigerant with Lubricating Oil for Replacement of R22 Refrigerant,” was filed on June 11, 2012, and after a full

and fair examination, was duly and legally issued by the PTO on May 29, 2018. A true and correct copy of the '179 Patent is attached hereto as Exhibit B.

30. Plaintiff R-421A LLC is the owner of all right, title, and interest in and to the '179 Patent by assignment from Ponder, including the right to make, use, offer for sale, sell, import, and enforce the '179 Patent.

31. Plaintiff RMS of Georgia LLC is the exclusive licensee of the '179 Patent and has been assigned and delegated the right to enforce the '179 Patent.

DEFENDANTS' INFRINGING AND UNLAWFUL CONDUCT

32. Upon information and belief, Defendant LM Supply is a company based in Tampa, Florida that is owned and operated by Defendant Xianbin (Ben) Meng.

33. Upon information and belief, Defendant Cool Master U.S.A. is also a company based in Tampa Florida that is owned and operated by Mr. Meng.

34. Upon information and belief, both Defendants LM Supply and Cool Master U.S.A. purchase certain chemicals, including hydrofluorocarbon refrigerant blends, from vendors in China and import the refrigerant blends into the United States, either for distribution and sale through Defendants BMP USA and/or iGAS USA, or for further processing and distribution through Defendants BMP USA and/or iGAS USA.

35. Upon information and belief, Defendants BMP USA and/or iGAS USA offer for sale and sell both single component and blended refrigerants for the HVAC industry.

36. Upon information and belief, Defendant Meng directs and controls the activities of each of Defendants BMP, iGas, LM Supply, and Cool Master, and has actively assisted with each of Defendants' infringement of the '706 and '179 Patents, as described in further detail below.

37. In 2015, the U.S. Department of Commerce ("Commerce") and the International Trade Commission ("ITC") began an investigation into whether the People's Republic of China was unfairly dumping (*i.e.*, illegally undermining U.S. markets) various blends of refrigerants into the U.S. refrigerant market. The investigation focused on a class of refrigerants known as hydrofluorocarbons ("HFCs") which includes R-421A and other HFC refrigerants. *See* Hydrofluorocarbon Blends and Components Thereof from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances, Dck. A-570-028, 81 Fed. Reg. 42314 (June 29, 2016) ("Final Determination"), attached hereto as Exhibit C.

38. In 2016, Commerce and ITC determined that Chinese exporters were illegally dumping HFC refrigerants into U.S. markets, and consequently imposed significant antidumping duties on imports of HFC blends from China.

See Hydrofluorocarbon Blends from the People’s Republic of China: Antidumping Duty Order, Dck. A–570–028, 81 Fed. Reg. 55436 (Aug. 19, 2016) (“HFC Blends Order”), attached hereto as Exhibit D.

39. Choice® R-421A, as a patented refrigerant, was expressly excluded from the HFC Blends Order. *See* Exhibit D, HFC Blends Order, 81 Fed. Reg. at 55436:3 (“Also excluded from this investigation are patented HFC blends, including, but not limited to, ISCEONR blends, including MO99™ (R–438A), MO79 (R–422A), MO59 (R–417A), MO49Plus™ (R–437A) and MO29™ (R–422D), GenetronR Performax™ LT (R–407F), Choice® R–421A, and Choice®–421B.”).

40. Notably, imports of the HFC component R-134a from China are subject to a separate antidumping duty of 167.02%. *See* 1,1,1,2 Tetrafluoroethane (R-134a) from the People’s Republic of China: Antidumping Duty Order, Dck. A-570-044, 82 Fed. Reg. 18422 (Apr. 19, 2017) (the “134a Order”), attached hereto as Exhibit E. Choice® R-421A is made, in part, from 42% (plus or minus 1%) R-134a by volume.

41. Between late 2016 and early 2018, the Defendants, directly or indirectly, imported approximately 750,000 kilograms of refrigerant that was identified by Defendants on custom forms as “R421A.”

42. Upon learning of Defendants’ importation of R-421A, in November 2017, Choice submitted an application to the Department of Commerce for a

scope ruling pursuant to 19 C.F.R. §351.225 regarding “whether non-patented HFC refrigerant blends qualify for the exclusion” from the HFC Blends Order.

43. In December 2017, Defendant LM Supply entered an appearance and provided comments in response to Choice’s November 2017 application for scope ruling. *See* December 27, 2017, Letter from LM Supply to Secretary of Commerce (“LM Supply’s Comments”), attached hereto as Exhibit F.

44. In LM Supply’s Comments, it expressly stated that the scope of the HFC Blends Order “is straightforward and unambiguous....The exclusion applies by its terms to any products that satisfy the terms of the patent.” *See* Exhibit F, p. 5.

45. LM Supply further stated that “[i]t is established Department practice in scope rulings involving patented goods to merely compare the description of the goods in the patent to the description of the imported goods.” *Id.*

46. LM Supply then noted that, “in this instance the Department should examine the description of HFC blends in the ’706 patent and determine whether the imported R-421A meets that description. If the imported product falls within the ’706 patent, then it is a “patented HFC blend” and is excluded from the order.” *Id.*

47. Ultimately, the Department of Commerce followed LM Supply’s suggestion that it determine whether LM Supply’s imported R-421A is a

“patented HFC blend,” and issued a Supplemental Questionnaire to LM Supply on April 4, 2018.

48. LM Supply submitted a response to the Supplemental Questionnaire on April 27, 2018 (“LM Supply’s Supplemental Response”), attached hereto as Exhibit G.

49. In the Supplemental Questionnaire, LM Supply was asked to “Describe any differences between R-421A imported by your company and patented R-421A.” In its response, LM Supply stated, in relevant part, that: “LM Supply believes that its imported R-421A is the same as Choice’s R-421A.” Exhibit G, p. 7.

50. LM Supply’s President, Mr. Meng, and its attorney, Nithya Nagarajan, certified, under oath, that LM Supply’s Supplemental Response was accurate and complete. See Exhibit G, Representative Certifications.

51. On January 8, 2018, LM Supply responded to a separate Request for Information (CBP Form 28) relating to certain imports of R-421A. In LM Supply’s written response to U.S. Customs and Border Protection (CBP), attached hereto as Exhibit H, LM Supply again noted that it was “cognizant of the scope of the order in the antidumping duty case on *Hydrofluorocarbon Blends and Components Thereof from the People’s Republic of China*, which excludes ‘patented HFC blends’ including, but not limited to certain brands of refrigerants.” Exhibit H, p. 2.

52. LM Supply further represented to CBP that, “[a]t the time of entry LM Supply believed (and continues to believe) that the R-421A in question was excluded from that antidumping duty case [the HFC Blends Order] by virtue of the above referenced exclusion.” Exhibit H, p. 2.

53. LM Supply represented to CBP that the R-421A in question in the Request for Information was excluded from the antidumping duties in the HFC Blends Order because it was a patented HFC blend.

54. Upon information and belief, one or more of Defendants, including LM Supply and Cool Master U.S.A., arranged for the importation of R-421A from China to one or more of Defendants in the United States with full knowledge of Choice’s patent rights in and to R-421A.

55. Specifically, one or more of Defendants, as importer of record for such shipments, would have prepared shipping papers reflecting the declaration of “R-421A” when they knew or should have known that the goods were patented, in order to claim that the shipments were expressly excluded from the HFC Blends Order.

56. Defendants’ importation, manufacture, use, offer for sale, and/or sale of R-421A infringed one or more claims of the ’179 and ’706 Patents.

57. Defendants directly infringed, literally or under the doctrine of equivalents, at least Claim 17 of the ’706 Patent by, without authority, making,

using, importing, selling, or offering to sell R-421A within the United States in violation of 35 U.S.C. § 271(a).

58. Defendants directly infringed, literally or under the doctrine of equivalents, at least Claim 31 of the '179 Patent by, without authority, making, using, importing, selling, or offering to sell R-421A within the United States in violation of 35 U.S.C. § 271(a).

COUNT I

Direct Infringement of the '706 Patent, 35 U.S.C. § 271(a)

59. Plaintiffs incorporate by reference the allegations contained in paragraphs 1-58 of this Complaint, as if fully set forth herein.

60. Defendants directly infringed, literally or under the doctrine of equivalents, at least Claim 17 of the '706 Patent by, without authority, making, using, importing, selling, or offering to sell R-421A within the United States in violation of 35 U.S.C. § 271(a).

61. Defendants have admitted in a verified submission to the U.S. government (*i.e.*, the U.S. Department of Commerce) in LM Supply's Supplemental Response that the R-421A it imported between late 2016 and early 2018 was the same as patented Choice R-421A.

62. As a result of Defendants' infringement of the '706 Patent, Plaintiffs have been damaged by Defendants' unlawful conduct. Plaintiffs are entitled to recover damages pursuant to 35 U.S.C. § 284 adequate to

compensate it for Defendants' infringing activities in an amount to be determined at trial, but in no event less than a reasonable royalty.

63. Upon information and belief, Defendants' past infringement of the '706 Patent has been deliberate and willful, which warrants an award of treble damages and attorneys' fees to Plaintiffs pursuant to 35 U.S.C. §§ 284 & 285.

COUNT II
Direct Infringement of the '179 Patent, 35 U.S.C. § 271(a)

64. Plaintiffs incorporate by reference the allegations contained in paragraphs 1-58 of this Complaint, as if fully set forth herein.

65. Defendants directly infringed, literally or under the doctrine of equivalents, at least Claim 17 of the '179 Patent by, without authority, making, using, importing, selling, or offering to sell R-421A within the United States in violation of 35 U.S.C. § 271(a).

66. Defendants have admitted in a verified submission to the U.S. government (*i.e.*, the U.S. Department of Commerce) in LM Supply's Supplemental Response that the R-421A it imported between late 2016 and early 2018 was the same as patented Choice R-421A.

67. As a result of Defendants' infringement of the '179 Patent, Plaintiffs have been damaged by Defendants' unlawful conduct. Plaintiffs are entitled to recover damages pursuant to 35 U.S.C. § 284 adequate to

compensate it for Defendants' infringing activities in an amount to be determined at trial, but in no event less than a reasonable royalty.

68. Upon information and belief, Defendants' past infringement of the '179 Patent has been deliberate and willful, which warrants an award of treble damages and attorneys' fees to Plaintiffs pursuant to 35 U.S.C. §§ 284 & 285.

JURY DEMAND

Plaintiffs hereby respectfully request a trial by jury of all issues raised in this Complaint, pursuant to Rule 38 of the Federal Rules of Civil Procedure.

PRAYER FOR RELIEF

WHEREFORE, R421A LLC and RMS of Georgia, LLC d/b/a Choice Refrigerants pray that this Court enter judgment in favor of Plaintiffs and against Defendants as follows:

- A. Entry of judgment that Defendants have directly infringed the '706 and '179 Patents pursuant to 35 U.S.C. § 271 (a);
- B. An order permanently enjoining Defendants, and their respective agents, servants, officers, directors, employees, attorneys, affiliated companies, successors-in-interest, and all those in active concert or participation with them, and all other parties properly enjoined by law, from infringing the claims of the '706 and '179 Patents;

- C. An order that Defendants provide an accounting and pay to Plaintiffs damages in an amount adequate to compensate Plaintiffs for Defendants' infringement of the '706 and '179 Patent, including damages for lost profits and any EPA allowances attributable to the infringing importation of R-421A, but in no event less than a reasonable royalty, including up to treble damages for Defendants' willful infringement pursuant to 35 U.S.C. § 284;
- D. An order that this is an exceptional case under 35 U.S.C. § 285 meriting that Plaintiffs be awarded their costs, including its reasonable attorneys' fees and other expenses incurred in connection with this action;
- E. Any other relief that the Court finds legal, just and equitable, as may be available under law or equity, and which the Court finds proper.

DATED this 26th day of September, 2022.

Respectfully submitted,

/s/ Ryan T. Santurri

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