

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

KBEnt. LLC,

Plaintiff,

v.

First Co.,

Defendant.

Case No. 3:24-cv-1061

JURY TRIAL DEMANDED

PLAINTIFF’S COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff KBEnt. LLC (“KBEnt”) files this Complaint for Patent Infringement against Defendant First Co. (“First Co.” or “Defendant”), and respectfully shows as follows:

NATURE OF THE ACTION

1. KBEnt seeks injunctive relief and damages for acts of patent infringement engaged in by Defendant in violation of the laws of the United States.

THE PARTIES

2. Plaintiff KBEnt is a Wyoming limited liability company having its principal place of business at 30 N Gould Street, Suite N, Sheridan, Wyoming 82801.

3. KBEnt is informed and believes, and thereon alleges, that Defendant First Co. is a Texas corporation, having a principal place of business at 8273 Moberly Lane, Dallas, Texas, 75227.

JURISDICTION AND VENUE

4. This is an action for patent infringement arising under the Patent Laws of the United States, 35 U.S.C. §§ 100, *et seq.*

5. This Court has original subject-matter jurisdiction over the claims in this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

6. This Court has personal jurisdiction over First Co. at least because First Co. is organized and exists under the laws of the State of Texas. KBEnt is informed and believes, and thereon alleges, that First Co. resides in this judicial district, has a continuous, systematic, and substantial presence in this judicial district, regularly and systematically transacts business within this district, and regularly avails itself of the benefits of this judicial district. KBEnt's cause of action arises, at least in part, from First Co's contacts and activities in the State of Texas.

7. Venue is proper in this judicial district under 28 U.S.C. §§ 1391(b) and (d) and 28 U.S.C. § 1400(b) because First Co. is a Texas corporation that resides in this judicial district. In addition, upon information and belief, First Co. has committed acts of infringement at its regular and established place of business in this district at least by promoting, selling and/or offering to sell infringing products in this judicial district.

GENERAL ALLEGATIONS

8. KBEnt realleges and reincorporates by references the allegations set forth in paragraphs 1-7 of this Complaint.

9. KBE, Inc. ("KBE") has pioneered a variety of innovative concepts related to preventing or mitigating ice formation in an indoor evaporator unit of an open-environment system for cooling and/or dehumidifying air. With considerable time, effort, and money, KBE developed technology to implement these concepts, including its No Freeze Control board. The No Freeze Control board works with HVAC and refrigeration systems to prevent the condenser and the compressor, as well as other vital parts of the systems, from becoming damaged by preventing or mitigating

ice formation due to continued operation of the unit during a freeze-up event. The No Freeze Control board not only prevents the evaporator coils from freezing, but it also prevents problems caused by the freezing such as the potential risk of mold, mildew, carbon dioxide, flooding, and property damage due to the melting ice. The No Freeze Control board has the potential to save the homeowner, business, and the insurance company thousands of dollars on repairs and claims.

10. To protect its substantial investment, KBE obtained patent protection covering its innovations.

11. On April 13, 2021, the USPTO duly and lawfully issued United States Patent No. 10,976,066 (the “’066 Patent”), titled “Systems and methods for mitigating ice formation conditions in air conditioning systems” to KBE, Inc. KBE, Inc. thereafter assigned all rights thereunder, including the right to sue for past infringement and standing to enforce the ’066 Patent, to KBEnt. A true and correct copy of the ’066 Patent is attached hereto as **Exhibit 1**.

12. KBEnt is informed and believes, and thereon alleges, that First Co. is a supplier of a broad range of HVAC products for the multi-family industry.

13. KBEnt is informed and believes, and thereon alleges, that First Co. manufactures, uses, sells, offers for sale, and/or imports into the United States HVAC products that have infringed and continue to infringe the ’066 Patent.

14. On March 30, 2023, KBE wrote to First Co. regarding its manufacture, offer for sale, and sale of its Eco Series product line sold under the names COOL PAK, FRESH PAK, and/or AQUA PAK that incorporate evaporator coil low temperature protection in which the unit is de-energized when a temperature sensor attached to the evaporator coil detects a low temperature

condition that could result in ice buildup (the “Infringing Products”). In the letter, KBE requested, inter alia, that First Co. cease offering the Infringing Products.

15. KBE did not receive a response from First Co. to KBE’s March 30 letter.

16. On June 7, 2023, KBE again wrote to First Co. regarding its manufacture, offer for sale, and sale of the Infringing Products.

17. Despite KBEs letters, First Co. continues to manufacture, offer for sale, and sell the Infringing Products.

18. First Co.’s acts complained of herein have caused KBEnt to suffer irreparable injury to its business. KBEnt will continue to suffer substantial loss and irreparable injury unless and until First Co. is enjoined from its willful actions complained of herein.

19. KBEnt is informed and believes, and on that basis alleges, that First Co.’s acts complained of herein are willful and deliberate.

FIRST CLAIM FOR RELIEF
(INFRINGEMENT OF THE ’066 PATENT) (35 U.S.C. § 271)

20. KBEnt repeats and re-alleges the allegations in Paragraph 1-19 of this Complaint as if set forth fully herein.

21. KBEnt is informed and believes, and thereon alleges, that First Co. has directly infringed the ’066 Patent, either literally or under the doctrine of equivalents, through, for example, the manufacture, use, sale, offer for sale, and/or importation into the United States of the Infringing Products in violation of 35 U.S.C. § 271(a). First Co. continues to engage in acts of direct infringement of the ’066 Patent.

22. For example, KBEnt is informed and believes, and thereon alleges, that the First Co. Fresh-Pak product includes all of the limitations of Claim 1 of the ’066 Patent.

23. The First Co. Fresh-Pak product includes a system for preventing ice formation in an indoor evaporator unit of an open-environment system for cooling and/or dehumidifying an interior space by monitoring a temperature of an indoor evaporator coil disposed within the indoor evaporator unit, as described in First Co.'s product specification for the "Single Package Vertical Unit with ERV" ("Product Spec") reproduced below:

- **Evaporator coil low temperature protection** - During the cooling mode, should the evaporator coil experience either a low temperature condition that could result in ice build up on the coil or a reduced air flow situation, a temperature sensor attached to the coil will de-energize the **Fresh-Pak** unit. The sensor will re-energize the Fresh-Pak unit when the coil warms back up.
- **Low ambient lockout** - Locks out compressor when the sensor registers temperatures of 40°F and below to extend compressor life.

(**Exhibit 2** at p. 10).

24. The First Co. Fresh-Pak product includes a temperature sensor responsive to thermal energy of the indoor evaporator coil, the temperature sensor attached to the indoor evaporator coil of the indoor evaporator unit, the temperature sensor comprising a thermal contact in thermal communication with the indoor evaporator unit, the temperature sensor configured to generate a thermal data associated with the temperature of the indoor evaporator coil, as described in First Co.'s Product Spec reproduced below:

- **Evaporator coil low temperature protection** - During the cooling mode, should the evaporator coil experience either a low temperature condition that could result in ice build up on the coil or a reduced air flow situation, a temperature sensor attached to the coil will de-energize the **Fresh-Pak** unit. The sensor will re-energize the Fresh-Pak unit when the coil warms back up.
- **Low ambient lockout** - Locks out compressor when the sensor registers temperatures of 40°F and below to extend compressor life.

Id.

25. The First Co. Fresh-Pak product includes a hardware processor in electronic communication with the temperature sensor, as described in First Co.'s Product Spec reproduced below:

STANDARD FEATURES: (see pages 8, 9 and 10 for further information)

- Fully integrated ERV module with washable core
- Completely pre-charged with environmentally friendly R-410A refrigerant
- Easy access for in-place service of most components
- **Multi-function micro-processor board** that includes the following functions:
 - Evaporator coil **low temperature protection**
 - Low ambient lockout

Id. at p. 5.

26. The First Co. Fresh-Pak product includes a memory device in electronic communication with the hardware processor, the memory device storing information comprising a threshold temperature value and machine-readable instructions, as described in First Co.'s Product Spec reproduced below:

- **Evaporator coil low temperature protection** - During the cooling mode, should the evaporator coil experience either a low temperature condition that could result in ice build up on the coil or a reduced air flow situation, a temperature sensor attached to the coil will de-energize the **Fresh-Pak** unit. The sensor will re-energize the Fresh-Pak unit when the coil warms back up.
- **Low ambient lockout** - Locks out compressor when the sensor registers temperatures of 40°F and below to extend compressor life.

Id. at p. 10.

27. The First Co. Fresh-Pak product includes machine-readable instructions that, when executed, cause the hardware processor to receive the thermal data from the temperature

sensor, as described in First Co.'s Product Spec reproduced below:

1. **Solid State Circuit Board** - Incorporates the following control features:
 - **Evaporator coil low temperature protection** - During the cooling mode, should the evaporator coil experience either a low temperature condition that could result in ice build up on the coil or a reduced air flow situation, a temperature sensor attached to the coil will de-energize the **Fresh-Pak** unit. The sensor will re-energize the Fresh-Pak unit when the coil warms back up.
 - **Low ambient lockout** - Locks out compressor when the sensor registers temperatures of 40°F and below to extend compressor life.

Id.

28. The First Co. Fresh-Pak product includes machine-readable instructions that, when executed, cause the hardware processor to determine a temperature parameter of the indoor evaporator coil using the thermal data received from the temperature sensor, as described in First Co.'s Product Spec reproduced below:

1. **Solid State Circuit Board** - Incorporates the following control features:
 - **Evaporator coil low temperature protection** - During the cooling mode, should the evaporator coil experience either a low temperature condition that could result in ice build up on the coil or a reduced air flow situation, a temperature sensor attached to the coil will de-energize the **Fresh-Pak** unit. The sensor will re-energize the Fresh-Pak unit when the coil warms back up.
 - **Low ambient lockout** - Locks out compressor when the sensor registers temperatures of 40°F and below to extend compressor life.

Id.

29. The First Co. Fresh-Pak product includes machine-readable instructions that, when executed, cause the hardware processor to compare the temperature parameter of the indoor evaporator coil to the threshold temperature value, as described in First Co.'s Product Spec reproduced below:

- **Low ambient lockout** - Locks out compressor when the sensor registers temperatures of 40° F and below to extend compressor life.

Id.

30. The First Co. Fresh-Pak product includes machine-readable instructions that, when executed, cause the hardware processor to determine that ice formation conditions are present when the temperature parameter of the indoor evaporator coil is less than or equal to the threshold temperature value, as described in First Co.'s Product Spec reproduced below:

1. **Solid State Circuit Board** - Incorporates the following control features:
 - **Evaporator coil low temperature protection** - During the cooling mode, should the evaporator coil experience either a low temperature condition that could result in ice build up on the coil or a reduced air flow situation, a temperature sensor attached to the coil will de-energize the **Fresh-Pak** unit. The sensor will re-energize the Fresh-Pak unit when the coil warms back up.
 - **Low ambient lockout** - Locks out compressor when the sensor registers temperatures of 40°F and below to extend compressor life.

Id.

31. The First Co. Fresh-Pak product includes machine-readable instructions that, when executed, cause the hardware processor to actuate a relay to stop operation of the open-environment system for cooling and/or dehumidifying an interior space and generate a notification signal indicating that ice formation conditions are present in response to determining that ice formation conditions are present, as described in First Co.'s Product Spec, Manual, and Product Video, reproduced below:

1. **Solid State Circuit Board** - Incorporates the following control features:
 - **Evaporator coil low temperature protection** - During the cooling mode, should the evaporator coil experience either a low temperature condition that could result in ice build up on the coil or a reduced air flow situation, a temperature sensor attached to the coil will de-energize the **Fresh-Pak** unit. The sensor will re-energize the Fresh-Pak unit when the coil warms back up.
 - **Low ambient lockout** - Locks out compressor when the sensor registers temperatures of 40°F and below to extend compressor life.

Id.

ERV ALARM CODES (continued)

CODE RANGES – HARDWARE

CODE RANGES – HARDWARE						
CODE	ALARM CLASS	NAME/DESCRIPTION	SOURCE	PLANT LOCK	BACNET OBJECT/COMMENT	INFLUENCE OF ALARM
1001	A	Supply air temperature, Sensor fault	System	Stop	TSu	Shutdown AHU
1002	A/B	Exhaust air temperature, sensor fault	System	Run	TEh, Active only if sensor available	Shutdown AHU/ No Heat exchanger supervision possible
1003	B	Extract air temperature, sensor fault	System	Run	TEe, Active only if sensor available	Fallback to room temperature control or supply air control
1004	A/B	Outside air temperature sensor fault	System	Conf.	TOa	Shutdown AHU / fallback to default
1005	A	Frost protection temperature for heating coil, sensor fault	System	Stop	TFRPrHcl Active only if HclHw selected	Shutdown AHU, Frost protection mode

First Co.’s Installation, Operation, and Maintenance for “Vertical Packaged Unit with Energy Recovery Ventilation” (“Manual”) (**Exhibit 3** at p. 61).



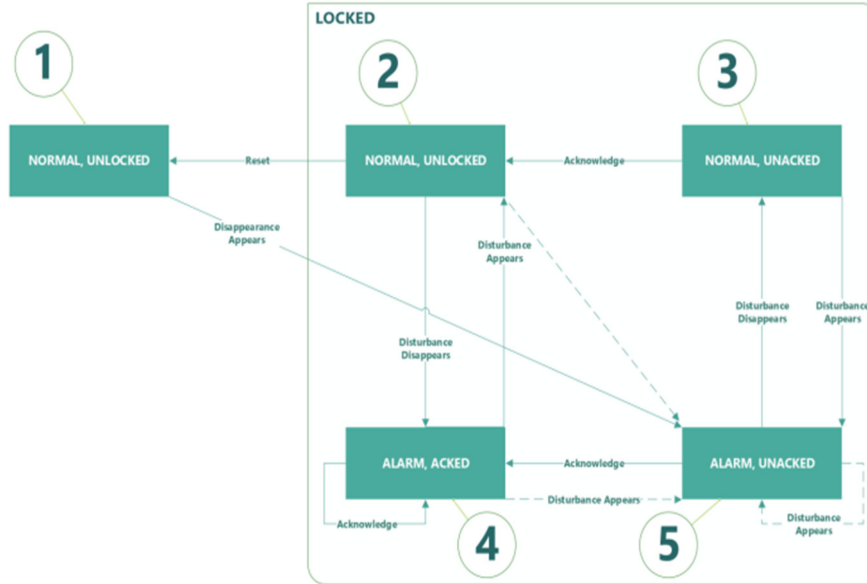
<https://youtu.be/KPglwZeLM74> and embedded on <https://firstco.com/product/eco-series-fresh-pak/> (last visited May 1, 2024) (ECO-SERIES FRESH-PAK PRODUCT VIDEO by First Co.) (“Product Video”).

32. The First Co. Fresh-Pak product includes a user interface device comprising a display configured to display a maintenance notification in response to the hardware processor

generating the notification signal, the maintenance notification prompting a user input as described in First Co.'s Manual, reproduced below, and Product Video:

A-ALARMS

In the case of critical A-Alarms, the application operation is locked in shut down mode until the alarm is acknowledged and reset.



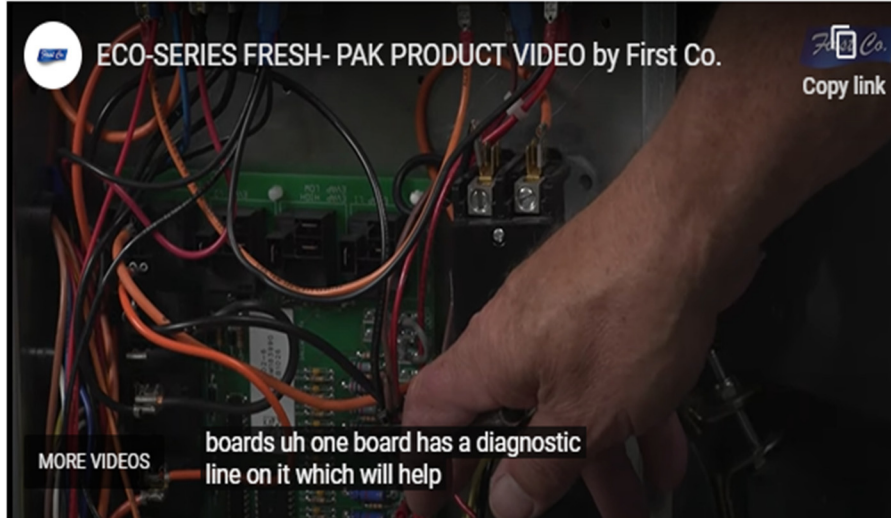
Ex. 3 at p. 58.

ERV ALARM CODES (continued)

CODE RANGES – HARDWARE

CODE RANGES – HARDWARE						
CODE	ALARM CLASS	NAME/DESCRIPTION	SOURCE	PLANT LOCK	BACNET OBJECT/COMMENT	INFLUENCE OF ALARM
1001	A	Supply air temperature, Sensor fault	System	Stop	TSu	Shutdown AHU
1002	A/B	Exhaust air temperature, sensor fault	System	Run	TEh, Active only if sensor available	Shutdown AHU/ No Heat exchanger supervision possible
1003	B	Extract air temperature, sensor fault	System	Run	TEe, Active only if sensor available	Fallback to room temperature control or supply air control
1004	A/B	Outside air temperature sensor fault	System	Conf.	TOa	Shutdown AHU / fallback to default
1005	A	Frost protection temperature for heating coil, sensor fault	System	Stop	TFRPrHcl, Active only if HclHw selected	Shutdown AHU, Frost protection mode

Ex. 3 at p. 61.

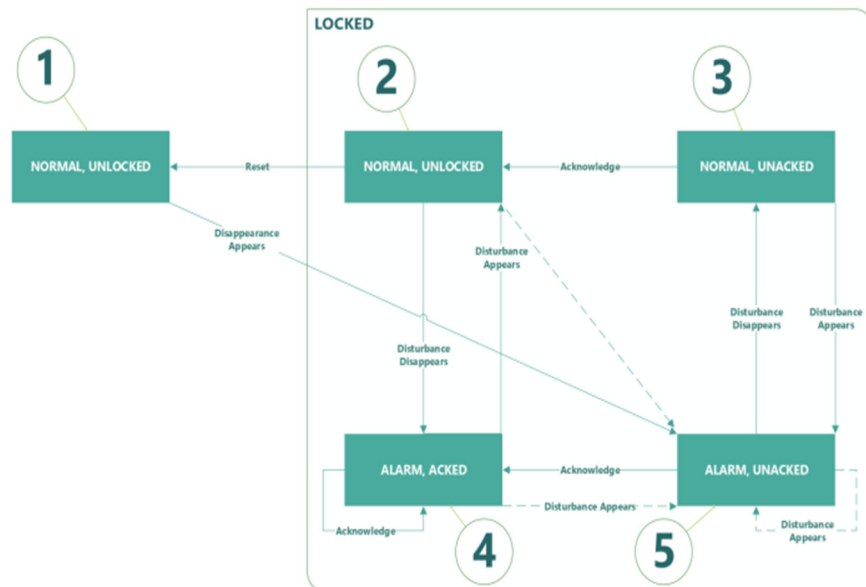


<https://youtu.be/KPglwZeLM74> and embedded on <https://firstco.com/product/eco-series-fresh-pak/> (last visited May 1, 2024) (ECO-SERIES FRESH-PAK PRODUCT VIDEO by First Co.).

33. The First Co. Fresh-Pak product hardware processor prevents operation of the open-environmental system for cooling and/or dehumidifying the interior space prior to receipt of the user input as described in First Co.'s Manual, reproduced below:

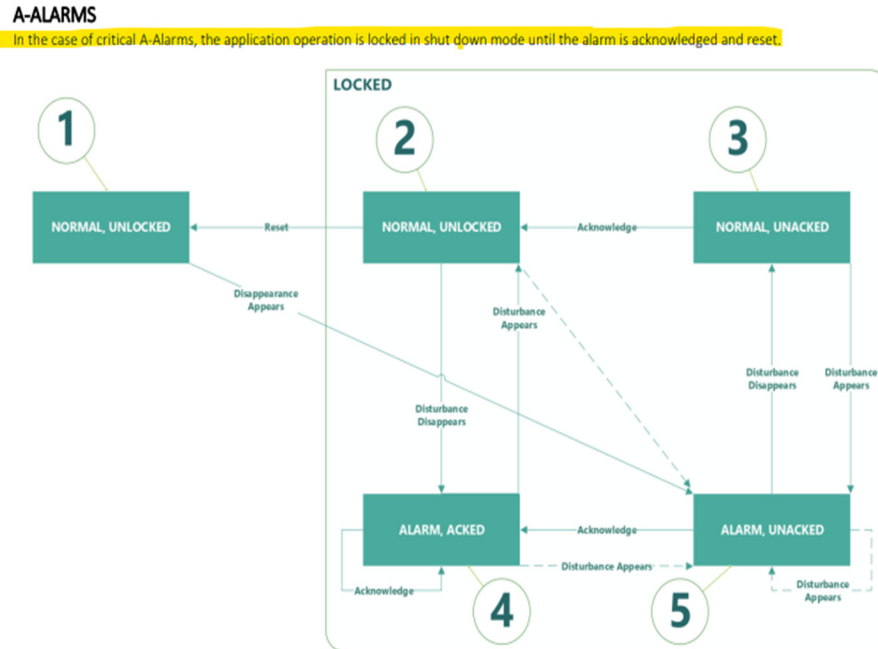
A-ALARMS

In the case of critical A-Alarms, the application operation is locked in shut down mode until the alarm is acknowledged and reset.



Ex. 3 at p. 58.

34. The First Co. Fresh-Pak product hardware processor resets the relay and restores operation of the open-environmental system for cooling and/or dehumidifying the interior space upon receipt of the user input as described in First Co.’s Manual, reproduced below:



Id.

35. KBEnt is informed and believes, and thereon alleges, that First Co. has actively, knowingly, and intentionally induced infringement of the '066 Patent in violation of 35 U.S.C. § 271(b). For example, KBEnt is informed and believes, and thereon alleges that First Co. has actively, knowingly, and intentionally induced infringement of at least Claim 12 of the '066 Patent. KBEnt is informed and believes, and thereon alleges that First Co., knowing that the Infringing Products practice every limitation of Claim 12 of the '066 Patent when installed and placed into service, has actively encouraged third parties such as customers and end-users to do so, knowing and intending that the actions by the third parties result in patent infringement. For example, First Co. published and provided technical specifications and installation, operation, and maintenance

manuals, among other resources, on its website (<http://www.firstco.com>) that instructed and encouraged third parties to install and place into service the Infringing Products. E.g., <https://firstco.com/product/eco-series-fresh-pak/>; <https://firstco.com/product/eco-series-aqua-pak-2/>; <https://firstco.com/product/eco-series-cool-pak-electric-heat/>. KBEnt is informed and believes, and thereon alleges that, as a result of First Co.'s activities, the Infringing Products have been used in a manner that directly infringes the '066 Patent. First Co. continues to engage in acts of induced infringement of the '066 Patent.

36. KBEnt is informed and believes, and thereon alleges, that First Co. has contributed to infringement of the '066 Patent in violation of 35 U.S.C. § 271(c). For example, KBEnt is informed and believes, and thereon alleges that First Co. has contributed to infringement of at least Claim 12 of the '066 Patent by making, using, selling, offering for sale, and/or importing in the United States the Infringing Products, which are known by First Co. to be especially made or especially adapted for use in an infringement of the '066 Patent and are not staple articles or commodities of commerce suitable for substantial non-infringing use. The Infringing Products are specifically designed to practice at least Claim 12 of the '066 Patent when installed and placed into service. As a result, third parties such as customers and end users have used the Infringing Products in a manner that directly infringes the '066 Patent. First Co. continues to engage in acts of contributory infringement of the '066 Patent.

37. KBEnt is informed and believes, and thereon alleges that First Co. knew of the '066 Patent at least as early as March 30, 2023, when KBE sent its first cease and desist letter to First Co. attaching the '066 Patent. Thus, since at least March 30, 2023, First Co. has known that its activities infringe the '066 Patent. In addition, since at least March 30, 2023, First Co. has known

or should have known that its activities induce and/or contribute to infringement of the '066 Patent by third parties.

38. KBEnt is informed and believes, and thereon alleges that First Co.'s infringement of the '066 Patent has been, and continues to be, willful, deliberate, and intentional by continuing its acts of infringement after knowing, or after it should have known, of the '066 Patent and that its conduct amounted to infringement of the '066 Patent.

39. Because of First Co.'s infringement of the '066 Patent, KBEnt has been damaged and is entitled to monetary relief in an amount to be determined at trial.

40. Pursuant to 35 U.S.C. § 284, KBEnt is entitled to damages for First Co.'s infringing acts and treble damages together with interests and costs as fixed by the Court.

41. Pursuant to 35 U.S.C. § 285, KBEnt is entitled to reasonable attorney's fees for the necessity of bringing this claim in this exceptional case.

42. Due to the aforesaid infringing acts, KBEnt has suffered great and irreparable injury, for which KBEnt has no adequate remedy at law.

43. First Co. will continue to willfully infringe KBEnt's patent rights to the great and irreparable injury of First Co. unless enjoined by this Court.

JURY DEMAND

44. Pursuant to Federal Rule of Civil Procedure 38(b), KBEnt demands a jury trial on all issues so triable.

PRAYER FOR RELIEF

45. KBEnt prays for judgment in its favor against First Co. for the following relief:

A. A judgment in favor of KBEnt and against First Co. on all claims alleged

herein;

- B. A judgment that First Co. has infringed the '066 Patent under 35 U.S.C. § 271;
- C. An Order adjudging First Co. to have willfully infringed the '066 Patent under 35 U.S.C. § 271;
- D. An Order that First Co. pay to KBEnt actual damages adequate to compensate for the infringement, but in no event less than lost profits and/or a reasonable royalty for the use made of the patented inventions by First Co., in accordance with 35 U.S.C. § 284;
- E. A preliminary and permanent injunction enjoining First Co., its officers, directors, agents, servants, employees, and attorneys, and those persons in active concert or participation with First Co., from (i) making, using, selling, offering to sell, and/or importing into the United States products that infringe the '066 Patent, and (ii) infringing the '066 Patent in violation of 35 U.S.C. § 271 (or, if the Court believes that an injunction is not warranted, KBEnt requests an award of a compulsory ongoing royalty);
- F. An order trebling or otherwise increasing damages pursuant to 35 U.S.C. § 284 because of First Co.'s willful infringement;
- G. An order finding this case exceptional under 35 U.S.C. § 285 and ordering First Co. to pay KBEnt its reasonable attorney's fees incurred in this action;
- H. Pre-judgment and post-judgment interest at the highest rate allowed by law and costs as fixed by the Court; and

- I. Granting KBEnt any and all such other and further relief, general and special, at law or in equity, to which it may be justly entitled.

Dated: May 1, 2024

Respectfully submitted,



STEVEN CALLAHAN

Texas State Bar No. 24053122

scallahan@ccrglaw.com

CHRISTOPHER T. BOVENKAMP

Texas State Bar No. 24006877

cbovenkamp@ccrglaw.com

CHARHON CALLAHAN

ROBSON & GARZA, PLLC

3333 Lee Parkway, Suite 460

Dallas, Texas 75219

Telephone: (214) 521-6400

Telecopier: (214) 764-8392

CHERYL T. BURGESS*

**Pro hac vice* motion to be filed

cheryl.burgess@knobbe.com

KNOBBE MARTENS OLSON & BEAR, LLP

2040 Main Street, Fourteenth Floor

Irvine, California 92614

Telephone: (949) 760-0404

Telecopier: (949) 760-9502

Counsel for Plaintiff KBEnt. LLC