

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DIVISION**

**ECO FIBER INC.,**

**Plaintiff,**

**v.**

**DAVID KEVIN VANCE,**

**Defendant.**

**Civil Action No. \_\_\_\_\_**

**VERIFIED COMPLAINT**

**(Jury Trial Demanded)**

Plaintiff Eco Fiber Inc. (“EFI”), a North Carolina corporation, hereby alleges as follows in support of its complaint against Defendant David Kevin Vance (“David”) for (1) declaratory judgment of noninfringement of patent and (2) bad-faith assertion of infringement of patent.

**NATURE OF THE ACTION**

This case involves David, a former EFI consultant, making in bad faith objectively false assertions of patent infringement to EFI’s customers after EFI ceased payments of a monthly patent royalty to David. EFI ceased such payments on advice of counsel based on learning that David’s patent does not and legally cannot cover any of EFI’s insulated containers that it sells to customers. This is because David’s patent covers a method of forming and loading an insulated container and does not cover an insulated container itself. After losing approximately \$832,000 in average monthly sale revenues, which equates to nearly \$10 million annually, from its largest customer as a direct result of such objectively false assertions of patent infringement, EFI seeks immediate relief from the Court that is crucial to any hope of EFI continuing as a going concern. EFI seeks a preliminary injunction enjoining David from making in bad faith such objectively false assertions of patent infringement to EFI’s remaining and potential customers; a declaratory judgment that EFI’s products do not infringe any claim David’s patent; and exemplary damages under the North

Carolina Abusive Patent Assertion Act (N.C. Gen. Stat. §§ 75-140 et seq.) (hereinafter the “APAA”).

### **THE PARTIES**

1. EFI is a North Carolina corporation with a registered address and principal place of business at 3520 Westinghouse Blvd Suite B, Charlotte, NC 28273.
2. David is an individual who has a primary residence at 255 Blackberry Trail, Concord, NC 28027.

### **JURISDICTION AND VENUE**

3. This action arises under the patent laws of the United States, 35 U.S.C. § 1 *et seq.*, and the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202. Subject matter jurisdiction is based upon 28 U.S.C. §§ 1131 and 1338(a).
4. The Court has supplemental jurisdiction pursuant to 28 U.S.C. § 1367 over all other claims asserted or that may be asserted that are so related to claims within the original jurisdiction of this action that they form part of the same case or controversy under Article III of the United States Constitution, including over EFI’s claim under the APAA because, as set forth below, the APAA claim is related to the claim(s) over which the Court has original jurisdiction.
5. This Court has personal jurisdiction over David in the Western District of North Carolina (hereinafter “this District”) because David resides within this District.
6. Venue is proper in this District, pursuant to 28 U.S.C. §§ 1391(b), 1391(c), 13919(d), and 1400(b), because EFI’s principal place of business is in this District, and since David resides in this District.

## FACTUAL BACKGROUND AND GENERAL ALLEGATIONS

7. EFI manufactures and sells insulated boxes for cold-chain packaging. Cold-chain packaging is an industry term that generally refers to insulated shipping boxes or containers designed to maintain consistent temperatures during shipping.
8. EFI was incorporated on December 20, 2020.
9. In 2021, EFI engaged David as a consultant in order to add to EFI's expertise and experience in the manufacture and delivery of cold-chain packaging.
10. David had many years of experience in the cold-chain packaging industry and EFI believed that David would be an excellent addition to the EFI team.
11. On or about August 1, 2021, David entered into a consulting agreement with EFI through Zone 1 Consulting, LLC ("Zone 1"), a company that David organized with Christopher Poore ("Chris"), who also had significant experience in the cold-chain packaging industry and had agreed to provide consulting services to EFI. David and Chris had worked together at a previous company in the cold-chain packaging industry and knew each other.
12. In accordance with the agreement, David received commissions on sales of cold-packaging products by EFI.
13. Toward the end of 2021 and into 2022, David was effective in creating significant demand for EFI for a new design for an insulated container having three insulating pads.
14. The term of the consulting agreement between Zone 1 and EFI ended in 2022, and an amended consulting agreement was negotiated beginning in 2023.
15. In negotiating the amended consulting agreement, Zone 1 represented that David had a patent on the insulated container having three insulating pads and that, as part of the amended consulting agreement, a patent royalty of 5% for use of David's patent would be

owed by EFI for all sales of the insulated container having three insulating pads (“Patent Royalty”). See **Exhibit A** submitted herewith and incorporated herein by reference.

16. Based on the representation by Zone 1, EFI agreed to pay and did begin paying the Patent Royalty in January 2023 under the amended consulting agreement. In total, EFI has paid Zone 1 at least \$240,776.05 as the Patent Royalty under the amended consulting agreement.
17. In November of 2023, EFI consulted patent counsel for purposes of preparation and filing of new original patent applications for EFI. In the course of discussions, EFI informed patent counsel of the Patent Royalty being paid to Zone 1. Upon investigation by patent counsel, it was discovered that David did in fact have a patent, but that the patent had not been granted until October 3, 2023, well after payment of the Patent Royalty had begun.
18. According to the records of the U.S. Patent & Trademark Office, David is the owner of all rights, title and interests in and to U.S. Patent 11,772,872 (“the '872 Patent”). The '872 Patent is titled “Insulated Container and Method of Forming and Loading an Insulated Container” and was granted on October 3, 2023. See **Exhibit B** submitted herewith and incorporated herein by reference.
19. According to the records of the U.S. Patent & Trademark Office, David does not own any rights, title, or interest in any other U.S. utility patent; the only U.S. utility patent for which David is the owner is the '872 Patent.
20. The '872 Patent includes 12 claims, of which only claim 1 is independent. The remaining 11 claims depend directly or indirectly from claim 1.
21. Claim 1 and all dependent claims of the '872 Patent are for “[a] method of forming and loading an insulated container” that comprises at least twelve specifically recited steps.

22. David has specific knowledge that the '872 Patent does not cover an insulated container. The patent application that issued as the '872 Patent originally presented claims for both the forming and loading method and the insulated container itself. In an Office Action dated April 12, 2023, the U.S. Patent & Trademark Office required David to elect for examination either the forming and loading method claims or the insulated container claims. **Exhibit B**, p. 46. In response, David elected for examination the method claims to the exclusion of the insulated container claims, and the insulated container claims were withdrawn. **Exhibit B**, p. 43. David later filed divisional patent application 18/455,195 on August 24, 2023, for purposes of pursuing patent protection on the insulated container, which divisional patent application is pending and awaits initial examination.
23. EFI learned during discussions with its patent counsel that the '872 Patent did not cover and legally cannot cover an insulated container formed and loaded by EFI at its manufacturing facility in Charlotte, NC.
24. Based on what EFI learned, in December 2023 EFI ceased payment of the Patent Royalty to David. EFI further ceased paying David as a consultant. Following cessation of the payment of the Patent Royalty, David never inquired with EFI why the payments had stopped, and David never asserted to EFI either that the insulated containers having three pads infringed the '872 Patent or that any customer of EFI was infringing the '872 Patent by purchasing those containers from EFI.
25. In his role as a consultant, David was intimately involved in the operations of EFI's business and David knew EFI's customers and sales volumes. David knew that the largest customer representing approximately 85% of EFI's sales was Veritiv Corporation ("Veritiv"). EFI and Veritiv have had a mutually beneficial business relationship since July

2021 when EFI became an official vendor of Veritiv. Most of the sales to Veritiv were for the insulated container having three insulating pads.

26. Annual sales of the insulated container having three insulating pads by EFI to Veritiv for 2023 was \$9,989,846.52, and annual sales of the insulated container having three insulating pads by EFI to Veritiv for 2022 was \$18,605,960.38. Monthly sales of the insulated container having three insulating pads by EFI to Veritiv for the first three months of 2024 are estimated to be \$832,487.21. The estimated monthly profit is approximately 30%, or \$249,746.16.
27. Rather than contact EFI regarding any asserted infringement of the '872 Patent following cessation of payment of the Patent Royalty, sometime in the latter half of March 2024 David contacted Veritiv and asserted to Veritiv that David owned the '872 Patent, and that the '872 Patent covered the insulated containers having three insulating pads that EFI was selling to Veritiv.
28. Based on the assertions made by David, Veritiv was concerned that it had legal risk for infringement of the '872 Patent based on Veritiv purchasing the insulated containers from EFI. See **Exhibit C** submitted herewith and incorporated herein by reference (confidential information redacted).
29. Upon information and belief, David did not consult with legal counsel regarding any infringement of the '872 Patent by any insulated containers sold by EFI.
30. Upon information and belief, David did not provide any details or specificity regarding how any claim of the '872 Patent maps to any insulated container sold by EFI.

31. Upon information and belief, David made a naked assertion to Veritiv of patent infringement by EFI, and by Veritiv based on purchasing from EFI, regarding EFI's insulated containers having three insulating pads.
32. Upon information and belief, David provided a copy of the '872 Patent to a sales representative and a product category manager at Veritiv who were responsible for purchasing from EFI the insulated containers having three insulating pads.
33. Upon information and belief, David did not contact anyone within the legal department of Veritiv regarding the '872 Patent, nor did David contact or provide notice to the registered agent for Veritiv or to any corporate officer of Veritiv.
34. Any assertion that a customer such as Veritiv has legal risk for patent infringement of the '872 Patent based on purchasing insulated containers from EFI is objectively false as a matter of law.
35. When making the assertion of patent infringement to Veritiv, David knew or should have known that such an assertion of patent infringement was objectively false.
36. As a direct result of David's assertion of patent infringement Veritiv ceased all purchases from EFI of insulated containers having three insulating pads.
37. As a direct result of David's assertion of patent infringement, and upon information and belief, Veritiv closed EFI's vendor account whereby no further purchase orders could be issued for insulated containers having three insulating pads.
38. When purchase orders were not received from Veritiv in the beginning of April for delivery in May, EFI contacted Veritiv to inquire about the absence of purchase orders for insulated containers having three insulating pads.

39. Upon making inquiry, Veritiv informed EFI that no further business would be done with EFI due to Veritiv's concern over legal risk presented by the insulated containers having three insulating pads in view of the '872 Patent.
40. Veritiv's decision to cease further purchase of insulated containers having three insulating pads with EFI was not a consequence of the business relationship between Veritiv and EFI.
41. In January 2024, Veritiv conducted a business review of its vendor relationship with EFI, finding that: "Overall, Eco Fiber has had a phenomenal performance operationally. Our standard target for LTOC metric is 85%, and Eco Fiber maintained a +95% metric all year with steady lead times." See **Exhibit D** submitted herewith and incorporated herein by reference. (A personal telephone number was redacted from Exhibit D).
42. On April 11, 2024, EFI attempted to regain the lost sales of insulated containers having three insulating pads by engaging its patent counsel to provide a formal written opinion of noninfringement to Veritiv, which was done on April 12, 2024.
43. EFI received no purchase orders from Veritiv in April for insulated containers having three insulating pads. In May, EFI has received some purchase orders; however, they are for only about 1/8 of the business EFI was receiving before David's false representations. There has been some discussion with Veritiv about EFI receiving some additional business back, though that has not yet occurred. Upon information and belief, all or a substantial portion of the purchase orders that EFI would have received in April and May were redirected to a competitor of EFI.
44. Upon information and belief, sales of insulated containers having three insulating pads by EFI to Veritiv were expected to continue in the normal course for April and thereafter prior



to the patent assertion and the resulting loss of business. If that business is not recovered by EFI, the resulting lost profit is estimated to be \$249,746.16 per month.

45. EFI cannot afford to lose any further sales as a result of objectively false patent assertions made in bad faith by David.
46. Because EFI is now on the brink of going out of business, any further loss of sales will only hasten EFI's demise.
47. EFI has demanded that David cease and desist from further asserting that the insulated containers having three insulating pads sold by EFI infringe the '872 Patent and that customers buying these insulated container from EFI will have legal risk. EFI further has demanded that David retract any such assertions that David has made to any actual or potential customer of EFI. See **Exhibit E** submitted herewith and incorporated herein by reference. Upon information and belief, David has failed and refused to comply with these demands.
48. In response to EFI's demands to cease and desist, David did send an email to Veritiv clarifying that the act of David sending to Veritiv a copy of his patent was not a representation "that there was any infringement of my patent by Eco Fiber or any other entity." See **Exhibit F** submitted herewith and incorporated herein by reference. David's statement falls woefully short of saying that the insulated containers sold by EFI do infringe the '872 Patent and that Veritiv does not have legal risk from buying the insulated containers from EFI.
49. Upon information and belief, Veritiv would not have ceased all business with EFI, citing as a reason "concern around the patent" and "legal risk," if David had not made an assertion of patent infringement.

50. Upon information and belief, David does not personally provide any goods or commercial services and does not personally engage in any manufacturing activities.
51. Upon information and belief, David does not personally engage in any research and technical or experimental work to create, test, qualify, modify, or validate technologies or processes for commercialization of goods or services.

**FIRST CLAIM FOR RELIEF**  
**Declaratory Judgment of Noninfringement**  
**(28 U.S.C. §1101)**

52. This is a claim for declaratory judgment of noninfringement of the '872 Patent. EFI restates and incorporates by reference the allegations in the preceding paragraphs 1-51 as though fully set forth herein.
53. Insulated containers sold by EFI do not infringe and have not infringed, directly or indirectly, literally or under the doctrine of equivalents, willfully or otherwise, any claim of the '872 Patent.
54. Assertions made by David that customers of EFI have legal risk for infringement of David's patent based on purchasing insulated containers from EFI are objectively false.
55. Assertions made by David that EFI is infringing David's patent by selling insulated containers are objectively false.
56. The '872 Patent only covers a method and legally cannot cover a product that is made by EFI at its manufacturing facility in Charlotte, NC.
57. A genuine controversy exists between the parties concerning the scope of the '872 Patent that may be terminated by a judicial declaration determining the same.
58. In view of the foregoing, EFI is entitled to, and EFI seeks, a judicial declaration and order that EFI's insulated containers do not infringe the '872 Patent.

59. A judicial declaration is necessary and appropriate so that EFI and its customers may ascertain their rights and obligations vis-a-vis the '872 Patent.

**SECOND CLAIM FOR RELIEF**  
**Violation of the North Carolina Abusive Patent Assertion Act (APAA)**  
**(N.C. Gen. Stat. §§ 75-140, *et seq.*)**

60. EFI restates and incorporates by reference the allegations in the preceding paragraphs 1-59 as though fully set forth herein.
61. David's assertions of legal risk of customers for infringing the '872 Patent by purchasing EFI's insulated containers are objectively false.
62. David knows or should know that his assertions of legal risk for patent infringement are objectively false.
63. David has made objectively false assertions of patent infringement in bad faith with malicious intent to harm EFI.
64. As a result of David's objectively false patent infringement assertions made in bad faith, EFI has suffered and continues to suffer irreparable harm.
65. All of EFI's damages, costs, and attorney fees resulting from David's objectively false patent infringement assertions made in bad faith are recoverable under the APPA. *See* N.C.G.S. §§ 75-145(b)(1)-(3).
66. EFI is entitled to and seeks both equitable relief enjoining David from making objectively false assertions of infringement of the '872 Patent by EFI's insulated contains as well as recovery of its damages, costs, and fees, together with an award of exemplary damages in an amount of \$50,000 or three (3) times the total of damages, costs, and fees, whichever is greater. *See id.* §§ 75-145(b)(1)-(4).

**JURY DEMAND**

Plaintiff demands a trial by jury of all issues so triable.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays for the following relief:

- A. That the Court enter a declaratory judgement that EFI's insulated containers do not infringe any claim of the '872 Patent;
- B. That the Court preliminarily and permanently enjoin David Vance from making objectively false assertions in bad faith that customers purchasing insulated containers from EFI have legal risk for infringement of the '872 Patent;
- C. That the Court order that David post a bond of \$500,000 under N.C. Gen. Stat. § 75-144(a);
- D. That the Court enter an order finding David's conduct to be in violation of the North Carolina Abusive Patent Assertion Act (N.C. Gen. Stat. § 75-140 et seq.) (the "APAA") and awarding to EFI all remedies contemplated by the APAA, including but not limited to all damages, costs, expenses, and fees (including attorneys' fees) incurred by EFI as a result of David's bad faith assertion of patent infringement, together with all pre- and post-judgment interest as provided by law, as well as equitable relief to enjoin David from continuing to make asserts in violation of the APAA;
- E. That the Court award as exemplary damages three times the sum of EFI's damages and costs and attorneys' fees, or \$50,000, whichever is greater; and
- F. That the Court award such other and further relief, both at law and in equity, which the Court deems just and proper.

**[SIGNATURES ON FOLLOWING PAGE]**

Respectfully submitted this the 9th day of May 2024.

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UNITED STATES DISTRICT COURT  
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CHARLOTTE DIVISION

ECO FIBER INC.,

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Civil Action No. \_\_\_\_\_

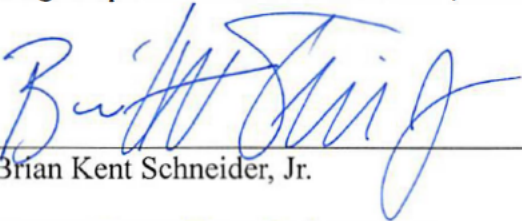
v.

DAVID KEVIN VANCE,

VERIFICATION


Defendant.

Being first duly sworn, I hereby depose and say that I am the President and a Director of Eco Fiber Inc., the Plaintiff in the above-captioned action, and that I have read the foregoing VERIFIED COMPLAINT and know the contents thereof to be true except for those matters alleged upon information and belief, and as to those I believe them to be true.

  
\_\_\_\_\_  
Brian Kent Schneider, Jr.

Date: 5-9-24

SWORN TO (or AFFIRMED) and subscribed before me this day by Brian Kent Schneider, Jr.

  
\_\_\_\_\_  
Notary Public

Lydia E. Farnsworth  
\_\_\_\_\_  
Name

My Commission expires: 09/28/2025



**INDEX OF EXHIBITS TO THE COMPLAINT**

- EX. A:       Email Exchange Between EFI and Zone 1 Regarding 5% Patent Royalty
- EX. B        U.S. patent 11,772,872
- EX. C        Emai Exchange Between EFI and Veritiv Regarding Reason for Pulling Business
- EX. D        Eco Fiber 2023 Business Review Email
- EX. E        EFI Cease-and-Desist Demand Letter Sent to David Kevin Vance
- EX F        David Kevin Vance Email to Veritiv in Response to EFI's Cease-and-Desist Letter