

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 1:23-cv-24931

DAVID'S DOZER V-LOC SYSTEM INC., and
DAVID ARMAS,

Plaintiffs,

v.

DEERE & COMPANY,

Defendant.

COMPLAINT

Plaintiffs David's Dozer V-Loc System Inc. ("David's Dozer") and David Armas ("Armas" and collectively with David's Dozer, "Plaintiffs") file this Complaint against Defendant Deere & Company ("Deere") alleging the following:

NATURE OF THE ACTION

1. This is a civil action for patent infringement under the Patent Laws of the United States, 35 U.S.C. § 256 and 35 U.S.C. § 271 *et seq.*, to correct inventorship of issued United States patents and to prevent and enjoin Defendant Deere from infringing and profiting, in an illegal and unauthorized manner, from United States Patent No. 10,533,300 ("the '300 Patent"), which is attached hereto as Exhibit 1, and to recover damages, attorney's fees, and costs. This is also an action against Defendant Deere for its violation of the Lanham Act, as Defendant's practices constitute unfair competition and false advertising in violation of Section 43(a)(1)(B) of the Lanham Act, 15 U.S.C. § 1125(a)(1)(B).

THE PARTIES

2. Plaintiff David's Dozer is a Florida corporation with its principal place of business at 9 E Lucy Street, Florida City, Florida 33034. Plaintiff David Armas is an individual residing in Miami-Dade County, Florida.

3. Upon information and belief, Defendant Deere is a corporation organized under the laws of Delaware, having a regular and established place of business at 12950 NW 17th Street, Miami, Florida 33182. Upon information and belief and according to the Florida Secretary of State's website, Defendant may be served with process c/o C T Corporation System, 1200 South Pine Island Road, Plantation, Florida 33324.

JURISDICTION AND VENUE

4. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

5. Defendant is subject to this Court's specific and general personal jurisdiction pursuant to its substantial business in this forum, including: (i) at least a portion of the infringements alleged herein; (ii) regularly doing or soliciting business, engaging in other persistent courses of conduct, and/or deriving substantial revenue from goods and services provided to individuals in this forum state and in this Judicial District; and (iii) being physically located in this District. Moreover, this Court has personal jurisdiction over Deere because, upon information and belief, Deere has committed acts of infringement within the forum state and based on systematic and continuous contact with the forum state.

6. Venue is proper in this judicial district pursuant to 28 U.S.C. §1400(b) because Defendant Deere has a regular and established place of business in this District and an act of infringement has occurred in this District. Venue is also proper in this judicial district pursuant to

28 U.S.C. § 1391(b) because substantial part of the events or omissions giving rise to the claim occurred in this judicial district, and because this Court has personal jurisdiction over Defendant.

THE PATENT-IN-SUIT

7. The '300 Patent was duly and legally issued on January 14, 2020, by the United States Patent and Trademark Office (“USPTO”) to David Armas. The '300 Patent is entitled “Automatic Grader Stabilizer.” Plaintiff David’s Dozer is the owner by assignment of all rights, title, and interest in the '300 Patent.

BACKGROUND

8. Plaintiff Armas, the sole inventor named in the '300 Patent, has been involved in the earth grading business since the 1990s. From the outset, Armas set about developing grading technology (*e.g.*, technology that can be used to level surfaces to create a proper foundation) to fit onto machinery acquired by him, which naturally led him to start his own grading business under the corporate name International Fine Grade Corp. (“IFG”). IFG evolved into David’s Dozer, which today is a respected company that manufactures and sells the patented V-Loc System.

9. The V-Loc System is comprised of three main components: the V-Loc blade with stabilizing brackets, the V-Hydra valve assembly, and the V-Lectral X2 electronic module. Combined, these components, when used together with a compact track loader (“CTL”), create a complete, state-of-the-art grading solution.

10. The USPTO awarded Armas his first patent directed to grading technology in 2012. Since then, Armas has been awarded many more patents within the grading field. David’s Dozer, a company founded by Armas, has continued to perform research and development on the grading solutions conceived by Armas.

11. Armas has spent years working with CTL's, conducting research and development, and creating new grading systems. In January of 2018, Armas exhibited his V-Loc System with Topcon Mastless GPS Technology (a GPS based system for controlling the blade of a dozer to improve grade control performance) at the 2018 World of Concrete Convention in Las Vegas, Nevada. The GPS "mast-less" systems use receivers on the top of the cab of a dozer and various combinations of sensors and gyroscopes to orient the position of a dozer's blade. During this convention, Mr. Armas was invited to participate in roadshows, planned by Topcon during the year, to display the newest Topcon machine control technology running with Plaintiff's V-Loc System.

12. In August of 2018, Armas participated in a Topcon Roadshow in Oklahoma City, Oklahoma where he first demonstrated his V-Loc System using the method covered by the '300 Patent. The attendance for this Roadshow consisted of Topcon representatives, representatives of Ozark Laser and Shoring (an authorized Topcon dealer), and representatives of Defendant Deere. The V-Loc System was installed onto a CTL, and the Topcon system was a GPS system which was controlling the pitch cylinders on the CTL, while the boom was on the stops. The boom was kept on the stops by hydraulically disconnecting the boom lift cylinders and plugging them.

13. On August 4, 2018, Armas filed a patent application for the method involving a dozer blade attachment, a CTL, and an automatic grade control system, in which the automatic grade control system controls the pitch cylinders on the CTL while the boom is resting on the stops at the boom's lower limit of movement and is restricted from coming off the stops. That application matured into the '300 Patent, granted January 14, 2020. Armas filed this application in an abundance of caution after having demonstrated the concept behind his proprietary V-Loc System to various third parties, including Defendant Deere, at the Topcon Roadshow. A prominent

innovation behind both the V-Loc System and the claims of the '300 Patent is the concept of hydraulically restricting the vehicle's boom arm while the user is hydraulically operating an attachment to the vehicle, such as a dozer blade.

14. A few months after Armas demonstrated the V-Loc System at the August 2018 Topcon Roadshow, Defendant Deere filed several patent applications, all of which disclosed systems and methods for restricting a boom arm on a work vehicle, such as a CTL, when the vehicle is also hydraulically coupled to an attachment such as a dozer blade. Specifically, the following patents (that Plaintiff is presently aware of) were all filed on December 7, 2018, approximately four months after Plaintiff's V-Loc System was demonstrated to representatives of Defendant Deere:

U.S. Patent Number	Relevant Disclosure
11,028,557	<p>A boom lock is coupled to at least one of the frame and the boom assembly. The boom lock is configured to move from an unlocked position where the boom assembly is moveable to a locked position where the boom assembly is locked to the frame in a lowered position when the attachment identification signal indicates the dozer blade. Col. 2, ln. 57-63;</p> <p>8. The work vehicle of claim 1, further comprising a boom lock coupled to at least one of the frame and the boom assembly, the boom lock configured to move from an unlocked position where the boom assembly is moveable to a locked position where the boom assembly is locked to the frame in a lowered position when the attachment identification signal indicates that the attachment is a dozer blade. Col. 12, ln. 13-19.</p>
11,286,641	<p>In the present embodiment, for example, flow to or from the flow path of the pair of first hydraulic cylinders 200 may be inactivated wherein the pair of the first hydraulic cylinders 200 are neither extended nor retracted, such that the boom assembly 170 may rests on the mounting pads (although not required). The pair of boom arms 190, in other words, would be hydraulically locked. Col. 12, ln. 16-22;</p> <p>4. The system of claim 2, wherein the controller transmits a soft boom lock signal to inactivate a portion of the hydraulic system related to</p>

	movement of the boom arms in one or more of raising or lowering the boom assembly. Col. 16, ln. 26-29.
10,975,547	<p>A controller 465 may be coupled to the work vehicle 10. In dozer mode 120 (FIG. 2B), the controller 465 may be configured to receive an operator signal 470 from the operator interface 50, transmit a boom lower signal 475 to the hydraulic system 275 to lower the boom assembly 195 to the frame 15, and transmit a boom lock signal 480 to a hydraulic actuator 330 or an electronic actuator 335 of the boom lock 290 to move the boom lock 290 to the locked position 300 (FIGS. 5A, 5B, 5C) after the boom assembly 195 is lowered to the frame 15. Col. 6, ln. 9-19;</p> <p>3. The work vehicle of claim 1, further comprising a hydraulic system fluidly coupled to the at least one boom cylinder and the at least one tilt cylinder, the controller configured to control the hydraulic system to maintain the cutting edge on the cutting plane. Col. 9, ln. 59-63.</p>
10,760,243	<p>The boom arms 190 remain locked in a lowered position when the attachment 105 of the embodiments disclosed herein are coupled to the work machine 100. Locked in the lowered position may include one or more of a hydraulic lock and a mechanical lock. Col. 8, ln. 55-59;</p> <p>4. The work machine of claim 1, wherein the boom arms remain locked in a lowered position. Col. 10, ln. 33-34.</p>

15. The '300 Patent was cited during the prosecution of each of the foregoing patents, thus confirming that Defendant Deere was well aware of the advantages taught by the '300 Patent, namely, the ability to hydraulically lock the vehicle's boom arm in a downward position when manipulating a front end attachment to the vehicle.

16. In 2020, Defendant Deere introduced the 333G SmartGrade™ Compact Track Loader ("333G") and John Deere SmartGrade six-way dozer blade attachment ("SG96"). One of the prominent features of the 333G is the vehicle's "Dozer Mode." When in Dozer Mode, an attachment coupled to the vehicle, such as a dozer blade, can be controlled with automated precision with the assistance of the vehicle's GPS system. The ability to automatically control the

vehicle's attachment with precision is possible because, when the vehicle is in Dozer Mode, the hydraulics which control the vehicle's boom arm are restricted such that the boom arm stays and remains in a lowered position.

17. On October 16, 2020, Defendant Deere's "product marketing manager," Gregg Zupancic, appeared on the podcast, "The Dirt," to discuss the advantages of the 333G. During the podcast, Defendant Deere's product marketing manager specifically touted the advantages of the 333G's Dozer Mode as follows:

[The 333G] enables some software that keeps the dozer blade down on the frame of the machine. If the blade somehow lifts up, the machine while you are in Dozer Mode, senses that the blade is coming off the grade and it will automatically push the blade down and that's important because in order to cut a ridged grade, a very smooth and accurate grade, you can't have that boom coming off the frame of the machine, the stops.... So the machine is automatically sensing when the elevation is coming up inadvertently just under load, and is making sure that [blade] is staying down onto the grade at all times, hydraulically. Now when you pull back [the vehicle's joystick] in Dozer Mode, instead of lifting the linkage, you're actually creating the elevation of the bucket or the dozer blade. And that keeps the boom on the stops, you get that rigidity....

18. At the 2020 ConExpo construction trade show, Defendant Deere's product marketing manager, Mr. Zupancic gave another interview wherein he once again touted the 333G's Dozer Mode capabilities:

For example, if you take a skid steer control and you pull back to get your elevation, your height of the attachment, the boom comes up and then your blade is no longer in the grading position. So we don't want that, we want to keep our boom down on the stops so that when you're pushing the draft load is going through the frame, its very rigid. If you come off those stops, raise it up for elevation off the stops with a skid steer control pattern, there is a lot of linkage and bushings and pivots that become very "squishy" and you lose some of you're accuracy when its up high like that. So with Dozer Mode, we electronically can read the elevation and we know when the blade is wanting to come up off the stops under heavy load, and we can pulse hydraulics to keep that down and push it down and keep it down so you get a nice smooth grade

19. In each of the foregoing interviews, Defendant Deere's product marketing manager, Mr. Zupancic, publicly advertised that a significant advantage of the 333G was the ability to hydraulically lock the vehicle's boom arm to the frame of the vehicle when in Dozer Mode, thus allowing for a precise and accurate grading function.

20. On or about October 9, 2020, after discovering Defendant Deere's 333G and incorporated Dozer Mode feature, Plaintiff sent Defendant Deere a cease and desist letter that set forth in detail how each and every element of the '300 Patent's independent claim 1 and dependent claim 2 is practiced by the 333G when the vehicle is operating in Dozer Mode. Plaintiff's October 9, 2020 letter also included excerpts from Mr. Zupancic's 2020 ConExpo interview where he expressly stated that the boom arm is maintained in a downward position in Dozer Mode through manipulation of the vehicle's hydraulics.

21. On December 1, 2020, Defendant Deere's Senior Intellectual Property Counsel, Joshua C. Heitsman, responded to Plaintiff's October 9, 2020 letter by informing Plaintiff that, contrary to Mr. Zupancic's interview, "Deer products do not pulse hydraulics, and Deere does not instruct Deere customers to pulse hydraulics.... However, if a Deere customer were to pulse hydraulics that would not be 'restricting the ability of a hydraulic' as required by the claim."

22. In 2023, Plaintiff purchased a 333G. Further confirming that the 333G practices all elements of the '300 Patent's independent claim 1 and dependent claim 2, Plaintiff measured the voltage level in the hydraulics controlling the boom arm when the vehicle was in Dozer Mode. Through this test, Plaintiff confirmed that, while the vehicle's boom arm is lowered onto the stops and the GPS is enabled (*i.e.*, the 333G is operating in Dozer Mode), when the joystick is pulled back there is no voltage measured in the boom arm hydraulics until the dozer blade is elevated to a specific height, at which point a voltage measurement is discernable in the boom arm's hydraulics

thus causing the boom to lift, and importantly, disconnecting the operation of the vehicle's blade from the 333G's GPS system. The foregoing test confirmed that, when the 333G is operating in Dozer Mode, the hydraulics controlling the boom arm are indeed restricted.

23. In view of the foregoing, there are only two possible scenarios relating to the operation of the 333G's boom arm while the vehicle is in Dozer Mode: 1) Mr. Heitsman's December 1, 2020 assessment is incorrect because the hydraulics to the vehicle's boom arm are restricted; or 2) Mr. Zupancic is repeatedly and publicly touting a significant advantage that the 333G does not exhibit in direct competition with Plaintiff's V-Loc System.

24. Defendant Deere's past and continuous use, display, marketing, promoting, exporting, offering for sale, and or selling of the 333G constitutes a deliberate and willful intent to infringe upon the '300 Patent, without Plaintiff's license, consent, or authorization. As a result, Plaintiff has suffered irreparable harm and has no adequate remedy at law.

COUNT I – INFRINGEMENT OF U.S. PATENT NO. 10,533,300

25. The allegations set forth in the foregoing paragraphs 1 through 24 are incorporated into Count I of the Complaint.

26. The '300 Patent discloses and claims a method of stabilizing skid steer vehicles used to grade earth using a dozer blade in conjunction with GPS automatic grade control equipment.

27. Upon issuance of the '300 Patent, David's Dozer notified Deere of its patent infringement by letters dated April 22, 2020, and October 9, 2020. Despite Deere's awareness of the '300 Patent and its infringement, Defendant Deere has and continues to directly infringe, either literally and/or under the doctrine of equivalents, at least claims 1 and 2 of the '300 Patent under 35 U.S.C. §271(a) by using, at least through internal testing or otherwise, the John Deere 333G

SmartGrade™ Compact Track Loader (“333G”) and John Deere SmartGrade six-way dozer blade attachment (“SG96”) (wherein the 333G and SG96 are referred to collectively as the “Infringing Products”). Claim charts detailing Deere’s infringement of at least claims 1 and 2 of the ’300 patent are attached hereto as Exhibit 2.

28. Deere’s Affiliates directly infringe at least claims 1 and 2 of the ’300 Patent by using and/or testing the Infringing Products to provide positive reviews to solicit sales of the Infringing Products with the goal of offering them for sale by providing links to Defendant’s website, <https://www.deere.com/>. End purchasers or customers of Deere also commit infringement of at least claims 1 and 2 of the ’300 Patent when they purchase the Infringing Products and once they begin to operate the Infringement Products.

29. Deere actively induced and is actively inducing infringement of at least claims 1 and 2 of the ’300 patent, in violation of 35 U.S.C. §271(b). Deere’s Affiliates, customers and end-users of the Infringing Products directly infringe at least claims 1 and 2 of the ’300 Patent, at least by using the Infringing Products, as described in Exhibit 2. Deere knowingly induces infringement of at least claims 1 and 2 of the ’300 Patent by Affiliates, customers, and end-users of the Infringing Products with specific intent to induce infringement, and/or with willful blindness to the possibility that its acts induce infringement, through activities relating to selling, marketing, advertising, promotion, support, and distribution of the Infringing Products in the United States. For example, Deere instructs Affiliates, customers, and end-users, at least through its marketing, promotional, and instructional materials, including manuals and video instructions, to use the Infringing Products, as shown in Exhibits 3 and 4. *See also* links to videos identified in Exhibit 2.

30. Deere contributed and is contributing to infringement of at least claims 1 and 2 of the ’300 Patent, in violation of 35 U.S.C. §271(c). Deere’s Affiliates, customers and end-users of

the Infringing Products directly infringe at least claims 1 and 2 of the '300 Patent, at least by using the Infringing Products, as described in detail in Exhibit 2. Deere contributes to infringement of the '300 Patent by offering to sell, selling, and/or importing into the United States the Infringing Products and components thereof. Such components are substantial, material parts of the claimed inventions of the '300 Patent and have no substantial non-infringing use. The Infringing Products supplied by Deere are specially made and especially adapted for use in infringing the '300 Patent and are not staple articles or commodities of commerce suitable for substantial non-infringing use.

31. David's Dozer has been and continues to be damaged by Deere's infringement of the '300 Patent. The injury to David's Dozer is irreparable and will continue unless and until Deere is enjoined from further infringement.

32. This case is exceptional, and David's Dozer is entitled to an award of attorneys' fees under 35 U.S.C. § 285.

**COUNT II – FALSE AND MISLEADING ADVERTISING
AND PROMOTION IN VIOLATION OF 15 U.S.C. § 1125(a)(1)(B)**

33. The allegations set forth in the foregoing paragraphs 1 through 24 are incorporated into Count II of the Complaint.

34. This Count is pled in the alternative to Count I for patent infringement.

35. Defendant's practices, as described in this Complaint, constitute unfair competition and false advertising in violation of Section 43(a)(1)(B) of the Lanham Act, 15 U.S.C. § 1125(a)(1)(B).

36. Defendant and Plaintiffs are direct competitors with one another, each competing for the same customers through the promotion and sales of competing products in the field of grading technology and related machinery.

37. Defendant has violated the Lanham Act by using false or misleading descriptions of fact and false or misleading representations of fact in its commercial advertising or promotion that misrepresent the nature, characteristics, and/or qualities of Defendant's business practices and products, as set forth above.

38. Defendant has also engaged in other false or misleading advertising and promotion intended to assure consumers that Defendant's practices are lawful. Upon information and belief, Defendant Deere states and mislead consumers into believing that the 333G's boom arm is hydraulically restricted in a lowered position when the vehicle is operating in Dozer Mode thereby allowing the vehicle to automatically provide a precise and accurate dozer grading function.

39. In its December 1, 2020 letter, Defendant Deere contended that it did not infringe the '300 Patent because the 333G does not restrict the ability of a hydraulic as claimed in the '300 Patent. This position is irreconcilable with its promotion and advertising of the 333G and its Dozer Mode feature. Thus, either Defendant Deere infringes the '300 Patent or, in the alternative, Defendant Deere is liable for its intentional false or misleading advertising and promotion.

40. The above-described acts of Defendant, if not enjoined by this Court, are likely to deceive members of the general public including customers and potential customers of the parties.

41. The above-described acts of Defendant have irreparably harmed and, if not enjoined, will continue to irreparably harm David's Dozer.

42. The above-described acts of Defendant have irreparably harmed and, if not enjoined, will continue to irreparably harm the interest of the public in being free from confusion, mistake, and deception.

43. By reason of Defendant's acts as alleged above, David's Dozer has suffered and will continue to suffer injuries, including injury to David's Dozer's business reputation. However,

David's Dozer's remedies at law are not adequate to compensate for all the injuries inflicted by Defendant.

44. Accordingly, Plaintiff David's Dozer is entitled to entry of injunctive relief requiring Defendant to cease its false and misleading advertising and promotion and unfair competitive practices.

COUNT III – DECLARATORY JUDGMENT
CORRECTION OF INVENTORSHIP UNDER 35 U.S.C. § 256

45. The allegations set forth in the foregoing paragraphs 1 through 24 are incorporated into Count III of the Complaint.

46. U.S. Patent Nos. 11,028,557, 11,286,641, 10,975,547, 10,760,243 (collectively, the "Deere Patents") contain claims directed to the restriction of a boom arm on a working vehicle necessary for patentability that originated from Plaintiff, David Armas.

47. The Deere Patents fail to list Armas as a joint inventor.

48. Plaintiff Armas substantially contributed to the conception and reduction to practice of significant features of the inventions recited in one or more claims of the Deere Patents. Plaintiff Armas is rightfully a joint inventor of the claimed features of one or more claims of the Deere Patents.

49. The omissions of Armas as a joint inventor of the Deere Patents was done without any deceptive intent on the part of Armas.

50. Armas respectfully requests this Court to enter a declaratory judgment declaring Armas a joint inventor of the Deere Patents, and issue an order directing the Director of the United States Patent and Trademark Office to add Armas as a joint inventor of the Deere Patents.

JURY DEMAND

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiffs demand a trial by jury on all issues triable as such.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for relief and judgment against Deere as follows:

- A. An adjudication and declaration that Deere has infringed one or more claims of the '300 Patent;
- B. That Deere has actively induced others to infringe one or more claims of the '300 Patent;
- C. That Deere has contributorily infringed one or more claims of the '300 Patent;
- D. A permanent injunction against Deere and its officers, directors, employees, agents, consultants, contractors, suppliers, distributors, all parent and subsidiary entities, all assignees and successors in interest, and all others acting in concert or privity with Deere, from further infringement of the '300 Patent;
- E. An award of enhanced damages pursuant to 35 U.S.C. § 284 for Defendants' willful infringement;
- F. A declaration that this case is exceptional under 35 U.S.C. §285, and an award of reasonable attorneys' fees;
- G. A declaration that Plaintiff Armas is a joint inventor of the Deere Patents;
- H. A permanent injunction against Deere and its officers, directors, employees, agents, consultants, contractors, suppliers, distributors, all parent and subsidiary entities, all assignees and successors in interest, and all others acting in concert or privity with Deere, from further falsely advertising features of the 333G that are not exhibited by the vehicle;

I. An award of damages pursuant to 15 U.S.C. § 1117 for Defendant Deere's false advertising and misleading promotion in violation of 15 U.S.C. § 1125;

J. Judgment against Deere in favor of Plaintiffs on all counts of this Complaint; and

K. An award to Plaintiffs of such further relief at law or in equity as the Court deems just and proper.

DATED: December 29, 2023

Respectfully submitted,

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