

UNITED STATES DISTRICT COURT
DISTRICT OF DELAWARE

Blue Sunny Skies, LLC, a Delaware limited liability company, Sun Energy Partners I, LLC, a Delaware limited liability company, formerly McConnell Energy Solutions, LLC, a Delaware limited liability company, and Blue Solar LLC, a Delaware limited liability company,)	
)	
Plaintiffs,)	C.A. No.
)	
v.)	
)	
PV Thermal Solar, LLC, a Delaware limited liability company, SolarRac2, an unknown entity, MJM Fabrications, Inc., a Delaware corporation, and Dave Lewenz, an individual,)	
)	
Defendants.)	
)	

COMPLAINT

Plaintiffs, Blue Sunny Skies, LLC (“BSS”), Sun Energy Partners I, LLC (“Sun Energy”), formerly McConnell Energy Solutions, LLC (“McConnell”), Blue Solar, LLC (“Blue Solar”) (collectively “SOLARDOCK”), by and for their complaint against defendants, PV Thermal Solar (“PV”), SolarRac2 (“SR2”), MJM Fabrication (“MJM”), and Dave Lewenz (“Lewenz”)(collectively “Defendants”), allege as follows:

PARTIES

1. Plaintiff BSS is a Delaware limited liability company with its principal place of business located at 201 West 14th Street, Suite 101, Wilmington, Delaware, 19801.

2. Plaintiff Sun Energy, formerly known as McConnell, is a Delaware limited liability company with its principal place of business located at 201 West 14th Street, Suite 101, Wilmington, Delaware, 19801.

3. Plaintiff Blue Solar is a Delaware limited liability company with its principal place of business located at 201 West 14th Street, Suite 101, Wilmington, Delaware, 19801.

4. Defendant PV is a Delaware limited liability company with its principal place of business located at 506 Crest Road, Wilmington, DE, 19803. Its products and services are offered to and may be purchased and/or used by citizens of Delaware. PV owns, maintains and/or operates a website at <http://pvthermalsolar.com>, the content of which is incorporated herein by reference.

5. SOLARDOCK is informed and believes Defendant SR2 is an entity of unknown type, but is a division of PV and is currently doing business in the State of Delaware with its principal place of business located at 506 Crest Road, Wilmington, DE, 19803. Its products and services are offered to and may be purchased and/or used by citizens of Delaware. SR2 owns, maintains and/or operates a website at <http://solarrac2.webstarts.com/index.html>, the content of which is incorporated herein by reference.

6. Defendant MJM Fabrication is a Delaware corporation with its principal place of business located at 200 Center Point Boulevard, Suite D, New Castle, Delaware, 19720.

7. SOLARDOCK is informed and believes Defendant Lewenz is an individual and a co-owner of PV and SR2, whose address is 4973 Bacopa Bay, Suite 304, St. Petersburg, Florida, 33715.

JURISDICTION AND VENUE

8. This is an action for (a) patent infringement under the patent laws of the United States, Title 35 of the United States Code, arising from Defendants' manufacture, sales, and/or offer for sale of the SolarRac2 ballasted racking systems for solar panels ("SR2 System") that infringe BSS's U.S. Patent No. 6,968,654 ("the '654 patent"), and for (b) unfair competition, (c) unjust enrichment, (d) civil conspiracy, (e) conversion, (f) tortious interference with contract, and (g) tortious interference with prospective economic advantage, arising from, among other acts, Defendants inequitable acquisition of certain economic benefits derived from the manufacture and sale of the SR2 System.

9. This Court has subject matter jurisdiction over BSS's patent infringement claims pursuant to 28 U.S.C. §§ 1331 and 1338(a), and over Defendants' additional claims pursuant to 28 U.S.C. §§ 1367 and 1338(b).

10. This Court has personal jurisdiction over Defendants by virtue of, *inter alia*: (1) their presence in Delaware; (2) their transaction of business and/or offer to transact business within Delaware; and/or (3) their status as an entity organized under the laws of Delaware.

11. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391 and 1400(b).

BACKGROUND FACTS

12. Dissatisfied with the available roof-mounted solar racking systems, in 2002 McConnell set out to design and develop a new lightweight solar mounting system that emphasized features that McConnell considered absolute requirements for use on its own building and future projects. This solar panel mounting system became known as SolarDock[®].

13. McConnell's development efforts also resulted in the '654 patent, which issued on November 29, 2005 and describes and claims a solar panel mounting system, among other things. A copy of the '654 patent is attached at Exhibit A.

14. Both the named inventors of the '654 patent, Michael Moulder ("Moulder") and Eugene Taylor, assigned their entire right, title and interest in the inventions described and claimed in the '654 patent to McConnell.

15. On February 4, 2008, McConnell unconditionally assigned its entire right, title and interest to the '654 patent to BSS.

16. Plaintiffs, all doing business as SOLARDOCK, are known in the solar industry as an innovator in solar mounting solutions. The SolarDock[®] solar panel mounting system not only maximizes annual kWh power production, but also dramatically increases installation productivity.

17. SOLARDOCK provides its customers with full technical support from design development through installation, specifically designing and customizing racking systems based on the unique needs of individual customers and using SOLARDOCK's industry-leading wind and seismic testing.

18. SOLARDOCK's success in the development, manufacturing and marketing of its specialized products is predicated on its dedication to innovation and technical support to its customers. SOLARDOCK is recognized among leading solar integrators, installers and distributors as the next generation in flat-roof and ground-mount solar systems.

19. Prior to the filing of this Complaint, SolarDock[®] systems have been manufactured by Moulder's company, MJM.

20. Because of MJM's limited financial capacity, SOLARDOCK pre-purchased the materials used by MJM to manufacture SolarDock® systems in bulk to receive a better price with the understanding that these materials would be inventoried and solely used for the manufacture of SolarDock® systems.

21. As part of its business model, SOLARDOCK retains independent contractors as its sales force to sell and distribute SolarDock® systems. This included an independent contractor agreement with Lewenz ("Lewenz Agreement") dated April 1, 2010.

22. Lewenz was an independent contractor for SOLARDOCK from the execution of the Lewenz Agreement to the filing of the Complaint, and has been SOLARDOCK's exclusive sales representative in the south east region of the United States.

23. By virtue of their relationship with SOLARDOCK, both Moulder and Lewenz have had access to SOLARDOCK proprietary and confidential information, which includes proprietary wind, seismic, and design information for the SolarDock® system.

24. Upon information and belief, Lewenz and Moulder co-founded PV, which was incorporated on February 2, 2011. Further upon information and belief, PV, through its division SR2, used SOLARDOCK's proprietary and confidential information to create racking systems that compete directly with the SolarDock® system and fall within the scope of one or more claims of the '654 patent. Such racking systems include SR2's SolarRac2 system.

25. Upon information and belief, PV, SR2, and/or Lewenz have offered for sale and/or sold SR2's SolarRac2 system. This includes sales to WCP Solar Services and Eagle Point Solar, among other companies, during the time Lewenz was an independent contractor for SOLARDOCK, for solar power installations that include, but are not limited to, the Great

Western Flooring Company in Naperville, Illinois, Scott Printing in Dubuque, Iowa, and Liposuction and Cosmetic Surgery Institute in Naperville, Illinois.

26. SOLARDOCK, at the request of Lewenz, expended significant resources in connection with at least the Great Western Flooring Company and Scott Printing solar power installation projects, including design services, drawings, and bids. SOLARDOCK was not awarded the contracts for these solar installation projects. Instead, SR2's SolarRac2 systems were installed at these locations in configurations that resemble the solar power installation configurations that had been proposed by SOLARDOCK.

27. PV, SR2, and Lewenz are not licensed or authorized to use the '654 patent for any of the products they offer to sell or sell, including the SolarRac2 system.

28. Upon information and belief, MJM manufactures, offers to sell, and/or sells the SolarRac2 system.

29. Except for the SOLARDOCK products, MJM is not licensed or authorized to use the '654 patent to manufacture, offer to sell, or sell any products, including the SolarRac2 system.

30. Further, upon information and belief, MJM has used materials purchased by SOLARDOCK for the exclusive use in the manufacture of SolarDock[®] systems to manufacture other products, including the SolarRac2 system.

**COUNT 1: INFRINGEMENT OF THE '654 PATENT
(Against All Defendants)**

31. SOLARDOCK hereby realleges and incorporates by reference the allegations of paragraphs 1-30 of this Complaint.

32. On information and belief, by February 2011, PV, SR2, Lewenz and MJM had begun manufacturing, offering for sale, and/or selling solar mounting products for their own benefit that are covered by one or more claims of the '654 patent.

33. On information and belief, such products include the SolarRac2 system, which directly competes with SOLARDOCK'S SolarDock® system.

34. Defendants have infringed, and presently infringe, literally or under the doctrine of equivalents, one or more claims of the '654 patent under 35 U.S.C. § 271(a), (b), and/or (c), by using, making, using, selling, and/or offering to sell the SolarRac2 system in the United States, and will continue to do so unless enjoined therefrom.

35. Defendants have contributed to the use, sale, and/or offer for sale by others of the SolarRac2 system in the United States.

36. Defendants have intentionally induced others to use, make, sell, and/or offer to sell the SolarRac2 system in the United States.

37. On information and belief, Defendants began making, using, offering for sale, and selling the SolarRac2 system in the United States even though each of the Defendants was aware of the '654 patent.

38. On information and belief, Defendants' infringement of the '654 patent has been and continues to be willful, intentional, and deliberate.

39. SOLARDOCK is entitled to damages under 35 U.S.C. §§ 284 and 289 for Defendants' infringement of the '654 patent.

40. SOLARDOCK has no adequate remedy at law for Defendants' infringement of the '654 patent, and will be irreparably harmed if Defendants are not enjoined from infringing the '654 patent.

COUNT 2: UNFAIR COMPETITION
(Against all Defendants)

41. SOLARDOCK hereby realleges and incorporates by reference the allegations of paragraphs 1-40 of this Complaint.

42. Defendants have, by reason of their wrongful acts, engaged in unfair competition and unfair and deceptive acts and practices in the conduct of its trade, which acts and practices have injured SOLARDOCK within the meaning, and in violation, of the laws of the State of Delaware.

43. In 2011, SOLARDOCK submitted design drawings and timely bids to both WCP Solar Services and Eagle Point Solar for the Great Western Flooring Company and Scott Printing solar power installations.

44. Upon information and belief, Defendants used SOLARDOCK's design drawings, inventoried materials, wind data, seismic data and other proprietary and confidential information, to submit bids to each of WCP Solar Services and Eagle Point Solar for the Great Western Flooring Company and Scott Printing solar power installations using the infringing SolarRac2 system.

45. The acts of Defendants, and in particular the submission of bids under the circumstances described herein, were willful, fraudulent, and malicious, and were committed by Defendants with the intent to deprive SOLARDOCK of the benefit it would have received had it been awarded the contracts to supply solar power installations to WCP Solar Services and Eagle Point Solar for the Great Western Flooring Company and Scott Printing projects.

**COUNT 3: UNJUST ENRICHMENT
(Against all Defendants)**

46. SOLARDOCK hereby realleges and incorporates by reference the allegations of paragraphs 1-45 of this Complaint.

47. Defendants have received economic benefits by virtue of the selection of their bids to supply solar power installations to WCP Solar Services and Eagle Point Solar for the Great Western Flooring Company and Scott Printing projects.

48. Upon information and belief, Defendants received those economic benefits after using SOLARDOCK'S design drawings, inventoried materials, wind data, seismic data and other proprietary and confidential information and in exchange for selling products that infringe the '654 patent.

49. It would be unjust and inequitable for Defendants to retain the economic benefits they have secured under their contracts to supply solar power installations to WCP Solar Services and Eagle Point Solar for the Great Western Flooring Company and Scott Printing projects at the expense of Plaintiffs.

**COUNT 4: CIVIL CONSPIRACY
(Against all Defendants)**

50. SOLARDOCK hereby realleges and incorporates by reference the allegations of paragraphs 1-49 of this Complaint.

51. Upon information and belief, all Defendants knowing entered into a confederation or combination to pursue unlawful ends vis-à-vis SOLARDOCK, including misappropriation of SOLARDOCK'S proprietary and confidential information, infringement of the '654 patent, unfair competition, and interference with SOLARDOCK'S contractual interests and economic expectancies.

52. For the purposes of this count, each of the Defendants is a separate legal person who conspired in order to pursue unlawful ends. The individual defendants were, on information and belief, acting for their own personal financial gain in participating in the civil conspiracy.

53. All Defendants committed unlawful acts in furtherance of the civil conspiracy. On information and belief, defendant Lewenz with Moulder masterminded the formation of PV and SR2, and the development of the infringing SolarRac2 system, to unfairly compete and interfere with SOLARDOCK's economic expectancies, causing substantial injury, loss, and damages to SOLARDOCK.

54. Upon information and belief, defendant MJM was involved in the civil conspiracy using SOLARDOCK's proprietary information and material purchased by SOLARDOCK to manufacture the infringing SolarRac2 system.

55. SOLARDOCK has suffered damages as a proximate cause of the civil conspiracy, including, but not limited to, lost business opportunities and profits and harm to its business reputation. SOLARDOCK is entitled to damages to be determined at trial.

**COUNT 5: CONVERSION
(Against Defendant MJM)**

56. SOLARDOCK hereby realleges and incorporates by reference the allegations of paragraphs 1-55 of this Complaint.

57. SOLARDOCK pre-purchased the materials used by MJM to manufacture SolarDock® systems in bulk to receive a better price and with the understanding that these materials would be inventoried by MJM and used exclusively for the manufacture of SolarDock® systems.

58. Upon information and belief, MJM has used materials purchased by SOLARDOCK to manufacture other products, including the SolarRac2 system.

59. MJM has no legitimate justification for using materials purchased by SOLARDOCK to manufacture products other than SolarDock® systems.

60. SOLARDOCK is entitled to recover damages for MJM's unauthorized conversion of materials purchased by SOLARDOCK, and the return of any materials purchased by SOLARDOCK in MJM's possession.

**COUNT 6: TORTIOUS INTERFERENCE WITH CONTRACT
(Against Defendants PV and SR2)**

61. SOLARDOCK hereby realleges and incorporates by reference the allegations of paragraphs 1-60 of this Complaint.

62. At all relevant times, SOLARDOCK had a valid and binding contract with Lewenz in the form of the Lewenz Agreement.

63. Defendants PV and SR2 had knowledge of the Lewenz Agreement.

64. Defendants PV and SR2 have intentionally interfered with SOLARDOCK's contractual interests in the Lewenz Agreement by causing Lewenz to breach his contractual obligations under the Lewenz Agreement by the conduct of Lewenz referred to herein.

65. PV's and SR2's intentional interference with SOLARDOCK's contractual interests in the Lewenz Agreement is without justification. Upon information and belief, their tortious conduct was motivated by their own financial gain at SOLARDOCK's expense.

66. SOLARDOCK is entitled to recover damages suffered as a result of PV's and SR2's tortious interference with the Lewenz Agreement in an amount to be determined at trial.

**COUNT 7: TORTIOUS INTERFERENCE WITH PROSPECTIVE
ECONOMIC ADVANTAGE
(Against All Defendants)**

67. SOLARDOCK hereby realleges and incorporates by reference the allegations of paragraphs 1-66 of this Complaint.

68. At all relevant times, SOLARDOCK had a reasonable probability and concrete expectation of economic advantage through its patented technology and its wind data, seismic data and other proprietary and confidential information relating to solar panel mounting systems.

69. Upon information and belief, Defendants had knowledge of SOLARDOCK's economic expectancies through Lewenz's contacts with SOLARDOCK's potential customers, including WCP Solar Services and Eagle Point Solar.

70. Upon information and belief, Defendants have intentionally interfered with SOLARDOCK's economic expectancies arising from its patented technology and proprietary information by, among other things, offering SOLARDOCK's potential customers, including WCP Solar Services and Eagle Point Solar, the infringing SolarRac2 system and discouraging potential customers from purchasing SolarDock® systems.

71. Upon information and belief, the tortious interference engaged in by Defendants was motivated by a desire to undermine the interests of SOLARDOCK and usurp SOLARDOCK's business opportunities for themselves.

72. The Defendants' tortious interference is the proximate cause of damages to SOLARDOCK. SOLARDOCK has had concrete economic opportunities foreclosed to it as a result of Defendants' tortious acts, including the loss of the Great Western Flooring Company and Scott Printing solar power installation projects.

73. SOLARDOCK is entitled to recover damages suffered as a result of the Defendants' tortious interference in an amount to be determined at trial.

REQUEST FOR RELIEF

Plaintiffs respectfully request that this Court enter judgment against the Defendants and grant the following relief:

- a. judgment that each of the Defendants have infringed the '654 patent;
- b. judgment that each of the Defendants' infringement of the '654 patent was willful;
- c. that each of the Defendants, its officers, agents, servants, and employees, and those persons in active concert or participation with any of them be enjoined from continued infringement;
- d. that SOLARDOCK be award damages for Defendants' manufacture, use, sales, and offers for sales of the SolarRac2 system, and that any such damages be awarded with prejudgment interest;
- e. that SOLARDOCK be awarded damages from Defendants for their unfair trade practices;
- f. that SOLARDOCK be awarded damages for Defendants' unjust enrichment relating to, *inter alia*, the Great Western Flooring Company and Scott Printing solar power installation projects;
- g. that SOLARDOCK be awarded damages as a result of Defendants' civil conspiracy, including, but not limited to, lost business opportunities and profits and harm to its business reputation;

- h. that SOLARDOCK be awarded damages from defendant MJM for the conversion of materials purchased by SOLARDOCK and used by MJM for products other than SolarDock[®] systems, and that MJM be ordered to return any materials purchased by SOLARDOCK in MJM's possession;
- i. that SOLARDOCK be awarded damages from defendants PV and SR2 for their tortious interference relating to the Lewenz Agreement;
- j. that SOLARDOCK be awarded damages for Defendants' tortious interference with SOLARDOCK's prospective economic advantage;
- k. that SOLARDOCK be awarded punitive damages for Defendants' tortious conduct;
- l. that SOLARDOCK be awarded its reasonable attorneys' fees and costs, and expenses because this is an exceptional case under 35 U.S.C. § 285; and
- m. that SOLARDOCK be awarded such other relief as the Court deems just and proper.

JURY DEMAND

Plaintiffs hereby demand a jury trial on all issues so triable.

Dated: June 28, 2012

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