

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

ENVIROGEN TECHNOLOGIES, INC.,

Plaintiff,

v.

**MAXIM CONSTRUCTION
CORPORATION, INC.,**

Defendant.

Civil Action No. _____

JURY TRIAL DEMANDED

COMPLAINT

Plaintiff, Envirogen Technologies, Inc. (“Envirogen”), by its attorneys, as and for its Complaint against Defendant Maxim Construction Corporation, Inc. (“Maxim”), alleges as follows:

Nature Of Action

1. This case involves the actions of Envirogen for breach of contract under the laws of the State of Illinois and, in addition or in the alternative to the breach of contract claim, patent infringement under 35 U.S.C. 271 *et seq.*

2. A true and correct copy of the Purchase Order is attached as Exhibit A.

3. A true and correct copy of U.S. Patent No. 7,309,436 is attached as Exhibit B.

4. A true and correct copy of U.S. Patent No. 6,878,286 is attached as Exhibit C.

5. A true and correct copy of U.S. Patent No. 7,041,223 is attached as Exhibit D.

The Parties

6. Plaintiff Envirogen, having its principal place of business at Two Kingwood Place, 700 Rockmead Drive, Suite 105, Kingwood Texas is a world leader in designing and

manufacturing water purification systems and processes for, just to name a few, the treatment of groundwater, wastewater, process improvement, resource recovery and odor control.

7. On information and belief, Defendant Maxim Construction Corporation, Inc. is an Illinois corporation with its principal place of business at 31632 North Ellis Drive, Unit 111, Volo, Illinois 60073.

Jurisdiction and Venue

8. This Court has exclusive jurisdiction over the subject matter of this case under 28 U.S.C. § 1331 (federal question); § 1338(a) (patent infringement), and § 1367(a) (supplemental jurisdiction).

9. This Court has personal jurisdiction over Maxim inasmuch as Maxim resides in this District and conducts business within the State of Illinois and this District.

10. Venue is proper in this District under 28 U.S.C. § 1391(a) and (b). Namely, and among other things, this case arises from breach of contract entered into in this District, Maxim resides in this District, and a substantial part of the events or omissions giving rise to the claims occurred or a substantial part of property that is the subject of the action is situated in this District.

Pertinent Facts

11. On information and belief, in November 2009, the City of Crystal Lake (“Crystal Lake”), through the proceedings of the City Council, retained Trotter & Associates (“Trotter”) to design and prepare bid documents for the renovation project known as the Water Treatment Plant #1 Softener Replacement and Modification project (“WTP #1 Project”).

12. On information and belief, in July 2010, Crystal Lake issued a request for proposals (“RFP”) for the WTP #1 Project, which included an ion exchange water treatment system to be installed at Water Plant #1, to general contractors.

13. On August 17, 2010, Crystal Lake awarded the WTP #1 Project to Maxim.

14. Soon thereafter, Maxim hired Envirogen as a subcontractor to supply the ion exchange water treatment system as set forth in section 11560 of the specification for the WTP #1 Project.

15. On August 29, 2010, Envirogen and Maxim signed a Purchase Order (“the Order”) whereby Envirogen would supply its patented ion exchange water treatment system for Maxim to be installed at the Water Plant #1 at the City of Crystal Lake.

16. The Order requires that the standard specification for the ion exchange water treatment system meet the requirements set forth under section 11560 of the specification in the WTP #1 Project.

17. Subject to the obligations for payment under the Order, Envirogen supplied to Maxim its patented ion exchange water treatment system meeting the requirements set forth under section 11560 of the specification in the WTP #1 Project.

18. Pursuant to the Order, Maxim promised to pay Envirogen a total sum of \$948,565 for supplying the patented ion exchange water treatment system.

19. On information and belief, the ion exchange water treatment system of the WTP #1 Project is covered by U.S. Patent No. 7,309,436 (“the ‘436 patent”).

20. Envirogen owns all right, title, and interest in, and has standing to sue for the infringement of the ‘436 patent.

21. The '436 patent existed in the United States at all times relevant to this action. During the term of the '436 patent, the ion exchange water treatment system that conforms to section 11560 of the specification in the WTP #1 Project could not be made or used by Maxim without utilizing the technology protected by the patent.

22. On information and belief, the ion exchange water treatment system of the WTP #1 Project is covered by U.S. Patent No. 6,878,286 ("the '286 patent").

23. Envirogen owns all right, title, and interest in, and has standing to sue for the infringement of the '286 patent.

24. The '286 patent existed in the United States at all times relevant to this action. During the term of the '286 patent, the ion exchange water treatment system that conforms to section 11560 of the specification in the WTP #1 Project could not be made or used by Maxim without utilizing the technology protected by the patent.

25. On information and belief, the ion exchange water treatment system of the WTP #1 Project is covered by U.S. Patent No. 7,041,223 ("the '223 patent").

26. Envirogen owns all right, title, and interest in, and has standing to sue for the infringement of the '223 patent.

27. The '223 patent existed in the United States at all times relevant to this action. During the term of the '223 patent, the ion exchange water treatment system that conforms to section 11560 of the specification in the WTP #1 Project could not be made or used by Maxim without utilizing the technology protected by the patent.

28. Beginning in or about January 2011, Maxim began making payments pursuant to the Order for the installation, sale, and continued use of Envirogen's patented ion exchange water treatment system.

29. Beginning in or about May 2012, Maxim delayed making payments for the ion exchange water treatment system and failed to make the payments in full.

30. The ion exchange water treatment system sold by Maxim to the City of Crystal Lake (without paying the full amount to Envirogen) falls within the claims of the '436 patent.

31. The ion exchange water treatment system sold by Maxim to the City of Crystal Lake (without paying the full amount to Envirogen) falls within the claims of the '286 patent.

32. The ion exchange water treatment system sold by Maxim to the City of Crystal Lake (without paying the full amount to Envirogen) falls within the claims of the '223 patent.

33. Maxim's license to acquire, make, use and sell such ion exchange water treatment system to the City of Crystal Lake is contingent upon Maxim's payment of \$948,565 in full, as set forth in the Order.

34. Maxim is in material breach of the Order.

35. Because Maxim has only paid a partial amount of the total \$ 948,565 and is in material breach of the Order, the ion exchange water treatment system sold by Maxim to the City of Crystal Lake is not licensed under the '436 patent, and therefore infringes such patent.

36. Because Maxim has only paid a partial amount of the total \$ 948,565 and is in material breach of the Order, the ion exchange water treatment system sold by Maxim to the City of Crystal Lake is not licensed under the '286 patent, and therefore infringes such patent.

37. Because Maxim has only paid a partial amount of the total \$ 948,565 and is in material breach of the Order, the ion exchange water treatment system sold by Maxim to the City of Crystal Lake is not licensed under the '223 patent, and therefore infringes such patent.

Count I
Breach of Contract

38. Plaintiff Envirogen incorporates by reference paragraphs 1 through 37 of its Complaint.

39. The Order is a valid and subsisting agreement under Illinois law between Envirogen and Maxim.

40. The Order is supported by adequate consideration.

41. Neither Envirogen nor Maxim has terminated the Order.

42. Envirogen has the right to license the '436 patent.

43. Envirogen has the right to license the '286 patent.

44. Envirogen has the right to license the '223 patent.

45. Maxim has materially breached the Order by failing to pay the total sum of \$948,565 for their use and sale of the patented ion exchange water treatment system.

46. Maxim has materially breached the Order in other ways, the details of which are unknown at this time.

47. In view of Maxim's breach of the Order, Envirogen is entitled to receive the balance owed.

48. Envirogen is also entitled to interest, accruing at the rate to be determined at trial, or the maximum amount permitted by applicable law, whichever is lower, on all unpaid balances under the Order.

49. Envirogen has suffered monetary and other damages, in an as-yet-undetermined amount, as the direct and proximate result of Maxim's material breach of the Order.

Count II
Patent Infringement (U.S. Patent No. 7,309,436)

50. Plaintiff Envirogen incorporates by reference paragraphs 1 through 49 of its Complaint.

51. In addition or in the alternative to Maxim's breach of contract claim, Maxim have infringed, literally and/or under the doctrine of equivalents, the '436 patent by practicing one or more claims of the '436 patent in their use, offering for sale, sale, and/or by inducing or contributing to the infringement of the '436 patent, under 35 U.S.C. § 271.

52. The '436 patent was valid and subsisting at all times relevant to this action and is entitled to a presumption of validity under 35 U.S.C. § 282.

53. Envirogen is the assignee of all rights, and interest in and to the '436 patent and possesses all rights of recovery under the '436 patent.

54. Maxim has had knowledge of the '436 patent at all times relevant to this action.

55. Maxim's infringement of the '436 patent has been and continues to be willful, and therefore Envirogen is entitled to treble damages under 35 U.S.C. § 284.

56. Envirogen has suffered monetary and other damages in an as-yet-undetermined amount, and irreparable injury, as the direct and proximate result of Maxim's infringement of the '436 patent.

Count III
Patent Infringement (U.S. Patent No. 6,878,286)

57. Plaintiff Envirogen incorporates by reference paragraphs 1 through 56 of its Complaint.

58. In addition or in the alternative to Maxim's breach of contract claim, Maxim have infringed, literally and/or under the doctrine of equivalents, the '286 patent by practicing one or

more claims of the '286 patent in their use, offering for sale, sale, and/or by inducing or contributing to the infringement of the '286 patent, under 35 U.S.C. § 271.

59. The '286 patent was valid and subsisting at all times relevant to this action and is entitled to a presumption of validity under 35 U.S.C. § 282.

60. Envirogen is the assignee of all rights, and interest in and to the '286 patent and possesses all rights of recovery under the '286 patent.

61. Maxim has had knowledge of the '286 patent at all times relevant to this action.

62. Maxim's infringement of the '286 patent has been and continues to be willful, and therefore Envirogen is entitled to treble damages under 35 U.S.C. § 284.

63. Envirogen has suffered monetary and other damages in an as-yet-undetermined amount, and irreparable injury, as the direct and proximate result of Maxim's infringement of the '286 patent.

Count IV
Patent Infringement (U.S. Patent No. 7,041,223)

64. Plaintiff Envirogen incorporates by reference paragraphs 1 through 63 of its Complaint.

65. In addition or in the alternative to Maxim's breach of contract claim, Maxim have infringed, literally and/or under the doctrine of equivalents, the '223 patent by practicing one or more claims of the '223 patent in their use, offering for sale, sale, and/or by inducing or contributing to the infringement of the '223 patent, under 35 U.S.C. § 271.

66. The '223 patent was valid and subsisting at all times relevant to this action and is entitled to a presumption of validity under 35 U.S.C. § 282.

67. Envirogen is the assignee of all rights, and interest in and to the '223 patent and possesses all rights of recovery under the '223 patent.

68. Maxim has had knowledge of the '223 patent at all times relevant to this action.

69. Maxim's infringement of the '223 patent has been and continues to be willful, and therefore Envirogen is entitled to treble damages under 35 U.S.C. § 284.

70. Envirogen has suffered monetary and other damages in an as-yet-undetermined amount, and irreparable injury, as the direct and proximate result of Maxim's infringement of the '223 patent.

Prayer for Relief

Wherefore, Envirogen requests that this Court enter judgment in its favor on each and every claim for relief set forth above and award it relief, including but not limited to a judgment and order as follows:

A. holding Defendant Maxim Construction Corp., Inc. liable for breach of contract;

B. in addition or in the alternative to the breach of contract claim, holding Defendant Maxim Construction Corp., Inc. liable for patent infringement under Claims II, III, and IV;

C. Directing Maxim to provide an accounting and to pay to Envirogen its actual damages for:

1. Maxim's breach of contract, and/or

2. in addition or in the alternative to the breach of contract claim,

Envirogen's patent infringement under Claims II, III, and IV, under 35 U.S.C. § 284;

D. directing Maxim to pay the unpaid balance under the Order for the ion exchange water treatment system that Maxim used, offered to sell, or sold to the City of Crystal Lake;

E. directing Maxim to pay interest on all unpaid balance owed under the Order;

F. holding that Maxim's patent infringement has been and continues to be willful, and trebling Envirogen's damages;

- G. directing Maxim to pay Envirogen's attorneys' fees and costs under 35 U.S.C. § 285;
- H. directing Maxim to pay prejudgment and post-judgment interest; and
- I. providing such other and further relief as this Court deems just and appropriate.

Jury Trial

Envirogen demands a jury trial on all claims set forth in this Complaint.

DATED: March 25, 2014

Respectfully submitted by,

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