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**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION**

VINCENT P. TIPPMANN, SR. FAMILY, LLC

and

TIPPMANN REFRIGERATION, INC.

Plaintiffs,

v.

GERALD P. TIPPMANN,

Defendant.

Case No. 1:14-cv-230

COMPLAINT FOR DAMAGES AND DECLARATORY JUDGMENT

Plaintiffs, Vincent P. Tippmann Sr. Family, LLC (the “Tippmann Family, LLC”) and Tippmann Refrigeration, Inc. (“Tippmann Refrigeration”), bring this action against the Defendant, Gerald P. Tippmann (“Gerald Tippmann”), pursuant to the Patent Laws of the United States, Title 35, United States Code, Section 256, to correct the inventorship of U.S. Patent No. 8,220,287 (the “’287 Patent”). A true and correct copy of the ‘287 Patent, entitled “Apparatus and Method for Blast Freezing or Thawing a Product,” is attached hereto and incorporated herein as Exhibit “A”. The action further requests a declaratory judgment pursuant to the Declaratory Judgment Act, 28 U.S.C. §§ 2201, and 2201 et seq., regarding true inventorship, as an actual and justiciable controversy exists among the parties with regard to the inventorship of the ‘287 Patent. Finally, and alternatively, the instant action requests a judgment pursuant to Indiana State law of negligent misrepresentation and constructive fraud on the part of Defendant, Gerald Tippmann, and associated relief and damages that the Court deems proper.

I. PARTIES

1. All facts herein are alleged on information and belief except those facts concerning the Tippmann Family, LLC and Tippmann Refrigeration's own activities.

2. Tippmann Family, LLC is an Indiana Limited Liability Company (known formerly as the Vincent P. Tippmann, Sr. Family Partnership, LLP) with its principal place of business at 4410 New Haven Avenue, Fort Wayne, Indiana 46803.

3. Tippmann Refrigeration is a corporation organized under the laws of Indiana with a principal place of business at 4410 New Haven Avenue, Fort Wayne, Indiana 46803.

4. Tippmann Family, LLC is the inventing and owning company of various patents and patent applications related to apparatus and methods for blast freezing and/or thawing of products, and it is a pioneer in refrigeration and freezing of food products generally.

5. The Vincent P. Tippmann, Sr. Family Partnership, LLP was initially the record assignee in the U.S. Patent and Trademark Office (USPTO) of the '287 Patent. A true and correct copy of the assignment is attached hereto as Exhibit "B1".

6. A Change of Name document has been recorded in the records of the USPTO to assign the ownership of the '287 Patent and all divisional applications to the Tippmann Family, LLC. A true and correct copy of the Change of Name document is attached hereto as Exhibit "B2".

7. Gerald Tippmann is an adult citizen of Indiana and an Indiana resident with a last known principal place of residence at 117 El Dorado Trail, Fort Wayne, Indiana 46825.

8. Based on information and belief, Gerald Tippmann is currently an owner and/or officer of Tippmann Energy Services, LLC, with a last known address located at 2135 Spy Run Avenue, Fort Wayne, Indiana 46805.

II. JURISDICTION AND VENUE

9. This is an action for correction of inventorship under the Patent Act, 35 U.S.C. § 256, the Declaratory Judgment Act, 28 U.S.C. §§ 2201, and 2201 et seq. and for Indiana State law claims for negligent misrepresentation and constructive fraud.

10. This Court has personal jurisdiction over Gerald Tippmann, in part, because Gerald Tippmann resides in the Northern District of Indiana; and in part because he conducts business in the Northern District of Indiana.

11. Additionally, a substantial portion of the operative events and actions attributed to Gerald Tippmann in this matter occurred in the Northern District of Indiana.

12. This Court has subject matter jurisdiction by virtue of Sections 1331 and 1338(a) of Title 28, United States Code.

13. This Court has jurisdiction of the Indiana State law claims by virtue of the underlying 35 U.S.C. § 256 action, and insofar as the state law claims require an inventorship determination.

14. Venue in this Court is proper by virtue of Sections 1391(b) and (c) and 1400(b) of Title 28, United States Code.

III. BACKGROUND STATEMENT OF FACTS

A. **The Tippmann Family, LLC's Co-Inventors, the '287 Patent, and Later Related Continuation and Divisional Applications**

15. Tippmann Family, LLC is an early pioneer of technologies that facilitate rapid and efficient freezing and thawing of food products.

16. Such food products -- normally positioned on pallets for storage and shipping -- were historically frozen in expensive blast freezers, which also have a further drawback of irregular freezing rates across arranged product stacks.

17. The names of the shareholders who own Tippmann Family, LLC are identical with the names of the shareholders who own Tippmann Refrigeration.

18. Gerald Tippmann and Vincent P. Tippmann Jr. were the first to recognize, and jointly designed, tested and reduced to practice a new method and system for freezing and thawing boxes or pallets of a commodity more efficiently and rapidly through the strategic arrangement of product boxes and pallets to create a plenum coupled with the use of a cover and the use of air handlers to create a directional airflow.

19. Gerald Tippmann and Vincent P. Tippmann Jr. were under an obligation to assign all rights in their inventions to the Vincent P. Tippmann, Sr. Family Partnership, LLP.

20. To protect their inventions, the Vincent P. Tippmann, Sr. Family Partnership, LLP through its inventors, Gerald Tippmann and Vincent P. Tippmann Jr., filed provisional application 60/645,027 with the USPTO on January 21, 2005. A true and accurate copy is attached hereto and incorporated herein as Exhibit "C".

21. Gerald Tippmann and Vincent P. Tippmann Jr. filed a subsequent non-provisional application No. 11/336,900 on January 23, 2006. A true and accurate copy is attached hereto and incorporated herein as Exhibit "D".

22. On February 18, 2005, Gerald Tippmann assigned his interest in the provisional application to Vincent P. Tippmann, Sr. Family Partnership, LLP. A true and accurate copy of the assignment is attached hereto and incorporated herein as Exhibit "E".

23. On February 6, 2006, Gerald Tippmann assigned his interest in the non-provisional application to Vincent P. Tippmann, Sr. Family Partnership, LLP (See Exhibit "B1").

24. On February 6, 2006, Gerald Tippmann also signed his inventor declaration for the invention, as defined by Title 37, Code of Federal Regulations, §1.56. A true and accurate copy is attached hereto and incorporated herein as Exhibit “F”.

25. The inventor declaration signed by Gerald Tippmann averred that Gerald Tippmann and Vincent P. Tippmann Jr. were co-inventors and that the invention “was not in public use or on sale in the United States of America more than one year prior to filing this application.” (See Exhibit “F”).

26. In addition, Gerald Tippmann signed a Declaration Under 37 C.F.R. 1.132 on December 9, 2011 averring that the invention defined in independent claims 1, 27, 32 and 33 was in his possession “as well as the possession of my co-inventor at the time of the present invention”. A true and accurate copy is attached hereto and incorporated herein as Exhibit “G”.

27. Gerald Tippmann’s Declaration on December 9, 2011, explained the differences in the ‘287 invention as compared to the prior art, the improved results that are achieved by the ‘287 invention and the commercial success of the ‘287 invention. (See Exhibit “G”).

28. The Declaration Under 37 C.F.R. 1.132 declared that “all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code....” (See Exhibit “G”).

29. The ‘287 Patent was duly issued on July 17, 2012, claiming the benefit of the preceding applications.

30. Later continuing and divisional applications claiming priority to the original applications were also filed on behalf of the inventors Gerald Tippmann and Vincent P.

Tippmann Jr., based on their inventive work and based on their obligation to assign all rights in their inventions to the Vincent P. Tippmann, Sr. Family Partnership, LLP (now Tippmann Family, LLC).

31. The aforementioned applications include Application Nos. 13/478, 244 and 13/478,427 and 13/478,203—all filed May 23, 2012, and assigned to Vincent P. Tippmann, Sr. Family Partnership, LLP on May 21, 2013; and Application No. 13/603,870, filed September 5, 2012.

B. Gerald Tippmann's Post-Assignment Actions

32. In May 2012 Gerald Tippmann left the employ of Tippmann Refrigeration, and became associated with Tippmann Construction, LLC (“Tippmann Construction”), a competitor of the Tippmann Family, LLC.

33. The owners of the Tippmann Family, LLC and the competing Tippmann Construction are relatives.

34. On information and belief, Gerald Tippmann remains associated with Tippmann Construction.

35. On or around June, 2013, Gerald Tippmann and the attorney for Tippmann Construction prepared a supplemental inventor declaration and disclosure statement to “clarify” statements Gerald Tippmann had made in his previous disclosures in the Tippmann Family, LLC applications.

36. Shortly thereafter, on June 27, 2013, the attorney for Tippmann Construction had Gerald Tippmann sign a new “clarifying” declaration of Gerald P. Tippmann in Compliance With Duty to Disclose Under Title 37, Code of Federal Regulations §1.56 (the “Declaration”).

37. This Declaration together with an Information Disclosure Statement were filed in all of the Vincent P. Tippmann, Sr. Family Partnership, LLP continuation and divisional applications cited above relating back to the original provisional application. True and accurate copies are attached hereto and incorporated herein as Exhibits “H” and “I”.

38. This Declaration raises a fatal and potentially validity-destroying question as to the true inventor with respect to the ‘287 Patent.

39. The new inventor Declaration filed by Gerald Tippmann, at the behest of the attorney and written by the attorney for the competitor, Tippmann Construction, directly contradicts all previous declarations made by Gerald Tippmann with regard to his joint inventorship with Vincent P. Tippmann Jr., while under an obligation to assign his patent rights to the Vincent P. Tippmann, Sr. Family Partnership LLP.

40. Specifically, the new Declaration now asserts that Gerald Tippmann was a sole inventor of the invention claimed in the provisional application 60/645,027 and subsequent non-provisional application No. 11/336,900, as well as for all inventions within the continuation and divisional applications derived therefrom.

41. Moreover, Gerald Tippmann’s new “clarifying” Declaration claims that his original declarations associated with the provisional application 60/645,027 and subsequent non-provisional application No. 11/336,900, as well as for all inventions within the continuation and divisional applications had been “mistaken” in that he had in fact commercialized and publically used the underlying invention while in the employ of an unrelated Florida company called Citrus World on or about 1996-97.

42. Gerald Tippmann has refused all attempts by the Tippmann Family, LLC to discuss or resolve this matter.

C. Gerald Tippmann's Acts at Citrus World, Role at Tippmann Refrigeration, and Co-Inventorship with Vincent P. Tippmann Jr.

43. Despite recent claims to the contrary, Gerald Tippmann is a co-inventor, along with Vincent P. Tippmann Jr., of U.S. Patent 8,220,287, which issued July 17, 2012 claiming the benefit of a provisional Application No. 60/645,027 filed on January 21, 2005 and subsequent Application No. 11/336,900 filed January 23, 2006, as well all inventions within the continuation and divisional applications derived therefrom.

44. Further, based on previous information provided by Gerald Tippmann, the underlying inventions were never commercialized or in public use during Gerald Tippmann's time at Citrus World.

45. From May 10, 1996 to February 13, 1998, Gerald Tippmann was employed at Citrus World in Lake Wales, Florida, which is in the business of manufacturing and supplying frozen fruit juice.

46. Gerald Tippmann was not employed in the Research and Development Department nor in the Engineering Department of Citrus World.

47. After 1998 and prior to 2003, Gerald Tippmann was working in the Middle East building dairy plants.

48. After 1998 and prior to 2003, Gerald Tippmann was not experimenting with the underlying invention associated with the '287 Patent during his work in the Middle East.

49. From about January 2003 to about May of 2012, Gerald Tippmann was employed at Tippmann Refrigeration doing work for Interstate Cold Storage, 4410 New Haven Ave, Fort Wayne, Indiana 46803.

50. As indicated above, the names of the shareholders who own Tippmann Refrigeration are identical to the names of the shareholders who own the Tippmann Family, LLC.

51. During this time, Gerald Tippmann signed an employment agreement with Tippmann Refrigeration – agreeing to, and incorporating the terms of, the Tippmann Refrigeration handbook establishing his confidential role with particular emphasis on proprietary technologies.

52. While employed at Tippmann Refrigeration, Gerald Tippmann had a pecuniary interest in the research, development, advancement, and commercialization of technologies related to refrigeration and thawing generally, and specifically the success and outcome of the inventions he co-invented with Vincent P. Tippmann Jr.

53. While employed at Tippmann Refrigeration, Gerald Tippmann occupied a position of trust and confidence and was both an agent to Vincent P. Tippmann, Sr. Family Partnership, LLP/Tippmann Refrigeration and offered information that was relied upon by the principal, Vincent P. Tippmann, Sr. Family Partnership, LLP/Tippmann Refrigeration.

54. Gerald Tippmann averred that he was a joint inventor and provided supporting declarations and technical expertise.

55. Gerald Tippmann had a duty to exercise reasonable care or competence regarding his statements concerning the inventive acts conducted while in the employment of Tippmann Refrigeration.

56. The Vincent P. Tippmann, Sr. Family Partnership, LLP, and co-inventor Vincent P. Tippmann Jr., justifiably relied upon the representations, expertise and declarations of Gerald

Tippmann for their investment in, and pursuance of, patents and business dealings based on the patent applications referenced above including the '287 Patent.

57. Gerald Tippmann, if not a true joint inventor, along with Vincent P. Tippmann Jr., of the '287 Patent and all continuation and divisional applications, made deceptive material representations at the time he signed underlying inventor declarations associated with the applications for the '287 Patent and subsequent continuation and divisional applications in that he possessed at the time of all such statements the requisite knowledge and duty to make correct and truthful affirmations regarding the same.

58. The recent declaration submitted by Gerald Tippmann affords advantage and unjust enrichment to Gerald Tippmann by implicitly declaring him a sole-inventor of the '287 Patent and all continuation and divisional applications relating to the same, and affords and unjustly enriches the competitor to the Tippmann Family, LLC, Tippmann Construction, the ability to invalidate the patent and thereby unlawfully use the rightful inventions of the Tippmann Family, LLC.

59. Contrary to his original statements, Gerald Tippmann now claims that he was employed at Citrus World in the 1996-1998 timeframe, where he supposedly experimented with a system for freezing quart containers of orange juice.

60. Gerald Tippmann further maintains, now, in contrast to previous statements, that while at Citrus World, he experimented with this system and process to rapidly freeze orange juice for institutional and school consumption.

61. Even if true, this use was experimental in view of the fact that the system and process was neither reduced to practice, nor ready for patenting and the invention was not commercially exploited.

62. Additionally, the system and process Gerald Tippmann used at Citrus World was not substantially the same as the content of the '287 Patent with regard to providing a teaching for freezing in view of the fact that claims 1-15 of the '287 Patent are directed to an apparatus for freezing a commodity wherein (1) a plurality of boxes or pallets are arranged in two rows with a space formed therebetween; (2) either ventilation holes are formed in the boxes or ventilation spacers are positioned at least beneath the boxes; (3) a plenum is formed between the two rows of boxes or pallets with a cover positioned on at least a portion of a top surface of the boxes or pallets; and (4) at least one air handler is positioned approximately midway between the two rows of boxes or pallets to evenly pull air through the ventilation holes in the boxes or the ventilation spacers positioned at least beneath the boxes.

63. Also, pursuant to the '287 Patent, the air handler is positioned with a housing that is approximately the size of the stack of boxes or pallets.

64. It was not until Gerald Tippmann was employed by Tippmann Refrigeration, after January, 2004, that Gerald Tippmann and Vincent P. Tippmann Jr. used a new process for rapidly thawing hams disposed in boxes arranged in rows with a tarp placed above the boxes and over the ends of the rows to form a plenum in a 38 to 40 degree Fahrenheit cooler with a fan placed above the plenum and operated to more rapidly thaw the hams than had previously been possible in a safe manner.

65. In view of the fact that provisional patent Application No. 60/645,027 was filed on January 21, 2005, any use of a system or process after January, 2004, would not form the basis for a statutory bar to US Patent No. 8,220,287 or any subsequently filed divisional or continuation applications claiming the filing date of January 21, 2005.

66. Gerald Tippmann's Declaration of June 27, 2013 was not corroborated, had no drawings, written disclosure or photographs of the system or process he experimented with at Citrus World.

67. Additionally, Gerald Tippmann did not provide the names of any coworkers at Citrus World to corroborate the system or process that he was experimenting with at Citrus World.

68. Further, the experimenting Gerald Tippmann performed at Citrus World was in a warehouse that was not open to the public.

69. Finally, Gerald Tippmann's experimenting at Citrus World was not a public use.

D. Harm and Damage Caused to Tippmann Family, LLC by Virtue of Gerald Tippmann's Actions

70. Tippmann Family, LLC, in reliance upon the inventor declarations made by Gerald Tippmann in reference to the inventions he co-invented with Vincent P. Tippmann Jr. while employed by Tippmann Refrigeration, has as a proximate result expended a considerable amount of money for both Intellectual Property protection associated with the aforementioned inventions, as well as business development and business planning and product development.

71. In addition, Tippmann Family, LLC has lost opportunity cost in view of lost revenue and lost sales.

72. Additionally, as a proximate result of the recent Declaration made by Gerald Tippmann that was prepared by the attorney for Tippmann Construction, a competitor of Tippmann Family, LLC, Tippmann Family, LLC has suffered irreparable harm due to Gerald Tippmann's actions at the behest of the attorney for Tippmann Construction, insofar as additional intellectual property expenses have been incurred and are ongoing, the validity of the '287 Patent is damaged and possibly unenforceable.

73. In addition, Tippmann Family, LLC has suffered lost opportunities, business dealings and planning, and the reputation of Tippmann Family, LLC has been called into question.

IV. CAUSES OF ACTION

A. **Declaratory Judgment of Joint Inventorship, Correction of Inventorship under 35 U.S.C. § 256**

74. Plaintiffs reallege and reincorporate the allegations set forth in Paragraphs 1-73.

75. As more fully described above, a dispute and conflict has arisen that is an actual and justiciable controversy regarding the inventorship, alleged commercialization, and alleged public use of the invention underlying the '287 Patent, as well as the continuation and divisional applications derived therefrom.

76. This controversy is within this Court's original jurisdiction.

77. As a result of the dispute, Tippmann Family, LLC seeks a declaration from the Court that the '287 Patent was indeed jointly invented by Gerald Tippmann and Vincent P. Tippmann Jr., while under an obligation to assign all rights in their inventions to Tippmann Family, LLC.

78. Tippmann Family, LLC additionally seeks a declaration from the Court that the experimentation performed by Gerald Tippmann while in the employment of Citrus World was not a commercialization or public use of the underlying invention associated with the '287 Patent or its related continuation and divisional applications.

B. **Negligent Misrepresentation under Indiana State Law**

79. Plaintiffs reallege and reincorporate the allegations set forth in Paragraphs 1-78.

80. Alternatively, and as more fully described above, Gerald Tippmann, in the course of his employment with Tippmann Refrigeration, a pecuniary relationship requiring a duty of

reasonable care and competence, made negligent misrepresentations regarding inventorship of the '287 Patent and related continuation and divisional applications that were justifiably relied upon by the Tippmann Family, LLC.

81. As a proximate result, the Plaintiffs have been damaged.

C. Constructive Fraud under Indiana State Law

82. Plaintiffs reallege and reincorporate the allegations set forth in Paragraphs 1-81.

83. Alternatively, and as more fully described above, Gerald Tippmann, in the course of his employment with Tippmann Refrigeration, a relationship of trust and confidence as agent and principal with associated influence exercised by virtue of his role and employment, made deceptive material misrepresentations by remaining silent in regard to the inventorship of the '287 Patent and related continuation and divisional applications when a duty to speak existed.

84. With such statements or silence relied upon by the Plaintiffs, Gerald Tippmann subsequently gained advantage for himself and the Plaintiffs' competitor, with which Gerald Tippmann was associated.

85. As a proximate result, the Plaintiffs have been damaged.

D. Prayer for Relief

WHEREFORE, TIPPMANN FAMILY, LLC and TIPPMAN REFRIGERATION, INC. respectfully request:

- (a) That this Court find that Gerald Tippmann and Vincent P. Tippmann Jr. are the true inventors of the '287 Patent;
- (b) That Gerald Tippmann's actions at Citrus World were an experimental use, not a public use or a commercialization, and that the underlying invention associated with the '287 Patent was experimental in view of the fact that the invention was

not reduced to practice, not ready for patenting and not commercialized at that time;

- (c) That Gerald Tippmann be estopped from declaring the assertions set forth in his Declaration signed on June 27, 2013 in the related continuation and divisional applications associated with the '287 Patent and any future related patents that he has assigned to the Tippmann Family, LLC;
- (d) That accordingly, under either (a), (b), or (c) above, that Tippmann Family, LLC be awarded all costs, attorney's fees, and all other just and proper relief;
- (e) Alternatively to (a)-(d), that the Court finds Gerald Tippmann has committed negligent misrepresentation with respect to the actions described above, and that the Tippmann Family, LLC be awarded all costs, attorney's fees, and all other just and proper relief, including damages;
- (f) Alternatively to (a)-(d), that the Court finds Gerald Tippmann has committed constructive fraud with respect to the actions described above, and that the Tippmann Family, LLC be awarded all costs, attorney's fees, and all other just and proper relief, including damages; and
- (g) Award such additional and further relief as the Court may deem just and proper.

Dated: August 1, 2014

Respectfully submitted,

/s/ Lindsay M. Hurni

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