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**UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION**

CUMMINS LTD. and CUMMINS INC. )

Plaintiffs )

vs. )

ADP DISTRIBUTORS USA, INC. and ADP )  
DISTRIBUTORS, INC., )

Defendants. )

Case No. 16-CV-215

JURY TRIAL DEMANDED

**COMPLAINT FOR PATENT INFRINGEMENT**

Plaintiffs, Cummins Ltd., including through its division Cummins Turbo Technologies, and Cummins Inc., by and through their attorneys, Foley & Lardner LLP, hereby submit their Complaint against Defendants, ADP Distributors USA, Inc. and ADP Distributors, Inc., collectively doing business as Rotomaster, and allege as follows:

**NATURE OF THE ACTION**

1. This is a civil action arising in part under the Patent Laws of the United States, 35 U.S.C. § 1 *et seq.*, and, in particular, 35 U.S.C. § 271.

2. Plaintiffs seek injunctive relief and monetary damages resulting from Defendants' infringement of its patent rights under United States Patent Nos. 6,401,563 and 5,941,684, as set forth more fully below.

**THE PARTIES**

3. Plaintiff Cummins Ltd. is a limited company organized under the laws of England and Wales, and has principal places of business located at St. Andrews Road, Huddersfield, United Kingdom HD16RA. Cummins Ltd., including through its division Cummins Turbo

Technologies, manufactures and distributes turbochargers for diesel engines primarily in the medium and heavy duty diesel engine markets.

4. Plaintiff Cummins Inc. is a corporation organized under the laws of the State of Indiana, and has a principal place of business at 500 Jackson Street, Columbus, Indiana 47201. Cummins Inc. is a global power leader that designs, manufactures, distributes and services diesel and natural gas engines and engine-related component products, including turbochargers, filtration, aftertreatment, fuel systems, controls systems, air handling systems, and electric power generation systems.

5. Upon information and belief, Defendant ADP Distributors USA, Inc. (“Rotomaster USA”) is a corporation organized under the laws of the State of California, is doing business as Rotomaster, and has a principal place of business at 2420 West 14th Street, Suite A, Tempe, Arizona 85281.

6. Upon information and belief, Defendant ADP Distributors, Inc. (“ADP International”) is a corporation organized under the laws of Canada, is doing business as Rotomaster, and has a principal place of business at 18940 94th Avenue, Surrey, British Columbia V4N 4X5, Canada.

7. Upon information and belief, Defendant ADP International is the parent company of Defendant Rotomaster USA (collectively “Rotomaster” or “Defendants”).

### **JURISDICTION**

8. This Court has exclusive subject matter jurisdiction over the claims asserted herein pursuant to 28 U.S.C. §§ 1331 and 1338(a).

9. This Court has personal jurisdiction over Defendant Rotomaster USA, which does business within the State of Indiana and within this Judicial District, and has committed acts of infringement within this Judicial District, and/or has advertised or otherwise promoted its

accused products as available in this Judicial District and placed its products within the stream of commerce with the expectation and/or knowledge that such products would be purchased by customers and/or used by customers within this Judicial District.

10. This Court has personal jurisdiction over Defendant ADP International, which does business within the State of Indiana and within this Judicial District, and has committed acts of infringement within this Judicial District, and/or has advertised or otherwise promoted its accused products as available in this Judicial District and placed its products within the stream of commerce with the expectation and/or knowledge that such products would be purchased by customers and/or used by customers within this Judicial District.

11. Defendants, individually or collectively, maintain a website (www.rotomaster.com) promoting their turbochargers and replacement parts that is accessible in the United States, including in this Judicial District.

12. Defendants, individually or collectively, solicit orders for, and/or offer to sell, and/or sell, the accused products to, or on behalf of, entities in the United States, including entities located within this Judicial District.

13. Upon information and belief, Defendant ADP International imports the accused products into the United States for sale or use in the United States, including in this Judicial District.

14. Upon information and belief, the conduct of Defendants as alleged herein has been systematic and continuous within the Southern District of Indiana.

#### **VENUE**

15. Venue in this Judicial District is proper under 28 U.S.C. § 1391(b), in that a substantial part of the events that give rise to this action have occurred and continue to occur in this Judicial District.

16. Venue is proper in this Judicial District at least pursuant to 28 U.S.C. §§ 1391(b) and (d) and 1400(b) because, upon information and belief, various acts and transactions constituting at least a substantial portion of the claims arose in this Judicial District. Venue is also proper in this Judicial District because Defendants are subject to personal jurisdiction in this Judicial District pursuant to 28 U.S.C. § 1391(c).

**U.S. PATENT NO. 6,401,563**

17. United States Patent No. 6,401,563 (“the ’563 patent”), entitled “Actuating Mechanism For A Slidable Nozzle Ring,” was duly and legally issued on June 11, 2002. A true and correct copy of the ’563 patent is attached hereto as Exhibit 1.

18. Plaintiff Cummins Ltd. is the owner of all right, title and interest in the ’563 patent, including the right to sue thereon and the right to recover for infringement thereof. Cummins Ltd., including through its division Cummins Turbo Technologies, sells turbochargers and turbocharger components in the original equipment and first-fit fields of use.

19. Plaintiff Cummins Inc. is an exclusive licensee to the ’563 patent for sales of turbochargers and turbocharger components.

20. The ’563 patent is directed to certain components of a turbocharger or turbomachine. A turbocharger is a device used in connection with internal combustion engines that is driven by exhaust gases and supplies air to the engine at a higher pressure to increase the engine’s power.

21. The claims of the ’563 patent are generally directed to a linkage assembly for linking together certain components within a turbocharger or turbomachine, including in part a nozzle ring, at least one rod guided for movement in a direction parallel to the central axis of the nozzle ring, and wherein the rod is (a) pivotally connected to the nozzle ring and (b) is pivotal with respect to its central axis.

22. Independent claim 1 of the '563 patent provides:

1. In a turbomachine having a turbine inlet, a linkage assembly comprising: [an] annular nozzle ring incorporated into said turbine inlet, said nozzle ring having a central axis and guided for movement parallel to said central axis, [at] least one rod guided for movement in a direction parallel to the central axis of said annular nozzle ring, and [a] linkage mechanism connected to one end of said rod and pivotally connected to said annular nozzle ring, said rod being pivotal with respect to the central axis of said rod.

23. Claims 2 through 8 of the '563 patent are dependent claims.

24. Dependent claim 2 of the '563 patent provides:

2. Apparatus as claimed in claim 1 wherein said linkage mechanism comprises a foot member having a first end face abutting said annular nozzle ring and a second end face fixed to said rod, one end of said foot member being pivotally connected to said annular nozzle ring on the first end face of said foot member.

25. Defendants have had prior knowledge of the '563 patent since at least as early as July 12, 2013 when Rotomaster was sent correspondence from Plaintiffs regarding the '563 patent.

**U.S. PATENT NO. 5,941,684**

26. United States Patent No. 5,941,684 ("the '684 patent"), entitled "Variable Geometry Turbine," was duly and legally issued on August 24, 1999. A true and correct copy of the '684 patent is attached hereto as Exhibit 2.

27. Plaintiff Cummins Ltd. is the owner of all right, title and interest in the '684 patent, including the right to sue thereon and the right to recover for infringement thereof. Cummins Ltd., including through its division Cummins Turbo Technologies, sells turbochargers and turbocharger components in the original equipment and first-fit fields of use.

28. Plaintiff Cummins Inc. is an exclusive licensee to the '684 patent for sales of turbochargers and turbocharger components.

29. The claims of the '684 patent are generally directed to a turbine, such as one used in connection with a turbocharger, having one or more springs which provide non-linear length to spring force characteristics on a displaceable sidewall.

30. Independent claim 1 of the '684 patent provides:

1. A variable geometry turbine comprising a housing, a turbine wheel mounted to rotate about a predetermined axis within the housing, a gas inlet passage to the turbine defined between a fixed wall and an annular sidewall which is mounted in the housing and is displaceable relative to the fixed wall between axially spaced first and second positions, at least one spring biasing the sidewall away from the fixed wall towards the first position, and means for applying an axial force to the sidewall in opposition to the at least one spring to thereby control the axial position of the sidewall, wherein the said at least one spring has a non-linear length to spring force characteristics such that the resultant of the applied spring force and an axial force applied to the sidewall as a result of gas flow through the passage increases continuously as the sidewall is displaced from the first position to the second position.

31. Claims 2 through 7 of the '684 patent are dependent claims.

32. Dependent claim 2 provides:

2. A variable geometry turbine according to claim 1, wherein the rate of change of spring force with sidewall displacement increases as the sidewall is displaced from the first position to the second position.

33. Upon information and belief, Defendants have had prior knowledge of the '684 patent since at least as early as July 12, 2013 when Rotomaster was put on notice of the Cummins patent portfolio, which portfolio Rotomaster investigated in response to prior correspondence from Plaintiffs.

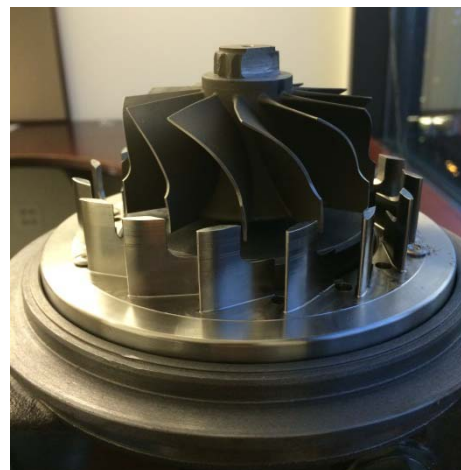
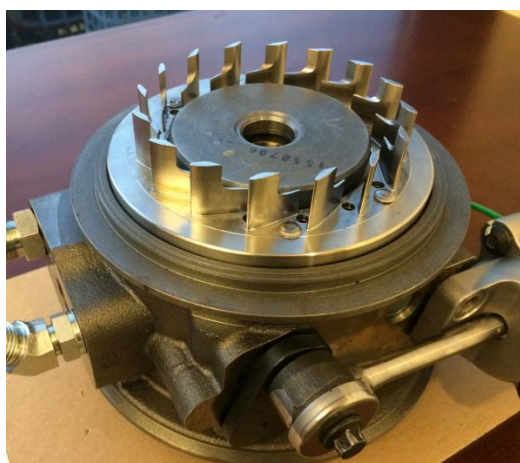
### **DEFENDANTS' INFRINGING ACTIVITIES AND ACCUSED PRODUCTS**

#### **The Accused Rotomaster Turbocharger (Model No. H1550112N)**

34. Upon information and belief, Defendants are in the business of manufacturing turbochargers and replacement parts for turbochargers.

35. Upon information and belief, Defendants, individually or in concert with others or each other, advertise for sale, offer for sale, import, sell and/or use within the United States turbochargers identified by Rotomaster Model. No. H1550112N (“the Accused Rotomaster Turbocharger”).

36. Photographs of component parts of the Accused Rotomaster Turbocharger are shown below:



37. Upon information and belief, the Accused Rotomaster Turbocharger is intended by Defendants to be used with Cummins engines.

38. Each and every claim element of independent claim 1 of the '563 patent is present, either literally or under the doctrine of equivalents, in the Accused Rotomaster Turbocharger.

39. Further, each and every claim element of one or more of dependent claims 2 through 8 of the '563 patent is present, either literally or under the doctrine of equivalents, in the Accused Rotomaster Turbocharger. For example, and without limitation, each and every claim element of dependent claim 2 of the '563 patent is present, either literally or under the doctrine of equivalents, in the Accused Rotomaster Turbocharger.

40. Each and every claim element of independent claim 1 of the '684 patent is present, either literally or under the doctrine of equivalents, in the Accused Rotomaster Turbocharger.

41. Further, each and every claim element of one or more of dependent claims 2 through 7 of the '684 patent is present, either literally or under the doctrine of equivalents, in the Accused Rotomaster Turbocharger. For example, and without limitation, each and every claim element of dependent claim 2 of the '684 patent is present, either literally or under the doctrine of equivalents, in the Accused Rotomaster Turbocharger.

#### **The Accused Rotomaster Replacement Part**

42. Upon information and belief, Defendants, individually or in concert with others or each other, advertise for sale, offer for sale, import, sell and/or use within the United States turbocharger replacement parts, including a nozzle ring assembly (“the Accused Rotomaster Replacement Part”).

43. A photograph of the Accused Rotomaster Replacement Part is shown below:





44. Upon information and belief, the Accused Rotomaster Replacement Part is intended by Defendants to be used with Cummins engines and/or turbochargers.

45. Each and every claim element of independent claim 1 of the '563 patent is present, either literally or under the doctrine of equivalents, in the Accused Rotomaster Replacement Part or a turbocharger containing the Accused Rotomaster Replacement Part.

46. Further, each and every claim element of one or more of dependent claims 2 through 8 of the '563 patent is present, either literally or under the doctrine of equivalents, in the Accused Rotomaster Replacement Part or a turbocharger containing the Accused Rotomaster Replacement Part. For example, and without limitation, each and every claim element of dependent claim 2 of the '563 patent is present, either literally or under the doctrine of equivalents, in the Accused Rotomaster Replacement Part or a turbocharger containing the Accused Rotomaster Replacement Part.

**COUNT I: DIRECT INFRINGEMENT OF U.S. PATENT NO. 6,401,563**

47. Plaintiffs reallege and incorporate Paragraphs 1 through 46 of this Complaint as if specifically set forth herein.

48. Upon information and belief, Defendants have, individually or in concert with others or each other, directly infringed at least claim 1 and one or more dependent claims of the '563 patent, including, without limitation, dependent claim 2, by advertising for sale, offering for sale, importing, selling and/or using within the United States turbochargers, including by way of example and not by way of limitation as to infringing products, the Accused Rotomaster Turbocharger and the Accused Rotomaster Replacement Part.

49. The Accused Rotomaster Turbocharger and the Accused Rotomaster Replacement Part include a linkage assembly for linking together certain components within a turbocharger or turbomachine, including a nozzle ring, at least one rod guided for movement in a direction parallel to the central axis of the nozzle ring, linkage mechanism connected to one end of the rod and pivotally connected to the nozzle ring, and wherein the rod is pivotal with respect to its central axis, as claimed in the '563 patent.

50. Additionally, the Accused Rotomaster Turbocharger and the Accused Rotomaster Replacement Part include a foot member having a first end face abutting said annular nozzle ring and a second end face fixed to said rod, one end of said foot member being pivotally connected to said annular nozzle ring on the first end face of said foot member, as claimed in dependent claim 2 of the '563 patent.

51. Upon information and belief, Defendants' infringement of the '563 patent has been willful.

52. The activities of Defendants as complained of in this Count have injured and been to the detriment of, and continue to injure and be detrimental to Plaintiffs and, as a result thereof,

Plaintiffs are entitled to recover damages adequate to compensate it for the infringement complained of herein, including lost profits, but in no event less than a reasonable royalty.

53. Defendants' complained-of activities have caused, and continue to cause, Plaintiffs substantial damage and irreparable injury by virtue of their past and on-going infringement.

**COUNT II: DIRECT INFRINGEMENT OF U.S. PATENT NO. 5,941,684**

54. Plaintiffs reallege and incorporate Paragraphs 1 through 53 of this Complaint as if specifically set forth herein.

55. Upon information and belief, Defendants have, individually or in concert with others or each other, directly infringed at least claim 1 and one or more dependent claims of the '684 patent, including, without limitation, dependent claim 2, by advertising for sale, offering for sale, importing, selling and/or using within the United States turbochargers, including by way of example and not by way of limitation as to infringing products, the Accused Rotomaster Turbocharger.

56. The Accused Rotomaster Turbocharger includes a turbine comprising a housing, a turbine wheel, a gas inlet passage defined between a fixed wall and a sidewall, at least one spring biasing the sidewall away from the fixed wall, and means for apply an axial force to the sidewall in opposition to the spring to control the axial position of the sidewall, wherein the spring has non-linear length to spring force characteristics such that the resultant of the spring force and axial force applied to the sidewall as a result of gas flow through the passage increases continuously as the sidewall is displaced, as claimed in the '684 patent.

57. Additionally, the rate of change of spring force in the Accused Rotomaster Turbocharger increases as the sidewall is displaced from a first position to a second position, as claimed in dependent claim 2 of the '684 patent.

58. Upon information and belief, Defendants' infringement of the '684 patent has been willful.

59. The activities of Defendants as complained of in this Count have injured and been to the detriment of, and continue to injure and be detrimental to Plaintiffs and, as a result thereof, Plaintiffs are entitled to recover damages adequate to compensate it for the infringement complained of herein, including lost profits, but in no event less than a reasonable royalty.

60. Defendants' complained-of activities have caused, and continue to cause, Plaintiffs substantial damage and irreparable injury by virtue of their past and on-going infringement.

**COUNT III: INDUCEMENT TO INFRINGE THE '563 PATENT**

61. Plaintiffs reallege and incorporate Paragraphs 1 through 60 of this Complaint as if specifically set forth herein.

62. Upon information and belief, Defendants had knowledge of the '563 patent.

63. With knowledge of the '563 patent, Defendants actively induced infringement of the '563 Patent by advertising for sale, offering to sell, selling and/or importing into the United States the Accused Rotomaster Replacement Part, and providing instructions for installing such part in turbochargers to produce turbochargers which directly infringe at least claim 1 and one or more dependent claims, including, without limitation, dependent claim 2, of the '563 patent.

64. Upon information and belief, Defendants' Accused Rotomaster Replacement Part has been installed within the United States into turbochargers to produce turbochargers which directly infringe at least claim 1 and one or more dependent claims, including, without limitation, dependent claim 2, of the '563 patent.

65. Defendants knew or should have known that the sales of the Accused Rotomaster Replacement Part would induce, and actively induce, actual infringement of the '563 patent.

**COUNT IV: CONTRIBUTORY INFRINGEMENT OF THE '563 PATENT**

66. Plaintiffs reallege and incorporate Paragraphs 1 through 65 of this Complaint as if specifically set forth herein.

67. Defendants offered for sale, sold and/or imported within the United States the Accused Rotomaster Replacement Part, which is a material part and a component of turbochargers which directly infringe the '563 patent.

68. Defendants knew that its Accused Rotomaster Replacement Parts were especially made or especially adopted for inclusion in turbochargers which directly infringe at least claim 1 and one or more dependent claims including, without limitation, dependent claim 2, of the '563 patent.

69. Upon information and belief, Defendants' Accused Rotomaster Replacement Parts were installed within the United States into turbochargers to produce turbochargers which directly infringe at least claim 1 and one or more dependent claims including, without limitation, dependent claim 2, of the '563 patent.

70. Defendants' Accused Rotomaster Replacement Parts are not a staple article or commodity of commerce suitable for substantial noninfringing use.

**DEMAND FOR JURY TRIAL**

Plaintiffs hereby demand a jury trial of all issues in the above-captioned action which are triable to a jury.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs, Cummins Ltd. and Cummins Inc., pray for their relief against Defendants, ADP Distributors USA, Inc. and ADP Distributors, Inc., as follows:

1. Judgment that Defendants have directly infringed one or more claims of the '563 patent;
2. Judgment that Defendants have directly infringed one or more claims of the '684 patent;
3. Judgment that Defendants have actively induced infringement one or more claims of the '563 patent;
4. Judgment that Defendants have contributorily infringed one or more claims of the '563 patent;
5. A preliminary and permanent injunction enjoining Defendants, their officers, agents, servants, employees, representatives, licensees, successors, assigns, and those persons in active concert or participation with any of them, from directly or indirectly infringing the '563 patent and '684 patent;
6. Awarding Plaintiffs damages adequate to compensate them for the infringement of the '563 patent and '684 patent, but in no event less than a reasonable royalty for use of the invention together with interest and costs under 35 U.S.C. § 284;
7. Awarding pre-judgment and post-judgment interest on the damages assessed;
8. Awarding treble damages on the damages assessed if the infringement is determined to be willful;
9. Declaring that this action be an exceptional case pursuant to 35 U.S.C. § 285 and awarding to Plaintiffs their attorneys' fees;
10. Awarding to Plaintiffs their costs; and
11. Awarding to Plaintiffs such other and further relief as the Court deems just and proper.

Dated: January 26, 2016

Respectfully submitted,

/s/ James D. Dasso

James D. Dasso (Ill. ARDC 6193545, admitted  
to practice before S.D. Indiana)

Jeanne M. Gills (Ill. ARDC 6225018, *Pro Hac  
Vice* admission to be applied for)

Aaron J. Weinzierl (Ill. ARDC 6294055, *Pro  
Hac Vice* admission to be applied for)

Jason A. Berta (Ill. ARDC 6295888, *Pro Hac  
Vice* admission to be applied for)

FOLEY & LARDNER LLP

321 North Clark Street, Suite 2800

Chicago, Illinois 60654-5313

312.832.4500

312.832.4700 (Fax)

*Attorneys for Plaintiff*

*Cummins Ltd. and*

*Cummins Inc.*