

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION



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_____)	
AMERIFAB, INC.,)	
)	
Plaintiff)	Case No. 1:17-cv-3580
)	
v.)	Jury Trial Demanded
)	
MELTER, S.A. DE C.V., GERDAU)	
AMERISTEEL CORPORATION,)	
GERDAU S.A., and RAVAGNAN S.P.A.)	
)	
Defendants.)	
_____)	

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff AmeriFab, Inc. (“AmeriFab”), by and through its attorneys, brings this Complaint for Patent Infringement against Defendants Melter, S.A. de C.V. (“Melter”), Gerdau Ameristeel Corporation (“Gerdau Ameristeel”), Gerdau S.A. (“Gerdau”) and Ravagnan S.p.A. (“Ravagnan”; all together collectively “Defendants”) and alleges as follows:

THE PARTIES

1. Plaintiff AmeriFab, Inc. is a corporation duly organized and existing under the laws of the State of Indiana, having a principal place of business at 3501 E. 9th St., Indianapolis, Indiana 46201.

2. On information and belief, Defendant Melter is a *Sociedad Anónima de Capital Variable* (Mexican corporation) organized and existing under the laws of Mexico, having a principal place of business at Calle “C” No. 511, Parque Industrial Almacentro, Apodaca, Nueva León 66600, México.

3. On information and belief, Defendant Gerdau Ameristeel is a corporation organized and existing under the laws of the State of Florida, having a principal place of business at 4221 West Boy Scout Boulevard, Tampa, Florida 33607.

4. On information and belief, Defendant Gerdau Ameristeel is a wholly-owned subsidiary of Defendant Gerdau.

5. On information and belief, Defendant Gerdau is a *Sociedade Anônima* (Brazilian corporation) organized and existing under the laws of the Federative Republic of Brazil, having a principal place of business at Av. Farrapos 1811, Porto Alegre, Rio Grande do Sul - Brazil CEP 90220-005.

6. On information and belief, Defendant Ravagnan is *Società per azioni* (Italian corporation) organized and existing under the laws of Italy, having a principal place of business at Via XXV Aprile, 35010 Limena (Pd) Italy.

7. On information and belief, since at least 1993, Defendant Ravagnan has been and continues to be a partner of Defendant Melter. On information and belief, Defendants Ravagnan and Melter share facilities, including facilities at Parque Industrial Almacentro, Apodaca, Nueva León 66600, México, and staff, including Director of Sales Guillermo Briceño. On information and belief, Defendant Ravagnan is the majority shareholder of Defendant Melter.

JURISDICTION AND VENUE

8. This action arises under the patent laws of the United States, Title 35, Section 101 *et seq.*, of the United States Code. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

9. This Court has personal jurisdiction over Defendants because, on information and belief, each has conducted and regularly conducts business activities within the State of Indiana

and the Southern District of Indiana, each has had continuous, substantial and systematic contacts with the State of Indiana and this District through the manufacture, use, sale, offer for sale and/or importation of certain furnace sidewall components, including splined pipe, and events giving rise to the cause of action herein, including, but not limited to, use of, sales of and/or offers to sell furnace sidewall equipment, including splined pipe, occurred and/or are occurring in the State of Indiana and this District.

10. Venue within this District is appropriate pursuant to 28 U.S.C. §§ 1391(b), 1391(c) and 1400(b) at least because Gerdau Ameristeel has committed acts of infringement and has a regular and established place of business in this District.

THE ASSERTED PATENT

11. On December 11, 2001, the United States Patent & Trademark Office (“PTO”) duly and lawfully issued United States Letters Patent No. 6,330,269 (“the ‘269 patent”), for “Heat Exchange Pipe with Extruded Fins,” to Richard J. Manasek and David P. Kincheloe of Greenwood, Indiana. A true and correct copy of the ‘269 patent is attached hereto as Exhibit A.

12. The ‘269 patent discloses an apparatus and method for cooling the interior wall of an electric arc furnace. The patented device is an extruded heavy-walled pipe having a base and a fin/spline or plurality of fins/splines. These extruded pipes can be attached to plates, generally in a serpentine fashion, and placed on the inside wall of an electric arc furnace to form a cooling surface between the interior and the furnace wall.

13. By virtue of an Assignment dated October 25, 2000, a copy of which was duly and legally recorded with the PTO at Reel 011646, frame 0889, AmeriFab is the owner of all right, title and interest in the ‘269 patent, including the right to bring suit for infringement. The ‘269 patent is valid and enforceable, and has not expired.

14. AmeriFab manufactures and sells products, including splined pipe, covered by the '269 patent under AmeriFab's AmeriSpline® trademark.

15. AmeriFab's AmeriSpline® products are recognized in the market as providing a superior solution for the cooling panels used in electric arc furnaces. AmeriFab's AmeriSpline® products run at lower temperature than normal steel panels, even in hot spots, and panels incorporating AmeriFab's AmeriSpline® products exhibit lifespans three (3) times that of normal steel panels. Moreover, the integral fins/splines in AmeriFab's AmeriSpline® products eliminate stress cracking and fatigue caused by welding of slag retention devices on panel pipes.

DEFENDANTS' INFRINGEMENT

16. On information and belief, Melter and Ravagnan have had knowledge of AmeriFab and its patent portfolio, including the '269 patent, since at least 2004.

17. On information and belief, at least by August, 2016, Melter and Ravagnan were manufacturing, offering for sale and/or selling furnace sidewall equipment, including splined pipe, that fell within the scope of one or more claims of the '269 patent.

18. On information and belief, furnace sidewall equipment, including splined pipe, manufactured and/or sold by Melter and/or Ravagnan and falling within the scope of one or more claims of the '269 patent was installed and used in the United States, without authorization from AmeriFab, at least by August, 2016.

19. On or about October 25, 2016, counsel for AmeriFab sent a letter ("the October 25 letter") to Melter reminding Melter of the '269 patent and its Mexican counterpart, Mexican Patent No. 229,082 and informing Melter that AmeriFab had become aware that furnace sidewall equipment, including splined pipe, manufactured and/or sold by Melter and falling within the scope of one or more claims of the '269 patent had been installed and used in the United States,

without authorization from AmeriFab. The October 25 letter included a request that Melter provide written assurance that it had ceased importing or selling furnace sidewall equipment, including splined pipe, falling within the scope of one or more claims of the '269 patent.

20. On or about November 1, 2016, Melter, by and through its representative Jorge C. Gonzalez, responded to the October 25, 2016 letter. Melter stated that the devices identified in the October 25 letter “have never been commercialized, offered for sale or exploited by Melter . . . and may have been the result of a sole maintenance process carried out a long time ago.” Melter further stated that “Melter has never promoted, promotes nor will ever promote (and is not intending to do so), the offering or sale of new panels or other kind of furnace components protected by Amerifab’s patents.”

21. On information and belief, on or before August, 2017, Melter was selected by Gerdau Ameristeel and/or Gerdau to supply furnace sidewall equipment, including splined pipe, to facilities owned and/or operated by Gerdau Ameristeel and/or Gerdau, including, but not limited to, the facility at Rancho Cucamonga, California.

22. On or about August 27, 2017, at the annual meeting of the Globe-Trotters Chapter of the Association for Iron and Steel Technology in Indianapolis, Indiana, Melter, by and through its Sales Manager, Bill Bennett (“Bennett”), contacted a representative of AmeriFab and stated that Melter had received an order from Gerdau Ameristeel and/or Gerdau to manufacture equipment having splined pipe. Bennett further stated that Melter wanted to purchase splined pipe from AmeriFab.

23. On or about August 29, 2017, Bennett contacted a second representative of AmeriFab regarding the possible purchase of splined pipe from AmeriFab.

24. AmeriFab is not currently selling, and has never sold, splined pipe to Melter. AmeriFab has never licensed or other authorized Melter to make, use, sell or offer for sale in or import into the United States splined pipe falling within the scope of one or more claims of the '269 patent.

25. On information and belief, Gerdau Ameristeel has had knowledge of AmeriFab and its patent portfolio, including the '269 patent, since at least 2010.

COUNT 1: INFRINGEMENT OF U.S. PATENT NO. 6,330,269

26. AmeriFab hereby realleges and incorporates by reference, as if fully set forth herein, the allegations set forth in paragraphs 1-25 above.

27. Defendants have infringed and are currently infringing the '269 patent by, without authority, making, having made, importing into the United States, and/or using, selling and/or offering for sale in the United States, including this District, furnace sidewall equipment, including splined pipe, falling within the scope of one or more claims of the '269 patent.

28. Defendants have directly infringed the '269 patent within the prohibitions of at least 35 U.S.C. § 271(a), including at least independent claim 1, and continue to do so.

29. On information and belief, Defendants' infringement of the '269 patent has been willful, egregious, deliberate and intentional and was either known by each of the Defendants, or so obvious it should have been known, at least by 2016.

30. AmeriFab has been and will continue to be damaged and irreparably injured unless this Court enjoins Defendants' infringing activities.

PRAYER FOR RELIEF

WHEREFORE, AmeriFab respectfully requests that this Court grant the following relief:

1. Enter judgment for AmeriFab against Defendants for infringement of the '269 patent;
2. Permanently enjoin Defendants, and their respective officers, directors, principals, agents, sales representatives, servants, employees, successors, assigns, affiliates, subsidiaries and all those acting in concert or participation with them, from directly or indirectly infringing, inducing infringement or contributing to the infringement of any claim of the '269 patent pursuant to 35 U.S.C. § 283;
3. Enter judgment in favor of AmeriFab and against Defendants for an amount that will adequately compensate AmeriFab for Defendants' infringement, but under no circumstances an amount less than a reasonable royalty, for each use of AmeriFab's patented invention;
4. Enter judgment in favor of AmeriFab and against Defendants for pre-judgment and post-judgment interest on all damages awarded;
5. Enter judgment in favor of AmeriFab and against Defendants for three times the amount of damages pursuant to 35 U.S.C. § 284 because of Defendants' willful infringement;
6. Enter judgment in favor of AmeriFab and against Defendants for AmeriFab's attorneys' fees and costs pursuant to 35 U.S.C. § 285;
7. Enter judgment in favor of AmeriFab and against Defendants for AmeriFab's costs of suit; and
8. Enter other such and further relief as the Court may deem just and proper.

JURY DEMAND

AmeriFab respectfully requests a trial by jury, pursuant to Rule 38 of the Federal Rules of Civil Procedure, on all issues so triable.

Dated: October 4, 2017

Respectfully submitted,

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