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

THRUSH CO., INC.,)
)
Plaintiff,)
)
v.)
)
WESSELS COMPANY,)
)
Defendants.)

Case No.: 1:18-cv-422

COMPLAINT

COMES NOW Plaintiff, Thrush Co., Inc., (“Thrush”), by counsel, and for its Complaint against Defendant, Wessels Company (“Wessels”), alleges as follows:

PARTIES

- 1. Thrush is an Indiana company having a principal place of business located in Peru, Indiana.
- 2. Thrush is the assignee of all right, title, and interest in and to U.S. Patent No. 8,177,975 (the “975 patent”), and has all necessary rights to bring this action.
- 3. Defendant Wessels is a Michigan corporation with its headquarters and principal place of business located in Greenwood, Indiana.

JURISDICTION AND VENUE

- 4. This is an action for patent infringement arising under Title 35 of the United States Code. 35 U.S.C. § 1 et. seq.
- 5. This Court has subject matter jurisdiction pursuant over this matter to 28 U.S.C. §§ 1331 and 1338.

6. Wessels is subject to personal jurisdiction in Indiana and to venue this District at least by virtue of maintaining its principal place of business here.

7. Venue is proper pursuant to 28 U.S.C. §§ 1391 and 1400(b) as Wessels resides in this District.

GENERAL ALLEGATIONS

8. This case relates to infringement of Thrush's '975 patent, which discloses and claims an innovative air and dirt separator.

9. On May 15, 2012, the '975 patent, entitled "Apparatus for Removing Air and/or Debris from a Flow of Liquid," a copy of which is attached hereto as Exhibit A, was duly and legally issued by the United States Patent and Trademark Office.

10. Aaron Schipper is the sole inventor of the '975 patent and was at all relevant times an employee of Thrush. By way of assignment executed effective January 19, 2004, and recorded January 21, 2004, Mr. Schipper assigned his entire right, title, and interest in and to the '975 patent to Thrush. Thrush is the owner of all right, title, and interest in and to the '975 patent, including the right to sue for and recover all past, present, and future damages for infringement of the '975 patent.

11. Thrush is a leader in the design, engineering, and manufacture of commercial and industrial water management equipment, including specifically the innovative "Aar-O-Vent" coalescing air and dirt separator. The Aar-O-Vent has become an industry standard for the rapid and efficient removal of dirt and air from high-volume water heating and cooling systems.

12. Thrush’s Aar-O-Vent employs a number of novel and advantageous features, including an innovative coalescing element. Many of these features, and air and dirt separators incorporating these features such as the Aar-O-Vent, are claimed and covered by the ‘975 patent.

13. Thrush sells the Aar-O-Vent throughout the United States, including within the State of Indiana and this judicial district.

14. Without authorization from Thrush, Wessels has sold and offered to sell infringing air and dirt separators within the United States, and, upon information and belief, has manufactured or had manufactured such infringing air and dirt separators (“Infringing Separators”).

15. Attached hereto as Exhibit B are images showing assembled and disassembled images of an exemplary Infringing Separator denominated as the “Wess-Vent.”


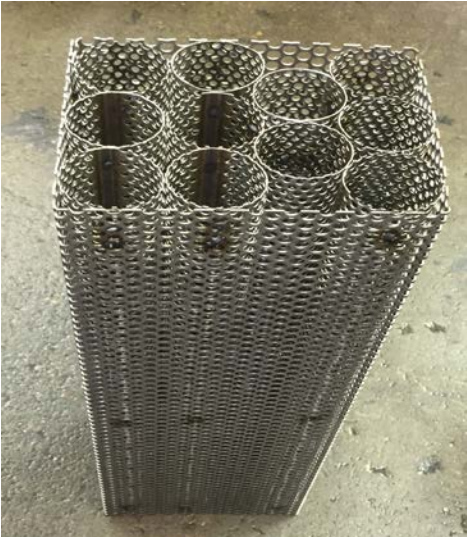
16. Attached hereto as Exhibit C is Wessels’ promotional literature for an Infringing Separator, as well as Wessels’ Operations and Maintenance Manual for an Infringing Separator.

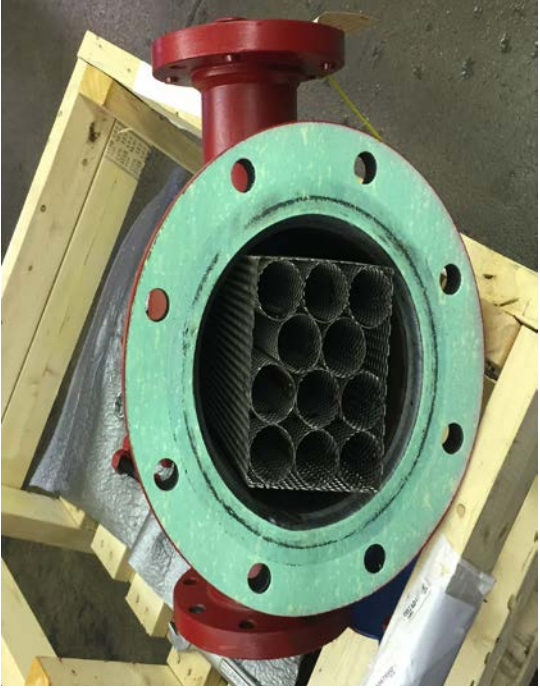
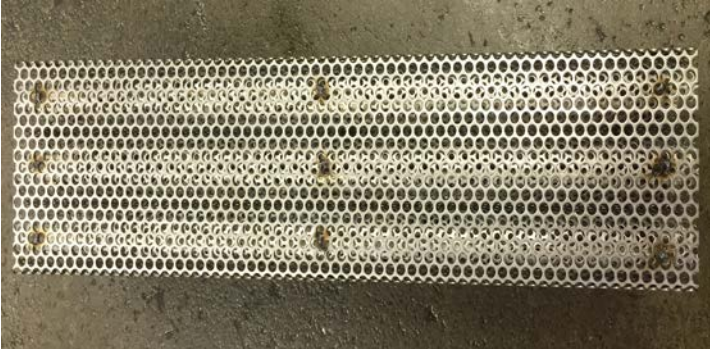
17. The Infringing Separator infringes at least claim 13 of the ‘975 patent.

18. The Infringing Separator embodies each and every limitation of at least claim 13 of the ‘975 patent.

19. An exemplary claim chart comparing the Infringing Separator to claim 13 of the ‘975 patent follows:

CLAIM 13	INFRINGING SEPARATOR
An apparatus for removing air or debris from a flow of liquid, the apparatus comprising: a shell having an inlet, an outlet, and an inner cavity in fluid communication with each of the inlet and the outlet,	The Infringing Separator has a shell with an inlet and an outlet disposed as radial “arms” and in fluid connection with an inner cavity, where the inlet and outlet are in fluid communication with an inner cavity:

	
<p>the inner cavity having a direct flow path space positioned directly between the inlet and outlet, and</p>	<p>The inlet and outlet are aligned, creating a straight line “direct” flow path from the inlet to the outlet (<i>See above</i>)</p>
<p>a plurality of tubes positioned within the inner cavity of the shell such that the tubes are oriented substantially parallel to each other and upper ends of the tubes being positioned above the inlet,</p>	<p>The coalescing elements comprises a plurality of tubes oriented parallel to each other;</p>  <p>The upper ends of the tubes are positioned above the location of the inlet;</p>

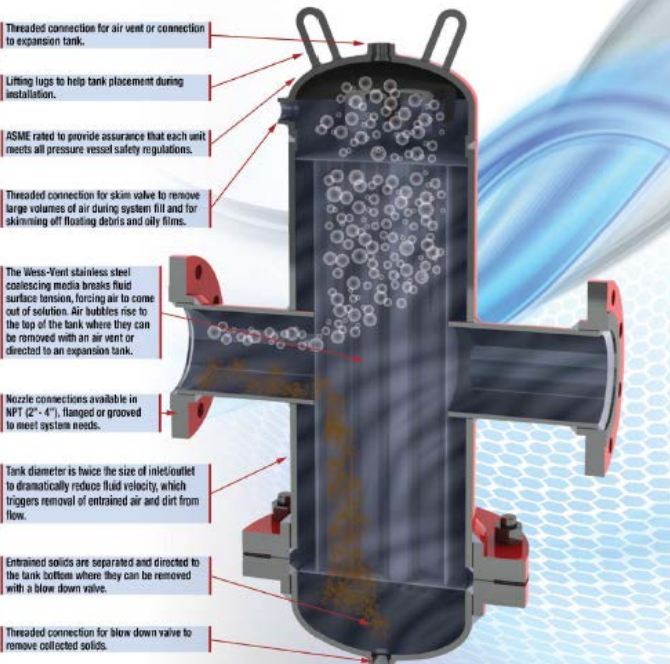
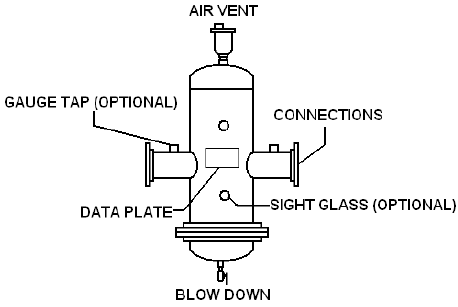
	
<p>each of the tubes having a longitudinal axis, and at least one of the tubes having a surface with a plurality of apertures,</p>	<p>Each tube has a longitudinal axis and at least one of the tubes has a plurality of apertures;</p> 
<p>a minority portion of the plurality of tubes being positioned in the direct flow path space</p>	<p>The direct flow path space intersects only a minority portion of the surface of the tubes;</p> <p><i>Compare:</i></p>



With



And

	 <p>Threaded connection for air vent or connection to expansion tank.</p> <p>Lifting lugs to help tank placement during installation.</p> <p>ASME rated to provide assurance that each unit meets all pressure vessel safety regulations.</p> <p>Threaded connection for skim valve to remove large volumes of air during system fill and for skimming off floating debris and oily films.</p> <p>The Wess-Vent stainless steel coalescing media breaks fluid surface tension, forcing air to come out of solution. Air bubbles rise to the top of the tank where they can be removed with an air vent or directed to an expansion tank.</p> <p>Nozzle connections available in NPT (2" - 4"), flanged or grooved to meet system needs.</p> <p>Tank diameter is twice the size of inlet/outlet to dramatically reduce fluid velocity, which triggers removal of entrained air and dirt from flow.</p> <p>Entrained solids are separated and directed to the tank bottom where they can be removed with a blow down valve.</p> <p>Threaded connection for blow down valve to remove collected solids.</p>
<p>with the flow of fluid between the inlet and outlet flowing directly across the minority portion of the plurality of tubes in a substantially radial direction,</p>	<p>The anticipated flow path will result in fluid between the inlet and outlet flowing directly across the minority portion of the tubes to flow in a substantially radial direction (See above)</p>
<p>a majority portion of the plurality of tubes being larger than the minority portion of the plurality of tubes and positioned outside of the direct flow path space; and</p>	<p>A majority portion of the tubes positioned outside the direct flow path space are larger than minority portion of the tubes within the direct flow path space (See above)</p>
<p>an air vent positioned to release air that is removed from the flow of liquid by the plurality of tubes.</p>	<p>There is an air vent positioned to release air that is removed from the flow of liquid.</p>  <p>AIR VENT</p> <p>GAUGE TAP (OPTIONAL)</p> <p>CONNECTIONS</p> <p>DATA PLATE</p> <p>SIGHT GLASS (OPTIONAL)</p> <p>BLOW DOWN</p> <p>Notably, Wessels copied this drawing from Thrush's literature.</p>

20. Upon information and belief, the Infringing Separator is made, sold, and/or offered for sale by Wessels in a number of sizes, capacities, and configurations, all of which infringe at least claim 13 of the '975 patent.

21. Thrush has at all relevant times marked its Aar-O-Vent with the patent number for the '975 patent in compliance with 35 U.S.C. § 287.

22. On information and belief, Wessels was aware of the application that issued as the '975 patent during its prosecution and was further aware of the '975 patent when it issued.

23. When Thrush began sales of the Aar-O-Vent, Wessels for a short period of time manufactured the Aar-O-Vent for Thrush and at Thrush's request.

24. Further, Wessels purchased a small number of Aar-O-Vent separators from Thrush preceding Thrush's discovery of Wessels' infringing acts.

25. On information and belief, Wessels exploited its access to the Aar-O-Vent to reverse-engineer and substantially influence its creation of the class of Infringing Separators.

26. Thrush expressly advised Wessels of the existence of the '975 patent and the infringement of the Infringing Separator in a letter dated November 2, 2016.

27. Wessels' actions and infringements described herein are willful and intentional. Wessels' actions have caused and continue to cause irreparable harm and monetary damage to Thrush and will continue to do so unless and until Wessels is enjoined and restrained by this Court.

COUNT I:
Direct Infringement of United States Patent No. 8,177,975

28. Thrush incorporates by reference all other allegations of this Complaint as though set forth here in full.

29. Pursuant to patent laws of the United States, the foregoing acts of Wessels, including selling and offering the Infringing Separator for sale in the United States, and, upon information and belief, manufacturing the Infringing Separator within the United States, constitute literal direct infringement of at least claim 13 of the '975 patent in violation of 35 U.S.C. § 271(a).

30. Pursuant to patent laws of the United States, the foregoing acts of Wessels, including selling and offering the Infringing Separator for sale in the United States, and, upon information and belief, manufacturing the Infringing Separator within the United States, constitute direct infringement of at least claim 13 of the '975 patent under the doctrine of equivalents in violation of 35 U.S.C. § 271(a).

31. On information and belief, Wessels was aware of the '975 patent at all relevant times and was and aware that its actions were likely to infringe the '975 patent. Alternately, on information and belief, Wessels was aware of the '975 patent at all relevant times and acted with wantonness and reckless disregard as to whether its actions would infringe the '975 patent.

32. Wessels' infringement of at least claim 13 of the '975 patent has been willful, in bad faith, and/or in reckless disregard of the rights of Thrush.

33. Wessels has caused Thrush monetary damage in an amount to be determined at trial.

34. Wessels has harmed Thrush's rights and should be enjoined from further infringement.

35. Wessels' infringements of the '975 patent were engaged in willfully, intentionally, in bad faith, and/or in reckless disregard of Thrush's rights.

COUNT II:
Indirect Infringement of United States Patent No. 6,964,727

36. Thrush incorporates by reference all other allegations of this Complaint as though set forth here in full.

37. On information and belief, Wessels has made sold, offered to sell, or used the Infringing Separator without one or more elements required by claim 13 of the '975 patent, such as specifically the air vent.

38. The Infringing Separator without an air vent is not a staple article of commerce capable of substantial non-infringing use.

39. The Infringing Separator without an air vent is a material part of the invention defined by at least claim 13 of the '975 patent.

40. Upon information and belief, Wessels sold Infringing Separators without an air vent knowing that customers would engage in acts of direct infringement of the '975 patent literally or under the doctrine of equivalents by attaching an air vent and then using the vented Infringing Separator.

41. Infringing Separators without an air vent are only suitable for their intended use after attachment of an air vent. Any purchaser of an Infringing Separator wishing to use the Infringing Separator for its intended purpose would be required to attach an air vent prior to use.

42. On information and belief, Wessels knew of the '975 patent at the time it sold Infringing Separators without an air vent.

43. On information and belief, Wessels knew that customers using an Infringing Separator with an air vent would be engaging in acts of direct infringement of the '975 patent, literally or under the doctrine of equivalents.

44. Wessels knew that customers would be unlikely or unable to use the Infringing Separator without an air vent.

45. Wessels' customers did in fact, on information and belief, purchase Infringing Separators without an air vent then attach an air vent pursuant to the directions and/or suggestions of Wessels, then used, sold, or offered to sell such Infringing Separators, with such use constituting direct infringement of at least claim 13 of the '975 patent.

46. Further, Wessels in its instructions, promotional materials, and operations and maintenance manual, directed or suggested that customers attach air vents to Infringing Separators sold without air vents.

47. Wessels acts as described above constitute indirect infringement of at least claim 13 of the '975 patent under 35 U.S.C. § 271(b).

48. Wessels acts as described above constitute indirect infringement of at least claim 13 of the '975 patent under 35 U.S.C. § 271(c).

49. Wessels has caused Thrush monetary damage in an amount to be determined at trial.

50. Wessels has harmed Thrush's rights and should be enjoined from further infringement.

51. Wessels' indirect infringements of the '975 patent were made willfully, intentionally, in bad faith, and/or in reckless disregard of Thrush's rights.

RELIEF

WHEREFORE, Plaintiff Thrush prays for judgment and relief against Defendant Wessels Company as follows:

A. Judgment in favor of Thrush finding that Wessels is liable for direct infringement of the '975 patent;

B. Judgment in favor of Thrush finding that Defendants are liable for indirect infringement of the '975 patent;

C. An accounting for and an award of any and all ascertainable damages, to be determined at trial, related to the unlawful acts of Wessels;

D. Judgment in favor of Thrush finding that this case is exceptional, that Wessels' conduct is willful, that Thrush should be awarded its reasonable attorneys' fees, and that damages awarded against Wessels should be increased up to three times;

E. For temporary, preliminary, and permanent injunctive relief ordering Wessels to refrain from further direct or indirect infringement of any claims of the '975 patent;

F. For Thrush's reasonable costs and expenses in this matter; and

G. For such further relief as the Court may deem proper.

DEMAND FOR JURY TRIAL

Thrush hereby demands a jury trial on all claims and issues triable to a jury.

DATED this 13th day of February 2018.

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