



**THE PARTIES**

2. TRC is a corporation organized under the laws of the Commonwealth of Pennsylvania with its principal place of business located at 10328 73 Ave NW, Edmonton, AB T6E 6N5, Canada.

3. Envacon Inc. is Canadian corporation having a principal place of business located at 9204-41 Avenue NW, Edmonton, AB, T6E 6R7, Canada.

4. Bozman is an adult individual residing at #55 1130 Falconer Road NW, Edmonton, AB, T6R 2J6, Canada.

5. JKKB is an Alberta corporation with a registered address at #55 1130 Falconer Road NW, Edmonton, AB, T6R 2J6, Canada. JKKB owns 50% of the shares of Envacon.

6. Bozman is a director of both Envacon and JKKB. Through his corporation, 854245 Alberta Ltd., Bozman owns 90% of the shares of JKKB.

**JURISDICTION AND VENUE**

7. This Court has jurisdiction over the subject matter of this action under 28 U.S.C. §§ 1331 and 1338(a), as well as § 1367(a).

8. Upon information and belief, this Court has personal jurisdiction over each of the Defendants because, they have each committed or participated in acts of patent infringement, and/or conspired in committing acts of patent infringement and other torts giving rise to this action within this District. More specifically, upon information and belief: (1) Envacon has manufactured infringing diesel engine shutdown valves that are covered by one or more claims of the '053 Patent for a customer at its facility located in Lafayette, Indiana; (2) Bozman has personally participated in making such engine shutdown valves for that customer at its facility in

Lafayette, Indiana; and (3) JKKB has conspired with both Envacon and Bozman in making such engine shutdown valves for that customer at its facility in Lafayette, Indiana. As set forth more fully below, TRC holds the exclusive rights to manufacture engine shutdown valves which, in the United States, are covered by the '053 Patent. Defendants have purposefully availed themselves of the privilege of doing business in this District and, in doing so, have committed acts of infringement and other tortious acts in this District in violation of TRC's exclusive manufacturing rights.

9. Venue is proper within this District under 28 U.S.C. § 1391(c)(3) as interpreted by *Brunette Machine Works, Ltd. v. Kockum Industries, Inc.*, 406 U.S. 706 (1972) and *In re HTC*, No. 2018-130, slip op. at 7 (Fed. Cir. May 9, 2018) as Defendants are not resident in the United States so that venue may lie in any District.

### **THE EXCLUSIVE LICENSE**

10. On November 11, 1999, TRC entered into an exclusive license agreement with Joseph Krepela ("Krepela") and Bozman (the "Exclusive License"). According to the recitals set forth in the Exclusive License, Bozman and Krepela were engaged in the design and development of innovative kinds of engine shut off valves (the "Shut Off Valves"), and wished to grant TRC the exclusive right to manufacture the Shut Off Valves. *See* Exclusive License at 1, a true and correct copy of which is attached hereto as Exhibit 2.

11. According to the Exclusive License, Bozman and Krepela agreed that, following the completion of the design and development of the Shut Off Valves, TRC "shall have the exclusive right to manufacture the Shut Off Valves." *See* Exclusive License at ¶ 4.

12. Bozman and Krepela completed the design and development of the Shut Off Valves with the assistance of TRC, and TRC's exclusive right to manufacture the Shut Off Valves became effective pursuant to the terms of the Exclusive License. *Id.*

13. The exclusive license to manufacture the Shut Off Valves granted by Bozman and Krepela to TRC was not limited geographically and, by its express terms, TRC's exclusive right to manufacture "shall be in force so long as any patent rights of the Licensors in reference to the Shut Off Valves design and development pursuant to the terms of this Agreement are still subsisting." *See* Exclusive License at ¶ 6.

14. As consideration for the Exclusive License, TRC assisted in the development of the Shut Off Valves, and provided employment to both Bozman and Krepela during the course of the development of the Shut Off Valves. *See* Exclusive License at ¶ 2.

#### **THE PATENT-IN-SUIT**

15. According to the Exclusive License, Bozman and Krepela further agreed to use their best efforts to apply for patent protection in Canada and the United States for the Shut Off Valves. *See* Exclusive License at ¶ 1.

16. On March 2, 2000, Bozman and Krepela assigned their rights in the Shut Off Valves, including their rights under the Exclusive License, to JKKB, and JKKB took assignment of such rights with actual knowledge that Bozman and Krepela had already granted worldwide exclusive manufacturing rights to TRC.

17. On March 3, 2000, JKKB filed for patent protection for the Shut Off Valves in the United States and Canada.

18. By virtue of the Exclusive License, which encumbered the transfer of rights in the Shut Off Valves to JKKB, the US and Canadian patent applications for the Shut Off Valves were similarly encumbered.

19. On August 14, 2001, the U.S. Patent and Trademark Office issued U.S. Patent No. 6,273,053, entitled “Engine Shutdown Valves,” to JKKB.

20. By virtue of the Exclusive License, which encumbered the transfer of rights in the Shut Off Valves to JKKB as well as the patent applications on the Shut Off Valves, the ’053 Patent issued to JKKB with TRC holding the exclusive license to manufacture Shut Off Valves under the ’053 Patent.

21. Pursuant to the Exclusive License, during the development of the Shut Off Valves from 1999 until 2001, and then from 2001 until 2004, TRC exclusively manufactured the Shut Off Valves, including:

- (a) sourcing raw materials;
- (b) machining components; and
- (c) assembling, testing, and packaging the completed Shut Off Valves

22. During the time TRC performed these manufacturing services, Envacon marketed and sold the completed Shut Off Valves provided to Envacon by TRC, and for which Envacon paid TRC’s parent corporation – Tyler Research Instruments Corporation (“TRIC”) – at the direction of TRC, for TRC’s performance of its manufacturing services.

23. By 2004, pursuant to the Exclusive License, TRC decided to outsource some machining or parts that it had been doing as part of its manufacturing services, and Envacon performed these steps under the oversight, direction, and control of TRC. TRC continued to

oversee and direct overall manufacturing of the Shut Off Valves, and Envacon continued to pay TRIC, at TRC's direction, for the TRC's manufacturing services.

24. From Envacon's incorporation on November 23, 1999, until April 16, 2011, Envacon and TRC operated out of the same premises at 10328-73 Avenue, Edmonton, Alberta (the "Premises").

25. TRC's oversight, direction, and control over the manufacture of the Shut Off Valves, included:

- (a) assuring the plant-wide quality of the manufacturing at the Premises;
- (b) maintaining the machine shop at the Premises;
- (c) providing all standard tooling for manufacturing at the Premises;
- (d) advising and directing Envacon, as necessary, on the use of manual and test equipment at the Premises; and
- (e) assuring safe operation of the machine shop at the Premises.

26. Throughout the time that Envacon was located at the Premises, TRC was able to maintain oversight, direction, and control over Envacon's involvement in the manufacturing of Shut Off Valves pursuant to TRC's rights under the Exclusive License.

27. According to current USPTO records, all maintenance fees due in connection with the '053 Patent have been timely paid and, as a result, the '053 Patent continues in force.

28. Pursuant to paragraph 6 of the Exclusive License, TRC's exclusive right to manufacture Shut Off Valves under the '053 Patent continues in force.

#### **DEFENDANTS' INFRINGEMENTS AND OTHER TORTIOUS CONDUCT**

29. On April 16, 2011, Envacon abandoned the Premises without notice to TRC.

30. Without TRC's oversight, direction, and control over the manufacture of Shut Off Valves, Envacon was no longer authorized by TRC to manufacture Shut Off Valves.

31. Upon information and belief, Envacon has manufactured Shut Off Valves, including in this District, which infringe at least Claims 4, 14, and 15 of the '053 Patent.

32. Upon information and belief, Bozman has personally participated in Envacon's manufacture of Shut Off Valves, including in this District, which infringe at least Claims 4, 14, and 15 of the '053 Patent.

33. Upon information and belief, JKKB has conspired with Envacon to deprive TRC of its exclusive manufacturing rights under the '053 Patent. Acts taken in furtherance of the common design include Envacon's manufacture of Shut Off Valves, including in this District, which infringe at least Claims 4, 14, and 15 of the '053 Patent.

34. Upon information and belief, Bozman has personally participated in the aforesaid conspiracy between JKKB and Envacon in furtherance of the common design by personally participating in Envacon's manufacture of Shut Off Valves, including in this District, which infringe at least Claims 4, 14, and 15 of the '053 Patent.

35. Upon information and belief, Bozman and Envacon have also tortiously interfered with TRC's contractual relationship with JKKB under the Exclusive License through Envacon's manufacture of Shut Off Valves, including in this District, which infringe at least Claims 4, 14, and 15 of the '053 Patent, and Bozman's personal participation in such infringing activity at least in this District.

36. Upon information and belief, Bozman and Envacon have also conspired to tortiously interfere with TRC's contractual relationship with JKKB under the Exclusive License through Envacon's manufacture of Shut Off Valves, including in this District, which infringe at

least Claims 4, 14, and 15 of the '053 Patent, and Bozman's personal participation in such infringing activity at least in this District.

### **COUNT I – PATENT INFRINGEMENT**

37. Plaintiff repeats and incorporates by reference each preceding paragraph as if fully set forth herein.

38. The '053 Patent is currently in force and owned by JKKB subject to the exclusive manufacturing license granted to TRC in the Exclusive License.

39. Upon information and belief, Envacon has infringed TRC's exclusive manufacturing rights by manufacturing Shut Off Valves which infringe at least Claims 4, 14, and 15 of the '053 Patent for at least a customer at its facility in Lafayette, Indiana.

40. Upon information and belief, Bozman has personally participated in Envacon's manufacture of Shut Off Valves which infringe at least Claims 4, 14, and 15 of the '053 Patent for at least a customer at its facility in Lafayette, Indiana.

41. Envacon's and Bozman's acts of infringement have violated TRC's exclusive manufacturing rights under the '053 Patent, and TRC is entitled to recover from Envacon and Bozman for damages incurred by TRC as a result thereof in an amount to be proven at trial.

### **COUNT II – CIVIL CONSPIRACY**

42. Plaintiff repeats and incorporates by reference each preceding paragraph as if fully set forth herein.

43. Upon information and belief, JKKB formed a conspiracy with Envacon to deprive TRC of its exclusive manufacturing rights under the '053 Patent, and wrongful acts taken in



furtherance of the common design include Envacon's manufacture of Shut Off Valves which infringe at least Claims 4, 14, and 15 of the '053 Patent for at least a customer at its facility in Lafayette, Indiana.

44. Upon information and belief, Bozman has personally participated in the aforesaid wrongful acts taken in furtherance of the aforesaid conspiracy by personally participating in Envacon's manufacture of Shut Off Valves which infringe at least Claims 4, 14 and 15 of the '053 Patent for at least a customer at its facility in Lafayette, Indiana.

45. Upon information and belief, the object of Defendants' conspiracy was to deprive TRC of its exclusive manufacturing rights under the '053 Patent, and TRC is entitled to recover from Defendants for damages incurred by TRC as a result thereof in an amount to be proven at trial.

### **COUNT III – TORTIOUS INTERFERENCE**

46. Plaintiff repeats and incorporates by reference each preceding paragraph as if fully set forth herein.

47. Upon information and belief, Envacon and Bozman have tortiously interfered with TRC's contractual relationship with JKKB under the Exclusive License through Envacon's manufacture of Shut Off Valves which infringe at least Claims 4, 14, and 15 of the '053 Patent for at least a customer at its facility in Lafayette, Indiana, and through Bozman's personal participation in such infringing activity.

48. Envacon's and Bozman's acts of tortious interference have harmed TRC's contractual relationship with JKKB under the Exclusive License, and TRC is entitled to recover

from Envacon and Bozman for damages incurred by TRC as a result thereof in an amount to be proven at trial.

**COUNT IV – CIVIL CONSPIRACY**

49. Plaintiff repeats and incorporates by reference each preceding paragraph as if fully set forth herein.

50. Upon information and belief, Bozman and Envacon have conspired to tortiously interfere with TRC's contractual relationship with JKKB under the Exclusive License, and wrongful acts taken in furtherance of the common design include Envacon's manufacture of Shut Off Valves which infringe at least Claims 4, 14, and 15 of the '053 Patent for at least a customer at its facility in Lafayette, Indiana, and Bozman's personal participation in at least such infringing activity.

51. Upon information and belief, the object of Defendants' conspiracy was to interfere with TRC's contractual relationship with JKKB under the Exclusive License, and TRC is entitled to recover from Defendants for damages incurred by TRC as a result thereof in an amount to be proven at trial.

**WHEREFORE**, Plaintiff, Tyler Research Corporation, prays that this Court enter:

A. A judgment stating that Envacon and Kieran Bozman have infringed Plaintiff's exclusive manufacturing rights under the '053 Patent;

B. A permanent injunction prohibiting Envacon and Kieran Bozman from further acts of infringement of Plaintiff's exclusive manufacturing rights under the '053 Patent;

C. A judgment and order requiring Defendants to pay Plaintiff its damages, costs, and expenses, and prejudgment and post-judgment interest, for infringement of Plaintiff's exclusive manufacturing rights under the '053 Patent;

D. A judgment and order requiring Envacon and Kieran Bozman to pay Plaintiff its damages, costs, and expenses, and prejudgment and post-judgment interest, for tortious interference with Plaintiff's contractual relationship with JKKB under the Exclusive License;

E. An award of such other and further relief that the Court may deem just and proper.

Respectfully submitted,

Dated: February 5, 2019

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