

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

ERECT-A-LINE, INC.

Plaintiff,

v.

EUROBEND S.A.,

Defendant.

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C.A. No. \_\_\_\_\_

JURY TRIAL DEMANDED

**ORIGINAL COMPLAINT OF ERECT-A-LINE, INC.**

Plaintiff Erect-A-Line, Inc. ("Plaintiff") states its Complaint against defendant Eurobend S.A. ("Defendant") and alleges as follows:

**NATURE OF ACTION**

1. By this action, Plaintiff seeks a declaration that: (a) it has not infringed and is not infringing Defendant's United States Patent No. 7,607,210. Plaintiff further seeks a judgment that Defendant has (a) breached its warranty with regard to

**BACKGROUND FACTS**

2. Founded in 1997, Plaintiff Erect-A-Line, Inc. has established itself as a leading provider of manufactured concrete products in the United States. On or about October 12, 2008, Plaintiff purchased a dowel rod side frame machine ("the Eurobend Machine"). Erect-A-Line uses the Eurobend Machine to produce rebar for use in steel reinforced concrete.

3. Throughout its use of the Eurobend Machine, Erect-A-Line has experienced a much higher part failure rate than anticipated. The constant breakage of mechanical and

electronic parts used in the Defendant Machine have caused a significant loss of production time. This loss of production time has been largely due to Defendant's procedures regarding the ordering and delivery of replacement parts.

4. Defendant does not stock any replacement parts in the United States. Replacement parts must be ordered from Greece. The processing and shipping time for the parts results in down time at Erect-A-Line's manufacturing facility. In some instances, it has taken Defendant weeks to deliver replacement parts that are essential for the maintenance of the Eurobend Machine.

5. On or about January 7, 2011, Defendant presented Plaintiff with a written offer to sell Plaintiff a Dowel Basked Assembly Line ("the Basket Assembly Line"). Defendant's written offer includes a provision that the "machine is guaranteed for twelve months against any defect of fabrication or materials." Plaintiff accepted Defendant's written offer on or about November 2, 2012. The Basket Assembly Line was installed between July 28, 2013 and August 3, 2013.

6. During the installation of the Basket Assembly Line, Defendant's technician experienced difficulty getting the machine to produce dowel baskets at a speed that was anywhere close to the speed that was quoted in Defendant's January 7, 2011 offer letter. Around this time, Plaintiff learned that this technician had never before installed a Basket Assembly Line. On or about August 2, 2013, Defendant directed its technician to return to Greece after the technician failed to get the Basket Assembly Line to function as promised in Defendant's quote. Defendant promised Plaintiff that it would send new technician to help get the Basket Assembly

Line functioning properly. To date, no such technician has been dispatched to fix Plaintiff's Basket Assembly Line.

7. On or about September 5, 2013, Plaintiff received a demand letter from Defendant claiming that Defendant is the owner of United Patent No. 7,607,210 ("the '210 patent"). A true and correct copy of the demand letter (the "Letter") is attached as Exhibit A. A true and correct copy of the '210 patent is attached as Exhibit B.

8. The Letter further claimed that:

Eurobend has now learned, on good authority, that Erect-A-Line is making, and/or has made, at least one copy of the subject machine in violation of the '210 patent. This activity coincides with Erect-A-Line's recent (February 2013 and later) requests to Eurobend for major spare parts which are not needed for service purposes..

9. The Letter further states that "[t]he foregoing acts by Erect-A-Line constitute infringement of Eurobend's '210 patent."

10. The Letter further states that "[t]he acts also violate the obligation of Erect-A-Line to act in good faith with Eurobend. Accordingly, all guarantees on all products purchased by Erect-A-Line from Eurobend are null and void." The Letter, however, gives no legal authority to support Defendant's argument that "all guarantees" are "null and void."

11. The Letter closes by demanding that Plaintiff cease all of the activities complained of in the letter and provide an accounting of all allegedly infringing products.

12. On or about October 14, 2013, Ray Harper, Plaintiff's General Manager, wrote a letter to Defendant in response to the Letter. In the letter, Mr. Harper stated that Plaintiff had only used the replacement parts that it had ordered to service the Eurobend Machine. Mr. Harper

further stated that Plaintiff has never constructed or sold a copy of the Eurobend Machine. Mr. Harper also offered to meet with Defendant and Defendant's counsel at Plaintiff's facility in Dallas in order to find a resolution to the parties' conflict.

13. On or about October 17, 2013, Plaintiff received a second letter ("the Second Letter") from counsel for Defendant. A true and correct copy of the Second Letter is attached as Exhibit C. In the Second Letter, counsel for Defendant reiterated its allegations that Plaintiff had infringed the '210 patent. The Second Letter included photographs of what counsel for Defendant believed to be a machine that infringes the '210 patent. True and correct copies of the photographs that accompanied the Second Letter are attached as Exhibit D.

14. The photographs clearly show a housing that contains no mechanical parts. The housing in the photographs does not perform any functions whatsoever.

15. Plaintiff continues to experience significant technical difficulties with the Basket Assembly Line. Defendant has refused to honor its warranty obligations in regard to the Basket Assembly Line. In fact, Defendant has refused to respond to any requests by Plaintiff for support in regard to the Basket Assembly Line.

### **PARTIES**

16. Plaintiff Erect-A-Line, Inc. is a corporation organized under the laws of the State of Texas, with a principal place of business located at 121 La Paz Dr., Dallas, Texas 75217. Plaintiff is a Texas Citizen.

17. Upon information and belief, Defendant Eurobend S.A. is a corporation organized under the laws of Greece, with a principal place of business located at 350 Tatoiou

Avenue, 136-77 Athens, Greece. Defendant may be served at its principal place of business or through the Texas Secretary of State. Defendant is a foreign citizen.

### **JURISDICTON AND VENUE**

18. This is a civil action regarding allegations of patent infringement under 35 U.S.C. § 101 *et seq.*, breach of warranty under Texas law and breach of the implied warranty of fitness for a particular purpose under Texas law. Thus, the Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1338, 2201 and 2202. The Court has subject matter jurisdiction of the State law claims in this action under 28 U.S.C. § 1367 because these claims arise out of the same transaction and occurrences giving rise to the federal jurisdiction. The Court has also subject matter jurisdiction under 28 U.S.C. § 1332 because the amount in controversy exceeds \$75,000, exclusive of interest and costs, and Plaintiff and Defendants are citizens of different states.

19. An actual, live, and justiciable controversy exists between Plaintiff and Defendant by virtue of Defendant's Letter accusing Plaintiff of patent infringement.

20. The Court has personal jurisdiction over Defendant because, upon information and belief, Defendant has sold or advertised for sale its products or services in this district; because Defendant operates an e-commerce website, <http://www.eurobend.com>, which is readily accessible by persons residing in this district; and because Defendant has by letter sent communications into this district raising alleged infringement issues.

21. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 and 1400 and for the reasons stated above.

## **FIRST CAUSE OF ACTION**

### **(Declaratory Judgment of Non-Infringement of the '210 Patent)**

22. Plaintiff hereby incorporated its allegations contained in paragraphs 1 through 21 of this Complaint as though fully set forth herein.

23. Defendant contends that Plaintiff has infringed and continues to infringe the claims of the '210 patent.

24. Plaintiff has not and does not directly or indirectly infringe the '210 patent.

25. An actual, live, and justiciable controversy therefore exists between Plaintiff and Defendant as to whether Plaintiff infringes the claims of the '210 patent.

26. Accordingly, Plaintiff seeks and is entitled to a judgment against Defendant that it does not infringe the claims of the '210 patent.

## **SECOND CAUSE OF ACTION**

### **(Breach of Contract)**

27. Plaintiff hereby incorporated its allegations contained in paragraphs 1 through 26 of this Complaint as though fully set forth herein.

28. A valid contract exists between Plaintiff and Defendant by way of Plaintiff's acceptance of Defendant's offer letter dated January 7, 2011.

29. In the contract, Defendant agreed to warranty the Basket Assembly Line machine for one year. Defendant has breached this obligation by refusing honor its warranty.

30. Plaintiff has sustained damages as a direct result of Defendant's breach.

31. Accordingly, Plaintiff seeks and is entitled to a judgment against Defendant that Defendant has breached its contract with Plaintiff.

### **THIRD CAUSE OF ACTION**

#### **(Breach of Implied Warranty of Fitness for a Specific Purpose Under Tex. Bus. Code. § 2.315)**

32. Plaintiff hereby incorporated its allegations contained in paragraphs 1 through 31 of this Complaint as though fully set forth herein.

33. Plaintiff is a buyer of goods, namely the Basket Assembly Line.

34. Defendant is a seller of the goods, namely the Basket Assembly Line.

35. Plaintiff had a particular purpose for the Basket Assembly Line, namely the dowel baskets at a rate comparable to the rates specified in the Defendant's offer letter dated January 7, 2011.

36. At the time Plaintiff accepted Defendant's offer, Defendant knew about plaintiff's particular purpose for the Basket Assembly Line.

37. Plaintiff relied on defendant's skill and judgment in manufacturing and installing such equipment to provide suitable goods for Plaintiff's purpose.

38. The Basket Assembly Line provided by Defendant was not fit for the Plaintiff's purpose.

39. Plaintiff notified Defendant that the Basket Assembly Line was not fit for Plaintiff's purpose within a reasonable time after discovering said breach.

40. The Defendant's breach proximately caused damages to Plaintiff.

41. Accordingly, Plaintiff seeks and is entitled to a judgment that, pursuant to Tex. Bus. Code § 2.315, Plaintiff has breached its implied warranty of fitness for a specific purpose.

### **DEMAND FOR JURY TRIAL**

Plaintiff hereby demands a trial by jury on all issues triable to a jury under Rule 38 of the Federal Rules of Civil Procedure.

### **PRAYER FOR RELIEF**

For these reasons, Plaintiff respectfully requests the court to:

a. Grant and enter judgment declaring that Plaintiff has not infringed and is not infringing any valid and enforceable claim of the '210 patent.

b. Grant and enter judgment Defendant breached its contract for the sale and delivery of the Dowel Basket Assembly Line by refusing to honor its warranty obligations.

c. Grant and enter judgment that Defendant has breached its implied warranty that the Dowel Basket Assembly Line is fit for a specific purpose pursuant to Tex. Bus. Code § 2.315.

d. Enter an injunction enjoining Defendant from claiming infringement by Plaintiff of the '210 patent.

e. Award Plaintiff its actual damages arising from Defendant's breach of contract.

f. Award Plaintiff its actual damages arising from Defendants breach of the implied warranty of fitness for a specific purpose.

g. That Plaintiff be entitled to recover its costs, expenses, and reasonable attorney's fees pursuant to 35 U.S.C. § 285, under the common law, Texas law, and otherwise; and

h. That such other and further relief as the Court deems just, equitable, and proper be awarded to Plaintiff

Dated: November 1, 2013

Respectfully Submitted,

MUNSCH HARDT KOPF & HARR, P.C.

*/s/ Jon B. Hyland*

By: \_\_\_\_\_

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