

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

TNA AUSTRALIA PTY LIMITED and TNA
NORTH AMERICA INC.,

Plaintiffs,

v.

PPM TECHNOLOGIES, LLC,

Defendant.

Case No.

JURY DEMANDED

COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiffs TNA Australia Pty Limited and TNA North America Inc. (collectively referred to herein as “TNA”) file this Complaint against Defendant PPM Technologies, LLC (“Defendant”) and allege the following:

NATURE OF ACTION

1. This is an action for damages and equitable relief arising under the patent laws of the United States, Title 35, United States Code, including in particular, Sections 271, 281, 283, 284, and 285, as a result of Defendant’s acts of infringement of United States Patent No. 7,185,754, entitled “Conveyor” (“the ’754 Patent”). A true and correct copy of the ’754 Patent is attached to this Complaint as Exhibit A.

THE PARTIES

2. TNA Australia Pty Limited is an Australian corporation with its principal place of business in Lidcombe, New South Wales, Australia. TNA is the current assignee and owner of

the '754 Patent and is entitled to enforce all rights arising therefrom, including the right to prevent infringement of the '754 Patent.

3. TNA North America Inc. is a corporation organized under the laws of the state of Pennsylvania, with its principal place of business at 680 S Royal Lane, #100, Coppell, TX 75019. TNA North America, Inc. is the exclusive licensee of the '754 Patent in the United States. TNA North America, Inc. makes and sells conveyor systems in the United States.

4. On information and belief, Defendant is a corporation organized under the laws of Oregon, with its principal place of business at 500 E. Illinois Street, Newberg, Oregon 97132. Defendant may be served through its registered agent for service of process, Sussman Shank Registration Services, LLC, 1000 SW Broadway, Suite 1400, Portland, Oregon 97205. On information and belief, Defendant has been, and is now, directly and through its agents and affiliates, doing business in this judicial district and elsewhere in the United States.

JURISDICTION AND VENUE

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

6. Defendant conducts substantial business in the state of Texas, including (1) committing at least a portion of the infringing acts alleged herein and (2) regularly transacting business, soliciting business, and/or knowingly deriving revenue from the sale of goods and services, including the infringing goods and services, to purchasers in the state of Texas. Additionally, on information and belief, the primary office of Defendant's former Vice President of Sales for Texas and Latin America, Mr. Alfredo Blanco, was in Dallas, Texas during the infringement period. Defendant has purposefully availed itself of the benefits of the state of

Texas, and the exercise of jurisdiction over Defendant would not offend traditional notions of fair play and substantial justice.

7. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391 and § 1400(b) because Defendant has transacted business and committed acts of patent infringement in this judicial district. Additionally, venue is proper in this judicial district because, on information and belief, Defendant has a regular and established place of business in Dallas, Texas, as evidenced by the fact that the primary office of Defendant's former Vice President of Sales for Texas and Latin America Mr. Alfredo Blanco, was in Dallas, Texas at least until January 2016.

THE PATENT

8. On March 6, 2007, the United States Patent and Trademark Office duly and legally issued the '754 Patent, entitled "Conveyor," to TNA Australia Pty Limited as the assignee and naming Alfred Alexander Taylor and Garry Ronald MacKay as the inventors.

9. On August 19, 2016, TNA Australia Pty Limited and TNA North America Inc. entered into an exclusive patent license agreement whereby TNA Australia Pty Limited memorialized its grant of an exclusive patent license with respect to the '754 Patent to TNA North America Inc.

GENERAL ALLEGATIONS

10. Defendant makes, uses, imports, sells, or offers for sale conveyor assemblies, such as the conveyor assemblies bearing the "Gateless Conveyor System" trade name in competition with conveyor systems made and sold by TNA North America Inc. *See* Ex. B; *see also* <http://ppmtech.com/conveying/gateless-conveyor/> (last accessed February 26, 2017).

11. As illustrated in Defendant's marketing materials,¹ the conveyor assemblies bearing the "Gateless Conveyor System" trade name include a first slip conveyor segment having a longitudinally extending conveyor surface upon which items to be conveyed are longitudinally transported, wherein the segment has an upstream end and a downstream end, the upstream end being provided to receive the items:



12. As illustrated in Defendant's marketing materials, the conveyor assemblies bearing the "Gateless Conveyor System" trade name further include a second slip conveyor segment likewise having a longitudinally extending conveyor surface upon which the items to be conveyed are longitudinally transported, wherein the second segment also has an upstream end and a downstream end. The second slip conveyor segment is mounted relative to first slip conveyor segment so that items leaving the downstream end of the first slip conveyor segment are delivered to the upstream end of the second slip conveyor segment.

¹ See Exhibit B, <http://ppmtech.com/conveying/gateless-conveyor/> (last accessed February 26, 2017), & <https://www.youtube.com/watch?v=TVITJoM7YH0&feature=youtu.be> (last accessed February 26, 2017).

13. As illustrated in Defendant's marketing materials, the first slip conveyor segment and the second slip conveyor segment of the conveyor assemblies bearing the "Gateless Conveyor System" trade name are mounted to provide for lateral displacement between the downstream end of the first slip conveyor segment relative to the upstream end of the second slip conveyor segment from an aligned position, wherein a desired quantity of items pass from the first slip conveyor segment to the second slip conveyor segment, to a displaced position, wherein a desired quantity of said items is removed from the conveyor as a result of relative displacement between the downstream end of the first slip conveyor segment and the upstream end of the second slip conveyor segment.

14. Indeed, Defendant's marketing materials provide: "The distribution conveyor modules pivot to dispense a required amount of product as demanded by the packaging system. Once the demand is satisfied the module swings back to provide a continuous feed." Ex. B.

15. As illustrated in Defendant's marketing materials, the conveyor assemblies bearing the "Gateless Conveyor System" trade name also include a transverse conveyor positioned below the downstream end of the first slip conveyor segment and the upstream end of the second slip conveyor segment, so that items leaving the downstream end of the first slip conveyor segment and not delivered to the upstream end of the second slip conveyor segment are delivered to the transverse conveyor.

COUNT I – INFRINGEMENT OF THE '754 PATENT

16. TNA realleges, adopts, and incorporates by reference the allegations included within paragraphs 1 through 15 as if fully set forth herein.

17. Defendant has manufactured, used, offered for sale, or sold, and continues to manufacture, use, offer for sale, or sell in the United States conveyor assemblies, such as

conveyor assemblies bearing the “Gateless Conveyor System” trade name, that incorporate each and every element of one or more of the claims of the ’754 Patent and therefore are covered by the ’754 Patent (“the Accused Products”).

18. Defendant infringes one or more claims of the ’754 Patent, including but not limited to claim 1, either literally or under the doctrine of equivalents, by making, using, selling, offering for sale, or importing the Accused Products that embody each element of at least one of the claims of the ’754 Patent and will continue to do so unless enjoined by this Court.

19. Defendant also indirectly infringes the ’754 Patent within the United States by inducement under 35 U.S.C. § 271(b). Since learning of the ’754 Patent, at least by the filing of this Complaint, and by failing to cease offering the Accused Products, Defendant has knowingly and intentionally induced, and continues knowingly and intentionally to induce, others in this judicial district and throughout the United States to directly infringe one or more claims of the ’754 Patent, such as claim 1. It does so, *inter alia*, by (1) providing instructions or information, for example in Exhibit B, to explain how to use the Accused Products in an infringing manner; and (2) touting these infringing uses of the Accused Products in advertisements, including but not limited to Exhibit B.

20. Defendant also indirectly infringes the ’754 Patent by contributing to the direct infringement of Defendant’s customers under 35 U.S.C. § 271(c) by providing the Accused Products, which, as evidenced by Defendant’s own marketing materials, are specially made for use in a manner infringing one or more claims of the ’754 Patent, such as claim 1, and have no substantial non-infringing uses.

21. TNA has been and continues to be injured by Defendant’s infringement of the ’754 Patent.

22. TNA has suffered damages in the form of lost profits, lost sales, and/or lost opportunities. TNA is entitled to recover damages to compensate it for Defendant's infringing activities in an amount to be determined at trial, but in no event less than a reasonable royalty.

23. Defendant's infringement has been and continues to be deliberate, willful, intentional, egregious, and with knowledge of the existence of the '754 Patent, at least by the filing of this Complaint, such that TNA is entitled to recover its attorneys' fees and other expenses of litigation pursuant to 35 U.S.C. § 285.

24. TNA has been damaged by Defendant's infringement of the '754 Patent and will suffer additional irreparable damage and impairment of the value of its patent rights unless Defendant is enjoined from continuing to infringe.

PRAYER FOR RELIEF

WHEREFORE, TNA respectfully requests that the Court:

(a) Enter judgment that Defendant has infringed the '754 Patent, and that such infringement has been willful;

(b) Permanently enjoin Defendant from infringing the '754 Patent, pursuant to 35 U.S.C. § 283, or grant such other equitable relief the Court determines is warranted;

(c) Award TNA damages in an amount to be proven at trial because of the injury suffered by reason of Defendant's infringement of the '754 Patent;

(d) Increase the damages awarded to TNA up to three times the amount found to be TNA's actual damages, as authorized by 35 U.S.C. § 284;

(e) Award TNA its attorney's fees and other expenses of litigation pursuant to 35 U.S.C. § 285;

(f) Award TNA prejudgment interest and costs pursuant to 35 U.S.C. § 284; and

(g) Award TNA such other and further relief as the Court deems proper.

JURY DEMAND

In accordance with Rule 38(b) of the Federal Rules of Civil Procedure, TNA requests a trial by jury on any issue in this action triable by right before a jury.

Respectfully submitted this 3rd day of March, 2017.

/s/ Timothy E. Taylor

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