

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

I.S.E.L., LLC,

Plaintiff,

v.

POLYGUARD PRODUCTS, INC.,

Defendant.

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CIVIL ACTION NO. 17-3218

**I.S.E.L., LLC’S COMPLAINT FOR A DECLARATORY JUDGMENT OF NON-
INFRINGEMENT**

Plaintiff I.S.E.L., LLC (“Isel”), by and through its undersigned counsel, file this Complaint against Defendant Polyguard Products, Inc. (“Polyguard”) and state as follows:

NATURE OF THE ACTION

1. This is an action arising under the Declaratory Judgment Act and patent laws of the United States seeking a declaratory judgment of non-infringement of United States Patent No. 6,331,509.

JURISDICTION AND VENUE

2. This action arises under the provisions of the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, and the Patent Act, 35 U.S.C. § *et seq.*

3. This Court has subject matter jurisdiction of this action under 28 U.S.C. §§ 1331, 1338(a), 2201, and 2202.

4. Personal jurisdiction over Polyguard is proper in this District because of its presence in this judicial district. On information and belief, Polyguard's principal place of business is at 4101 S-I-45, Ennis, Ellis County, Texas 75119.

5. Venue is proper in this district under at least 28 U.S.C. § 1391(b)(1) and (b)(3) because Polyguard resides in and is subject to personal jurisdiction in this judicial district.

PARTIES

6. Plaintiff I.S.E.L., LLC is a limited liability company that is organized in Florida and has its principal place of business in Jacksonville, Florida.

7. Isel is a manufacturer of industrial lubricants and other grease products specializing in private-label, high-technology, tailored products for industrial applications.

8. Isel was founded in Jacksonville, Florida in 1992, and for over 25 years has operated as a family business.

9. Isel has a history of developing innovative products for specialty applications. For example, the National Aeronautics and Space Administration ("NASA") officially recognized Isel's president for the creative development of an Isel lubricant product that had significant value to advancing NASA's aerospace technology program.

10. For over 20 years, Isel has offered Food Grade (H-1 or H-2) lubricants for use in refrigeration systems. These products are Isel's own proprietary formulation, which it developed in house and maintains as a trade secret.

11. On information and belief, Defendant Polyguard Products, Inc. is a corporation that is incorporated in Oklahoma and has its principal place of business in Ennis,

Texas. On information and belief, Polyguard manufactures products that protect surfaces and structures from moisture, water, and other undesired substances.

FACTUAL BACKGROUND

The Patent-in-suit

12. United States Patent No. 6,331,509 (“the ’509 patent”), entitled “Corrosion Resistant Lubricants, Greases, and Gels” names Robert L. Heimann, Nancy M. Heimann, William M. Dalton, Donald W. Taylor, and Todd W. Scrivens as the named inventors. The ’509 patent states an issue date of December 18, 2001. Attached as Exhibit A is a copy of the ’509 patent.

13. The ’509 patent is directed to compositions composed of a synthetic base oil(s), a polymer that is at least partially miscible with the synthetic base oil(s), and a silica containing material in an amount effective to thicken the composition.

14. The ’509 patent lists on its face Elisha Technologies Co LLC as the assignee. On information and belief, Polyguard is the assignee of all right, title, and interest in the ’509 patent as a result of a transfer from a previous assignee.

The Existence of an Actual Controversy

15. There is an actual controversy within the jurisdiction of this Court under 28 U.S.C. §§ 2201 and 2202.

16. On September 21, 2017, Polyguard brought suit against Innovative Refrigeration Systems, Inc. (“Innovative”) in the Western District of Pennsylvania. *See Polyguard Products, Inc. v. Innovative Refrigeration Systems, Inc.*, Case No. 2:17-cv-01230 (W.D. Pa.). Attached as Exhibit B is a copy of that Complaint, its exhibits, and its related

filing documents. In that suit, Polyguard alleges that Innovative directly and indirectly infringes unspecified claims of the '509 patent by using, offering to sell, and selling a Food-Grade Pipe Coating identified as IRS-1726.

17. Isel develops and manufactures the product known as IRS-1726. Innovative purchases IRS-1726 from Isel. Attached as Exhibit C is a copy of an invoice demonstrating that Innovative purchases IRS-1726 from Isel.

18. On information and belief, Innovative has used, offered to sell, and sold IRS-1726 in a form largely unmodified from the form that it receives IRS-1726 from Isel.

19. Isel sells products with the same composition as IRS-1726 to a number of other customers.

20. On information and belief, Polyguard stated to Innovative that Polyguard intends to bring additional infringement lawsuits against other companies based on products sold by Isel with the same composition as IRS-1726. Therefore, in addition to the pending extant suit against an Isel customer, Isel's other customers and Isel itself are at risk of litigation.

21. Based on the foregoing, there is an actual and justiciable controversy between Polyguard and Isel as to whether Isel's products directly or indirectly infringe the '509 patent.

22. Absent a declaration of non-infringement, Polyguard will continue to wrongfully allege that Isel's products infringe the '509 patent, thereby causing Isel irreparable injury and damage.

COUNT ONE
DECLARATORY JUDGMENT OF NON-INFRINGEMENT OF THE '509 PATENT

23. The allegations of paragraphs 1 through 22 are incorporated by reference into Count I as though fully set forth therein.

24. As a result of the acts described in the preceding paragraphs, there exists a controversy of sufficient immediacy and reality to warrant the issuance of a declaratory judgment of non-infringement.

25. A judicial declaration is necessary and appropriate so that Isel may ascertain its rights regarding its IRS-1726, and any product with the same composition as IRS-1726, and the '509 patent.

26. Isel is entitled to a declaratory judgment that its IRS-1726, and any product with the same composition as IRS-1726, does not infringe and has not infringed, either directly or indirectly, any claims of the '509 patent for at least the following reasons. The composition of IRS-1726 has varied slightly over the life of the product, but such variance is not relevant to the non-infringement positions set forth herein—each position described below applies to all current and past iterations of IRS-1726.

27. Each and every claim of the '509 patent requires “at least one synthetic base oil.” Isel’s IRS-1726, and any product with the same composition as IRS-1726, does not include, and has never included, a synthetic base oil or any equivalent thereof. Accordingly, IRS-1726, and any product with the same composition as IRS-1726, cannot infringe any claim of the '509 patent.

28. Claims 3, 8, and 12 of the '509 patent each require a “silica containing material” containing either calcium silicate, potassium silicate, or sodium silicate. Isel’s

IRS-1726, and any product with the same composition as IRS-1726, does not include, and has never included, either calcium silicate, potassium silicate, or sodium silicate, or any equivalents thereof. Accordingly, IRS-1726, and any product with the same composition as IRS-1726, cannot infringe claims 3, 8, and 12 of the '509 patent.

29. Claims 6, 9-12, and 14-19 of the '509 patent each require "at least one photoinitiator." Isel's IRS-1726, and any product with the same composition as IRS-1726, does not include, and has never included, a photoinitiator or any equivalents thereof. Accordingly, IRS-1726, and any product with the same composition as IRS-1726, cannot infringe claims 6, 9-12, and 14-19 of the '509 patent.

PRAYER FOR RELIEF

WHEREFORE, Isel respectfully requests that the Court enter a Judgment and Order against Polyguard as follows:

(a) Adjudging that Isel has not infringed and is not infringing, either directly or indirectly, any claim of the '509 patent, in violation of 35 U.S.C. § 271;

(b) A judgment that Polyguard and each of its officers, directors, agents, counsel, servants, employees and all of persons in active concert or participation with any of them, be restrained and enjoined from alleging, representing, or otherwise stating that Isel infringes any claims of the '509 patent or from instituting or initiating any action or proceeding alleging infringement of any claims of the '509 patent against Isel or any customers, manufacturers, users, importers, or sellers of IRS-1726 or any product with the same composition as IRS-1726;

(c) Declaring Isel as the prevailing party and this case as exceptional, and awarding Isel its reasonable attorneys' fees, pursuant to 35 U.S.C. § 285;

(d) That Polyguard be ordered to pay all fees, expenses and costs associated with this action; and

(e) Awarding such other and further relief as this Court deems just and proper.

Dated: November 27, 2017

Respectfully submitted,

s/ Robert S. Hill

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