UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

MOLTEN METAL EQUIPMENT INNOVATIONS, INC., Plaintiff, **v.** **PYROTEK INC.,** Defendant.	Case No. Judge **Complaint For Declaratory Judgment And Injunctive Relief**

Plaintiff Molten Metal Equipment Innovations, Inc. ("MMEI"), for its Complaint for Declaratory Judgment and Injunctive Relief against Defendant Pyrotek Inc. ("Pyrotek"), states as follows:

INTRODUCTION

1. This is an action for declaratory judgment pursuant to 28 U.S.C. § 2201, et seq. to resolve a present controversy between MMEI and Pyrotek and to enjoin an arbitration for patent unenforceability initiated by Pyrotek.

2. MMEI and Pyrotek have previously been involved in patent infringement litigation.

3. Following certain patent litigation between MMEI and Pyrotek, they entered into a Settlement Agreement ("Settlement") dated February 22, 2006.

4. The Settlement requires the parties to arbitrate certain patent infringement disputes.

5. Pursuant to the Settlement, MMEI filed an arbitration demand for patent infringement with the American Arbitration Association ("AAA") that resulted in AAA Case No. 53 117 00283 09 (the "First Arbitration").

6. In the First Arbitration Pyrotek alleged that U.S. Patent Nos. 6,303,074 ("'074 patent") and 7,402,276 (the "'276 patent") were unenforceable.

7. The First Arbitration culminated in a Reasoned Award ("Award") issued on February 19, 2010.

8. The Reasoned Award found that Pyrotek had infringed the '074 patent and that neither the '074 patent or '276 patent was unenforceable.

9. MMEI filed an application to confirm the Award with this Court on February 22, 2010, which is case no. 1:10-cv-00388-DAP.

10. Pyrotek filed a Motion to Vacate Arbitration Award and Response to Molten Metal Equipment Innovations, Inc's Application to Confirm Arbitration Award ("Motion to Vacate") on April 12, 2010.

11. On March 12, 2010 Pyrotek filed a Demand For Arbitration with the AAA, Case No. 75 133 00156 10 JEMO, seeking an arbitration of the issue of "unenforceability" of the '074 patent and the '276 patent. This arbitration is referred to herein as the "Second Arbitration."

12. "Unenforceability" is a statutory defense to patent infringement under 35 U.S.C. § 282.

13. Pyrotek bases the Second Arbitration on patent unenforceability issues that were already raised in the First Arbitration.

14. Pyrotek's exclusive legal recourse to challenge an issue raised in the First Arbitration is to move to vacate the Award in this Court under the Federal Arbitration Act ("FAA"), which it has already done.

15. Pyrotek also bases its patent unenforceability allegations in the Second Arbitration on it having sent drawings to MMEI, to which MMEI did not respond.

16. MMEI has no duty to respond to drawings sent to it by Pyrotek.

17. MMEI has not threatened Pyrotek with patent infringement or made a claim of patent infringement based on Pyrotek's drawings.

18. MMEI seeks relief from this Court in the form of an Order declaring that there is no justiciable controversy of patent unenforceability and no arbitral issue. MMEI also seeks injunctive relief in the form of an Order directing Pyrotek to immediately withdraw its Second Arbitration and cease from proceeding with said arbitration.

JURISDICTION AND VENUE

19. This Court has federal question jurisdiction over this action pursuant to 28 U.S.C. §§ 1131 and 1338 in that this action is based whether there is a justiciable claim of patent unenforceability, which arises under the patent laws, 35 U.S.C. § 1 et seq. 9 U.S.C § 4.

20. This Court also has diversity jurisdiction over this action since MMEI is an Ohio corporation with its principal place of business in Middlefield, Ohio and Pyrotek is a Washington corporation with its principal place of business in Spokane, Washington. Pyrotek alleges relief in its demand for the Second Arbitration of "attorneys fees" and "arbitration costs." On information and belief, Pyrotek's attorneys' fees and costs in the First Arbitration were in excess of $75,000 exclusive of interest and costs, and Pyrotek's attorneys' fees and costs to arbitrate the Second Arbitration would be in excess of $75,000 exclusive of interest and costs.

21. There is a real and actual controversy between MMEI and Pyrotek affecting MMEI's legal interests, which this Court is authorized to resolve by declaratory judgment under 28 U.S.C. § 2201.

22. This Court has personal jurisdiction over this matter since MMEI is based in Middlefield, Ohio and Pyrotek's facility that competes with MMEI and produces products found to

infringe the ‘074 patent in the First Arbitration is based in Solon, Ohio. Furthermore, the First Arbitration took place in Cleveland, Ohio and Pyrotek sent its new drawings to MMEI in Middlefield, Ohio.

23. Venue is proper in this Court under 28 U.S.C. §§ 1391 and 1400 for the reasons set forth in the preceding paragraph.

BACKGROUND

24. MMEI initiated the First Arbitration on May 15, 2009 and the parties arbitrated whether Pyrotek infringed MMEI’s ‘074 patent or ‘276 patent.

25. Pyrotek raised the issue of “unenforceability” with respect to the ‘074 patent and ‘276 patent in the First Arbitration.

26. The First Arbitration resulted in the Award issued on February 19, 2010, for which MMEI filed its Application to Confirm the Award on February 22, 2010.

27. The Award specifically addressed the issues of unenforceability of the ‘074 patent and the ‘276 patent.

28. The Award was in full settlement of all claims and counterclaims submitted.

29. All claims not expressly granted in the Award were expressly denied.

30. The Award disposes of all the issues (except for e-mailing drawings to MMEI) Pyrotek raises in the Second Arbitration.

31. The Award addresses the issue of whether declarations from U.S. Patent No. 6,345,964 (the “‘964 patent”) show whether the dual-flow rotors of U.S. Patent No. 5,944,496 (the “‘496 patent”) were used in the field.

32. The Award found that the declarations from the ‘964 patent are not evidence of the dual-flow rotors of the ‘496 patent being used in the field.

33. The ‘964 patent declarations were known to Pyrotek for years before the First Arbitration commenced.

34. The ‘496 patent declarations were known to Pyrotek for years before the First Arbitration commenced.

35. Pyrotek’s only recourse regarding issues raised in the First Arbitration is to challenge the Award under the FAA.

36. Pyrotek sent MMEI drawings after the Award was issued seeking infringement analyses by MMEI.

37. MMEI never responded to Pyrotek about the drawings referenced in the preceding paragraph.

38. A drawing cannot infringe the ‘074 patent or ‘276 patent.

39. MMEI has not threatened any action on Pyrotek’s drawings.

40. MMEI has no duty to render opinions on Pyrotek’s drawings.

41. MMEI has not made a claim of infringement against Pyrotek other than the ones raised as part of the First Arbitration.

42. Pyrotek has no reasonable apprehension of MMEI filing an arbitration demand for patent infringement against Pyrotek based on Pyrotek’s drawings.

43. On March 10, 2010, the parties held a telephonic conference with this Court and Pyrotek raised allegations of Arbitrator bias and alleged fraud by MMEI.

44. Pyrotek did not inform the Court in the March 10, 2010 conference that it was going to file a second arbitration demand.

45. On March 12, 2010, two days after the conference with this Court, Pyrotek filed its demand for the Second Arbitration, and the nature of the dispute states: “Unenforceability of U.S. Patent No. 6,303,074 and U.S. Patent No. 7,402,276 arising from inequitable conduct.”

46. The only monetary relief Pyrotek requests in the Second Arbitration is attorneys fees and arbitration costs.

47. “Unenforceability” is not a claim, but a defense to patent infringement and there has been no claim of infringement by MMEI except for the ones decided in the First Arbitration.

48. MMEI’s and Pyrotek’s respective positions regarding the propriety of the Second Arbitration have been set forth in MMEI’s letter to the AAA dated March 26, 2010, Pyrotek’s response letter of April 5, 2010, and MMEI’s reply letter of April 7, 2010.

49. The AAA responded on May 6, 2010 to the parties’ respective letters referenced in the preceding paragraph and stated that as a neutral administrative organization it would empanel an arbitrator absent a court order.

50. MMEI would suffer irreparable harm from being compelled to expend substantial time, resources and money to re-arbitrate patent unenforceability issues already raised in the First Arbitration.

51. MMEI would suffer irreparable harm from being compelled to arbitrate plainly non-justiciable patent unenforceability issues.

52. MMEI would be irreparably harmed if Pyrotek continued to manufacture and sell products that have been found to infringe the ‘074 patent.

53. MMEI would be irreparably harmed if Pyrotek delays in satisfying the patent infringement damages in the Award.

54. The Settlement permits arbitration to be brought only if there is a claim of infringement.

55. The Settlement permits arbitration to be initiated only by the party claiming infringement.

56. All claims of the ‘276 patent that were asserted against Pyrotek in the First Arbitration were held to be invalid.

COUNT ONE
CLAIM FOR DECLARATORY JUDGMENT

57. MMEI incorporates, as if fully rewritten herein, the allegations contained in the preceding paragraphs of this Complaint.

58. This Court has the power pursuant to 28 U.S.C. § 2201 to declare the legal rights and obligations of the parties here, regardless of whether further relief is or could be sought.

59. This Court has the power to determine questions as to whether issues of patent unenforceability were raised in the First Arbitration and are now subject only to confirmation or vacatur under the FAA.

60. This Court has the power to determine questions as to whether Pyrotek’s sending drawings to MMEI creates a justiciable issue of unenforceability under the patent laws.

61. A real and justiciable controversy exists between MMEI and Pyrotek requiring the Court to interpret the parties' rights and obligations with respect to the patent unenforceability allegations raised in the Second Arbitration.

62. MMEI is entitled to a declaration that there is no justiciable issue of patent unenforceability between MMEI and Pyrotek.

63. Immediate relief is necessary to prevent Pyrotek from proceeding with the Second Arbitration.

COUNT TWO
PRELIMINARY AND PERMANENT INJUNCTION

64. MMEI incorporates, as if fully rewritten herein, the allegations contained in the preceding paragraphs of this Complaint.

65. By instituting the Second Arbitration, Pyrotek is attempting to re-arbitrate patent unenforceability issues that were part of the First Arbitration.

66. Pyrotek's Second Arbitration is an improper attempt to obtain a potentially different result for patent unenforceability than that which Pyrotek obtained in the First Arbitration.

67. By instituting the Second Arbitration, Pyrotek is also attempting to arbitrate patent unenforceability based on it sending drawings to MMEI.

68. Pyrotek’s sending of drawings to MMEI does not create a justiciable controversy under the patent laws.

69. MMEI has a strong likelihood of success on the merits in this matter because Pyrotek is attempting to re-arbitrate patent unenforceability matters that were already raised in the First Arbitration.

70. MMEI has a strong likelihood of success on the merits in this matter because there is no justiciable issue of patent unenforceability based on Pyrotek having sent drawings to MMEI.

71. Without the issuance of an injunction ordering Pyrotek to withdraw the Second Arbitration, MMEI will suffer irreparable harm in being forced to expend monetary and human resources to defend itself in a needless arbitration.

72. The damages that would be suffered by MMEI as a result of Pyrotek's wrongful institution of the Second Arbitration potentially include, but are not limited to, extended business interruptions from the loss of corporate officers and employees traveling to, and participating in, arbitration proceedings; damages for which there is no adequate remedy at law.

73. Enjoining the Second Arbitration will not harm any third parties.

74. The public interest will be served by the issuance of injunctive relief by enforcing the Award from the First Arbitration and not requiring MMEI to arbitrate decided matters and non-justiciable matters.

DEMAND FOR RELIEF

WHEREFORE, MMEI requests that the Court enter orders and judgments in favor of MMEI and against Pyrotek as follows:

A. Declaring that Pyrotek's Second Arbitration is based on patent unenforceability issues raised in the First Arbitration;

B. Declaring that Pyrotek’s Second Arbitration is also based on the non-justiciable issues of Pyrotek sending MMEI drawings;

C. Declaring that MMEI is not obligated to and cannot be compelled to submit to the Second Arbitration;

D. Granting preliminary and permanent injunctive relief and directing Pyrotek to immediately withdraw its Second Arbitration and cease from proceeding with said arbitration; and

E. Granting such other and further relief, whether legal or equitable, as the Court may find appropriate, including costs and reasonable attorneys fees.

Dated: June 4, 2010

Respectfully submitted,

s/ Martha S. Sullivan

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