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Timothy Pickett and James Peterson

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION**

**FRONTIER WATER SYSTEMS, LLC, a
Delaware Limited Liability Company,
TIMOTHY PICKETT, an Individual, and
JAMES PETERSON, an Individual,**

Plaintiffs,

v.

**GENERAL ELECTRIC COMPANY., a
New York Corporation,**

Defendant.

**FIRST AMENDED COMPLAINT AND
JURY DEMAND**

Case No. 2:17-cv-00261-PMW

Magistrate Judge Paul M. Warner

Plaintiffs Frontier Water Systems, LLC (“Frontier”), Timothy Pickett (“Pickett”) and James Peterson (“Peterson”), hereby allege for their First Amended Complaint against Defendant General Electric Company (“GE”), as follows:

THE PARTIES

1. Frontier is a Delaware limited liability company with its principal place of business at 8 East Broadway Street, Suite 330, Salt Lake City, Utah.

2. Timothy Pickett is an individual residing in Salt Lake City, Utah, and an employee of Frontier.

3. James Peterson is an individual residing in San Diego, California, and an employee of Frontier.

4. GE is a New York corporation with its principal place of business at 41 Farnsworth Street, Boston, Massachusetts. GE asserts that it is the owner of United States Patent Nos. 7,790,034 (“’034 patent”), 7,550,087 (“’087 patent”) and 8,163,181 (“’181 patent”), true and correct copies of which are attached hereto as Exhibits 1-3, respectively. GE further alleges that it is the owner of all rights and benefits to alleged contracts between Zenon Environmental, Inc. and Timothy Pickett and James Peterson. A true and correct copy of the alleged agreement with James Peterson is attached as Exhibit 4. GE has not provided an alleged signed agreement with Timothy Pickett.

JURISDICTION AND VENUE

5. This Complaint is brought pursuant to the Declaratory Judgment Act, codified at 28 U.S.C. §§ 2201 et seq. Declaratory judgment jurisdiction exists because there is an actual controversy between Frontier and GE as to whether Frontier infringes claims 1 and 9 of the ‘034 patent, claim 1 of the ‘087 patent and claim 1 of the ‘181 patent. Declaratory jurisdiction further exists because there is an actual controversy as to whether Pickett and Peterson have breached any alleged agreements with GE and whether said alleged agreements are enforceable.

6. Subject matter jurisdiction is proper in this Court pursuant to 28 U.S.C. §§ 1331 and 1338(a) because this action arises under the patent laws of the United States, including, but not limited to 35 U.S.C. §§ 271, 281 and 285. Supplemental jurisdiction exists for the related breach of contract claim under 28 U.S.C. §1367(a).

7. Personal jurisdiction is proper in this Court because GE has engaged in substantial and continuous enforcement activities for the '034, '087, and '181 patents in Salt Lake City, Utah. As set forth below, those activities at a minimum include sending cease and desist letters to Salt Lake City accusing Frontier and its project contractor of infringement of the asserted patents, and travelling to Salt Lake City to assert infringement against Frontier and the project contractor to demand inappropriate and unreasonable licensing fees. Moreover, the inventions claimed in the '034, '087, and '181 patents were at least in substantial part conceived and reduced to practice in Salt Lake City.

8. Personal jurisdiction is further proper at a minimum because any alleged contracts between GE and Pickett and Peterson were negotiated and performed in Salt Lake City and GE has sent letters to Salt Lake City alleging breach of contract by both Pickett and Peterson in Salt Lake City.

9. Venue is proper under 28 U.S.C. § 1391(a)-(c) because GE is subject to personal jurisdiction in this Court and a substantial part of the events giving rise to this declaratory judgment action occurred in this district and division.

FACTS

10. Frontier is the pioneer and leading supplier of premium engineered equipment packages for high rate treatment of selenium, nitrate, and metals in heavy industry wastewater.

11. As it relates to this dispute, Frontier offers for sale its proprietary SeHawk biological reactor ("bioreactor") that is used in the treatment of selenium in wastewater resulting from flue gas desulfurization ("FGD") scrubbers at coal-fired power plants. Selenium is a toxic contaminant whose presence in wastewater is regulated by the EPA and other regulatory

agencies, and must be removed to minimum levels from wastewater before it is released by a power plant.

12. Frontier's proprietary SeHawk® bioreactor uses a microbial respiration process that reduces selenium to a solid state which is then removed from the water. The SeHawk bioreactor does not "soften" wastewater (i.e., remove dissolved calcium and magnesium) through lime or other physical or chemical pretreatment.

13. GE, through its Water & Process Technologies division, competes with Frontier through the offer for sale and sale of its comprehensive wastewater treatment systems that include bioreactors for the removal of selenium resulting from FGD scrubbers.

14. On or about July 8, 2016, GE sent two of Frontier's principals "Cease and Desist" letters accusing Frontier's Systems of infringing the '034, '087, and '181 patents owned by GE. More specifically, the letters stated that "Based on information and beliefs, the Systems infringe several of GE's patents, including most, if not all of the following claims: claims 1 and 9 of the '034 patent; claim 1 of the '087 patent; and claim 1 of the '181 patent." A true and correct copy of GE's cease and desist letters are attached hereto as Exhibits 5 and 6.

15. GE's "Cease and Desist" letters, among other things, also stated: "If Frontier continues to infringe by selling, offering to sell, piloting, or manufacturing the Systems in the United States or other geographies where patent family members are issued, GE will have no choice but to take the appropriate legal action." *Id.*

16. Frontier denied and continues to deny GE's infringement allegations and has attempted to resolve them with GE. GE, however, has demanded inappropriate and unreasonable licensing fees for Frontier to offer for sale or sell its accused SeHawk bioreactor for use in FGD scrubbers at coal-fired power plants.

17. GE has also accused a Salt Lake City contractor that sells water treatment system(s) that are used in combination with Frontier's SeHawk bioreactor of infringing the '034, '087, and '181 patents. GE has also advised several of Frontier's coal-fired plant customers that their use of Frontier's SeHawk bioreactor constitutes infringement of the '034, '087, and '181 patents.

18. GE has travelled to Salt Lake City to attempt to enforce its '034, '087, and '181 patents and demanded inappropriate and unreasonable licensing fees in this district.

19. In addition to its allegations of patent infringement, GE has asserted in separate and identical September 15 and December 2, 2015 letters to Pickett and Peterson, respectively, that they are each "potentially in violation of" their alleged confidentiality contractual obligations in their alleged contracts and that GE "therefore demand(s) that that you immediately cease and desist all such activities that are contrary to said obligations." A true and correct copy of GE's September 15 and December 2, 2015 letters are attached hereto as Exhibits 7 and 8. Pickett and Peterson have denied and continue to deny that they have used any confidential information to develop the SeHawk bioreactor or otherwise.

20. As a result of GE's infringement accusations and demands, and the denials and rejections by Frontier, Pickett and Peterson, there is a case of actual controversy concerning patent infringement between the parties under the Declaratory Judgment Act, 28 U.S.C. § 2201, and jurisdiction is proper in this Court. GE's breach accusations and demands, and the denials and rejections by Pickett and Peterson, as well as the vagueness and overbreadth of the alleged contracts at issue, also creates an actual controversy between the parties under the Declaratory Judgment Act, 28 U.S.C. § 2201, as to at least one contract's existence, and as to the validity, scope and breach of any alleged contracts.

COUNT 1:

DECLARATORY JUDGMENT OF NONINFRINGEMENT OF THE '034 PATENT

21. Frontier incorporates and realleges the allegations of paragraphs 1-20 as if fully set forth herein in their entirety.

22. Frontier does not directly infringe, nor induce or contribute to the infringement of claims 1 or 9 of the '034 patent for, at a minimum, the reasons set forth below.

23. As to claim 1, neither Frontier nor any third party “soften the water stream” as required by claim 1 because softening water requires a pH level of 10 or more and the pH level of a wastewater treatment system that uses the SeHawk bioreactor is maintained at or about a pH level of 8.5.

24. As to claims 1 and 9, neither Frontier nor any third party “have” only the claimed elements and instead perform several additional steps using additional components, including at least an ultrafiltration step to polish the final effluent, a system to add polymer, and biological treatment to remove metals and contaminants other than selenium.

25. As to claim 9, neither Frontier nor any third party provide “one or more reactors configured to provide denitrification and selenium removal by biological treatment” because in a FGD wastewater treatment system that uses the SeHawk bioreactor denitrification occurs at a different time and place, not in the SeHawk bioreactor.

26. As to claim 9, neither Frontier nor any third party add “lime or sulfides” because a wastewater system that uses the SeHawk bioreactor adds both lime and sulfides.

27. Frontier has a good faith belief that its SeHawk bioreactor is not used in any wastewater treatment system for gas flue desulfurization that directly infringes the '034 patent.

28. Frontier's SeHawk bioreactor implements a known, immaterial component of the patented inventions, and has substantial non-infringing uses, such as for selenium removal in mining and agricultural operations.

29. Frontier seeks a declaration that it does not infringe the '034 patent either directly or through inducement or contribution under 35 U.S.C. § 271(a)-(c).

COUNT 2:

DECLARATORY JUDGMENT OF NONINFRINGEMENT OF THE '087 PATENT

30. Frontier incorporates and realleges the allegations of paragraphs 1-29 as if fully set forth herein in their entirety.

31. Frontier does not directly infringe, nor induce or contribute to the infringement of claim 1 of the '087 patent for, at a minimum, the reasons set forth below

32. As to claim 1, neither Frontier nor any third party "soften the liquid" as required by claim 1 because softened liquid requires a pH level of 10 or more and a wastewater treatment system that uses a SeHawk bioreactor is maintained at or about a pH level of 8.5.

33. As to claim 1, neither Frontier nor any third party perform the step of "ammonia stripping of the liquid" because that step is not performed in any fashion by a wastewater treatment system that uses the SeHawk bioreactor.

34. As to claim 1, neither Frontier nor any third party perform the step of "membrane separation of the liquid upstream of step (d)."

35. Frontier has a good faith belief that its SeHawk bioreactor is not used in any wastewater treatment system that directly infringes the '087 patent.

36. Frontier's SeHawk bioreactor implements a known, immaterial component of the patented invention, and has substantial non-infringing uses, such as for water treatment systems that do not perform ammonia stripping.

37. Frontier seeks a declaration that it does not infringe the '087 patent either directly or through inducement or contribution under 35 U.S.C. § 271(a)-(c).

COUNT 3:
DECLARATORY JUDGMENT OF NONINFRINGEMENT OF THE '181 PATENT

38. Frontier incorporates and realleges the allegations of paragraphs 1-37 as if set forth herein in their entirety.

39. Frontier does not directly infringe, nor induce or contribute to the infringement of the '181 patent, for at least the following reasons.

40. As to claim 1, neither Frontier or any third party add "one or more nutrients" to the water flowing through the second media bed reactor because that step is not performed in any fashion by a wastewater treatment system that uses the SeHawk bioreactor.

41. Frontier has a good faith belief that its SeHawk bioreactor is not used in any wastewater treatment system for gas flue desulfurization that directly infringes the '181 patent.

42. Frontier's SeHawk bioreactor implements a known, immaterial component of the patented invention, and has substantial non-infringing uses, such as for selenium removal in mining and agricultural operations.

43. Frontier seeks a declaration that it does not infringe the '181 patent either directly or through inducement or contribution under 35 U.S.C. § 271(a)-(c).

COUNT 4:
DECLARATORY JUDGMENT OF NO BREACH AND UNENFORCEABILITY

44. Pickett and Peterson incorporate and reallege the allegations of paragraphs 1-43 as if set forth in their entirety herein.

45. Pickett and Peterson have not violated the alleged confidentiality obligations of any alleged contracts with GE and have not used any confidential information to design, develop, market or sell Frontier's SeHawk bioreactor or otherwise.

46. Paragraphs 1 and 2 of any alleged contracts are overbroad and unenforceable under Ontario, Canada law because, at a minimum, they restrict use of information that is not confidential.

47. Pickett and Peterson seek a declaration that they have not breached the alleged confidentiality obligations of any alleged contracts and that the confidentiality obligations of any alleged contracts are vague, overbroad, void and unenforceable.

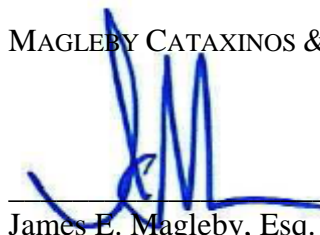
PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for an Order and entry of Judgment against GE:

- A. Declaring that Frontier does not infringe the '034 patent;
- B. Declaring that Frontier does not infringe the '087 patent;
- C. Declaring that Frontier does not infringe the '181 patent;
- D. Declaring that the alleged confidentiality obligations of any alleged contracts at issue have not been breached and are void and unenforceable;
- E. Awarding Frontier its costs incurred in this action;
- E. Declaring this case exceptional under 35 U.S.C. § 285 and awarding Frontier its reasonable attorney's fees in this action;
- F. Granting such other and further relief as the Court deems proper and just.

Dated: April 13, 2017

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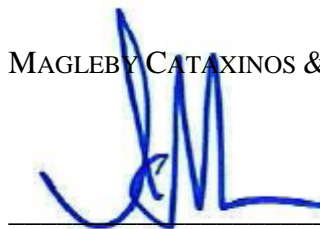
Attorneys for Plaintiffs Frontier Water Systems, LLC,
Timothy Pickett, and James Peterson

JURY DEMAND

Pursuant to Fed. R. Civ. P. 38(b), Plaintiffs Frontier Water Systems, LLC, Timothy Pickett, and James Peterson hereby demands a jury trial on all issues triable by jury.

Dated: April 13, 2017

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