

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN
MILWAUKEE DIVISION**

NUHN INDUSTRIES LTD.

Plaintiff,

v.

BAZOOKA FARMSTAR, LLC

and

TASCH'S CUSTOM LLC

Defendants.

CASE NO. 2:21-cv-01322

JURY TRIAL DEMANDED

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff, Nuhn Industries, Ltd. (“Nuhn” or “Plaintiff”), for its Complaint against Defendants Bazooka Farmstar, LLC (“Bazooka”) and Tasch’s Custom LLC (“Tasch’s”) (collectively “Defendants”), alleges as follows:

NATURE OF THE ACTION

1. This is an action for patent infringement under 35 U.S.C. § 271, *et. seq.*, by Nuhn against Defendants for infringement of United States Patent Nos. 9,694,636 (“the ‘636 Patent”) and 10,974,557 (“the ‘557 Patent”) (collectively “the Nuhn Patents”) by making, using, selling, and/or offering to sell the “Wolverine Agitation Boat” in the United States.

PARTIES

2. Nuhn is a corporation organized and existing under the laws of the province of Ontario, Canada, having a principal place of business at 4816 Line 34, Sebringville, ON N0K 1X0

Canada.

3. Among numerous other products, Nuhn markets an amphibious pumping vehicle for use in agitating manure lagoons, that is known as the Lagoon Crawler. The Lagoon Crawler is covered by claims of the Nuhn Patents.



4. Nuhn has sold the Lagoon Crawler to customers within this District.

5. On information and belief, Bazooka is a limited liability company organized and existing under the laws of the state of Iowa, having a principal place of business at 800 E. 7th Street, Washington, IA 52353. On information and belief, Bazooka is registered to do business in the State of Wisconsin and may be served through its registered agent Scott Szymanek 800 E. 7th Street, Washington, IA 52353.

6. On information and belief, Tasch's is a limited liability company organized and existing under the laws of the state of Wisconsin, having a principal place of business at N10212 St. Paul Rd., Malone, WI 53049. On information and belief, Tasch's is registered to do business in the State of Wisconsin and may be served through its registered agent Chad M. Tasch at N9900 Saint Paul Rd., Malone, WI 53049-1308.

JURISDICTION AND VENUE

7. This Court has subject matter jurisdiction over the matters asserted in this Complaint under 28 U.S.C. §§ 1331 and 1338(a) because the claims herein arise under the patent laws of the United States, 35 U.S.C. § 1 et seq., including 35 U.S.C. § 271.

8. On information and belief, Defendants are subject to this Court's specific and general personal jurisdiction, pursuant to due process and/or the Wisconsin Long Arm Statute, due at least to their substantial business in this forum, including at least because they have infringed the patents-in-suit directly and/or indirectly in this district. Defendants regularly transact business in the State of Wisconsin and within this District. Defendants engage in other persistent courses of conduct and derive substantial revenue from products and/or services in the State of Wisconsin and this District, and have purposefully established substantial, systematic, and continuous contacts within this District and should reasonably expect to be sued in a court in this District.

9. On information and belief, this Court has personal jurisdiction over Bazooka because it has committed acts of patent infringement and/or contributed to and/or induced acts of patent infringement by others in the State of Wisconsin and in this District. On information and belief, Bazooka directly has made, used, offered to sell, sold, and/or advertised (including through websites) in the United States, including to customers located within the State of Wisconsin and this District, including co-defendant Tasch's, products that infringe one or more claims of the Nuhn patents. On information and belief, Bazooka has purposefully and voluntarily placed the infringing products into the stream of commerce with the awareness, expectation, and/or intent that they will be purchased by consumers in the State of Wisconsin and in this District.

10. On information and belief, this Court has personal jurisdiction over Tasch's because Tasch's is located in the State of Wisconsin and in this District. Further, Tasch's has

committed acts of patent infringement and/or contributed to and/or induced acts of patent infringement by others in the State of Wisconsin and in this District. On information and belief, Tasch's directly has offered to sell, sold, and/or advertised in the United States, including to customers located within the State of Wisconsin and this District, products that infringe one or more claims of the Nuhn patents.

11. Venue is proper in this judicial district under 28 U.S.C. §§ 1391(b), (c) and 1400(b). On information and belief, Defendants have transacted business in this District and have committed acts of direct and indirect infringement in this District by, among other things, using, offering to sell, and selling products that infringe the Nuhn Patents to businesses in this District.

NUHN'S LEGACY OF INNOVATION

12. Nuhn is a family-owned business that was founded in 1902 as Nuhn Welding & Manufacturing in Wartburg, Ontario, Canada. Initially, the business specialized in making horseshoes.

13. Since its founding, Nuhn has consistently adapted to changing needs in the farming industry, creatively providing solutions to that industry. For example, in 1965, Dennis Nuhn made the company's first liquid manure spreader. The spreader was fabricated from an old gas tank with airplane tires.

14. Nuhn's legacy of creativity has led to the development of a broad patent portfolio consisting of innovative, unique designs related to the liquid manure handling industry. The first such patent was an innovative dual tanker design that allows farmers to increase loads by up to 70%, with greater ease of handling.

15. An additional patented innovation is an alley vacuum that allows for the cleanup of manure in dairy barns. The inventions described and claimed in these patents have revolutionized

how dairy barns are made and how liquid manure is handled.

16. As yet another example, Nuhn developed a multi-pump outlet that enables 30% more volume with the same horsepower as a conventional pump. This patented innovation has taken over the industry given the time savings, fuel savings, and better performance.

17. This lawsuit concerns another significant innovation from Nuhn, its Lagoon Crawler amphibious agitation vehicle, which is covered by the claims of the Nuhn Patents.

18. Prior to this innovation, in 2009-2010 the best solution for pumping out a manure lagoon was an agitator that required a long pump driven by a tractor along the bank of a lagoon. Depending on the size of the lagoon, as many as four pump/tractor combinations were required to adequately mix the lagoon, and not leave any solids behind. To the extent this pump/tractor method was not sufficiently effective, lagoon operators would be required to scoop out residual solids from the pit.

19. While other agitation boat devices were introduced to the market, they had numerous drawbacks that the Nuhn Patents overcame. For example, the Lagoon Crawler made it easier for the vehicle to enter and exit the lagoon. A typical lagoon has a berm that requires navigation both up and then back down. Prior art designs required a trailer to launch the boat. Compounding this difficulty was the fact that the terrain around a lagoon is often muddy and wet. Indeed, a typical problem with the prior art boats was that they would get stuck on the bank or enter the lagoon too quickly and nosedive under the liquid.



20. Relatedly, prior art designs were often ineffective in exiting the lagoon, either because they got stuck in the mud at the bottom of the lagoon or got stuck on “islands” of solid buildup in the lagoon. This could lead to safety concerns when a tractor used chains to pull the boat from the lagoon. If the boat was stuck in the mud, the chains were known to break, endangering the drivers of the tractors.

21. The inventions of the Nuhn Patents solved these considerable deficiencies in the prior art designs. As an all-terrain, amphibious vehicle, the Nuhn inventions allowed for superior agitation without fear of the vehicle becoming stuck either on the lagoon floor or islands of solid waste that may have formed. Indeed, the Lagoon Crawler, which is a commercial embodiment of the inventions claimed in the Nuhn Patents, was an instant success leading to significant commercial success, as well as copying by Bazooka and Tasch’s.

THE PATENTS-IN-SUIT

22. On July 4, 2017, U.S. Patent No. 9,694,636, entitled “Amphibious Pumping

Vehicle,” was duly and legally issued by the United States Patent and Trademark Office. A true and accurate copy of the ‘636 Patent is attached hereto as Exhibit 1.

23. On April 13, 2021, U.S. Patent No. 10,974,557, entitled “Amphibious Pumping Vehicle,” was duly and legally issued by the United States Patent and Trademark Office. A true and accurate copy of the ‘557 Patent is attached hereto as Exhibit 2.

THE WOLVERINE SERIES AGITATION BOAT

24. Upon information and belief, in early 2021, Bazooka began marketing its Wolverine Series agitation boat. *See* May 13, 2021, video published on YouTube.com (<https://www.youtube.com/watch?v=ehAHKL442as>).

25. The Wolverine Series boat is marketed as a floating vehicle that can be driven into a manure lagoon in view of four “large diameter, aggressive tires [that] make climbing out of steep banks effortless.” (<https://bazookafarmstar.com/wolverine-series/>).

26. The Wolverine Series boat also includes a fluid nozzle connected to a pump. The pump is powered by an engine. (https://bazookafarmstar.com/wp-content/uploads/2021/05/IMG_3850-straightened-1024x683.jpg).



27. Lastly, Bazooka advertises that the Wolverine Series boat is controllable by a remote control. (<https://bazookafarmstar.com/wp-content/uploads/2021/04/GOPR1101->

1620x1080.jpg).

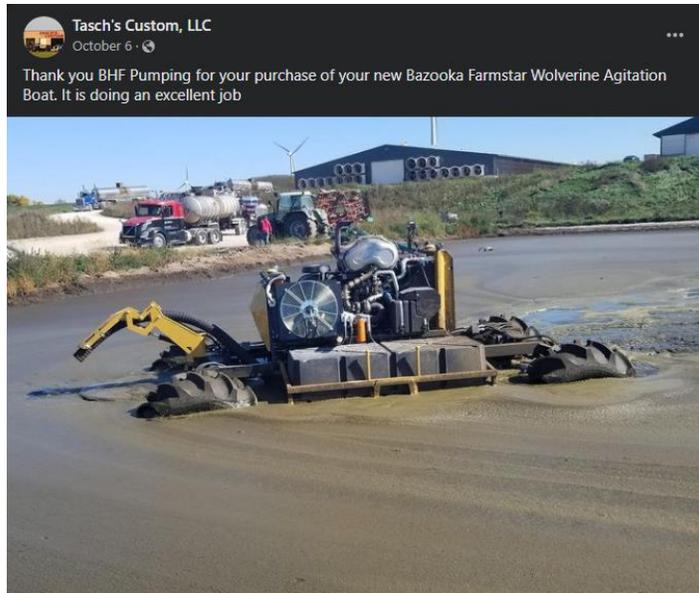


28. Upon information and belief, Bazooka has made, used, sold, and/or offered for sale the Wolverine Series boat in this District, including to Tasch's.



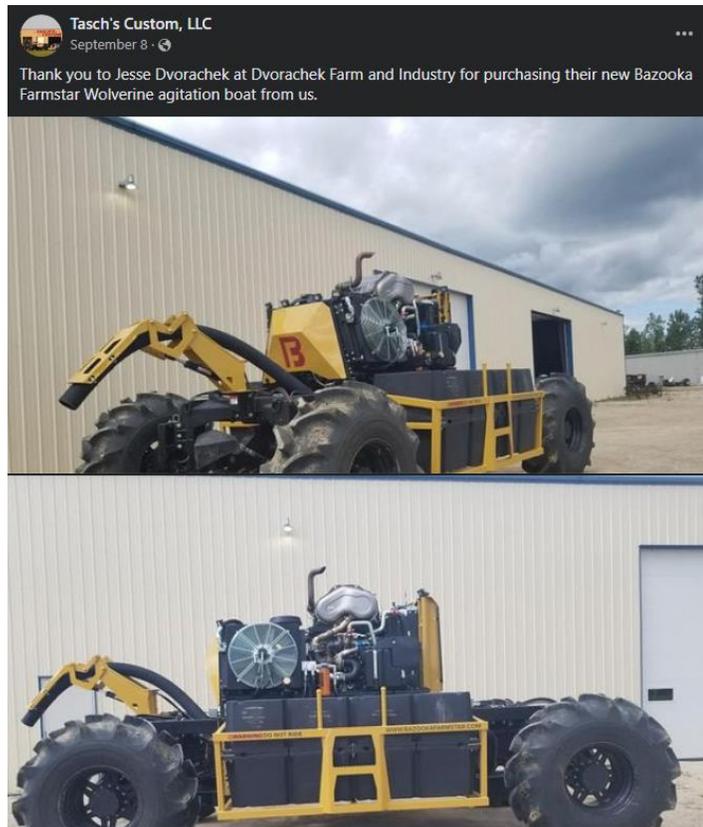
(<https://www.facebook.com/bazookafarmstar>)

29. Relatedly, Tasch's has also used, sold, and/or offered for sale the Wolverine Series boat in this district, including to BHF Pumping of Campbellsport, Wisconsin.



(<https://www.facebook.com/taschscustomllc>).

30. Upon information and belief, Tasch's has also used, sold, and/or offered for sale the Wolverine Series boat to Dvorachek Farm & Industry, LLC of Billion, Wisconsin.



(<https://www.facebook.com/taschscustomllc>)

31. Upon information and belief, Tasch's has also used, sold, and/or offered for sale the Wolverine Series boat to Eisentraut AG Services of Waldo, Wisconsin.



(<https://www.facebook.com/taschscustomllc>)

DEFENDANT BAZOOKA'S KNOWLEDGE OF THE PATENTS-IN-SUIT

32. On April 14, 2021, Bazooka was notified of its infringement by way of the letter attached hereto as Exhibit 3.

FIRST CAUSE OF ACTION

(Infringement of the '636 Patent by Bazooka)

33. Nuhn incorporates by reference and realleges each and every allegation of paragraphs 1 through 32 as if set forth herein.

34. Nuhn owns all substantial right, title, and interest in and to the '636 Patent,

including the sole and exclusive right to prosecute this action and enforce the '636 Patent against infringers, and to collect damages for all relevant times.

35. The '636 Patent generally describes an amphibious vehicle that is equipped for pumping, including the pumping of liquid manure, such as animal manure contained in a farm lagoon.

36. The written description of the '636 Patent describes in technical detail each of the limitations of the claims, allowing a skilled artisan to understand the scope of the claims and how the non-conventional and non-generic combination of claim limitations is patentably distinct from and improved upon what may have been considered conventional or generic in the art at the time of the invention.

37. Bazooka has made, used, sold, and/or offered for sale products, including its Wolverine Series Agitation Boat, that infringe one or more claims of the '636 Patent.

38. As set forth in the attached non-limiting claim chart (Exhibit 4), upon information and belief, Bazooka, without authorization or license from Nuhn, has directly infringed and continues to directly infringe at least Claim 1 of the '636 Patent, either literally or under the doctrine of equivalents, by making, having made, using, distributing, selling, and/or offering for sale the Wolverine Series Agitation Boat.

39. Nuhn has been damaged as a result of the infringing conduct by Bazooka alleged above. Thus, Bazooka is liable to Nuhn in an amount that compensates it for such infringement, which by law cannot be less than a reasonable royalty, together with interest and costs as fixed by this Court under 35 U.S.C. § 284.

40. Bazooka's infringement of the '636 Patent has caused, and will continue to cause, Nuhn to suffer substantial and irreparable harm.

41. Nuhn is entitled to injunctive relief in accordance with 35 U.S.C. § 283.

42. Bazooka has been aware that it infringes the '636 Patent since at least April 14, 2021, upon the receipt of the letter attached as Exhibit 3. Since obtaining knowledge of its infringing activities, Bazooka has failed to cease its infringing activities.

43. Bazooka's infringement of the '636 Patent is, has been, and continues to be, willful, intentional, deliberate, and/or in conscious disregard of Nuhn's rights under the patent, justifying a trebling of damages under 35 U.S.C. § 284.

44. Bazooka's infringement is exceptional and entitles Nuhn to attorneys' fees and costs under 35 U.S.C. § 285.

45. Nuhn has complied with the marking requirements of 35 U.S.C. § 287 with respect to the '636 Patent.

SECOND CAUSE OF ACTION

(Infringement of the '636 Patent by Tasch's)

46. Nuhn incorporates by reference and realleges each and every allegation of paragraphs 1 through 45 as if set forth herein.

47. Tasch's has used, sold, and/or offered for sale products, including the Wolverine Series Agitation Boat, that infringe one or more claims of the '636 Patent.

48. As set forth in the attached non-limiting claim chart (Exhibit 4), upon information and belief, Tasch's, without authorization or license from Nuhn, has directly infringed and continues to directly infringe at least Claim 1 of the '636 Patent, either literally or under the doctrine of equivalents, by using, distributing, selling, and/or offering for sale the Wolverine Series Agitation Boat.

49. Nuhn has been damaged as a result of the infringing conduct by Tasch's alleged

above. Thus, Tasch's is liable to Nuhn in an amount that compensates it for such infringement, which by law cannot be less than a reasonable royalty, together with interest and costs as fixed by this Court under 35 U.S.C. § 284.

50. Tasch's infringement of the '636 Patent has caused, and will continue to cause, Nuhn to suffer substantial and irreparable harm.

51. Nuhn is entitled to injunctive relief in accordance with 35 U.S.C. § 283.

52. Nuhn has complied with the marking requirements of 35 U.S.C. § 287 with respect to the '636 Patent.

THIRD CAUSE OF ACTION

(Infringement of the '557 Patent by Bazooka)

53. Nuhn incorporates by reference and realleges each and every allegation of paragraphs 1 through 52 as if set forth herein.

54. Nuhn owns all substantial right, title, and interest in and to the '557 Patent, including the sole and exclusive right to prosecute this action and enforce the '557 Patent against infringers, and to collect damages for all relevant times.

55. The '557 Patent generally describes an amphibious vehicle that is equipped for pumping, including the pumping of liquid manure, such as animal manure contained in a farm lagoon.

56. The written description of the '557 Patent describes in technical detail each of the limitations of the claims, allowing a skilled artisan to understand the scope of the claims and how the non-conventional and non-generic combination of claim limitations is patentably distinct from and improved upon what may have been considered conventional or generic in the art at the time of the invention.

57. Bazooka has made, used, sold, and/or offered for sale products, including its Wolverine Series Agitation Boat, that infringe one or more claims of the '557 Patent.

58. As set forth in the attached non-limiting claim chart (Exhibit 5), upon information and belief, Bazooka, without authorization or license from Nuhn, has directly infringed and continues to directly infringe at least Claim 1 of the '557 Patent, either literally or under the doctrine of equivalents, by making, having made, using, distributing, selling, and/or offering for sale the Wolverine Series Agitation Boat.

59. Nuhn has been damaged as a result of the infringing conduct by Bazooka alleged above. Thus, Bazooka is liable to Nuhn in an amount that compensates it for such infringement, which by law cannot be less than a reasonable royalty, together with interest and costs as fixed by this Court under 35 U.S.C. § 284.

60. Bazooka's infringement of the '557 Patent has caused, and will continue to cause, Nuhn to suffer substantial and irreparable harm.

61. Nuhn is entitled to injunctive relief in accordance with 35 U.S.C. § 283.

62. Bazooka has been aware that it infringes the '557 Patent since at least April 14, 2021, upon the receipt of the letter attached as Exhibit 3. Since obtaining knowledge of its infringing activities, Bazooka has failed to cease its infringing activities.

63. Bazooka's infringement of the '557 Patent is, has been, and continues to be, willful, intentional, deliberate, and/or in conscious disregard of Nuhn's rights under the patent, justifying a trebling of damages under 35 U.S.C. § 284.

64. Bazooka's infringement is exceptional and entitles Nuhn to attorneys' fees and costs under 35 U.S.C. § 285.

65. Nuhn has complied with the marking requirements of 35 U.S.C. § 287 with respect

to the '557 Patent.

FOURTH CAUSE OF ACTION

(Infringement of the '557 Patent by Tasch's)

66. Nuhn incorporates by reference and realleges each and every allegation of paragraphs 1 through 65 as if set forth herein.

67. Tasch's has used, sold, and/or offered for sale products, including the Wolverine Series Agitation Boat, that infringe one or more claims of the '557 Patent.

68. As set forth in the attached non-limiting claim chart (Exhibit 5), upon information and belief, Tasch's, without authorization or license from Nuhn, has directly infringed and continues to directly infringe at least Claim 1 of the '557 Patent, either literally or under the doctrine of equivalents, by using, distributing, selling, and/or offering for sale the Wolverine Series Agitation Boat.

69. Nuhn has been damaged as a result of the infringing conduct by Tasch's alleged above. Thus, Tasch's is liable to Nuhn in an amount that compensates it for such infringement, which by law cannot be less than a reasonable royalty, together with interest and costs as fixed by this Court under 35 U.S.C. § 284.

70. Tasch's infringement of the '557 Patent has caused, and will continue to cause, Nuhn to suffer substantial and irreparable harm.

71. Nuhn is entitled to injunctive relief in accordance with 35 U.S.C. § 283.

72. Nuhn has complied with the marking requirements of 35 U.S.C. § 287 with respect to the '557 Patent.

PRAYER FOR RELIEF

Wherefore, Nuhn respectfully requests that the Court enter judgment in its favor and against Defendants on the patent infringement claims set forth above and respectfully requests that this Court:

- (a) enter judgment that, under 35 U.S.C. §§ 271(a) and (b), both Bazooka and Tasch's have directly infringed at least one claim of the '636 Patent;
- (b) enter judgment that, under 35 U.S.C. §§ 271(a) and (b), both Bazooka and Tasch's have directly infringed at least one claim of the '557 Patent;
- (c) in accordance with 35 U.S.C. § 283, enjoin Defendants, and all affiliates, employees, agents, officers, directors, attorneys, successors, and assigns and all those acting on behalf of or in active concert or participation with Defendants, preliminarily and permanently from infringing the '636 Patent;
- (d) in accordance with 35 U.S.C. § 283, enjoin Defendants, and all affiliates, employees, agents, officers, directors, attorneys, successors, and assigns and all those acting on behalf of or in active concert or participation with Defendants, preliminarily and permanently from infringing the '557 Patent;
- (e) award Nuhn all available and legally permissible damages and relief sufficient to compensate Nuhn for Defendants' infringement of the '636 Patent, including to the full extent permitted by 35 U.S.C. § 284, together with interest, in an amount to be determined at trial;
- (f) award Nuhn all available and legally permissible damages and relief sufficient to compensate Nuhn for Defendants' infringement of the '557 Patent, including to the full extent permitted by 35 U.S.C. § 284, together with interest, in an amount to be

determined at trial;

- (g) award Nuhn treble damages under 35 U.S.C. § 284 as a result of Bazooka's willful and deliberate infringement of the '636 Patent;
- (h) award Nuhn treble damages under 35 U.S.C. § 284 as a result of Bazooka's willful and deliberate infringement of the '557 Patent;
- (i) declare this to be an exceptional case under 35 U.S.C. § 285 and award Nuhn costs, expenses, and disbursements in this action, including reasonable attorneys' fees; and
- (j) award Nuhn such other and further relief that this Court deems just and proper.

JURY DEMAND

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Nuhn hereby demands a trial by jury on all issues triable of right by a jury.

Date: November 16, 2021

s/Scott E. Yackey
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