

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

HIP, INC.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	C.A. No. _____
	)	
HORMEL FOODS CORPORATION,	)	
	)	
Defendant.	)	

**COMPLAINT FOR CORRECTION OF  
PATENT INVENTORSHIP AND OWNERSHIP**

Plaintiff HIP, Inc. (“Plaintiff” or “HIP”) files this Complaint against Defendant Hormel Foods Corporation (“Defendant” or “Hormel”) for correction of inventorship and ownership of U.S. Patent No. 9,980,498 (the “’498 Patent”).

HIP files this Complaint out of an abundance of caution in view of Hormel’s pending challenge to HIP’s standing in the related lawsuit, C.A. No. 18-802 (CFC) (the “18-802 Case”). HIP believes it has standing in the 18-802 Case, but in an effort to moot Hormel’s challenge, reduce the burden of jurisdictional disagreements on the Court and the parties, and to allow the parties to focus on the merits of the dispute, which are now reflected in a Joint Pretrial Order and accompanying materials filed in the 18-802 Case, HIP files the instant lawsuit to obviate any issue as to standing at the onset of the lawsuit. HIP intends to move to consolidate this case with the 18-802 Case, allowing the consolidated case to move forward on the merits.

**PARTIES**

1. HIP, Inc., is an Oklahoma corporation with its principal place of business in Dallas, Texas. HIP, Inc. was formerly known as Unitherm Food Systems, Inc.
2. Upon information and belief, Defendant Hormel Foods Corporation is a Delaware

corporation with its principal place of business in Austin, Minnesota. At present, Hormel Foods Corporation is erroneously listed as the owner of record of the '498 Patent by virtue of assignments received from the currently named "inventors."

### **NATURE OF THIS ACTION**

3. This is an action for correction of inventorship and ownership arising under the patent laws of the United States, section 256 of Title 35 of the United States Code.

### **JURISDICTION AND VENUE**

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

5. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391(b), 1391(c), and 1400(b) because Defendant resides in this District.

### **FACTUAL BACKGROUND**

6. The true and sole inventor of all of the subject matter claimed in the '498 Patent is HIP's president, David Howard. HIP, Inc. has standing to bring this action for correction of inventorship and ownership by virtue of the May 29, 2018 assignment from David Howard to HIP (*see* C.A. No. 18-802, D.I. 5, Exhibit J), attached hereto as Exhibit I, and/or the April 14, 2021 Quitclaim and Assignment from Marlen International, Inc. ("Marlen") to HIP of all rights that Unitherm LLC or Marlen may have had in the '498 Patent, attached hereto as Exhibit H. HIP reserves the right to bring a further action for correction of inventorship and ownership of any other related Hormel patent application should such application issue as a patent.

### **The '498 Patent**

7. The '498 Patent, titled "Hybrid Bacon Cooking System," was issued by the U.S. Patent and Trademark Office on May 29, 2018. The '498 Patent issued from U.S. Patent Application Serial No. 13/207,065, which was filed on August 10, 2011, and claims the benefit of

Provisional Patent Application No. 61/372,560, which was filed on August 11, 2010. A copy of the '498 Patent is attached hereto as Exhibit A.

8. Through error, the “inventors” currently named in the '498 Patent are Brian J. Srsen, Richard M. Herreid, James E. Mino, and Brian E. Hendrickson. At present, Defendant Hormel Foods Corporation is erroneously listed as the owner of record of the '498 Patent by virtue of assignments which Hormel Foods Corporation has received from all of the named “inventors.”

9. The true and sole inventor of all the subject matter claimed in the '498 Patent is Plaintiff's president, David Howard. Through error, David Howard was omitted as the sole inventor of the '498 Patent. This Complaint therefore seeks a correction of inventorship under 35 U.S.C. §256(b) to name David Howard as the sole inventor of the '498 Patent. Since David Howard assigned all of his rights in the '498 Patent to HIP, this Complaint seeks transfer of ownership of the '498 Patent, and all pending foreign patent applications and/or foreign patents in any way based on U.S. Patent Application Serial No. 13/207,065, Provisional Patent Application No. 61/372,560 and/or the '498 Patent to HIP, the equitable title holder.

10. The '498 Patent has a total of 16 claims. Claim 1 calls for a method of making precooked bacon pieces using a hybrid cooking system, comprising:

- a) preheating bacon pieces with a microwave oven to a temperature of 140°F to 210°F to create preheated bacon pieces, the preheating forming a barrier with melted fat around the preheated bacon pieces and reducing an amount of condensation that forms on the preheated bacon pieces when transferred to a cooking compartment of an oven, the barrier preventing any condensation that forms from contacting the preheated bacon pieces under the melted fat and diluting flavor in the preheated bacon pieces;

- b) transferring the preheated bacon pieces to the cooking compartment of the oven, the cooking compartment heated with steam from an external steam generator, the external steam generator being external to the cooking compartment, the steam being injected into the cooking compartment and being approximately 400°F to 1000°F when the steam leaves the external steam generator, the cooking compartment including internal surfaces, the steam assisting in keeping the internal surfaces at a temperature below 375°F (i.e., the smoke point of bacon fat) thereby reducing off flavors during cooking in the cooking compartment; and
- c) cooking the preheated bacon pieces in the cooking compartment to a water activity level of 0.92 or less to create precooked bacon pieces.

11. The remaining claims 2-16 of the '498 Patent either repeat certain limitations called for in claim 1 or variously call for: (i) cooking bacon slices having a thickness of 0.25 inch (6.35 millimeters) or less; (ii) the steam level in the cooking compartment being greater than 90%; (iii) the preheater being either a microwave, infrared or hot air oven; or (iv) the cooking compartment including a heating element to preheat the compartment.

12. The only oven disclosed in the '498 Patent and used in the patent examples for cooking the preheated bacon is a Unitherm Mini Spiral Oven.

**The Prior Related Patent of David Howard (The “Howard Patent”)**

13. On December 6, 2016, HIP’s president, David Howard, was issued U.S. Patent No. 9,510,610 for a “Process for Producing Precooked Bacon Slices” (the “Howard Patent”). The Howard Patent was duly and legally issued by the U.S. Patent and Trademark Office to HIP as the assignee of the inventor, Mr. Howard. A copy of the Howard Patent is attached hereto as Exhibit

B.

14. The Howard Patent discloses and claims various embodiments of what has been referred to as the “Unitherm Process” wherein precooked sliced bacon products are prepared by cooking the bacon in a superheated steam environment in a spiral oven. As expressly called for in claim 2 of the Howard Patent, the Unitherm Process can also optionally include a preheating step.

15. The process claimed in the ’498 Patent is an embodiment of the Unitherm Process which includes a preheating step. Specifically, the process claimed in the ’498 Patent is an embodiment of the Unitherm Process wherein the bacon is preheated in a microwave or other oven prior to cooking the bacon in a superheated steam environment in a spiral oven.

#### **Prior Related Proceedings Between the Parties**

16. On September 29, 2014, more than two years and two months prior to the issuance of the Howard Patent, Plaintiff brought suit against Hormel in the U.S. District Court for the District of Minnesota (*Unitherm Food Systems, Inc. v. Hormel Foods Corporation and Hormel Foods Corporate Services, LLC*, Case No.: 0:14-CV-04034-JNE/BRK (D. Minn.)) for breach of a Mutual Confidential Disclosure Agreement (the “MCDA”) and a Joint Development Agreement (the “JDA”) between the parties. Relevant to the present case, Plaintiff also brought a claim for declaratory relief under the terms of the JDA naming Plaintiff the owner of the Hormel patent application for the ’498 Patent.

17. Hormel counterclaimed for (i) breach of the JDA, (ii) a declaration of ownership under the JDA of Hormel’s own patent application for the ’498 Patent, and (iii) a declaration of ownership of the Unitherm Process as disclosed in Plaintiff’s then pending application for the Howard Patent.

18. On September 14, 2016, more than two and one half months prior to the issuance of the Howard Patent and more than 20 months prior to the issuance of the ’498 Patent, a final judgment was entered by the Federal District Court in Minnesota in which the court dismissed,

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