

NOTE: This disposition is nonprecedential.

**United States Court of Appeals  
for the Federal Circuit**

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**CIMLINE, INC.,**  
*Plaintiff-Appellant,*

v.

**CRAFICO, INC.,**  
*Defendant-Appellee.*

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2010-1348

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Appeal from the United States District Court for the District of Minnesota in case no. 07-CV-3997, Judge Richard H. Kyle.

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Decided: March 2, 2011

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PAUL R. SMITH, Foley & Mansfield, PLLP, of Minneapolis, Minnesota, argued for plaintiff-appellant. With him on the brief was LAURIS A. HEYERDAHL.

CASEY A. KNISER, Patterson Thunte Christensen Pedersen, P.A., of Minneapolis, Minnesota, argued for defendant-appellee. With him on the brief was ERIC H. CHADWICK.

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Before RADER, *Chief Judge*, GAJARSA and PROST, *Circuit Judges*.

PROST, *Circuit Judge*.

Plaintiff-Appellant Cimline, Inc. (“Cimline”) appeals the district court’s dismissal of its complaint seeking, inter alia, a declaration of invalidity or noninfringement of U.S. Patent No. 5,967,375 (“’375 patent”) and the court’s sua sponte entry of summary judgment in favor of Defendant-Appellee CrafcO, Inc. (“CrafcO”) on its counterclaim for infringement. *Cimline, Inc. v. CrafcO, Inc.*, 672 F. Supp. 2d 916 (D. Minn. 2009). Thereafter, the parties stipulated to \$25,000 in damages for infringement of the ’375 patent and the district court entered an injunction against Cimline. We *affirm-in-part, vacate-in-part* and *reverse-in-part* the district court’s judgment because the ’375 patent is invalid.

#### BACKGROUND

Cimline and CrafcO are competitors in the market for the manufacture and sale of sealant melters. Sealant melters are heavy machinery equipment that are often trailered and used to heat and melt blocks of sealant. The melted sealant is poured into cracks in roadway surfaces to seal them and prevent further deterioration of the roadway. Early sealant melters did not include conveyor belts. Thus, heavy sealant blocks were hoisted to the top of the sealant melter box and dropped into a reservoir tank, sometimes called the “kettle.” This manual task posed some danger to the operator, since the sealant blocks are heavy and can cause hot sealant to splash back

onto the operator when dropped into the kettle. Hot sealant can cause serious burns.

In the mid-1990s, employees of the Pennsylvania Department of Transportation (“PennDOT”) sought a better way to load sealant blocks into the melter. PennDOT made modifications to sealant melters purchased from CrafcO. Specifically, PennDOT added a manual conveyor belt attached to a splash box affixed at the top of the kettle. Propelled by gravity, sealant blocks would travel down the manual conveyor belt and drop through a hinged door at the top of the splash box. The hinged door would prevent hot sealant from splashing back when the sealant block was dropped into the kettle. Because sealant blocks traveled down the manual conveyor belt under the force of gravity, only one block at a time could be loaded onto the conveyor belt.

CrafcO sent an employee to PennDOT to observe the modifications to its machine. Thereafter, CrafcO sent a letter to PennDOT warning it that CrafcO would not honor the warranty on modified sealant melters and that CrafcO could not be held liable for injuries resulting from use of the modified melters. Later, CrafcO attended a sales meeting with PennDOT and PennDOT requested that CrafcO make a sealant melter similar to the modified melters, but having a powered conveyor belt that could drop sealant blocks through a splash box. CrafcO agreed and assigned the redesign project to a new employee, Mr. David Barnes. Ultimately, Mr. Barnes, the named inventor, delivered a redesigned sealant melter satisfying PennDOT’s requirements and CrafcO filed a patent application on this redesign, which matured into the ’375 patent.

Though the extent of Mr. Barnes's knowledge of the scope of the prior art at the time of invention is in dispute, the actual scope of the prior art is not. First, CrafcO sold sealant melters without conveyor belts or splash boxes in the 1990s. Those sealant melters were modified by PennDOT to add manual conveyor belts and splash boxes. The record evidence shows, however, that CrafcO built and delivered sealant melters to the Texas Department of Transportation in the 1980s. Those sealant melters included both a manual conveyor belt and a splash box. It is unclear why CrafcO sold sealant melters without a conveyor belt and a splash box to PennDOT in the 1990s when it had previously sold sealant melters with a conveyor belt and a splash box in the 1980s. It is undisputed, however, that sealant melters using a manual conveyor belt and a splash box were in the prior art since at least the 1980s.

The '375 patent issued on October 19, 1999, with twenty-three claims. CrafcO asserts three dependent claims: claims 4, 5, and 23. Claims 4 and 5 depend from claim 1, which requires:

A sealant melter, comprising:

(A) mobile frame;

(B) heated sealant tank mounted on said frame, said sealant tank having a liquid sealant discharge opening and an upper sealant block inlet opening;

(C) a splash box disposed above said inlet opening of said sealant tank, said splash box having an upper splash box inlet and having a lower splash

box outlet disposed above said inlet opening of said sealant tank; and

(D) a sealant block conveyor which conveys sealant blocks from a source to said splash box inlet, said sealant block conveyor having 1) a discharge end positioned adjacent said splash box inlet and 2) an inlet end; and wherein said inlet end of said sealant block conveyor is vertically adjustable relative to said frame.

Claim 4 adds the requirement that the “sealant block conveyor is a powered conveyor” and claim 5 adds a requirement to the sealant melter of claim 4, wherein the device includes a control assembly mounted at the inlet end of the sealant block conveyor. J.A. 73. Claim 23 depends from independent claim 21, which includes additional limitations on the dimensions of the splash box and a requirement that the splash guard close before the sealant block enters the pool of melted sealant in the kettle. Figure 1, shown below, includes a depiction of an exemplary embodiment of a sealant melter being towed by a vehicle.

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