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**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE**

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)	
BlazeFrame Industries, Ltd., a Washington Corporation,)	Case No.
)	
Plaintiff,)	COMPLAINT FOR PATENT
)	INFRINGEMENT AND TORTIOUS
v.)	INTERFERENCE WITH BUSINESS
)	EXPECTANCIES
California Expanded Metal Products Co. (CEMCO), a California Corporation,)	
)	
Defendant.)	
_____)	

Pursuant to Fed. R. Civ. P. 7, 8, and 10, Plaintiff BlazeFrame Industries, Ltd., ("BlazeFrame") brings this action against Defendant California Expanded Metal Products Co. ("CEMCO") and alleges as follows:

1 non-federal claims are so closely related to the federal claim of patent infringement that they
2 form part of the same case or controversy and derive from a common nucleus of operative facts).

3 5. Venue is appropriate under 28 U.S.C. § 1391(a) and (b) in that a substantial part
4 of the events or omissions giving rise to the claims occurred within the Western District of
5 Washington, and 28 U.S.C. § 1400(a) in that defendant CEMCO and its agents may be found
6 within the Western District of Washington, and CEMCO conducts a substantial volume of
7 business in Washington State.

8 6. This Court has jurisdiction over the "person" of Defendant CEMCO, consistent
9 with the principles of due process and the Washington State Long Arm Statute, because CEMCO
10 maintains offices and facilities in the Western District of Washington, offers its infringing
11 products for sale in the Western District of Washington, has transacted business in this district,
12 and has committed, contributed to, and induced acts of patent infringement in this district. The
13 Court may exercise jurisdiction over CEMCO under general jurisdiction principles, because the
14 volume of commercial activity that CEMCO engages in makes it "present" throughout the State
15 of Washington, and under "specific" jurisdiction principles because a significant volume of
16 CEMCO's revenues derives from the infringing products at issue in this case. Finally, CEMCO
17 has appointed an agent for receipt of process in Washington State, which constitutes consent to
18 be sued in that state.

19 FACTUAL BACKGROUND

20 7. Plaintiff BlazeFrame is the assignee and owner of all right, title, and interest in
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1 several patents, including U.S. Patent No. 8,056,293 (the '293 patent), issued on November 15,
2 2011 and entitled "Head-of-Wall Fireblock Systems and Related Wall Assemblies." A true and
3 correct copy of the '293 patent is attached as **Exhibit A** to this Complaint. BlazeFrame is also
4 the assignee and owner of all right, title, and interest in U.S. Patent No. 8,136,314 (the '314
5 patent), issued on March 20, 2012 and entitled "Head-of-Wall Fireblocks." A true and correct
6 copy of the '314 patent is attached as **Exhibit B** to this Complaint. Finally, BlazeFrame is also
7 the assignee and owner of all right, title, and interest in U.S. Patent No. 7,814,718 (the '718
8 patent), issued on October 19, 2010 and entitled "Head-of-Wall Fireblocks." A true and correct
9 copy of the '718 patent is attached as **Exhibit C** to this Complaint. At a general level, these three
10 patents ("patents-in-suit" or "BlazeFrame patents") relate to fire retardant head-of-wall
11 assemblies. The patents-in-suit and each claim of those patents are presumed to be valid.

12 8. BlazeFrame provided CEMCO with direct, actual knowledge of the patents-in-
13 suit through correspondence and through discussions involving CEMCO's potential license of
14 these and other patents. Those discussions, while protracted, yielded no licensing agreement,
15 with the result that CEMCO is not licensed under the patents-in-suit and has no right to use those
16 patents.

17 9. Defendant CEMCO makes, uses, sells, and offers to sell, and/or contributes to or
18 induces others to make, use, sell, or offer to sell products that infringe the patents-in-suit literally
19 and/or under the doctrine of equivalents and directly and/or indirectly. One such line of
20 infringing products is the FAS TRACK product line. CEMCO has continued to sell infringing
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1 products, such as the FAS TRACK product line, even though it has actual notice of the patents-
2 in-suit and of the objectively high likelihood that its actions constitute infringement of one or
3 more valid patents. CEMCO has been recklessly indifferent to BlazeFrame's patent rights and is
4 willfully infringing BlazeFrame's patents-in-suit.

5 **FIRST COUNT**
6 **(Infringement of the '293 Patent)**

7 10. Plaintiff BlazeFrame incorporates each of the allegations contained in paragraphs
8 1-9 of this Complaint as if fully set forth here.

9 11. Defendant CEMCO makes, uses, sells, and offers to sell within the United States,
10 and/or imports into the United States, a series of products called FAS TRACK products that
11 infringe claims 1, 2, and 3 of the '293 patent, literally or under the doctrine of equivalents. A
12 true and correct copy of a brochure describing many of the features of the FAS TRACK products
13 is attached to this Complaint as **Exhibit D**.

14 12. Claim 1 of the '293 patent reads as follows:

15 A header track for use in a stud wall assembly, comprising: a generally U-shaped
16 top header track comprising a web and a pair of flanges, the web having a top
17 surface and the flanges extending generally perpendicularly from opposing sides
18 of the web; at least one strip of intumescent material coupled to the header track,
19 the strip of intumescent material extending lengthwise relative to the header track
20 with at least a portion of the strip of intumescent material located on a first
21 portion of an outward-facing surface of one of the pair of flanges; an elongate
22 protrusion extending lengthwise along the one flange, wherein the elongate
protrusion is positioned between the at least one strip of intumescent material and
a second portion of the outward-facing surface of the one flange; and wherein the
intumescent material has a top portion that extends beyond the top surface of the
web.

1 ('293 patent, claim 1) (**Exhibit A**).

2 13. The FAS TRACK products, as depicted and described in **Exhibit D**, literally meet
3 all limitations of claim 1 of the '293 patent. The FAS TRACK products are header tracks for use
4 in a stud wall assembly. (Exhibit D at 6-7). They are plainly U-shaped top header tracks with a
5 web (a central plane of metal) and flanges on opposite sides of the web. (See Illustrations,
6 Exhibit D at 4; see also Digital Photographs attached as **Exhibit E**). The FAS TRACK products
7 have at least one strip of intumescent material "coupled to the header track." (Exhibit D at 4)
8 (specifically described as intumescent material).

9 14. On the FAS TRACK, the "at least one strip of intumescent material" extends
10 lengthwise and is located, in part, on a first portion of an outward facing surface of one flange.
11 (*Id.*). In fact, the FAS TRACK has two intumescent strips located (at least in part) on the first
12 portion of each of the two flanges. (*Id.*). The FAS TRACK also has an "elongate protrusion"
13 extending lengthwise along one flange (it actually has two) called for in claim 1 of the '293
14 patent, which is described by CEMCO in Exhibit D as an "external groove" located above the
15 "deflection slots." (Exhibit D at 4).

16 15. On the FAS TRACK products, the elongate grooves are "positioned between the
17 at least one strip of intumescent material and a second portion of the outward-facing surface of
18 the one flange," as claim 1 requires. (*Id.*; Exhibit E). Finally, on the FAS TRACK products, "the
19 intumescent material has a top portion that extends beyond the top surface of the web." This is
20 shown on page 4 of Exhibit D, where the intumescent strip bends around the top portion of the
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1 flange and onto the top surface of the web and sits on the top of the web (and thus extends
2 beyond the web at that point). The FAS TRACK products thus literally meet each and every
3 limitation of claim 1 of the '293 patent. In the event those products are deemed not to literally
4 meet one or more limitations of claim 1 of the '293 patent, then the products meet all limitations
5 of the claim literally and/or under the doctrine of equivalents.

6 16. The FAS TRACK products have two intumescent strips, one on each flange, as
7 noted above and thus also infringe claim 2 of the '293 patent literally and/or under the doctrine
8 of equivalents.

9 17. The FAS TRACK products use an adhesive to couple the intumescent strips to the
10 header track, and thus also infringe claim 3 of the '293 patent literally and/or under the doctrine
11 of equivalents. (Exhibit D at 4, 11) (strip on FAS TRACK and FAS TRACK DL2 "adhered to"
12 profile).

13 18. CEMCO also indirectly infringes claims 1, 2, and 3 of the '293 patent by inducing
14 its customers to use the infringing FAS TRACK products, which use is a direct infringement of
15 those claims. CEMCO does so knowing of the patents-in-suit, knowing that its products infringe
16 the patent claims, and intending that the induced customers infringe those claims. *See* 35 U.S.C.
17 § 271(b).

18 19. CEMCO also contributorily infringes claims 1, 2, and 3 of the '293 patent, by
19 contributing to its customers' infringing uses of the infringing FAS TRACK products.
20 Specifically, CEMCO sells and offers to sell a product or component, namely the FAS TRACK
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1 product, which constitutes a material component of the inventions described in the claims of the
2 '293 patent, knowing that component to be especially made to infringe the BlazeFrame patent
3 claims. The CEMCO FAS TRACK products are also not a staple article or commodity of
4 commerce suitable for substantial noninfringing use, as CEMCO knows. *See* 35 U.S.C. § 271(c).

5 20. CEMCO's infringement of claims 1, 2, and 3 of the '293 patent is ongoing and
6 willful. Evidence of willfulness includes the fact that CEMCO entered into negotiations with
7 BlazeFrame to license the BlazeFrame patents, but then failed to negotiate in good faith and
8 ultimately declined to take a license, thereby rendering CEMCO's continued manufacture, sale,
9 offering for sale, and use of the patented technology infringing. In a recent letter dated
10 September 28, 2012, CEMCO, through counsel, claimed that (1) it did not need a license, and (2)
11 it was nonetheless electing to "cease selling the current FAS Track product." A true and correct
12 copy of the September 28, 2012 letter from CEMCO's counsel is attached as **Exhibit F** to this
13 Complaint. CEMCO's assertion that it does not need a license, based on a dubious claim of co-
14 inventorship, is not plausible and amounts to an objectively reckless disregard of BlazeFrame's
15 patent rights.

16 21. CEMCO's ongoing infringement is irreparably harming BlazeFrame's business
17 opportunities and sales. CEMCO's ongoing infringement will continue unless enjoined by this
18 Court, preliminarily and/or permanently, under 35 U.S.C. § 283. Even if CEMCO discontinues
19 selling the FAS TRACK product, which it has not yet done, the next generation product may
20 infringe the BlazeFrame patents as well, given CEMCO's insistence that it need not take a
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1 license. BlazeFrame is also entitled to damages for CEMCO's infringement and may be entitled
2 to enhanced damages and attorneys' fees under 35 U.S.C. § 284 and § 285.

3 **SECOND COUNT**
4 **(Infringement of the '314 Patent)**

5 22. Plaintiff BlazeFrame incorporates each of the allegations contained in paragraphs
6 1-21 of this Complaint as if fully set forth here.

7 23. On information and belief, the FAS TRACK products also infringe at least claims
8 1-5 of the '314 patent. Based on the knowledge of James Klein, sole inventor of the patents-in-
9 suit, BlazeFrame believes that discovery will confirm that the composition of the intumescent
10 strips of the FAS TRACK products falls within the parameters set forth in claim 1 of the '314
11 patent. The FAS TRACK products literally meet each and every limitation of claims 1-5 of the
12 '314 patent. In the event those products are deemed not to literally meet one or more limitations
13 of those claims, then the products meet all limitations of the claims literally and/or under the
14 doctrine of equivalents.

15 24. CEMCO also indirectly infringes claims 1-5 of the '314 patent, by inducing its
16 customers to use the infringing FAS TRACK products, which use is a direct infringement of
17 those claims. CEMCO does so knowing of the patents-in-suit, knowing that its products infringe
18 the patent claims, and intending that the induced customers infringe those claims. *See* 35 U.S.C.
19 § 271(b).

20 25. CEMCO also contributorily infringes claims 1-5 of the '314 patent, by
21 contributing to its customers' infringing uses of the infringing FAS TRACK products.
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1 Specifically, CEMCO sells and offers to sell a product or component, namely the FAS TRACK
2 product, which constitutes a material component of the inventions described in claims 1-5 of the
3 '314 patent, knowing that component to be especially made to infringe the BlazeFrame patent
4 claims. The CEMCO FAS TRACK products are also not a staple article or commodity of
5 commerce suitable for substantial noninfringing use, as CEMCO knows. *See* 35 U.S.C. § 271(c).

6 26. CEMCO's infringement of claims 1-5 of the '314 patent is ongoing and willful.
7 This ongoing infringement is irreparably harming BlazeFrame's business opportunities and sales.
8 CEMCO's ongoing infringement will continue unless enjoined by this Court, preliminarily
9 and/or permanently, under 35 U.S.C. § 283. BlazeFrame is also entitled to damages for
10 CEMCO's infringement and may be entitled to enhanced damages and attorneys' fees under 35
11 U.S.C. § 284 and § 285.

12 **THIRD COUNT**
(Infringement of the '718 Patent)

13 27. Plaintiff BlazeFrame incorporates each of the allegations contained in paragraphs
14 1-26 of this Complaint as if fully set forth here.

15 28. On information and belief, the FAS TRACK products also infringe at least claim
16 12 of the '718 patent. Much of the analysis of infringement under the '293 patent, First Count
17 above, applies here as well. Claim 12 of the '718 patent reads as follows:

18 An elongated U-shaped sheet-metal track, comprising: an elongated web
19 integrally connected to a pair of spaced apart and outwardly extending sidewalls
20 with the web and sidewalls defining a U-shaped profile, each sidewall having
21 inner and outer sidewall surfaces, each sidewall having a plurality of slots
22 positioned perpendicular to the lengthwise direction of the elongated web, each

1 sidewall having a first sidewall portion adjacent to the web and a second sidewall
2 portion adjacent to the first sidewall portion; and an elongated heat expandable
3 intumescent strip affixed lengthwise on at least one of the outer sidewall surfaces
4 of the pair of sidewalls, the intumescent strip being positioned on the first
5 sidewall portion and not on the second sidewall portion.

6 (Exhibit C, Claim 12). The CEMCO FAS TRACK product meets all limitations of this claim
7 literally.

8 29. As shown in Exhibits D (page 4) and E, the FAS TRACK is an elongated U-
9 shaped, sheet-metal track. It comprises an elongated web integrally connected to a pair of spaced
10 apart and outwardly extending sidewalls. This is depicted in Fig. 2 of the patent, for example,
11 which can aid proper reading of the claim. Each of the FAS TRACK sidewalls has a plurality of
12 slots positioned perpendicularly to the lengthwise direction of the elongated web. These slots are
13 shown on page 4 of Exhibit D and are remarkably similar to the slots shown, for example, in
14 Fig. 2 of the patent specification, where the slots are each numbered 36. Each sidewall of the
15 FAS TRACK has two portions of the outer surface of the sidewall, a first and a second portion,
16 and the FAS TRACK has at least one (actually two) intumescent strips on the first portion of the
17 outer surface of the sidewall (and not on the second portion), the first portion being the portion of
18 the sidewall closer to the web. The FAS TRACK products thus literally infringe claim 12 of the
19 '718 patent.

20 30. In the event those products are deemed not to literally meet one or more
21 limitations of claim 1 of the '718 patent, then the products meet all limitations of the claim
22 literally and/or under the doctrine of equivalents.

1 31. CEMCO also indirectly infringes claim 1 of the '718 patent, by inducing its
2 customers to use the infringing FAS TRACK products, which use is a direct infringement of
3 those claims. CEMCO does so knowing of the patents-in-suit, knowing that its products infringe
4 the patent claims, and intending that the induced customers infringe those claims. *See* 35 U.S.C.
5 § 271(b).

6 32. CEMCO also contributorily infringes claim 1 of the '718 patent, by contributing
7 to its customers' infringing uses of the infringing FAS TRACK products. Specifically, CEMCO
8 sells and offers to sell a product or component, namely the FAS TRACK product, which
9 constitutes a material component of the inventions described in the claims of the '718 patent,
10 knowing that component to be especially made to infringe the BlazeFrame patent claims. The
11 CEMCO FAS TRACK products are also not a staple article or commodity of commerce suitable
12 for substantial noninfringing use, as CEMCO knows. *See* 35 U.S.C. § 271(c).

13 33. CEMCO's infringement of claim 1 of the '718 patent is ongoing and willful. This
14 ongoing infringement is irreparably harming BlazeFrame's business opportunities and sales.
15 CEMCO's ongoing infringement will continue unless enjoined by this Court, preliminarily
16 and/or permanently, under 35 U.S.C. § 283. BlazeFrame is also entitled to damages for
17 CEMCO's infringement and may be entitled to enhanced damages and attorneys' fees under 35
18 U.S.C. § 284 and § 285.

FOURTH COUNT
(Tortious Interference with Business Expectancies)

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3 34. Plaintiff BlazeFrame incorporates each of the allegations contained in paragraphs
4 1-33 of this Complaint as if fully set forth here.

5 35. Defendant CEMCO has also been actively interfering in BlazeFrame's contractual
6 relationships and/or valid business expectancies. For example, CEMCO has interfered with
7 BlazeFrame's business contracts or expectancies with ClarkWestern Building Systems. Attached
8 to this Complaint as **Exhibit G** is a true and correct copy of a letter from CEMCO to
9 ClarkWestern that specifically attempts to disrupt or interfere with the relationship between
10 ClarkWestern and BlazeFrame. CEMCO has interfered or attempted to interfere with several
11 other valid business expectancies as well.

12 36. CEMCO knew of these contracts or valid business expectancies before interfering
13 with them (*see* Exhibit G, for example), and CEMCO's interference with the contracts or
14 business expectancies was intentional, and – in some cases – caused a loss, breach, or
15 termination of the contracts or business expectancies.

16 37. CEMCO's interference has been wrongful in that it was (1) based on an improper
17 motive, and (2) conducted through improper means. CEMCO's improper motive was revenge
18 against the inventor of the BlazeFrame patents, James Klein. At one time, Mr. Klein worked for
19 CEMCO in sales and marketing. He was never hired by CEMCO as an engineer, product
20 development person, or inventor. Mr. Klein invented the inventions underlying his various
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1 BlazeFrame (and related) patents from his home, on his own time, using his own resources, and
2 without help from CEMCO. Nevertheless, CEMCO has made claims on Klein's inventions and
3 is angry and resentful that CEMCO has been unable to co-opt or seize those inventions, and the
4 BlazeFrame patents, even though CEMCO in no way helped to develop those inventions.
5 CEMCO thus seeks revenge on Mr. Klein, by telling various persons, alternately, that CEMCO
6 invented the patents or has rights to those patents, that Klein's inventions lack merit, that Klein is
7 a bad person, or other variations on those comments.

8 38. CEMCO's tortious interference has also been wrongful in that its comments have
9 been dishonest. For example, in claiming rights to Klein's inventions, CEMCO inevitably fails
10 to mention that Klein was in *sales*, not product development, that he was working from home,
11 that he never signed an inventions agreement, assignment agreement, or employment agreement,
12 and that he conceived and reduced to practice the inventions on his own time, using his own
13 resources. **RCW 49.44.140** also requires an employer to give an employee located in
14 Washington State (like Klein) a specific notice regarding assignment of inventions, which
15 CEMCO never provided to Klein. In short, there *is no plausible basis for CEMCO to claim*
16 *rights in Klein's inventions*. Yet, CEMCO continues to do so as a way of damaging Klein's and
17 BlazeFrame's business opportunities and as a thin justification for CEMCO's patent
18 infringement.

19 39. BlazeFrame has lost millions of dollars in sales as a result of CEMCO's tortious
20 interference. BlazeFrame wants to recover those damages and also seeks an injunction barring
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1 CEMCO from continuing to tortiously interfere with BlazeFrame's business expectancies.
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3 **PRAYER FOR RELIEF**

4 Plaintiff BlazeFrame Industries, Ltd., respectfully requests the Court to order or enter the
5 following relief:

6 A. An order declaring that CEMCO has infringed at least claims 1-3 of the '293 patent,
7 claims 1-5 of the '314 patent, and claim 1 of the '718 patent, directly or indirectly, and literally
8 or under the doctrine of equivalents;

9 B. An order declaring that CEMCO has tortiously interfered with BlazeFrame's valid
10 business contracts or business expectancies;

11 C. An order declaring that the asserted claims of the patents-in-suit are valid, if challenged;

12 D. An order declaring that CEMCO has no rights to practice the BlazeFrame patents, and no
13 ownership interests in those patents;

14 E. Damages adequate to compensate BlazeFrame for infringement of one or more claims of
15 the patents-in-suit, based on lost profits (if established), price erosion, another damages theory,
16 or at least a reasonable royalty;

17 F. Damages adequate to compensate BlazeFrame for CEMCO's tortious interference;

18 G. A declaration that CEMCO's infringement of the patents-in-suit has been willful and that
19 this case is exceptional under 35 U.S.C. § 285;

20 H. Enhanced damages, costs, and attorneys' fees, if appropriate, under 35 U.S.C. §§ 284, 285
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1 and other applicable provisions;

2 I. A preliminary and permanent injunction barring CEMCO, and all those in active
3 participation or concert with CEMCO, from continuing to infringe, directly or indirectly, one or
4 more claims of the patents-in-suit under 35 U.S.C. § 283;

5 J. A preliminary and permanent injunction barring CEMCO from continuing to tortiously
6 interfere with BlazeFrame's contracts or valid business expectancies;

7 K. An award of pre-judgment and post-judgment interest;

8 L. An order requiring CEMCO to destroy or deliver to BlazeFrame all infringing products;
9 and

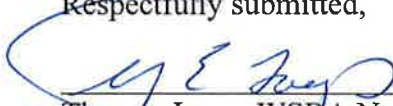
10 M. Any other relief this Court deems to be just and appropriate.

DEMAND JURY TRIAL

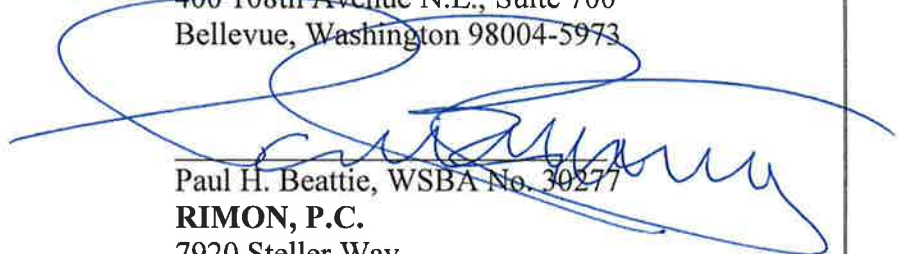
Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiff BlazeFrame hereby demands a jury trial of all issues so triable.

Dated: October 31, 2012

Respectfully submitted,



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