

**UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF NEW YORK**

DEGELMAN INDUSTRIES LTD.,

Plaintiff,

vs.

**PRO-TECH WELDING AND
FABRICATION, INC. and
MICHAEL P. WEAGLEY,**

Defendants.

**NOTICE OF APPEAL
BY DEGELMAN INDUSTRIES LTD**

**Civil Action No.
06-CV-6346**

Notice is hereby given that Degelman Industries, Ltd. (“Degelman”), plaintiff in the above-named case, hereby appeals to the United States Court of Appeals for the Federal Circuit from the following items before the United States District Court for the Western District of New York: ___ all; X part of the Verdict Form entered on March 8, 2013 (“Verdict”) [Dkt. No. 220]; and ___ all; X part of the Judgment entered on March 18, 2013 (“Judgment”) [Dkt. No. 222]; and ___ all; X part of the Amended Judgment entered on March 26, 2013 (“Amended Judgment”) [Dkt. No. 223].

Specifically, Degelman appeals from the following:

- (1) Verdict:
 - a. Each and every determination set forth in Verdict Question 9, on internal Page 10, Docket Page 11 of 15;
 - b. Each and every determination set forth in Verdict Question 10, on internal Page 11, Docket Page 12 of 15;
 - c. Each and every determination set forth in Verdict Question 11, on internal Page 12, Docket Page 13 of 15;

- d. Each and every determination set forth in Verdict Question 12, on internal Page 13, Docket Page 14 of 15;
- e. Each and every determination set forth in Verdict Question 13, on internal Page 14, Docket Page 15 of 15;

(2) Judgment:

- a. That part of the Judgment that Ordered and Adjudged that Degelman has not proven by a preponderance of the evidence that Defendants Pro-Tech or Weagley have infringed the '097 Patent for the following products: SPL Loader, SPB Backhoe, SPS Skidsteer, SPC Compact, IST Loader, IST Backhoe, IST Skidsteer, and PBS Pullback, on internal Page 2, Docket Page 2 of 3;
- b. That part of the Judgment that Ordered and Adjudged that Degelman has not proven by a preponderance of the evidence that Defendants Pro-Tech or Weagley have infringed the '128 Patent for the following products: SPL Loader, SPB Backhoe, SPS Skidsteer, SPC Compact, IST Loader, IST Backhoe, IST Skidsteer, PBS Pullback, FPL Foldout, and FTF Forklift, on internal Page 2, Docket Page 2 of 3;
- c. That part of the Judgment that Ordered and Adjudged that Degelman has not proven by a preponderance of the evidence that Defendants Pro-Tech or Weagley have infringed the '129 Patent for the following products: SPL Loader, SPB Backhoe, SPS Skidsteer, SPC Compact, IST Loader, IST Backhoe, IST Skidsteer, and PBS Pullback, on internal Pages 2-3, Docket Pages 2-3 of 3;

- d. That part of the Judgment that Ordered and Adjudged that Degelman has not proven by a by clear and convincing evidence that Defendants Pro-Tech or Weagley's infringement was willful for the following patents: '576 Patent (Claim 1), '576 Patent (Claim 2), '576 Patent (Claim 3), '576 Patent (Claim 4), '576 Patent (Claim 5), '576 Patent (Claim 6), '576 Patent (Claim 7), '576 Patent (Claim 8), '097 Patent, '128 Patent, and '129 Patent, on internal Page 3, Docket Page 3 of 3;
- e. That part of the Judgment that Ordered and Adjudged that Defendants Pro-Tech and Weagley have proven by clear and convincing evidence that Degelman's asserted utility and/or design patent claims are invalid for the following patents: '576 Patent (Claim 1), '576 Patent (Claim 2), '576 Patent (Claim 3), '576 Patent (Claim 4), '576 Patent (Claim 5), '576 Patent (Claim 6), '576 Patent (Claim 7), '576 Patent (Claim 8), '097 Patent, '128 Patent, and '129 Patent, on internal Page 3, Docket Page 3 of 3.

(3) Amended Judgment:

- a. That part of the Amended Judgment that Ordered and Adjudged that Degelman has not proven by a preponderance of the evidence that Defendants Pro-Tech or Weagley have infringed the Design Patent No. D478,097 for the following products: SPL Loader, SPB Backhoe, SPS Skidsteer, SPC Compact, IST Loader, IST Backhoe, IST Skidsteer, and PBS Pullback, on internal Page 2, Docket Page 2 of 3;
- b. That part of the Amended Judgment that Ordered and Adjudged that Degelman has not proven by a preponderance of the evidence that Defendants Pro-Tech or

Weagley have infringed the Design Patent No. D519,128 for the following products: SPL Loader, SPB Backhoe, SPS Skidsteer, SPC Compact, IST Loader, IST Backhoe, IST Skidsteer, PBS Pullback, FPL Foldout, and FTF Forklift, on internal Page 2, Docket Page 2 of 3;

- c. That part of the Amended Judgment that Ordered and Adjudged that Degelman has not proven by a preponderance of the evidence that Defendants Pro-Tech or Weagley have infringed the Design Patent No. D519,129 for the following products: SPL Loader, SPB Backhoe, SPS Skidsteer, SPC Compact, IST Loader, IST Backhoe, IST Skidsteer, and PBS Pullback, on internal Pages 2-3, Docket Pages 2-3 of 3;
- d. That part of the Amended Judgment that Ordered and Adjudged that Degelman has not proven by a by clear and convincing evidence that Defendants Pro-Tech or Weagley's infringement was willful for the following patents: Utility Patent No. 6,845,576 (Claim 1); Utility Patent No. 6,845,576 (Claim 2); Utility Patent No. 6,845,576 (Claim 3); Utility Patent No. 6,845,576 (Claim 4); Utility Patent No. 6,845,576 (Claim 5); Utility Patent No. 6,845,576 (Claim 6); Utility Patent No. 6,845,576 (Claim 7); Utility Patent No. 6,845,576 (Claim 8); Design Patent No. D478,097; Design Patent No. D519,128; and, Design Patent No. D519,129, on internal Page 3, Docket Page 3 of 3;
- e. That part of the Amended Judgment that Ordered and Adjudged that Defendants Pro-Tech and Weagley have proven by clear and convincing evidence that Degelman's asserted utility and/or design patent claims are invalid for the following patents: Utility Patent No. 6,845,576 (Claim 1); Utility

Patent No. 6,845,576 (Claim 2); Utility Patent No. 6,845,576 (Claim 3); Utility Patent No. 6,845,576 (Claim 4); Utility Patent No. 6,845,576 (Claim 5); Utility Patent No. 6,845,576 (Claim 6); Utility Patent No. 6,845,576 (Claim 7); Utility Patent No. 6,845,576 (Claim 8); Design Patent No. D478,097; Design Patent No. D519,128; and, Design Patent No. D519,129, on internal Page 3, Docket Page 3 of 3.

Degelman also appeals from all order, decisions, and opinions of the Court in this matter entered prior or subsequent to the entry of the Judgment, to the extent that such are adverse to Degelman.

Other than Degelman, the names of the parties to the above orders, judgments, and rulings are as follows: Pro-Tech Welding and Fabrication, Inc., Pro-Tech Manufacturing and Distribution, Inc., Michael P. Weagley.

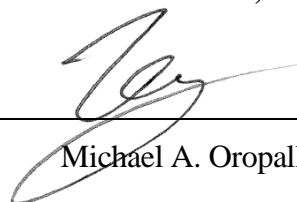
The names of the attorneys for these other parties are as follows: Donald W. O'Brien, Jr., Esq., Woods Oviatt Gilman LLP, 700 Crossroads Building, 2 State Street, Rochester, New York 14614; Michael D. Hoenig, Woods Oviatt Gilman LLP, 700 Crossroads Building, 2 State Street, Rochester, New York 14614; William G. Bauer, Woods Oviatt Gilman LLP, 700 Crossroads Building, 2 State Street, Rochester, New York 14614; and Duane C. Basch, Basch & Nickerson, LLP, 1777 Penfield Road, Lower Level, Penfield, New York 14526.

Respectfully submitted,

HISCOCK & BARCLAY, LLP

Dated: August 12, 2013

By: _____



Michael A. Oropallo

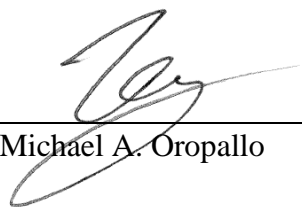
Christopher Blank
Attorneys for Plaintiff
Degelman Industries Ltd.
2000 HSBC Plaza,
100 Chestnut Street
Rochester, New York 14604
Telephone (585) 325-7570
Facsimile (585) 325-5458
E-Mail: cblank@hblaw.com

Michael A. Oropallo
John M. Nichols
One Park Place
300 South State Street
Syracuse, New York 13202
Telephone (315) 425-2831
Facsimile (315) 703-7367
E-Mail: moropallo@hblaw.com
E-Mail: jnichols@hblaw.com

CERTIFICATE OF SERVICE

I hereby certify that on August 12, 2013, I caused a Notice of Appeal to be filed with the Clerk of the Court via hand delivery, and by the CM/ECF System which sent notification of such filing to counsel of record, and to be served via first class mail upon:

Duane C. Basch, Esq.
Basch & Nickerson, LLP
1777 Penfield Road, Lower Level
Penfield, New York 14526



Michael A. Oropallo