

1 WATSON ROUNDS
Michael D. Rounds, Esq.
2 Nevada Bar No. 4734
mrounds@watsonrounds.com
3 Adam Yowell, Esq.
Nevada Bar No. 11748
4 ayowell@watsonrounds.com
5371 Kietzke Lane
5 Reno, Nevada 89511
Telephone: (775) 324-4100
6 Facsimile: (775) 333-8171

7 BANNER & WITCOFF, LTD.
Charles W. Shifley (IL. Bar No. 2587564)
8 (*pro hac vice* pending)
cshifley@bannerwitcoff.com
9 Binal J. Patel(IL. Bar No. 6237843)
(*pro hac vice* pending)
10 bpatel@bannerwitcoff.com
Timothy J. Rechten (IL. Bar No. 6293623)
11 (*pro hac vice* pending)
trechten@bannerwitcoff.com
12 Ten South Wacker Drive, Suite 3000
Chicago, Illinois 60606-7407
13 Tel: (312) 463-5000
Fax: (312) 463-5001
14 *Attorneys for Plaintiffs*

15 UNITED STATES DISTRICT COURT
16 DISTRICT OF NEVADA

17 ESCO CORPORATION and ESCO
18 CANADA, LTD.

19 Plaintiffs,

20 v.

21 CASHMAN EQUIPMENT COMPANY,
22 CATERPILLAR GLOBAL MINING LLC,
CATERPILLAR, INC., RAPTOR MINING
23 PRODUCTS (USA) INC., and RAPTOR
MINING PRODUCTS INC.

24 Defendants.

Case No.: 2:12-cv-01545-RCJ-VCF

FIRST AMENDED COMPLAINT FOR
PATENT INFRINGEMENT AND DEMAND
FOR JURY TRIAL

25 Plaintiffs ESCO Corporation (“ESCO”) and ESCO Canada, Ltd. (“ESCO Canada”)
26 (collectively the “ESCO Parties”), by and through their undersigned counsel, for their First
27 Amended Complaint against Defendants Cashman Equipment Company (“Cashman”),
28

1 Caterpillar Global Mining LLC (Caterpillar Global”), Caterpillar, Inc. (“Caterpillar”), Raptor
2 Mining Products (USA), Inc. (“Raptor USA”), and Raptor Mining Products Inc. (“Raptor”)
3 (collectively “Defendants”)¹, hereby demand a jury trial and allege as follows:

4 **JURISDICTION AND VENUE**

5 1. This is an action for patent infringement arising under the patent laws of the
6 United States, 35 U.S.C. § 1 *et seq.*, and particularly 35 U.S.C. § 271 *et seq.*

7 2. This Court has subject matter jurisdiction over this dispute pursuant to 28 U.S.C.
8 §§ 1331 and 1338(a).

9 3. This Court has personal jurisdiction over the Caterpillar Defendants because, *inter*
10 *alia*, the Caterpillar Defendants’ products, including the LM Series ground engaging tool system
11 having the CapSure® locking system (“the CapSure® system”) and the Mechanically Attached
12 Wear Plate System (“MAWPS”), have been and are sold in, distributed to and/or shipped into the
13 State of Nevada, and because upon information and belief Defendants have done and are doing
14 business in the State of Nevada.

15 4. This Court has personal jurisdiction over the Raptor Defendants because, *inter alia*,
16 the Raptor Defendants’ products, including the Predator® system, have been and are sold in,
17 distributed to and/or shipped into the State of Nevada. Upon information and belief, the Raptor
18 Defendants have knowingly and intentionally placed their products, including the Predator®
19 system, into the stream of commerce through established distribution channels expecting them to
20 be shipped into and purchased by customers in this judicial district.

21 5. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391(b)-(c) and
22 § 1400(b).

23 **THE PARTIES**

24 6. ESCO is a corporation organized and existing under the laws of the State of
25 Oregon and having a principal place of business at 2141 N.W. 25th Avenue, Portland, Oregon
26 97210.

27 _____
28 ¹ Cashman, Caterpillar and Caterpillar Global are collectively referred to herein as “Caterpillar Defendants.” Raptor
USA and Raptor are collectively referred to herein as “Raptor Defendants.”

1 applications that are essential to the productivity of ESCO and ESCO Canada’s customers’
2 machines.

3 16. ESCO Canada is the owner by assignment of U.S. Patent No. 7,640,684 (“the
4 ‘684 patent”).

5 17. The Caterpillar Defendants manufacture, import, offer to sell, and/or sell the
6 CapSure® system and/or MAWPS for heavy machinery as well as products that incorporate the
7 CapSure® system and/or MAWPS.

8 18. On information and belief, Caterpillar has had knowledge of the ‘684, ‘274, ‘693,
9 ‘621, and ‘765 patents.

10 19. On information and belief, the Raptor Defendants manufacture, import, offer to
11 sell, and sell the Predator® system for heavy machinery and equipment for various uses.

12 20. On information and belief, the Raptor Defendants have had knowledge of at least
13 the ‘684 patent.

14 21. On information and belief, the structure and operation of the CapSure® system
15 and the Predator® system are the same design. On information and belief, the locking
16 mechanisms utilized in the CapSure® system and the Predator® system are the same design.

17 22. On information and belief, at least Caterpillar and Raptor have been acting in
18 concert with one another with respect to the actions complained of herein.

19 23. On information and belief, Cashman has been and still offers for sale and sells the
20 CapSure® system, the Predator® system, and MAWPS for heavy machinery as well as products
21 that incorporate these systems.

22 **COUNT I – INFRINGEMENT OF U.S. PATENT NO. 7,640,684**

23 24. Paragraphs 1-23 are realleged and reincorporated by reference as if fully set forth
24 herein.

25 25. On January 5, 2010, the United States Patent and Trademark Office duly and
26 legally issued the ‘684 patent entitled “Torque Locking System for Fastening a Wear Member to
27 a Support Structure.” ESCO Canada is the owner of the ‘684 patent by virtue of assignment of
28

1 all rights, title, and interest to the '684 patent, including all rights to recover for all infringements
2 thereof. A true and correct copy of the '684 patent is attached to this Complaint as Exhibit A.

3 26. On information and belief, the Caterpillar Defendants have been and still are
4 infringing the '684 patent literally, directly, contributorily, by way of inducement, and/or under
5 the doctrine of equivalents by making, using, offering to sell, selling, and/or importing products
6 that are covered by one or more valid claims of the '684 patent. The past and present infringing
7 acts include, but are not limited to, manufacturing, importing, offers to sell and/or sales of the
8 CapSure® system and its associated products.

9 27. On information and belief, the Raptor Defendants and Cashman have been and
10 still are infringing the '684 patent literally, directly, contributorily, by way of inducement, and/or
11 under the doctrine of equivalents by making, using, offering to sell, selling, and/or importing
12 products that are covered by one or more valid claims of the '684 patent. The past and present
13 infringing acts include, but are not limited to, manufacturing, importing, offers to sell and/or
14 sales of the Predator® system and its associated products.

15 28. ESCO Canada has been damaged by the Defendants' infringement.

16 29. On information and belief, at least Caterpillar's and the Raptor Defendants'
17 infringement of the '684 patent has been willful.

18 30. The Defendants' acts of infringement have been without express or implied
19 license by ESCO Canada, are in violation of ESCO Canada's rights, and will continue unless
20 enjoined by this Court.

21 31. ESCO Canada has been and will continue to be irreparably harmed by the
22 Defendants' infringement of the '684 patent.

23 **COUNT II – INFRINGEMENT OF U.S. PATENT NO. 7,178,274**

24 32. Paragraphs 1-31 are realleged and reincorporated by reference as if fully set forth
25 herein.

26 33. On February 20, 2007, the United States Patent and Trademark Office duly and
27 legally issued the '274 patent entitled "Coupling Arrangement." ESCO is the owner of the '274
28 patent by virtue of assignment of all rights, title, and interest to the '274 patent, including all

1 rights to recover for all infringements thereof. A true and correct copy of the '274 patent is
2 attached to this Complaint as Exhibit B.

3 34. On information and belief, the Caterpillar Defendants have been and still are
4 infringing the '274 patent literally, directly, contributorily, by way of inducement, and/or under
5 the doctrine of equivalents by making, using, offering to sell, selling, and/or importing products
6 that are covered by one or more valid claims of the '274 patent. The past and present infringing
7 acts include, but are not limited to, manufacturing, importing, offers to sell and/or sales of the
8 CapSure® system and its associated products.

9 35. On information and belief, the Raptor Defendants and Cashman have been and
10 still are infringing the '274 patent literally, directly, contributorily, by way of inducement, and/or
11 under the doctrine of equivalents by making, using, offering to sell, selling, and/or importing
12 products that are covered by one or more valid claims of the '274 patent. The past and present
13 infringing acts include, but are not limited to, manufacturing, importing, offers to sell and/or
14 sales of the Predator® system and its associated products.

15 36. ESCO has been damaged by the Defendants' infringement.

16 37. On information and belief, at least Caterpillar's infringement of the '274 patent
17 has been willful.

18 38. The Defendants' acts of infringement have been without express or implied
19 license by ESCO, are in violation of ESCO's rights, and will continue unless enjoined by this
20 Court.

21 39. ESCO has been and will continue to be irreparably harmed by the Defendants'
22 infringement of the '274 patent.

23 **COUNT III – INFRINGEMENT OF U.S. PATENT NO. RE43,693**

24 40. Paragraphs 1-39 are realleged and reincorporated by reference as if fully set forth
25 herein.

26 41. On October 2, 2012, the United States Patent and Trademark Office duly and
27 legally issued the '693 patent entitled "Coupling Arrangement." ESCO is the owner of the '693
28 patent by virtue of assignment of all rights, title, and interest to the '693 patent, including all

1 rights to recover for all infringements thereof. A true and correct copy of the '693 patent is
2 attached to this Complaint as Exhibit C.

3 42. On information and belief, the Caterpillar Defendants have been and still are
4 infringing the '693 patent literally, directly, contributorily, by way of inducement, and/or under
5 the doctrine of equivalents by making, using, offering to sell, selling, and/or importing products
6 that are covered by one or more valid claims of the '693 patent. The past and present infringing
7 acts include, but are not limited to, manufacturing, importing, offers to sell and/or sales of the
8 CapSure® system and its associated products.

9 43. On information and belief, the Raptor Defendants and Cashman have been and
10 still are infringing the '693 patent literally, directly, contributorily, by way of inducement, and/or
11 under the doctrine of equivalents by making, using, offering to sell, selling, and/or importing
12 products that are covered by one or more valid claims of the '693 patent. The past and present
13 infringing acts include, but are not limited to, manufacturing, importing, offers to sell and/or
14 sales of the Predator® system and its associated products.

15 44. ESCO has been damaged by the Defendants' infringement.

16 45. On information and belief, at least Caterpillar's infringement of the '693 patent
17 has been willful.

18 46. The Defendants' acts of infringement have been without express or implied
19 license by ESCO, are in violation of ESCO's rights, and will continue unless enjoined by this
20 Court.

21 47. ESCO has been and will continue to be irreparably harmed by the Defendants'
22 infringement of the '693 patent.

23 **COUNT IV – INFRINGEMENT OF U.S. PATENT NO. 8,122,621**

24 48. Paragraphs 1-47 are realleged and reincorporated by reference as if fully set forth
25 herein.

26 49. On February 28, 2012, the United States Patent and Trademark Office duly and
27 legally issued the '621 patent entitled "Wear Assembly." ESCO is the owner of the '621 patent
28 by virtue of assignment of all rights, title, and interest to the '621 patent, including all rights to

1 recover for all infringements thereof. A true and correct copy of the '621 patent is attached to
2 these this Complaint as Exhibit D.

3 50. On information and belief, the Caterpillar Defendants have been and still are
4 infringing the '621 patent literally, directly, contributorily, by way of inducement, and/or under
5 the doctrine of equivalents by making, using, offering to sell, selling, and/or importing products
6 that are covered by one or more valid claims of the '621 patent. The past and present infringing
7 acts include, but are not limited to, manufacturing, importing, offers to sell and/or sales of the
8 CapSure® system and its associated products.

9 51. On information and belief, the Raptor Defendants and Cashman have been and
10 still are infringing the '621 patent literally, directly, contributorily, by way of inducement, and/or
11 under the doctrine of equivalents by making, using, offering to sell, selling, and/or importing
12 products that are covered by one or more valid claims of the '621 patent. The past and present
13 infringing acts include, but are not limited to, manufacturing, importing, offers to sell and/or
14 sales of the Predator® system and its associated products.

15 52. ESCO has been damaged by the Defendants' infringement.

16 53. On information and belief, at least Caterpillar's infringement of the '621 patent
17 has been willful.

18 54. The Defendants' acts of infringement have been without express or implied
19 license by ESCO, are in violation of ESCO's rights, and will continue unless enjoined by this
20 Court.

21 55. ESCO has been and will continue to be irreparably harmed by the Defendants'
22 infringement of the '621 patent.

23 **COUNT V – INFRINGEMENT OF U.S. PATENT NO. 5,241,765**

24 56. Paragraphs 1-55 are realleged and reincorporated by reference as if fully set forth
25 herein.

26 57. On September 7, 1993, the United States Patent and Trademark Office duly and
27 legally issued the '765 patent entitled "Lock Assembly for Wearable Structure." ESCO is the
28 owner of the '765 patent by virtue of assignment of all rights, title, and interest to the '765

1 patent, including all rights to recover for all infringements thereof. A true and correct copy of
2 the '765 patent is attached to this Complaint as Exhibit E.

3 58. On information and belief, Caterpillar and Cashman were infringing the '765
4 patent literally, directly, contributorily, by way of inducement, and/or under the doctrine of
5 equivalents by making, using, offering to sell, selling, and/or importing products that are covered
6 by one or more valid claims of the '765 patent. On information and belief, the past infringing
7 acts include, but are not limited to, manufacturing, importing, offers to sell and sales of
8 MAWPS® its associated products.

9 59. ESCO has been damaged by Caterpillar's and Cashman's infringement.

10 60. On information and belief, as least Caterpillar's infringement of the '765 patent
11 was willful.

12 61. Caterpillar's and Cashman's acts of infringement were without express or implied
13 license by ESCO and were in violation of ESCO's rights.

14 **DEMAND FOR JURY TRIAL**

15 62. The ESCO Parties have been and will continue to be irreparably harmed by
16 Defendants' acts of infringement. Pursuant to Federal Rule of Civil Procedure 38 and the
17 Seventh Amendment to the Constitution of the United States of America, the ESCO Parties
18 hereby demand a trial by jury on all issues raised in this action that are so triable.

19 **PRAYER FOR RELIEF**

20 **WHEREFORE**, the Plaintiff ESCO Parties pray that this Court award to them the
21 following relief:

- 22 A. A declaration that Defendants have been and are still infringing valid
23 claims of the '684 patent, '274 patent, '693 patent, and '621 patent
24 literally, directly, contributorily, by way of inducement, and/or under the
25 doctrine of equivalents;
- 26 B. A declaration that Caterpillar and Cashman have infringed valid claims of
27 the '765 patent literally, directly, contributorily, by way of inducement,
28 and/or under the doctrine of equivalents;

- 1 C. An injunction pursuant to Federal Rule of Civil Procedure 65 that those
2 subject to the injunction cease and desist from infringing the claims of the
3 ‘684 patent, ‘274 patent, ‘693 patent, and ‘621 patent literally, directly,
4 contributorily, by way of inducement, and/or under the doctrine of
5 equivalents;
- 6 D. An Order that Defendants notify purchasers and users of the infringing
7 products that the products infringe the ‘684 patent, ‘274 patent, ‘693
8 patent, ‘621 patent, and that Defendants recall all infringing products sold
9 or otherwise distributed;
- 10 E. An Order directing Defendants to provide an accounting to determine the
11 damages suffered by Plaintiffs as a result of Defendants’ infringing
12 conduct before it shall cease and desist, such damages of Plaintiffs
13 including, but not limited to, their lost profits and no less than a reasonable
14 royalty;
- 15 F. An Order directing Defendants to pay Plaintiffs the amount of damages
16 that they have sustained as a result of Defendants’ acts of patent
17 infringement, and that such damages be trebled for willfulness, pursuant to
18 35 U.S.C. § 284;
- 19 G. That Plaintiffs be awarded their fees and costs, including its attorneys’
20 fees pursuant to 35 U.S.C. § 285, and pre-judgment interest and post-
21 judgment interest; and
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H. That this Court award Plaintiffs such other and further relief as the Court deems just and proper.

Dated this 5th day of October 2012.

WATSON ROUNDS

By: /s/ Michael D. Rounds
MICHAEL D. ROUNDS, Nevada Bar No. 4734
ADAM YOWELL, Nevada Bar No. 11748
5371 Kietzke Lane
Reno, Nevada 89511
Tel: (775) 324-4100
Fax: (775) 333-8171

And

BANNER & WITCOFF, LTD .
Charles W. Shifley (IL. Bar No. 2587564)
(pro hac vice pending)
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(pro hac vice pending)
Timothy J. Rechten (IL. Bar No. 6293623)
(pro hac vice pending)
Ten South Wacker Drive, Suite 3000
Chicago, Illinois 60606-7407
Tel: (312) 463-5000
Fax: (312) 463-5001

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

Pursuant to FRCP 5(b), I certify that I am an employee of Watson Rounds, and that on this date a true and correct copy of the foregoing document, **FIRST AMENDED COMPLAINT FOR PATENT INFRINGEMENT AND DEMAND FOR JURY TRIAL**, will be served upon counsel of record via electronic mail through the United States District Court's CM/ECF system.

DATED October 5, 2012

/s/ Jeff Tillison
An Employee of Watson Rounds