

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN
GREEN BAY DIVISION

MICHAEL M. KAHR,

Plaintiff,

Case No. _____

v.

Jury Trial Demanded

MICHAEL E. COLE

and

IRON WORKS CONSTRUCTION COMPANY, LLC,

Defendants.

COMPLAINT

The Plaintiff, Michael M. Kahr, by his undersigned attorneys, as and for his complaint against the Defendants, Michael E. Cole and Iron Works Construction Company, LLC, alleges as follows:

INTRODUCTION

This is an action for patent infringement arising under the patent laws of the United States, 35 U.S.C. §§ 271 and 281, et. seq.

THE PARTIES

1. The Plaintiff, Michael M. Kahr (“Kahr”), is an adult individual residing at 11648 Old Stage Road, Ellison Bay, Wisconsin 54210. Among other things, Kahr fabricates and installs dock structures and assemblies.

2. Upon information and belief, the Defendant, Michael E. Cole, is an adult individual residing at 8953 State Hwy 57, Bailey’s Harbor, Wisconsin 54202, and the Defendant,

Iron Works Construction Company, LLC, is a Wisconsin limited liability company with a principal office located at 8953 State Hwy 57, Bailey's Harbor, Wisconsin 54202. Among other things, Cole and Iron Works fabricate and install dock structures and assemblies.

JURISDICTION AND VENUE

3. This Court has exclusive, original subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a) because this civil action arises under the Patent Act.

4. This Court also has personal jurisdiction over both Cole and Iron Works because, *inter alia*, both do business in the Eastern District of Wisconsin and they have violated 35 U.S.C. § 271 by distributing, selling, offering for sale and making a structure, assembly and method of construction that infringes a U.S. patent within the Eastern District of Wisconsin.

5. Venue is proper in this judicial district under 28 U.S.C. §1391(b) and (c) because both Cole and Iron Works are residents of this state and are subject to personal jurisdiction in this state.

BACKGROUND

6. Kahr's patented technology relates to a dock structure, a dock assembly and a method of constructing the dock structure and assembly used in the marine industry.

7. Docks for mooring boats along a shoreline are well known in the marine industry. There are many types of permanent and temporary structures known in the marine industry that allow such mooring and other water activities to take place, such docks allowing persons to have access to deeper parts of a body of water away from shore. However, such structures typically must be removed or, if not removed, are subject to damage due to the freeze-thaw cycles experienced in bodies of water that are located in the northern climates.

8. On January 8, 2013, U.S. Letters Patent No. 8,348,554 (“the ‘554 patent”) titled “*DOCK STRUCTURE, DOCK ASSEMBLY AND METHOD OF CONSTRUCTING THE DOCK STRUCTURE AND ASSEMBLY*” was duly and legally issued to Kahr. The application for the ‘554 patent was filed on June 4, 2010. A copy of the ‘554 patent is attached to this Complaint as **Exhibit A**.

9. The subject matter of the ‘554 patent is a permanent dock structure and assembly that is highly resistant to the freeze-thaw cycles that are experienced in bodies of water that are located in the northern climates. The subject matter of the ‘554 patent is also the method of construction used to make such dock structures and assemblies. The dock structure and assembly is also height-adjustable to allow the dock to be raised or lowered, subject to water levels that may change from time to time. The dock structure and assembly is also configured of dock elements that are placed into position and create a form into which concrete is poured to strengthen each element. Each dock element is also like-configured for uniformity and ease of construction.

10. Kahr makes and sells dock structures and assemblies in accordance with the ‘554 patent.

COLE’S AND IRON WORKS’ INFRINGING ACTIVITIES

11. Upon information and belief, Cole and Iron Works make, use, sell and offer for sale dock structures and assemblies that compete with Kahr’s patented dock structures and assemblies. A photograph of the elements made and used by Cole and Iron Works is attached to this Complaint as **Exhibit B**. **Exhibit C** to this Complaint is a photograph of a dock structure and assembly made by Cole and Iron Works in the Eastern District of Wisconsin.

12. Kahr first became aware of Cole and Iron Works' dock structures and assemblies in July, 2010.

13. Kahr, by his counsel, sent a letter to Cole and Iron Works on July 8, 2010 informing Cole and Iron Works of the application for the '554 patent and informing them of certain provisional rights that will attach to the invention upon publication of the application. A copy of that July 8, 2010 letter is attached to this Complaint as **Exhibit D**.

14. Cole and Iron Works, by their counsel, responded to the July 8, 2010 letter on July 15, 2010, requesting additional information regarding Kahr's invention and application. A copy of that July 15, 2010 letter is attached to this Complaint as **Exhibit E**.

15. Kahr's counsel responded to the July 15, 2010 letter on August 11, 2010 and provided the additional information requested. A copy of that August 11, 2010 letter is attached to this Complaint as **Exhibit F**. No further communications from counsel for Cole and Iron Works were received by Kahr's counsel subsequent to August 11, 2010.

16. The application for the '554 patent was published on January 13, 2011. A copy of that published application is attached to this Complaint as **Exhibit G**.

17. Following issuance of the '554 patent, Kahr became aware that Cole and Iron Works were continuing to make and sell infringing dock structures and assemblies and, on May 6, 2013, a letter was sent to Cole and Iron Works asserting infringement of the '554 patent. A copy of that May 6, 2013 letter is attached to this Complaint as **Exhibit H**. No response to the May 6, 2013 letter has been received.

18. Kahr did not, and has not, authorized Cole and Iron Works' to make, use, sell, or offer to sell any dock structures or assemblies practicing or embodying any claim of the '554 patent.

FIRST CAUSE OF ACTION
Infringement of the '554 Patent

19. Plaintiff repeats and realleges the allegations of Paragraphs 1 through 19 above as if fully set forth herein.

20. Upon information and belief, Cole and Iron Works are making, using, selling or offering to sell dock structures and assemblies that use, practice, embody the invention of, or otherwise infringe at least one of the claims of the '554 patent.

SECOND CAUSE OF ACTION
Willful Infringement of the '554 Patent

21. Plaintiff repeats and realleges the allegations of Paragraphs 1 through 21 above as if fully set forth herein.

22. Upon information and belief, Cole's and Iron Works' infringement of the '554 patent is knowing and willful.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiff, Michael M. Kahr, prays that this Court enter judgment in its favor and against Michael E. Cole and Iron Works of Construction Company, LLC, granting the following relief:

- A. An order declaring that Cole has infringed the '554 patent.
- B. An order declaring that Iron Works has infringed the '554 patent.
- C. An award of damages to Kahr, with interest and costs, compensating Kahr for Coles' and Iron Works' respective infringements of the '554 patent.
- D. A permanent injunction enjoining Cole and Iron Works, its officers, partners, employees, agents, parents, subsidiaries, affiliates, attorneys, and any one acting or participating with any of them, from making, selling, offering for sale or using any dock structures and assemblies that infringe the '554 patent.
- E. An award to Kahr of all other such relief the Court may deem just and equitable.

DEMAND FOR A JURY TRIAL

Plaintiff, Michael M. Kahr, hereby demands a jury trial as to the above cause of action.

Dated this 5th day of September, 2013.

s/Frank W. Kowalkowski
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