

IN THE UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

ACCENT PACKAGING, INC.	§	CIVIL ACTION NO. 4:10-cv-01362
	§	
	§	
Plaintiff,	§	
	§	Judge Lynn N. Hughes
VS.	§	
	§	
LEGGETT & PLATT, INCORPORATED	§	
	§	JURY DEMANDED
Defendant.	§	

**PLAINTIFF'S SECOND AMENDED COMPLAINT**

Plaintiff ACCENT PACKAGING, INC. ("ACCENT") files this Second Amended Complaint against Defendant LEGGETT & PLATT, INCORPORATED, and alleges as follows:

**PARTIES**

1. Plaintiff ACCENT, is a Texas corporation, having its principal place of business at 10131 FM 2920, Tomball, Texas 77375.
2. Defendant LEGGETT & PLATT, INCORPORATED ("LEGGETT") is a Missouri Corporation, registered to do business in Texas, with its principal place of business at No. 1 Leggett Road, Carthage, Missouri 64836. LEGGETT has made an appearance in this matter.

**JURISDICTION AND VENUE**

3. This is a civil action that includes a claim for patent infringement arising under the patent laws of the United States, Title 35 of the United States Code. Accordingly, this Court has exclusive subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a).

4. This Court has personal jurisdiction over LEGGETT. LEGGETT is registered with the Texas Secretary of State to do business in Texas, has done and is doing business in this judicial district and elsewhere in Texas.

5. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391 and 1400(b) in that LEGGETT resides in this district within the meaning of 28 U.S.C. §§ 1391(c) and 1400(b).

### **BACKGROUND**

6. Plaintiff ACCENT manufactures wire tier systems that are used to bale recyclables or solid waste for easy handling. ACCENT's wire tiers are used in conjunction with two-ram baler systems, in which recyclables or solid waste are fed into a large hopper, and leave the system in compacted bales tied with wire on the outside. LEGGETT is ACCENT's main competitor in the wire tier industry, and LEGGETT previously had a dominant market share of the wire tier industry.

7. Beginning in late 2000, ACCENT set out to design a more efficient wire tier with fewer moving parts, and consequently lower maintenance costs. Those efforts resulted in the design of ACCENT'S 470 Wire Tier System, which was completed in early 2004. ACCENT filed for a patent covering the 470 System in April 2004.

8. On May 20, 2008, the United States Patent and Trademark Office duly and legally issued United States Patent No. 7,373,877 ("the '877 Patent"), entitled "Wire Strapper for Waste Material Baler." A true and correct copy of the '877 Patent is attached as Exhibit A to this Complaint.

9. The '877 Patent is valid and enforceable.

10. ACCENT'S 470 Wire Tier System is covered by the '877 Patent. Since the '877 Patent issued, ACCENT has given notice to the public that the 470 Wire Tier System is patented by marking those systems in compliance with 35 U.S.C. § 287.

11. In early 2006, LEGGETT surreptitiously obtained a 470 Wire Tier System that had been attached to a baler being delivered from Harris Waste Management Group of Cordele, Georgia to Universal Molding Extrusion Company of Downey, California, and replaced the 470 System with a LEGGETT wire tier. LEGGETT subsequently moved the 470 System it had obtained to Carthage, Missouri and had a copy of the 470 System made. LEGGETT's copy has been sold as the Pinnacle Wire-Tie System (the "Pinnacle").

12. On April 26, 2010, ACCENT filed its Original Petition in this Court, alleging, *inter alia*, that LEGGETT's Pinnacle device infringed on the '877 Patent. (Doc. 1).

13. On April 28, 2010, ACCENT filed its First Amended Petition in this Court, alleging, *inter alia*, that LEGGETT's Pinnacle device infringed on the '877 Patent. (Doc. 4).

14. On May 1, 2013 a FINAL JUDGMENT was entered in this case, finding that "The Pinnacle device of Leggett & Platt, Inc., infringes claims 1 through 4 of United States Patent 7,373,877 of Accent Packaging, Inc." (Doc. 94).

15. In 2012, LEGGETT announced its introduction of a wire tier system known as the Pinnacle II. The Pinnacle II is, in all material ways, identical to the Pinnacle, which has already been adjudged to infringe on ACCENT's '877 Patent.

## COUNT I

### **INFRINGEMENT OF THE '877 PATENT BY LEGGETT'S PINNACLE DEVICE**

16. Plaintiff re-alleges and incorporates herein by reference the allegations contained in paragraphs 1-15 of the Second Amended Complaint as if fully set forth herein.

17. LEGGETT has infringed the '877 Patent by virtue of its making and offering for sale its Pinnacle and Pinnacle II Wire Tier Systems.

18. A FINAL JUDGMENT has been entered, finding that LEGGETT'S Pinnacle device infringes claims 1-4 of the '877 Patent.

19. The Pinnacle II is not materially different from the original Pinnacle device and also infringes claims 1-4 the '877 Patent.

20. LEGGETT's activities have been without express or implied license by ACCENT.

21. LEGGETT's infringement of the '877 Patent has been and continues to be wilful in that it had knowledge of the '877 Patent and its infringement of the '877 Patent, yet it has continued to infringe the '877 Patent without any reasonable basis for believing that it is not infringing a valid patent.

22. LEGGETT will continue its acts of infringement unless restrained and enjoined by this Court.

23. ACCENT has been and continues to be damaged by LEGGETT's infringement. ACCENT is suffering and will continue to suffer damages, including irreparable harm for which there is no adequate remedy at law, unless this Court enjoins LEGGETT's infringement of the '877 Patent by the Pinnacle and Pinnacle II devices.

24. As a result of LEGGETT's acts of infringement, ACCENT has suffered and will continue to suffer monetary damages in an amount to be proved at trial.

**JURY TRIAL**

25. Plaintiff respectfully requests trial by jury as to all issues so triable.

**PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff prays for the following relief against LEGGETT:

A. A judgment for ACCENT that LEGGETT'S Pinnacle and Pinnacle II devices are infringing the '877 Patent in violation of 35 U.S.C. § 271;

B. Preliminary and/or permanent injunctive relief enjoining LEGGETT, their officers, directors, affiliates, agents, servants, employees, and all those persons in privity or in concert with any of them from directly or indirectly making, using, selling, offering to sell, importing, and having imported into the United States any infringing products, including, but not limited to the Pinnacle and Pinnacle II, or inducing or contributing to infringement of the patents-in-suit;

C. An award of damages for Defendants' infringement of the '877 Patent by the Pinnacle and Pinnacle II devices, together with interest (both pre-judgment and post-judgment interest), costs, and disbursements as determined by this Court under 35 U.S.C. § 284;

D. A declaration that Defendants' infringement of the patent-in-suit is wilful and deliberate, and an award to ACCENT of three times the amount of damages and losses sustained by ACCENT as a result of Defendants' wilful infringement, and all other damages allowed under 35 U.S.C. § 284;

E. A declaration that this is an exceptional case within the meaning of 35 U.S.C. § 285, and an award of costs, expenses, and attorneys' fees incurred in bringing and prosecuting this action, including pursuant to 35 U.S.C. § 285;

F. Such other and further relief in law or in equity to which ACCENT may be justly entitled.

June 26, 2013

Respectfully submitted,

JOHN C. ALLEN, P.C.

By: John C. Allen

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**CERTIFICATE OF SERVICE**

The undersigned certifies that the foregoing document is being filed electronically with the Clerk of the Court using the CM/ECF system, which will serve a copy of this filing on all counsel of record, this day of June 26, 2013.

/s/ Keith Jaasma  
Keith Jaasma