

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

BETTCHER INDUSTRIES, INC.,	)	
	)	
Plaintiff,	)	Civil Action No. 1:13-cv-9000
	)	
v.	)	JUDGE KENDALL
	)	
SUHNER TURBO TRIM, LLC, a Georgia	)	
limited liability company; SUHNER	)	
MANUFACTURING, INC., a Georgia	)	JURY DEMANDED
corporation; and OTTO SUHNER AG, a	)	
Switzerland corporation,	)	
	)	
Defendants.	)	

**AMENDED COMPLAINT FOR PATENT INFRINGEMENT**

Plaintiff Bettcher Industries, Inc. (“Bettcher”) sets forth the following Amended Complaint against defendants Suhner Turbo Trim, LLC, Suhner Manufacturing, Inc., and Otto Suhner AG (jointly, “Suhner”):

**Nature Of The Case and Jurisdiction**

1. Bettcher was founded in 1944, and is a corporation organized and operating under the laws of the State of Delaware, with its principal place of business at 6801 State Route 60, Birmingham, Ohio 44816. Bettcher actively practices the inventions of the patents at issue in this Complaint, employing people in the United States to engage in the research and development necessary to devise and perfect the inventions, and to manufacture, service and sell products that incorporate the inventions, throughout the United States and in nearly fifty countries worldwide. In particular, Bettcher has incorporated the inventions of the patents at issue in this Complaint into its highly-successful Whizard® Trimmers, used for the commercial trimming of meat. Example Whizard® Trimmers are shown below:



2. On information and belief, SUHNER TURBO TRIM, LLC is a Georgia limited liability company with principal place of business in Rome, Georgia at 25 Anderson Road, SE, P.O. Box 1754, Rome, GA 30162.

3. On information and belief, SUHNER MANUFACTURING, INC. is a Georgia corporation with principal place of business in Rome, Georgia at Hwy. 411 S./Suhner Drive, Rome GA 30162.

4. On information and belief, OTTO SUHNER AG is a Swiss corporation with principal place of business at Industriestraße 10, 5242 Lupfig, Switzerland.

5. On information and belief, Suhner Turbo Trim, LLC and Suhner Manufacturing, Inc., are direct or indirect subsidiaries of Otto Suhner AG and they sell the Suhner products accused of infringement in this Complaint in the United States, which products Otto Suhner AG makes or has made outside of the United States.

6. Bettcher's claims arise under the patent laws of the United States, specifically 35 U.S.C. §§ 154(d), 271, 281, 283, 284 and 285, for infringement of U.S. patents Nos. 6,769,184,

7,340,840, 8,074,363 (the “‘184” “‘840” and “‘363” patents, respectively). Copies of the ‘184, ‘840 and ‘363 patents are attached hereto as EXHIBITS A, B and C, respectively.

7. This action is authorized by 35 U.S.C. § 281. The federal courts have original and exclusive jurisdiction of the action pursuant to 28 U.S.C. § 1338(a). Venue in this Court is appropriate pursuant to 28 U.S.C. §§ 1391(b)(2) and 1400(b). Amendment to the Complaint is allowed as a matter of course pursuant to F.R.C.P. 15(a).

**The Suhner Defendants Are Operated As One Common Entity**

8. On information and belief, Suhner Turbo Trim, LLC, Suhner Manufacturing, Inc., and Otto Suhner AG (the “Suhner Defendants”) operate as one entity with a common ownership and control structure such that the actions of any one of the Suhner Defendants are known by, intended by, and attributable to the other Suhner Defendants.

9. Each of the Suhner Defendants is part of a family of companies under Suhner Holding Ltd. (March 10, 2014 Affidavit of Paul Luthi, ECF 44-1, at ¶ 4) Otto Suhner AG manufactures the products accused in this Amended Complaint and sells them to Suhner Abrasive Expert AG. (*Id.* at ¶¶ 3, 5) Suhner Abrasive Expert AG sells the products to Suhner Turbo Trim, LLC. (*Id.* at ¶ 7) Suhner Turbo Trim, LLC sells and ships the accused products to customers throughout the United States, including customers located in the Northern District of Illinois. (*Id.* at ¶¶ 19, 38)

10. Paul Luthi is President and a member of the Board of Directors of Suhner Turbo Trim, LLC and Suhner Manufacturing, Inc. (*Id.* at ¶ 2) Suhner Manufacturing, Inc. is entirely owned by Suhner Turbo Trim, LLC and Suhner Abrasive Expert AG. (*Id.* at ¶¶ 8-9) Suhner Manufacturing, Inc. has a sales office in Chicago, Illinois. (*Id.* at ¶ 27)

11. On information and belief, Suhner began operations in the United States in 1977 and opened the Chicago sales office in 1990. On or about March 7, 2013, Suhner

Manufacturing, Inc. requested applicants for a district sales manager position in the Chicago sales office. The job posting states the manager will be responsible for “promotion and sales of electric, pneumatic, and flexible shaft power tools ...[,]” will participate in “national and regional trade shows ... [and] sales meetings both Domestically and Internationally,” and must be “[w]illing to travel overseas once a year.” The job posting describes Suhner Manufacturing, Inc. as a “Swiss owned corporation” and states that, “We sell and ship our products throughout the US and Canada. For further information, please visit our website at [www.suhner.com](http://www.suhner.com).” A copy of newspaper articles regarding Suhner’s domestic operations and a copy of the March 7, 2013, job posting are attached hereto as EXHIBITS D and E.

12. On information and belief, Suhner Manufacturing, Inc. owns the United States trademark registrations for TURBO TRIM® and TURBOTRIM SUHNER® (Reg. Nos. 2,522,008 and 2,530,269). The trademarks have been registered since December 25, 2001, and January 15, 2002, respectively. Both marks are registered for U.S. Classes 013, 019, 021, 023, 031, 034 and 035. Renewal declarations signed by Paul Luthi on July 27, 2011, and January 11, 2012, affirm that Suhner Manufacturing, Inc. is using these marks in U.S. commerce for “electric knife flex shaft assembl[ies].” Relevant excerpts from the United States Trademark Office files for these trademark registrations are attached hereto as EXHIBITS F and G.

13. On information and belief, Otto Suhner AG owns the United States trademark registration for SUHNER® (Reg. No. 3,362,615). The SUHNER® trademark has been registered since January 1, 2008. The registration covers U.S. Classes 013, 019, 021, 023, 031, 034 and 035. During prosecution, Otto Suhner AG twice asserted that “Applicant [Otto Suhner AG] and Suhner Manufacturing, Inc. are both wholly owned subsidiaries of Suhner Holding AG [such] that these entities should be considered a single source.” Otto Suhner AG made this

representation in order to overcome an office action rejection of its trademark on the ground that it was likely to cause confusion with Suhner Manufacturing, Inc.'s TURBOTRIM SUHNER® trademark. Further, in a Declaration filed with the United States Trademark Office in connection with the SUHNER® trademark registration on or about October 18, 2013, registrant Otto Suhner AG stated that the SUHNER® trademark had been continuously used in U.S. commerce since the date of registration. Relevant excerpts from the United States Trademark Office public file for this trademark are attached hereto as EXHIBIT H.

14. On information and belief, the website SUHNER.COM serves as an online domain name for each of the Suhner Defendants' operations. SUHNER.COM describes Suhner's United States operations as part of its international business operations. The website provides contact and background information for Suhner Manufacturing, Inc. and Suhner Turbo Trim, LLC. The website provides information on trade exhibitions at which Suhner will participate, including the September 8, 2014, International Manufacturing Technology Show at the McCormick Place in Chicago, Illinois. The website also provides information and brochures for the "Turbo Trim" product line under a linked domain name SUHNER-TURBO-TRIM.COM. The linked page describes the "Turbo Trim" product line as a "Member of the Suhner Group." Both SUHNER.COM and SUHNER-TURBO-TRIM.COM prominently display the SUHNER® trademark registered to Otto Suhner AG and the TURBOTRIM SUHNER® trademark registered to Suhner Manufacturing, Inc. Relevant screenshots from the websites SUHNER.COM and SUHNER-TURBO-TRIM.COM are attached hereto as EXHIBIT I.

15. On information and belief, Otto Suhner AG is the registrant and administrator for the websites SUHNER.COM and SUHNER-TURBO-TRIM.COM. Public domain registration information for these domain names is attached hereto as EXHIBIT J.

16. An eight-page brochure for the “Turbo Trim” product line is downloadable from the website SUHNER.COM. The brochure prominently displays the SUHNER® trademark and the phrase “www.suhner.com” alongside pictures and information for the “Turbo Trim” product line. The brochure provides contact information for Suhner Manufacturing, Inc., Suhner Abrasive Expert AG, and Otto Suhner GmbH. The brochure is attached hereto as EXHIBIT K.

17. A similar eight-page brochure for the “Turbo Trim” product line is downloadable from the website SUHNER-TURBO-TRIM.COM. The brochure prominently displays the SUHNER® trademark and the phrase “www.suhner.com” alongside pictures and information for the “Turbo Trim” product line. The brochure provides contact information for Suhner Turbo Trim, LLC and Suhner Abrasive Expert AG. The brochure is attached hereto as EXHIBIT L.

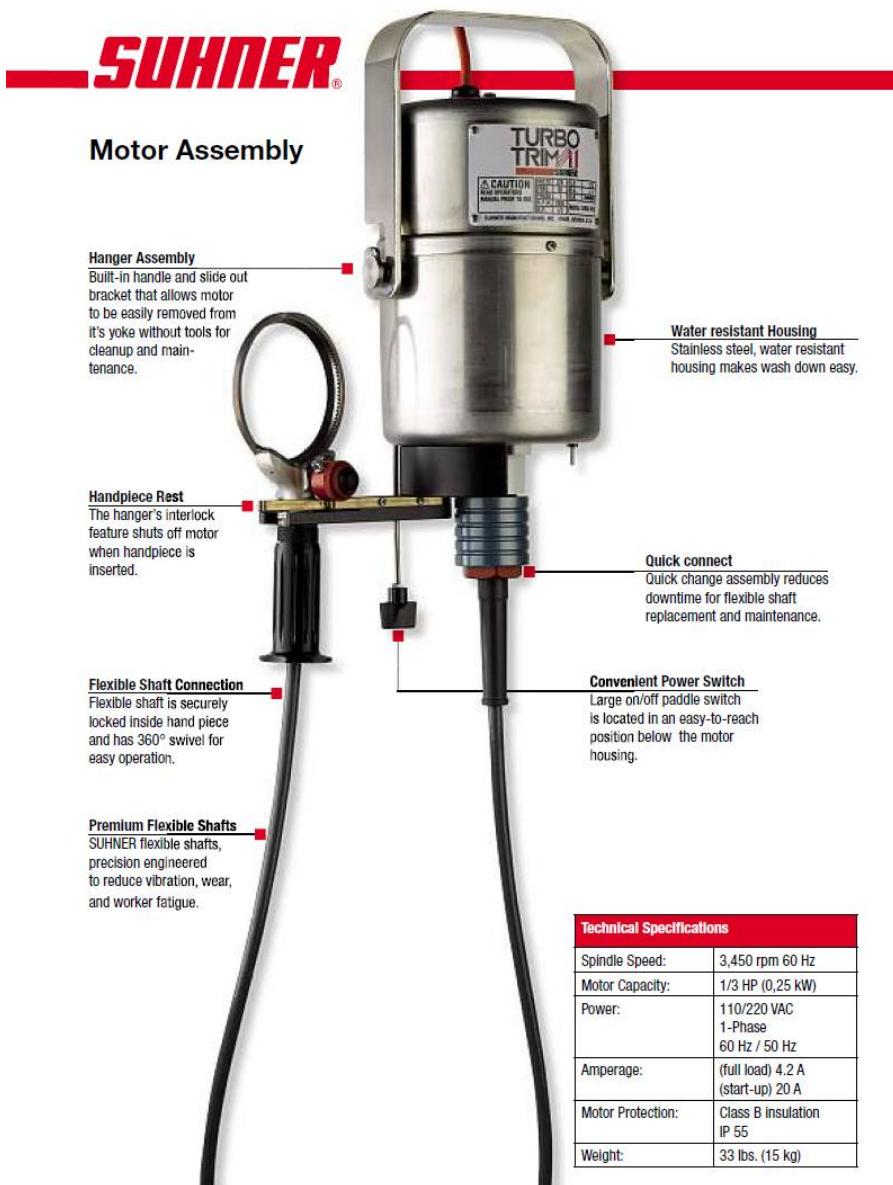
#### **Bettcher’s Products And The “Accused Products”**

18. Bettcher manufactures and sells food processing equipment and hand tools, including trimming knives and the blades utilized therein. Its products are used for various applications in the meat processing industry. Bettcher currently sells and offers for sale Whizard® rotary trimming knives and accessories, including the Whizard® Trimmer Series II products. Bettcher sells its products directly to end users through its sales network. Bettcher provides notice to the public that its rotary trimming knives and accessories are protected by the ‘184, ‘840 and ‘363 patents among other ways by affixing the corresponding patent number(s) directly to each product.

19. Suhner competes directly with Bettcher in the food processing equipment market. Among other products, Suhner sells and offers for sale in the Northern District of Illinois, and imports into the United States, “Turbo Trim” rotary knives of the variety depicted below, a photograph displayed on Suhner’s web site at [www.suhner.com](http://www.suhner.com):



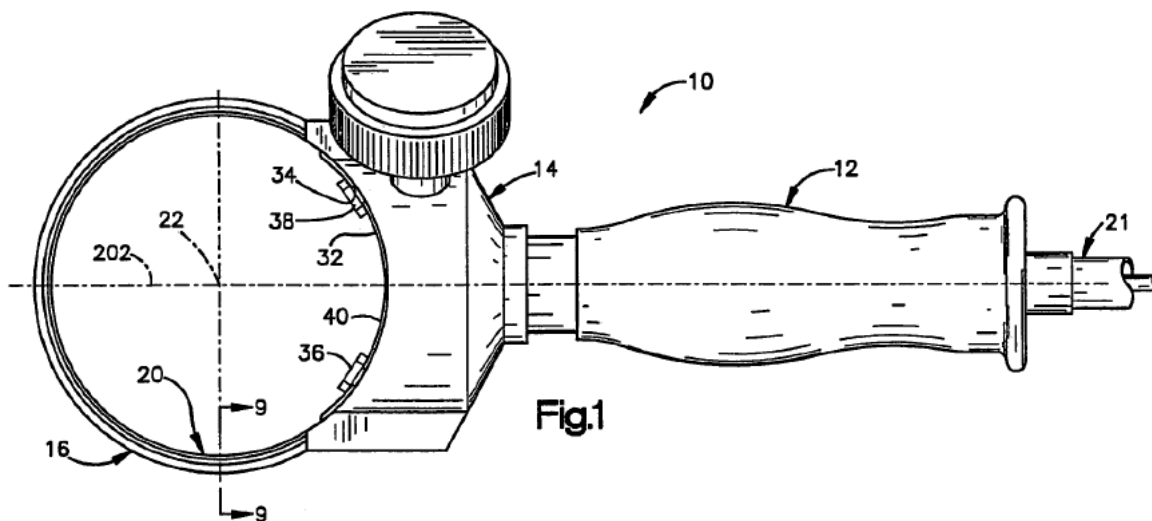
20. Suhner's "Turbo Trim" rotary knives are also depicted in its "Turbo Trim" product brochure, which is attached hereto as Exhibit K. Below is a photograph taken from Suhner's "Turbo Trim" brochure. On information and belief, this photograph is the same photograph referenced in the December 25, 2001, and January 15, 2002, renewal declarations for the TURBO TRIM® and TURBOTRIM SUHNER® trademarks, which were signed by Paul Luthi, and which are attached hereto as EXHIBITS F and G.



21. Suhner also sells and offers for sale in the Northern District of Illinois replacement parts for the Turbo Trim rotary knives, including but not limited to the replaceable rotary knife blade and the replaceable rotary knife blade housing of the device. The Turbo Trim knives, including the replaceable rotary knife blade and housing sold with the knives, and the rotary knife blades and housings sold as replacements for the original knife blade and housing sold with the Turbo Trim knives, are referred to herein as the “Accused Products.”



22. On August 3, 2004, the United States patent and Trademark Office issued U.S. patent No. 6,769,184 B1, to Jeffrey A. Whited of Amherst, Ohio, entitled “Low Friction Rotary Knife.” Figure 1, depicting the rotary knife of the invention, appears below:



23. On March 11, 2008, the United States patent and Trademark Office issued U.S. patent No. 7,340,840 B2, to Jeffrey A. Whited of Amherst, Ohio, entitled “Blade Housing For A Low Friction Rotary Knife.” The ‘840 patent issued from a division of the application that resulted in the ‘184 patent.

24. On December 13, 2011, the United States patent and Trademark Office issued U.S. patent No. 8,074,363 B2, to Jeffrey A. Whited of Amherst, Ohio, entitled “Rotary Knife Blade For Low Friction Rotary Knife.” The ‘363 patent issued from a continuation of a division of the application that resulted in the ‘184 patent.

25. Bettcher is the assignee of all rights in the ‘184, ‘840 and ‘363 patents and Bettcher has not granted any rights to Suhner to practice the ’184, ‘840, or ‘363 patents.

26. Between April and August of 2013, each of the Suhner Defendants was made aware of Bettcher's allegations against the accused products and representatives from each of the Suhner Defendants communicated with Bettcher regarding the allegations.

**Claim One – The '184 patent**

27. The foregoing allegations are incorporated by reference into the allegations of Claim One of this Complaint.

28. Otto Suhner AG directs, aides, and encourages infringement of the '184 patent by Suhner Turbo Trim, LLC and Suhner Manufacturing, Inc. The Suhner Defendants collectively operate as one entity with a common ownership and control structure such that the actions of any one of the Suhner Defendants are known by, intended, and attributable to the other Suhner Defendants. Otto Suhner AG makes the Accused Products and sells them to Suhner Turbo Trim, LLC and Suhner Manufacturing, Inc. through an intermediate affiliate, Suhner Abrasive Expert AG, for further sale to customers in the United States. There are no non-infringing uses for the Accused Products. Otto Suhner AG actively markets the Accused Products in the United States through websites it owns and administers. By its own representation, Otto Suhner AG "should be considered a single source" with Suhner Manufacturing, Inc. for the Accused Products.

29. Suhner Turbo Trim, LLC, directly infringes claims of the '184 patent, and with knowledge induces others to infringe, and/or with knowledge contributes to the infringement thereof by others, by selling and/or offering for sale, and/or importing into the United States, the Accused Products, either literally or by virtue of the Doctrine of Equivalents.

30. Suhner Manufacturing, Inc. directly infringes claims of the '184 patent, and with knowledge induces others to infringe, and/or with knowledge contributes to the infringement thereof by others, by selling and/or offering for sale, and/or importing into the United States, the Accused Products, either literally or by virtue of the Doctrine of Equivalents.

31. Otto Suhner AG, directly infringes claims of the '184 patent, and with knowledge induces others to infringe, and/or with knowledge contributes to the infringement thereof by others, by selling and/or offering for sale, and/or importing into the United States, the Accused Products, either literally or by virtue of the Doctrine of Equivalents.

32. Suhner had constructive notice of Bettcher's '184 patent. Bettcher affixes the '184 patent number to each product covered by the patent.

33. Suhner had actual notice of Bettcher's '184 patent at least as of April 8, 2013, the day on which Bettcher notified Otto Suhner AG in writing that Suhner's Turbo Trim knives infringe the '363 patent. On its face, the '363 patent makes explicit reference to the '184 patent, and thus Suhner is believed to have notice of Bettcher's '184 patent at least as of April 8, 2013.

34. Suhner Turbo Trim, LLC, and Suhner Manufacturing, Inc. had actual notice of Bettcher's '184 patent through their common ownership and control structure with Otto Suhner AG. Representatives from Suhner Turbo, LLC and Suhner Manufacturing, Inc. responded to the allegations made in the April 8, 2013 letter and participated in an August 12, 2013 meeting with Bettcher to discuss the allegations.

35. Suhner is not authorized to practice the invention of the '184 patent.

36. If Suhner is permitted to continue to sell and offer for sale in the United States, and to import into the United States, the invention claimed in the '184 patent, Bettcher will suffer irreparable injury from the erosion of its patent rights in the '184 patent.

37. Bettcher has suffered injury from Suhner's infringement and is entitled to be made whole to the extent possible by an award of money damages in its favor, as well as the award of preliminary and permanent injunctive relief.

38. Suhner's past, present and expected future infringement of the '184 patent, with knowledge of that patent, is willful and objectively reckless, entitling Bettcher to enhanced damages pursuant to 35 U.S.C. § 284, and to an award of its attorneys' fees and costs in the bringing and maintaining of this action pursuant to 35 U.S.C. § 285.

**Claim Two – The '840 patent**

39. The foregoing allegations are incorporated by reference into the allegations of Claim Two of this Complaint.

40. Otto Suhner AG directs, aides, and encourages infringement of the '840 patent by Suhner Turbo Trim, LLC and Suhner Manufacturing, Inc. The Suhner Defendants collectively operate as one entity with a common ownership and control structure such that the actions of any one of the Suhner Defendants are known by, intended, and attributable to the other Suhner Defendants. Otto Suhner AG makes the Accused Products and sells them to Suhner Turbo Trim, LLC and Suhner Manufacturing, Inc. through an intermediate affiliate, Suhner Abrasive Expert AG, for further sale to customers in the United States. There are no non-infringing uses for the Accused Products. Otto Suhner AG actively markets the Accused Products in the United States through websites it owns and administers. By its own representation, Otto Suhner AG "should be considered a single source" with Suhner Manufacturing, Inc. for the Accused Products.

41. Suhner Turbo Trim, LLC, directly infringes claims of the '840 patent, and with knowledge induces others to infringe, and/or with knowledge contributes to the infringement thereof by others, by selling and/or offering for sale, and/or importing into the United States, the Accused Products, either literally or by virtue of the Doctrine of Equivalents.

42. Suhner Manufacturing, Inc. directly infringes claims of the '840 patent, and with knowledge induces others to infringe, and/or with knowledge contributes to the infringement

thereof by others, by selling and/or offering for sale, and/or importing into the United States, the Accused Products, either literally or by virtue of the Doctrine of Equivalents.

43. Otto Suhner AG, directly infringes claims of the '840 patent, and with knowledge induces others to infringe, and/or with knowledge contributes to the infringement thereof by others, by selling and/or offering for sale, and/or importing into the United States, the Accused Products, either literally or by virtue of the Doctrine of Equivalents.

44. Suhner had constructive notice of Bettcher's '840 patent. Bettcher affixes the '840 patent number to each product covered by the patent.

45. Suhner is not authorized to practice the invention of the '840 patent.

46. If Suhner is permitted to continue to sell and offer for sale in the United States, and to import into the United States, the invention claimed in the '840 patent, Bettcher will suffer irreparable injury from the erosion of its patent rights in the '840 patent.

47. Bettcher has suffered injury from Suhner's infringement and is entitled to be made whole to the extent possible by an award of money damages in its favor, as well as the award of preliminary and permanent injunctive relief.

48. Suhner's past, present and expected future infringement of the '840 patent, with knowledge of that patent, is willful and objectively reckless, entitling Bettcher to enhanced damages pursuant to 35 U.S.C. § 284, and to an award of its attorneys' fees and costs in the bringing and maintaining of this action pursuant to 35 U.S.C. § 285.

### **Claim Three – The '363 patent**

49. The foregoing allegations are incorporated by reference into the allegations of Claim Three of this Complaint.

50. Otto Suhner AG directs, aides, and encourages infringement of the '363 patent by Suhner Turbo Trim, LLC and Suhner Manufacturing, Inc. The Suhner Defendants collectively

operate as one entity with a common ownership and control structure such that the actions of any one of the Suhner Defendants are known by, intended, and attributable to the other Suhner Defendants. Otto Suhner AG makes the Accused Products and sells them to Suhner Turbo Trim, LLC and Suhner Manufacturing, Inc. through an intermediate affiliate, Suhner Abrasive Expert AG, for further sale to customers in the United States. There are no non-infringing uses for the Accused Products. Otto Suhner AG actively markets the Accused Products in the United States through websites it owns and administers. By its own representation, Otto Suhner AG “should be considered a single source” with Suhner Manufacturing, Inc. for the Accused Products.

51. Suhner Turbo Trim, LLC, directly infringes claims of the ‘363 patent, and with knowledge induces others to infringe, and/or with knowledge contributes to the infringement thereof by others, by selling and/or offering for sale, and/or importing into the United States, the Accused Products, either literally or by virtue of the Doctrine of Equivalents.

52. Suhner Manufacturing, Inc. directly infringes claims of the ‘363 patent, and with knowledge induces others to infringe, and/or with knowledge contributes to the infringement thereof by others, by selling and/or offering for sale, and/or importing into the United States, the Accused Products, either literally or by virtue of the Doctrine of Equivalents.

53. Otto Suhner AG, directly infringes claims of the ‘363 patent, and with knowledge induces others to infringe, and/or with knowledge contributes to the infringement thereof by others, by selling and/or offering for sale, and/or importing into the United States, the Accused Products, either literally or by virtue of the Doctrine of Equivalents.

54. Suhner had constructive notice of Bettcher’s ‘363 patent. Bettcher affixes the ‘363 patent number to each product covered by the patent.

55. Suhner had actual notice of Bettcher's '363 patent at least as of April 8, 2013, the day on which Bettcher notified Otto Suhner AG in writing that Suhner's Turbo Trim knives infringe the '363 patent.

56. Suhner Turbo Trim, LLC, and Suhner Manufacturing, Inc. had actual notice of Bettcher's '363 patent through their common ownership and control structure with Otto Suhner AG. Representatives from Suhner Turbo, LLC and Suhner Manufacturing, Inc. responded to the allegations made in the April 8, 2013 letter and participated in an August 12, 2013 meeting with Bettcher to discuss the allegations.

57. Suhner is not authorized to practice the invention of the '363 patent.

58. If Suhner is permitted to continue to sell and offer for sale in the United States, and to import into the United States, the invention claimed in the '363 patent, Bettcher will suffer irreparable injury from the erosion of its patent rights in the '363 patent.

59. Bettcher has suffered injury from Suhner's infringement and is entitled to be made whole to the extent possible by an award of money damages in its favor, as well as the award of preliminary and permanent injunctive relief.

60. Suhner's past, present and expected future infringement of the '363 patent, with knowledge of that patent, is willful and objectively reckless, entitling Bettcher to enhanced damages pursuant to 35 U.S.C. § 284, and to an award of its attorneys' fees and costs in the bringing and maintaining of this action pursuant to 35 U.S.C. § 285.

### **Request For Relief**

WHEREFORE, Bettcher demands a trial by jury and demands judgment, jointly and severally, against Suhner Turbo Trim, LLC, Suhner Manufacturing, Inc., and Otto Suhner AG as follows:

A. For a preliminary and a permanent injunction enjoining Suhner, their successors and assigns, and their officers, directors, agents, servants, employees, and all entities and individuals acting in concert with them or on their behalf, from continued infringement of the '184, '840 and '363 patents;

B. For an award reasonably compensating Bettcher for Suhner's exploitation of the invention claimed in the '184, '840 and '363 patents.

C. For an accounting of all damages and a judgment for general damages against Suhner, jointly and severally, as compensation for each of their use, exploitation and infringement of the '184, '840 and '363 patents;

D. For an increase of all such monetary damages described above to three times their amount, pursuant to 35 U.S.C. § 284, for willful infringement of the '184, '840 and '363 patents;

E. For the cost of this action, together with an assessment of interest and reasonable attorney fees pursuant to 35 U.S.C. § 285;

F. For an award of pre-judgment interest; and

G. For such other and further relief as this Court may deem just and proper.



**Demand For Jury Trial**

Bettcher demands a trial by jury as to all issues tryable by a jury in this action.

March 28, 2014

BETTCHER INDUSTRIES, INC.

By: /s/ William K. Kane  
One of Its Attorneys

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*Attorneys for Plaintiff, Bettcher Industries, Inc.*

**CERTIFICATE OF SERVICE**

I certify that I have this day, March 28, 2014, filed a copy of the foregoing AMENDED COMPLAINT FOR PATENT INFRINGEMENT with the Clerk of Court using the CM/ECF system. All counsel of record who are deemed to have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system.

/s/ William K. Kane  
William K. Kane, an attorney for Plaintiff,  
Bettcher Industries, Inc.