

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

AMESBURY DOOR HARDWARE, INC.

Plaintiff,

v.

**FASCO DIE CAST, INC.
(d/b/a FASCO HARDWARE)**

Defendant.

Civil Action No. 10-11929

JURY TRIAL DEMANDED

COMPLAINT

Plaintiff Amesbury Door Hardware, Inc. (“Amesbury”) files this Complaint for patent infringement against defendant Fasco Die Cast, Inc. (“Fasco”), doing business as Fasco Hardware.

Because of Fasco’s past and continuing infringement of one of Amesbury’s patents, Amesbury has been damaged and irrevocably harmed, and seeks injunctive relief, compensatory and multiple damages, attorneys’ fees, and costs and expenses, including an injunction prohibiting Fasco from making, using, selling, offering to sell, and importing into the United States its infringing door latch.

PARTIES

1. Amesbury is a Delaware corporation with a regular place of business at 620 East 54th Street North, Sioux Falls, South Dakota.
2. Upon information and belief, Fasco is a foreign corporation with a regular place of business at 6625 Ordan Drive, Mississauga, Ontario, Canada.

JURISDICTION AND VENUE

3. This is an action for patent infringement arising under the patent laws of the United States, including 35 U.S.C. § 271. This Court has exclusive jurisdiction over the subject matter of this action under 28 U.S.C. § 1331 and § 1338(a).

4. Venue is proper in the United States District Court for the District of Massachusetts, pursuant to at least 28 U.S.C. § 1391 and § 1400(b).

5. This Court has personal jurisdiction over Fasco for reasons including that, on information and belief, Fasco's products, including door latches that are the subject of this patent infringement suit, are sold to persons in Massachusetts via an established distribution channel. Additionally, Fasco offers for sale products to persons in Massachusetts. For example, Fasco identifies on its website at least one of its distributors that sells Fasco's products into Massachusetts. (Exhibit B.) Additionally, an official website of the Canadian government notes that Fasco has exported products into Massachusetts. (Exhibit C.) Also, Fasco advertises products that are the subject of this suit on a website that is publicly accessible to Massachusetts residents. (Exhibit D.)

INFRINGEMENT OF U.S. PATENT NO. 5,820,170

6. Amesbury re-alleges and adopts by reference the allegations set forth in paragraphs 1 – 5 above, as though set forth fully herein.

7. On October 13, 1998, the U.S. Patent and Trademark Office duly and legally issued to John M. Clancy, United States Patent No. 5,820,170, titled "Multi-Point Sliding Door Latch," on December 10, 2002, a Certificate of Correction, and on October 9, 2007, an Ex Parte Reexamination Certificate (collectively the "'170 patent"), true and correct copies of which are attached as Exhibits A1 – A3, respectively.

8. Amesbury is the current assignee and owner of the '170 patent.

9. Fasco had and currently has notice of the '170 patent, at least because Amesbury informed Fasco by letter dated June 15, 2009, that Fasco is infringing the '170 patent, enclosing a copy of the '170 patent with the letter.

10. Fasco also had and currently has notice of the '170 patent because Amesbury marks, with U.S. Patent No. 5,820,170, certain door latches it manufactures and sells in the United States.

11. Fasco has directly infringed, and is directly infringing, the '170 patent in the United States by at least importing, offering to sell, and selling, certain door latches that fall within the scope of one or more claims of the '170 patent including, for example, the door latches depicted in Exhibits E, F and G (the "Fasco Multipoint Lock").

12. Fasco has also infringed and is infringing the '170 patent in the United States as a contributory infringer. By way of example, Fasco sold door latches that it knows are especially made or especially adapted for use in infringing the '170 patent including, for example, the Fasco Multipoint Lock. For example, upon information and belief, Fasco sold the Fasco Multipoint Lock to Alside, a division of Associated Materials Incorporated of Akron, Ohio ("Alside"). Upon information and belief, Fasco had knowledge that the Fasco Multipoint Lock it sold to Alside would be installed by Alside in certain sliding doors, and that the combination would directly infringe the '170 patent. The Fasco Multipoint Lock has no substantial non-infringing uses.

13. Fasco has actively induced, and is actively inducing, the infringement of the '170 patent, for example, by intentionally encouraging and intentionally instructing certain customers, for example Alside, to purchase and install the Fasco Multipoint Lock into certain sliding doors,

in a configuration that Fasco knows would infringe the '170 patent. Upon information and belief, Fasco had a specific and actual intent to cause such infringement.

14. On information and belief, Fasco's infringement of the '170 patent has been, and continues to be, willful. For example, at least because of Amesbury's above-mentioned letter to Fasco, Fasco knew that there was an objectively high likelihood that its actions constituted infringement, but it nevertheless proceeded with such actions and infringed the '170 patent and is continuing to infringe the '170 patent.

15. Amesbury is without an adequate remedy at law, because Fasco's continued infringement of the '170 patent, whether direct, contributory, or induced, will irreparably harm Amesbury unless Fasco is enjoined by the Court from the actions complained of herein. By way of example, by offering the Fasco Multipoint Lock for sale to certain potential Amesbury customers, Fasco is unfairly and unjustly damaging Amesbury's reputation as an innovator in the field, and is threatening to erode Amesbury's customer base and market share.

16. As a direct and proximate result of Fasco's infringement of the '170 patent, whether direct, contributory, or induced, Amesbury has suffered damages and continues to suffer damages in an amount to be determined at trial.

PRAYERS FOR RELIEF

WHEREFORE, Amesbury prays for judgment in its favor, including:

- a. a finding that Fasco has infringed the '170 patent;
- b. a finding that Fasco's infringement of the '170 patent is willful;
- c. a permanent injunction prohibiting Fasco, its officers, agents, servants, employees, attorneys, and all other persons in active concert or participation with

Fasco, from further infringing the '170 patent throughout its remaining enforceable term;

- d. an accounting for damages arising from the infringement of the '170 patent by Fasco and those in privity with Fasco;
- e. an award of damages proximately caused by Fasco's unlawful acts, at least under 35 U.S.C. §§ 154 and 284;
- f. an award of increased damages and punitive damages for the willful nature of Fasco's unlawful acts, said award to equal treble the amount of actual damages;
- g. an award of the costs and attorneys' fees Amesbury has incurred in bringing and maintaining this action;
- h. an award of pre-judgment and post-judgment interest;
- i. such other and further relief as the Court deems proper.

JURY DEMAND

Amesbury demands a trial by jury on all issues so triable.

Respectfully submitted,

AMESBURY DOOR HARDWARE, INC.

By its attorneys,

/s/ Douglas J. Kline

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