

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION**

CENTURY-BOARD CORPORATION	§	
	§	
Plaintiff,	§	
	§	CIVIL ACTION NO. 5:14-cv-00671-HLH
v.	§	
	§	
BORAL INDUSTRIES, INC.,	§	<b>JURY TRIAL DEMANDED</b>
BORAL COMPOSITES, INC., AND	§	
BORAL MATERIAL TECHNOLOGIES,	§	
LLC.	§	
	§	
Defendants.	§	

**PLAINTIFF’S FIRST AMENDED COMPLAINT**

Plaintiff Century-Board Corporation (“Century-Board” or “Plaintiff”) files this First Amended Complaint against Defendants Boral Industries, Inc. (“Boral Industries”), Boral Composites, Inc. (“Boral Composites”), and Boral Material Technologies, LLC, (“BMT”) (all defendants are collectively referred to herein as “Boral” or “Defendants”)<sup>1</sup>, alleging as follows:

**I. THE PARTIES**

1. Plaintiff is a corporation organized and existing under the laws of the State of Nevada, with a principal place of business in Mooresville, North Carolina.
  
2. Upon information and belief, Boral Industries is a corporation organized and existing under the laws of the state of California, with its principal place of business located at 200 Mansell Center East, Suite 310, Roswell, GA 30076. Boral Industries has been served with process, made an appearance through counsel, and is presently before this Court. On

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<sup>1</sup> Pursuant to Fed. R. Civ. P. 15(a)(2), Boral has consented, in writing, to Century-Board filing this First Amended Complaint. See Certificate of Conference herein.

information and belief, Boral Industries is a subsidiary of Australian-based Boral Limited, and is also the parent company to the other Boral Defendants.

3. Upon information and belief, Boral Composites is a corporation organized and existing under the laws of the state of Delaware, with its principal place of business located at 200 Mansell Center East, Suite 310, Roswell, GA 30076. Boral Composites has been served with process, made an appearance through counsel, and is presently before this Court. On information and belief, Boral Composites is a subsidiary of Boral Industries, Ltd, and held within the Boral Limited's United States division, Boral U.S.A.

4. Upon information and belief, BMT is a limited liability company organized and existing under the laws of the state of Delaware, with its principal place of business located at 200 Mansell Center East, Suite 310, Roswell, GA 30076. BMT also maintains a place of business at 45 Northeast Loop 410, Suite 700, San Antonio, Texas 78216. BMT may has been served with process, made an appearance through counsel, and is presently before this Court. On information and belief, BMT is a subsidiary of Boral Industries, Ltd, and held within the Boral Limited's United States division, Boral U.S.A. On further information and belief, BMT was formerly known as Boral Material Technologies, Inc.

## **II. JURISDICTION**

5. This is an action alleging multiple causes of action, including patent infringement, misappropriation of trade secrets, and breach of contract.

6. This Court has jurisdiction to hear these matters. This Court has exclusive subject matter jurisdiction over patent infringement actions under 28 U.S.C. § 1331 and § 1338(a). This Court has supplemental jurisdiction over the non-patent claims pursuant to 28 U.S.C. § 1367 and

also pursuant to 28 U.S.C. § 1332(a) because the parties are citizens of different states and the amount in controversy exceeds \$75,000.

7. Boral has minimum contacts with the State of Texas such that suit in Texas is fair and reasonable. Boral has purposefully availed itself of the protections and laws of the State of Texas in a continuous, systematic, and substantial fashion, including building and running a Research and Development facility in San Antonio, Texas where a number of the events giving rise to this action took place, up to and including misappropriation of Plaintiff's trade secrets, infringement of Plaintiff's patents by Boral, and Boral breaching the contract at issue.

8. Boral sells numerous building products all in Texas, including stone, roofing, siding, and trim products, among which is its TruExterior® Trim product, receiving significant revenues from these sales. Thus, Boral infringes the Patents-in-Suit in Texas. All the named Boral entities maintain a registered agent in the State of Texas. As a result, Boral either knew or should have known that it could be hailed into court in Texas as a foreseeable consequence of its actions as described more fully herein.

9. This Court also has supplemental jurisdiction over Century-Board's breach of contract cause of action. Pursuant to ¶24 of the contract at issue, which is attached to this First Amended Complaint as Exhibit "D", "any action under this Agreement by either Party shall be brought only in, and in the Parties hereby consent to the exclusive venue and jurisdiction of, the federal courts located in the State of Texas."

### **III. VENUE**

10. Venue is proper in the Western District of Texas because a substantial part of the events giving rise to Plaintiff's causes of action occurred here. As explained more fully herein, Boral is infringing Plaintiff's patents in this District through its manufacture and sale of its

TruExterior® product line, has misappropriated Plaintiff's trade secrets in this District, and has breached a contract between the Parties in this District.

11. Boral has committed such purposeful acts and/or transactions in Texas that it reasonably knew and/or expected that it could be hailed into court as a future consequence of such activity. Upon information and belief, Boral has regularly transacted or solicited, and at the time of the filing of this Complaint, is transacting and soliciting business within the San Antonio Division of the Western District of Texas.

12. For these reasons, personal jurisdiction exists and venue is proper in this Court under 28 U.S.C. § 1400(b) and 28 U.S.C. §§ 1391(b) and (c).

13. Venue here is further proper given Century-Board's breach of contract cause of action. Pursuant to ¶24 of the contract at issue "any action under this Agreement by either Party shall be brought only in, and in the Parties hereby consent to the exclusive venue and jurisdiction of, the federal courts located in the State of Texas."

#### **IV. BACKGROUND FACTS**

14. Mr. Wade Brown is the majority shareholder and President of Plaintiff Century-Board. Mr. Brown has a graduate degree in chemistry and has worked as a professional chemist. In 1994 Mr. Brown purchased Ecomat, Inc., which was developing composite building materials containing recycled waste materials or filler, such as coal ash or other byproduct. Century-Board was created in and around 1999, dedicated to developing the technology to move from composite building materials containing large amounts of polyesters to composite building materials that are largely polyurethane-based, containing a specific blend of chemicals along with high amounts of recycled filler.

15. Filler can be a desirable ingredient within building materials for a number of reasons, including from a structural standpoint due to its inherent strength and stability; an environmental standpoint because it makes use of, and recycles waste; and from a cost standpoint, as it can be acquired at little or no cost.

16. Over years of experience, Century-Board and Mr. Brown have developed a unique understanding of the optimal manufacturing process to maximize the amount of recycled filler in the highest-quality polyester and polyurethane products, allowing for building products to be made at lower costs, higher profit margins, and with increased environmental benefits. Where Ecomat, Inc. worked with polyester-based composite materials, Century-Board advanced the technology and began working with partners to bring polyurethane-based composite materials to the market.

17. Century-Board's proprietary understanding and technology is captured and protected in patents, patent applications, and closely held trade secrets belonging to Century-Board. Century-Board holds fifteen patents and eleven pending patent applications covering various aspects of its proprietary process including chemical compositions and manufacturing techniques. Century-Board's trade secrets cover other, non-patented aspects of its manufacturing process and know-how.

18. Boral has been making building products in the United States since the 1960's, but on information and belief, prior to the events giving rise to Century-Board's claims in this lawsuit, Boral had not manufactured and/or sold any composite building materials containing large amounts of recycled filler.

19. Because of Century-Board's expertise in this area, Boral approached Century-Board to help create a line of polyurethane composite materials containing recycled coal ash, and discussions between the parties began in February of 2005.

20. The parties entered into a non-disclosure agreement and Century-Board began showing Boral its technological capabilities, including giving Boral access to an R&D facility Century-Board had set up with a different licensee of Century-Board's technology.

21. Century-Board and Boral executed a letter of intent and began a joint development program whereby Boral gained access to Century-Board's patents, trade secrets, and additional know-how to develop the desired building products.

22. A pilot operation dedicated to testing materials and processes was set up in 2006 within Boral's existing Research and Development facility in San Antonio, Texas. Mr. Brown moved to San Antonio and worked in this facility for approximately 15 months, designing, building and developing test lines and the requisite operations to create siding and trim products for Boral using Century-Board's technology. Utilizing its trade secrets, patents, and other know-how, Century-Board helped Boral come up with product formulations and procedures to effectively produce polyurethane-based composite materials with high amounts of recycled, inorganic filler.

23. Continuing into 2007, the parties worked on product development and negotiated a formal Joint Development and License Agreement (the "JDLA"). The JDLA was executed on August 10, 2007 by Century-Board on the one hand, and Boral Composites and BMT on the other. The JDLA has an effective date of July 31, 2006. The JDLA is attached hereto as Exhibit "D".

24. The JDLA sets out, among other things, Century-Board's patents and patents applications (all of which, including the three presently asserted in this litigation, claim a priority date prior to the JDLA), option payments to license the Century-Board technology during the development time period, and royalty rates to be paid to Century-Board on sales of products utilizing Century-Board's technology sold by Boral after the completion of the joint development time period.

25. Specifically, Century-Board "[granted] Boral Composites and its Affiliates a license to the Century-Board Patents and Patent Applications ... so that BCI and its Affiliates can make, manufacture, have manufactured, use, sell, transfer or commercialize Products under the rights granted [in the JDLA]..." pursuant to §3(c) of the JDLA.

26. The JDLA also set out would-be ownership and allowable usage of both minor and major technological improvements developed by the parties during their work together. Nothing in the JDLA granted Boral any rights to Century-Board's patents, patent applications, or already existing trade secrets and other know-how after the expiration of the JDLA.

27. Along with the execution of the JDLA, Boral provided notification of termination of the joint development program, which set in motion a one-year period within which Boral could execute an option in the JDLA to license Century-Board's patents, trade secrets, and technology on a long-term basis on terms set out in the JDLA.

28. During this period Mr. Brown successfully set up the production line and equipment to manufacture the desired materials, gave Boral access to Century-Board's patents, trade secrets, and other know-how, and continued to consult Boral on processing issues and other production problems Boral encountered.

29. Under Mr. Brown's direction and with Century-Board's assistance, the process and composition to manufacture a polyurethane-based composite trim product with over 70% inorganic filler were successfully implemented in Boral's facility.

30. Despite these successes, in December of 2008 Boral began disengaging from its relationship with Century-Board, claiming it was unable to produce a commercially viable product using Century-Board's technology.

31. On February 2, 2009, Mr. Russell Hill, VP, Technology Development for Boral, wrote to Mr. Brown, stating "Boral is not using, nor is it preparing to use any Century-Board proprietary technology or other know-how" and "the work [Boral and Century-Board] have done together has not lead to any viable product for Boral...."

32. Boral allowed the JDLA to expire on February 10, 2009. Upon this expiration, pursuant to ¶16(d) of the JDLA, Boral lost all "further rights in or to any or all of Century-Board's Patents and Patent Applications, Century-Board's Confidential Information, and Century-Board Technology...."

33. On February 24, 2009, Mr. Brown wrote to Mr. Russell Hill confirming that "this expiration of the [JDLA] means that Boral will not sell any product using Century-Board Technology or Century-Board Confidential Information, as outlined in the [JDLA]."

34. In August of 2009, Boral began filing its own patent applications on polyurethane-based building products using large amounts of inorganic filler. The United States Patent and Trademark Office rejected many of these patent applications based on Century-Board's already existing patents and applications.

35. On information and belief, at some point in late 2011, Boral built a plant dedicated to the manufacture of TruExterior® Trim, its residential trim offering containing



“more than 70% recycled material” and according to Boral’s own marketing materials, developed after “6 years [of] rigorous internal and 3<sup>rd</sup> party testing to ensure [its] performance and durability....” TruExterior® Trim is nearly identical in all material aspects to product manufactured in the Boral facility using Century-Board’s technology under the JDLA.

36. On information and belief, Boral introduced TruExterior® Trim to the market in March of 2012. Boral has recently added siding and beadboard to its TruExterior® line. On information and belief, these additional products may also utilize varying forms of Century-Board’s technology that Boral learned under the JDLA.

37. Boral misappropriated Century-Board’s trade secrets by continuing to use them to manufacture TruExterior® Trim after the expiration of the JDLA, and practices multiple Century-Board patents without permission through the same manufacturing process and sales of TruExterior® Trim. Similarly, continual use of Century-Board’s confidential information constitutes a breach of surviving clauses of the JDLA.

#### **V. COUNT I – PATENT INFRINGEMENT**

38. ¶¶1-37 are incorporated herein and Plaintiff further alleges as follows:

39. On August 9, 2011, United States Patent No. 7,993,552 (the “552 Patent”) was duly and legally issued for “FILLED POLYMER COMPOSITE AND SYNTHETIC BUILDING MATERIAL COMPOSITIONS.” A true and correct copy of the ‘552 Patent is attached hereto as Exhibit “A” and made a part hereof.

40. On March 20, 2012, United States Patent No. 8,138,234 (the “234 Patent”) was duly and legally issued for “POLYURETHANE COMPOSITE MATERIALS.” A true and correct copy of the ‘234 Patent is attached hereto as Exhibit “B” and made a part hereof.

41. On October 30, 2012, United States Patent No. 8,299,136 (the “136 Patent”) was duly and legally issued for “POLYURETHANE COMPOSITE MATERIALS.” A true and correct copy of the ‘136 Patent is attached hereto as Exhibit “C” and made a part hereof.

42. The ‘552 Patent, ‘234 Patent, and ‘136 Patent are collectively referred to herein as the Patents-in-Suit.

43. Plaintiff is the owner of all right, title, and interest of the Patents-in-Suit, including all rights to enforce and prosecute actions for infringement and to collect damages for all relevant times against infringers of the Patents-in-Suit. Accordingly, Plaintiff possesses the exclusive right and standing to prosecute the present action for infringement of the Patents-in-Suit by Defendants.

44. Upon information and belief, Defendants manufacture, make, have made, use, practice, import, provide, supply, distribute, sell and/or offer for sale products and/or systems that infringe one or more claims of the Patents-in-Suit.

45. Specifically, Defendants have infringed at least claims 1, 2, 3, 4, 5, 7, and 13 of the ‘552 Patent; claims 1, 4, and 5 of the ‘234 Patent; and claims 1, 3, 4, 5, 17, 18, 19, and 20 of the ‘136 Patent by its manufacture, use, sale, importation, and/or offer or sale of exterior siding and decorative trim products containing recycled, inorganic filler, including, but not limited to, the TruExterior® Trim product.

46. More specifically and on information and belief, Defendants practice the method claims of the Patents-in-Suit to manufacture the TruExterior® Trim product. Additionally, Defendants sell TruExterior® Trim to the public, which itself is a composite material containing all the chemical characteristics of the asserted composition claims of the Patents-in-Suit.

47. As a result of Defendants infringing conduct, Defendants have damaged Plaintiff. Defendant is, thus, liable to Plaintiff in an amount that adequately compensates Plaintiff for its infringement, which by law in not event can be less than a reasonable royalty, together with interest and costs as fixed by this Court under 35 U.S.C. § 284.

48. On information and belief, Defendants have had actual notice their infringement since it began, having been aware of the Patents-in-Suit since entering into the JDLA, which includes among its list of licensed patents, the patent applications leading to the Patents-in-Suit, and having full knowledge their processes and chemical compositions used to create TruExterior® Trim were covered by these patents.

49. Defendants were further made aware of their infringement when their own patents applications were rejected in view of Plaintiff's patents and again upon their receipt of notice of the instant lawsuit. The entirety of Defendants infringement is knowing and willful.

50. As a result of Defendants' knowing and willful infringement of the Patents-in-Suit, Plaintiff is entitled to increased damages as permitted by 35 U.S.C. § 284.

51. Plaintiff has been irreparably damaged as a consequence of Defendants' infringement, for which there is no adequate remedy at law, and such damage will continue without the issuance of an injunction by this Court.

## **VI. COUNT II – MISAPPROPRIATION OF TRADE SECRETS**

52. ¶¶1-37 are incorporated herein and Plaintiff further alleges as follows:

53. Century-Board is the owner of a number of trade secrets relating to the creation of polyurethane based composite materials. Specifically, Century-Board has trade secrets covering multiple areas of its technology that are not covered by any patents.

54. Such trade secrets include know-how related to optimal ingredients with which to create highly-filled polyurethane building products, such as, but not limited to, the types of ash, chemical surfactants, pre-mixers, and coupling agents to include within particular products.

55. Century-Board also has trade secrets covering know-how related to the manufacturing processes related to highly-filled polyurethane building products, such as, but not limited to, the optimal order to introduce certain materials and velocities and temperatures to mix them; how to make, shape, and operate the requisite forming machinery; mixing and wetting techniques; and testing procedures to assure quality of the finished product.

56. Boral obtained these trade secrets and know-how under the JDLA and was permitted to use them only during the JDLA period, and only into the future with payments of additional royalties to Century-Board, which it declined to do.

57. Boral is continuing to use these trade secrets to make at least TruExterior® Trim. Upon information and belief, Boral may be making other products using these trade secrets, including additional trim products, TruExterior® siding, and TruExterior® bead board. All use of these trade secrets is unauthorized and improper.

58. Century-Board has been injured by Boral's improper use of Century-Board's trade secrets. As such, Century-Board is entitled to compensation.

## **VII. COUNT III – BREACH OF CONTRACT**

59. ¶¶1-37 are incorporated herein and Plaintiff further alleges as follows:

60. The JDLA was executed by the Parties on August 10, 2007, with an effective date of July 31, 2006, and was a valid, enforceable contract. While Boral allowed the JDLA to expire on February 10, 2009, certain provisions, including but not limited to at ¶16(d), survived termination. At a minimum, those provisions are still valid and enforceable by Century-Board.

Defendants conduct as described herein constitutes a breach of those surviving provisions of the JDLA.

61. Century-Board is the owner of all right, title, and interest to all patents, patent applications, trade-secrets, and other “Century-Board Technology” and Century-Board “Confidential Information” as those terms are defined in the JDLA, having acquired all assets and liabilities of its predecessor, Century-Board USA, LLC, via assignment. Thus, Century-Board is the proper party to enforce the valid and enforceable provisions of the JDLA against Boral.

62. Century-Board and Century-Board USA, LLC performed any and all obligations required by the JDLA, including giving Defendants access to Century-Board Technology and Confidential Information.

63. Upon expiration of the JDLA, Boral lost all “further rights in or to any or all of Century-Board’s Patents and Patent Applications, Century-Board’s Confidential Information, and Century-Board Technology....” See JDLA at ¶16(d). This section explicitly survived termination of the JDLA.

64. Boral has breached the JDLA through, at a minimum, continuing to use “Century-Board’s Patents and Patent Applications, Century-Board’s Confidential Information, and Century-Board Technology...” after the JDLA expiration to manufacture and sell its TruExterior® line of products without payment of royalties to Century-Board. Boral has also breached the JDLA by attempting to obtain United States patents including within their claims “Century-Board’s Confidential Information, and Century-Board Technology.”

65. As a result of Boral’s conduct, Century-Board has been damaged in an amount beyond the jurisdictional minimum of this Court.

### **VIII. JURY DEMAND**

Plaintiff hereby requests a trial by jury pursuant to Rule 38 of the Federal Rules of Civil Procedure.

### **IX. PRAYER FOR RELIEF**

WHEREFORE, Plaintiff respectfully requests that the Court find in its favor and against Defendants, and that the Court grant Plaintiff the following relief:

- a. Judgment that one or more claims of the United States Patents Nos. 7,993,552; 8,138,234; and 8,299,136 have been infringed, either literally and/or under the doctrine of equivalents, by Defendants and/or by others to whose infringement Defendants have contributed and/or by others whose infringement has been induced by Defendants;
- b. Judgment that that Defendants account for and pay to Plaintiff all damages to and costs incurred by Plaintiff because of Defendants' infringing activities and other conduct complained of herein;
- c. Judgment that Defendants' infringement is willful from the time Defendants became aware of the infringing nature of its products and methods and that the Court award treble damages for the period of such willful infringement pursuant to 35 U.S.C. § 284.
- d. Judgment that Defendants' conduct complained of herein constitutes misappropriation of Plaintiff's trade secrets, and further that such conduct constitutes malicious and willful misappropriation of trade secrets;
- e. Judgment that as a result of Defendants' misappropriation, Plaintiff be granted compensatory damages corresponding to the entire life cycle of the TruExterior® Trim product and all other products associated therewith which use one or more of Plaintiff's trade secrets and additional exemplary or punitive damages for Defendants' willful and malicious conduct;
- f. Judgment that Defendants' conduct complained of herein constitutes breach of the JDLA and that as a result of Defendants' breach of contract, Plaintiff be awarded actual damages associated with Defendants' breach, in addition to reasonable attorneys' fees and costs pursuant to the fee shifting agreement in the JDLA and Tex. Civ. Prac. & Rem. Code § 38.001(8).
- g. That Plaintiff be granted pre-judgment and post-judgment interest on the damages caused by Defendants' infringing activities and other conduct complained of herein;

- h. That the Court declare this an exceptional case and award Plaintiff its reasonable attorney's fees and costs in accordance with 35 U.S.C. § 284;
- i. That Defendants be permanently enjoined from any further activity or conduct that infringes one more claims of United States Patents Nos. 7,993,552; 8,138,234; and 8,299,136 or conduct that misappropriates any of Plaintiff's trade secrets; and
- j. That Plaintiff be granted such other and further relief as the Court may deem just and proper under the circumstances.

Dated: September 17, 2014

Respectfully Submitted,

/s/ Jonathan T. Suder  
Jonathan T. Suder  
State Bar No. 19463350  
Brett M. Pinkus  
State Bar No. 24076625  
Todd I. Blumenfeld  
State Bar No. 24067518  
FRIEDMAN, SUDER & COOKE  
Tindall Square Warehouse No. 1  
604 East 4th Street, Suite 200  
Fort Worth, Texas 76102  
(817) 334-0400  
(817) 334-0401 - Fax  
[jts@fsclaw.com](mailto:jts@fsclaw.com)  
[pinkus@fsclaw.com](mailto:pinkus@fsclaw.com)  
[blumenfeld@fsclaw.com](mailto:blumenfeld@fsclaw.com)

J. Phil Watkins  
State Bar No. 20927400  
J. PHIL WATKINS, P.C.  
926 Chulie Drive  
San Antonio, TX 78216  
(210) 225-6666  
(210) 225-2300 – Fax  
[phil@philwatkins.com](mailto:phil@philwatkins.com)

**ATTORNEYS FOR PLAINTIFF  
CENTURY-BOARD CORPORATION**

**CERTIFICATE OF CONFERENCE**

I hereby certify that on September 15, 2014, I spoke with Mr. Keith Broyles, counsel for Defendants, who indicated that, pursuant to Federal Rule of Civil Procedure 15(a)(2), Defendants consented to Plaintiff filing its First Amended Complaint at this time. Mr. Broyles provided written confirmation of Defendants' consent on September 16, 2014.

/s/ Todd I. Blumenfeld

**CERTIFICATE OF SERVICE**

I hereby certify that on the 17th day of September, 2014, I electronically filed the foregoing document with the clerk of the court for the U.S. District Court, Western District of Texas, San Antonio Division, using the electronic case filing system of the court. The electronic case filing system sent a "Notice of Electronic Filing" to the attorneys of record who have consented in writing to accept this Notice as service of this document by electronic means. Any attorneys of record who are not noticed via the electronic case filing system have been served this document via email pursuant to their written consent to me.

/s/ Jonathan T. Suder