

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

Civil Action No. _____

HAROLD SIMPSON, INC., an Oklahoma Corporation,

Plaintiff,

v.

ROOFMASTERS ROOFING & SHEET METAL
CO., INC., a Kansas Corporation,

Defendant.

ATTORNEY'S LIEN CLAIMED

COMPLAINT AND JURY DEMAND

Plaintiff, Harold Simpson, Inc., by and through counsel, Riggs, Abney, Neal, Turpen, Orbison & Lewis, P.C., and for its patent infringement case against the Defendant, Roofmasters Roofing & Sheet Metal Co., Inc. (hereinafter "Roofmasters") states and avers as follows:

I. THE PARTIES

1. Plaintiff, Harold Simpson, Inc. (hereinafter "HSI"), is a corporation organized and existing under the laws of the State of Oklahoma, having a principal place of business located in Tulsa, Oklahoma.

2. Defendant, Roofmasters, is a corporation organized and existing under the laws of the State of Kansas, having a principal place of business at 2070 E. 8th Street, Hays, Kansas, 67601.

II. JURISDICTION AND VENUE

3. This is an action for infringement of a patent arising under Title 35 U.S.C. §§ 271, 281 and 284-285, inter alia. This Court has subject matter jurisdiction of the action under Title 28 U.S.C. §§ 1331 and 1338(a).

4. This Court has personal jurisdiction over Defendant, Roofmasters, and venue is proper pursuant to Title 28 U.S.C. §§ 1391 and 1400(b). Defendant, Roofmasters, has substantial contacts with the forum as a result of pervasive business activities conducted within the State of Colorado and within this District, including but not limited to: (i) the marketing, sale and distribution of services related to retrofit roofing and installation; and (ii) the marketing, sale and distribution of products related to retrofit roofing support apparatuses.

5. Defendant, Roofmasters, has committed (and continues to commit) acts of patent infringement, directly and/or through its agents and intermediaries, by making, using, selling, offering for sale and/or leasing certain infringing products, services, and systems in Colorado. Specifically, Defendant, Roofmasters, sells, markets and distributes (directly and/or through its intermediaries) infringing retrofit roofing support apparatuses and services in this District.

III. CLAIM FOR RELIEF

INFRINGEMENT OF THE ‘170 PATENT

6. Plaintiff, HSI, incorporates by reference each of the allegations contained in this Complaint as if fully set forth herein.

7. On January 6, 1998, United States Patent No. 5,704,170 (hereinafter “the ‘170 Patent”) was duly and legally issued for an “Apparatus for Roof Support.” A true and correct copy of the ‘170 Patent is attached hereto as **Exhibit 1**.

8. On June 7, 1995, prior to the issuance of the ‘170 Patent (on January 6, 1998 as referenced in ¶ 7, above), Harold G. Simpson (an individual) executed an “Assignment of Assignors Interest” with respect to the ‘170 Patent to HSI.

9. Pursuant to the June 7, 1995 “Assignment of Assignors Interest,” Plaintiff, HSI, owns all rights, title, and interest in and to the ‘170 Patent and possesses all rights of recovery under it, including the right to prosecute this action and to collect damages for all relevant times.

10. As it pertains to this lawsuit, the ‘170 Patent is infringed by Roofmasters’ use, sale, offering for sale, installation, distribution-of and/or manufacturing-of roofing support apparatuses as detailed herein.

11. Defendant, Roofmasters, directly infringed, contributed to the infringement of, and/or induced the infringement of, at least one claim of the ‘170 Patent without Plaintiff’s, HSI, consent or authorization. Such acts of infringement (which are ongoing) include, but are not limited to the sale, marketing, distribution and/or installation of products and services related to the ‘170 Patent.

12. Plaintiff, HSI, has been damaged as a result of Defendant, Roofmasters’ conduct.

13. Defendant, Roofmasters, is liable to Plaintiff, HSI, in an amount that adequately compensates it for Defendant’s, Roofmasters, infringements, which, by law, cannot be less than a reasonable royalty, together with interest and costs as fixed by this Court under Title 35 U.S.C. § 284.

14. Defendant, Roofmasters, is further responsible for the indirect infringement of the ‘170 Patent through: (a) installation of roofing apparatus products in an infringing manner; and (b) contribution to the infringement of the ‘170 Patent by supplying the infringing roofing apparatus products – products that have no substantial non-infringing use – to its respective customers who then infringe the ‘170 Patent through their infringing use of Defendant’s, Roofmaster, products.

JURY DEMAND

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

PRAYER FOR RELIEF

Plaintiff, HSI, requests that the Court find in its favor and against Defendant, Roofmaster, and that the Court grant Plaintiff, HSI, the following relief:

1. Judgment that one or more claims of the '170 Patent have been infringed, either literally and/or under the doctrine of equivalents, by Defendant, Roofmasters, and/or by others to whose infringement Defendant, Roofmasters, has contributed and/or by others whose infringement has been induced by Defendant, Roofmasters;
2. Judgment for reasonable royalty for said infringement;
3. A preliminary and final injunction against the continuing infringement;
4. That Plaintiff, HSI, be granted pre-judgment and post-judgment interest on the damages caused by Defendant, Roofmasters', infringing activities and other conduct complained of herein;
5. That this Court declare that Defendant, Roofmasters, acted willfully in infringement of the '170 Patent and award Plaintiff, HSI, damages pursuant to 35 U.S.C. § 284;
6. That this Court declare this an exceptional case and award Plaintiff, HSI, its reasonable attorney fees and costs in accordance with 35 U.S.C. § 285; and
7. That Plaintiff, HSI, be granted all relief to which the Plaintiff, HSI, is otherwise entitled and such other and further relief as the Court may deem just and appropriate under the circumstance.

Respectfully submitted,

/s/: Thomas M. Askew

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