

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

BROAN-NUTONE LLC,

Plaintiff,

Case No.

v.

HOMEWERKS WORLDWIDE, LLC,

Jury Trial Demanded

Defendant.

COMPLAINT

Plaintiff Broan-Nutone LLC (“Broan”) by and through its attorneys, for its Complaint against Defendant, Homewerks Worldwide, LLC (“Homewerks”), hereby demands a jury trial and alleges as follows:

NATURE OF THE ACTION

1. This is a complaint for patent infringement of U.S. Patent Nos. 6,830,065 (“the ‘065 patent”, attached as Exhibit A), 8,382,332 (“the ‘332 patent”, attached as Exhibit B), and 7,203,416 (the ‘416 patent”, attached as Exhibit C) arising under the patent laws of the United States, 35 U.S.C. §§ 1, *et seq.* Broan is seeking injunctive relief to prevent Homewerks from continuing to infringe the ‘065, ‘332, and ‘416 patents as well as recovery of monetary damages resulting from Homewerks’ infringement of the ‘065, ‘332, and ‘416 patents.

PARTIES

2. Plaintiff Broan is a limited liability company organized and existing under the laws of the State of Delaware, with a principal place of business within this judicial district at 926 W. State Street, Hartford, Wisconsin 53027.

3. Upon information and belief, Defendant Homewerks is a limited liability company organized and existing under the laws of the State of Delaware, having its principal place of business at 500 Bond Street Lincolnshire, Illinois 60069.

JURISDICTION AND VENUE

4. This action is for patent infringement under the patent laws of the United States, 35 U.S.C. § 1 *et seq.*

5. This Court has subject matter jurisdiction over this dispute pursuant to 28 U.S.C. §§ 1331 and 1338(a).

6. This Court has personal jurisdiction over Homewerks because its products have been and will continue to be sold in, distributed to and/or shipped into this judicial district, and because Homewerks has done and is doing business in this judicial district. Furthermore, upon information and belief, Homewerks has knowingly and intentionally placed its products into the stream of commerce through established distribution channels expecting them to be shipped into and purchased by customers in this judicial district. In addition, Homewerks has directly infringed the '065, '332, and '416 patents in this judicial district by selling and offering for sale infringing ventilation fan products at numerous stores located in this judicial district and by distributing said ventilation fan products to customers in this judicial district.

7. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391(b), 1391(c), and 1400(b). Homewerks is doing business in this judicial district, and wrongful acts of patent infringement committed by Homewerks have occurred in, and are causing injury to Broan in, this judicial district.

Homewerks' Sale of Homewerks Worldwide® Brand Products in this District

8. Homewerks has sold and continues to sell multiple products under the brand name Homewerks Worldwide at The Home Depot® stores located in this judicial district. For example, the www.homedepot.com website lists 55 products offered for sale under the Homewerks Worldwide brand name as in-stock products available for purchase at both the SE Milwaukee store of The Home Depot, located at 150 West Holt Avenue, Milwaukee, WI 53207 (the “SE Milwaukee Home Depot”) and the North Shore store of The Home Depot, located at 4155 N Port Washington, Milwaukee, WI 53212 (the “North Shore Home Depot”). (*See* Exhibit 4, Declaration of Z. Miller, ¶¶ 2-3).

9. Homewerks has sold and continues to sell multiple products under the brand name Homewerks Worldwide at Lowe’s® stores located in this judicial district. For example, the www.lowes.com website lists 27 products offered for sale under the Homewerks Worldwide brand name as in-stock products available for purchase at the Franklin, WI store of Lowe’s, located at 7027 South 27th Street, Franklin, WI 53132 (the “Franklin Lowe’s”) and 26 products offered for sale under the Homewerks Worldwide brand name as in-stock products available for purchase at the Wauwatosa, WI store of Lowe’s, located at 12000 West Burleigh Street, Wauwatosa, WI 53222 (the “Wauwatosa Lowe’s”). (*See id.* at ¶¶ 6-7).

10. In addition, Homewerks’ products can be purchased online at www.homedepot.com and then available for pick-up at The Home Depot stores located in this judicial district. The www.homedepot.com website lists 156 products offered for sale under the Homewerks Worldwide brand name that can be purchased online and then picked-up at the SE Milwaukee Home Depot. (*See id.* at ¶ 4). The same number of Homewerks Worldwide products are available for purchase and pick-up at the North Shore Home Depot. (*See id.* at ¶ 3).

11. Homewerks' products can be purchased online at www.lowes.com and then available for pick-up at Lowe's stores located in this judicial district. The www.lowes.com website lists 31 products offered for sale under the Homewerks Worldwide brand name that can be purchased online and then picked-up at either the Franklin Lowe's or at the Wauwatosa Lowe's. (*See id.* at ¶¶ 6-7).

Homewerks' Sale of Utilitech® Brand Products in this District

12. Homewerks has sold and continues to sell multiple products under the brand name Utilitech® at Lowe's stores located in this judicial district. For example, an Utilitech Ventilation Fan with Heater (model no. 7123-02-L) includes packaging stating that the product is distributed by Howewerks Worldwide, LLC. The www.lowes.com website lists 19 fan products offered for sale under the Utilitech brand as in-stock products available for purchase at the Franklin Lowe's, and 18 fan products offered for sale under the Utilitech brand as in-stock products available for purchase at the Wauwatosa Lowe's. (*See id.* at ¶¶ 8-9).

13. In addition, Homewerks' Utilitech brand products can be purchased online at www.lowes.com and then available for pick-up at Lowe's locations in this judicial district. The www.lowes.com website lists 20 fan products offered for sale under the Utilitech brand name that can be purchased online and then picked-up at the Franklin Lowe's, and 21 fan products offered for sale under the Utilitech brand name that can be purchased online and then picked-up at the Wauwatosa Lowe's. (*See id.* at ¶¶ 8-9).

Homewerks' Sale of Home NetWerks® Brand Products in this District

14. Homewerks has sold and continues to sell multiple products under the brand name Home NetWerks® in this judicial district. For example, a Home NetWerks Ventilating Bath Fan with Bluetooth® Speaker (model no. 7130-02-BT) includes packaging stating that the product is

distributed by Howewerks Worldwide, LLC, and includes the Homewerks website, www.homewerksww.com, on the instruction manual. The www.homedepot.com website lists Home NetWerks 90 CFM Bluetooth Stereo Speaker Bath Fan with LED Light (model no. 7130-02-BT) as an in-stock product available for purchase at the North Shore Home Depot. (*See id.* at ¶ 4).

Homewerks' Sale of Infringing Products in this District

15. Homewerks has sold and continues to sell ventilation fan products that infringe one or more claims of the '065 patent, the '332 patent, and/or the '416 patent at Lowe's store locations and The Home Depot store locations in this judicial district. For example, the www.lowes.com website lists the Utilitech 1.2-Sone 110-CFM Bathroom Fan with Room and Night Light (model no. 7108-03-L) as an in-stock product available for purchase at the both the Franklin Lowe's and at the Wauwatosa Lowe's. (*See id.* at ¶¶ 12-13). In addition, the www.homedepot.com website lists Home NetWerks 90 CFM Bluetooth Stereo Speaker Bath Fan with LED Light (model no. 7130-02-BT) as an in-stock product available for purchase at the North Shore Home Depot. (*See id.* at ¶ 4).

16. Homewerks' infringing ventilation fan products, sold under the Utilitech and/or Home NetWerks brand names, can be purchased online at www.lowes.com and then picked-up at Lowe's locations in this judicial district. For example, the www.lowes.com website lists the Home NetWerks 1.5-Sone 90-CFM Bathroom Fan (model no. 7130-01-BT), the Utilitech 1.5-Sone 80-CFM Bathroom Fan with Heater and Light (model no. 7123-02-L), the Utilitech 1.2-Sone 110-CFM Bathroom Fan with Room and Night Light (model no. 7108-03-L), and the Utilitech 1.2-Sone 110-CFM Bathroom Fan ENERGY STAR (model no. 7107-02-L) as

available for purchase online and subsequent pick-up at either the Franklin Lowe's or at the Wauwatosa Lowe's. (*See id.* at ¶¶ 8-11).

17. Homewerks' infringing ventilation fan products, sold under the Homewerks Worldwide and/or Home NetWerks brand names, can be purchased online at www.homedepot.com and then picked-up at The Home Depot locations in this judicial district. For example, www.homedepot.com lists the Homewerks Worldwide 90 CFM Ceiling Bluetooth Speaker Bath Fan (model no. 7130-01-BT) and the Home NetWerks 90 CFM Bluetooth Stereo Speaker Bath Fan with LED Light (model no. 7130-02-BT) as available for purchase online and subsequent pick-up at either the SE Milwaukee Home Depot or the North Shore Home Depot. (*See id.* at ¶¶ 4-5).

BACKGROUND

18. Broan is the owner of the '065 patent entitled "Duct Connector Apparatus and Method" that issued on December 14, 2004 and lists inventors Richard R. Sinur and Tom Heidel.

19. Broan is the owner of the '332 patent entitled "Lighting and Ventilating System and Method" that issued on February 26, 2013 and lists inventors Mirko Zakula, Corey S. Jacak, and Kiyoshi Hoshino.

20. Broan is the owner of the '416 patent entitled "Ventilating and Heating Apparatus with Heater Shielded by Tapered Discharge Duct" that issued on April 10, 2007 and lists inventors Gary J. Craw, Daniel L. Karst, Christopher J. Nemacheck, and Kenneth J. Jonas.

21. The '065 patent, the '332 patent, and the '416 patent relate, in general, to ventilation fan products and methods involving ventilation systems and products.

22. Broan's websites, <http://www.broan.com/about-us/patents> and <http://www.nutone.com/about-us/patents>, provide notice that certain ventilation fan products and components thereof are protected by Broan's patents, including the '065 patent, the '332 patent, and the '416 patent.

23. Homewerks has had actual knowledge of and has been aware of the '065 patent, the '332 patent, and the '416 patent since at least June 10, 2015.

24. Further, Homewerks has been aware of the '065 patent, the '332 patent, and the '416 patent and of Broan's infringement allegations with respect to said patents since at least the service of this Complaint.

25. Upon information and belief, Homewerks has engaged and will continue to engage in the manufacture, use, offer for sale, sale, marketing, distribution, and/or importation of ventilation fan products that infringe one or more claims of the '065 patent, the '332 patent, and the '416 patent.

COUNT I – INFRINGEMENT OF U.S. PATENT NO. 6,830,065

26. Broan incorporates each of the preceding paragraphs 1-25 as if fully set forth herein.

27. Broan is the owner of the '065 patent.

28. The '065 patent is valid and enforceable.

29. Homewerks has had actual knowledge of the '065 patent since at least June 10, 2015.

30. Homewerks, upon information and belief, has been and is currently infringing the '065 patent by engaging in the manufacture, use, offer for sale, sale, marketing, distribution, and/or importation of at least the Home NetWerks Bluetooth Bath Fans (model no. 7130-01-BT

and model no. 7130-02-BT), the Utilitech Ventilation Fan with Light and Motion Sensor Night Light (model no. 7108-03-L), and the Utilitech Ventilation Fan (model no. 7107-02-L).

31. Upon information and belief, Homewerks will continue to infringe the '065 patent unless and until it is enjoined by this Court.

32. Homewerks' infringement of the '065 patent has caused and will continue to cause damage to Broan.

33. Furthermore, Homewerks' acts of infringement with respect to the '065 patent have been without express or implied license by Broan and are in violation of Broan's rights.

34. Broan has been and will continue to be irreparably harmed by Homewerks' infringement of the '065 Patent.

35. Homewerks' acts of infringement have been and will be undertaken with knowledge of the '065 patent and with knowledge of Broan's infringement allegations with respect to the '065 patent. Accordingly such acts constitute willful infringement of the '065 patent and entitle Broan to enhanced damages and reasonable attorneys' fees.

COUNT II – INFRINGEMENT OF U.S. PATENT NO. 8,382,332

36. Broan incorporates each of the preceding paragraphs 1-25 as if fully set forth herein.

37. Broan is the owner of the '332 patent.

38. The '332 patent is valid and enforceable.

39. Homewerks had actual knowledge of the '332 patent no later than April 27, 2015 when it identified the '332 patent in an Information Disclosure Statement filed with the U.S. Patent and Trademark Office in connection with Homewerks' U.S. Patent Application 14/467,828, entitled, "Audio Equipped Fan."

40. Homewerks, upon information and belief, has been and is currently infringing the '332 patent by engaging in the manufacture, use, offer for sale, sale, marketing, distribution, and/or importation of at least the Home NetWerks Bluetooth Bath Fan (model no. 7130-02-BT).

41. Upon information and belief, Homewerks will continue to infringe the '332 patent unless and until it is enjoined by this Court.

42. Homewerks' infringement of the '332 patent has caused and will continue to cause damage to Broan.

43. Furthermore, Homewerks' acts of infringement with respect to the '332 patent have been without express or implied license by Broan and are in violation of Broan's rights.

44. Broan has been and will continue to be irreparably harmed by Homewerks' infringement of the '332 Patent.

45. Homewerks' acts of infringement have been and will be undertaken with knowledge of the '332 patent and with knowledge of Broan's infringement allegations with respect to the '332 patent. Accordingly such acts constitute willful infringement of the '332 patent and entitle Broan to enhanced damages and reasonable attorneys' fees.

COUNT III – INFRINGEMENT OF U.S. PATENT NO. 7,203,416

46. Broan incorporates each of the preceding paragraphs 1-25 as if fully set forth herein.

47. Broan is the owner of the '416 patent.

48. The '416 patent is valid and enforceable.

49. Homewerks has had actual knowledge of the '416 patent since at least June 10, 2015.

50. Homewerks, upon information and belief, has been and is currently infringing the '416 patent by engaging in the manufacture, use, offer for sale, sale, marketing, distribution, and/or importation of at least the Utilitech Ventilation Fan with Heater and Light (model no. 7123-02-L).

51. Upon information and belief, Homewerks will continue to infringe the '416 patent unless and until it is enjoined by this Court.

52. Homewerks' infringement of the '416 patent has caused and will continue to cause damage to Broan.

53. Furthermore, Homewerks' acts of infringement with respect to the '416 patent have been without express or implied license by Broan and are in violation of Broan's rights.

54. Broan has been and will continue to be irreparably harmed by Homewerks' infringement of the '416 Patent.

55. Homewerks' acts of infringement have been and will be undertaken with knowledge of the '416 patent and with knowledge of Broan's infringement allegations with respect to the '416 patent. Accordingly such acts constitute willful infringement of the '416 patent and entitle Broan to enhanced damages and reasonable attorneys' fees.

PRAYER FOR RELIEF

WHEREFORE, Broan requests the following relief:

(a) An entry of judgment that Homewerks, its officers, agents, servants, employees and attorneys be found to have directly infringed the '065 patent, the '332 patent, and the '416 patent;

(b) An order enjoining Homewerks, its officers, agents, servants, employees and attorneys from making, using, selling, offering for sale, or importing into the United States products which infringe the '065 patent, the '332 patent, and the '416 patent;

(c) An award of damages adequate to compensate Broan for Homewerks' infringement of the '065 patent, the '332 patent, and the '416 patent;

(d) If a permanent injunction is not granted, a judicial determination of the conditions of future infringement such as a royalty bearing compulsory license or such other relief as the Court deems appropriate;

(e) A trebling of any damages award pursuant to 35 U.S.C. § 284, including due to Defendant's willful infringement of the '065 patent, the '332 patent, and the '416 patent;

(f) Such other and further relief as the Court deems Broan may be entitled to in law and equity.

Dated: July 1, 2015

Respectfully submitted,

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