

THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS
KANSAS CITY DIVISION

COMPOSITE TECHNOLOGIES
CORPORATION d/b/a THERMOMASS,

Plaintiff,

v.

ICON X, LLC,

Defendant.

Case No. 2:15-cv-9209

FIRST AMENDED COMPLAINT AND DEMAND FOR JURY TRIAL

COMES NOW the Plaintiff, Composite Technologies Corporation d/b/a Thermomass (hereinafter “Thermomass”), by and through its attorneys, pursuant to Federal Rule of Civil Procedure 15(a)(1)(B), and for its first amended complaint against Defendant, ICONX, LLC, alleges as follows:

PARTIES

1. Plaintiff, Composite Technologies Corporation is a corporation organized and existing under the laws of the State of Iowa, with its principal place of business at 1000 Technology Drive, Boone, Iowa, 50036. Composite Technologies Corporation has adopted and operates under the fictitious name Thermomass.

2. Defendant, ICONX, LLC, is a limited liability company organized and existing under the laws of the State of Kansas, with a principal place of business at 5525 Kaw Drive, Kansas City, Kansas, 66102.

JURISDICTION AND VENUE

3. This is an action for patent infringement arising under the patent laws under Title 35 of the United States Code.

4. This Court has subject matter jurisdiction over the federal patent infringement claims pursuant to 28 U.S.C. §§ 1331, 1332(a), and 1338(a), since the action arises under the patent laws of the United States and this action arises between citizens of different states with the amount in controversy exceeding \$75,000.00, exclusive of interest and costs.

5. This Court has personal jurisdiction over Defendant because Defendant maintains its principal place of business in the State of Kansas and this judicial district. Defendant further offers their products for sale in this judicial district, regularly conducts and transacts business in this judicial district, has committed direct, indirect, and/or contributory acts of patent infringement in this judicial district, the causes of action asserted in this Complaint arise out of Defendant's contacts with this judicial district, and Defendant has caused injury to Plaintiff in this judicial district.

6. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391(b) and 1400(b).

BACKGROUND INFORMATION

7. For over 35 years, Thermomass has produced industry-leading insulation systems for concrete sandwich wall construction.

8. Most sandwich wall panels, also called integrally insulated concrete panels, are composed of interior and exterior concrete layers, called wythes, and one or more insulation layers between the two concrete layers. The insulation layer is generally rigid insulation, such as expanded or extruded polystyrene or polyisocyanurate.

9. Included in the sandwich wall panel are load transfer devices or connectors that connect the two concrete wythes through the layer(s) of insulation. The load transfer devices hold the components of the sandwich wall panel together and also provide a mechanism whereby loads (like tension, shear, and moments induced by seismic, wind, or gravity) can be transferred between the components of the wall and the structure's foundation. In composite and partially composite sandwich wall panels, load transfer devices must cause the two concrete wythes to function together as one structure.

10. It is important to sandwich the insulation between two layers of concrete because concrete layers provide thermal mass. That is, the concrete is able to store significant amounts of thermal energy and delay heat transfer through building walls. By placing insulation between two layers of concrete and structurally connecting the three layers into a single construction, it significantly improves the insulating effectiveness of the constructed wall over concrete alone, resulting in a more cost-effective, durable, and energy-efficient structure.

COUNT I
INFRINGEMENT OF U.S. PATENT NO. 8,839,580

11. Thermomass realleges and incorporates by reference all other allegations of the Complaint as though fully set forth herein.

12. Thermomass is the owner of all right, title, and interest in U.S. Patent No. 8,839,580 (hereinafter "the '580 patent"), entitled "Load Transfer Device," duly and properly issued by the U.S. Patent and Trademark Office on September 23, 2014. A true and accurate copy of the '580 patent is attached hereto as Exhibit 1.

13. Defendant has directly infringed and continues to directly infringe the '580 patent by making, using, offering for sale, and/or selling in the United States the "Icon Shear Connector" and "Icon System," which practices one or more inventions claimed in the '580

patent. A true and accurate copy of the Icon Design Handbook First Edition 2015 showing the “Icon Shear Connector” and “Icon System” is attached hereto as Exhibit 3.

14. Defendant has had knowledge of the ‘580 patent since its issuance in September 2014.

15. Defendant has further had knowledge of the application leading to the ‘580 patent since at least April 30, 2014.

16. In the prosecution of Defendant’s own patents describing the Icon Shear Connector and Icon System, Defendant submitted Information Disclosure Statements, which disclosed Plaintiff’s application and patent as material prior art of which Defendant was aware. A true and accurate copy of the Information Disclosure Statements are attached hereto as Exhibit 4.

17. In an Information Disclosure Statement submitted on April 30, 2014, Defendant disclosed Plaintiff’s pending parent application – United States Patent Application Publication No. 20120285108, which led to the ‘580 patent. See Ex. 4.

18. In an Information Disclosure Statement submitted April 14, 2015, Defendant disclosed the issued ‘580 patent. See Ex. 4.

19. Defendant has further had knowledge of the ‘580 patent since August 17, 2015, when it received and signed for a certified letter from Plaintiff providing notice of infringement and the patents. A true and accurate copy of the certified letter and proof of receipt are attached hereto as Exhibit 5.

20. Defendant has indirectly infringed and continues to indirectly infringe the ‘580 patent by making, using, selling, or offering for sale in the United States or importing into the

United States products, including without limitation, Defendant's "Icon Shear Connector," notwithstanding its knowledge of the '580 patent.

21. In addition to Defendant's direct infringement, Defendant's customers are also directly infringing through their use of "The Icon System" composite concrete wall panels, which include within them the "Icon Shear Connector."

22. Composite concrete wall panels incorporating the Icon Shear Connector and Icon System infringe at least and without limitation claims 1-4 and 7 of the '580 patent. Specifically, the Icon Shear Connector is a load transfer device for connecting the first and second concrete elements, or layers, of a composite concrete wall panel and for transferring shear loads. The Icon Shear Connector includes two load transfer members and a retention housing. The retention housing retains and holds the load transfer members in place such that they form an "X", with each load transfer member extending at an angle into the concrete elements or layers of the composite concrete wall panel. The '580 patent includes claims directed toward the retention housing.

23. Defendant offers the Icon Shear Connector and Icon System for sale via its website. A true and accurate copy of Defendant's Terms of Sale webpage is attached hereto as Exhibit 6.

24. Defendant offers the Icon Shear Connector and Icon System for sale via direct solicitation. A true and accurate copy of a communication from Defendant to a potential customer is attached hereto as Exhibit 7.

25. On information and belief, Defendant compares its product to Plaintiff's during its direct in-person sales pitches.

26. Defendant currently licenses the Icon Shear Connector and Icon System to Omega Concrete and Molin Concrete Products, and these producers are using the Icon System. A true and accurate copy of licensing information from Defendant's website is attached hereto as Exhibit 8.

27. Therefore, Defendant solicits sales and encourages use of the Icon Shear Connector in an infringing manner.

28. Defendant's product is advertised for sale only in association with composite concrete wall panels.

29. There is no other use of the Icon Shear Connector or Icon System.

30. Claims 1-4 and 7 of the '580 patent are directed to a retention housing. Defendant's Icon Shear Connector and Icon System include such a retention housing. As the claims themselves are directed specifically toward the retention housing, it is a material part of the invention.

31. Defendant had intent and continues to possess the intent to commit contributory and induced infringement of the '580 patent.

32. Defendant knew its "Icon Shear Connector" were components especially made or adopted for use in infringing, at minimum and without limitation, claims 1-4 and 7 of the '580 patent, having no substantial non-infringing use.

33. Defendant has contributed to the infringement of the '580 patent by offering for sale or selling Defendant's "Icon Shear Connector" itself or as a part of its "Icon System" to its customers.

34. Defendant has been fully aware of Plaintiff's patents and applications; yet, Defendant provides literature and sales encouraging use of the Icon Shear Connector and Icon

System, which themselves are infringing, and for incorporation in a composite concrete wall panel, which is further infringement.

35. Defendant's infringement has been and continues to be deliberate and willful.

36. As a result of Defendant's unlawful infringement of the '580 patent, Thermomass has suffered and will continue to suffer damage.

37. Upon information and belief, Defendant intends to continue its unlawful activity, and Thermomass continues and will continue to suffer irreparable harm, for which there is no adequate remedy at law, from such unlawful infringing activities unless this Court enjoins Defendant from further infringing activities.

COUNT II
INFRINGEMENT OF U.S. PATENT NO. 9,074,370

38. Thermomass realleges and incorporates by reference herein all other allegations of the Complaint as though fully set forth herein.

39. Thermomass is the owner of all right, title, and interest in U.S. Patent No. 9,074,370 (hereinafter "the '370 patent"), entitled "Load Transfer Device," which is a continuation of the above-identified '580 patent and which was duly and properly issued by the U.S. Patent and Trademark Office on July 7, 2015. A true and accurate copy of the '370 patent is attached hereto as Exhibit 2.

40. Defendant has directly infringed and continues to directly infringe the '370 patent by making, using, offering for sale, and/or selling in the United States the "Icon Shear Connector" and "Icon System," which practices one or more inventions claimed in the '370 patent. See Ex. 3.

41. Defendant has had knowledge of the '370 patent since at least July 2015.

42. Defendant has had knowledge of Plaintiff's application leading to the '370 patent since as early as April 14, 2015.

43. In the prosecution of Defendant's own patents discussing the Icon Shear Connector and Icon System, Defendant submitted Information Disclosure Statements, which disclosed Plaintiff's applications and patents as material prior art of which it was aware. See Exhibit 4.

44. In an Information Disclosure Statement submitted April 14, 2015, Defendant disclosed United States Patent Application Publication No. 20140298743, which led to the '370 patent.

45. The claims pending in the 20140298743 application on April 14, 2015 were nearly identical to those which issued on July 7, 2015 – the only change was a minor Examiner's amendment which affected one asserted dependent claim.

46. Defendant has further had knowledge of the '370 patent since August 17, 2015, when it received a certified letter from Plaintiff providing notice of infringement and the patents. See Exhibit 5.

47. Defendant has indirectly infringed and continues to indirectly infringe the '370 patent by making, using, selling, or offering for sale in the United States or importing into the United States products, including without limitation, Defendant's "Icon Shear Connector," notwithstanding its knowledge of the '370 patent.

48. In addition to Defendant's direct infringement, Defendant's customers are also directly infringing through their use of "The Icon System" composite concrete wall panels, which include within them the "Icon Shear Connector."

49. Composite concrete wall panels incorporating the Icon Shear Connector and Icon System infringe at least and without limitation claims 1, 2, 4-10 and 17-22 of the '370 patent. Specifically, the Icon Shear Connector is a load transfer device for connecting the first and second concrete elements, or layers, of a composite concrete wall panel and for transferring shear loads. The Icon Shear Connector includes two load transfer members and a retention housing. The retention housing retains and holds the load transfer members in place such that they form an "X", with each load transfer member extending at an angle into the concrete elements or layers of the composite concrete wall panel. The '370 patent includes claims directed to a load transfer device and a sandwich wall panel. Composite concrete wall panels using the Icon Shear Connector infringe these patents.

50. Defendant offers the Icon Shear Connector and Icon System for sale via its website. See Exhibit 6.

51. Defendant offers the Icon Shear Connector and Icon System for sale via direct solicitation. See Exhibit 7.

52. On information and belief, Defendant compares its product to Plaintiff's during its direct in-person sales pitches.

53. Defendant currently licenses the Icon Shear Connector and Icon System to Omega Concrete and Molin Concrete Products, and these producers are using the Icon System. See Exhibit 8.

54. Therefore, Defendant solicits sales and encourages use of the Icon Shear Connector in an infringing manner.

55. Defendant's product is advertised for sale only in association with composite concrete wall panels.

56. There is no other use of the Icon Shear Connector or Icon System.

57. Claims 1, 2, 4-8 and 17-22 of the '370 patent are directed to a load transfer device. Defendant's Icon Shear Connector is a load transfer device. As these claims themselves are directed specifically toward the load transfer device, it is a material part of the invention.

58. Claims 9-10 are directed toward a sandwich wall panel specifically including the load transfer device. The load transfer device is a material part of the invention claimed in claims 9-10.

59. Defendant had intent and continues to possess the intent to commit contributory and induced infringement of the '370 patent.

60. Defendant knew its "Icon Shear Connector" were components especially made or adopted for use in infringing, at minimum and without limitation, claims 1, 2, 4-10, and 17-22 of the '370 patent, having no substantial non-infringing use.

61. Defendant has contributed to the infringement of the '370 patent by offering for sale or selling Defendant's "Icon Shear Connector" itself or as a part of its "Icon System" to its customers.

62. Defendant was aware of Plaintiff's applications leading to the issued patents and the issued patents themselves; yet, Defendant provides literature and sales encouraging use of the Icon Shear Connector and Icon System, which themselves are infringing, and for incorporation in a composite concrete wall panel, which is further infringement.

63. Defendant's infringement has been and continues to be deliberate and willful.

64. As a result of Defendant's unlawful infringement of the '370 patent, Thermomass has suffered and will continue to suffer damage.

65. Upon information and belief, Defendant intends to continue its unlawful activity, and Thermomass continues and will continue to suffer irreparable harm, for which there is no adequate remedy at law, from such unlawful infringing activities unless this Court enjoins Defendant from further infringing activities.

PRAYER FOR RELIEF

WHEREFORE, in consideration of the foregoing, Plaintiff respectfully requests that this Court enter an Order granting it the following relief:

- a) Pursuant to 35 U.S.C. § 271, a judgment finding Defendant has and continues to directly infringe, contributorily infringe, and/or actively induced infringement of Plaintiff's patents;
- b) Pursuant to 35 U.S.C. § 284, an award of damages adequate to compensate Plaintiff for the Defendant's infringement of the patents, together with post-judgment interest and costs, but in no event less than a reasonable royalty;
- c) An order requiring Defendant to account for all profits made from making, using, offering to sell, and/or selling products or processes that practice one or more inventions claimed in Plaintiff's patents and the imposition of a constructive trust;
- d) Pursuant to 35 U.S.C. § 284, a judgment finding Defendant's infringement of the patents has been willful and deliberate;
- e) Pursuant to 35 U.S.C. § 284, an award of treble damages and pre-judgment interest as a result of Defendant's willful and deliberate infringement of the patents;
- f) A judgment declaring that this case is exceptional and awarding Plaintiff its expenses, costs, and attorney fees in accordance with 35 U.S.C. §§ 284 and 285 and Rule 54(d) of the Federal Rules of Civil Procedure;
- g) A temporary and permanent injunction enjoining and restraining Defendant and each of its agents, employees, officers, attorneys, successors, assigns, affiliates, and any persons in privity or acting in concert or participation with any of them from further acts of infringement in accordance with 35 U.S.C. § 283 and Rule 65 of the Federal Rules of Civil Procedure; and
- h) Such other and further relief as the Court may deem just and necessary under the circumstances.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury on all issues so triable.

Respectfully submitted this 10th day of September 2015.

/s/ Patrick D. Kuehl, Jr.

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was electronically filed this 10th day of September 2015 with the clerk of court using the CM/ECT system, and the same was emailed to the following:

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/s/ Patrick D. Kuehl, Jr.

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