

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

Civil Action No.: 1:15-cv-1148-CBS

D THREE ENTERPRISES, LLC,

Plaintiff,

v.

RILLITO RIVER SOLAR LLC
d/b/a ECOFASTEN SOLAR

Defendant.

PLAINTIFF'S FIRST AMENDED COMPLAINT

Plaintiff D THREE ENTERPRISES, LLC ("Plaintiff") files this First Amended Complaint against Defendant RILLITO RIVER SOLAR LLC d/b/a ECOFASTEN SOLAR, alleging as follows:

I. THE PARTIES

1. D THREE ENTERPRISES, LLC ("Plaintiff") is a Limited Liability Company organized and existing under the laws of the State of Colorado, with a principal place of business in Lafayette, Colorado.

2. Defendant RILLITO RIVER SOLAR LLC d/b/a ECOFASTEN SOLAR ("EcoFasten") is a corporation organized and existing under the laws of the State of Arizona, with a principal place of business in Morrisville, VT. EcoFasten has appeared and may be served through its counsel of record.

II. JURISDICTION AND VENUE

3. This is an action for infringement of a United States patent. Federal question jurisdiction is conferred to this Court over such action under 28 U.S.C. §§ 1331 and 1338(a).

4. Defendant has had minimum contacts with the District of Colorado such that this venue is fair and reasonable. Defendant has committed such purposeful acts and/or transactions in this district that it reasonably should know and expect that it could be hauled into this Court as a consequence of such activity. Defendant has transacted and, at the time of the filing of this Complaint, is transacting business within the District of Colorado.

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

III. PATENT INFRINGEMENT

6. On April 8, 2014, United States Patent No. 8,689,517 B2 (“the ‘517 Patent”) was duly and legally issued for “ROOF MOUNT SEALING ASSEMBLY.” A true and correct copy of the ‘517 Patent is attached hereto as Exhibit “A” and made a part hereof.

7. On April 29, 2014, United States Patent No. 8,707,655 B2 (“the ‘655 Patent”) was duly and legally issued for “ROOF MOUNT SEALING ASSEMBLY.” A true and correct copy of the ‘655 Patent is attached hereto as Exhibit “B” and made a part hereof.

8. On June 30, 2015 (approximately one month after Plaintiff filed its Original Complaint), United States Patent No. 9,068,339 B2 (“the ‘339 Patent”) was duly and

legally issued for "ROOF STANDOFF DEVICE." A true and correct copy of the '339 Patent is attached hereto as Exhibit "C" and made a part hereof.

9. These three patents may be referred to collectively as the "Patents-in-Suit."

10. By way of assignment, Plaintiff is the owner of all right, title and interest in and to the Patents-in-Suit, with all rights to enforce them against infringers and to collect damages for all relevant times, including the right to prosecute this action.

11. On information and belief, Defendant -- without authority, consent, right, or license -- manufactures, has manufactured, makes, has made, uses, imports, has imported, markets, sells, and/or offers for sale systems and/or products that directly infringe one or more claims of the Patents-in-Suit. By way of example only, its QuikFoot Roof Mount System with P-3-CSK Compression Post directly infringes at least claims 1, 2, 3, 4, 6, 9, 10, 11, 12, 13, 14 and 16 of the '517 Patent.

12. By way of further example only, its QuikFoot Roof Mount System, when used with certain EcoFasten compression brackets, including but not limited to the P-3-CSK Compression Post, the L-102-3 "L-foot" bracket, the Z-101 bracket, or the CP-SQ Slotted Bracket, directly infringes at least claims 1, 2, 3, 4, 5, and 7 of the '655 Patent.

13. By way of further example only, its Eco-65 System, when used with certain EcoFasten compression brackets, including but not necessarily limited to the F-202 bracket, the L-202 bracket, or the Z-202 bracket, directly infringes at least claims 1, 2, 3, 4, 5, and 7 of the '655 Patent.

14. By way of further example only, its QuikFoot Roof Mount System, when used with certain EcoFasten compression brackets, including but not limited to the P-3-

CSK Compression Post, the L-102-3 “L-foot” bracket, the Z-101 bracket, or the CP-SQ Slotted Bracket, directly infringes at least claims 1, 2, 4, 5 (when used, for example, with the compression post), 7, 8, 9, and 10 (when used, for example, with the L-102-3 “L-foot” bracket) of the '339 Patent.

15. By way of further example only, its Eco-65 System, when used with certain EcoFasten compression brackets, including but not necessarily limited to the F-202 bracket, the L-202 bracket, or the Z-202 bracket, directly infringes at least claims 1, 2, and 3 of the '339 Patent.

16. Plaintiff expressly reserves the right to assert additional claims of the Patents-in-Suit and expressly reserves the right to assert additional patents.

17. Plaintiff has been damaged as a result of Defendant’s infringing conduct. Defendant is, thus, liable to Plaintiff in an amount that adequately compensates for its infringement, which, by law, cannot be less than a reasonable royalty, together with interest and costs as fixed by this Court under 35 U.S.C. § 284.

18. Upon information and belief, Defendant will continue its infringement of the Patents-in-Suit unless enjoined by the Court. Defendant’s infringing conduct has caused Plaintiff irreparable harm and will continue to cause such harm without the issuance of an injunction.

IV. JURY DEMAND

19. Plaintiff hereby requests a trial by jury pursuant to Fed. R. Civ. P. 38.

V. RELATED CASES

20. This case is related to three other cases that were filed on or about June 2, 2015, namely: *D Three Enterprises, LLC v. Sunmodo Corporation*, for infringement of U.S. Patent Nos. 8,689,517 and 8,707,655 (both of which have now been asserted against EcoFasten in the instant suit); *D Three Enterprises, LLC v. EJOT Fastening Systems L.P.*, for infringement of U.S. Patent No. 8,833,032; and *D Three Enterprises, LLC v. Quickscrews International Corp.*, for infringement of U.S. Patent No. 8,833,032. The *Quickscrews* matter has since been dismissed. All of the four above-referenced U.S. Patents are titled “Roof Mount Sealing Assembly” or “Roof Standoff Device”; trace their lineage to the same parent patents (U.S. Patent Nos. 8,707,654, 8,448,405, and 8,661,765) and to the same provisional application (No. 61/150,301, filed on February 5, 2009); list the same inventors, namely, Richard F. Schaefer of Fort Lupton, Colorado, David Kreuzman, of Louisville, Colorado, and Don N. Tamm, of Denver, Colorado; and are owned or controlled by the same entity, namely, Plaintiff D Three Enterprises, LLC. Pursuant to the joinder provision of the America Invents Act, 35 U.S.C. § 299, these four lawsuits were filed separately. However, for a number of reasons, including judicial efficiency, the convenience of the parties and witnesses, and to avoid the risk of conflicting claim constructions, Plaintiff respectfully submits that all four lawsuits should be consolidated for all pre-trial purposes, including discovery, claim construction, motion practice, and pre-trial conferences. Plaintiff intends to file a Motion to Consolidate on or before September 17, 2015.

VI. PRAYER FOR RELIEF

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

- a. Judgment that one or more claims of the Patents-in-Suit have been directly infringed, either literally and/or under the doctrine of equivalents, by Defendant;
- b. Judgment that Defendant account for and pay to Plaintiff all damages to and costs incurred by Plaintiff because of Defendant's infringing activities and other conduct complained of herein;
- c. That Defendant's infringement be found to be willful from the time Defendant became aware of the infringing nature of its products, goods, or services, which is the time of filing of Plaintiff's Original Complaint at the latest, and that the Court award treble damages for the period of such willful infringement pursuant to 35 U.S.C. § 284.
- d. That Plaintiff be granted pre-judgment and post-judgment interest on the damages caused by Defendant's infringing activities and other conduct complained of herein;
- e. 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. § 285;
- f. That Defendant be permanently enjoined from any further activity or conduct that infringes one or more claims of the Patents-in-Suit; and
- g. That Plaintiff be granted such other and further relief as the Court may deem just and proper under the circumstances.

Dated: September 11, 2015

Respectfully submitted,

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ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

I hereby certify that on the 11th day of September, 2015, I electronically filed the foregoing document with the clerk of the court for the United States District Court for the District of Colorado, 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.

/s/ David A. Skeels