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**UNITED STATES DISTRICT COURT**

**FOR THE DISTRICT OF ARIZONA**

ELECTRICAL PREFAB SYSTEMS, LLC,  
an Arizona company, and BRUCE  
PHILLIPS, an Arizona resident,

Plaintiffs,

v.

COOPER CROUSE-HINDS, LLC, and  
EATON CORPORATION

Defendants.

Case No.:

**COMPLAINT FOR PATENT  
INFRINGEMENT**

DEMAND FOR JURY TRIAL

Plaintiffs Electrical Prefab Systems (“EPS”) and Bruce Phillips (collectively, “Plaintiffs”) bring this Complaint for patent infringement against Defendants Cooper Crouse-Hinds, LLC (“CCH”) and Eaton Corporation (collectively, “Defendants”) and allege as follows:

**NATURE OF THE ACTION**

1. This is an action for patent infringement arising under the patent laws of the United States, including 35 U.S.C. §§ 271 and 281-285.

2. This lawsuit pertains to Defendants’ infringement of U.S. Patent Nos. 8,168,887 (“the ’887 Patent”), entitled “METHOD AND APPARATUS FOR PRE-FAB WIRING” and 9,040,848 (“the ’848 Patent”), entitled “OPEN BACK JUNCTION BOX AND METHOD FOR PRE-FAB WIRING” (together, “the patents-in-suit”).

**PARTIES**

3. Plaintiff Electrical Prefab Systems, LLC is a corporation organized and existing under the laws of the state of Arizona, with a principal place of business located at 6607 W Boston Street #3, Chandler, AZ 85226.

4. Plaintiff Bruce Phillips is an individual residing in the State of Arizona.

5. Upon information and belief, Defendant Cooper Crouse-Hinds, LLC is a corporation organized and existing under the laws of the state of Delaware, with a principal place of business at 1201 Wolf Street, Syracuse, NY 13221, and may be served with process in Arizona through its registered agent, CT Corporation System, 3800 N Central Avenue Suite 460, Phoenix, AZ 85012.

6. Upon information and belief, Eaton Corporation is a corporation organized and existing under the laws of Ohio, with a principal place of business at 1000 Eaton Boulevard, Cleveland, Ohio 44122, and may be served with process in Arizona through its registered agent, CT Corporation System, 3800 N Central Avenue Suite 460, Phoenix, AZ 85012.

7. Upon information and belief, Defendants conduct business throughout the United States and within the State of Arizona and this District, including but not limited to the fabrication, assembly, marketing, promotion, demonstration, use, offer for sale, distribution, importation, export, and sale of, among other things, prefabricated electrical equipment, including but not limited to pre-fabricated assemblies sold under the “PRE-formance” brand name.

**JURISDICTION AND VENUE**

8. This action arises under the Patent Laws of the United States, 35 U.S.C. § 101 *et seq.*, including 35 U.S.C. § 271. This Court has subject matter jurisdiction over this matter pursuant to 28 U.S.C. §§ 1331 and 1338(a).

9. This Court has personal jurisdiction over Defendants because Defendants have established minimum contacts within the District of Arizona, including for at least the reasons that Defendants continuously, systematically, and purposefully solicit and

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1 conduct business within the State of Arizona and this District including, but not limited  
2 to, via their website, and through Local Sales Representative(s), Authorized Distributors,  
3 customers, associated business agreements and retention of legal counsel within the State  
4 of Arizona and this District. Defendants' unauthorized infringing activities such as the  
5 marketing, promotion, demonstration, use, offer for sale, distribution, and sale of  
6 prefabricated electrical equipment, including but not limited to pre-fabricated assemblies  
7 sold under the "PRE-formance" brand name, have inflicted substantial and irreparable  
8 injury in this District on Plaintiffs' business and interests, and will continue to do so  
9 unless enjoined by this Court.

10 10. Defendants manufacture (directly or indirectly through third party  
11 manufacturers) and/or assemble products that are and have been used, offered for sale,  
12 sold, and purchased in Arizona. Defendants, directly and/or through their distribution  
13 network, place prefabricated electrical equipment within the stream of commerce, which  
14 stream is directed at this District, with the knowledge and/or understanding that those  
15 products will be sold in the State of Arizona, within the District of Arizona. Defendants,  
16 by conducting business within Arizona, have availed themselves of the benefits and  
17 protections of Arizona's laws such that they should reasonably anticipate being haled into  
18 court here.

19 11. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391 and 1400(b).

### 20 **FACTUAL BACKGROUND**

21 12. Bruce Phillips is the sole inventor and owner of the patents-in-suit. The  
22 '887 and '848 Patents were duly and lawfully issued by the U.S. Patent Office on May 1,  
23 2012 and May 26, 2015, respectively. A true and correct copy of the '887 and '848  
24 Patents are attached hereto as Exhibits 1 and 2, respectively.

25 13. Mr. Phillips is a co-founder and the current President of EPS. He has  
26 licensed the patents-in-suit to EPS.

27 14. Plaintiff EPS has nearly 100 employees in the state of Arizona. EPS has  
28 been designing, assembling, marketing and selling, *inter alia*, the patented and proprietary

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1 products and advanced manufactured branch wiring systems to the electrical construction  
2 industry for the last eight years.

3 15. The patented pre-fabricated Open Back Box (“OBB”) system has solved  
4 several longstanding problems in the electrical construction industry, including but not  
5 limited to the time consuming and tedious process of disassembly and reassembly of  
6 junction boxes at the job site in order to access the wiring inside. It resolved these issues  
7 by, *inter alia*, providing an open back junction box assembly which allows substantially  
8 improved and simplified wiring to be made at the rear of the open back box at a prefab  
9 production facility and construction site with a detachable and reattachable rear cover  
10 plate. The numerous advantages of the patented OBB system have been praised by  
11 customers and competitors in the industry, including those such as CCH which have  
12 copied the patented products, and delivered substantial savings in time and labor costs at  
13 prefab construction installations such as medical, assisted living and educational facilities,  
14 hotels/motels, apartment buildings, and condominiums across the country.

15 16. CCH, and specifically Thomas McCarron, raised the possibility of Mr.  
16 Phillips starting his own prefabrication company and proposed an exclusive agreement  
17 whereby Mr. Phillips’ new company would supply CCH with the OBB products.

18 17. In 2007, Mr. Phillips co-founded EPS, filed a patent application covering  
19 the OBB system, and entered into a Master Supply Agreement (“MSA”) with CCH. The  
20 MSA was signed by John Kerkhove, the General Manager for Commercial products at  
21 CCH. Under the MSA, CCH sought and obtained EPS’s agreement to “not sell Products  
22 directly to any other parties” without CCH’s approval and, thereby, the sole right to  
23 purchase and sell the patent-pending OBB products.

24 18. On information and belief, at that time of entering into the MSA, CCH had  
25 no OBB products or prefabricated systems of its own. CCH sold EPS’s OBB products  
26 pursuant to the MSA under the brand name PRE-formance.

27 19. In connection with the MSA, at EPS’s sole expense, Plaintiffs prepared and  
28 provided CCH with marketing materials for the OBB products and prefabricated systems,

1 assisted CCH's marketing team to create additional sales literature for the OBB products  
2 and prefabricated systems, and trained CCH's sales and marketing personnel concerning  
3 the patent-pending OBB technology.

4 20. In the fall of 2009, after EPS notified CCH that it would not be renewing  
5 the MSA, CCH sought to acquire EPS. Mr. Phillips engaged in several meetings and  
6 discussions with John Kerkhove and others at CCH concerning the proposed acquisition,  
7 with the parties' extending the term of the MSA to accommodate such discussions.  
8 Ultimately, however, Plaintiffs rejected CCH's overtures and decided not to renew the  
9 MSA.

10 21. As a result of the termination of the MSA, CCH no longer had any rights to  
11 sell EPS's proprietary and patent-pending OBB products. CCH, however, continued to  
12 market and sell products that copied the OBB technology without the authorization of  
13 EPS.

14 22. CCH's unauthorized activities were done with full awareness of the patent  
15 situation as shown by their marketing of the PRE-formance products in a promotional  
16 video narrated by CCH's Patrick Kane. The video promoted a "patent pending open back  
17 box process" on a slide in the presentation that used verbiage written by EPS, with Mr.  
18 Kane specifically stating that the "patent pending open back box process eliminates the  
19 need for disassembly on the job site and maximizes the working area to reduce wiring  
20 time and speed up installation." The pending patent referred to by CCH in the  
21 promotional video was Mr. Phillips' pending '887 Patent.

22 23. On information and belief, CCH disseminated the video and continued to  
23 promote the patent pending OBB following termination of the MSA, in direct competition  
24 with Plaintiffs and without their authorization. CCH also continued to use other marketing  
25 materials that were developed and provided by Plaintiffs to promote the infringing  
26 products.

27 24. On information and belief, Defendants have monitored Plaintiffs' patent  
28 filings, prosecution activities, and grants of patents, and as a result has had actual notice

1 of the patents-in-suit, including the '848 Patent, since shortly after issuance by the PTO.  
2 Discovery is likely to reveal the exact date on which Defendants gained such actual  
3 knowledge.

4 25. EPS has actively publicized the patents-in-suit to the interested public,  
5 including on its website (<http://www.epsprefab.com/patents>). Moreover, by letter dated  
6 January 25, 2010, Plaintiffs put Defendants on notice of its provisional patent rights under  
7 35 U.S.C. § 154(d), enclosing a copy of the published U.S. Patent Application Publication  
8 No. 2009/0084571, and notifying Defendants of their belief that CCH's PRE-formance  
9 products and activities were covered thereby.

10 26. Shortly after the '887 Patent had been issued by the U.S. Patent Office in  
11 2012, CCH's Arizona-based counsel confirmed in writing that CCH had knowledge and  
12 awareness of the '887 Patent.

13 27. On information and belief, despite Defendants' actual knowledge of the  
14 '887 and '848 Patents, they have willfully and knowingly maintained their infringing  
15 activities, including making, having made, using, distributing, selling, promoting and  
16 offering for sale its infringing PRE-formance products and services.

17 28. CCH has been directly and indirectly infringing the patents-in-suit and  
18 unlawfully encouraging others to do the same, in competition with Plaintiffs, and with full  
19 knowledge of the patents-in-suit and the infringing nature of their activities, including,  
20 but not limited to, the infringing PRE-formance systems that it has touted in marketing  
21 materials as providing a way to "improve job site efficiency and properly align skilled  
22 resources to meet tight commercial construction project deadlines" and "the most  
23 complete turn-key solution for commercial construction projects" that delivers  
24 "elimination of job site 'engineering'," "elimination of job site material 'piles' and  
25 inefficient searching for pieces and parts at the job site," and "30 to 40% labor savings  
26 over traditional 'stick-build' wiring methods for greatly improved jobsite efficiency"  
27 using "open back boxes that are designed with pre-fabrication, productivity & job site  
28 speed in mind."

29. Defendants' actions have caused, and will continue to cause, substantial and irreparable harm to Plaintiffs and their business operations unless such acts are restrained by this Court.

### **GENERAL ALLEGATIONS**

#### **FIRST CLAIM FOR RELIEF – INFRINGEMENT OF THE '887 PATENT**

30. Plaintiffs restate and reallege each of the assertions set forth in Paragraphs 1 through 29 above.

31. On information and belief, Defendants market, promote, offer to sell and sell the PRE-formance open back box and equivalent open back box products to third parties, including but not limited to, distributors, contractors and/or end users. These third parties directly infringe, literally and/or under the doctrine of equivalents, by acts which include, but are not limited to, making, using and/or selling the PRE-formance open back box and equivalent open back box products in a manner claimed in one or more claims of the '887 Patent.

32. On information and belief, in violation of 35 U.S.C. § 271(a), Defendants and their third party customers are and have been, separately and/or jointly, infringing one or more claims of the '887 Patent directly by making, using, testing, providing, distributing, offering to sell, and/or selling in the United States, and/or importing into the United States, without authority, products, including without limitation PRE-formance open back box products and equivalent open back box products, in a manner claimed in one or more claims of the '887 Patent, either literally and/or under to the doctrine of equivalents.

33. On information and belief, in violation of 35 U.S.C. § 271(b), Defendants actively induce, encourage and cause third parties, including but not limited to, distributors, contractors and/or end users of the PRE-formance open back box products and equivalent open back box products, to infringe one or more claims of the '887 Patent's claims through, among other things, Defendants' marketing, promotional and advertising materials with full knowledge of the '887 Patent as described above, and with



1 intent, awareness and/or willful blindness of the fact that the actions induced thereby  
2 constitute patent infringement of one or more of the '887 Patent's claims.

3 34. On information and belief, in violation of 35 U.S.C. § 271(c), Defendants  
4 have contributed, and continue to contribute, to the infringement of one or more of the  
5 '887 Patent's claims based on Defendants' distribution, offers to sell and sales to third  
6 parties, including without limitation distributors, contractors and/or end users, of the  
7 PRE-formance open back box products and equivalent open back box products which  
8 constitute a material part of the inventions claimed in one or more of the '887 Patent's  
9 claims. These open back products are not staple articles of commerce suitable for  
10 substantial noninfringing use.

11 35. 887 Patent As a direct and proximate result of Defendants' unauthorized  
12 acts and practices, Defendants have also caused, are causing, and, unless such acts are  
13 enjoined by the court, will continue to cause irreparable harm to Plaintiffs for which there  
14 is no adequate remedy at law, and for which Plaintiffs are entitled to injunctive relief  
15 under 35 U.S.C. § 283.

16 36. As a direct and proximate result of Defendants' unauthorized acts and  
17 practices, Plaintiffs have been, are being, and unless such acts and practices are enjoined  
18 by the Court, will continue to be, injured in their business and property rights, and have  
19 suffered, are suffering, and will continue to suffer injury and damages for which they are  
20 entitled to relief under 35 U.S.C. § 284, including but not limited to provisional damages  
21 under 35 U.S.C. § 154(d).

22 37. Plaintiffs are entitled to recover from Defendants the damages sustained by  
23 Plaintiffs as a result of Defendants' infringement, including their lost profits, in an  
24 amount subject to proof at trial and not less than a reasonable royalty, together with  
25 prejudgment interest, enhanced damages, attorneys' fees, and costs as fixed by this Court  
26 under 35 U.S.C. §§ 284 and 285.

27 38. On information and belief, Defendants' infringing acts are, have been and  
28 continue to be willful, with full knowledge of the '887 Patent, and in willful, wanton,



1 reckless, and deliberate disregard thereof, entitling Plaintiffs to an increase of up to three  
2 times the damages awarded under 35 U.S.C. § 284.

3 39. The infringement by Defendants of the '887 Patent will continue to cause  
4 Plaintiffs irreparable injury and damage for which there is no adequate remedy at law  
5 unless and until Defendants are enjoined from infringing said patent.

6 **SECOND CLAIM FOR RELIEF – INFRINGEMENT OF THE '848 PATENT**

7 40. Plaintiffs restate and reallege each of the assertions set forth in Paragraphs 1  
8 through 29 above.

9 41. On information and belief, Defendants market, promote, offer to sell and  
10 sell the PRE-formance open back box and equivalent open back box products to third  
11 parties, including but not limited to, distributors, contractors and/or end users. These  
12 third parties directly infringe, literally and/or under the doctrine of equivalents, one or  
13 more of the '848 Patent by acts which include, but are not limited to, using the PRE-  
14 formance open back box and equivalent open back box products in a manner claimed in  
15 one or more claims of the '848 Patent.

16 42. On information and belief, in violation of 35 U.S.C. § 271(a), Defendants  
17 and their third party customers are and have been, separately and/or jointly, infringing one  
18 or more claims of the '848 Patent directly by making, using, testing, providing,  
19 distributing, offering to sell, and/or selling in the United States, and/or importing into the  
20 United States, without authority, products, including without limitation PRE-formance  
21 open back box products and equivalent open back box products, in a manner claimed in  
22 one or more claims of the '848 Patent, either literally and/or under to the doctrine of  
23 equivalents.

24 43. On information and belief, in violation of 35 U.S.C. § 271(b), Defendants  
25 actively induce, encourage and cause third parties, including but not limited to,  
26 contractors and/or end users of the PRE-formance open back box products and equivalent  
27 open back box products, to infringe one or more claims of the '848 Patent's claims  
28 through, among other things, Defendants' marketing, promotional and advertising

1 materials with full knowledge of the '848 Patent as described above, and with intent,  
2 awareness and/or willful blindness of the fact that the actions induced thereby constitute  
3 patent infringement of one or more of the '848 Patent's claims.

4 44. On information and belief, in violation of 35 U.S.C. § 271(c), Defendants  
5 have contributed, and continue to contribute, to the infringement of one or more of the  
6 '848 Patent's claims based on Defendants' distribution, offers to sell and sales to third  
7 parties, including without limitation contractors and/or end users, of the PRE-formance  
8 open back box products and equivalent open back box products which constitute a  
9 material part of the inventions claimed in one or more of the '848 Patent's claims. These  
10 open back products are not staple articles of commerce suitable for substantial  
11 noninfringing use.

12 45. As a direct and proximate result of Defendants' unauthorized acts and  
13 practices, Defendants have also caused, are causing, and, unless such acts are enjoined by  
14 the court, will continue to cause irreparable harm to Plaintiffs for which there is no  
15 adequate remedy at law, and for which Plaintiffs are entitled to injunctive relief under 35  
16 U.S.C. § 283.

17 46. As a direct and proximate result of Defendants' unauthorized acts and  
18 practices, Plaintiffs have been, are being, and unless such acts and practices are enjoined  
19 by the Court, will continue to be, injured in their business and property rights, and have  
20 suffered, are suffering, and will continue to suffer injury and damages for which they are  
21 entitled to relief under 35 U.S.C. § 284, including but not limited to provisional damages  
22 under 35 U.S.C. § 154(d).

23 47. Plaintiffs are entitled to recover from Defendants the damages sustained by  
24 Plaintiffs as a result of Defendants' infringement, including their lost profits, in an  
25 amount subject to proof at trial and not less than a reasonable royalty, together with  
26 prejudgment interest, enhanced damages, attorneys' fees, and costs as fixed by this Court  
27 under 35 U.S.C. §§ 284 and 285.  
28

1           48. The infringement by Defendants of the '848 Patent will continue to cause  
2 Plaintiffs irreparable injury and damage for which there is no adequate remedy at law  
3 unless and until Defendants are enjoined from infringing said patent.

4                           **DEMAND FOR JURY TRIAL**

5           Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiffs  
6 respectfully request a trial by jury of any and all issues on which a trial by jury is  
7 available under applicable law.

8                           **PRAYER FOR RELIEF**

9           WHEREFORE, Plaintiffs respectfully request that the Court enter a Judgment and  
10 Order:

11           a. Declaring that Defendants have directly infringed, induced infringement of,  
12 and/or contributorily infringed, one or more claims of the '887 and '848 Patents;

13           b. Permanently enjoining Defendants and their respective officers, agents,  
14 servants, employees, and attorneys, and those persons in active concert or participation  
15 with them, from committing further acts of infringement under 35 U.S.C. § 271 of one or  
16 more claims of the '887 and '848 Patents pursuant to 35 U.S.C. § 283;

17           c. Awarding Plaintiffs their lost profits and other damages adequate to  
18 compensate for Defendants' infringement, but in no event less than a reasonable royalty,  
19 in accordance with 35 U.S.C. § 284, and including, but not limited to, provisional  
20 damages under 35 U.S.C. § 154(d);

21           d. Declaring Defendants' infringement to be willful, and increasing damages  
22 awarded to Plaintiffs in this case up to three times the damages amount found by the jury  
23 or assessed by the Court pursuant to 35 U.S.C. § 284;

24           e. Declaring this to be an "exceptional" case within the meaning of 35 U.S.C.  
25 § 285, and awarding Plaintiffs their reasonable attorney fees;

26           f. Awarding Plaintiffs costs and prejudgment interest pursuant to 35 U.S.C. §  
27 284; and  
28

1 g. Awarding Plaintiffs such other and further relief as this Court deems just,  
2 proper and equitable.

3 Dated this 1st day of October, 2015

4 **GREENBERG TRAUIG, LLP**

5  
6 By: /s/ Brian J. Schulman  
7 Brian J. Schulman  
8 *Attorneys for Plaintiffs Electrical Prefab*  
9 *Systems, LLC and Bruce Phillips*

10 ORIGINAL of the foregoing filed with  
11 the Clerk of Court this 1st day of  
12 October, 2015

13 /s/ Amy Hershberger  
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