

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION**

WCM INDUSTRIES, INC., a Colorado Corporation,)	
)	
Plaintiff,)	Civil Action No.
v.)	
)	
THE KEENEY MANUFACTURING COMPANY, a Connecticut Corporation, and)	JURY DEMAND
JOHN DOE,)	
an individual,)	
)	
Defendants.)	

COMPLAINT WITH JURY DEMAND

Plaintiff WCM Industries, Inc. ("WCM"), by and through its undersigned attorneys, for its Complaint against The Keeney Manufacturing Company ("Keeney") and John Doe, sometimes collectively referred to as "Defendants," states as follows:

PARTIES

1. WCM is a Colorado corporation with its principal place of business at 2121 Waynoka Road, Colorado Springs, Colorado 80915.

2. Upon information and belief, Keeney is a Connecticut corporation with its principal place of business at 1170 Main Street, Newington, Connecticut 06111. Keeney is aware of WCM and competes against WCM in the United States.

3. One or more John Doe Defendants, whose identities are presently unknown, have assisted, induced, contributed, or cooperated with Keeney to commit the acts complained of herein.

JURISDICTION AND VENUE

4. This is a civil action for patent infringement arising under the patent laws of the United States, 35 U.S.C. § 101, *et seq.*

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

6. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391 and 1400.

WCM'S LEGACY OF INNOVATION

7. WCM incorporates herein by reference each and every allegation in paragraphs 1 through 6.

8. WCM has long been recognized for manufacturing the finest plumbing products in the country. The company's rich and successful history began in 1929, when Joseph C. Woodford, Sr. opened the first location in Des Moines, Iowa. For three generations, the Woodford family has built on the foundation that Joseph C. Woodford, Sr. built. Now encompassing both the Woodford and Watco brands, WCM continues to provide innovative and highly sought after fixtures, valves and fittings for use in residential and commercial buildings. Through its long history of innovation and development of best-in-class products, WCM has now become a leading supplier of plumbing fittings in the United States.

9. After nine decades of improved engineering and manufacturing, as well as significant expenses made in research and development and innovation, WCM has acquired a portfolio of patents that stands apart from any other company in the field of bath drains and related fixtures. WCM has enjoyed a reputation of innovation among those familiar with the marketplace, due in part to the innovative nature and quality of the products WCM manufactures.

10. WCM advertises its products in part by offering images and descriptions of its products in a print catalog that is distributed to distributors, customers, and potential customers throughout the United States. WCM also offers an electronic version of its catalog via its website, www.watcomfg.com.

11. WCM has continued to expand and maintain its patent portfolio in part due to its strong belief in and support of the U.S. patent system's ability to spur innovation and progress, and in part to prevent knock-off artists and low-quality suppliers from unfairly enjoying the fruits of WCM's creativity and labor and causing confusion among consumers. Many of these knock-off artists import their products from less expensive and less reliable manufacturers located overseas.

12. Through its divisions, WCM has applied for and been granted over 100 U.S. Patents on inventions ranging from wall hydrants to faucets to overflow valves. Over the last 20 years in particular, WCM has been granted a number of patents on its novel bath drains and related fixtures that have been commercialized and have resulted in highly successful products.

13. One of WCM's inventions is covered by U.S. Patent No. 8,302,220 ("the '220 Patent"), entitled "Method and Apparatus for Assembling and Sealing Bathtub Overflow and Waste Water Ports," naming inventor William T. Ball, and was duly and legally issued on November 6, 2012. A true and correct copy of the '220 Patent is attached hereto as Exhibit A.

14. The application that became the '220 Patent was filed with the United States Patent and Trademark Office ("USPTO") on December 10, 2003 and published with the USPTO as U.S. Patent Application Publication 2004/0117907 on June 24, 2004. Upon information and belief, Keeney became aware of the '220 Patent upon its June 24, 2004 publication with the USPTO.

15. U.S. Patent No. 8,321,970 ("the '970 Patent"), entitled "Method and Associated Apparatus for Assembling and Testing a Plumbing System," naming inventor William T. Ball, was duly and legally issued on December 4, 2012. A true and correct copy of the '970 Patent is attached hereto as Exhibit B.

16. The application that became the '970 Patent was filed with the USPTO on September 15, 2011 and published with the USPTO as U.S. Patent Application Publication 2012/0005824 on January 12, 2012. Upon information and belief, Keeney became aware of the '970 Patent upon its January 12, 2012 publication.

17. U.S. Patent No. 8,584,272 ("the '272 Patent"), entitled "Method and Associated Apparatus for Assembling and Testing a Plumbing System," naming inventor William T. Ball, is another patent owned by WCM and is closely related to the '132 Patent. The '272 Patent was duly and legally issued on November 19, 2013. A true and correct copy of the '272 Patent is attached hereto as Exhibit C.

18. The application that became the '272 Patent was filed with the USPTO on November 30, 2012 and was published by the USPTO as U.S. Patent Application Publication 2013/0191988 on August 1, 2013. Upon information and belief, Keeney became aware of the '272 Patent as early as August 1, 2013.

19. U.S. Patent No. 9,200,436 ("the '436 Patent"), entitled "Overflow Assembly for Bathtubs and the Like," naming inventor William T. Ball, was duly and legally issued on December 1, 2015. A true and correct copy of the '436 Patent is attached hereto as Exhibit D.

20. The application that became the '436 Patent was filed with the USPTO on May 15, 2013 and published with the USPTO as U.S. Patent Application Publication 2013/0283523

on October 31, 2013. Upon information and belief, Keeney became aware of the '436 Patent upon its October 31, 2013 publication.

21. WCM has enforced the '220, '970, and '272 Patents against other plumbing fitting suppliers in the United States. Upon information and belief, Keeney was aware of WCM's enforcement of the '220, '970, and '272 Patents against IPS Corporation prior to the filing of this Complaint, as Keeney has been a customer of IPS Corporation's plumbing products.

22. By assignment, WCM owns all right, title and interest to the '220, '970, '272, and '436 Patents.

KEENEY CONSPIRES TO COPY WCM'S PRODUCTS

23. Keeney is a competitor who has copied WCM's products and imported such copies from overseas manufacturers to undercut WCM's prices and steal WCM's customers. For many years, WCM has lived with the added expense of having to compete with Keeney and its copying.

24. Upon information and belief, Keeney does not manufacture its products, but rather has imported its products from overseas, including one or more fittings that interface with "overflow assemblies." Manufacturers and plumbers use the term "overflow assemblies" to refer to the fittings and pipes used in overflow outlets commonly found in bathtubs, such as the fittings and pipes shown in Exhibits E and F. Overflow assemblies are an essential plumbing fixture in residential and many commercial buildings, as they interconnect to a waste water drain system and divert water that reaches the overflow outlet from the bathtub to the waste water drain system, thereby reducing or eliminating overflows and the damage resulting therefrom. Various aspects of WCM's novel overflow assembly are covered by multiple WCM patents.

25. Keeney has been offering to sell and selling, in the United States, one or more overflow assemblies as part of its bath waste and overflow product line. The Keeney overflow comprises an overflow fitting interconnected to pipes that connect a drain port of the bathtub with the waste water drain system, and includes all of the elements of the overflow assemblies covered by various WCM patents. True and correct copies from the Keeney website showing examples of the infringing overflow products being manufactured, offered for sale, and/or sold by Keeney are also included in Exhibits E and F.

26. Upon information and belief, Keeney is currently importing the WCM knock-off products identified in Exhibits E and F.

27. Upon information and belief, Keeney has offered to sell and has sold its "Seal2Test" overflow assemblies, and individual fittings therefrom, in the State of Tennessee.

FIRST CLAIM FOR RELIEF
(Infringement of the '220 Patent)

28. WCM incorporates herein by reference each and every allegation in paragraphs 1 through 27.

29. Keeney's activities in making, using, selling and/or offering to sell in the United States, and/or importing into the United States, the product depicted below and the products depicted in Exhibits E and F constitute direct infringement of the '220 Patent, in violation of 35 U.S.C. § 271(a).



Keeney Product

30. Upon information and belief, Keeney is inducing direct infringement of the '220 Patent by others by actively instructing, assisting, and/or encouraging others to practice one or more of the inventions claimed in the '220 Patent, in violation of 35 U.S.C. § 271(b).

31. Upon information and belief, Keeney is contributing to direct infringement of the '220 Patent by others by directing others to manufacture one or more components which constitute a material part of the invention defined by the claims of the '220 Patent, knowing the same to be especially made or especially adapted for use in an infringement of the '220 Patent, and which components are not staple articles or commodities of commerce suitable for substantial non-infringing use, in violation of 35 U.S.C. § 271(c).

32. Upon information and belief, Keeney has acted in concert with and has induced or contributed to the infringement of the '220 Patent by instructing individual plumbers and tradesmen to commit acts that result in infringement of the '220 Patent.

33. Keeney's actions in infringing the '220 Patent have been, and are, willful, deliberate and/or in conscious disregard of WCM's rights, making this an exceptional case within the meaning of 35 U.S.C. § 285 and entitling WCM to enhanced damages and an award of its attorneys' fees.

34. Keeney's infringement of the '220 Patent has caused damage to WCM in an amount to be ascertained at trial.

35. Keeney's infringement of the '220 Patent has caused and will continue to cause irreparable injury to WCM, for which there exists no adequate remedy at law. Keeney's infringement of the '220 Patent will continue unless enjoined by this Court.

SECOND CLAIM FOR RELIEF
(Infringement of the '970 Patent)

36. WCM incorporates herein by reference each and every allegation in paragraphs 1 through 35.

37. Keeney's activities in making, using, selling and/or offering to sell in the United States, and/or importing into the United States, the product depicted above and the products depicted in Exhibits E and F constitute direct infringement of the '970 Patent, in violation of 35 U.S.C. § 271(a).

38. Upon information and belief, Keeney is inducing direct infringement of the '970 Patent by others by actively instructing, assisting, and/or encouraging others to practice one or more of the inventions claimed in the '970 Patent, in violation of 35 U.S.C. § 271(b).

39. Upon information and belief, Keeney is contributing to direct infringement of the '970 Patent by others by directing others to manufacture one or more components which constitute a material part of the invention defined by the claims of the '970 Patent, knowing the same to be especially made or especially adapted for use in an infringement of the '970 Patent, and which components are not staple articles or commodities of commerce suitable for substantial non-infringing use, in violation of 35 U.S.C. § 271(c).

40. Upon information and belief, Keeney has acted in concert with and has induced or contributed to the infringement of the '970 Patent by instructing individual plumbers and tradesmen to commit acts that result in infringement of the '970 Patent.

41. Keeney's actions in infringing the '970 Patent have been, and are, willful, deliberate and/or in conscious disregard of WCM's rights, making this an exceptional case within the meaning of 35 U.S.C. § 285 and entitling WCM to enhanced damages and an award of its attorneys' fees.

42. Keeney's infringement of the '970 Patent has caused damage to WCM in an amount to be ascertained at trial.

43. Keeney's infringement of the '970 Patent has caused and will continue to cause irreparable injury to WCM, for which there exists no adequate remedy at law. Keeney's infringement of the '970 Patent will continue unless enjoined by this Court.

THIRD CLAIM FOR RELIEF
(Infringement of the '272 Patent)

44. WCM incorporates herein by reference each and every allegation in paragraphs 1 through 43.

45. Keeney's activities in making, using, selling and/or offering to sell in the United States, and/or importing into the United States, the products depicted in Exhibits E and F constitute direct infringement of the '272 Patent, in violation of 35 U.S.C. § 271(a).

46. Upon information and belief, Keeney is inducing direct infringement of the '272 Patent by others by actively instructing, assisting, and/or encouraging others to practice one or more of the inventions claimed in the '272 Patent, in violation of 35 U.S.C. § 271(b).

47. Upon information and belief, Keeney is contributing to direct infringement of the '272 Patent by others by directing others to manufacture one or more components which

constitute a material part of the invention defined by the claims of the '272 Patent, knowing the same to be especially made or especially adapted for use in an infringement of the '272 Patent, and which components are not staple articles or commodities of commerce suitable for substantial non-infringing use, in violation of 35 U.S.C. § 271(c).

48. Upon information and belief, Keeney has acted in concert with and has induced or contributed to the infringement of the '272 Patent by instructing individual plumbers and tradesmen to commit acts that result in infringement of the '272 Patent.

49. Keeney's actions in continuing to infringe the '272 Patent after notice of WCM's rights to the same have been, and are, willful, deliberate and/or in conscious disregard of WCM's rights, making this an exceptional case within the meaning of 35 U.S.C. § 285 and entitling WCM to enhanced damages and an award of its attorneys' fees.

50. Keeney's infringement of the '272 Patent has caused damage to WCM in an amount to be ascertained at trial.

51. Keeney's infringement of the '272 Patent has caused and will continue to cause irreparable injury to WCM, for which there exists no adequate remedy at law. Keeney's infringement of the '272 Patent will continue unless enjoined by this Court.

FOURTH CLAIM FOR RELIEF
(Infringement of the '436 Patent)

52. WCM incorporates herein by reference each and every allegation in paragraphs 1 through 51.

53. Keeney's activities in making, using, selling and/or offering to sell in the United States, and/or importing into the United States, the products depicted in Exhibits E and F constitute direct infringement of the '436 Patent, in violation of 35 U.S.C. § 271(a).

54. Upon information and belief, Keeney is inducing direct infringement of the '436 Patent by others by actively instructing, assisting, and/or encouraging others to practice one or more of the inventions claimed in the '436 Patent, in violation of 35 U.S.C. § 271(b).

55. Upon information and belief, Keeney is contributing to direct infringement of the '436 Patent by others by directing others to manufacture one or more components which constitute a material part of the invention defined by the claims of the '436 Patent, knowing the same to be especially made or especially adapted for use in an infringement of the '436 Patent, and which components are not staple articles or commodities of commerce suitable for substantial non-infringing use, in violation of 35 U.S.C. § 271(c).

56. Upon information and belief, Keeney has acted in concert with and has induced or contributed to the infringement of the '436 Patent by instructing individual plumbers and tradesmen to commit acts that result in infringement of the '436 Patent.

57. Keeney's actions in continuing to infringe the '436 Patent after notice of WCM's rights to the same have been, and are, willful, deliberate and/or in conscious disregard of WCM's rights, making this an exceptional case within the meaning of 35 U.S.C. § 285 and entitling WCM to enhanced damages and an award of its attorneys' fees.

58. Keeney's infringement of the '436 Patent has caused damage to WCM in an amount to be ascertained at trial.

59. Keeney's infringement of the '436 Patent has caused and will continue to cause irreparable injury to WCM, for which there exists no adequate remedy at law. Keeney's infringement of the '436 Patent will continue unless enjoined by this Court.

PRAYER FOR RELIEF

WHEREFORE, WCM requests that judgment be entered in its favor and against Keeney as follows:

A. Declaring that Keeney has infringed United States Patent No. 8,302,220, and that Keeney's infringement of the '220 Patent was and continues to be willful;

B. Issuing temporary, preliminary, and permanent injunctions enjoining Keeney, its officers, agents, subsidiaries, and employees, and those in privity with or who act in concert with any of the foregoing, from further activities that constitute infringement of United States Patent No. 8,302,220, pursuant to 35 U.S.C. § 283;

C. Awarding WCM damages arising out of Keeney's infringement of United States Patent No. 8,302,220 for each act of infringement, and trebling those damages pursuant to 35 U.S.C. § 284, together with costs and pre- and post-judgment interest;

D. Declaring that Keeney has infringed United States Patent No. 8,321,970, and that Keeney's infringement of the '970 Patent was and continues to be willful;

E. Issuing temporary, preliminary, and permanent injunctions enjoining Keeney, its officers, agents, subsidiaries, and employees, and those in privity with or who act in concert with any of the foregoing, from further activities that constitute infringement of United States Patent No. 8,321,970, pursuant to 35 U.S.C. § 283;

F. Awarding WCM damages arising out of Keeney's infringement of United States Patent No. 8,321,970 for each act of infringement, and trebling those damages pursuant to 35 U.S.C. § 284, together with costs and pre- and post-judgment interest;

G. Declaring that Keeney has infringed United States Patent No. 8,584,272, and that Keeney's infringement of the '272 Patent was and continues to be willful;

H. Issuing temporary, preliminary, and permanent injunctions enjoining Keeney, its officers, agents, subsidiaries, and employees, and those in privity with or who act in concert with any of the foregoing, from further activities that constitute infringement of United States Patent No. 8,584,272, pursuant to 35 U.S.C. § 283;

I. Awarding WCM damages arising out of Keeney's infringement of United States Patent No. 8,584,272 for each act of infringement, and trebling those damages pursuant to 35 U.S.C. § 284, together with costs and pre- and post-judgment interest;

J. Declaring that Keeney has infringed United States Patent No. 9,200,436, and that Keeney's infringement of the '436 Patent was and continues to be willful;

K. Issuing temporary, preliminary, permanent injunctions enjoining Keeney, its officers, agents, subsidiaries, and employees, and those in privity with or who act in concert with any of the foregoing, from further activities that constitute infringement of United States Patent No. 9,200,436, pursuant to 35 U.S.C. § 283;

L. Awarding WCM damages arising out of Keeney's infringement of United States Patent No. 9,200,436 for each act of infringement, and trebling those damages pursuant to 35 U.S.C. § 284, together with costs and pre- and post-judgment interest;

M. Finding that this is an "exceptional case" within the meaning of 35 U.S.C. § 285 and awarding reasonable attorneys' fees to WCM; and

N. Awarding WCM such further legal and equitable relief as the Court deems just and proper.

JURY DEMAND

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, WCM demands a trial by jury on all issues so triable.

DATED: February 25, 2016

Respectfully submitted,

s/Glen G. Reid, Jr.

Glen G. Reid, Jr. (#8184)
WYATT, TARRANT & COMBS, LLP
1715 Aaron Brenner Drive, Suite 800
Memphis, TN 38120-4367
Telephone: (901) 537-1000
Facsimile: (901) 537-1010
greid@wyattfirm.com

*APPLICATIONS FOR ADMISSION PRO HAC
VICE TO BE SUBMITTED:*

Ian R. Walsworth
iwalsworth@sheridanross.com
John C. Heuton
jheuton@sheridanross.com
SHERIDAN ROSS P.C.
1560 Broadway, Suite 1200
Denver, CO 80202
303.863.9700
litigation@sheridanross.com

ATTORNEYS FOR WCM INDUSTRIES, INC.