

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

Strike Tool, Inc.,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 16-cv-0896 (SRN/JSM)
)	
Ess Brothers and Sons, Inc., and)	
Sealing Systems Inc.)	
)	JURY TRIAL DEMANDED
Defendants.)	

AMENDED COMPLAINT FOR PATENT INFRINGEMENT

For its Amended Complaint against the above-named Defendants, Plaintiff Strike Tool, Inc., by and through its undersigned counsel, states and alleges as follows:

THE PARTIES

1. Strike Tool, Inc. (“Plaintiff” or “Strike Tool”) is a Minnesota Corporation, having its principal place of business located at 23620 Main Street, #3A, Hampton, MN 55031

2. On information and belief, Defendant Ess Brothers and Sons, Inc. is a Minnesota Corporation having its principal place of business located at 9350 County Road 19, Loretto, MN 55357.

3. On information and belief, Defendant Sealing Systems Inc. is a Minnesota Corporation having its principal place of business located at 9350 County Road 19,

Loretto, MN 55357. (Ess Brothers and Sons, Inc and Sealing Systems Inc. collectively “Defendants”).

JURISDICTION AND VENUE

4. This is a case for patent infringement arising under the Acts of Congress relating to patents, 35 U.S.C. §§ 271 and 281–285.

5. This Court has federal question subject matter jurisdiction over the matter in controversy under 28 U.S.C. §§ 1331 and 1338(a) because the claims alleged herein arise under the Patent Laws of the United States, 35 U.S.C. § 1, *et seq.*

6. On information and belief, at all times material, Defendants are incorporated in the State of Minnesota, and have regularly solicited and transacted business in Minnesota and in this District by making, using, importing, selling and/or offering to sell products, devices, systems and/or methods including those identified below. Minimally, Defendants have deliberately placed at least those infringing products, devices, systems and/or methods identified in this Amended Complaint into the stream of commerce knowing same have been and will be made, used, imported, sold and/or offered for sale within Minnesota and this District. Defendants’ infringing activities have caused and will continue to cause harm and damage to Plaintiff.

7. This Court has personal jurisdiction over Defendants and each of them by virtue of their location in Minnesota, and purposeful contacts with the State of Minnesota, described herein.

8. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391(b) and (c) and 1400(b).

BACKGROUND

9. On January 17, 2006, the United States Patent and Trademark Office (the “USPTO”) duly issued U.S. Patent No. 6,986,226 (“the ‘226 Patent”), entitled Manhole Water Seal-Cap/Diverter, to inventor Robert S. Banks. A true copy of the ‘226 Patent is attached hereto as Exhibit A.

10. Strike Tool is the owner by assignment of the entire right, title, and interest in the ‘226 Patent.

11. Ess Brothers and Sons, Inc. manufactures and distributes infringing grade ring alignment and water barrier products and systems marketed to the public as an “Alignment Barrier” (The Infringing Alignment Barrier Products and Methods).

12. The Infringing Alignment Barrier Products and Methods allow users to align manhole chimneys in such a way that water will not infiltrate, and the chimney will maintain alignment despite weather, traffic, and other forces.

13. The Infringing Alignment Barrier Products and Methods are constructed from water resistant materials and are designed to be secured with a water resistant mastic.

14. The Defendants manufacture and distribute infringing manhole water seal cap and diverter products and methods under the trademark “Infi-Shield® Uni-Band” (The “Infringing Uni-Band Products and Methods”).

15. The Infringing Uni-Band Products and Methods allow users to externally seal the area around a manhole.

16. The Infringing Alignment Barrier Products and Methods and Infringing Uni-Band Products and Methods infringe the issued claims of the '226 Patent as specified below. (Infringing Alignment Barrier Products and Methods and Infringing Uni-Band Products and methods collectively "The Infringing Products and Methods").

17. Defendants' direct and indirect infringing activities aforesaid, and described further below, have been without authority or license from Strike Tool.

18. Defendants, and third party users to whom the Infringing Products and Methods are advertised to and sold, have directly infringed the patents in suit as described further below.

19. Defendants have been on notice of Strike Tool's patent rights since at least as early as August 26, 2015.

20. Defendants' infringing activities aforesaid, and described further below, have been in wanton disregard of Strike Tool's rights in the '226 Patent.

21. Defendants' infringing activities aforesaid, and described further below, have caused, and will continue to cause, substantial injury and damage to Strike Tool, in an amount to be determined at trial.

22. Strike Tool has been and will continue to be irreparably harmed by Defendants' infringing activities described herein, unless permanently enjoined by order of this Court.

23. Strike Tool has no adequate remedy at law.

COUNT I—DIRECT INFRINGEMENT OF U.S. PATENT NO. 6,986,226

24. The foregoing allegations are incorporated herein by this reference as though fully set forth herein.

25. By making, selling, offering for sale, importing and/or using the Infringing Products and Methods Defendants have infringed the issued claims of the '226 Patent, literally and/or under the doctrine of equivalents.

26. On information and belief, Defendants' infringement of claims of the '226 Patent has been in wanton disregard for Strike Tool's right to exclude others from making, importing, selling, offering for sale and/or using the invention embodied within the '226 Patent.

27. Defendants' infringement of claims of the '226 Patent has caused, and will continue to cause, substantial injury and damage to Strike Tool, in an amount to be determined at trial.

28. Strike Tool has been and will continue to be irreparably harmed by Defendants' deliberate infringement of the '226 Patent, unless permanently enjoined by order of this Court.

29. On information and belief, based on the allegations set forth herein and their making, importing, selling, offering for sale and/or using one or more of the respective Infringing Products and Methods, Defendants are jointly, severally, or alternatively liable for infringing the '226 Patent literally or under the doctrine of equivalents.

COUNT II—INDUCEMENT OF INFRINGEMENT OF U.S. PATENT NO.

6,986,226

30. The foregoing allegations are incorporated herein by this reference as though fully set forth herein.

31. Defendants have actual knowledge of the '226 Patent and in the inventions claimed therein.

32. Defendants actively advertise to and approach third parties, including contractors and municipalities engaged in sealing manhole covers, regarding their Infringing Products and Methods and how to use the same.

33. Upon information and belief, Defendants instruct third parties including contractors and municipalities concerning how to use the Infringing Products and Methods.

34. Despite their actual knowledge, Defendants continue to make, sell, offer to sell, import and/or use the Infringing Products and Methods, and thereby induce third parties, to directly infringe one or more claims of the '226 Patent.

35. On information and belief, Defendants actively and knowingly aid and abet direct infringement of the '226 Patent by third parties.

36. On information and belief, Defendants intend to cause the acts which they know constitute direct infringement of the '226 Patent by third parties.

37. On information and belief, Defendants either performs the steps contained in the asserted method claims of the '226 Patent, or so exercise control and direction over

the performance of the steps within such claims by third parties, that the performance of every such step is attributable to Defendants.

38. Defendants' active inducement of infringement of the '226 Patent has been willful, deliberate and knowing, in reckless disregard for Strike Tool's right to exclude others from making, importing, selling, offering for sale and/or using the inventions therein.

39. Defendants' active inducement of infringement of the '226 Patent has caused, and will continue to cause, substantial injury and damage to Strike Tool, in an amount to be determined at trial.

COUNT III—CONTRIBUTING TO THE INFRINGEMENT OF U.S. PATENT

NO. 6,986,226

40. Plaintiff incorporates by this reference all of the previous allegations as though fully set forth herein.

41. On information and belief, by making, importing, selling, and/or offering for sale the Infringing Products and Methods to third parties, including contractors and municipalities engaged in sealing manhole covers, knowing the Infringing Products and Methods to be especially made or adapted for infringement of the '226 Patent, Defendants are liable for contributory infringement. Defendants have made, sold, offered for sale, and/or licensed at least the Infringing Products and Methods to their customers. Defendants thus have encouraged and contributed to their own and/or their customer's infringing uses of the Infringing Products and Methods, in violation of Strike Tool's

exclusive rights in the '226 Patent. Each of Defendants' Infringing Products and Methods include a material part of an invention embodied in the '226 Patent.

42. Defendants' and/or customers' use of Defendants' Infringing Products and Methods, constitutes direct infringement of the '226 Patent, as set forth herein.

43. Defendants have actual knowledge of the '226 Patent and the inventions claimed therein. Further, Defendants know and have reason to know that their respective Infringing Products and Methods made, imported, sold, offered for sale, and/or licensed to their customers are especially made or adapted for uses that infringe the '226 Patent.

44. The respective Infringing Products and Method imported, sold, offered for sale, and/or licensed by Defendants are not staple articles or commodities of commerce capable of substantial non-infringing use.

45. Defendants' contributory infringement of the '226 Patent has been willful, deliberate and knowing, in reckless disregard for Strike Tool's right to exclude others from making, importing, selling, offering for sale and/or using the inventions therein.

46. Defendants' contributory infringement of the '226 Patent has caused, and will continue to cause, substantial injury and damage to Strike Tool, in an amount to be determined at trial.

47. Strike Tool has been and will continue to be irreparably harmed by Defendants' contributory infringement of the '226 Patent.

48. On information and belief, based on the allegations set forth herein and for further reasons described above with respect to direct infringement of the '226 Patent,

Defendants are jointly, severally, or alternatively liable for inducing infringement of the '226 Patent literally or under the doctrine of equivalents.

DEMAND FOR JURY TRIAL

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

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for the following relief:

- A. To enter judgment that Defendants have directly infringed, actively induced others to infringe, and/or contributed to the infringement of the '226 Patent;
- B. To enter judgment that Defendants have committed willful infringement of the '226 Patent;
- C. A judgment against Defendants and each of them in favor of Strike Tool for an award of monetary damages sufficient to compensate Strike Tool for all of its substantial losses and harm suffered as a consequence of Defendants' infringement of the '226 Patent but in no event less than a reasonable royalty amount;
- D. A judgment against Defendants in favor of Strike Tool for an award trebling Strike Tool's damages herein, ordering Defendants to pay pre-judgment and post-judgment interest, declaring this case to be "exceptional," and ordering Defendants to pay Strike Tool's reasonable costs and attorneys' fees in prosecuting this action;

E. An Order permanently enjoining Defendants and each of its respective officers, agents, employees and other persons acting in concert or participation with them, from making, using, selling or offering to sell the Infringing Products and Methods and from importing same into the United States, and from otherwise infringing the claims of the '226 Patent in violation of 35 U.S.C. § 271; and

F. Such other and further relief as the Court deems just and proper.

Dated: June 10, 2016

HELLMUTH & JOHNSON, PLLC

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ATTORNEYS FOR STRIKE TOOL