

**UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA**

HUBER ENGINEERED WOODS LLC,  Plaintiff,  vs.  GEORGIA-PACIFIC WOOD PRODUCTS LLC,  Defendant.
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Civil Action No. 3:16-cv-00399-FDW

**Jury Trial Demanded**

**FIRST AMENDED COMPLAINT**

Plaintiff Huber Engineered Woods LLC (“HEW”), through its undersigned attorneys, for its First Amended Complaint against Defendant Georgia-Pacific Wood Products LLC (“GP”) alleges as follows:

**THE PARTIES**

1. HEW is a Delaware limited liability company with its principal place of business at Suite 300, One Resource Square, 10925 David Taylor Drive, Charlotte, North Carolina 28262.
2. GP is a Delaware limited liability company with its principal place of business at 133 Peachtree Street, N.E., Atlanta, Georgia 30303.

**JURISDICTION**

3. This is an action for patent infringement arising under the Acts of Congress relating to patents, 35 U.S.C. §§ 271, *et seq.*, and for unfair competition arising under the laws of North Carolina.
4. This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1338(a).

5. This Court has supplemental jurisdiction over state law claims under 28 U.S.C. § 1367.

6. This Court has personal jurisdiction over GP pursuant to North Carolina's long-arm statute, N.C. Gen. Stat. §§1-75.4(1)(d) and 1.75.4(3)-(4), and the Due Process Clause of the Fourteenth Amendment to the United States Constitution. GP regularly conducts business in North Carolina and has engaged in the sale or offer for sale of a system falling under the claims of United States Patent Nos. 8,474,197 and 9,010,044 in North Carolina.

## **BACKGROUND**

### **The Patents In Suit**

7. HEW develops and sells innovative engineered wood products and systems, including structural sheathing systems used in the construction of buildings. Among other things, HEW's structural sheathing systems provide structural support for buildings, while also providing air and water resistance that protects buildings from weather during construction. HEW owns several patents directed to such structural sheathing systems, including the patents at issue in this lawsuit, United States Patent Nos. 8,474,197 and 9,010,044 (collectively, "the Patents in Suit").

8. On July 2, 2013, the United States Patent and Trademark Office ("PTO") duly and legally issued United States Patent No. 8,474,197 ("the '197 patent"), entitled Panel for Sheathing System and Method, to HEW. HEW is the owner of all right, title, and interest in the '197 patent. A true and correct copy of the '197 patent is attached hereto as Exhibit A.

9. On April 21, 2015, the PTO duly and legally issued United States Patent No. 9,010,044 ("the '044 patent"), entitled Panel for Sheathing System and Method, to HEW. HEW

is the owner of all right, title, and interest in the '044 patent. A true and correct copy of the '044 patent is attached hereto as Exhibit B.

10. The inventions claimed in the Patents in Suit were the result of years of research and development on structural sheathing systems by HEW. The inventions represent a leap forward in roof and/or wall structural sheathing system technology, solving several problems exhibited by other sheathing systems that rely upon house wrap or felt paper that is used with structural wood panels as part of the weatherization of buildings.

#### HEW's ZIP System® Sheathing

11. HEW's commercial embodiments of the Patents in Suit are exemplified in its ZIP System® panels and the use of such panels in conjunction with ZIP System™ tape. ZIP System® panels are structural roof and/or wall panels with an integrated water-resistive and air barrier. ZIP System panels in combination with ZIP System tape (collectively, "ZIP System Sheathing") streamline and simplify the installation and weatherization process associated with the building of structures such as single and multi-resident housing by achieving desired water resistance, air resistance, and water vapor permeability characteristics while eliminating the need to use house wrap or felt paper and/or eliminating the labor-intensive process of wrapping structures in house wrap or felt paper.

12. HEW's ZIP System Sheathing was first sold in 2007. As a result of the patented technology, HEW developed a market for structural roof and/or wall panels or panel systems having an integrated barrier layer on the panels and using a seam sealing means, such as tape, to seal the joints between the panels. Since 2007, HEW has invested substantial amounts of time and resources developing and growing the market for structural building sheathing systems with an integrated barrier layer and seam sealant, including marketing ZIP System Sheathing and

educating customers and those in the building industry regarding structural roof and/or wall sheathing systems, ZIP System Sheathing, and the benefits associated with ZIP System Sheathing. Indeed, ZIP System Sheathing has been the only successful structural roof and wall system in the market with an integrated barrier layer and seam sealing means with the above-described properties. The marketplace for structural roof and wall sheathing systems with an integrated barrier layer and seam sealing means, like ZIP System Sheathing, was created by and, thus, has also grown as a result of HEW's efforts.

#### The Infringing GP ForceField® Sheathing System

13. In light of the success achieved by ZIP System Sheathing and the growing market created by HEW, GP sought to enter the market for structural building sheathing systems with an integrated barrier layer. Rather than put in the time and resources necessary to independently develop a sheathing product, like HEW did, GP instead chose to take advantage of the innovative development work performed by HEW and claimed in the Patents in Suit.

14. Indeed, GP announced at the 2016 International Builders' Show, a major trade show for the housing industry, that GP intended to launch its ForceField® Air and Water Barrier System ("the ForceField Sheathing System") in the United States during 2016. The ForceField Sheathing System is composed of ForceField® panels and ForceField® seam tape. The ForceField panels are structural wall panels with an integrated water-resistive and air barrier that is also water vapor permeable. (Exhibit C at 2-3.) The ForceField panels are used to create a system of panels that sheath the exterior walls of a home, and the ForceField seam tape is used to create a water-resistant seal over the joints between the ForceField panels in the system. (*Id.*) On information and belief, GP offered for sale or sold the ForceField panels and ForceField seam

tape together as one package. GP's ForceField Sheathing System is intended to be a direct competitor of HEW's ZIP System Sheathing.

15. The ForceField Sheathing System, when made, offered for sale, sold or used in the United States meets the limitations of the claims of the Patents in Suit. For example, GP's own marketing literature for the ForceField Sheathing System states:

The ForceField™ air and water barrier system from Georgia-Pacific consists of structural engineered wood sheathing panels laminated with a proprietary air and water barrier. Once the panels are installed on a structure and the panel seams are taped with ForceField™ seam tape, it creates a code-compliant, integrated system for residential or light commercial construction that eliminates the need for house wrap.

(Exhibit C at 2.) The same marketing documents claim that “[t]his [barrier] overlay [on the ForceField panels] creates a barrier that keeps water out, but is also water vapor permeable, allowing water vapor to escape and promote drying.” (*Id.* at 3.) Further, the specification for the ForceField seam tape states that the tape “[s]eals against air and moisture infiltration.” (Exhibit D.) GP likewise provides installation instructions that instruct builders how to use ForceField panels and ForceField seam tape to create an infringing ForceField Sheathing System. (Exhibit E.)

#### GP's Unfair Competition With Respect to Former HEW Employee Richard Jordan

16. Moreover, GP hired a former HEW employee, Richard Jordan to help GP develop its infringing ForceField Sheathing System. On information and belief, GP improperly used confidential HEW information known to Mr. Jordan as part of the development of the ForceField Sheathing System.

17. Mr. Jordan is a named inventor on each of the Patents in Suit, and he was involved in the development of HEW's ZIP System Sheathing and other HEW products while an

employee of HEW. Mr. Jordan is in possession of confidential HEW information relating to the Patents in Suit, HEW's ZIP System Sheathing, and other HEW products. In particular, Mr. Jordan obtained certain confidential HEW information regarding ways to secure barrier layers to lignocellulosic panels, such as oriented strand board ("OSB"), including the use of adhesives to secure such barrier layers.

18. As part of his prior employment with HEW, Mr. Jordan entered into an Inventions and Confidentiality Agreement ("the Confidentiality Agreement"). Clause 4 of that Confidentiality Agreement expressly prohibited Mr. Jordan from, either directly or indirectly, using, revealing, disclosing or publishing any confidential HEW information. The Confidentiality Agreement is attached hereto as Exhibit F.

19. On information and belief, GP experienced trouble during its efforts to develop a sheathing product with a barrier layer secured to a lignocellulosic panel such as an OSB panel. On information and belief, GP attempted to market a sheathing product with an integrated barrier layer prior to the development of the ForceField Sheathing System, but that previous product failed commercially. On information and belief, GP hired former HEW employee Mr. Jordan to help GP solve the problems with its prior sheathing product and to assist in the development of the infringing ForceField Sheathing System.

20. GP represents that Mr. Jordan began work as a consultant for GP in or around May 2012, after working for McTech Group. However, on information and belief, GP began working with Mr. Jordan prior to May 2012. Mr. Jordan is listed as a co-inventor with Michael Carroll on patent application No. 61/261,874 for a "Radiant Barrier and Method of Making Same," relating to construction materials and filed in 2009. Mr. Carroll was purportedly hired by GP in 2010, but, on information and belief, continued to work and still works at McTech Group.

(Exhibit G.) On information and belief, Mr. Carroll was working with Mr. Jordan at McTech Group and, for part of that time, was simultaneously employed at GP. Therefore, it appears that at least one high-level employee of GP, Mr. Carroll, was working with Mr. Jordan on developing construction materials well before the May 2012 date represented by GP.

21. On information and belief, at the time GP hired Mr. Jordan, GP was aware of Mr. Jordan's knowledge of confidential HEW information, including at least confidential HEW information about securing an integrated barrier layer to a lignocellulosic panel. On information and belief, GP sought to use the confidential HEW information possessed by Mr. Jordan as part of the development of the infringing ForceField Sheathing System and to avoid the failures GP experienced with its previous sheathing product.

22. Indeed, Mr. Jordan, along with Mr. Carroll, is a named inventor on GP's patent application U.S. Patent Application No. 14/065,580 (the "GP Patent Application"). The GP Patent Application relates to the same subject matter as, and contains information remarkably similar to, the Patents in Suit. This is further evidence of Mr. Jordan's involvement in the development of the infringing ForceField Sheathing System and GP's knowledge of HEW's proprietary technology in this area and of Mr. Jordan's role in developing that technology. Notably, GP abandoned the GP Patent Application, as the PTO officially found on June 29, 2016. (Exhibit H.) GP's abandonment follows repeated rejections, including a Final Rejection, of GP's Patent Application in view of three prior art publications - two of which were filed on behalf of HEW. (Exhibit I.) One of the prior art publications cited in the September 29, 2015 Final Rejection, Bennett et al. (US 2005/0229504), is the published version of an application to which both the '197 and '044 patents (which list Mr. Jordan as an inventor) claim priority.

(Exhibit J at 1; *see also* Exhibits A at 1(identifying application no. 11/029,535 in Related U.S. Application Data field); B at 2 (same).)

23. When hiring Mr. Jordan, GP knew Mr. Jordan was formerly employed by HEW and that he worked on confidential technology related to engineered wood products with an integrated barrier layer.

24. The disclosure and/or use of HEW confidential information possessed by Mr. Jordan has harmed HEW because, among other things, the confidential information has been used to create the ForceField Sheathing System which GP now makes, offers for sale and sells in interstate commerce in competition with HEW's ZIP System Sheathing.

#### Sales Of The ForceField Sheathing System

25. HEW has determined that GP has offered to sell and sold the infringing ForceField Sheathing System in North Carolina. For example, HEW learned that a distributor located in southeast Charlotte, North Carolina, obtained supply of the infringing ForceField Sheathing System. The distributor in turn sold the infringing ForceField Sheathing System to a construction company in North Carolina that used the system in a residential development located in Charlotte.

26. In addition, HEW has obtained the infringing ForceField Sheathing System from a distributor named Locust Lumber located in the Charlotte, North Carolina area.

27. On information and belief, the infringing ForceField Sheathing System sold by GP is inferior to the ZIP System Sheathing. On information and belief, the ForceField Sheathing System's barrier layer is prone to peeling away from the underlying OSB board, thereby exposing the OSB board and interior of homes under construction to air and water damage that the barrier layer was intended to prevent. In fact, on information and belief, the construction



company that bought the infringing ForceField Sheathing System was dissatisfied with the performance ForceField Sheathing System. For that reason, the construction company switched from using the infringing ForceField Sheathing System to using Tyvek house wrap midway through the construction of homes being built by the company, as shown in the picture below:



28. The inferiority of GP's ForceField Sheathing System tarnishes the reputation of, and thereby harms the market for, the patented structural building sheathing systems with an integrated barrier layer and seam sealant which HEW has worked so hard to develop.

### **COUNT I – PATENT INFRINGEMENT OF THE '197 PATENT**

29. HEW incorporates Paragraphs 1-28 by reference as if set forth fully as part of this count.

30. GP has directly infringed and continues to directly infringe, literally and/or under the doctrine of equivalents, at least claim 1 of the '197 patent by making, offering for sale, using, or selling its ForceField Sheathing System. On information and belief, GP makes, offers for

sale, uses, and sells its ForceField panels together with its ForceField tape. A preliminary claim chart attached hereto as Exhibit K provides examples of evidence showing that GP's ForceField Sheathing System meets each element of claim 1 of the '197 patent.

31. HEW has complied with the marking requirements of 35 U.S.C. § 287, giving GP constructive notice of the '197 patent.

32. GP has also contributed to, and continues to contribute to, the infringement of at least independent claims 1 and 12 of the '197 patent at least by selling and offering to sell the ForceField Sheathing System and through its related marketing, advertising, customer assistance, and selling activities.

33. GP has been aware of the '197 patent since at least February 6, 2015 (*see* Exhibit L) and is and has been on notice of the alleged infringement of the '197 patent at least as of June 17, 2016, when HEW informed GP that HEW had filed a lawsuit against it and provided GP with a courtesy copy of the original Complaint.

34. The infringing ForceField Sheathing System comprises a material part of the claimed invention of the '197 patent. GP's own marketing materials tout the advantages of its ForceField panels having a water resistant and water vapor permeable barrier layer and of the ForceField seam tape, evidencing their importance (taken individually and as a whole) in the overall system offered for sale and sold by GP and their importance to the method of sheathing claimed in the '197 patent. (Exhibit C at 2-3; *see also* Exhibit E.)

35. Further, the infringing ForceField Sheathing System is especially made and adapted for use in infringement of the '197 patent. Moreover, the ForceField Sheathing System is not a staple article of commerce and has no substantial noninfringing use. GP's marketing materials and installation instructions state the ForceField panels and ForceField seam tape are

intended to be used to provide a sheathing system with a water resistant and water vapor permeable barrier layer, wherein the system is sealed together by water resistant tape, as claimed in the claims of the '197 patent. (Exhibits C; E.) In addition, GP's marketing materials do not advertise or otherwise suggest that the ForceField Sheathing System is a staple article of commerce or has a substantial noninfringing use. (Exhibit C.) In fact, when used as shown in GP's own marketing materials (*see* Exhibit C) and when used as instructed by GP (*see* Exhibit E), the ForceField Sheathing System directly infringes claims of the '197 patent. No instructions provide for alternative uses of the ForceField Sheathing System other than for use in sheathing buildings. (Exhibit E.)

36. GP's customers or customers of distributors selling GP's ForceField Sheathing System—namely home builders and others in the construction industry—directly infringe the '197 patent by using and offering for sale the ForceField Sheathing System in a panel system and/or as part of a method that embodies the invention(s) of the '197 patent. At least one such builder has used GP's ForceField Sheathing System in a residential development in Charlotte, North Carolina. GP knows that its customers or customers of its distributors use and sell (and indeed GP instructs such customers to use and sell) the ForceField Sheathing System in a manner that infringes the '197 patent. As such, GP intended to contributorily infringe the '197 patent.

37. GP has also induced, and continues to induce, infringement of at least independent claims 1 and 12 of the '197 patent at least by offering for sale and selling the ForceField Sheathing System directly to customers or through distributors to customers. GP has instructed and continues to instruct its customers or customers of its distributors to use and sell the ForceField Sheathing System in a panel system on the exterior walls of homes and as a system and method that embodies the invention(s) claimed in the '197 patent. (Exhibit E.)

38. On information and belief, GP knows that its sale of the ForceField Sheathing System and instructions for use of the same induces customers to directly infringe the '197 patent. GP's knowledge of the '197 patent since at least February 6, 2015, combined with its marketing materials and instructions for use of the ForceField Sheathing System in a manner claimed by the '197 patent, demonstrate GP intends to induce customers to infringe the '197 patent.

39. When using and offering to sell the ForceField Sheathing System as directed or instructed by GP, customers directly infringe the '197 patent by using and offering to sell the ForceField Sheathing System in a panel system on the exterior walls of homes and/or using and offering to sell a method that embodies the invention(s) claimed in the '197 patent. At least one such builder has used and offered to sell GP's ForceField Sheathing System in a residential development in Charlotte, North Carolina.

40. A preliminary claim chart attached hereto as Exhibit K provides examples of evidence showing that GP's marketing materials and instructions contribute to or induce infringement of at least claims 1 and 12 of the '197 patent.

41. GP's infringement has been and continues to be willful and deliberate. In addition to the facts cited in the above paragraphs, the willfulness of GP's infringement of the '197 patent is evidenced by the fact that GP abandoned its pursuit of the GP Patent Application on sheathing systems related to its ForceField product line on June 29, 2016. The abandonment came after the GP Patent Application was rejected by the PTO based, in part, on HEW's patent application no. 2005/0229504, which ultimately issued as U.S. Patent No. 7,658,040, and was part of HEW's patent portfolio on sheathing systems including specifically the '197 patent. GP knew or was willfully blind to HEW's '197 patent as a result of the rejection of its application

over HEW's published application that is closely related to the '197 patent. GP's decision to abandon the GP Patent Application when it was rejected over the HEW patent publication further demonstrates that GP knows HEW is entitled to the Patents in Suit and GP is willfully infringing on those patent rights and is intentionally contributing to and inducing infringement as described herein.

42. HEW has been damaged by GP's infringement of the '197 patent and its tarnishing of the reputation of structural building sheathing systems with an integrated barrier layer and seam sealant and will continue to be damaged in the future unless GP is permanently enjoined from infringing, directly or indirectly, the '197 patent.

#### **COUNT II – PATENT INFRINGEMENT OF THE '044 PATENT**

43. HEW incorporates Paragraphs 1-42 by reference as if set forth fully as part of this count.

44. GP has directly infringed and continues to directly infringe, literally and/or under the doctrine of equivalents, at least independent claim 1 of the '044 patent by making, using, offering for sale, or selling its ForceField Sheathing System. A preliminary claim chart attached hereto as Exhibit M provides examples of evidence showing that GP's ForceField Sheathing System meets each element of claim 1 of the '044 patent.

45. HEW has complied with the marking requirements of 35 U.S.C. § 287, giving GP constructive notice of the '044 patent.

46. GP has also contributed to, and continues to contribute to, the infringement of at least independent claim 1 of the '044 patent at least by selling and offering to sell the ForceField Sheathing System and through its related marketing, advertising, customer assistance, and selling activities.

47. GP became aware of HEW's patent portfolio covering panel systems and methods of sheathing at least as early as February 6, 2015, when HEW sent a letter to GP notifying it of HEW's patent portfolio. (Exhibit L.) That letter identified eight patents in the HEW patent portfolio (including the '197 patent), but it did not list the '044 patent because the '044 patent issued soon thereafter on April 21, 2015. Nonetheless, on information and belief, GP would have begun tracking or monitoring HEW's patent and patent applications relating to panel systems and methods of sheathing upon receiving the letter from HEW.

48. Further, the PTO issued a Final Rejection of GP's Patent Application for sheathing systems on September 29, 2015. GP's Patent Application was rejected, in part, based on HEW's published patent application no. 2005/0229504. That publication was directly related to the '044 patent, which had issued by the time of the final rejection, being based on the same specification and drawings. The existence of the '044 patent as claiming the technology disclosed in the 2005/0229504 publication was readily apparent from minimal review of the publication and its related data, such as a search in Google Patents. The PTO's reliance on HEW's published application to reject the claims of the GP Patent Application put GP on clear notice at least as of the fall of 2015 that HEW had a number of patents that covered subject matter similar to the ForceField Sheathing System. This notice extended specifically to the Patents in Suit because those patents claim priority to the same patent application. GP thus had notice, prior to its launch of the ForceField Sheathing System in early 2016, of both the '197 and '044 patents, and the high risk that launching the ForceField Sheathing System would infringe those patents. GP proceeded to launch the ForceField Sheathing System in the face of that high risk, even as it realized its repeated efforts had failed with finality to distinguish the claims of its related patent application from HEW's published application.

49. GP subsequently called HEW in January 2016 to inform HEW that GP intended to announce the launch of the ForceField Sheathing System at the 2016 International Builders' Show in Las Vegas, Nevada and to discuss HEW's patent portfolio, which at that time included the issued '044 patent. On information and belief, by January 2016, GP would have been tracking or monitoring HEW's patents and patent applications relating to panel systems and methods of sheathing after receiving the February 2015 letter from HEW and after having the GP Patent Application finally rejected, in part, based on a published version of the HEW patent application that ultimately gave rise to the '197 and '044 patents. Thus, GP knew of the '044 patent or was willfully blind to its existence at least as early as January 2016, when GP contacted HEW. At the least, GP had actual notice of the '044 patent and infringement of it as of June 17, 2016, when HEW informed GP that HEW had filed a lawsuit against it and provided GP with a courtesy copy of the original Complaint.

50. The infringing ForceField Sheathing System comprises a material part of the claimed invention of the '044 patent. GP's own marketing materials tout the advantages of its ForceField panels having a water resistant and water vapor permeable barrier layer and of the ForceField seam tape, evidencing their importance (taken individually and as a whole) in the overall system offered for sale and sold by GP and their importance to the method of sheathing claimed in the '044 patent. (Exhibit C; *see also* Exhibit E.)

51. Further, the infringing ForceField Sheathing System is especially made and adapted for use in infringement of the '044 patent. Moreover, the ForceField Sheathing System is not a staple article of commerce and has no substantial noninfringing use. GP's marketing materials and installation instructions state the ForceField panels and ForceField seam tape are intended to be used to provide a sheathing system with a water resistant and water vapor

permeable barrier layer, wherein the system is sealed together by water resistant tape, as claimed in the claims of the '044 patent. (Exhibits C; E.) In addition, GP's marketing materials do not advertise or otherwise suggest that the ForceField Sheathing System is a staple article of commerce or has a substantial noninfringing use. (Exhibit C.) In fact, when used as shown in GP's own marketing materials (*see* Exhibit C) and when used as instructed by GP (*see* Exhibit E), the ForceField Sheathing System directly infringes claims of the '044 patent. No instructions provide for alternative uses of the ForceField Sheathing System other than for use in sheathing buildings. (Exhibit E.)

52. GP's customers or customers of distributors selling GP's ForceField Sheathing System—namely home builders and others in the construction industry—directly infringe the '044 patent by using the ForceField Sheathing System in a panel system and/or as part of a method that embodies the invention(s) of the '044 patent. At least one such builder has used and offered for sale GP's ForceField Sheathing System in a residential development in Charlotte, North Carolina. GP knows that its customers or customers of its distributors use and offer for sale (and indeed GP instructs such customers to use and offer for sale) the ForceField Sheathing System in a manner that infringes the '044 patent. As such, GP intended to contributorily infringe the '044 patent.

53. On information and belief, GP has also induced, and continues to induce, infringement of at least independent claim 1 of the '044 patent at least by marketing and selling the ForceField Sheathing System to customers or through distributors to customers. GP has instructed and continues to instruct its customers or customers of its distributors to use and offer to sell the ForceField Sheathing System in a panel system on the exterior walls of homes and as a system and method that embodies the invention(s) claimed in the '044 patent.



54. On information and belief, GP knew of the '044 patent prior to the filing of this lawsuit (*see* ¶¶ 47-49 above), and, at the least, GP had actual notice of the '044 patent and its infringement as of June 17, 2016. On information and belief, GP knows that its sale of the ForceField Sheathing System and marketing and instructions for use of the same induces customers to directly infringe the '044 patent. GP's knowledge of the '044 patent, combined with its marketing materials and instructions for use of the ForceField Sheathing System in a manner claimed by the '044 patent, demonstrate GP intended to induce its customers to infringe the '044 patent.

55. When using the ForceField Sheathing System as directed by GP, customers directly infringe the '044 patent by using the ForceField Sheathing System in a panel system on the exterior walls of homes and/or using a method claimed in the '044 patent. At least one such builder has used and offered for sale GP's ForceField Sheathing System in a residential development in Charlotte, North Carolina.

56. A preliminary claim chart attached hereto as Exhibit M provides examples of evidence showing that GP's marketing materials and instructions contribute to or induce infringement of at least claim 1 of the '044 patent.

57. GP's infringement has been and continues to be willful and deliberate. In addition to the facts cited in the above paragraphs, the willfulness of GP's infringement of the '044 patent is evidenced by the fact that GP abandoned its pursuit of the GP Patent Application on sheathing systems related to its ForceField product line on June 29, 2016. The abandonment came after the GP Patent Application was rejected by the PTO based, in part, on HEW's patent application no. 2005/0229504, which ultimately issued as U.S. Patent No. 7,658,040, and was part of HEW's patent portfolio on sheathing systems including specifically the '044 patent. GP

knew or was willfully blind to HEW's '044 patent as a result of the rejection of its application over HEW's published application that is closely related to the '044 patent. GP's decision to abandon the GP Patent Application when it was rejected over the HEW patent application demonstrates that GP knows HEW is entitled to the Patents in Suit and GP is willfully infringing on those patent rights.

58. HEW has been damaged by GP's infringement of the '044 patent and its tarnishing of the reputation of structural building sheathing systems with an integrated barrier layer and seam sealant and will continue to be damaged in the future unless GP is permanently enjoined from infringing, directly or indirectly, the '044 patent.

**COUNT III – UNFAIR COMPETITION, N.C. GEN. STAT. § 75-1.1 ET. SEQ.**

59. HEW incorporates Paragraphs 1-58 by reference as if set forth fully as part of this count.

60. GP hired Mr. Jordan, an individual GP knew was formerly employed by HEW. Mr. Jordan obtained confidential knowledge while working at HEW concerning the manufacture of engineered wood products with an integrated barrier system, including knowledge of how such barriers were secured to lignocellulosic panels such as OSB panels. This confidential HEW information is valuable and cannot be readily ascertained through other means. On information and belief, after GP failed in the marketing of a predecessor sheathing product, GP hired Mr. Jordan to help develop the ForceField Sheathing System. On information and belief, GP subsequently used the confidential HEW information relating to the manufacture of engineered wood products with an integrated barrier system to develop the ForceField Sheathing System and to be able to enter the marketplace for structural building sheathing systems with an integrated barrier layer based on proprietary technology developed by HEW.

61. GP represented in a recent declaration that it did not begin working with Mr. Jordan as a consultant until May 2012. GP did not disclose, however, that Michael Carroll, a GP Vice President who became an employee of GP in 2010, worked with Mr. Jordan on related technologies beginning at least as early as 2009, when they were identified as joint inventors on a patent application for a building construction technology. On information and belief, GP began working with Mr. Jordan before May of 2012 and has attempted to conceal the full scope of the consulting work done with or on behalf of GP and its employees including Mr. Carroll.

62. GP's hiring of Mr. Jordan, with the goal of obtaining or having access to confidential HEW information, and GP's subsequent use and disclosure of that confidential HEW information without the authorization of HEW for use in developing a competing product amounts to unfair competition under N.C. Gen. Stat. § 75-1.1 *et. seq.*

63. HEW provided GP written notice of its concerns associated with GP's hiring of Mr. Jordan and the use of HEW's confidential information before GP introduced the ForceField Sheathing System. (Exhibit L.) GP nonetheless continued the process of developing, using, making, offering for sale, and marketing a competing product by making unfair use of HEW's confidential information.

64. GP's acts of unfair competition are willful, and GP disregarded its opportunity to avoid the unfair use of HEW's confidential information.

65. HEW has been harmed by GP's unfair competition at least because the confidential information has been used to create a competing product which GP now offers for sale and sells in interstate commerce.

#### **REQUEST FOR RELIEF**

HEW requests the following relief:

- a. A judgment that GP has infringed United States Patent Nos. 8,474,197 and 9,010,044, and that such infringement has been willful;
- b. An injunction enjoining and restraining Defendant, its officers, directors, agents, servants, employees, attorneys, and all others acting under or through it from directly or indirectly infringing United States Patent Nos. 8,474,197 and 9,010,044;
- c. A judgment and order requiring GP to pay all damages arising out of GP's infringement of United States Patent Nos. 8,474,197 and 9,010,044, including treble damages for willful infringement as provided by 35 U.S.C. § 284, with interest;
- d. A judgment and order directing GP to pay the costs and expenses of this action and attorneys' fees as provided by 35 U.S.C. § 285 and under other applicable law, with interest;
- e. A judgment that GP engaged in unfair competition in hiring Mr. Jordan and/or in obtaining or using confidential HEW information;
- f. A judgment and order requiring GP to pay all damages, trebled, arising out of GP's unfair acts pursuant to N.C. Gen. Stat. § 75-16, with interest;
- g. A judgment and order finding GP's unfair acts were willful and awarding HEW its costs and attorneys' fees pursuant to N.C. Gen. Stat. § 75-16.1(1) and under other applicable law, with interest; and
- h. Such other and further relief as this Court may deem just and equitable.

**DEMAND FOR JURY TRIAL**

HEW hereby demands that all issues be determined by jury.

Respectfully submitted,

Date: August 16, 2016

By: s/ David M. Wilkerson  
David M. Wilkerson  
NC State Bar No. 35742  
Larry McDevitt  
NC State Bar No. 5032  
Van Winkle Law Firm  
11 North Market Street  
Asheville, NC 28801  
Telephone: (828) 258-2991  
Facsimile: (828) 257-2767  
[dwilkerson@vwlawfirm.com](mailto:dwilkerson@vwlawfirm.com)  
[lmcdevitt@vwlawfirm.com](mailto:lmcdevitt@vwlawfirm.com)  
Attorneys for Plaintiff

Jeffrey D. Blake, Esq.  
MERCHANT & GOULD P.C.  
191 Peachtree Street N.E., Suite 3800  
Atlanta, GA 30303  
Email: [jblake@merchantgould.com](mailto:jblake@merchantgould.com)  
Main Telephone: (404) 954-5100  
Main Facsimile: (404) 954-5099

Daniel W. McDonald, Esq.  
Paige S. Stradley  
MERCHANT & GOULD P.C.  
3200 IDS Center  
80 South Eighth Street  
Minneapolis, MN 55402  
Emails: [dmcDonald@merchantgould.com](mailto:dmcDonald@merchantgould.com)  
[pstradley@merchantgould.com](mailto:pstradley@merchantgould.com)  
Main Telephone: (612) 332-5300  
Main Facsimile: (612) 332-9081

*Counsel for Plaintiff*  
*Huber Engineered Woods LLC*

**CERTIFICATE OF SERVICE**

I certify that on August 16, 2016, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system which will send notification via electronic means to the registered participants.

THIS the 16th day of August, 2016.

s/ David Wilkerson  
David Wilkerson