

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

ACME OPERATIONS PTY., LTD.  
/dba/ AJAX ENGINEERED FASTENERS  
82-88 Mills Road,  
Braeside, Victoria 3195,  
Australia,

Plaintiff,

vs.

ALLFASTENERS USA LLC  
959 Lake Road  
Medina, Ohio 44256

ALLFASTENERS ENTERPRISES LLC  
959 Lake Road  
Medina, Ohio 44256

ALLFASTENERS USA LLC  
c/o Mark Wooten, Statutory Agent  
4548 Industrial Parkway  
Cleveland, OH 44135

ALLFASTENERS LA LLC  
c/o Mick Strange, Statutory Agent  
959 Lake Road  
Medina, Ohio 44256

and

ALLFASTENERS ENTERPRISES LLC  
c/o Mick Strange, Statutory Agent  
959 Lake Road  
Medina, Ohio 44256,

Defendants.

) CASE NO.

) JUDGE:

) COMPLAINT

) (JURY DEMAND ENDORSED HEREON)

This is an action by Plaintiff against the Defendants for Defendants' joint and several infringement of United States Patent No. 7,373,709; and arises under and pursuant to 35 U.S.C. § 271 *et seq.*, and additionally for relief arising under and pursuant to 35 U.S.C. § 285.

## I. PARTIES

1. Plaintiff ACME Operations Pty., Ltd. /dba/ Ajax Engineered Fasteners (hereafter "Ajax" or "Plaintiff") is an Australian corporate form of business established and in good standing under the laws of the Commonwealth of Australia.

2. Plaintiff does business in the United States and elsewhere as Ajax Engineered Fasteners and has its office and establishment for doing business at the address set forth in the caption above.

3. Plaintiff does not maintain an office or business establishment in this Judicial District or otherwise in the United States. Plaintiff is, therefore, a foreign corporation with standing to bring this action in the Court and this Judicial District.

4. Plaintiff is the owner of United States Patent No. 7,373,709. (See Exhibit A, United States Patent No. 7,373,709, and Exhibit B, USPTO Assignment of Record for United States Patent No. 7,373,709.)

5. Defendant AllFasteners USA LLC ("AF-USA") is an Ohio limited liability company with its principal place of business at the address set forth in the caption above. (See Exhibit C, Ohio Secretary of State *domestic registration* of AllFasteners USA LLC)

6. Defendant AllFasteners Enterprises LLC ("AF-E") is an Ohio limited liability Company with its principal place of business at the address set forth in the caption above. (See Exhibit D, Ohio Secretary of State *domestic registration* of AllFasteners Enterprises LLC.)

7. Defendant AllFasteners LA LLC ("AF-LA") is a California limited liability company registered to do business in the State of Ohio as a foreign corporation and maintains its principal place of business at 5450 W. 83<sup>rd</sup> Street, Los Angeles, California 90045. (See Exhibit E, Ohio Secretary of State *foreign registration* of AllFasteners LA LLC.)

8. AF-USA, AF-E, and AF-LA (collectively referred to as “AllFasteners” or “Defendants”) are, upon information and belief, acting as one and the same under the control of AF-USA, and they are jointly and severally engaged in the conduct alleged in this action. Further, all conduct giving rise to this action occurred in and/or was directed in and from this Judicial District by AF-USA.

## II. JURISDICTION AND VENUE

9. This Court has original jurisdiction over the subject matter of this action because it is a civil action for patent infringement and therefore arises under 35 U.S.C. § 271 *et seq.*; and further, under 35 U.S.C. § 285, 28 U.S.C. §§ 1331, 1332, and 1338.

10. Defendants are subject to the personal jurisdiction of this Court because they have substantial and continuous contacts within this District and conduct business activity in this District by jointly and severally; making, using, and selling certain products and/or devices which infringe upon the ‘709 Patent directly and/or pursuant to the doctrine of equivalents, by practicing the method of the ‘709 Patent, by inducing others to make, use, and sell certain products and/or devices which infringe upon the ‘709 Patent, by engaging in contributory infringement by and through the use of the infringing devices and methods by others, and by inducing others to practice and therefore infringe upon the method set forth in the ‘709 Patent.

11. Jurisdiction is proper in this Court because the conduct of Defendants, which gave rise to this action, as generally set forth in Paragraph 10 above, infringes upon the ‘709 Patent; and Plaintiff seeks relief pursuant to 35 U.S.C. § 271 *et seq.*, as well as pursuant to 35 U.S.C. § 285. Therefore, this Court has both general and specific personal jurisdiction over the Plaintiff and all of the Defendants.

12. Defendants AF-USA, AF-E, and AF-LA are also subject to the personal jurisdiction of this Court because they maintain their headquarters in this District and/or are registered by and with the Ohio Secretary of State as (domestic) Ohio and (foreign) California (Limited Liability Corporations), and their registered agent Michael ("Mick") Strange is also located in this District. Therefore, Defendants AF-USA, AF-E, and AF-LA are all subject to service of process herein (See Exhibits C, D, and E.)

13. Jurisdiction is also proper in this Judicial District because all of the Defendants' conduct giving rise to this action occurred in this Judicial District and/or was and is expressly directed by Defendants from this Judicial District; therefore, this Court has both general and specific personal jurisdiction over the Defendants.

14. Venue of this action is proper in the Northern District of Ohio under 28 U.S.C. § 1391(b)(1) and (2) because the Defendants are all subject to the personal jurisdiction of the Court in this Judicial District and, thus, are defined as residents of this Judicial District under 28 U.S.C. § 1391(c)(2). In addition, the acts, events, and conduct giving rise to Plaintiff's claims have substantially occurred and will continue to occur in the Northern District of Ohio.

### III. FACTUAL BACKGROUND

15. Plaintiff Ajax is a Manufacturer of patented, high quality structural fastener products, among which it makes and sells a specific type of fastener, its installation tools and its installation method; as the "Ajax" "ONESIDE" product line.

16. Plaintiff is in the business of developing, designing, engineering, manufacturing, testing, certification, and selling various types of fasteners, installation tools, and installation methods; among them and in this instance, engineered special fasteners for the construction of cell telephone antenna towers, wind turbine towers, pressure vessels and other steel structures which

Plaintiff has identified above as its ONESIDE structural fastener , installation tool, and installation method (hereafter referred to as "ONESIDE"); (See Exhibit F, a compilation of relevant excerpts from the Plaintiff's "Ajax" website located at [www.ajaxfast.com.au](http://www.ajaxfast.com.au).)

17. Plaintiff's ONESIDE fastener products consist of a distinctive and patented combination of bolt, washers, installation tool, and installation method which enable the bolt to be installed and tightened in holes in steel structures where the "head" of the bolt is not accessible to tools. Thus, the ONESIDE can be fully installed and properly tensioned from only one side of a structure. This type of fastener is identified as, and referred to in, the structural engineering and erection industry as "blind hole fastener." (See Exhibit G, images depicting a typical application of the ONESIDE and the method of its installation.)

18. As illustrated below, the ONESIDE products consist of a special bolt with one solid washer and one split washer that is joined by a plastic film, and a nut; and an installation tool.



Figure 1: Ajax ONESIDE



Figure 2: Ajax ONESIDE installation tool

19. As described in Exhibit G and in the above images, the genuine patented ONESIDE products (the bolt components, bolt assembly, and installation tool) are not a staple article or device of merchandise in the fastener industry or otherwise, are not obtainable in ordinary commerce, and have no substantial non infringing use.

20. Plaintiff's design for the ONESIDE bolt, installation tool and the specific and unique method by which it is used are the inventions of the aforementioned '709 Patent issued by the United States Patent & Trademark Office. (See Exhibit A.)

21. Plaintiff is the owner of the '709 Patent by way of an assignment of record at the USPTO and is therefore unconditionally authorized by law to enforce the '709 Patent against any and all infringing persons or entities, without limitation. (See Exhibit B.)

22. Plaintiff is the sole manufacturer of the genuine patented ONESIDE product line, which incorporate the inventions described in the '709 Patent and which are manufactured, tested, certified, sold and shipped exclusively from Plaintiff's facility in Australia.

23. Each genuine patented ONESIDE fastener product is made from steel which Plaintiff obtains from various sources and which is certified by the source and the Plaintiff as to specification, composition, and quality.

24. Each and every genuine patented ONESIDE fastener product manufactured by the Plaintiff is subject to rigorous and documented quality control as well as material and manufacturing standards and specifications many of which have been adopted by the fastener industry, including, but not limited to, ISO 9001:2008 and numerous ASTM standards. (See Exhibit H, Ajax ISO9001:2008 Certificate of Registration and NATA Accreditation Certificate No. 1202.)

25. Genuine patented ONESIDE fastener products are also tested and certified as to quality and performance by Plaintiff's in house testing laboratory which is accredited by National Australian Testing Association (NATA). (See Exhibit H, NATA Accreditation Certificate No. 1202 and Ajax ISO9001:2008 Certificate of Registration)

26. As a result of the foregoing research, development, manufacturing, testing, and obtaining certifications, Plaintiff has secured a reputation in the steel tower and steel structural industry as the sole manufacturer and seller of the patented, distinctive, unique, and high quality ONESIDE blind hole installation fasteners. The genuine ONESIDE products, which are made and sold by Plaintiff, and the method of their installation incorporate the inventions set forth in the '709 Patent and are, therefore, protected by law against infringing, inferior, and counterfeit products, by the '709 Patent.

27. The genuine patented ONESIDE fastener products, which can be subjected to loads of over 125,000 pounds per square inch, are known and proven to be reliable, of the highest quality, rigorously manufactured, and safe to install and utilize in potentially dangerous and highly stressed applications such as cell and wind turbine towers.

28. Plaintiff, through its patented ONESIDE fastener and installation method product line, has been and remains established as the acceptable, safe, and reliable source for this unique and patented, high strength type of blind fastener products and is recognized in the industry as setting the standard for such products. Based upon this reputation and the exclusivity conferred upon Plaintiff the '709 Patent, Plaintiff is able to charge an appropriate price for its genuine patented ONESIDE products in comparison to similarly used, but materially lesser structural quality and capacity products from other manufacturers.

29. AllFasteners are engaged in the wholesale purchasing, importation, warehousing, distribution and re-sale of several hundred different lines of fastener products and related generic industrial and commercial supplies and products.

30. Genuine patented ONESIDE products have been sold in the United States solely through two authorized re-sellers. And, from early 2012 through May of 2015, AllFasteners was

one of the authorized re-sellers. (See Exhibit I, AllFasteners' materials specifically representing and promoting the genuine patented Ajax manufactured ONESIDE on AllFasteners' website.)

31. Under a commercial re-sale arrangement between Plaintiff and AllFasteners (the "Re-sale Relationship"), AllFasteners acquired and resold only genuine ONESIDE products to end-user customers. Pursuant to the Re-sale Relationship, AllFasteners was authorized and permitted to re-sell only such unaltered and unmodified genuine patented ONESIDE products that were exclusively manufactured and delivered by Plaintiff directly to AllFasteners; and, further AllFasteners would not sell any competing products.

32. At all times relevant hereto, it was Plaintiff's practice to ensure that the end-user customer applications for which the genuine patented ONESIDE were designed, intended and, in many instances specified by the end-customers, were properly satisfied with un-altered genuine patented ONESIDE products.

33. The Re-sale Relationship between Plaintiff and AllFasteners did not, in any way, authorize AllFasteners to manufacture (directly or indirectly through means other than Plaintiff) any ONESIDE product. In fact, the Re-Sale Relationship was intended solely and for the sale of the genuine patented ONESIDE by Plaintiff directly to AllFasteners for resale to end-users. Substitution of counterfeit, modified, altered, or otherwise non-genuine ONESIDE was neither contemplated nor permitted.

34. The Re-sale Relationship was entered into by mutual agreement, and was limited to the activities set forth above, so Plaintiff could ensure that the genuine patented Ajax ONESIDE products sold by AllFasteners conformed to the express specifications and standards for steel, manufacturing, quality control, testing and certification under industry standards and would



therefore be safe for installation and use in high stress and safety critical applications such as cell and wind turbine towers.

35. As part of the Re-sale Relationship, AllFasteners was authorized to represent that the ONESIDE product offered by AllFasteners were made under the '709 Patent and, thus, the protections of the patented inventions incorporated in the genuine ONESIDE product lines were known, acknowledged and used to enhance AllFasteners' marketing efforts as one of the two exclusive re-sellers of the genuine patented ONESIDE products. (See Exhibit I.)

36. Inherent in, and a prime objective of, the Re-sale Relationship was to obtain the undisputed recognition in the marketplace that the genuine patented ONESIDE products were manufactured, tested, and most importantly, independently certified such that each and every genuine ONESIDE product met or exceeded numerous industry standards. Strict *and verifiable* compliance with these standards ensured the buyers, installers, and most importantly the owners of the cell and wind turbine towers in which the genuine patented ONESIDE were installed using the specific and unique methods of the '709 Patent, were buying and using genuine patented ONESIDE products that would perform safely and that the structures in which they were installed were themselves safe for the general public.

37. As part of the Re-sale Relationship, Plaintiff authorized and assisted AllFasteners to establish AllFasteners web pages utilizing the 'Ajax' trade name and genuine ONESIDE promotional materials including web pages wherein AllFasteners was permitted to use and/or closely imitate Plaintiff's distinctive type face, color, and characteristics. And, AllFasteners' use of the Ajax/ONESIDE identity included product packaging, trade show exhibits, printed materials, and a YouTube video demonstration of the installation of the genuine patented ONESIDE bolts using the patented ONESIDE installation tool, and the patented ONESIDE installation method.

38. In addition, based on AllFasteners representations that it needed detailed product and development information in order to understand and market the genuine ONESIDE, Plaintiff provided AllFasteners with access to substantial amounts of its confidential, proprietary and trade secret information regarding the manufacturing and testing the genuine ONESIDE products. This disclosure also included organizing a visit by AllFasteners to Plaintiff's manufacturing facility in Australia to observe and learn the capital intensive, complex, extensive, and carefully controlled manufacturing and quality control processes used by Plaintiff to make the genuine patented ONESIDE products.

39. Through its reliance upon Plaintiff's existing reputation as a manufacturer, the reputation of the genuine patented ONESIDE products, and the exclusivity conferred by the '709 Patent, AllFasteners by way of the Re-sale Relationship established a second presence in the United States market for genuine patented ONESIDE products starting in 2012 and sold significant amounts of genuine patented ONESIDE products.

40. Notably prior to the Re-sale Relationship, AllFasteners had never sold any blind hole structural fasteners, marketed even remotely comparable products; and was and remains, completely incapable of actually manufacturing the genuine patented ONESIDE products and/or the NexGen1 and/or NexGen2 products.

41. While actively selling the genuine ONESIDE products pursuant to the Re-sale Relationship, AllFasteners used information obtained from Plaintiff to clandestinely modify an unknown number of genuine patented ONESIDE bolts to make a visually identical, but materially inferior copy of the ONESIDE bolt and installation tools; which AllFasteners identified as its "NexGen1." (See Exhibit J, image of NexGen1 products.)

42. Plaintiff became aware of AllFasteners' conduct on or around November 26, 2014, and confronted AllFasteners with Plaintiff's accusations of the infringement of the '709 Patent by AllFastener's NexGen1 products.

43. AllFasteners' principals, including Mick Strange and Bruce Carmichael, assured Plaintiff that AllFasteners understood Plaintiff's concerns regarding the '709 Patent and All Fasteners' NexGen1 product, that AllFasteners would immediately discontinue the entire NexGen project; and, would thereafter continue solely and exclusively to buy and re-sell genuine patented ONESIDE products obtained from Plaintiff under the Re-sale Relationship.

44. Thereafter, in January of 2015, AllFasteners made various requests for Plaintiff's confidential records of its certifications of steel used in the ONESIDE bolts, as well as other manufacturing, testing, certification and engineering information, representing that obtaining and understanding this information was necessary to accommodate customer requests for information relating to AllFasteners' efforts in the continued exclusive selling of the genuine patented ONESIDE products.

45. Subsequently, in early 2015, Plaintiff reiterated its 2014 and subsequent demand that All Fasteners enter into a written agreement memorializing their three + year course of commercial dealings under the Re-sale Relationship. However, AllFasteners pretextually put off its responses to this request in a successful effort to conceal the ongoing clandestine development of the infringing NexGen2 product line.

46. Then, on or about April 9, 2015, Plaintiff advised AllFasteners of third party reports alleging that All Fasteners were promoting and selling to Plaintiff's ONESIDE customers, a product that was just like the NexGen1 products described above, except that these new products were apparently not crudely modified genuine ONESIDE products, but were manufactured by

unknown vendors to AllFasteners. Just as the NexGen1 above, AllFasteners' so-called NexGen2 bolts and the tools required to install them were substantially identical to Plaintiff's genuine patented ONESIDE and could only be installed using the '709 Patent's installation method.

47. AllFasteners was forced to admit to Plaintiff that, notwithstanding AllFasteners' prior unconditional promises to the contrary, they had already commenced having vendors manufacture this second, nearly identical counterfeit product, the so-called NexGen2 (which could only be installed using the installation methods set forth in the '709 Patent) and were actively marketing and selling the NexGen2 to both existing and potential customers for the genuine patented ONESIDE products. (See Exhibit K, AllFasteners' website excerpt depicting images of NexGen2 products.)

48. Notwithstanding AllFasteners' knowledge and commercial use and benefit of the '709 patent as well as Plaintiff's development of several significant markets for the ONESIDE products and Plaintiff's assertion that both the NexGen1 and the identical NexGen2 infringed upon the '709 Patent, AllFasteners continued make, use, and sell the counterfeit NexGen2 alongside the genuine patented ONESIDE products to the very customers developed for the genuine patented ONESIDE by Plaintiff. (See Exhibit K.)

49. Notably, AllFasteners' initial 2015 marketing campaign for "NexGen2" included a webpage that was materially identical to both the AllFasteners' existing webpage for the genuine patented ONESIDE and Plaintiff's own web pages for the genuine patented ONESIDE, and that depicted the infringing NexGen2 products and installation method information. (See Exhibits I and K.)

50. AllFasteners also posted a NexGen2 installation YouTube video that carefully imitated the Plaintiff's installation video for the genuine ONESIDE and, specifically, depicts

AllFasteners’ using the infringing NextGen2 products to practice the exact method set forth in the ‘709 Patent. (See Exhibit L, A comparison of still frames taken from the ONESIDE installation video and the AllFasteners NexGen2 installation video.)

51. Since 2015, all of AllFasteners’ NexGen2 blind hole fasteners and the installation tools have been and are, according to AllFasteners, manufactured and supplied by third parties solely and exclusively to the order of AllFasteners.

52. Therefore, despite their knowingly false assurances to Plaintiff in November of 2014, AllFasteners continued to develop a competing product that AllFasteners knew infringed upon the ‘709 Patent that is an inferior, counterfeit, and infringing blind hole fastener, tool, and that requires the practicing of the patented installation method. And, they are visually and functionally indistinguishable from the genuine patented ONESIDE products as depicted in the following images excerpted from Plaintiff’s and AllFasteners’ websites.

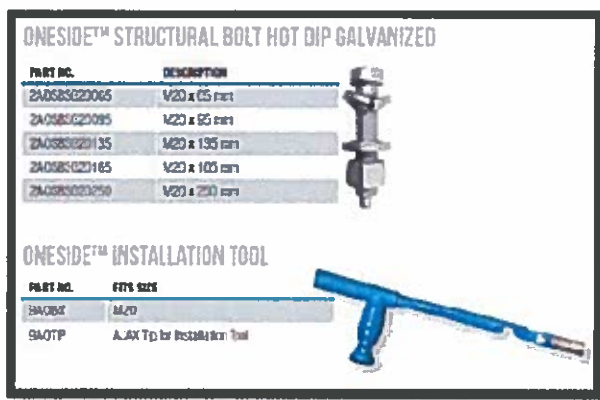


Figure 3: Ajax ONESIDE bolt and installation tool

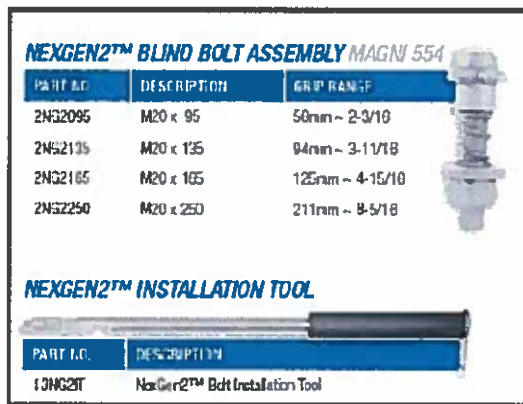


Figure 4: All Fasteners NexGen2 bolt and installation tool

53. Also, as a result of the Re-sale Relationship of presumed good faith in dealing and honesty, AllFasteners obtained from Plaintiff substantial amounts of engineering, material specifications, manufacturing technology and know-how, application information manufacturing site visits and other information that Plaintiff ordinarily would not disclose to the public.

54. The foregoing information was provided to AllFasteners based on their representation that it was necessary to effectively market the ONESIDE but was utilized instead by AllFasteners to engage in infringement of the '709 Patent and the inducement of both AllFasteners' manufacturing vendors and AllFasteners' customers to infringe upon the '709 Patent.

55. The NexGen2 products (e.g., the bolt assemblies and installation tools) which are indistinguishable copies of the genuine patented ONESIDE bolts and tools have a single and distinct use, practicing the method of the '709 Patent. And, these products incorporate and use the inventions claimed in the '709 Patent, which are made solely for the use in the infringement of the method of the '709 Patent, are not a staple or commodity article, have no substantial non-infringing use, and which are used to infringe the method of the '709 Patent. (See Exhibits I, J, and K.)

56. As described in Paragraphs 29 through 55 above and otherwise as set forth herein, the AllFasteners' conduct substantially constitutes:

a. Direct infringement of the '709 Patent by reason of:

(i) Making, using, offering to sell, and selling the NexGen1 and/or NexGen2 products which infringe upon the '709 Patent by incorporating the inventions claimed in the '709 Patent, which are made solely for the use in the infringement of the method of the '709 Patent, are not a staple or commodity article, have is no substantial non-infringing use, and which are used to infringe the method of the '709 Patent.

(ii) Practicing each and every step of the method of the '709 Patent using the infringing NexGen1 and/or NexGen2 products.

b. Indirect Infringement of the '709 Patent by reason of:

(i) Contributory infringement by obtaining the NexGen1 and/or NexGen2 products which infringe upon the '709 Patent, which are made for AllFasteners by others pursuant to the express and exclusive direction of AllFasteners, and which incorporate the inventions claimed in the '709 Patent, are made solely for the use in the infringement of the method of the '709 Patent, are not a staple or commodity article, have no substantial non-infringing use, and are used to infringe the method of the '709 Patent;

(ii) Contributory infringement of the method of the '709 Patent by knowingly selling and supplying the infringing NexGen1 and/or NexGen2 products which incorporate the inventions claimed in the '709 Patent, are made solely for use in the infringement of the method of the '709 Patent, are not a staple or commodity article, have no substantial non-infringing use, and are used to infringe the method of the '709 Patent;

(iii) Inducement of infringement of the '709 Patent, by each and every past, present, and future manufacturers of such infringing NexGen1 and/or NexGen2 products to therefore make the infringing NexGen1 and/or NexGen2 products which are made solely for use in the infringement of the method of the '709 Patent, and which are not a staple or commodity article, have no substantial non-infringing use and are used to infringe the method of the '709 Patent;

(iv) Inducement of infringement by each and every past, present, and future manufacturers of the NexGen1 and/or NexGen2 products to infringe upon the '709 Patent by making the NexGen1 and/or NexGen2 products which incorporate the inventions claimed in the '709 Patent, made solely for use in the infringement of the method of the '709 Patent, and which are not a staple or commodity article, have no substantial non-infringing use and are used to infringe the method of the '709 Patent;

(v) Inducement of infringement of the '709 Patent by each and every past, present, and future buyer of the infringing NexGen1 and/or NexGen2 products to buy such products which incorporate the inventions claimed in the '709 Patent, and which are made solely for use in the infringement of the method of the '709 Patent, are not a staple or commodity article, have no non-infringing use; and are used to infringe the method of the '709 Patent; and

(vi) Inducement of infringement of the '709 Patent by each and every past, present, and future buyer of the infringing NexGen1 and/or NexGen2 products to buy and use such products and thereby to practice the method of the '709 Patent; which products incorporate the inventions claimed in the '709 Patent, are made solely for use in the infringement of the method of the '709 Patent, are not a staple or commodity article, have no substantial non-infringing use; and are used to infringe the method of the '709 Patent.

57. Based on the substantial multi-year history of the parties relationship and conduct; including but not limited to Plaintiff's and AllFasteners' activities pursuant to the Re-sale Relationship and in (i) selling the genuine patented ONESIDE products; (ii) practicing the method of the '709 Patent; (iii) enabling others to practice the '709 method through the sale of genuine patented ONESIDE products; and (iv) publicly acknowledging and representing the existence and reaping the benefits of, the exclusivity of the ONESIDE products and installation method conferred by the '709 Patent, together with AllFasteners acknowledgment the Plaintiff's position that the NexGen1 and/or NexGen2 products and using such to practice the method of the '709 Patent constituted infringement of the Patent, no reasonable doubt could exist that each and every act of infringement by AllFasteners was and is continuing to be indisputably and unmistakably willful.



58. Despite AllFasteners' long established and full knowledge that by engaging in the foregoing conduct they are infringing upon the '709 Patent, AllFasteners' counterfeit NexGen1 and/or NexGen2 products continue to be made to be visually indistinguishable, used in exactly the same applications, are entirely interchangeable, applied/installed in the same manner, using the same method, are represented to have the same engineering and structural benefits and characteristics, as the genuine patented ONESIDE products, Defendants are therefore infringing upon the '709 Patent and such infringement is willful.

First Cause of Action: Patent Infringement

59. Plaintiff restates, re-alleges, and re-avers each of the allegations set forth in the preceding Paragraphs 1 through 58 as if fully rewritten herein.

60. Each and every one of the AllFasteners' NexGen1 and/or NexGen2 products directly infringes upon the claims of the '709 Patent and such infringement jointly and severally by the Defendants is willful, and Plaintiff has been damaged by such conduct and will continue to be damaged by such conduct.

61. Each and every use of the AllFasteners' NexGen1 and/or NexGen2 products by the Defendants in practicing the method of the '709 Patent directly infringes upon the claims of the '709 Patent and such infringement jointly and severally by the Defendants is willful, and Plaintiff has been damaged by such conduct and will continue to be damaged by such conduct.

62. Each and every one of the AllFasteners' NexGen1 and/or NexGen2 products indirectly infringes upon Plaintiff's '709 Patent and such infringement jointly and severally by the Defendants is willful, and Plaintiff has been damaged by such conduct and will continue to be damaged by such conduct.

63. Each and every use of the AllFasteners' NexGen1 and/or NexGen2 products by the Defendants in practicing the method of the '709 Patent indirectly infringes upon the claims of the '709 Patent and such infringement jointly and severally by the Defendants is willful, and Plaintiff has been damaged by such conduct and will continue to be damaged by such conduct.

64. Defendants, jointly and severally, have induced and continue to induce the presently unknown past, present, and possible future actual manufacturers of the NexGen 1 and/or NexGen2 products to infringe upon Plaintiff's '709 Patent and that such inducement of infringement by the Defendants is willful, and Plaintiff has been damaged by such conduct and will continue to be damaged by such conduct.

65. Defendants, jointly and severally, have induced and continue to induce the presently-unknown past, present, and possible future buyers and users of the infringing NexGen1 and/or NexGen2 products to buy and use such products to practice the method of the '709 Patent and thereby infringe upon the '709 Patent. All Fasteners' inducement of infringement is also willful, and Plaintiff has been damaged by such conduct and will continue to be damaged by such conduct.

66. Defendants, jointly and severally have engaged in contributory infringement by obtaining the NexGen1 and/or NexGen2 products which infringe upon the '709 Patent, which are made for AllFasteners by others pursuant to the express and exclusive direction of AllFasteners, and which incorporate the inventions claimed in the '709 Patent, are made solely for the use in the infringement of the method of the '709 Patent, are not a staple or commodity article, have no substantial non-infringing use, and are used to infringe the method of the '709 Patent.

67. Defendants, jointly and severally have engaged in contributory infringement of the method of the '709 Patent by knowingly selling and supplying the infringing NexGen1 and/or

NexGen2 products which incorporate the inventions claimed in the '709 Patent, are made solely for use in the infringement of the method of the '709 Patent, are not a staple or commodity article, have no substantial non-infringing use, and are used to infringe the method of the '709 Patent.

68. Upon information and belief with respect to the infringement by the Defendants of the Claims set forth in the '709 Patent; Claims 1, 19, and 20 are directly infringed upon by the Defendants by (i) making, offering for sale, and selling products identified by AllFasteners the names "NexGen1" and/or "NexGen2;" (ii) practicing the method set forth in Claims 1, 19, and 20; and (iii) indirectly infringing upon Claims 1, 19, and 20 by way of inducement of infringement and/or contributory infringement.

69. Upon information and belief with respect to the infringement by the Defendants of the Claims set forth in the '709 Patent, Claims 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, and 18 are directly infringed upon by the Defendants under the doctrine of equivalents by (i) making, offering for sale, and selling products identified by AllFasteners and sold by the them under the names "NexGen1" and/or "NexGen2;" (ii) practicing the method set forth in Claims 4, 12, 13, 14, 18, 19, and 20; and (iii) indirectly infringing upon Claims 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, and 18 by way of inducement of infringement and/or contributory infringement.

70. Upon information and belief, Exhibits M and N nominally set forth the elements of the NexGen1 and/or NexGen2 products which infringe upon the claims of the '709 Patent as set forth in Paragraphs 61, 62, and otherwise as set forth herein. And, generally identifies where the limitations of such claims are found in AllFasteners' NexGen1 products and/or NexGen2 products, respectively; and/or by the practicing of the methods set forth in the foregoing Claims. (See Exhibit M, NexGen1 and Exhibit N, NexGen2.)

Second Cause of Action: Exceptional Case Designation and Award: 35 U.S.C. § 285

71. Plaintiff restates, re-alleges, and re-avers each of the allegations set forth in the preceding Paragraphs 1 through 70 as if fully rewritten herein.

72. AllFasteners was first informed by Plaintiff of Plaintiff's allegations of infringement of the '709 Patent in November of 2014 and, shortly thereafter in person, AllFasteners not only acknowledged their understanding of Plaintiff's assertions of infringement, but also represented to Plaintiff as consideration for Plaintiff continuing to sell genuine patented ONESIDE products to AllFasteners, that they would immediately stop all development of the NexGen product line.

73. AllFasteners further repeatedly represented to Plaintiff that they clearly understood the infringement claim, that they understood that the NexGen1 bolts, tools, and installation methods could infringe upon the '709 Patent; that they would discontinue the entire NexGen project, and would continue solely and exclusively to buy and re-sell genuine ONESIDE products from Plaintiff.

74. Notwithstanding the foregoing express and unambiguous representations by AllFasteners, AllFasteners has continued to this day to engage in the acts of infringement set forth herein. Further, despite AllFasteners' full knowledge of their infringing conduct, they have not only continued the same but have expanded their market for counterfeit infringing NexGen1 and/or NexGen2 products and have, thus, caused substantially more innocent manufacturers and buyers of such products to infringe upon the '709 Patent.

75. AllFasteners' conduct as set forth herein is clearly contemplated by 35 U.S.C. § 285, and, as such, entitles Plaintiff to have this proceeding and its claims herein determined to be subject to adjudication by this Court pursuant to 35 U.S.C. § 285.

76. AllFasteners' willful and deliberate acts described above have caused injury and damages to Plaintiff, have caused injury to Plaintiff's goodwill and reputation, have caused numerous presently innocent and unwitting non-party persons and entities to infringe the '709 Patent, and have put untold persons and property at risk by the sale of counterfeit, inferior, and infringing NexGen1 and/or NexGen2 products and unless enjoined, AllFasteners' conduct will cause further irreparable injury, whereby Plaintiff will have no adequate remedy at law.

WHEREFORE, Plaintiff prays for judgment jointly and severally against Defendants, All Fasteners USA LLC, All Fasteners Enterprises LLC and All Fasteners LA LLC, as follows:

1. Plaintiff requests herein the Preliminary and Permanent Injunctive Relief of unconditional prohibition of the making, using and selling of the NexGen2 or any similar product or products by the Defendants and any and all of those acting in concert with them including but not limited to the following:

- a. Enjoining and restraining Defendants and their affiliates, partners, representatives, servants, employees, attorneys and all persons in concert, privity or participation with Defendants, of and from:
  - i. Making, using and selling any NexGen1 and/or NexGen2 products; or any other products however identified which infringe upon the '709 Patent;
  - ii. Engaging in any conduct which constitutes direct infringement of the '709 Patent by practicing the method set forth therein;
  - iii. Engaging in any conduct which constitutes indirect infringement of the '709 Patent as set forth herein; and

- (iv) Otherwise infringing the '709 Patent as variously set forth herein.
- b. Ordering Defendants to locate, identify, recall, recover and seize any and all such infringing products wherever located and or installed in any structures;
- c. Ordering Defendants to produce a verified accounting of all sales of its infringing products, its production costs and expenses, and its profits;
- d. Declaring that Defendants have violated 35 U.S.C. § 271 and 35 U.S.C. § 285;
- e. Awarding compensatory damages in a sum of \$20,000,000.00;
- f. Awarding punitive damages and enhanced damages against Defendants;
- g. Awarding attorney's fees and costs, including but not limited to fees and costs authorized by law;
- h. That this Court notify the United States Department of Homeland Security's Customs Services to seize and sequester any inbound shipments of the infringing products at all United States points of entry; and
- i. Granting such further relief as this Court may deem appropriate.

2. Plaintiff further requests herein that this Court order an accounting of, and recovery of, Defendants' profits in connection with sales of its infringing NexGen1 and/or NexGen2; or any similar products which may also infringe upon the '709 Patent.

3. Plaintiff further requests herein a finding by this Court that the Defendants' conduct constitutes willful direct infringement, willful indirect infringement, willful contributory infringement, and willful inducement of infringement and that Plaintiff is entitled to money

damages in excess of \$20,000,000.00; a trebling of said damages for wilful conduct; and its reasonable attorney's fees together with the costs of this action.

4. Plaintiff further requests herein a finding by this Court that Defendants joint and several conduct is subject to adjudication pursuant to 35 U.S.C. § 285 and an award of its reasonable attorney's fees, costs, and the expenses of this proceeding.

5. Plaintiff further requests herein that this Court grant preliminary and permanent injunctive relief consistent with the foregoing.

Dated: August 25, 2016

Respectfully submitted,

/s/ Robert W. McIntyre

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**Attorneys for Plaintiff Acme Operations Pty Ltd.**

### **JURY DEMAND**

Plaintiff hereby demands a trial by the maximum number of jurors permissible in this matter on all triable issues.

/s/ Robert W. McIntyre

ROBERT W. McINTYRE (0006768)

**Attorney for Plaintiff Acme Operations Pty Ltd.**