

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF INDIANA**

Lifetime Industries, Inc.)	
)	
)	
)	
Plaintiff,)	Civil Action No. 3:16-cv-559
)	
v.)	
)	
Trim-Lok, Inc.)	
)	JURY TRIAL DEMAND
)	
Defendant.)	

AMENDED COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff, Lifetime Industries, Inc. (“LTI”, “Plaintiff”), by and through the undersigned counsel, files this Amended Complaint for Patent Infringement against Trim-Lok, Inc. (“Trim-Lok”, “Defendant”). LTI amends its Complaint based on its recently acquired evidence of additional acts of infringement described herein. Plaintiff hereby alleges as follows:

NATURE OF THE ACTION

1. This is a civil action for patent infringement. Plaintiff’s claims are based on the unauthorized, infringing manufacture, use, sale, or offer for sale by Defendant of seal products including, for example, seal components for a slide-out room of a recreational vehicle (“RV”) and the installation of those components by Defendant and others onto RVs having slide-out rooms to make the patented combination.

THE PARTIES

2. Plaintiff is a corporation organized and existing under the laws of the State of Minnesota having a principal place of business at 53208 Columbia Drive, Elkhart, Indiana 46514.

3. Defendant is a corporation organized and existing under the laws of the State of California having a principal place of business at 6855 Hermosa Circle, Buena Park, California 90622, a sales office at 1507 South Olive Street, South Bend, Indiana 46619, and a manufacturing and distribution facility at 1642 Gateway Court, Elkhart, Indiana 46514.

JURISDICTION AND VENUE

4. This is an action for patent infringement of United States Patent No. 6,966,590 (“the ‘590 patent”) arising under the provisions of the Patent Laws of the United States, 35 U.S.C. §§ 271, 281 and 283-285. Plaintiff owns the ‘590 patent and holds rights to sue and recover damages for infringement thereof, including past infringement. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a).

5. Defendant makes, offers for sale, or sells products and components of infringing products which are the subject of the patent infringement cause of action set forth herein.

6. Defendant has committed acts of patent infringement, including making, offering for sale, or selling products and components within this Judicial District.

7. This Court has personal jurisdiction over Defendant. Defendant does and has done substantial business in this District by having a manufacturing and distribution facility in this District. Defendant’s facility distributes products and components, including those that infringe or result in infringement of Plaintiff’s ‘590 patent and places them into the stream of commerce. Defendant has committed and continues to commit acts of patent infringement in this District.

8. Venue is proper in this Court pursuant to 28 U.S.C. §§1391 and 1400(b) because Defendant is subject to personal jurisdiction in this District and has committed and continues to

commit acts of patent infringement that give rise to the claims alleged within this District.

PATENT-IN-SUIT

9. On November 22, 2005, the United States Patent and Trademark Office duly and legally issued the '590 patent titled "Two-Part Seal for a Slide-Out Room." A true and correct copy of the '590 patent is attached to this Complaint as Exhibit A.

10. All maintenance fees for the '590 patent which have come due have been paid and the patent has not expired. The '590 patent has not been found invalid by any court or agency.

11. Defendant has not offered to buy or license the '590 patent from Plaintiff.

12. Claim 1 of the '590 patent covers a resilient seal used in combination with mobile living quarters, which includes RVs. An RV, according to Claim 1, has a slide-out room defining an interior space, and having a first sidewall having an exterior side with an opening through the first sidewall in which the slide-out room is shifted between open and closed positions. The slide-out room includes a second sidewall spaced from the first sidewall and an end wall defining interior space within the slide-out room. The slide-out room includes a peripheral flange that overlaps the first sidewall when the slide-out room is in its closed position. The seal, according to Claim 1, has a mounting portion attached to the first sidewall along the opening and a separate bulb portion. The bulb portion is slidably connected to the mounting portion for compressible contact with the flange of the exterior wall when the slide-out room is in its closed position.

13. Claim 2 of the '590 patent depends from Claim 1 and further specifies a tongue and groove connection between the bulb and mounting portion.

14. Claim 6 of the '590 patent covers a method of attaching a seal to mobile living quarters having a slide-out room defining an interior space, and having a first sidewall having an exterior side with an opening through first sidewall in which the slide-out room is shifted between open and closed positions. The slide-out room includes a second sidewall spaced from the first

sidewall and an end wall defining interior space within the slide-out room. The slide-out room includes a peripheral flange that overlaps the first sidewall when the slide-out room is in its closed position. The seal includes an elongated mounting portion and an elongated bulb seal portion, Claim 6 includes the following steps:

- a. affixing the mounting portion to the first wall adjacent to the opening using both adhesive and mechanical fasteners;
- b. attaching the bulb seal portion to locate the bulb portion in compressed engagement with and between the first sidewall and the flange when the slide-out room is in its closed position;
- c. sliding the bulb seal along the attached mounting to a selected position; and
- d. maintaining the selected position of the bulb seal portion to the mounting portion by fastening the bulb seal portion to the mounting portion.

FACTUAL BACKGROUND

15. LTI is in the business of creating custom sealing solutions for recreational vehicles, especially sealing solutions for RVs that have slide-out rooms. Its customers include Forest River, Inc. (“Forest River”), who has purchased seals for RV slide-out rooms from LTI. Slide-out room sealing poses unique problems that frequently drive innovative and patent-worthy solutions. During its time in the RV slide-out seal industry, LTI has developed and patented numerous solutions for sealing RV slide-out rooms.

16. LTI has been in the business of designing, manufacturing, and providing seals for slide-out rooms since 2003 and Trim-Lok is a recent direct competitor. Trim-Lok has developed and patented at least one product that seals slide-out rooms and does not infringe an LTI patent, such as U.S. Pat. Nos. 8,701,351 and 8,910,422.

17. One of the named inventors of the ‘590 patent is Edwin Ksiezepolski who has

worked for at least 49 years in the RV industry. He has worked for LTI since 2003 to the present as a representative for LTI selling EK/KE seals covered by the '590 patent along with other products. As part of his compensation for generating sales for LTI, Mr. Ksiezopolski receives royalty payments for sales of product covered by the '590 patent. As part of Mr. Ksiezopolski's ongoing duties representing LTI, he routinely visits RV manufacturer's plants to assist with sales and installation of LTI seals on RVs, particularly seals used on slide-out rooms. During some of those visits, Mr. Ksiezopolski has directly installed seals on RVs with slide-out rooms.

18. RV manufacturers producing RVs with slide-out rooms typically demand a representative of the seal manufacturer selling seals for use with slide-out rooms be present to provide training and assistance with installation. Forest River demands a representative of the seal manufacturer be present in their facility to provide assistance with installation. It is common for the representative of a seal manufacturing company to install slide-out seals for instructional purposes.

19. An RV manufacturer will not commit to purchasing components, including seals for RVs, without having first installed them on a vehicle to prove they will not leak.

20. The manufacturer's installing of seals on slide-out rooms is in the seal manufacturer's best interest to ensure seals function as intended and that they do not leak because when leaks occur around slide-out rooms, they are a large warranty expense to RV manufacturers.

21. If a slide-out room does leak, the RV manufacturer will often seek reimbursement from the slide-out seal manufacturer to cover warranty costs, and this is further motivation for slide-out seal manufacturers to provide assistance with slide-out seal installation and to install seals on RVs at RV manufacturer's facilities.

THE ACCUSED PRODUCT

22. The Defendant manufactures a bulb portion (“Accused Product”) that slidably connects to a mounting portion (“Mounting Portion”). The Accused Product is shown in Exhibit B, Pages 1-5.

23. Trim-Lok manufactured the Accused Product for use with an RV having a slide-out room.

24. The Accused Product slidably connects to the Mounting Portion (Ex. B, Mounting Portion). As installed on the RV at Forest River, the Accused Product has compressible contact with the flange of the exterior wall. Combining the Accused Product and Mounting Portion with an RV having a slide-out room meets all of the elements of Claim 1 and therefore would infringe Claim 1.

25. The Accused Product utilizes a tongue and groove design to connect to the Mounting Portion (Ex. B, Page 1, Tongue and Groove). Affixing the Accused Product to the Mounting Portion using tongue and groove with an RV having a slide-out room meets each and every element of Claim 2, and therefore would infringe Claim 2.

26. Installing the Accused Product on an RV having a slide-out room according to the steps of Claim 6 would infringe Claim 6.

Trim-Lok’s Prior Knowledge of the ‘590 Patent

27. Mr. Ksiezopolski, as a representative of LTI having extensive experience with seals covered by the ‘590 patent, maintained an office within LTI’s Elkhart, Indiana facility. In his office at LTI, Mr. Ksiezopolski maintained a white board with a listing of the patents in which he was a named inventor, and this list was written on the white board in permanent marker. The white board included a written description of what each patent covered.

28. Andrew Busch and Daryl Torrey were key employees at LTI, both being extensively involved in the design and manufacture of RV slide-out seals.

29. Mr. Ksiezopolski worked directly with Daryl Torrey, who started his employment with LTI on November 15, 2004. Mr. Torrey designed tools and dies to produce seals covered by the '590 patent and was a production engineer for these parts. As part of his duties working with machines to produce parts covered by the '590 patent, Mr. Torrey maintained labeling machines for labeling boxes containing parts covered by the '590 patent. These boxes were routinely labeled with the corresponding '590 patent number. Therefore, Mr. Torrey knew the scope of the '590 patent's coverage through his experience with numerous examples of parts covered by the '590 patent. During his employment at LTI, Mr. Torrey saw sales brochures for LTI seals covered by the '590 patent and those sales brochures listed the '590 patent as covering certain seals. Additionally, Mr. Torrey was familiar with the white board describing patent coverage of the patents on which Mr. Ksiezopolski was an inventor, including the '590 patent.

30. Mr. Ksiezopolski also worked directly with former LTI employee Andrew Busch, who started his employment with LTI on October 16, 2005. Mr. Busch shared the same office with Mr. Ksiezopolski while employed with LTI. As such, he was familiar with the white board describing parts covered by the '590 patent. During his employment at LTI, Mr. Busch made drawings of parts covered by the '590 patent and visited customer plants where LTI seals were installed on RVs having slide-out rooms. While employed with LTI, Mr. Busch installed seals on RVs having slide-out rooms. This was customarily done to ensure new products were accepted by customers, to demonstrate the utility of the product to the customer, and to prevent improper installation of LTI products. As part of his duties working for LTI, Mr. Busch made sales brochures describing seals covered by the '590 patent. Additionally, Mr. Busch made a list of parts covered by the '590 patent for the purpose of determining royalty payments to Mr. Ksiezopolski. As such, Mr. Busch was thoroughly familiar with the coverage of the '590 patent.

31. During their time together at LTI, Andrew Busch and Daryl Torrey knew each other and worked together.

32. Andrew Busch left his employment at LTI on or around March 1, 2013. Within a month of leaving his employment at LTI, Mr. Busch began working for Trim-Lok.

33. Daryl Torrey left his employment at LTI on or around May 3, 2013. Within a month of leaving his employment with LTI, Mr. Torrey also began working for Trim-Lok.

34. Thus, Trim-Lok was aware of LTI's '590 patent at least as early as April 1, 2013 through the knowledge of at least one former LTI employee having intimate knowledge of the '590 patent and its coverage.

35. Further, Defendant also has intimate knowledge of the '590 patent, including its coverage and file history from its preparation for the Declaratory Judgment action ("Dec. Action") brought in California on July 29, 2013. See *Trim-Lok, Inc. v. Lifetime Industries, Inc.*, 8:13-cv-01141-JAK-JEM (C.D. Cal. 2013).

36. On August 12, 2013, before the Dec. Action was dismissed, LTI filed an action in this District against Trim-Lok over infringement of the '590 patent. The accused product in that case was different but contained many similar and relevant features to this infringement action.

37. Trim-Lok also had knowledge of what would infringe the '590 patent much earlier than the filing of the Complaint in this action from its key employees, other litigation surrounding the '590 patent, and the preparation of Trim-Lok's own Dec. Action.

38. Finally, the Complaint (Dkt. 1), filed on August 22, 2016, showed the Accused Product (Dkt. 1-1, Ex. A), and clearly identified and articulated the features of the Accused Product and how the Accused Product was used to infringe the '590 patent. Further, it contained specific allegations of direct, induced, and contributory infringement.

39. As such, Trim-Lok is well aware of the '590 patent and what would and would not infringe the '590 patent. Thus, Trim-Lok had knowledge of its infringing acts subsequent to the filing of the Complaint (Dkt. 1), including a seventy-five vehicle build that began at Forest River's Prime Time Manufacturing Plant ("Prime Time") on November 7, 2016 using the

Accused Product.

COUNT 1: DIRECT INFRINGEMENT OF THE '590 PATENT

40. Paragraphs 1 through 39 of Plaintiff's Complaint are incorporated into Count 1 of Plaintiff's Complaint as if fully set forth herein.

41. Direct infringement is covered by 35 U.S.C. §271(a), "whoever without authority makes, uses, offers to sell, or sells any patented invention, within the United States or imports into the United States any patented invention during the term of the patent therefor, infringes the patent."

42. Direct infringement is a strict-liability offense in which Defendant's knowledge, intent, or mental state is irrelevant.

43. In short and only for the purposes of clarity, the '590 patent requires three basic components: a mounting portion, a bulb portion that slidably connects to the mounting portion, and an RV having a slide-out room. Combining the Accused Product and Mounting Portion with an RV having a slide-out room meets all of the elements of Claim 1, and therefore infringes Claim 1.

44. A Forest River employee informed LTI that during the week of July 11, 2016, the Accused Product was assembled on an RV at Prime Time. A Trim-Lok employee was involved with that installation.

45. The Accused Product was tested on the RV at Prime Time to determine whether the Accused Product had a proper height that would work with the peripheral flange on the RV.

46. On July 15, 2016, a sample of the Accused Product was obtained by LTI during a routine visit to Prime Time and a Forest River employee stated that the Accused Product was from Trim-Lok.

47. On July 25, 2016, Forest River requested LTI make a design change to its 3105 part, one that is nearly identical to the Accused Product, so that the LTI bulb portion would be

taller and thus, more like Trim-Lok's Accused Product.

48. The only way Forest River would know it needed a taller bulb portion, like the Accused Product, would be to test fit the Accused Product on an RV adjacent to the slide-out room and see how the peripheral flange on the slide-out room interacted with the installed seal.

49. Forest River would not have requested LTI make a taller bulb seal if Trim-Lok's Accused Product had not been installed and tested on an RV.

50. Sometime before November 2, 2016, Prime Time ordered a quantity of the Accused Product. This quantity of the Accused Product was photographed at Prime Time on November 2, 2016. *See* Ex. B, Page 6. The quantity contained enough Accused Product to build at least seventy-five RVs. Containers from Trim-Lok showing the Accused Product is shown in Ex. B Page 6.

51. On November 7, 2016, a build of around seventy-five RVs was started, using the Accused Product to seal slide-out rooms on RVs at Prime Time.

52. The Accused Product was found to be slidably installed on the Mounting Portion of a Forest River RV having a slide-out room. *See* Ex. B, Pages 6-11.

53. As is stated previously, it is customary with new product releases of seals for RVs having slide-out rooms, for the supplier to perform the installation of a new seal at a customer's facility and the Accused Product was a new product at the time of the installation during the week of July 11, 2016. On information and belief, Defendant installed the Accused Product on an RV having a slide-out room in the United States, therefore directly infringing the '590 patent.

54. Because the Accused Product was a new product from Trim-Lok and it is custom in the industry for the seal manufacturer to install new products for sample runs, a Trim-Lok employee installed the Accused Product. Therefore, because Trim-Lok made the combination including the Accused Product with a Mounting Portion on an RV, it directly infringed the '590 patent.

COUNT 2: INDUCED INFRINGEMENT OF THE '590 PATENT

55. Paragraphs 1 through 54 of Plaintiff's Complaint are incorporated in Count 2 of Plaintiff's Complaint as if fully set forth herein.

56. For reference, induced infringement is covered by 35 U.S.C. §271(b) and requires the following basic elements:

- a. An underlying direct infringement; and
- b. Scier: knowledge that the induced acts constitute patent infringement.

57. Regardless of who performed the installation, the Accused Product was installed on an RV having a slide-out room (Ex. B, Page 8-12) and directly infringed at least one claim of the '590 patent, clearly fulfilling the requirement for an underlying direct infringement. Specifically, Forest River's making, using, offering for sale, or selling of an RV having the Accused Product constitutes direct infringement of the '590 patent.

58. As previously stated, Defendant gained knowledge of Plaintiff's '590 patent from at least one former LTI employee before April 1, 2013. Additionally, Defendant obtained intimate knowledge of the '590 patent's scope of coverage from its preparation for its Dec. Action filed July 29, 2013. Further, Defendant became aware of the '590 patent when Plaintiff filed its Complaint for Patent Infringement (Dkt. 1) in this District on August 22, 2016. The Complaint and Exhibits specifically explained the '590 patent, identified the Accused Product, and alleged infringement of the '590 patent.

59. Defendant provided Forest River samples of the Accused Product and instructed Forest River to use the Accused Product to seal a slide-out room on an RV. Further, Defendant provided quotes of the Accused Product at a significant discount compared to Plaintiff's product covered by the '590 patent that caused Forest River to purchase the Accused Product and assemble the Accused Product on an RV in combination with a Mounting Portion.

60. The significant discount by Defendant influenced Forest River to purchase a quantity of the Accused Product for a limited production run of at least seventy-five vehicles.

61. Purchasing agents at Prime Time stated that cost was a major factor in their decision to purchase the Accused Product, given cost is one of the largest factors in component purchases in the RV industry, a significant discount of a product can heavily influence a purchaser.

62. In spite of full knowledge of LTI's Complaint (Dkt. 1), Defendant sold/provided enough of the Accused Product to build around seventy-five RVs.

63. Aware of active litigation with knowledge that the Accused Product would be used in an infringing manner, Defendant provided the Accused Product at a significant discount.

64. At the time of providing samples of Accused Product and quotes for the same, Defendant knew installation of the Accused Product on an RV in combination with a Mounting Portion infringed the '590 patent.

65. Because Defendant knew of the '590 patent, knew the coverage of the same, and then provided samples of the Accused Product at a significant discount, Defendant induced behavior it knew would infringe the '590 patent.

66. Trim-Lok induced Forest River's infringing behavior by providing the sample of the Accused Product that was obtained on July 15, 2016 at Prime Time, Trim-Lok instructed an infringing use by facilitating Forest River's testing of its Accused Product on an RV, thereby instructing an infringing use and providing a significant discount on its Accused Product.

COUNT 3: CONTRIBUTORY INFRINGEMENT OF THE '590 PATENT

67. Paragraphs 1 through 66 of this Complaint are incorporated in Count 3 of Plaintiff's Complaint as if fully set forth herein.

68. For reference, 35 U.S.C. § 271(c) covers contributory infringement and requires

the following basic elements:

- a. An underlying direct infringement;
- b. A non-staple article of commerce; and
- c. Scierter – knowledge that providing the component will result in infringement.

69. Regardless of who performed the installation, the Accused Product was installed on a Forest River RV and directly infringed at least one claim of the ‘590 patent, fulfilling the requirement for an underlying direct infringement. See Ex. B, Page 7-11. Specifically, Forest River’s making, using, offering for sale, or selling of an RV having the Accused Product constitutes an underlying direct infringement of the ‘590 patent.

70. As previously stated, Defendant also had intimate knowledge of the ‘590 patent from its preparation for its Dec. Action attempting to invalidate the ‘590 patent that was filed on July 29, 2013.

71. Before the underlying direct infringement occurred during the seventy-five vehicle build, Defendant knew of the ‘590 patent from the Complaint (Dkt. 1) that clearly laid out the elements of the claim(s).

72. As previously stated, Defendant gained knowledge of Plaintiff’s ‘590 patent from at least one former LTI employee before April 1, 2013. Additionally, Defendant obtained intimate knowledge of the ‘590 patent’s scope of coverage from its preparation for its Dec. Action filed July 29, 2013. Further, Defendant became aware of the ‘590 patent when Plaintiff filed its Complaint for Patent Infringement (Dkt. 1) in this District on August 22, 2016. The Complaint and Exhibits specifically explained the ‘590 patent, identified the Accused Product, and alleged infringement of the ‘590 patent.

73. Slide-out room seals require a wiper portion that seals the wide gap between the sidewall of the slide-out room and the opening in the sidewall. The slide-out room seals require a compressible portion (bulb portion) that makes contact with a flange on the slide-out room. The

Accused Product contains both of these features. Seals with wipers and a compressible bulb portion, like the Accused Product, are only useable for sealing slide-out rooms and serve no use apart from that application. Further, limiting the use of the Accused Product to that of infringing the '590 patent, is the tongue and grove connection on the Accused Product. Another illustration that the Accused Product's only use is for infringing the '590 patent is the fact that it interchangeably fits the same Mounting Portion as the LTI product covered by the '590 patent. Defendant's customers, including Forest River, only use the Accused Product on their RVs having slide-out rooms.

74. Because of the unique features of the Accused Product, it is not a staple article of commerce suitable for non-infringing use. The Accused Product has no other use apart from sealing a slide-out room.

75. Based on sales experience in the industry, the Complaint (Dkt. 1), the Dec. Action, employment of key employees from LTI with full knowledge of the '590 patent, and previous litigation, Defendant was aware at the time it supplied the Accused Product that Forest River would use the Accused Product to infringe the '590 patent.

DEMAND FOR JURY TRIAL

Pursuant to Federal Rules of Civil Procedure 38(b), Plaintiff demands a trial by jury.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully prays that this Court enter judgment in its favor:

- a) declaring the '590 patent is directly infringed by Defendant;
- b) declaring the Defendant induced infringement of the '590 patent;
- c) declaring the Defendant has contributorily infringed the '590 patent;
- d) declaring Defendant's infringement of the '590 patent has been willful;
- e) declaring Defendant be preliminarily and permanently enjoined from manufacturing,

using, selling and offering to sell the infringing product in the United States prior to the expiration of the '590 patent;

- f) declaring this case is exceptional within the meaning of 35 U.S.C. § 285;
- g) awarding damages adequate to compensate it for Defendant's infringement of the '590 patent including lost profits, but in an amount no less than a reasonable royalty, and that such damages be trebled according to 35 U.S.C. § 284;
- h) awarding all costs and expenses of this action, including reasonable attorneys' fees; and
- i) awarding Plaintiff such further relief as the Court may deem just, necessary, and proper.

Dated: November 11, 2016

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the above and foregoing document was filed electronically with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all parties of record.

S/Michael D. Marston
Michael D. Marston