

**IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
ST. JOSEPH DIVISION**

BRENT E. SMITH and AES RAPTOR, LLC)	
)	
Plaintiffs,)	
)	
v.)	Case No. 5:15-cv-06046-GAF
)	
)	
GARLOCK SAFETY SYSTEMS, INC.,)	
)	
Defendant.)	

FIRST AMENDED COMPLAINT FOR PATENT INFRINGEMENT

Plaintiffs Brent E. Smith (“Smith”) and AES Raptor, LLC (“AES”) (collectively, “Plaintiffs”), through their undersigned attorneys, file this First Amended Complaint against Defendant Garlock Safety Systems, Inc., and state and allege as follows:

Parties

1. Smith is a natural person residing in Weston, Missouri.
2. AES is a for-profit limited liability company organized and existing under the laws of the State of Missouri with a principal place of business at 1349 Taney, North Kansas City, MO 64116. AES designs and manufactures fall protection products for use by commercial roofers and sheet metal workers. These products include the AES Raptor Stinger™ and the AES Raptor TriRex™. The sole member of AES is Smith.
3. Garlock Safety Systems, Inc. (“Garlock Safety”) is a for-profit corporation organized and existing under the laws of the State of Michigan with a registered office at 1218 E. Pontaluna Road, Suit B, Spring Lake, MI 49456 and a principal place of business at 2601 Niagara Lane N, Plymouth, MN 55447.

4. Garlock Safety is a division of Plymouth Industries, Inc. (“Plymouth”). Plymouth is a for-profit corporation organized and existing under the laws of the State of Michigan with a registered office at 1218 E. Pontaluna Road, Suit B, Spring Lake, MI 49456 and a principal place of business at 2601 Niagara Lane N, Plymouth, MN 55447. Plymouth touts itself as a construction products and services company working in its core markets of pavement maintenance, commercial roofing application equipment and safety fall protection.

5. Garlock Safety is a sister-company of Garlock Equipment Company (“Garlock Equipment”). Garlock Equipment manufactures commercial roofing and safety equipment, including the Cobra Twin-Man Mobile Fall Protection Cart.

6. Garlock Safety, Plymouth and Garlock Equipment share a common financial interest in offering to sell and/or selling the Cobra Twin-Man Mobile Fall Protection Cart to end-users in the State of Missouri and elsewhere across the United States.

7. Garlock Safety, Plymouth and Garlock Equipment offer to sell and/or offered to sell and/or sell and/or sold the Cobra Twin-Man Mobile Fall Protection Cart in part through various distributors. These distributors include Garlock Chicago, Inc. (“Garlock Chicago”), Russell Dean, Inc., doing business as Garlock East Equipment Company (“Garlock East”), and RWH Roofing Equipment, Inc., doing business as Garlock North (“Garlock North”). These and other distributors

Jurisdiction and Venue

8. This action arises under the patent laws of the United States, 35 U.S.C. § 1, *et seq.* This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

9. This Court has personal jurisdiction over Garlock Safety because Garlock Safety has purposefully availed itself of the privilege of conducting business within this State and this District by, among other things, offering for sale and/or selling the Cobra Twin-Man Mobile Fall Protection Cart. Garlock Safety offered for sale and/or offers for sale and/or sells and/or sold the Cobra Twin-Man Mobile Fall Protection Cart through a collection of interconnected webpages that allow consumers in the State of Missouri to request additional information and a price quote for these products, and to actually order component parts of these products. On information and belief, Garlock Safety directs or has directed promotional materials pertaining to these products into the State of Missouri, and have sold or attempted to sell these products to end users and/or independent distributors in the State of Missouri.

10. Venue is proper in this District and Division pursuant to 28 U.S.C. §§ 1391 and 1400.

Factual Background

11. On August 14, 2012, United States Patent No. 8,240,431 (“the ‘431 Patent”) entitled “Apparatus and Method of Arresting a Fall” issued to Smith. Since its issuance, the ‘431 Patent has been in full force and effect. The ‘431 Patent is valid and enforceable. Smith has commercialized the invention claimed in the ‘431 Patent through AES, incorporating this invention in the AES Raptor Stinger™ and the AES Raptor TriRex™ products. Smith owns all right, title and interest to the ‘431 Patent, including the right to sue for past, present and future infringements. Smith has properly marked the AES Raptor Stinger™ and the AES Raptor TriRex™ products pursuant to 35 U.S.C. § 287(a). A true and correct copy of the ‘431 Patent is attached hereto as Exhibit A.

12. On December 20, 2007, United States Patent Application Publication No. US 2007/0289811 (“the ‘811 Publication”) was published. A true and correct copy of the ‘811 Publication is attached hereto as Exhibit B.

13. The application of the ‘811 Publication issued as the ‘431 Patent, and the ‘811 Publication includes claims that are substantially identical to the claims of the ‘431 Patent.

14. Garlock Safety has infringed the ‘431 Patent by making, using, offering to sell, and/or selling in the United States, and/or importing into the United States, products or processes that practice the invention claimed in the ‘431 Patent. These products include the Cobra Twin-Man Mobile Fall Protection Cart, which is covered by claim 1 of ‘431 Patent.

15. Garlock Safety has profited through infringement of the ‘431 Patent. As a result of Garlock Safety’s unlawful infringement of the ‘431 Patent, Plaintiffs have suffered and will continue to suffer damage. Plaintiffs are entitled to recover from Garlock Safety the damages it suffered as a result of Garlock Safety’s unlawful acts.

16. On information and belief, Garlock Safety’s infringement of the ‘431 Patent was and is willful and deliberate, entitling Plaintiffs to enhanced damages and reasonable attorney’s fees and costs.

COUNT I
Infringement of the ‘431 Patent By Garlock Safety Systems, Inc.

17. Plaintiffs incorporate by reference their foregoing allegations as if fully set forth herein.

18. Garlock Safety has directly and/or indirectly infringed, either literally or under the doctrine of equivalents, one or more claims of the ‘431 Patent by making, using, offering to sell, and/or selling in the United States, and/or importing into the United States, products or processes

that practice the invention claimed in the '431 Patent. In particular, Garlock Safety has made, used, offered to sell and/or sold the Cobra Twin-Man Mobile Fall Protection Cart with a tether in the United States, and the Cobra Twin-Man Mobile Fall Protection Cart with a tether contains all the elements of Claim 1 of the '431 Patent.

19. Garlock Safety's activities have been without express or implied license from Plaintiffs.

20. As a result of the infringement of the '431 Patent, Plaintiffs have been damaged, will be further damaged, and are entitled to be compensated for such damages pursuant to 35 U.S.C. § 284 in an amount to be determined at trial.

COUNT II
Contributory Infringement of the '431 Patent

21. Plaintiffs incorporate by reference their foregoing allegations as if fully set forth herein.

22. Garlock Safety sold or supplied a component or material for use in practicing patented process. In particular, from time to time on information and belief, Garlock Safety sold or supplied the Cobra Twin-Man Mobile Fall Protection Cart without a tether to distributors and/or end-users in the United States.

23. The "tetherless" Cobra Twin-Man Mobile Fall Protection Cart constitutes a material part of the invention, with the invention consisting of a fall protection cart with a tether.

24. Garlock Safety knew the "tetherless" Cobra Twin-Man Mobile Fall Protection Cart was especially made or adapted for use in infringing the '431 Patent. Indeed, the "tetherless" Cobra Twin-Man Mobile Fall Protection Cart could not be used without a tether, and the incorporation of a tether caused the device to infringe.

25. The persons and/or entities that purchased or received the “tetherless” Cobra Twin-Man Mobile Fall Protection Cart from Garlock Safety in fact infringed the ‘431 Patent by making, using, offering to sell, and/or selling the device with a tether in the United States.

26. The “tetherless” Cobra Twin-Man Mobile Fall Protection Cart is not a staple article or commodity of commerce suitable for substantial non-infringing use.

27. Garlock Safety’s activities have been without express or implied license from Plaintiffs.

28. As a result of the infringement of the ‘431 Patent, Plaintiffs have been damaged, will be further damaged, and are entitled to be compensated for such damages pursuant to 35 U.S.C. § 284 in an amount to be determined at trial.

COUNT III
Inducing Infringement of the ‘431 Patent

29. Plaintiffs incorporate by reference their foregoing allegations as if fully set forth herein.

30. Garlock Safety has intentionally induced others to infringe Claim 1 of the ‘431 Patent by providing the Cobra Twin-Man Mobile Fall Protection Cart to distributors, dealers, customers, and/or others with detailed instructions and information on how to use and/or sell the infringing cart.

31. Garlock Safety’s distributors, dealers, customers, and/or others in fact infringed the ‘431 Patent by using, offering to sell, and/or selling in the United States the Cobra Twin-Man Mobile Fall Protection Cart.

32. Garlock Safety’s activities have been without express or implied license from Plaintiffs.

33. As a result of the infringement of the '431 Patent, Plaintiffs have been damaged, will be further damaged, and are entitled to be compensated for such damages pursuant to 35 U.S.C. § 284 in an amount to be determined at trial.

Willful Infringement

34. Plaintiffs incorporate by reference their foregoing allegations as if fully set forth herein.

35. Garlock Safety's infringement of the '431 Patent has been deliberate and willful. Garlock Safety's conduct warrants an award of treble damages pursuant to 35 U.S.C. § 284. Moreover, this is an exceptional case as set forth in 35 U.S.C. § 285 warranting an award of attorney's fees.

Jury Trial Demand

Plaintiffs demand trial by jury on all issues so triable.

Prayer for Relief

WHEREFORE, upon final hearing or trial, Plaintiffs pray for the following relief:

- A. A judgment that Garlock Safety has directly infringed the '431 Patent;
- B. A judgment that Garlock Safety has contributorily infringed the '431 Patent;
- C. A judgment that Garlock Safety has induced infringement of the '431 Patent;
- D. A judgment and order requiring Garlock Safety to pay Smith a reasonable royalty for infringing on Claim 1 of the '431 Patent pursuant to 35 U.S.C. § 154(d)(1);
- E. A judgment and order requiring Garlock Safety to pay damages to Plaintiffs adequate to compensate them for Defendant's wrongful infringing acts in accordance with 35 U.S.C. § 284;

- F. A judgment and order requiring Garlock Safety to pay increased damages up to three times, in view of its willful and deliberate infringement of the '431 Patent;
- G. A finding in favor of Plaintiffs that this is an exceptional case under 35 U.S.C. § 285 and an award of Plaintiffs of their costs, including reasonable attorney's fees and other expenses incurred in connection with this action;
- H. A judgment and order requiring Garlock Safety to pay Plaintiffs pre-judgment interest under 35 U.S.C. § 284 and post-judgment interest under 28 U.S.C. § 1961 on all damages awarded; and
- I. Such other and further relief as the Court deems just and appropriate.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on February 1, 2017, I served the foregoing via this Court's CM/ECF System to the following counsel of record:

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