

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

STEVEN L. AYLSWORTH

Plaintiff,

v.

APEX MACHINE SALES, INC.,
APEX MACHINE WORKS LLC, and
STEVEN R. WEINSCHENK

Defendants.

Civil Action No. _____

COMPLAINT

Plaintiff Steven L. Aylsworth, for his Complaint against Defendants Apex Machine Sales, Inc., Apex Machine Works LLC (collectively the “Apex Defendants”), and Steven R. Weinschenk states and alleges as follows:

NATURE OF THIS ACTION

1. This is an Action for willful patent infringement arising under the patent laws of the United States, including 35 U.S.C. § 271 and §§ 281-285.

2. Plaintiff is the owner of all right, title and interest in and to United States Patent No. 8,960,244 (the “’244 Patent”), titled Automated Lumber Retrieval and Delivery.” Plaintiff commercializes the inventions claimed in the ’244 Patent through his company Acer Inc. (“Acer”), a leading innovative designer and manufacturer of lumber delivery and truss construction equipment.

3. Upon information and belief, Defendant Weinschenk is the founder and sole owner of the Apex Defendants. Upon information and belief, at all times relevant to this

action Defendant Weinschenk has directed and controlled the actions of the Apex Defendants described herein.

4. The Defendants have directly infringed Plaintiff's valuable patent rights through their manufacture, sale, offer for sale and use of automated lumber retrieval systems including the Wood Runner AirPick, the use of which infringes the '244 Patent.

5. The Defendants have also contributorily infringed Plaintiff's valuable patent rights through their manufacture, sale, and offer for sale of automated lumber retrieval systems including the Wood Runner AirPick.

6. The Defendants have also induced infringement of Plaintiff's valuable patent rights by actively encouraging and inducing others to infringe the '244 Patent through the use of automated lumber retrieval systems including the Wood Runner AirPick.

7. Defendant Weinschenk is personally liable for the Apex Defendants' infringement because he directed and controlled the infringing conduct of the Apex Defendants.

8. Plaintiff seeks an injunction prohibiting Defendants from further and continuing infringement of his patent rights. Plaintiff also seeks an award of damages caused by Defendants' unlawful conduct.

PARTIES

9. Plaintiff is the owner of Acer and is a resident of the state of Minnesota. Acer is a corporation organized and existing under the laws of the state of Minnesota, with its principal place of business at 6463 50th Street SE, Rochester, MN 55904. Acer is a

leading innovative designer and manufacturer of lumber delivery and truss construction equipment.

10. Plaintiff is a co-inventor of the '244 Patent, and owner by assignment of all right, title and interest in and to the '244 Patent.

11. Upon information and belief, Defendant Apex Machine Sales, Inc. is a Minnesota corporation with its principal place of business at 2008 3rd Street SW, Rochester, MN 55902. Upon information and belief, Apex Machine Sales, Inc., either directly or through its subsidiaries, uses, manufactures, sells, and/or offers for sale an automated lumber retrieval system marketed as the Wood Runner AirPick.

12. Upon information and belief, Defendant Apex Machine Works LLC is a Minnesota corporation with its principal place of business at 2008 3rd Street SW, Rochester, MN 55902. Upon information and belief, Apex Machine Works LLC, either directly or through its subsidiaries, uses, manufactures, sells, and/or offers for sale an automated lumber retrieval system marketed as the Wood Runner AirPick.

13. Upon information and belief, Defendant Steven R. Weinschenk is an individual resident of the State of Minnesota, and is the founder and owner of the Apex Defendants.

JURISDICTION AND VENUE

14. This is an action for patent infringement arising under the patent laws of the United States, United States Code, Title 35 § 1, et seq.

15. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

16. This Court has personal jurisdiction over the Defendants because the Defendants each reside in this judicial district, regularly conduct business in this judicial district, and have engaged in acts of patent infringement in this judicial district.

17. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391(b) & (c), and 1400(b).

FACTS

18. The '244 Patent was duly and legally issued by the United States Patent and Trademark Office on or about February 24, 2015. A true and correct copy of the '244 Patent is attached as Exhibit A.

19. Plaintiff is a co-inventor to the '244 Patent.

20. Defendant Weinschenk is also a co-inventor to the '244 Patent and a former employee of Acer.

21. On or about October 13, 2011, Defendant Weinschenk duly and legally assigned his entire right, title and interest in and to the '244 Patent to Plaintiff.

22. Despite this assignment, Defendant Weinschenk, knowingly and with the intention to willfully infringe upon Plaintiff's '244 Patent, formed the Apex Defendants and caused them to use, manufacture, sell and offer to sell automated lumber retrieval systems in direct competition with Acer, including the Apex Defendants' products sold under the trade name Wood Runner AirPick.

DEFENDANTS' INFRINGEMENT OF THE '244 PATENT

23. Defendants have directly infringed the '244 patent through the use of methods claimed in the '244 patent throughout the United States.

24. Specifically, Defendants have used automated lumber retrieval processes that comprise inventions of the '244 Patent, including at least the method claimed in claim 7 of the '244 Patent. For example, Defendants use the Wood Runner AirPick in a manner that infringes at least claim 7 of the '244 Patent.

25. In addition, Defendants have contributorily infringed the '244 Patent by selling and/or offering for sale the Wood Runner AirPick.

26. Defendants sell and/or offer to sell the Wood Runner AirPick with knowledge that the Wood Runner AirPick practices at least the patented process of claim 7 of the '244 Patent.

27. Upon information and belief, at all times relevant to this action, Defendants knew that the Wood Runner AirPick was especially made or especially adapted for use in the infringement of at least claim 7 of the '244 patent.

28. The Wood Runner AirPick is not a staple article or commodity of commerce with a substantial noninfringing use.

29. Further, upon information and belief, with knowledge of the '244 Patent and without license or authority, Defendants have actively encouraged and induced others to infringe at least claim 7 of the '244 Patent by using the Wood Runner AirPick.

30. Upon information and belief, Defendants' active encouragement and inducement includes providing detailed customer protocols and instructions regarding how to practice the methods claimed in the '244 Patent, providing on-site technical assistance to customers regarding the methods claimed in the '244 Patent, and supplying the hardware necessary to practice the methods claimed in the '244 Patent.

31. At all times relevant to this action, Defendants had actual knowledge of the '244 Patent and willfully, deliberately, and intentionally infringed the claims of the '244 Patent as described above. Indeed, Defendant Weinschenk is a co-inventor of the '244 Patent and a former employee of Acer.

32. Defendants' actions have been without license or permission from Plaintiff.

33. Upon information and belief, Defendants will persist in their infringing conduct unless enjoined from further infringement by this Court.

34. As a result of Defendants' wrongful conduct, Plaintiff is entitled to the preliminary and permanent injunctive remedies specified in the prayer for relief, damages in an amount to be proven at trial, and recovery of all reasonable attorneys' fees and costs, herein.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Steven L. Aylsworth prays for entry of judgment against Defendants Apex Machine Sales, Inc., Apex Machine Works LLC, and Steven R. Weinschenk as follows:

- (a) Finding that the Defendants have infringed the '244 Patent;
- (b) Permanently enjoining the Defendants, their agents, servants, officers, directors, employees, affiliated entities, and all persons acting in concert with them from further and continuing infringement of the '244 Patent;
- (c) Awarding Plaintiff all damages suffered as a result of the Defendants' wrongful activities, trebled where permissible;
- (d) Finding this case is "exceptional" and awarding Plaintiff his attorneys' fees and costs as allowed by law;
- (e) Adding prejudgment and post-judgment interest on all sums awarded; and

- (f) Granting such other and further relief as the Court may deem just and equitable.

DEMAND FOR JURY TRIAL

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiff respectfully requests a trial by jury on any and all issues on which a trial by jury is available under applicable law.

Dated: February 20, 2017

Respectfully submitted,

By: /s/ Christopher K. Larus

Christopher K. Larus (226828)
ROBINS KAPLAN LLP
800 LaSalle Avenue
Suite 2800
Minneapolis, MN 55402
Phone: (612) 349-8500
Fax: (612) 339-4181
clarus@robinskaplan.com

*Attorney for Plaintiff Steven L.
Aylsworth*