

Locke Lord LLP  
44 Montgomery Street, Suite 4100  
San Francisco, CA 94104

1 LOCKE LORD LLP  
Regina J. McClendon (SBN 184669)  
2 rmccclendon@lockelord.com  
3 44 Montgomery Street, Suite 4100  
San Francisco, CA 94104  
4 Telephone: (415) 318-8810  
Fax: (415) 676-5816

5 LOCKE LORD LLP  
6 Jason Mueller (*pro hac vice*)  
jmueller@lockelord.com  
7 Galyn Gafford (*pro hac vice*)  
ggafford@lockelord.com  
8 Robert Hough (*pro hac vice*)  
9 robert.hough@lockelord.com  
2200 Ross Avenue, Suite 2800  
10 Dallas, Texas 75201-6776  
11 Telephone: (214)740-8000

12 Attorneys for Plaintiff  
PACIFIC COAST BUILDING PRODUCTS, INC.

13  
14 UNITED STATES DISTRICT COURT  
15 NORTHERN DISTRICT OF CALIFORNIA  
16

17 PACIFIC COAST BUILDING PRODUCTS, INC., ) CASE NO.: 5:17-cv-01116-LHK  
18 )  
Plaintiff, )  
19 )  
vs. ) **FIRST AMENDED COMPLAINT**  
20 ) **FOR PATENT INFRINGEMENT;**  
CERTAINTEED GYPSUM, INC., and SAINT ) **DEMAND FOR JURY TRIAL**  
21 )  
GOBAIN PERFORMANCE PLASTICS CORP. )  
22 )  
Defendant. )  
23 )

24  
25 Plaintiff, Pacific Coast Building Products, Inc. (“Pacific Coast”), by and through its  
26 undersigned attorneys, files this First Amended Complaint against Defendants CertainTeed Gypsum,  
27 Inc. and Saint Gobain Performance Plastics Corp. (collectively “Defendants”).  
28

Locke Lord LLP  
44 Montgomery Street, Suite 4100  
San Francisco, CA 94104

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**THE PARTIES**

1. Plaintiff Pacific Coast is a corporation organized and existing under the laws of the State of California, having its principal place of business at 10600 White Rock Road, Suite 100, Rancho Cordova, CA 95670.

2. Upon information and belief, Defendant CertainTeed Gypsum, Inc. is a corporation organized under the laws of Delaware with a principal place of business at 750 E Swedesford Road, Wayne, Pennsylvania 19087.

3. Upon information and belief, Defendant Saint Gobain Performance Plastics Corp. is a corporation organized under the laws of California with a principal place of business at 31500 Solon Road, Ohio 44139.

**NATURE OF THE ACTION**

4. This is an action for patent infringement, arising pursuant to the patent laws of the United States, 35 U.S.C. §§ 100, *et seq.*

**JURISDICTION AND VENUE**

5. This Court has subject matter jurisdiction pursuant to Title 28 United States Code, Sections 1331 and 1338(a) because this action arises under the Patent Laws of the United States.

6. This Court has personal jurisdiction over Defendant as a result of Defendants' acts of infringement in violation of 35 U.S.C. § 271 in this District and by placing infringing products into the stream of commerce, with the knowledge or understanding that such products are sold in this District.

7. Venue in this Judicial District is proper pursuant to Title 28 United States Code, Sections 1391(b) and (c) and 1400(b). Intradistrict Assignment: Pursuant to Civil L.R. 3-2(c), this is a patent case which may be assigned on a district-wide basis.

**FACTUAL BACKGROUND**

**The Patents-in-Suit**

1  
2  
3 8. On May 22, 2012, U.S. Patent No. 8,181,738 (“the ‘738 Patent”) entitled “Acoustical  
4 Sound Proofing Material with Improved Damping at Select Frequencies and Methods for  
5 Manufacturing Same” was duly and legally issued by the United States Patent & Trademark Office.  
6 A true and correct copy of the ‘738 Patent is attached as Exhibit A.  
7

8 9. Pacific Coast is the lawful owner by assignment of all rights, title and interest in the  
9 ‘738 Patent, including the right to sue for patent infringement and damages, including past damages.

10 10. The ‘738 Patent relates generally to acoustical sound proofing laminated panels  
11 formed from two layers of materials (*e.g.*, gypsum wallboard) sandwiched around a layer of  
12 viscoelastic glue, which significantly improves the sound attenuation ability of the panels by limiting  
13 the transmission of sounds from one area to another. The claims of the ‘738 Patent are directed to  
14 specific formulations of the viscoelastic glue that offer optimum sound-attenuation.  
15

16 11. As described in detail below, Defendant CertainTeed’s SilentFX® QuickCut noise-  
17 reducing drywall directly infringes at least claims 1, 3, 23 and 25 of the ‘738 Patent. The SilentFX®  
18 QuickCut drywall features a viscoelastic polymer between two gypsum boards wherein the  
19 viscoelastic polymer has an acrylic polymer in a selected concentration between about 10% and  
20 about 60% and a glass transition temperature less than room temperature.  
21

22 12. Further, and as described in detail below, Defendant Saint Gobain’s Green Glue  
23 Noiseproofing Compound indirectly infringes at least claims 1 and 23 of the ‘738 patent. Defendant  
24 teaches its customers to make laminated gypsum board panels wherein the Green Glue  
25 Noiseproofing Compound is used as the viscoelastic polymer between two gypsum board panels,  
26 and the Green Glue Noiseproofing Compound has an acrylic polymer in a selected concentration  
27 between about 10% and about 60% and a glass transition temperature less than room temperature.  
28

Locke Lord LLP  
44 Montgomery Street, Suite 4100  
San Francisco, CA 94104

1           13.     On July 12, 2016, U.S. Patent No. 9,388,568 (“the ‘568 Patent”) entitled “Acoustical  
2 Sound Proofing Material with Improved Fracture Characteristics and Methods for Manufacturing  
3 Same” was duly and legally issued by the United States Patent & Trademark Office. A true and  
4 correct copy of the ‘568 Patent is attached as Exhibit B.  
5

6           14.     Pacific Coast is the lawful owner by assignment of all rights, title and interest in the  
7 ‘568 Patent, including the right to sue for patent infringement and damages, including past damages.  
8

9           15.     The ‘568 Patent relates generally to acoustical sound proofing laminated panels  
10 formed from two layers of materials (*e.g.*, gypsum wallboard) sandwiched around a layer of  
11 viscoelastic glue, which significantly improves the soundproofing ability of walls and ceilings by  
12 limiting the transmission of sounds from one area to another. The ‘568 Patent specifically discloses  
13 a laminated panel using two pieces of gypsum wallboard with the inner surfaces being unclad with  
14 no face paper, which allows the resultant panel to be scored and snapped like traditional gypsum  
15 wallboard while still offering significant sound attenuation.

16           16.     As described in detail below, Defendant CertainTeed’s SilentFX® QuickCut noise-  
17 reducing drywall infringes at least claim 21 of the ‘568 Patent. The SilentFX® QuickCut drywall is  
18 a laminated sound-attenuating panel that features two gypsum boards with unclad inner surfaces that  
19 cuts and installs (*i.e.* can be scored and snapped) like standard gypsum board.  
20

**The Products At Issue**

21           17.     Pacific Coast is a small but innovative North American manufacturer of building  
22 materials that has been based in the Sacramento area since 1953. Included in its building materials  
23 products is gypsum wallboard, offered in various thicknesses of traditional gypsum wallboard,  
24 moisture resistant wallboard and other specialty boards including the QuietRock sound-attenuating  
25 wallboard.  
26

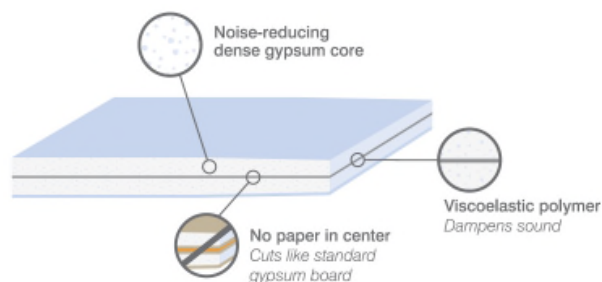
27           18.     QuietRock EZ-SNAP was the first high performance sound damping gypsum panel  
28 that scores and snaps like standard gypsum wallboard. The invention is a breakthrough, as proven

1 by its market demand for a product that attenuates sound, yet installs like standard gypsum  
 2 wallboard. This breakthrough is possible due to Pacific Coast's patented technology that offers  
 3 outstanding sound-attenuation with no paper or metal in the center of the panel. QuietRock EZ-  
 4 SNAP delivers high acoustic performance with easier, faster installation than other brands—using  
 5 standard and well-known installation techniques for drywall.  
 6

7 19. The QuietRock EZ-SNAP panels also feature a proprietary viscoelastic adhesive, that  
 8 is marketed under the tradename QuietGlue. QuietGlue has been specifically formulated to offer  
 9 sound-attenuating properties, while also adhering the two layers of gypsum board to each other.

10 20. Defendant CertainTeed is a competitor of Pacific Coast and is also engaged in the  
 11 business of manufacturing building materials, including among other things, gypsum wallboard.

12 21. Upon information and belief, Defendant CertainTeed has introduced a line of sound-  
 13 attenuating drywall products under the brand name SilentFX®. One of the products introduced by  
 14 Defendant CertainTeed is SilentFX® QuickCut, a laminated panel featuring a viscoelastic polymer  
 15 between two gypsum panels that cuts like standard gypsum wallboard due to the lack of paper on the  
 16 inner surfaces of the gypsum panels. The following drawing is included in the CertainTeed  
 17 SilentFX® QuickCut Noise-reducing Gypsum Board Product Brochure (attached as Exhibit C).  
 18



25

26 22. Upon information and belief, the viscoelastic polymer used by Defendant in creating  
 27 the SilentFX® QuickCut panels contains the acrylic polymer Poly(2-ethylhexyl acrylate) in a  
 28 concentration of approximately 40% by weight.

1           23.     Upon information and belief, Defendant Saint Gobain also offers a viscoelastic glue  
2 under the brand name Green Glue Noiseproofing Compound, a viscoelastic damping compound used  
3 to soundproof floors, walls and ceilings. Defendant Saint Gobain instructs its customers to create  
4 laminated panels by applying Green Glue Noiseproofing Compound between two layers of gypsum  
5 wallboard, as shown in the Green Glue Noiseproofing Compound product brochure attached as  
6 Exhibit D on pages 4-5. Specifically, Defendant Saint Gobain's product brochure provides:  
7

8                   **Step 4**

9                   **Hanging the Second Sheet-** After applying the Green Glue to the back of the  
10 second layer, raise the board into position, press the board against the wall or  
11 ceiling, and fasten in place using appropriate screws. The Green Glue will  
12 squeeze into a thin layer (about 0.5 mm). (Exhibit D, p. 5).  
13

14           24.     Upon information and belief, the Green Glue Noiseproofing Compound offered by  
15 Defendant Saint Gobain contains the acrylic polymer Poly(2-ethylhexyl acrylate) in a concentration  
16 of approximately 40% by weight.

17           25.     Defendant CertainTeed has directly infringed the '738 Patent and the '568 Patent by  
18 making, using, selling or offering for sale laminated sound-attenuating gypsum wallboard panels,  
19 including its SilentFX® QuickCut product that infringes at least one claim of the '738 Patent and the  
20 '568 Patent. Specifically, Defendant has sold its Silent FX® QuickCut product into the district,  
21 which is being installed in a current new hotel construction project at 250 4th Street, San Francisco,  
22 California 94103. (Exhibit E, Declaration of Steven Benasso).  
23

24           26.     Defendant Saint Gobain has indirectly infringed the '738 patent by making, selling or  
25 offering for sale Green Glue Noiseproofing Compound for its customers to make laminated sound-  
26 attenuating gypsum wallboard panels that infringes at least one claim of the '738 patent.  
27

28           27.     Defendant's infringement has damaged Pacific Coast in an amount yet to be  
determined, and has irreparably harmed, and continues to irreparably harm Pacific Coast, including

1 by usurping Pacific Coast's sales and goodwill generated as a pioneer, innovator and leader in the  
2 market.

3 **COUNT 1**  
4 **(INFRINGEMENT OF U.S. PATENT NO. 8,181,738)**

5 28. Pacific Coast repeats and incorporates by reference the allegations contained in  
6 Paragraphs 1 through 26 of this Complaint as if fully set forth herein.

7 29. Defendant CertainTeed has directly infringed and continues to infringe one or more  
8 claims of the '738 Patent, either literally or under the doctrine of equivalents, by making, using,  
9 offering for sale, or selling certain gypsum wallboard sound-attenuating panels, including its  
10 SilentFX® QuickCut products, that embody each element of at least one claim of the '738 Patent.  
11 Attached as Exhibit F is a claim chart showing specifically element-by-element of how Defendant  
12 CertainTeed's SilentFX® QuickCut products infringe claims 1, 3, 23 and 25 of the '738 Patent.  
13

14 30. Further, at least since the filing and service of this Complaint, Defendant Saint  
15 Gobain has been and is now actively inducing infringement of at least claims 1 and 23 of the '738  
16 Patent in violation of 35 U.S.C. § 271(b). Users of the Green Glue Noiseproofing Compound  
17 directly infringe at least claims 1 and 23 when they use the product in the ordinary, customary and  
18 intended way. (*See e.g.*, Ex. D, pages 6-7 highlighting testimonials of Defendant Saint Gobain's  
19 customers who have used the product to create laminated structures and have practiced the methods  
20 to create laminated structures pursuant to at least claims 1 and 23 of the '738 Patent). Defendant  
21 Saint Gobain's inducements include, without limitation and with specific intent to encourage the  
22 infringement, knowingly inducing consumers to use the Green Glue Noiseproofing Compound in the  
23 ordinary, customary and intended way by instructing such users (*e.g.*, Ex. D, the Product Information  
24 brochure on pages 4-5) how to use the product in an infringing manner, that Defendant Saint Gobain  
25 knows or should know infringes at least claims 1 and 23 of the '738 Patent. Attached as Exhibit G is  
26  
27  
28

Locke Lord LLP  
44 Montgomery Street, Suite 4100  
San Francisco, CA 94104

1 a claim chart showing specifically element-by-element of how Defendant Saint Gobain's Green Glue  
2 Noiseproofing Compuond product infringe claims 1 and 23 of the '738 Patent

3 31. Further, at least since the filing and service of this Complaint, Defendant Saint  
4 Gobain has been and continues to actively contribute to infringement of at least claims 1 and 23 of  
5 the '738 Patent in violation of 35 U.S.C. § 271(c). Users of the Green Glue Noiseproofing  
6 Compound directly infringe at least claims 1 and 23 when they use the product in the ordinary,  
7 customary and intended way. (*See e.g.*, Ex. D, pages 6-7 highlighting testimonials of Defendant  
8 Saint Gobain's customers who have used the product to create laminated structures and have  
9 practiced the methods to create laminated structures pursuant to at least claims 1 and 23 of the '738  
10 Patent). The viscoelastic Green Glue Noiseproofing Compound containing the acrylic polymer  
11 Poly(2-ethylhexyl acrylate) in a concentration of approximately 20% by weight constitutes a  
12 material part of the claimed invention recited in at least claims 1 and 23 of the '738 Patent and is not  
13 a staple article or commodity of commerce as it is specifically designed and intended to perform the  
14 functionality claimed in at claims 1 and 23 of the '738 Patent. Any other use of the product would  
15 be unusual, far-fetched, illusory, impractical, occasional, aberrant, or experimental. Defendant Saint  
16 Gobain's contributions include, without limitation and with specific intent, offering to sell and/or  
17 selling, the Green Glue Noiseproofing Compound constituting a material part of the invention  
18 recited in at least claims 1 and 23 of the '738 Patent knowing that the product to be especially made  
19 or especially adapted for use in an infringement of at least claims 1 and 23 of the '738 Patent and not  
20 a staple article or commodity of commerce suitable for substantial noninfringing use.  
21  
22  
23

24 32. Defendants' past and continuing infringement of the '738 Patent has damaged and  
25 continues to damage Pacific Coast.

26 33. Defendants' past and continuing infringement of the '738 patent has irreparably  
27 harmed Pacific Coast, and Defendants' infringement will continue unless enjoined by this Court  
28 pursuant to 35 U.S.C. § 283.





Locke Lord LLP  
44 Montgomery Street, Suite 4100  
San Francisco, CA 94104

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

A. A judgment holding Defendants liable for direct and indirect infringement of the ‘738 Patent and the ‘568 Patent;

B. Damages resulting from Defendants’ infringement of the ‘738 Patent and the ‘568 Patent in an amount to be proven at trial, but no less than a reasonable royalty, together with pre-judgment and post-judgment interest;

C. Permanently enjoin Defendants under 35 U.S.C. § 283 from directly infringing the ‘738 Patent and the ‘568 Patent, including by specifically prohibiting Defendants from making, using, offering for sale or selling any product which falls within the scope of any claim of the ‘738 Patent and the ‘568 Patent;

D. A judgment holding this to be an exceptional case, and an award to Pacific Coast of increased damages pursuant to 35 U.S.C. § 284 and its attorneys’ fees and costs pursuant to 35 U.S.C. § 285;

E. Such other and further relief as the Court deems just and equitable.

Dated: April 21, 2017

Respectfully submitted,

LOCKE LORD LLP

By: /s/ Regina J. McClendon  
Regina J. McClendon

Attorneys for Plaintiff  
PACIFIC COAST BUILDING PRODUCTS,  
INC.

**DEMAND FOR JURY TRIAL**

1  
2 Plaintiff Pacific Coast Building Products, Inc. hereby demands trial by jury on all claims and  
3 issues so triable.  
4

5 Dated: April 21, 2017

Respectfully submitted,

LOCKE LORD LLP

6  
7  
8 By:  /s/ Regina J. McClendon  
9 Regina J. McClendon

10 Attorneys for Plaintiff  
11 PACIFIC COAST BUILDING PRODUCTS,  
12 INC.  
13

14 **Locke Lord LLP**  
15 44 Montgomery Street, Suite 4100  
16 San Francisco, CA 94104  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28