

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF WISCONSIN

KOHLER CO.	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	Case No. 2:17-cv-00573
AMERISINK, INC.	)	
	)	
Defendant.	)	
	)	
	)	

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**COMPLAINT**

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Kohler Co. (“Kohler”), by and for its Complaint against Defendant Amerisink, Inc. (“Amerisink”), alleges to the Court as follows:

**PARTIES**

1. Kohler is a company organized and existing under the laws of the State of Wisconsin, with a principal place of business located at 444 Highland Drive, Kohler, Wisconsin, 53044.

2. Kohler is informed and believes that Defendant Amerisink is a corporation organized and existing under the laws of the State of California, with a principal place of business located at 835 Fremont Avenue, San Leandro, California 94577.

**JURISDICTION**

3. This is an action for patent infringement arising out of Amerisink’s unauthorized importing, manufacturing, offering for sale, and/or selling kitchen sinks in violation of Kohler’s patent rights. Because this is an action for infringement under the patent laws of the United States, 35 U.S.C. § 271, *et seq.*, this Court has subject matter jurisdiction pursuant to 28 U.S.C.

§§ 1331 and 1338(a).

4. This Court has personal jurisdiction over Amerisink in that at all times pertinent hereto, upon information and belief, Amerisink has systematic activities in this Judicial District and has and/or is committing infringing acts in Wisconsin and this District. More specifically, upon information and belief, Amerisink has offered for sale and sold stainless steel sinks, including the accused infringing sinks, in this Judicial District. In addition, Kohler has previously sued Amerisink for patent infringement in this District. *See Kohler Co. v. Amerisink, Inc.*, Case No. 2:11-cv-00921-WEC (E.D. Wis.). Prior to the dismissal of the litigation, the parties stipulated to – and the Court entered – a consent decree permanently enjoining Amerisink from infringing certain of Kohler’s other patents. *Id.* at Dkt. No. 26.

#### **VENUE**

5. Venue is proper in the Eastern District of Wisconsin pursuant to 28 U.S.C. §§ 1391(b) and (c) and 1400(b) because Amerisink is subject to personal jurisdiction in this District, due at least to Amerisink’s substantial business in Wisconsin and this District.

#### **BACKGROUND**

##### **KOHLER HAS A HISTORY OF INNOVATION**

6. Kohler, founded in 1873, is a family-owned business. It is one of America’s oldest and largest privately held companies, and it first began by manufacturing and selling plows and farm implements in Sheboygan, Wisconsin.

7. In 1883, Kohler took the company beyond its farming roots and created a new business line by coating an iron hog scalding/water trough with enamel and calling it a “bathtub.” This bathtub innovation was an immediate hit and marked the first of many plumbing products manufactured by Kohler.

8. Today, in that same spirit of innovation and invention, Kohler has grown worldwide to be synonymous with quality and originality.

**KOHLER IS A MARKET LEADER  
FOR THE KITCHEN AND BATH INDUSTRY**

9. Kohler is likely best known for its distinctive and often iconic kitchen and bath products. Kohler markets across six continents a highly regarded array of sinks, faucets, toilets, and other kitchen and bath accessories. Kohler's diversity of products and powerful portfolio of brands continually set new standards in design, craftsmanship, and innovation.

10. Kohler is a recognized leader in kitchen and bath design, and its products are well-known around the world by its global customer base in part because of Kohler's extensive advertising and promotional efforts, which total millions of dollars each year.

11. Kohler markets across many channels including, among others, the Internet, television, magazines, and newspapers.

12. Always an innovator, Kohler continuously invests in the engineering, design, and development of new kitchen and bath products, positioning itself as an industry and market leader.

13. Kohler currently owns thousands of patents worldwide on innovations in the kitchen and bath industry.

**THE PATENTS-IN-SUIT**

14. Kohler is the assignee and owner of United States Patent No. 9,173,487 ("the '487 patent") which describes and discloses an original and unique apron-front sink. The '487 patent, entitled "Apron-front Sink," was duly and legally issued by the United States Patent and Trademark Office on November 3, 2015, from Application Serial No. 13/310,460, filed on December 2, 2011. The '487 patent claims priority to U.S. Provisional Application No.

61/449,585, which was filed on March 4, 2011. A true and correct copy of the '487 patent is attached hereto as Exhibit A.

15. Kohler is the assignee and owner of United States Design Patent No. D663,389 (“the '389 patent”) which covers an original and unique sink design. The '389 patent, entitled “Sink,” was duly and legally issued by the United States Patent and Trademark Office on July 10, 2012, from Application Serial No. 29/412,242, filed on February 1, 2012, which is a Division of Application Serial No. 29/386,884, filed on March 4, 2011. A true and correct copy of the '389 patent is attached hereto as Exhibit B.

16. Kohler is the assignee and owner of United States Design Patent No. D675,300 (“the '300 patent”) which covers an original and unique sink design. The '300 patent, entitled “Sink,” was duly and legally issued by the United States Patent and Trademark Office on January 29, 2013, from Application Serial No. 29/428,614, filed on August 1, 2012, which is a Division tracing priority back to Application Serial No. 29/386,884, filed on March 4, 2011. A true and correct copy of the '300 patent is attached hereto as Exhibit C.

17. Kohler is the assignee and owner of United States Design Patent No. D670,367 (“the '367 patent”) which covers an original and unique sink design. The '367 patent, entitled “Sink,” was duly and legally issued by the United States Patent and Trademark Office on November 6, 2012, from Application Serial No. 29/425,479, filed on June 22, 2012, which is a Division tracing priority back to Application Serial No. 29/386,884, filed on March 4, 2011. A true and correct copy of the '367 patent is attached hereto as Exhibit D.

18. The '389, '300, and '367 patents are collectively referred to herein as the “Apron-Front Design Patents-in-Suit.”

19. Kohler is also the assignee and owner of United States Design Patent Nos.

D635,228 (“the ’228 patent”) and RE45,624 (“the ’624 patent”), which are patents that cover other original and unique sink designs.

20. The ’228 patent, entitled “Sink,” was duly and legally issued by the United States Patent and Trademark Office on March 29, 2011, from Application Serial No. 29/367,303, filed on August 5, 2010, which is a Division tracing priority back to Application Serial No. 29/336,324, filed on April 30, 2009. A true and correct copy of the ’228 patent is attached hereto as Exhibit E.

21. The ’624 patent, entitled “Sink,” was duly and legally issued by the United States Patent and Trademark Office on July 28, 2015, from Application Serial No. 29/421,144, filed on May 17, 2012, which is a Reissue of United States Design Patent No. D627,864, issued on November 23, 2010 and tracing priority back to Application Serial No. 29/336,324, filed on April 30, 2009. A true and correct copy of the ’624 patent is attached hereto as Exhibit F.

**KOHLER’S NOVEL AND DISTINCTIVE SINK DESIGNS  
ARE PROTECTED BY THE PATENTS-IN-SUIT**

22. On or around July 2011, after significant engineering and development expense, Kohler introduced sinks practicing the inventions claimed in the ’487 patent and having the novel and distinctive designs embodied in the Apron-Front Design Patents-in-Suit. At least Kohler’s Vault™, Strive™, and Whitehaven® lines of apron-front sinks are embodiments of the ’487 patent and the Apron-Front Design Patents-in-Suit.

23. Kohler has extensively promoted its category of apron-front sinks, and these sinks have been featured and highlighted both in design and lifestyle magazines as well as in numerous other media outlets.

24. As a result of their unique and distinctive designs, the Vault™, Strive™, and Whitehaven® lines of apron-front sinks have become successful commercial products for

Kohler.

25. Similarly, after significant engineering and development expense, Kohler introduced sinks having the novel and distinctive designs embodied in the '624 and '228 patents. For example, Kohler's Staccato™ Top-Mount Double-Equal Bowl Kitchen Sink and Staccato™ Under-Mount Double-Equal Bowl Kitchen Sink are embodiments of the '624 and '228 patents.

26. Kohler has extensively promoted both the Staccato™ Top-Mount Double-Equal Bowl Kitchen Sink and Staccato™ Under-Mount Double-Equal Bowl Kitchen Sink, and as a result of their unique and distinctive designs, these particular sinks have become successful commercial products for Kohler.

#### **AMERISINK'S INFRINGING ACTS**

27. Kohler owns the exclusive right, title, and interest in and to the inventions claimed in the patents-in-suit.

28. Notwithstanding Kohler's rights, Amerisink, without permission or authorization, is importing, manufacturing, offering for sale, and/or selling certain sinks, including the Single Bowl Apron Legend Stainless Steel Kitchen Sink, Double Bowl Apron Legend Stainless Steel Kitchen Sink, and sinks marketed under AS349, AS350, and AS350R model numbers (and any other similarly configured products (collectively, the "Infringing Apron-Front Sinks")), which infringe at least one claim of the '487 patent and the Apron-Front Design Patents-in-Suit. A true and correct copy of a representative Infringing Apron-Front Sink's specification is attached hereto as Exhibit G.

29. In addition, Amerisink, without Kohler's permission or authorization, has imported, manufactured, offered for sale, and/or sold certain sinks, namely the Trend

Undermount Stainless Steel Sink, and sinks marketed under AS129 model number (and any other similarly configured products (collectively, “Infringing Sinks”)). Just as with the Infringing Apron-Front Sinks, these Infringing Sinks are inferior quality, deeply discounted, imitations of Kohler’s sink designs protected by the patents-in-suit. A true and correct copy of a representative Infringing Sink’s specification is attached hereto as Exhibit H.

30. Amerisink has a history of attempting to knock-off Kohler’s sink designs, which previously resulted in litigation between the parties. *See Kohler Co. v. Amerisink, Inc.*, Case No. 2:11-cv-00921-WEC (E.D. Wis.). Prior to the dismissal of the litigation, the parties stipulated to – and the Court entered – a consent decree permanently enjoining Amerisink from infringing certain of Kohler’s other patents. *Id.* at Dkt. No. 26.

31. Kohler is informed and believes that Amerisink continues to import, manufacture, offer for sale, and/or sell the Infringing Apron-Front Sinks and continues to deliberately and willfully infringe the patents-in-suit in violation of Kohler’s rights.

### COUNT I

#### **INFRINGEMENT OF U.S. PATENT NO. 9,173,487**

32. Kohler repeats and realleges each and every allegation contained in paragraphs 1-31, inclusive, as though fully set forth herein.

33. The ’487 patent is valid and enforceable.

34. Kohler is the owner of all right, title, and interest in and to the inventions claimed in the ’487 patent. Kohler is entitled to receive all damages and the benefits of all other remedies for Amerisink’s infringement.

35. Without permission or authorization from Kohler and in violation of 35 U.S.C. § 271(a), Amerisink is importing, manufacturing, selling, offering for sale, and/or using in this

District and elsewhere in the United States, certain apron-front sinks, including, but not limited to, the Infringing Apron-Front Sinks that infringe at least claims 1, 12, and 18 of the '487 patent (the "Asserted Claims").

36. More specifically, in violation of the Asserted Claims, the Infringing Apron-Front Sinks are mounted to the underside of a horizontal countertop. *See* Annotated Illustration Nos. 1-2 below.

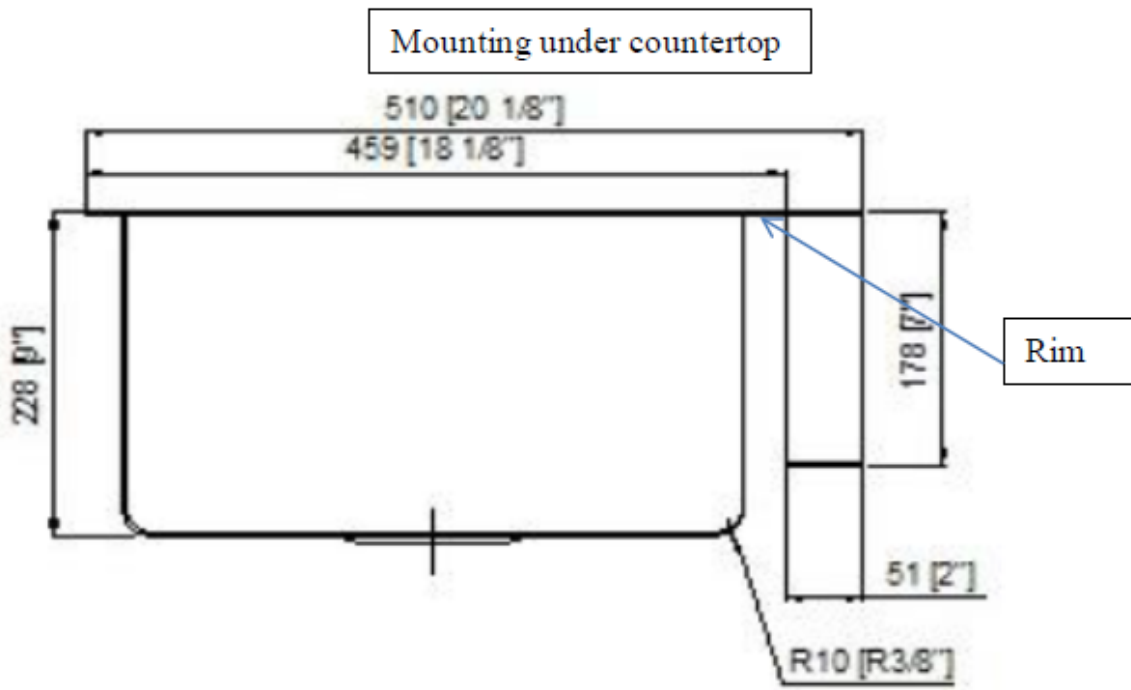
37. The Infringing Apron-Front Sinks have a rim that forms a continuous surface. *See* Annotated Illustration No. 1 below.



Annotated Illustration No. 1. (Exhibit I, Legend Apron Stainless Steel Sink AS350 Specification (unannotated).)

38. The rim of the Infringing Apron-Front Sinks is configured to be mounted adjacent an underside of a horizontal countertop. *See* Annotated Illustration No. 2 below.





Annotated Illustration No. 2. (Ex. I, Legend Apron Stainless Steel Sink AS350 Specification.)

39. The Infringing Apron-Front Sinks have an apron-front. See Annotated Illustration No. 3 below.

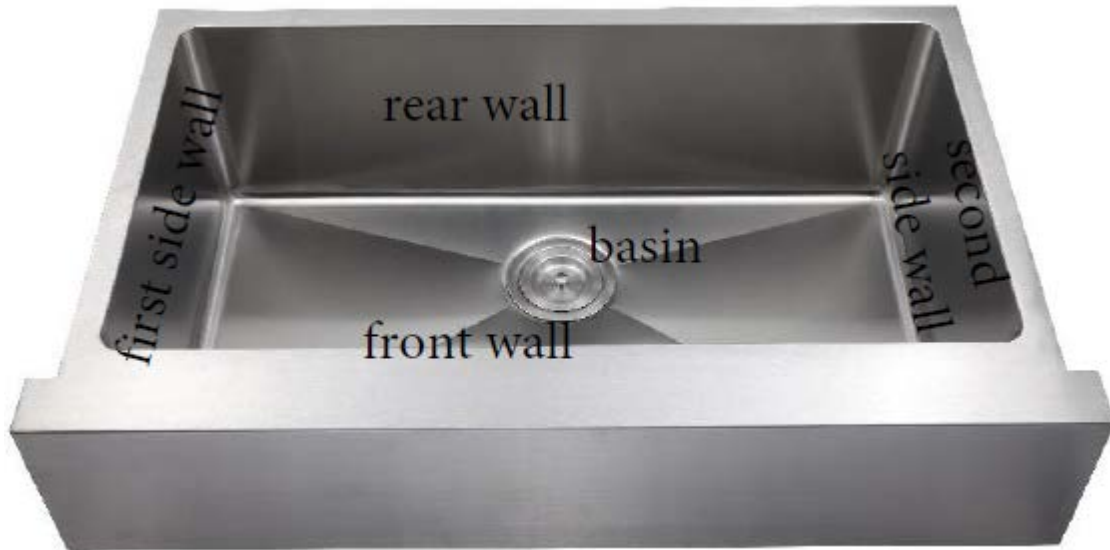


Annotated Illustration No. 3. (Ex. I, Legend Apron Stainless Steel Sink AS350 Specification.)

40. The Infringing Apron-Front Sinks have one or more basins. See Annotated

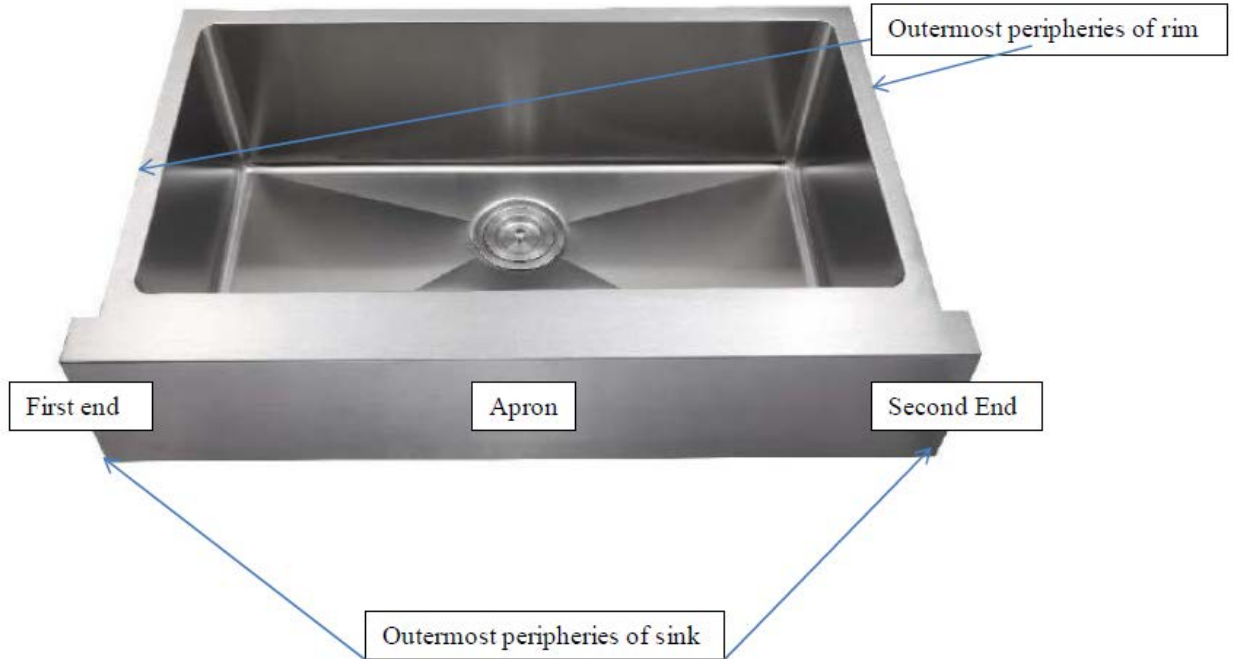
Illustration No. 4 below.

41. The basins in the Infringing Apron-front Sinks have a front wall, rear wall, first side wall and second side wall. *See* Annotated Illustration No. 4 below.



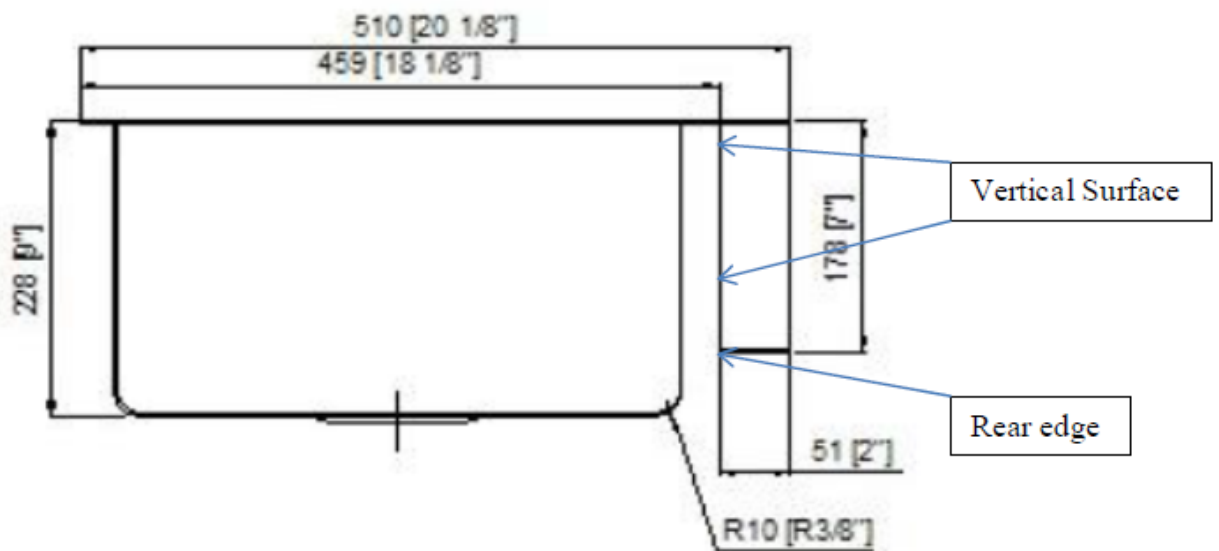
Annotated Illustration No. 4. (Ex. I, Legend Apron Stainless Steel Sink AS350 Specification.)

42. The Infringing Apron-Front Sinks have an apron-front that extends outwardly past the outermost periphery of the rim. *See* Annotated Illustration No. 5 below.



Annotated Illustration No. 5. (Ex. I, Legend Apron Stainless Steel Sink AS350 Specification.)

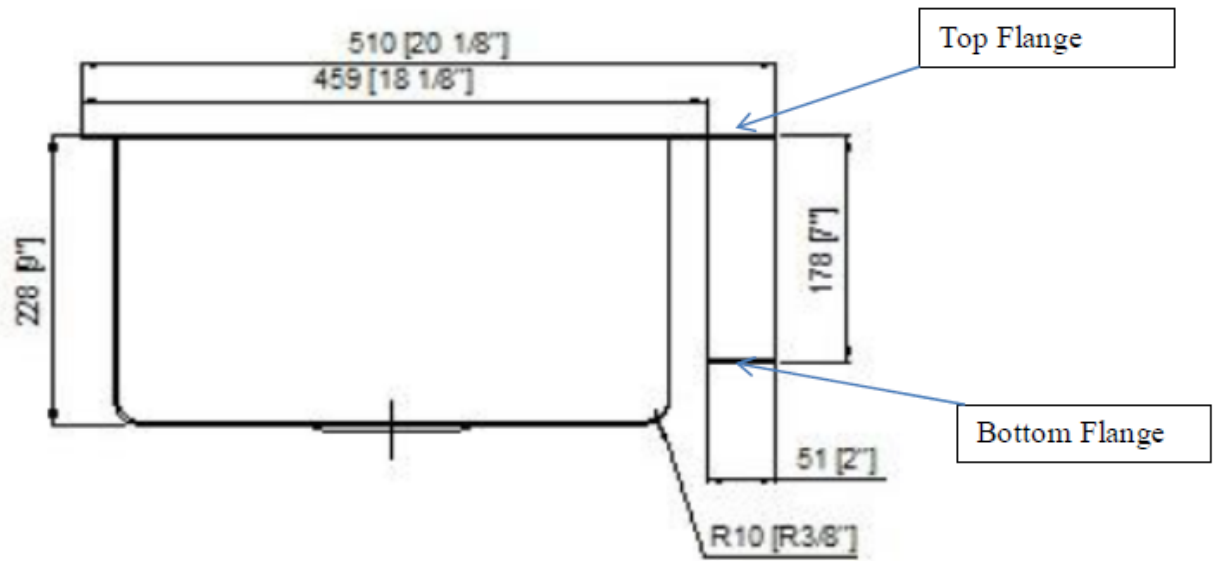
43. The bottom member of the apron-front of the Infringing Apron-Front Sinks has a rear edge that is configured to engage a vertical surface of a cabinet. See Annotated Illustration No. 6 below.



Annotated Illustration No. 6. (Ex. I, Legend Apron Stainless Steel Sink AS350 Specification.)

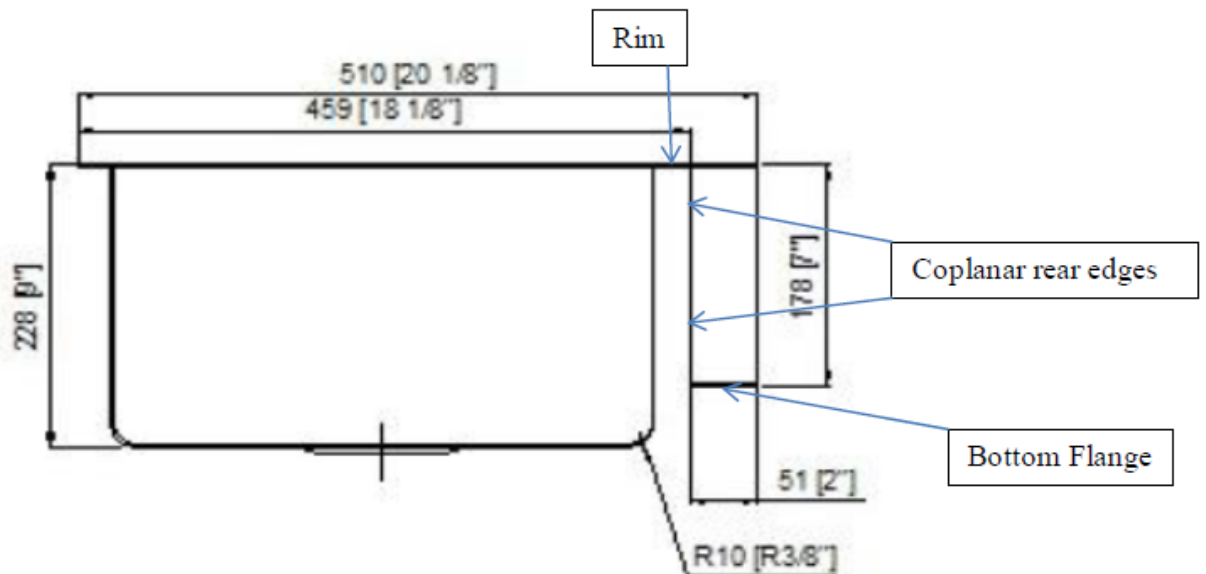
44. The Infringing Apron-Front Sinks have a top flange. See Annotated Illustration No. 7 below.

45. The Infringing Apron-Front Sinks have a bottom flange. See Annotated Illustration No. 7 below.



Annotated Illustration No. 7. (Ex. I, Legend Apron Stainless Steel Sink AS350 Specification.)

46. The rim of the Infringing Apron-Front sinks is supported by the cabinet. See Annotated Illustration No. 8 below.



Annotated Illustration No. 8. (Ex. I, Legend Apron Stainless Steel Sink AS350 Specification.)

47. Amerisink's infringement of the '487 patent has been and continues to be willful and deliberate.

48. Amerisink's conduct has caused and will continue to cause Kohler substantial damage, including irreparable harm, for which Kohler has no adequate remedy at law, unless and until Amerisink is enjoined from infringing the '487 patent.

## **COUNT II**

### **INFRINGEMENT OF U.S. DESIGN PATENT NO. D633,389**

49. Kohler repeats and realleges each and every allegation contained in paragraphs 1-48, inclusive, as though fully set forth herein.

50. The '389 patent is valid and enforceable.

51. Kohler is the owner of all right, title, and interest in and to the design covered by the '389 patent, and Kohler is entitled to receive all damages and the benefits of all other remedies for Amerisink's infringement.

52. Without permission or authorization from Kohler, Amerisink has imported, manufactured, offered for sale, and/or sold and continues to import, manufacture, offer for sale, and/or sell including, without limitation, the Infringing Apron-Front Sinks which infringe the '389 patent.

53. The following is a graphic from the Amerisink Specification for the Legend Apron Stainless Steel Sink Model(s) AS350R:



(Ex. G, Amerisink Specifications.) This graphic from the Amerisink Specification for the Legend Apron Stainless Steel Sink Model(s) AS350R is representative of the Infringing Apron-Front Sinks' designs.

54. Figure 1 from the '389 patent illustrates the claimed ornamental design for a sink:

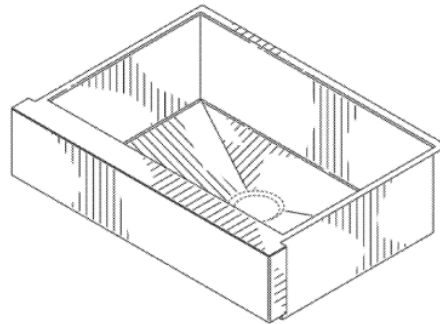


FIG. 1

55. Amerisink's Infringing Apron-Front Sinks contain each and every aspect of the claimed design in the '389 patent.

56. Amerisink's Infringing Apron-Front Sinks have an overall appearance that is confusingly similar to the claimed design in the '389 patent.

57. Amerisink's Infringing Apron-Front Sinks have an overall appearance that is substantially the same as the claimed design in the '389 patent.

58. Amerisink's infringement of the '389 patent has been and continues to be willful.

59. Amerisink's conduct has caused and will continue to cause Kohler substantial damage, including irreparable harm, for which Kohler has no adequate remedy at law, unless and until Amerisink is enjoined from infringing the '389 patent.

**COUNT III**

**INFRINGEMENT OF U.S. DESIGN PATENT NO. D675,300**

60. Kohler repeats and realleges each and every allegation contained in paragraphs 1-59, inclusive, as though fully set forth herein.

61. The '300 patent is valid and enforceable.

62. Kohler is the owner of all right, title, and interest in and to the designs covered by the '300 patent, and Kohler is entitled to receive all damages and the benefits of all other remedies for Amerisink's infringement.

63. Without permission or authorization from Kohler, Amerisink has imported, manufactured, offered for sale, and/or sold and continues to import, manufacture, offer for sale, and/or sell including, without limitation, the Infringing Apron-Front Sinks which infringe the '300 patent.

64. The following is a graphic from the Amerisink Specification for the Legend Apron Stainless Steel Sink Model(s) AS350R:



(Ex. G, Amerisink Specifications.) This graphic from the Amerisink Specification for the Legend Apron Stainless Steel Sink Model(s) AS350R is representative of the Infringing Apron-Front Sinks' designs.

65. Figure 1 from the '300 patent illustrates one of the claimed ornamental designs for a sink:

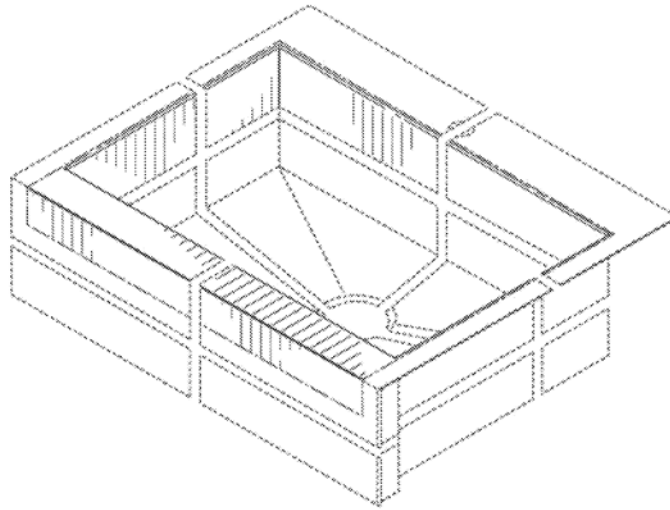


FIG. 1

66. Amerisink's Infringing Apron-Front Sinks contain each and every aspect of the claimed designs in the '300 patent.

67. Amerisink's Infringing Apron-Front Sinks have an overall appearance that is confusingly similar to the claimed designs in the '300 patent.

68. Amerisink's Infringing Apron-Front Sinks have an overall appearance that is substantially the same as the claimed designs in the '300 patent.

69. Amerisink's infringement of the '300 patent has been and continues to be willful.

70. Amerisink's conduct has caused and will continue to cause Kohler substantial damage, including irreparable harm, for which Kohler has no adequate remedy at law, unless and



until Amerisink is enjoined from infringing the '300 patent.

**COUNT IV**

**INFRINGEMENT OF U.S. DESIGN PATENT NO. D670,367**

71. Kohler repeats and realleges each and every allegation contained in paragraphs 1-70, inclusive, as though fully set forth herein.

72. The '367 patent is valid and enforceable.

73. Kohler is the owner of all right, title, and interest in and to the designs covered by the '367 patent, and Kohler is entitled to receive all damages and the benefits of all other remedies for Amerisink's infringement.

74. Without permission or authorization from Kohler, Amerisink has imported, manufactured, offered for sale, and/or sold and continues to import, manufacture, offer for sale, and/or sell including, without limitation, the Infringing Apron-Front Sinks which infringe the '367 patent.

75. The following is a graphic from the Amerisink Specification for the Legend Apron Stainless Steel Sink Model(s) AS350R:



(Ex. G, Amerisink Specifications.) This graphic from the Amerisink Specification for the Legend Apron Stainless Steel Sink Model(s) AS350R is representative of the Infringing Apron-Front

Sinks' designs.

76. Figure 1 from the '367 patent illustrates one of the claimed ornamental designs for a sink:

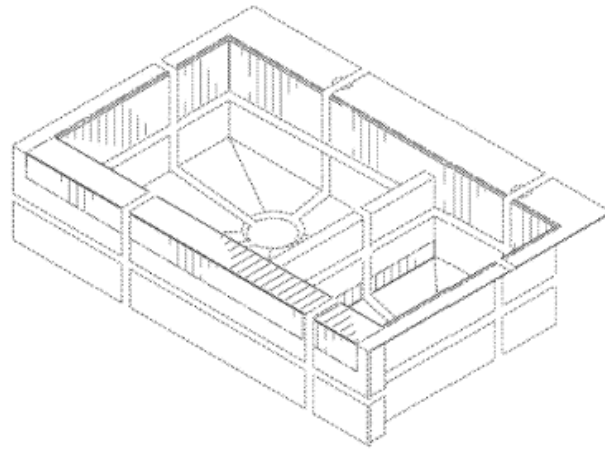


FIG. 1

77. Amerisink's Infringing Apron-Front Sinks contain each and every aspect of the claimed designs in the '367 patent.

78. Amerisink's Infringing Apron-Front Sinks have an overall appearance that is confusingly similar to the claimed designs in the '367 patent.

79. Amerisink's Infringing Apron-Front Sinks have an overall appearance that is substantially the same as the claimed designs in the '367 patent.

80. Amerisink's infringement of the '367 patent has been and continues to be willful.

81. Amerisink's conduct has caused and will continue to cause Kohler substantial damage, including irreparable harm, for which Kohler has no adequate remedy at law, unless and until Amerisink is enjoined from infringing the '367 patent.

**COUNT V**

**INFRINGEMENT OF U.S. DESIGN PATENT RE45,624**

82. Kohler repeats and realleges each and every allegation contained in paragraphs 1-81, inclusive, as though fully set forth herein.

83. The '624 patent is valid and enforceable.

84. Kohler is the owner of all right, title, and interest in and to the designs covered by the '624 patent, and Kohler is entitled to receive all damages and the benefits of all other remedies for Amerisink's infringement.

85. Without permission or authorization from Kohler, Amerisink has imported, manufactured, offered for sale, and/or sold including, without limitation, the Trend Undermount Stainless Steel Sink AS129, which infringes the '624 patent.

86. The following is a graphic from the Amerisink Specification for the Trend Undermount Stainless Steel Sink AS129:



(Ex. H, Amerisink Specifications.) This graphic from the Amerisink Specification for the Trend Undermount Stainless Steel Sink AS129 is representative of the Infringing Sinks' designs.

87. Figure 1 from the '624 patent illustrates one of the claimed ornamental designs for a sink:

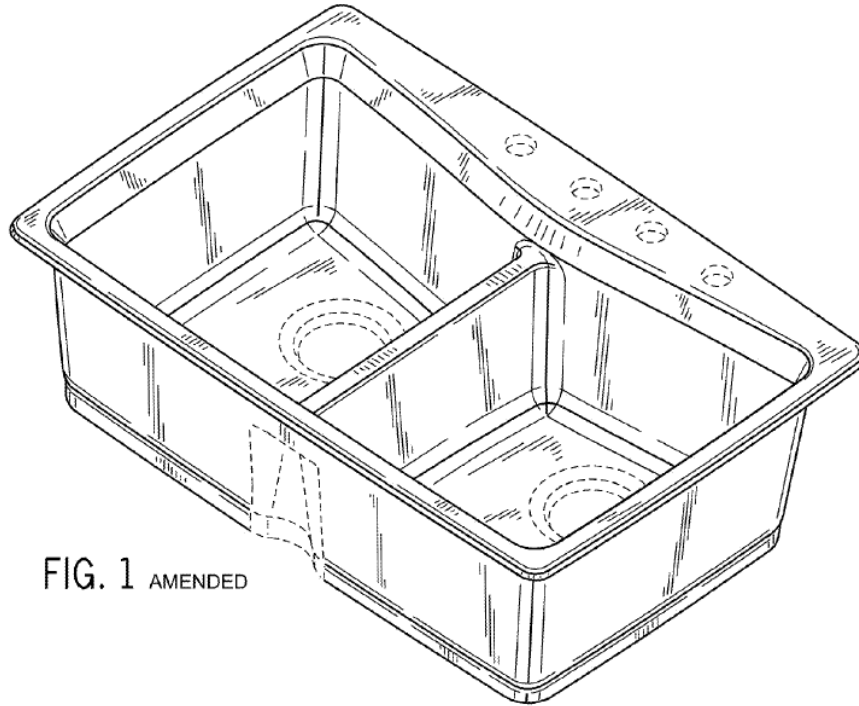


FIG. 1 AMENDED

88. Amerisink's Infringing Sinks contain each and every aspect of the claimed designs in the '624 patent.

89. Amerisink's Infringing Sinks have an overall appearance that is confusingly similar to the claimed designs in the '624 patent.

90. Amerisink's Infringing Sinks have an overall appearance that is substantially the same as the claimed designs in the '624 patent.

91. Amerisink's infringement of the '624 patent has been willful.

#### **COUNT VI**

#### **INFRINGEMENT OF U.S. DESIGN PATENT NO. D635,228**

92. Kohler repeats and realleges each and every allegation contained in paragraphs 1-91, inclusive, as though fully set forth herein.

93. The '228 patent is valid and enforceable.

94. Kohler is the owner of all right, title, and interest in and to the designs covered by

the '228 patent, and Kohler is entitled to receive all damages and the benefits of all other remedies for Amerisink's infringement.

95. Without permission or authorization from Kohler, Amerisink has imported, manufactured, offered for sale, and/or sold including, without limitation, the Trend Undermount Stainless Steel Sink AS129, which infringes the '228 patent.

96. The following is a graphic from the Amerisink Specification for the Trend Undermount Stainless Steel Sink AS129:



(Ex. H, Amerisink Specifications.) This graphic from the Amerisink Specification for the Trend Undermount Stainless Steel Sink AS129 is representative of the Infringing Sinks' designs.

97. Figure 1 from the '228 patent illustrates one of the claimed ornamental designs for a sink:

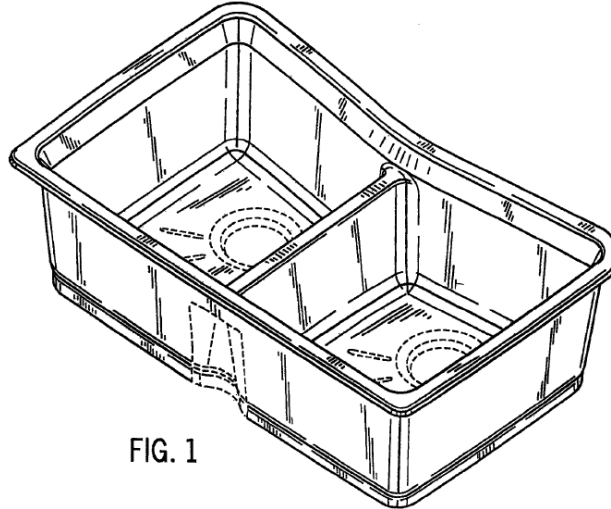


FIG. 1

98. Amerisink's Infringing Sinks contain each and every aspect of the claimed designs in the '228 patent.

99. Amerisink's Infringing Sinks have an overall appearance that is confusingly similar to the claimed designs in the '228 patent.

100. Amerisink's Infringing Sinks have an overall appearance that is substantially the same as the claimed designs in the '228 patent.

101. Amerisink's infringement of the '228 patent has been willful.

**PRAYER FOR RELIEF**

Wherefore, Kohler respectfully prays for entry of a judgment and relief as follows:

A. For a judgment that Amerisink has infringed the '487, '389, '300, '367, '228, and '624 patents;

B. For a preliminary and permanent injunction enjoining Amerisink and its agents, officers, directors, employees and all persons in privity or active concert or participation with them, directly or indirectly, from infringing, inducing others to infringe, or contributing to the infringement of the '487, '389, '300, '367, '228, and '624 patents;

C. For a judgment and award that Amerisink account for and pay to Kohler

damages adequate to compensate for Amerisink's infringement of the '487, '389, '300, '367, '228, and '624 patents, including lost profits but in no event less than a reasonable royalty;

D. For a judgment and award of Amerisink's total profits in an amount subject to proof at trial, pursuant to 35 U.S.C. § 289;

E. For a judgment and award of any supplemental damages sustained by Kohler for any continuing post-verdict infringement of the '487, '389, '300, '367, '228, and '624 patents until entry of final judgment with an accounting as needed;

F. For a finding that Amerisink's infringement is willful and an award of increased damages for willful infringement pursuant to 35 U.S.C. § 284;

G. For an order finding that this case is exceptional case under 35 U.S.C. § 285 and awarding Kohler its costs, expenses, and disbursements incurred in this action, including reasonable attorneys' fees as available by law to be paid by Amerisink;

H. For an award of pre-judgment interest, post-judgment interest, and costs in this action; and

I. For an award of such other relief to Kohler as this Court deems just and proper.

**DEMAND FOR JURY TRIAL**

Kohler demands a trial by jury on all issues so triable.

Dated: April 21, 2017

**FOLEY & LARDNER LLP**

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