

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

RILLITO RIVER SOLAR, LLC, :

PLAINTIFF, : **Case No. 2:17-cv-554**

v. : **Judge Algenon L. Marbley**

ECOLIBRIUM SOLAR INC., : **Magistrate Judge Elizabeth P. Deavers**

DEFENDANT. :

AMENDED COMPLAINT

Plaintiff Rillito River Solar LLC, doing business as EcoFasten Solar (“EcoFasten”), for its amended complaint against defendant Ecolibrium Solar Inc., (“Ecolibrium”), alleges as follows:

NATURE OF THE ACTION

This is a patent infringement action. EcoFasten and Ecolibrium manufacture and market roof mounts for solar panels. In the relatively new residential solar panel market, Plaintiff EcoFasten is the market leader. EcoFasten has developed unique, novel, and innovative inventions that allow solar panels to be installed on roofs while avoiding roof leaks and roof degradation that are associated with other solar panel roof mounts. EcoFasten holds U.S. Patents, issued as early as 2003, protecting its roof mount inventions.

Defendant Ecolibrium infringes EcoFasten’s patents by making, using, selling, and offering to sell roof mounts that misappropriate EcoFasten’s novel and innovative patented inventions. EcoFasten brings this action to enjoin Ecolibrium from infringing its patents and to recover damages adequate to compensate for infringement, including but not limited to a

reasonable royalty. Further, Ecolibrium should be made to disgorge its illegal profits made through infringing EcoFasten's patents.

PARTIES

1. EcoFasten is an Arizona limited liability company with its principal place of business in Maricopa County, Arizona.

2. Ecolibrium is a Delaware corporation with its principal place of business in Athens County, Ohio.

JURISDICTION

3. This Court has subject matter jurisdiction over EcoFasten's claims under 28 U.S.C. §§ 1331 and 1338(a) because this action is for patent infringement and arises under the patent laws of the United States, Title 35, Sections 271 et seq. of the United States Code.

4. Ecolibrium ships and sells products nationwide, including in Arizona.

5. Ecolibrium advertises its products nationwide, including in Arizona.

6. Ecolibrium maintains a network of distributors nationwide.

7. As a result, this Court has personal jurisdiction over Ecolibrium.

8. Venue is proper in this district under 28 U.S.C. § 1391(b)-(c) because a substantial part of the events or omissions giving rise to EcoFasten's claims occurred in this District.

FACTS

EcoFasten's principal invents novel roof mounts for snow guards and solar panels.

9. In the 1990s, Brian C. Stearns was a roofer specializing in slate roofs, working primarily in New England.

10. Mr. Stearns frequently installed snow guards on roofs to prevent snow from falling off roofs in large quantities, which can cause property damage and personal injury.

11. Installation of snow guards typically involves drilling holes in the roof in order to mount the guard. Holes naturally increase a roof's susceptibility to leaks.

12. Mr. Stearns observed a need for a new kind of roof mount that would be substantially leak proof. He began experimenting with possible solutions.

13. In the mid-2000s, solar panel installers started calling Mr. Stearns to ask if his roof mounts and flashings could be used for installing rooftop solar arrays.

14. Meanwhile, Mr. Stearns continued to innovate superior roof mounts for snow guards and solar panels.

15. Mr. Stearns worked with Douglas Lounsbury to develop a new roof mount iteration. This invention includes in relevant part (but is not limited to): a roof mount assembly for mounting a structure to a roof, the roof comprising at least one rafter and a substrate at least partially covering the at least one rafter, the roof mount assembly comprising (1) flashing configured to be positioned on the substrate, the flashing including a first surface configured to be located adjacent the substrate and a second surface opposite the first surface, the first and second surfaces defining a projection that is configured to extend away from the substrate in response to being positioned on the substrate, the projection including an aperture extending therethrough, (2) a bracket configured to be positioned on the second surface with the projection received by an aperture of the bracket, the bracket is configured to be coupled to the structure, (3) a fastener extending through the apertures of the bracket and the flashing, the fastener configured to secure the bracket to the flashing and the substrate, and (4) a washer configured to form a water-tight seal to inhibit flow of fluid through the aperture of the flashing to the

substrate, the washer including a first portion, a second portion, and an aperture extending through the first and second portions, wherein the fastener extends through the aperture of the washer such that the washer is positioned between the fastener and the bracket.

16. Mr. Stearns and Mr. Lounsbury's invention is described in the duly and legally issued U.S. Patent No. 9,422,723 (the "'723 Patent").

17. The '723 Patent has been validly assigned to EcoFasten.

18. EcoFasten currently manufactures and sells products embodying its novel and innovative patented invention.

19. Another of Mr. Stearns' inventions (with co-inventor Douglas Lounsbury) includes in relevant part (but is not limited to): a roof flashing system, comprising (1) flashing defining a first projection and a second projection, wherein the second projection is defined within the first projection (2) a bracket positionable on the flashing and configured to receive the second projection; (3) a washer positionable on the bracket; and (4) a fastener installable through the bracket, the washer, and the flashing, wherein the fastener is configured to compress the bracket, the washer, and the flashing.

20. Mr. Stearns and Mr. Lounsbury's invention is described in the duly and legally issued U.S. Patent No. 9,793,853 (the "'853 Patent" and together with the '723 Patent, the "EcoFasten Patents").

21. The '853 Patent has been validly assigned to EcoFasten.

Ecolibrium infringes the EcoFasten Patents.

22. Ecolibrium is a competitor of EcoFasten. It started selling roof mounts in the mid-2000s, after Mr. Stearns had already patented his first novel, innovative, and unique roof mount.

23. Among Ecolibrium's products is the EcoX line of products.

24. The EcoX line uses all of the same elements as the apparatus patented in the '723 Patent, including (but not limited to) the fact that it is a roof mount, comprising (1) flashing configured to be positioned on the substrate, the flashing including a first surface configured to be located adjacent the substrate and a second surface opposite the first surface, the first and second surfaces defining a projection that is configured to extend away from the substrate in response to being positioned on the substrate, the projection including an aperture extending therethrough, (2) a bracket configured to be positioned on the second surface with the projection received by an aperture of the bracket, the bracket is configured to be coupled to the structure, (3) a fastener extending through the apertures of the bracket and the flashing, the fastener configured to secure the bracket to the flashing and the substrate, and (4) a washer configured to form a water-tight seal to inhibit flow of fluid through the aperture of the flashing to the substrate, the washer including a first portion, a second portion, and an aperture extending through the first and second portions, wherein the fastener extends through the aperture of the washer such that the washer is positioned between the fastener and the bracket.

25. The EcoX line also uses all of the same elements as the apparatus patented in the '853 Patent, including (but not limited to) the fact that it is a roof flashing system, comprising (1) flashing defining a first projection and a second projection, wherein the second projection is defined within the first projection (2) a bracket positionable on the flashing and configured to receive the second projection; (3) a washer positionable on the bracket; and (4) a fastener installable through the bracket, the washer, and the flashing, wherein the fastener is configured to compress the bracket, the washer, and the flashing.

COUNT ONE: INFRINGEMENT OF THE '723 PATENT

26. EcoFasten incorporates by reference the previous allegations in the complaint.

27. The '723 Patent is valid and enforceable.

28. Ecolibrium has, without authority, consent, right or license, and in direct infringement of the '723 Patent, made, used, offered for sale, and/or sold apparatus protected by the '723 Patent.

29. EcoFasten has no adequate remedy at law for the harm caused by Ecolibrium's acts.

30. EcoFasten has suffered monetary damages in an amount to be proven at trial.

31. EcoFasten is entitled to an accounting by Ecolibrium of funds comprising all revenues received through the commercial exploitation of its infringing products, the imposition of a constructive trust for the benefit of EcoFasten for all such funds in the custody or control of Ecolibrium, the assessment of a reasonable royalty for Ecolibrium's use of EcoFasten's invention, and to all other damages to which EcoFasten may be entitled.

COUNT TWO: INFRINGEMENT OF THE '853 PATENT

32. EcoFasten incorporates by reference the previous allegations in the complaint.

33. The '853 Patent is valid and enforceable.

34. Ecolibrium has, without authority, consent, right or license, and in direct infringement of the '853 Patent, made, used, offered for sale, and/or sold apparatus protected by the '853 Patent.

35. EcoFasten has no adequate remedy at law for the harm caused by Ecolibrium's acts.

36. EcoFasten has suffered monetary damages in an amount to be proven at trial.

37. EcoFasten is entitled to an accounting by Ecolibrium of funds comprising all revenues received through the commercial exploitation of its infringing products, the imposition of a constructive trust for the benefit of EcoFasten for all such funds in the custody or control of Ecolibrium, the assessment of a reasonable royalty for Ecolibrium's use of EcoFasten's invention, and to all other damages to which EcoFasten may be entitled.

JURY DEMAND

EcoFasten requests a trial by jury on all issues so triable.

PRAYER FOR RELIEF

WHEREFORE, EcoFasten prays for relief and judgment against Ecolibrium, as follows:

A. For a judicial determination and a declaration that the EcoFasten Patents are valid and enforceable;

B. For a preliminary and then permanent injunction issued against Ecolibrium, its agents, officers, directors, employees, attorneys, successors and assigns, all parent and subsidiary entities, and all those acting for or on the behalf of Ecolibrium, or in active concert, participation, or combination with them, including customers and distributors, prohibiting Ecolibrium from:

- i. Continuing acts of infringement of the '723 Patent and/or the '853 Patent;
- ii. Making, using, selling, and/or importing infringing products, to include any colorable imitation thereof; and
- iii. Otherwise infringing up the '723 Patent and/or the '853 Patent.

C. A judicial determination and a declaration that Ecolibrium has infringed the '723 Patent and/or the '853 Patent under 35 U.S.C. § 271, and final judgment incorporating the same;

D. That an Order issue from this Court requiring Ecolibrium, its officers, agents, servants and employees, to deliver up to this Court for destruction all articles and materials infringing upon the '723 Patent and/or the '853 Patent and all materials for reproducing such infringing products;

E. That Ecolibrium be required to file with the Court within thirty (30) days after entry of an injunctive order or final judgment a written statement under oath setting forth the manner in which Ecolibrium has complied with the order or final judgment;

F. Awarding EcoFasten its damages sustained due to Ecolibrium's infringement of the '723 Patent and/or the '853 Patent;

G. In the alternative, that a reasonable royalty for Ecolibrium's infringement be awarded to EcoFasten pursuant to 35 U.S.C. § 284;

H. An award of the costs of this action, including pre- and post-judgment interest, pursuant to 35 U.S.C. § 284; and

I. For such other and further relief as this Court deems necessary, just and proper under the circumstances.

Dated: January 3, 2018

Respectfully submitted,

/s/Robert T. Razzano

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CERTIFICATE OF SERVICE

I certify that on January 3, 2018, I served the following by email on the following:

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s/Brandi Bies