

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN
GREEN BAY DIVISION**

PIERCE MANUFACTURING INC.,

Plaintiff,

Case No. 18-cv-_____

vs.

REV GROUP, INC. AND E-ONE, INC.,

JURY TRIAL DEMANDED

Defendants.

COMPLAINT

Plaintiff Pierce Manufacturing Inc. (“Pierce” or “Plaintiff”) hereby sets forth its Complaint against REV Group, Inc. (“REV Group”) and E-ONE, Inc. (“E-ONE”) (collectively, “Defendants”), as follows:

NATURE OF THE CASE

1. This action is for patent infringement arising under the patent laws of the United States, 35 U.S.C. §§ 1, *et seq.* Plaintiff seeks monetary damages and injunctive relief in this action.

THE PARTIES

2. Plaintiff Pierce Manufacturing Inc. is a Wisconsin corporation with its principal place of business at 2600 American Drive, Appleton, Wisconsin 54914.

3. Pierce is a leading manufacturer and marketer of fire and rescue apparatus, including the Ascendant[®] class of aerials.

4. Upon information and belief, Defendant REV Group is a company organized and existing under the laws of Delaware, having a principal place of business at 111 East Kilbourn Avenue, Suite 2600, Milwaukee, Wisconsin 53202.

5. Upon information and belief, REV Group is a manufacturer, distributor, and retailer of specialty vehicles, including fire trucks, and is based in Milwaukee, Wisconsin.

6. Upon information and belief, Defendant E-ONE is a wholly-owned subsidiary of REV Group and is organized and existing under the laws of Delaware, having a principal place of business at 1601 SW 37th Avenue, Ocala, Florida 34474.

JURISDICTION AND VENUE

7. Pierce has its principal place of business in Appleton, Outagamie County, Wisconsin which falls within the jurisdictional territory of the Eastern District of Wisconsin, Green Bay Division.

8. REV Group has its principal place of business at 111 East Kilbourn Avenue, Suite 2600, Milwaukee, Wisconsin 53202.

9. Upon information and belief, REV Group's executive officers include Chief Executive Officer Tim Sullivan, Chief Financial Officer Dean Nolden, and General Counsel Pamela Krop. Upon information and belief, all three of these individuals work in Milwaukee, Wisconsin at 111 East Kilbourn Avenue, Suite 2600, Milwaukee, Wisconsin 53202.

10. E-ONE is a "business unit" of REV Group and is a manufacturer, distributor, and retailer of fire trucks with operations across the globe, including within the State of Wisconsin.

11. Upon information and belief, according to REV Group's Quarterly Report filed with the Securities and Exchange Commission ("SEC") (attached as Exhibit 1), REV Group is "organized into three reportable segments," including the "Fire & Emergency" segment (*id.* at 26). The Fire & Emergency segment includes "business units" such as E-ONE, which "manufacture and market commercial and custom fire and emergency vehicles" (*id.*).

12. Upon information and belief, certain of REV Group's executives are also officers of E-ONE and are responsible for conducting the business of E-ONE. For example, E-ONE's 2017 Foreign Profit Corporation Amended Annual Report filed with the Florida Secretary of State on August 18, 2017 (attached as Exhibit 2) identifies Timothy Sullivan as E-ONE's President and CEO, Dean Nolden as its Treasurer and CFO, and Pamela Krop as its Secretary and General Counsel. Upon information and belief, each of these individuals is also an officer of REV Group, and conduct E-ONE's and REV Group's business out of 111 East Kilbourne Avenue, Suite 2600, Milwaukee, Wisconsin.

13. In addition, at least one other of E-ONE's officers works in Wisconsin. E-ONE's Vice President Stan Edme, lists a work address of 111 East Kilbourn Avenue, Suite 2600, Milwaukee, Wisconsin 53202. Thus, E-ONE has a regular and established place of business in this District.

14. Upon information and belief, E-ONE has sold more than 23,000 vehicles around the world, including sales throughout the State of Wisconsin, and in this District. E-ONE also actively markets and services infringing products within the State of Wisconsin and in this District. For example, through its exclusive dealer in Wisconsin,

Fire Safety U.S.A., E-ONE has sold fire apparatus to at least departments in Brookfield, WI; Caledonia, WI; Doylestown, WI; Lund, WI; Pewaukee, WI; Pleasant Prairie, WI; and Baldwin, WI.¹ As a result, E-ONE has purposefully directed its activities at, and caused damages to, residents of this District.

15. This action arises under the patent laws of the United States, Title 35 of the United States Code. Thus, this Court has subject matter jurisdiction over the claims in this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

16. Venue is proper in this District pursuant to 28 U.S.C. § 1400(b) because this is an action for patent infringement, because Defendants have committed acts of infringement in this District, including but not limited to the sale and offer for sale of infringing products, and because Defendants have a regular and established place of business in this District, including at least their physical location at 111 East Kilbourn Avenue, Suite 2600, Milwaukee, Wisconsin 53202, from where the operations of both REV Group and E-ONE are directed and controlled.

17. This Court has personal jurisdiction over REV Group under Rule 4 of the Federal Rules of Civil Procedure and the provisions of Wis. Stat. § 801.05, by virtue of the fact that REV Group purposefully availed itself to the privilege of conducting and soliciting business within the State of Wisconsin, including, upon information and belief, by engaging in at least a portion of the infringing acts alleged herein through sales, offers for sale, and marketing of the infringing products within the State, entering into contracts with residents of the State for the same, and by supporting its infringing activities through the presence of corporate officers in this State. Accordingly, because the claims set forth

¹ See <https://firesafetyusa.com/category.aspx/new-delivery-photos/>.

in this action arise out of REV Group's infringing activities within this State, as well as others, and because REV Group has purposefully availed itself of the privilege of conducting business in this District and within the State of Wisconsin, it is fair and reasonable for this Court to exercise personal jurisdiction over it.

18. This Court has personal jurisdiction over E-ONE under Rule 4 of the Federal Rules of Civil Procedure and the provisions of Wis. Stat. § 801.05, by virtue of the fact that E-ONE purposefully availed itself to the privilege of conducting and soliciting business within the State of Wisconsin, including, upon information and belief, by engaging in at least a portion of the infringing acts alleged herein through sales, offers for sale, and marketing of the infringing products within the State, entering into contracts with residents of the State for the same, and by supporting its infringing activities through the presence of corporate officers in this State. Accordingly, because the claims set forth in this action arise out of E-ONE's infringing activities within this State, as well as others, and because E-ONE has purposefully availed itself of the privilege of conducting business in this District and within the State of Wisconsin, it is fair and reasonable for this Court to exercise personal jurisdiction over it.

BACKGROUND AND THE PATENTS-IN-SUIT

19. Pierce got its start in 1913, building truck bodies on Model T Ford chassis in an old converted church. Since that time, Pierce has evolved to creating highly customized, innovative, and carefully designed and engineered fire and rescue vehicles, including pumpers, aerials, tankers, and rescue units. As a leader in the fire and rescue apparatus industry, Pierce now has more than 27,000 vehicles on the road.

20. Research and development are keys to Pierce's success and provide the necessary cornerstone for its cutting-edge products and services. Pierce's research, development, and innovation in the fire and rescue apparatus industry have resulted in worldwide recognition and the issuance of numerous patents.

21. This case involves two (2) patents that represent Pierce's pioneering innovations in fire apparatus. These important patents include: (i) U.S. Patent No. 9,597,536, entitled "Quint Configuration Fire Apparatus" (the "536 Patent"); and (ii) U.S. Patent No. 9,814,915, entitled "Quint Configuration Fire Apparatus" (the "915 Patent") (collectively, the "Asserted Patents").

22. As explained in the 536 Patent, a "quint configuration fire apparatus" is a fire truck that "includes an aerial ladder, a water tank, ground ladders, a water pump, and hose storage" (536 Patent at 1:19-21). "Traditional quint configuration fire trucks have included a second rear axle to carry the weight required to provide the desired aerial ladder horizontal reach and vertical extension height" (*id.* at 1:26-29). Because prior devices required a second rear axle, they were often "more heavy, difficult to maneuver, and expensive to manufacture" (*id.* at 1:30-31). The Asserted Patents solve this problem by providing, in part, for a quint configuration fire apparatus that has a single rear axle, but without compromising other aspects of the truck's performance.

23. The 536 Patent was duly and lawfully issued by the United States Patent and Trademark Office ("USPTO") on March 21, 2017. A copy of the 536 Patent is attached hereto as Exhibit 3.

24. Pierce is the exclusive licensee of all rights, title, and interest in and to the 536 Patent and holds the right to sue and recover damages for infringement thereof, including past damages.

25. The 915 Patent was duly and lawfully issued by the USPTO on November 14, 2017. A copy of the 915 Patent is attached hereto as Exhibit 4.

26. Pierce is the exclusive licensee of all rights, title, and interest in and to the 915 Patent and holds the right to sue and recover damages for infringement thereof, including past damages.

CLAIMS

27. Plaintiff incorporates the preceding paragraphs by reference as if fully set forth herein.

28. As discussed in further detail below, Defendants manufacture, offer for sale, and sell within the United States certain quint configuration fire apparatus (the “Accused Products”) that infringe the Asserted Patents, including, but not limited to, the Metro 100 Quint.

29. REV Group actively markets and promotes the sale of the Metro 100 Quint, and proudly displays its logo and branding on marketing materials for the Metro 100 Quint. For example, attached as Exhibit 5 is the product specification for the Metro 100 Quint, which includes both REV Group and E-ONE logos.

30. By way of example, upon information and belief, the REV Group attended the 2017 FDIC International Exhibition on April 24-29, 2017 in Indianapolis, Indiana, where it displayed and offered for sale the Metro 100 Quint.

31. In addition, upon information and belief, REV Group actively encouraged potential customers to purchase the Metro 100 Quint by posting the following to its Twitter account during the FDIC Exhibition:



32. REV Group once again encouraged the sale of the Metro 100 Quint on June 9, 2017, once again through posting on its Twitter account:



REV Group, Inc. @revgroupinc · Jun 9

Low travel height is possible with the @EONE_FireTrucks Metro 100 Quint. #metro100quint #EONEstrong #firetrucks



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33. Thereafter, on June 13, 2017, Pierce sent a letter to E-ONE informing Defendants that “promotion and sale of the Metro 100 Quint fire apparatus infringes one or more claims of our Ascendant patents, including at least Claim 20 of U.S. Patent No. 9,597,536.” Thus, upon information and belief, Defendants had actual knowledge of the 536 Patent as of at least June 13, 2017.

34. Despite notice of their infringement, Defendants continue to manufacture, sell, and offer for sale the Metro 100 Quint.

35. For example, on July 13, 2017, exactly one month after receiving notice of its infringement of the 536 Patent, E-ONE posted a video on YouTube² promoting the

² Available at <https://www.youtube.com/watch?v=WfW3RQdvJEI&t=190s>.

Metro 100 Quint, and touting the benefits of its 100-foot ladder mounted on a chassis with a single rear axle.

36. REV Group similarly posted the following materials to its Twitter account on July 27, 2017, once again promoting and encouraging the sale of the Metro 100 Quint after receiving notice of its infringement:



37. A day later, on July 28, 2017, REV Group and E-ONE once again displayed the Metro 100 Quint at the 2017 Fire Rescue International trade show, held in Charlotte, NC:



E-ONE (Fire Trucks) @EONE_FireTrucks · 28 Jul 2017

Come and check out E-ONE's [#Metro100Quint](#) and Low Hose Bed Pumper today at Booth 2500 at [#FRI2017](#)! Let's talk [#firetrucks!](#) [#EONEstrong](#)



38. REV Group and E-ONE once again displayed their Metro 100 Quint at the Fire Rescue East trade show held in Daytona Beach, Florida in January 2018, where both the REV Group and E-ONE logos were prominently displayed:



39. Defendants' promotion, sale, and offer for sale of the Metro 100 Quint has continued and, as recent at February 16, 2018, Defendants have advertised the Metro 100 Quint through their Facebook page:



E-ONE Fire Trucks (Official Site) shared their video.

February 16 at 8:52am · 🌐

E-ONE's Metro 100 Quint offers tight maneuverability and great features for today's fire departments! Learn more here: <http://www.e-one.com/product/metro-100/> #EONEstrong #firetrucks #Metro100Quint



44,521 Views

40. As such, Plaintiff asserts the following against Defendants:

CLAIM 1
(Infringement of the 536 Patent)

41. Defendants directly infringe at least claim 20 of the 536 Patent in violation of 35 U.S.C. § 271 with respect to Defendants' quint configuration fire apparatus including, but not limited to, the Metro 100 Quint.

42. For example, Defendants directly infringe the 536 Patent by making, using, selling, and/or offering to sell within the United States Defendants' quint configuration fire apparatus including, but not limited to, the Metro 100 Quint.

43. A representative claim chart demonstrating how Defendants' quint configuration fire apparatus, and specifically the Metro 100 Quint, infringes the 536 Patent is attached as Exhibit 6.

44. E-ONE had actual knowledge of the 536 Patent as of at least June 13, 2017, when Plaintiff: (i) notified Defendants in writing of the 536 Patent; and (ii) specifically alleged that Defendants, their distributors, and/or users of the Accused Products infringe at least claim 20 of the 536 Patent.

45. The 536 Patent is presumed valid.

46. Despite Defendants' knowledge of the 536 Patent and its infringement of the same, Defendants have continued to directly infringe the 536 Patent. Accordingly, Defendants' infringement of the 536 Patent has been willful and deliberate.

47. Plaintiff has been injured and seeks damages to adequately compensate it for Defendants' infringement of the 536 Patent. Such damages should be no less than a reasonable royalty under 35 U.S.C. § 284.

48. Upon information and belief, Defendants will continue to infringe the 536 Patent unless permanently enjoined by this Court. Pursuant to 35 U.S.C. § 283, Plaintiff is entitled to a preliminary and permanent injunction against further infringement of the 536 Patent by Defendants.

CLAIM 2
(Infringement of the 915 Patent)

49. Defendants directly infringe at least claim 20 of the 915 Patent in violation of 35 U.S.C. § 271 with respect to Defendants' quint configuration fire apparatus including, but not limited to, the Metro 100 Quint.

50. For example, Defendants directly infringe the 915 Patent by making, using, selling, and/or offering to sell within the United States Defendants' quint configuration fire apparatus including, but not limited to, the Metro 100 Quint. A representative claim chart demonstrating how Defendants' quint configuration fire apparatus, and specifically the Metro 100 Quint, infringes the 915 Patent is attached as Exhibit 7.

51. The 915 Patent is presumed valid.

52. Despite Defendants' knowledge of the 915 Patent and its infringement of the same, Defendants have continued to directly infringe the 915 Patent. Accordingly, Defendants' infringement of the 915 Patent has been willful and deliberate.

53. Plaintiff has been injured and seeks damages to adequately compensate it for Defendants' infringement of the 915 Patent. Such damages should be no less than a reasonable royalty under 35 U.S.C. § 284.

54. Upon information and belief, Defendants will continue to infringe the 915 Patent unless permanently enjoined by this Court. Pursuant to 35 U.S.C. § 283, Plaintiff is entitled to a preliminary and permanent injunction against further infringement of the 915 Patent by Defendants.

DAMAGES

55. For the above-described infringement, Plaintiff has suffered injury and seeks a permanent injunction and damages, in an amount to be proven at trial, to adequately compensate it for Defendants' infringement of the Asserted Patents. Such damages should be no less than the amount of a reasonable royalty under 35 U.S.C. § 284.

JURY DEMAND

56. Plaintiff requests a jury trial of all issues triable of right by a jury.

PRAYER FOR RELIEF

57. WHEREFORE, Plaintiff respectfully requests the following relief:

a. A judgment in favor of Plaintiff that Defendants have infringed the 536 Patent, whether literally or under the doctrine of equivalents, as described herein;

b. A judgment in favor of Plaintiff that Defendants have infringed the 915 Patent, whether literally or under the doctrine of equivalents, as described herein;

c. A judgment and order requiring Defendants to pay Plaintiff's damages, costs, expenses, and pre-judgment and post-judgment interest for Defendants' infringement of the 536 Patent as provided under 35 U.S.C. § 284, including supplemental damages for any continuing post-verdict or post-judgment infringement with an accounting as needed;

d. A judgment and order requiring Defendants to pay Plaintiff's damages, costs, expenses, and pre-judgment and post-judgment interest for Defendants' infringement of the 915 Patent as provided under 35 U.S.C. § 284, including supplemental damages for any continuing post-verdict or post-judgment infringement with an accounting as needed;

e. An order declaring that Defendants' infringement of the 536 Patent has been willful, and awarding treble damages pursuant to 35 U.S.C. § 284.

f. An order declaring that Defendants' infringement of the 915 Patent has been willful, and awarding treble damages pursuant to 35 U.S.C. § 284.

g. An order under 35 U.S.C. § 283 preliminarily and permanently enjoining Defendants from continuing to make, use, sell, and/or offer to sell the products accused of infringing the 536 Patent and from further inducing or contributing to the infringement of the 536 Patent.

h. An order under 35 U.S.C. § 283 preliminarily and permanently enjoining Defendants from continuing to make, use, sell, and/or offer to sell the products accused of infringing the 915 Patent and from further inducing or contributing to the infringement of the 915 Patent.

i. Such other relief as the Court deems just and proper.

Respectfully submitted, this 23rd day of February, 2018.

/s/ Sherry D. Coley

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