

**IN THE UNITED STATES DISTRICT
FOR THE WESTERN DISTRICT OF WISCONSIN**

Sierra Pacific Industries,

Plaintiff,

v.

Kolbe & Kolbe Millwork Co., Inc.,

Defendant.

Civil Action No. 18-cv-853

JURY TRIAL REQUESTED

COMPLAINT

Plaintiff Sierra Pacific Industries (“Sierra Pacific” or “Plaintiff”), by its undersigned attorneys, for its Complaint against Defendant Kolbe & Kolbe Millwork Co., Inc. (“Kolbe” or “Defendant”), hereby alleges as follows:

NATURE OF THE ACTION

1. This is an action for patent infringement under the patent laws of the United States, 35. U.S.C. § 100 et seq., including 35 U.S.C. § 271, arising from Kolbe’s actions, including making, using, selling, and/or offering for sale one or more products in violation of U.S. Patent No. 8,561,365 (the “’365 patent”).

THE PARTIES

2. Sierra Pacific is a corporation organized and existing under the laws of the State of California and having a principal place of business at 575 South Whelen Avenue, Medford, WI 54451. Sierra Pacific is engaged in the business of designing, manufacturing, selling, and distributing door and window products, including innovative windows and doors crafted with energy efficiency, sustainable building practices, and attention to detail. Sierra Pacific has been

praised by media outlets such as Window & Door, a national buying guide for window and door products, as producing “truly state-of the art window[s] for today’s economy” that are capable of providing “the features and performance of a premium window at a modest price.” (Publication available at <https://windowanddoor.com/most-innovative-window/CAA2009#hurd>.)

3. Upon information and belief, Kolbe is a corporation organized under the laws of the State of Wisconsin and having a principal place of business at 1323 South 11th Avenue, Wausau, WI 54401.

JURISDICTION AND VENUE

4. This is an action for patent infringement arising under the Acts of Congress relating to patents, 35 U.S.C. § 1 *et seq.*, including 35 U.S.C. §§ 271 and 282-85.

5. This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1338(a).

6. Personal jurisdiction exists over Kolbe at least because it is incorporated in this State and has its principal place of business in this District, and makes, uses, sells, and offers for sale infringing products in this District.

7. Venue is proper in this Court. Kolbe has its principal place of business in this District, and Kolbe has a regular and established place of business and has committed acts of infringement, and otherwise has significant contacts with this District.

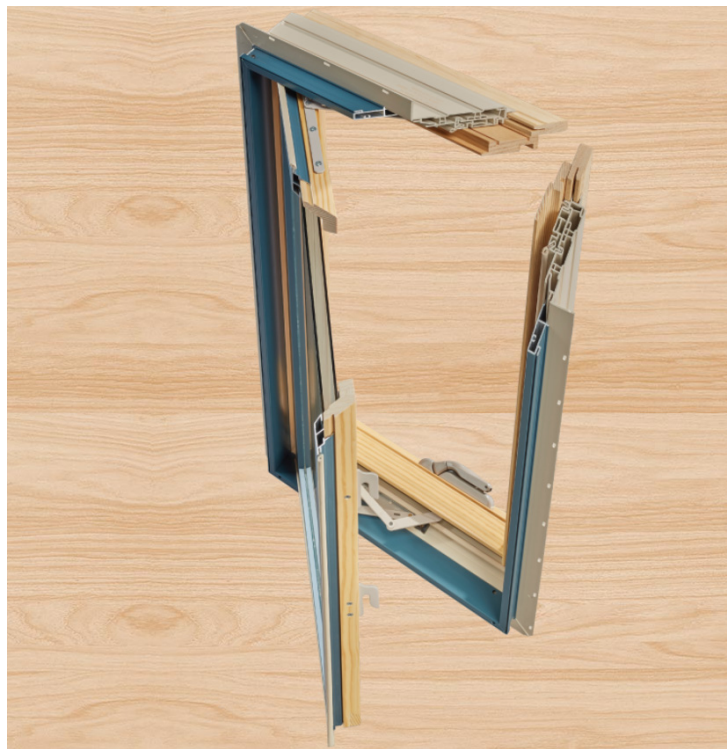
BACKGROUND

The Asserted Patent

8. On October 22, 2013, the ’365 patent, entitled VERSATILE HYBRID WINDOW SYSTEM, was duly and legally issued by the United States Patent and Trademark Office. The ’365 patent was issued with named inventors Scott D. Albrecht, Mark C. Hoffman, and James L. Peterson. At the time of its issue, the ’365 patent was assigned to HWD Acquisition, Inc. of

Medford, Wisconsin. Sierra Pacific is currently the owner by assignment of all right, title, and interest in the '365 patent and all rights to sue for past, present or future infringement. The '365 Patent is attached as Exhibit A.

9. The '365 patent is directed to a versatile hybrid window assembly. The window assembly is "hybrid" in that different materials are used for the interior, exterior, and base. Generally, wood-type material is used for the interior, metal-type material is used for the exterior, and plastic-type material is used for the base. A representative example of one of Sierra Pacific's patented hybrid window assemblies, known as the H3, is shown below with virtual cut-outs showing various components:



10. Sierra Pacific's H3 product line has, since its introduction in approximately 2009, become Sierra Pacific's most popular and successful line of window products. The window provides many benefits including those relating to costs, manufacturing, weather resistance, durability, and aesthetics.

11. The claims of the '365 patent describe window assemblies offering improvements and advantages over the prior art. Such assemblies comprise a base frame assembly, an external cladding assembly, an interior trim assembly, and a sash assembly, and are constructed in a manner that allows the use of multiple types of materials while avoiding the disadvantages of prior art techniques.

12. Window assemblies according to the claims of the '365 patent have various advantages over prior art window assemblies, such as lower manufacturing costs and production times, and increased water resistance, thermal properties, energy efficiency, durability, and resistance to humidity and other weather elements. The patented window assemblies also provide a clean architectural look, featuring thin lines and expansive window areas.

13. Figures 1 and 4 of the '365 patent, as shown below, depict certain embodiments of the claims of the '365 patent from different perspectives:

U.S. Patent Oct. 22, 2013 Sheet 1 of 10 US 8,561,365 B2 U.S. Patent Oct. 22, 2013 Sheet 4 of 10 US 8,561,365 B2

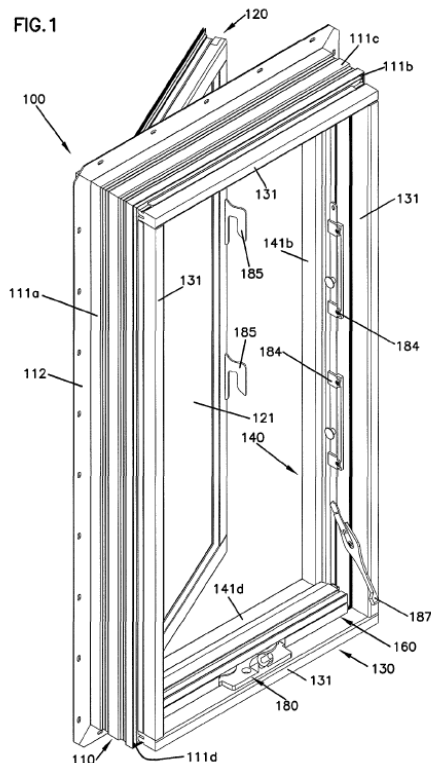
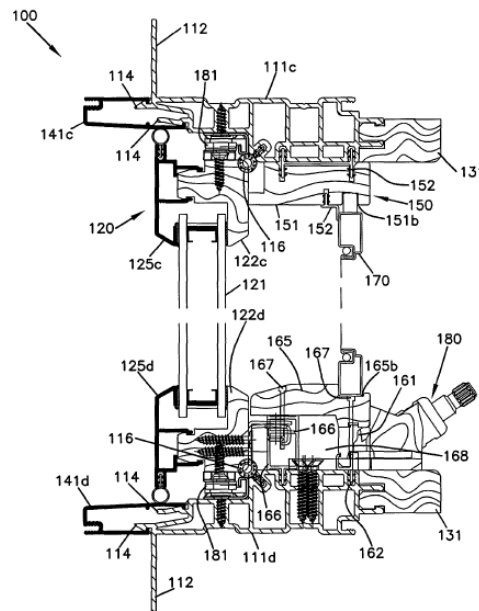


FIG. 4



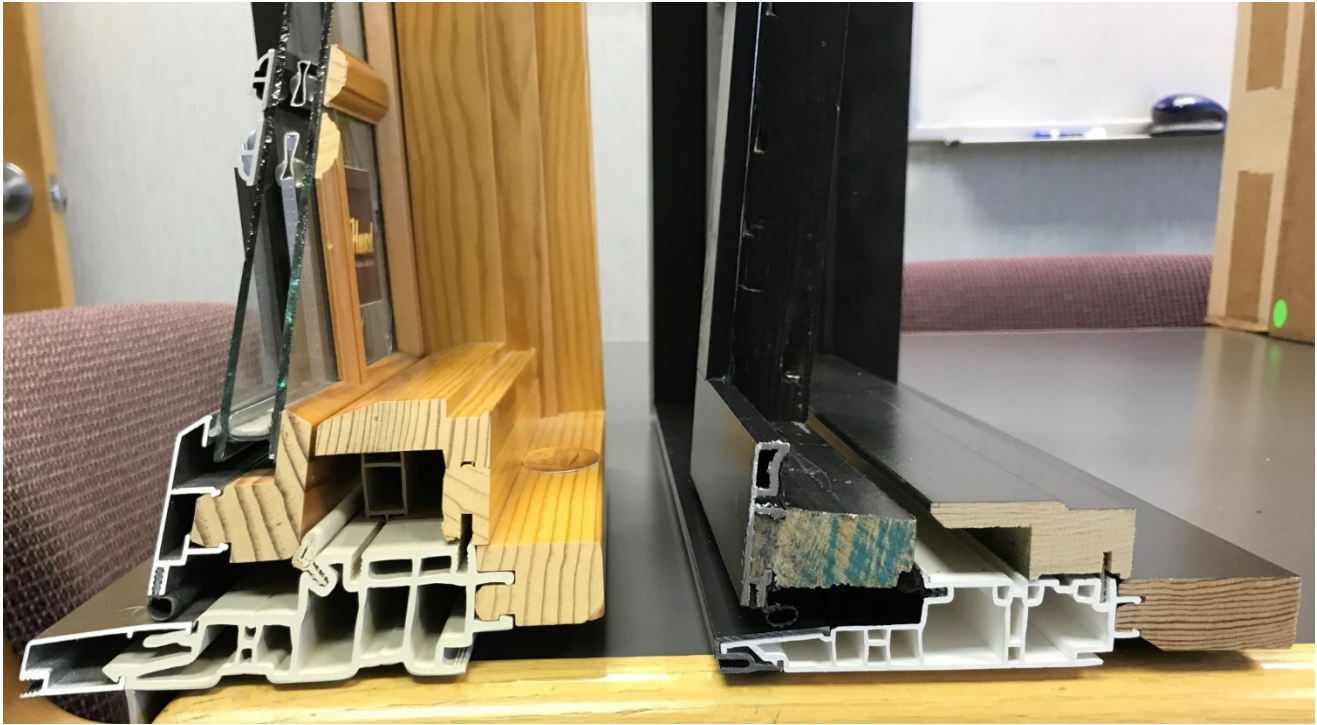
14. Sierra Pacific has complied with the marking provisions of 35 U.S.C. § 287, having substantially and continuously marked the patent number 8,561,365 in accordance with that statute for many years. Notice of the patent number has been provided at least through marking the patent number on patented H3 window assemblies and/or marking windows with citation to the Sierra Pacific website that associates the patented articles with the patent number.

Kolbe's Accused Products

15. Defendant Kolbe is engaged in the business of manufacturing, using, selling, and offering to sell window and door products. A description of Defendant's business is available on its website at <https://www.kolbewindows.com>. A screenshot of an excerpt from Defendant's website is attached as Exhibit B.

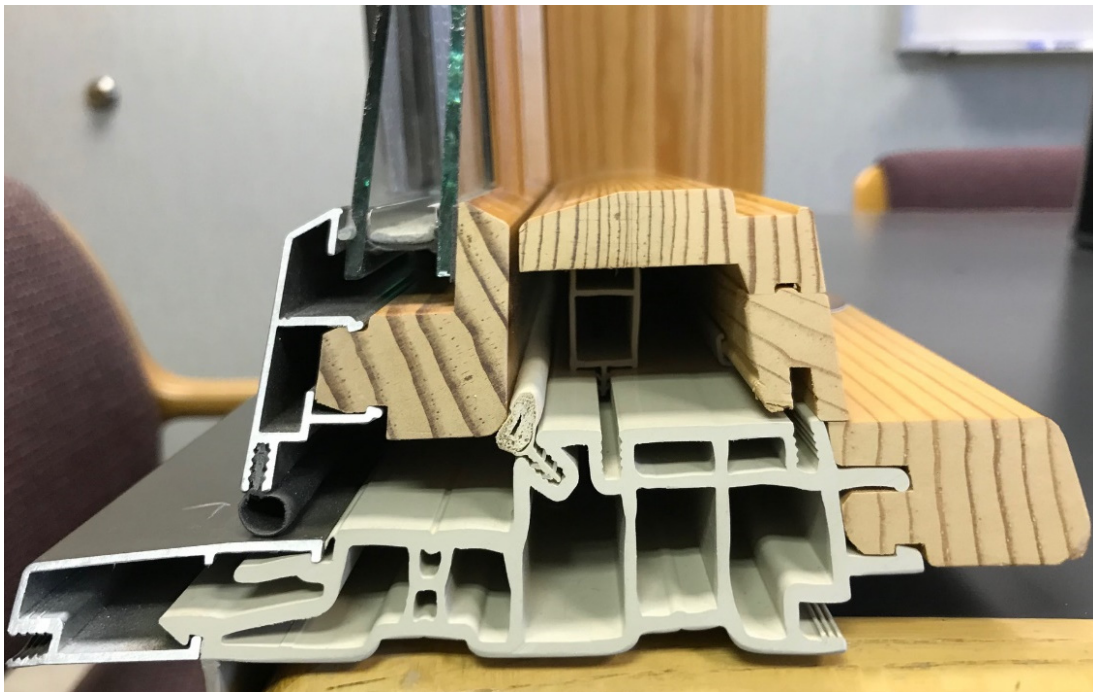
16. As part of its business, Defendant manufactures, sells, uses, and offers to sell window and door products and related products, including the VistaLuxe® Collection of windows and doors including casement windows (the "Accused Products"). Defendant has purposefully sold and offered for sale such products throughout the United States. Defendant's brochure for its VistaLuxe® Collection of window and door products is attached as Exhibit C.

17. Kolbe's VistaLuxe® casement window assembly (shown by cross section in the photo below at right and as indicated below) is strikingly similar to Sierra Pacific's patented H3 window assembly (shown by cross section in the photo below at left and as indicated below) with respect to the incorporation of the elements claimed in the '365 Patent:

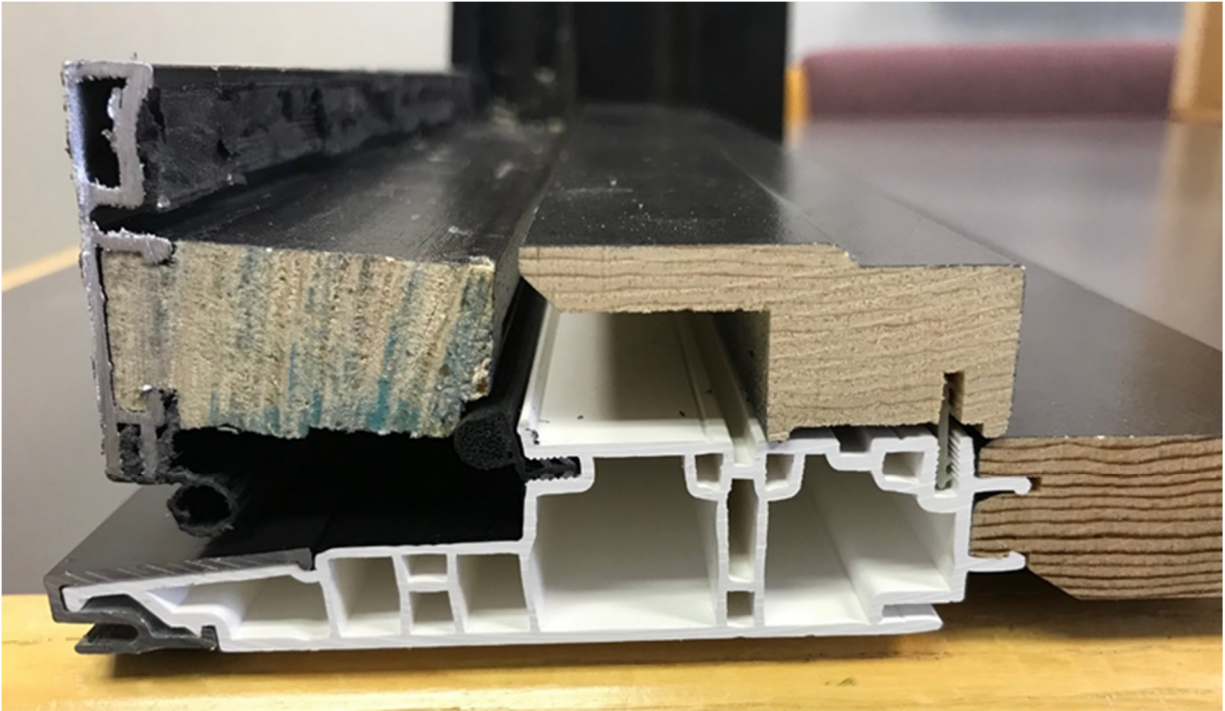


Sierra-Pacific H3 window assembly

Accused Kolbe VistaLuxe window assembly

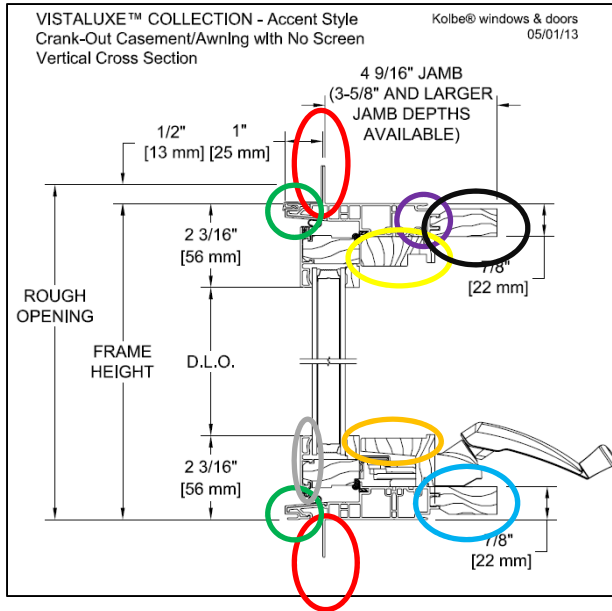


Sierra Pacific H3 window assembly (close-up)



Kolbe VistaLuxe window assembly (close-up)

18. A side-by-side comparison of drawings from Kolbe's website of the infringing VistaLuxe® windows and drawings from Sierra Pacific's '365 patent further demonstrate striking similarities with respect to the elements claimed in the '365 patent. Various, but not all, corresponding features of such drawings are circled below.



VistaLuxe® Collection Diagram from website
(Attached as Ex. D, annotated)

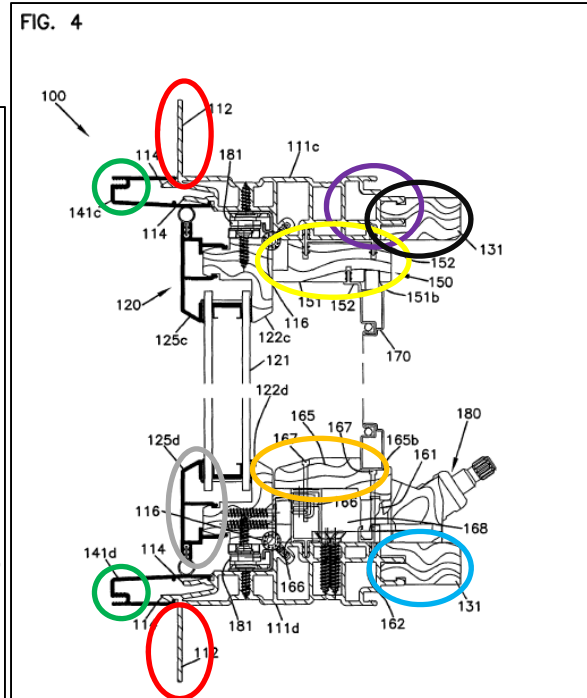


Figure 4 of the '365 patent
(Annotated)

Exemplary Claim and Infringement Analysis: Kolbe's VistaLuxe® Window and Claim 1 of the '365 Patent

19. Kolbe's making selling, offering for sale, and using the Accused Products infringes at least claim 1 of the '365 patent, which recites:

A window assembly comprising:

- (a) a base frame assembly including a plurality of base frame members that form a frame, the base frame assembly being attachable to an opening in a wall and being constructed of a plastic type material, each base frame member having a pair of extension clips;
- (b) an external cladding assembly including a plurality of cladding members that form a frame, the external cladding assembly being connected to the base frame assembly by a snap-fit connection, the external cladding assembly being constructed of a metal type material;
- (c) an interior trim assembly including a jamb extender assembly, a head stop, a sill stop, and two side stops

extending between the head and sill stops, the interior trim assembly concealing at least a portion of the base frame assembly from view from an interior side, each component of the interior trim assembly being constructed of a wood type material and directly attached to the base frame assembly with a non-adhesive connection, wherein the jamb extender assembly is connected to the base frame assembly with the base frame member extension clips to form a snap-fit connection such that the extension clips extend beyond an interior face of the head and sill stops and at least beneath the two side stops; and

(d) a sash assembly constructed and arranged to hold a window pane, the sash assembly being operably connected to the base frame assembly and having an exterior sash assembly constructed of a metal type material and an interior sash assembly constructed of a wood type material, the interior sash assembly being directly connected to the exterior sash assembly to form a wood-metal snap-fit connection;

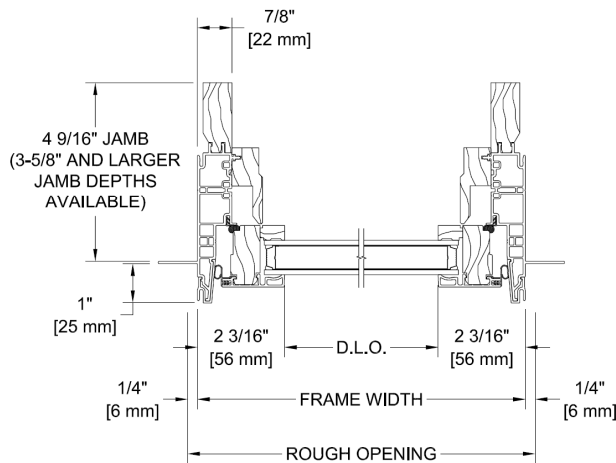
(e) wherein the base frame members and the cladding members are each formed from a stock material having a uniform profile.

20. Kolbe infringes claim 1 and other claims of the '365 patent at least by making, using, selling, and offering for sale Accused Products. Kolbe also induces infringement by actively encouraging distributors, customers, and others to sell, offer for sale, and/or use the Accused Products.

21. For example, the Kolbe VistaLuxe® Casement products, shown in the drawings below (available on the Kolbe website at www.kolbewindows.com and attached hereto as Exhibit D), and brochure excerpt below (available on the Kolbe website at www.kolbewindows.com and attached hereto as Exhibit C), infringe claim 1 for at least the reasons set forth in the paragraphs below:

VISTALUXE™ COLLECTION - Accent Style
Crank-Out Casement/Awning with No Screen
Horizontal Cross Section

Kolbe® windows & doors
05/01/13



VISTALUXE™ COLLECTION - Accent Style
Crank-Out Casement/Awning with No Screen
Vertical Cross Section

Kolbe® windows & doors
05/01/13

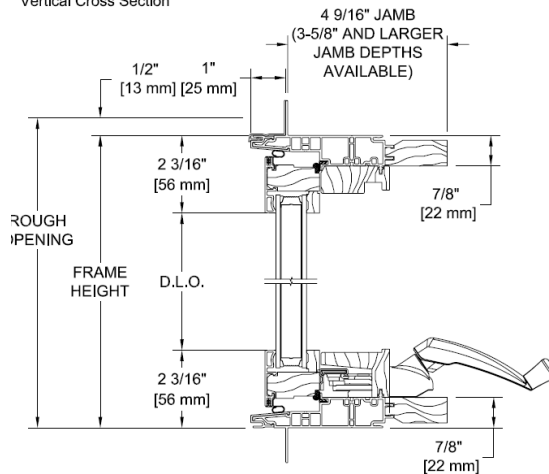


Exhibit D at 1-2.



Standard Features

- ▶ Pine interiors, ready for a variety of finishes
- ▶ Extruded aluminum exterior finished with a 70% PVDF fluoropolymer coating (meets performance requirements of AAMA 2605)
- ▶ Energy efficient, insulating LoE²-270 glass
- ▶ Accessory grooves are integral to the extruded frames so units can easily be mulled together
- ▶ Interior insect screens with Rustic aluminum frames and BetterVue® fiberglass mesh
- ▶ Stainless steel exterior operator parts
- ▶ Matte Black folding handle
- ▶ Integral nailing fin with additional head drip caps

Options* (custom options are also available)

- ▶ Insect screens with White, Beige, Coal Black, Sand, Dark Bronze anodized, or Clear anodized frames
- ▶ Wood-wrapped insect screen frames with UltraVue® fiberglass screen mesh, aluminum mesh or charcoal-colored aluminum mesh
- ▶ Flat casing and stucco return kits for field application
- ▶ Accessory groove fillers and frame expanders for field application
- ▶ Steel stiffeners with matching mull covers
- ▶ Floor sill available in Dark Bronze anodized or Clear anodized to match or mull with inswing doors or outswinging doors
- ▶ Window Opening Control Device available on casements
- ▶ Motorized operator available on awnings
- ▶ Evo operator
- ▶ Extension jambs (up to 12" applied)
- ▶ Galvanized steel installation clips

* See pages 32-34 for wood species, interior & exterior finish, glass, and divided lite options available for all VistaLuxe Collection products.

Exhibit C at 7.

22. The Kolbe VistaLuxe® Casement products are windows, as can be seen for example in the brochure excerpt above.

23. The windows have a base frame which is attached to a wall, the base frame including multiple members that form the frame. See Exhibit C at 7.

24. On information and belief, the base frame assembly is made of a plastic type material.

25. The base frame members each have a pair of extension clips. An example of said pair of extension clips is shown in the VistaLuxe® Casement schematic below, circled in red.

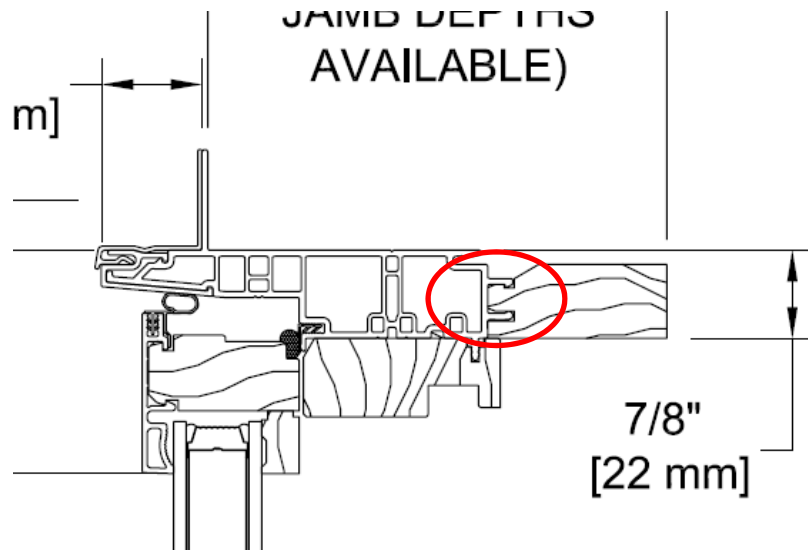


Exhibit D at 2 (annotated).

26. The VistaLuxe® Casement has an external cladding assembly including a plurality of cladding members that form a frame, and is connected to the base frame assembly by a snap-fit connection. This is evidenced by the VistaLuxe® Casement schematics below. The external cladding (highlighted in blue) can be seen attaching to the base frame assembly (highlighted in yellow) through a snap-fit connection.

VISTALUXE™ COLLECTION - Accent Style
Crank-Out Casement/Awning with No Screen
Vertical Cross Section

Kolbe® windows & doors
05/01/13

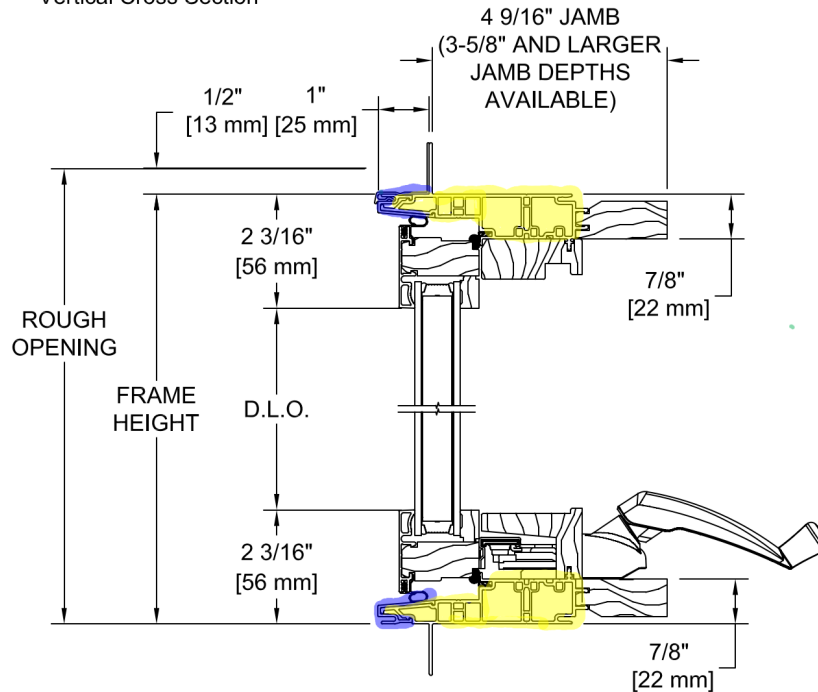


Exhibit D at 2 (annotated).

27. The external cladding assembly of the VistaLuxe® Casement product is made of metal. This is evidenced by Kolbe’s advertising material which notes that the VistaLuxe® Casement has an “[e]xtruded aluminum exterior.” Exhibit C at 7.

28. The VistaLuxe® Casement product contains an interior trim assembly including a jamb extender assembly (green), a head stop (blue), a sill stop (yellow), and two side stops (red) extending between the head and sill stops, the interior trim assembly concealing at least a portion of the base frame assembly from view from an interior side.

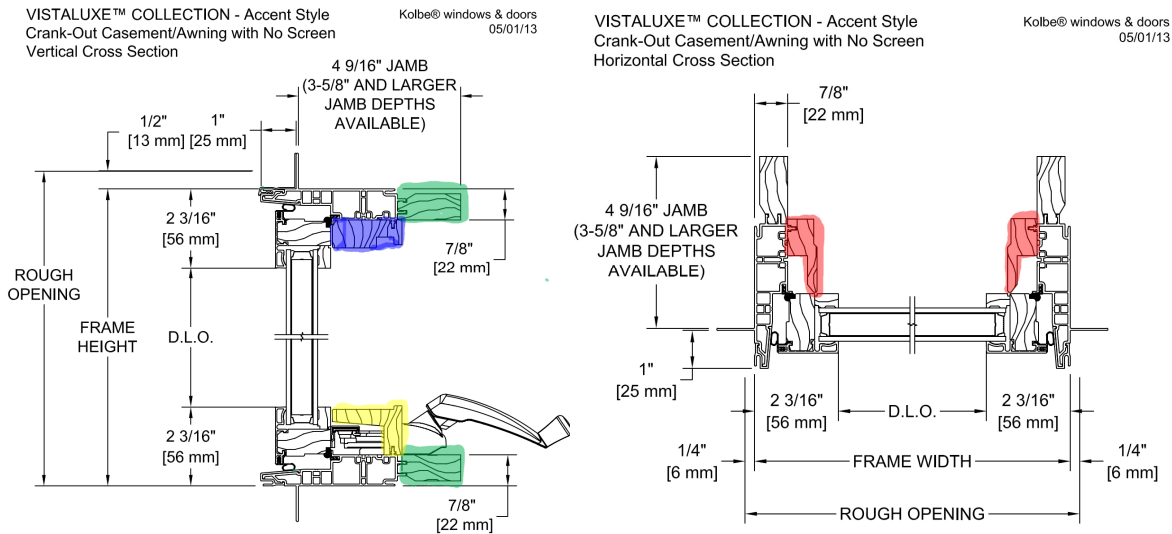


Exhibit D at 2 (annotated).

29. The interior trim assembly is constructed of a wood type material. Kolbe advertises its VistaLuxe® Casement as having, for example, “[p]line interiors.” Exhibit C at 7.

30. As the schematics above indicate, the interior trim assembly is directly attached to the base frame assembly, wherein the jamb extender assembly is connected to the base frame assembly with the base frame member extension clips to form a snap-fit connection such that the extension clips extend beyond an interior face of the head and sill stops and at least beneath the two side stops. This can be seen, for example, by comparing the relative position of the clips and the head/sill stops in the schematics above. A close-up of the upper portion of this schematic, showing the clip (green) extending beyond the interior face of the head stop (blue) is shown below.

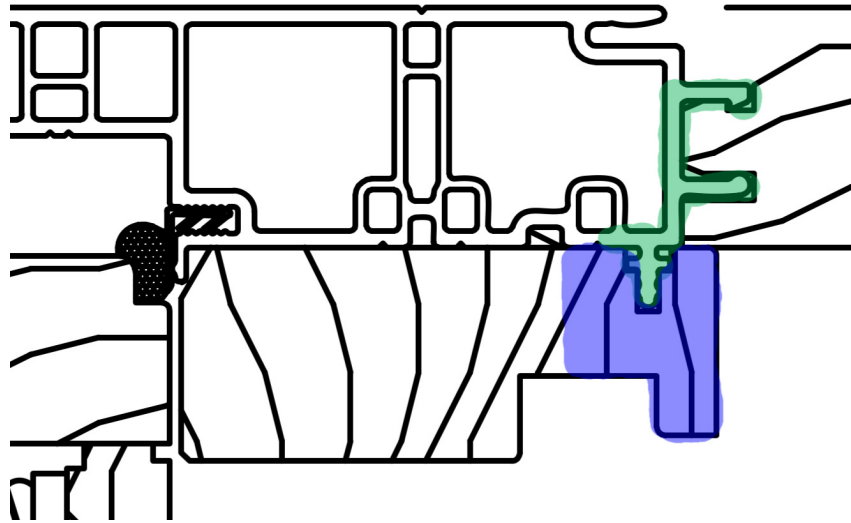


Exhibit D at 2 (annotated).

31. The VistaLuxe® Casement has a sash assembly constructed and arranged to hold a window pane, which is connected to the base frame assembly. This is demonstrated, for example, by the green and red portions of the schematic below.

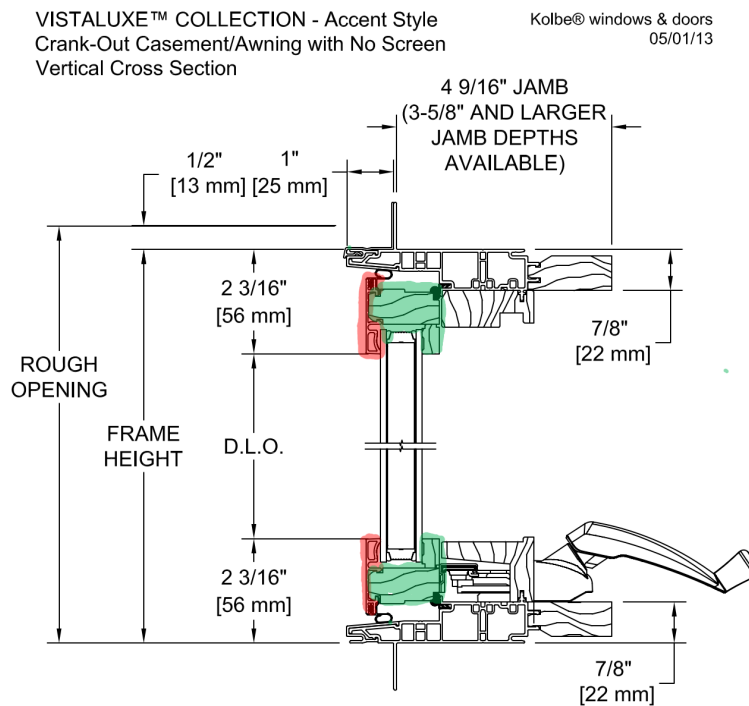


Exhibit D at 2 (annotated).

32. The exterior sash assembly, highlighted in red in the figure above, is metal. This is shown, for example, by Kolbe's advertising material which notes that exterior portions of the VistaLuxe® Casement are extruded aluminum. Exhibit C.

33. The interior sash assembly, highlighted in green in the figure above, is wood. This is shown, for example, by Kolbe's advertising material which notes that interior portions of the VistaLuxe® Casement are, for example, pine. Exhibit C at 7.

34. The interior sash assembly is directly connected to the exterior sash assembly to form a wood-metal snap-fit connection, as shown, for example, in the highlighted schematic above.

35. The base frame members and the cladding members of the VistaLuxe® Casement are formed from a stock material having a uniform profile.

36. The Accused Products also infringe claim 16 of the '365 patent, which recites:

A window assembly comprising:

(a) a base frame assembly including a plurality of base frame members that form a frame, the base frame assembly being attachable to an opening in a wall and being constructed of a plastic type material, each base frame member having a pair of extension clips;

(b) an external cladding assembly including a plurality of cladding members that form a frame, the external cladding assembly being connected to the base frame assembly by a snap-fit connection with clips integral to the external cladding assembly that engage with recesses in the base frame assembly;

(c) an interior trim assembly including a jamb extender assembly, a head stop, a sill stop, and two side stops extending between the head and sill stops, the interior trim assembly concealing at least a portion of the base frame assembly from view from an interior side, each component of the interior trim assembly being constructed of a wood type material and directly attached to the base frame

assembly with clips integral to the base frame assembly that engage with corresponding recesses in the interior trim assembly, wherein the jamb extender assembly is connected to the base frame assembly with the base frame member extension clips to form a snap-fit connection such that the extension clips extend beyond an interior face of the head and sill stops and at least beneath the two side stops; and

(d) a sash assembly constructed and arranged to hold a window pane, the sash assembly being operably connected to the base frame assembly and having metal exterior sash assembly and an interior sash assembly, the interior sash assembly being constructed of a wood type material and being directly connected to the exterior sash assembly to form a wood-metal connection;

(e) wherein the base frame members and the cladding members are each formed from a stock material having a uniform profile.

37. Kolbe infringes at least claim 16 of the '365 patent at least by making, using, selling, and offering for sale, the Accused Products. Kolbe also induces infringement of this claim by actively encouraging distributors, customers, and others to sell, offer for sale, and/or use the Accused Products.

38. Generally claim 16 is similar to claim 1 in structure, but there are differences. One difference is that the external cladding assembly of claim 16, unlike claim 1, is not recited as being made of metal (element (b)). Another difference is that claim 16, unlike claim 1, recites a “wood-metal connection” rather than a “wood-metal snap fit connection” in the sash assembly (element (d)). A third difference is that claim 16 lacks the “non-adhesive connection” recited in element (c). Other differences also exist, but the facts set forth herein also show infringement of claim 16.

39. Claim 16, unlike claim 1, recites in element (b) “clips integral to the external cladding assembly that engage with recesses in the base frame assembly.” The published

schematics for the VistaLuxe® Casement discloses that the clips, which are integral to the external cladding assembly, engage with recesses in the base frame assembly, as shown below.

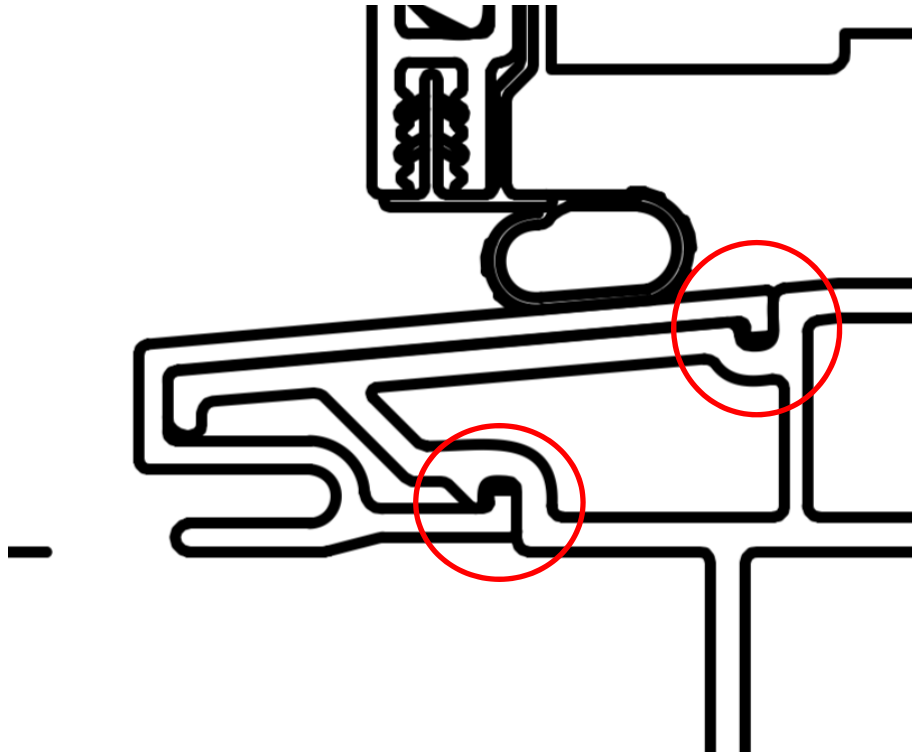


Exhibit D at 2 (annotated).

40. Similarly, unlike claim 1, element (c) of claim 16 recites “clips integral to the base frame assembly that engage with corresponding recesses in the interior trim assembly.” The green highlighting in the schematics below demonstrates that the interior trim assembly is directly attached to the base frame assembly with clips integral to the base frame assembly that engage with corresponding recesses in the interior trim assembly.

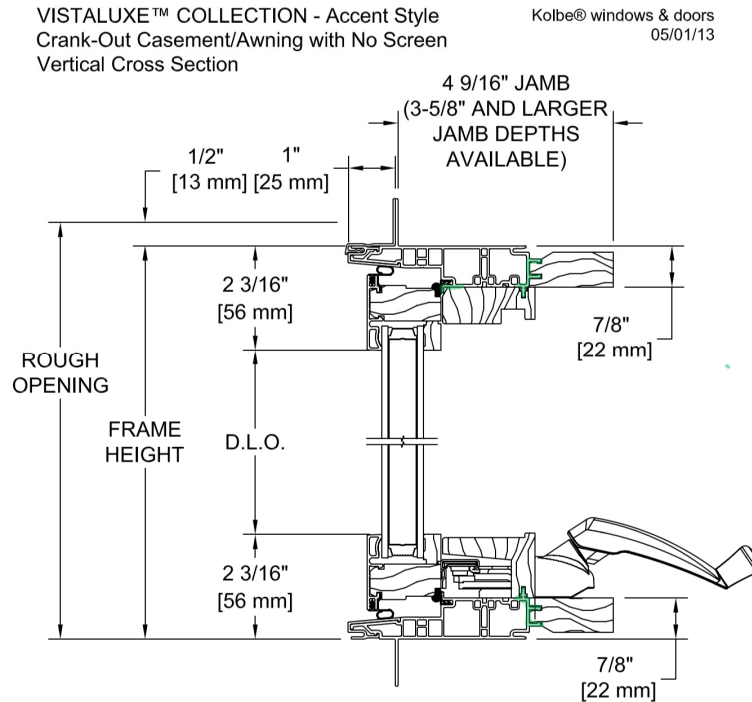


Exhibit D at 2 (annotated).

41. On information and belief, Kolbe has sold and/or sells windows in addition to the VistaLuxe® Casement window described in detail above that also infringe at least claim 1 or claim 16 of the '365 patent. Kolbe's actions also infringe (as well as induce infringement of) several other claims of the '365 patent. The analysis provided herein is for two detailed examples of infringement.

Kolbe's Willful Infringement and the Harm to Sierra Pacific

42. On information and belief, Kolbe has been manufacturing, using, selling, and/or offering for sale within the United States, or importing into the United States, infringing products including at least the Accused Products since about 2013.

43. Sierra Pacific has marked its patented H3 windows with patent number 8,561,365 since about 2014. The patent issued October 22, 2013.

44. It is likely Kolbe had access to and accessed in fact Sierra Pacific patented windows marked with the '365 patent number, the Sierra Pacific website which identifies the '365 patent, as well as the '365 patent itself. It is likely Kolbe copied the patented features of the patented H3 products with knowledge of the '365 patent.

45. Based on information and belief, including the close proximity of the business facilities of Sierra Pacific and Kolbe, the similarity of the Accused Products and the patented H3 products, the success and ready availability of the H3 products to Kolbe, and the likelihood that Kolbe has obtained access to the patented H3 windows of Sierra Pacific that are marked with the '365 patent number, Kolbe is aware of the '365 patent and its application to window assemblies including the Accused Products.

46. Kolbe likely had knowledge of the '365 patent as it made, sold, and offered to sell its infringing windows each year after it began selling the windows, and continues its infringing activities with knowledge of the patent.

47. Kolbe has made, on information and belief, millions of dollars in revenues and profits selling the Accused Products. It also manufactures and sells, and profits from, additional products that are sold alongside the Accused Products and which would not have been sold but for Kolbe's infringement of the '365 patent. For example, Kolbe advertises "numerous" complimentary products to "help complete a VistaLuxe® project."

VistaLuxe Complementary Products

Numerous VistaLuxe Complementary products are available to help complete a VistaLuxe project. Because the details make the difference, most VistaLuxe complementary windows and doors have square interior and exterior sticking. And, with all of the customization options for which Kolbe is known, these products offer exceptional design flexibility to coordinate with any design.

Exhibit C at 17. On information and belief, Kolbe has made additional millions of dollars in revenues and profits on these additional sales caused by and as a direct result of its infringement.

48. Kolbe leverages the benefits and appeal of the patented windows to sell other windows and doors including products with designs that match or complement the infringing Kolbe windows, further increasing sales and profits derived from its infringement. Kolbe's website features a video quoting one of its employees, Robin DeLonay, as touting how "all the windows" in the VistaLuxe® product line "were designed to go together." See video 0:25-0:55/1:39 at www.kolbewindows.com/product-lines.

49. Kolbe has knowledge that the patented window design is valuable. Kolbe touts the features and benefits of its infringing windows that arise from infringing the '365 patent, confirming the value of Sierra Pacific's patented technology. For example, Kolbe markets the infringing VistaLuxe® windows on its website by touting:

- a. "Sleek lines and narrow profiles"
- b. "Generous daylight openings"
- c. "Wood interior"
- d. A "palette" of exterior and interior choices
- e. "Strong and durable extruded aluminum exterior"
- f. "The look of steel with three main benefits: Better efficiency, lower cost, quicker lead times"
- g. "Energy efficient"

See www.kolbewindows.com/product-lines, attached hereto as Exhibit E.

50. Sierra Pacific has suffered harm from Kolbe's infringement of the '365 patent through, among other factors, lost royalties, lost exclusivity in the market, and other measurable

and irreparable harm from having to compete in the market place with its own patented technology.

51. Kolbe is further aware that its manufacture, use, sale, and/or offer for sale within the United States of the Accused Products, and inducement of others to sell, offer for sale, and use the Accused Products, infringe the '365 patent at least through the notice of infringement provided by Sierra Pacific through providing a copy of this complaint to Kolbe.

52. On information and belief, Kolbe intentionally copied Sierra Pacific's patented products and the '365 patent with knowledge that its products would infringe Sierra Pacific's patent rights, and/or willful blindness to such infringement.

COUNT I - INFRINGEMENT OF U.S. PATENT NO. 8,561,365

53. Sierra Pacific restates the allegations set forth in the paragraphs above and incorporates them herein by reference.

54. By virtue of its ownership of the '365 patent, Sierra Pacific maintains the right to sue thereon and the right to recover for infringement thereof including damages for any infringement.

55. Defendant has infringed the '365 patent through the manufacture, use, sale, and/or offer for sale of products, including at least the Accused Products.

56. Defendant has infringed the '365 patent by inducing others to offer for sale, sell, and use products including at least the Accused Products.

57. Defendant copied Sierra Pacific's patented products and/or the '365 patent in the design, creation, and/or ongoing manufacture and use of the Accused Products.

58. Defendant knew that making, selling, offering to sell, and using the Accused Products would infringe the '365 patent. Defendant's past and continued infringement of the '365 patent has been and continues to be willful and deliberate.

59. As a result of Defendant's infringement of the '365 patent, Sierra Pacific has suffered monetary damages and is entitled to damages in an amount no less than a reasonable royalty for Defendant's use of the claimed inventions of the '365 patent, together with interest and costs as determined by the Court. Sierra Pacific will continue to suffer damages in the future unless Defendant's infringing activities are enjoined by this Court.

60. Sierra Pacific will be irreparably harmed unless Defendant and their agents, employees, representatives, affiliates, and others acting in concert with Defendant are enjoined from further infringement of the '365 patent.

61. Defendant's conduct makes this an exceptional case; Sierra Pacific should therefore be awarded enhanced damages and its reasonable attorney's fees pursuant to 35. U.S.C. §§ 284 and 285 and other applicable rules, statutes, and law.

PRAYER FOR RELIEF

WHEREFORE, Sierra Pacific prays for judgment that:

A. United States Patent Nos. 8,561,365 was duly and legally issued, is valid and enforceable;

B. Defendant has infringed one or more claims of United States Patent No. 8,561,365;

C. Defendant, its officers, agents, servants and employees, and those persons in active concert or participation with any of them be enjoined from further infringing United States Patent No. 8,561,365;

D. An accounting be had for the damages under 35 U.S.C. § 284 arising out of Defendant's infringement of United States Patent No. 8,561,365, including enhanced (up to treble) damages for willful infringement as provided by 35 U.S.C. § 284, with interest;

E. Defendant pay the costs of this action (including all disbursements) and attorney fees as provided by 35 U.S.C. § 285 or other appropriate authority, with interest; and

F. Plaintiff be awarded such other and further relief as this Court may deem necessary and proper.

DEMAND FOR JURY TRIAL

Pursuant to Federal Rule of Civil Procedure 38(b), Sierra Pacific hereby demands a trial by jury of all issues so triable.

Respectfully submitted,

By: /s/ Daniel W. McDonald
Daniel W. McDonald, Esq. (168580)
Thomas Johnson, Esq. (*pro hac vice* to be filed)
MERCHANT & GOULD P.C.
3200 IDS Center
80 South Eighth Street
Minneapolis, MN 55402
Telephone: (612) 336-4637
Facsimile: (612) 332-9081
dmcDonald@merchantgould.com

Stephen R. Howe, Esq. (1102417)
MERCHANT & GOULD P.C.
10 E. Doty Street, Suite 600
Madison, WI 53703-3376
Telephone: (608) 280-6763
Facsimile: (612) 332-9081
showe@merchantgould.com

*Attorneys for Plaintiff
Sierra Pacific Industries*

Dated: October 17, 2018