

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF TENNESSEE**

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SPG INTERNATIONAL, LLC,	)	
	)	Case No. 3:18-cv-00116
Plaintiff/Counter-Defendant,	)	Judge: Campbell
	)	Magistrate Judge: Newbern
v.	)	
	)	JURY TRIAL DEMANDED
INTERMETRO INDUSTRIES CORP.,	)	
	)	
Defendant/Counter-Plaintiff.	)	

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**Second Amended Complaint**

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Plaintiff SPG International, LLC (“SPG”) complains against Defendant InterMetro Industries Corp. (“Metro”) as follows:

***Introduction***

1. SPG is one of the world’s leading designers and manufacturers of storage systems. SPG has been awarded more than fifteen patents on its innovative shelving systems, and sells its patented shelving systems to companies in a wide range of industries, including, but not limited to, the food service industry, the retail industry, and the warehousing and storage industry. At issue in this case, SPG developed an innovative shelving system that is protected by SPG’s U.S. Patent Nos. 9,883,755 (“’755 patent”) and 10,104,987 (“’987 patent”).

2. Defendant Metro competes with SPG in the same markets and has developed and is marketing storage systems and workstations known as the “Smart Lever” that incorporate SPG’s innovative and patented technology. Metro’s Smart Lever storage systems and workstations directly infringe SPG’s ’755 and ’987 patents. Metro’s unauthorized infringing activities are interfering with SPG’s customer relationships and causing SPG to incur monetary

damages and suffer irreparable harm. SPG brings this action seeking relief for Metro's ongoing patent infringement.

### ***The Parties***

3. SPG is a limited liability company duly organized and existing under the laws of the State of Delaware. SPG has its principal place of business at 3340 Peachtree Road NE, Suite 1250, Atlanta, Georgia.

4. Metro is a corporation duly organized and existing under the laws of the State of Delaware. Metro has its principal place of business at 651 North Washington Street, Wilkes-Barre, Pennsylvania and a distribution center at 3263 Elam Farms Parkway, Murfreesboro, Tennessee.

### ***Jurisdiction and Venue***

5. This action arises under the patent laws of the United States of America, Title 35 of the United States Code. This Court has exclusive subject matter jurisdiction over this case for patent infringement under 28 U.S.C. §§ 1331 and 1338(a).

6. This Court has personal jurisdiction over Metro because, on information and belief, Metro conducts regular and substantial business in Tennessee, including through its distribution center in Murfreesboro, Tennessee. Metro also has committed acts within this state that give rise to this suit, including importing, making, using, offering to sell, or selling infringing products such as those identified in this Second Amended Complaint. At a minimum, Metro places products, including infringing products such as those identified in this Second Amended Complaint, into the stream of commerce knowing and intending that such products will be used, sold, or offered for sale within this state. Exercising personal jurisdiction over Metro is appropriate and reasonable under the circumstances.

7. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1400(b) because, on information and belief, Metro owns and operates a distribution center within this judicial district, conducts regular and substantial business in this judicial district, including through its distribution center in this judicial district, and has committed acts within this judicial district that give rise to this suit, including importing, making, using, offering to sell, or selling infringing products such as those identified in this Second Amended Complaint.

### ***Background***

8. The '755 patent, entitled "SHELVING SYSTEM," was duly and legally issued by the United States Patent and Trademark Office on February 6, 2018. A true and correct copy of the '755 patent is attached to this Second Amended Complaint as Exhibit A. The '755 patent is valid and enforceable.

9. SPG is the sole owner of the '755 patent. As the owner of the '755 patent, SPG is authorized and has standing to bring legal action to enforce all rights arising from the '755 patent.

10. The '987 patent, entitled "SHELVING SYSTEM," was duly and legally issued by the United States Patent and Trademark Office on October 23, 2018. A true and correct copy of the '987 patent is attached to this Second Amended Complaint as Exhibit B. The '987 patent is valid and enforceable.

11. SPG is the sole owner of the '987 patent. As the owner of the '987 patent, SPG is authorized and has standing to bring legal action to enforce all rights arising from the '987 patent.

12. Metro directly competes with SPG, offering to sell and selling within the United States of America "Smart Lever" storage systems and workstations as shown below:



13. Metro's Smart Lever storage systems and workstations embody each and every limitation of at least claims 1-3, 5, 7-12, 14-16, and 18 of the '755 patent.

14. Metro's Smart Lever storage systems and workstations embody each and every limitation of at least claims 1-3, 5, 7, 8-9, 12-20, 23-25, 27-30, 32-38, 40, and 43-48 of the '987 patent.

15. Metro does not have authority to make, use, offer to sell, or sell within the United States of America, or to import into the United States of America, the technology of the '755 or the '987 patents.

**COUNT I**  
**Direct Infringement of U.S. Patent No. 9,883,755**

16. SPG re-alleges and incorporates by reference into this Count I the allegations set forth in paragraphs 1-15 of this Second Amended Complaint as though fully set forth herein.

17. Metro has directly infringed the '755 patent at least by importing, making, using, offering to sell or selling within the United States of America storage systems and workstations that embody the technology of the '755 patent, including, but not limited to, the inventions recited in claims 1-3, 5, 7-12, 14-16, and 18 of the '755 patent.

18. As a result of Metro's infringement of the '755 patent, SPG has suffered irreparable harm and monetary damages, which continue to accrue, in an amount to be determined at trial.

19. On information and belief, Metro's acts infringing the '755 patent will continue after service of this Second Amended Complaint unless enjoined by the Court. Thus, unless preliminarily and permanently enjoined by this Court, Metro's acts of infringement will cause SPG further injury and damage, including immediate and irreparable harm that cannot be adequately compensated by monetary damages.

20. Metro's acts of infringement have been willful, deliberate, and knowingly performed with reckless disregard for SPG's exclusive rights in the '755 patent, justifying the assessment of enhanced damages pursuant to 15 U.S.C. § 284.

21. This is an exceptional case, justifying the awarding of attorneys' fees and costs pursuant to 35 U.S.C. § 285.

**COUNT II**  
**Induced Infringement of U.S. Patent No. 9,883,755**

22. SPG re-alleges and incorporates by reference into this Count II the allegations set forth in paragraphs 1-21 of this Second Amended Complaint as though fully set forth herein.

23. When a third party uses Metro's Smart Lever storage systems and work stations, that third party also infringes the '755 patent. In turn, Metro has induced infringement of claims 1-3, 5, 7-12, 14-16, and 18 of the '755 patent under 35 U.S.C. § 271(b) by actively, knowingly, and intentionally encouraging and instructing third parties in their use of its infringing Smart Lever storage systems and work stations.

24. On or about February 8, 2018, SPG served its original complaint in this action on Metro. Since at least that time, Metro has been aware that its Smart Lever storage systems and

workstations infringe SPG's '755 patent. Notwithstanding this knowledge, since February 8, 2018, Metro has continued to sell its Smart Lever storage systems and work stations to third parties. Since February 8, 2018, Metro has provided third parties with oral and written instructions regarding how to install and use its Smart Lever storage systems and workstations. For example, Metro has promoted its infringing Smart Lever storage systems and workstations to third parties at trade shows and conferences such as the McDonald's Corporation Worldwide Conference. As such, Metro has and continues knowingly and intentionally to encourage and instruct third parties' infringement of the '755 patent by their normal and intended use of the Smart Lever storage systems and work stations.

25. As a result of Metro's induced infringement of the '755 patent, SPG has suffered irreparable harm and monetary damages, which continue to accrue, in an amount to be determined at trial.

26. On information and belief, Metro's acts inducing infringement of the '755 patent have continued since service of the original complaint and will continue after service of this Second Amended Complaint unless enjoined by the Court. Thus, unless preliminarily and permanently enjoined by this Court, Metro's acts inducing infringement will cause SPG further injury and damage, including immediate and irreparable harm that cannot be adequately compensated by monetary damages.

27. Metro's acts of induced infringement have been willful, deliberate, and knowingly performed with reckless disregard for SPG's exclusive rights in the '755 patent, justifying the assessment of enhanced damages pursuant to 15 U.S.C. § 284.

28. This is an exceptional case, justifying the awarding of attorneys' fees and costs pursuant to 35 U.S.C. § 285.

**COUNT III**  
**Contributory Infringement of U.S. Patent No. 9,883,755**

29. SPG re-alleges and incorporates by reference into this Count III the allegations set forth in paragraphs 1-28 of this Second Amended Complaint as though fully set forth herein.

30. When a third party uses Metro's Smart Lever storage system and work stations, that third party also infringes the '755 patent. In turn, Metro has contributorily infringed claims 1-3, 5, 7-12, 14-16, and 18 of the '755 patent under 35 U.S.C. § 271(c) by actively, knowingly, and intentionally encouraging and instructing third parties in their infringing uses of Metro's Smart Lever storage systems and work stations.

31. On or about February 8, 2018, SPG served its original complaint in this action on Metro. Since at least that time, Metro has been aware that its Smart Lever storage systems and workstations infringe SPG's '755 patent. Notwithstanding this knowledge, since February 8, 2018, Metro has continued to sell its Smart Lever storage systems and work stations to third parties. Since February 8, 2018, Metro has provided third parties with oral and written instructions regarding how to install and use its Smart Lever storage systems and workstations. For example, Metro has promoted its infringing Smart Lever storage systems and workstations to third parties at trade shows and conferences such as the McDonald's Corporation Worldwide Conference. Metro knows that its Smart Lever storage systems and work stations are especially made and adapted for use in a manner that infringes SPG's '755 patent, and they are not a staple article or commodity of commerce suitable for substantial non-infringing use. Nevertheless, Metro has and continues to knowingly and intentionally encourage and instruct third parties in their use of Metro's infringing Smart Lever storage systems and work stations.

32. As a result of Metro's contributory infringement of the '755 patent, SPG has suffered irreparable harm and monetary damages, which continue to accrue, in an amount to be determined at trial.

33. On information and belief, Metro's acts inducing infringement of the '755 patent have continued since service of the original complaint and will continue after service of this Second Amended Complaint unless enjoined by the Court. Thus, unless preliminarily and permanently enjoined by this Court, Metro's acts contributing to infringement will cause SPG further injury and damage, including immediate and irreparable harm that cannot be adequately compensated by monetary damages.

34. Metro's acts of contributory infringement have been willful, deliberate, and knowingly performed with reckless disregard for SPG's exclusive rights in the '755 patent, justifying the assessment of enhanced damages pursuant to 15 U.S.C. § 284.

35. This is an exceptional case, justifying the awarding of attorneys' fees and costs pursuant to 35 U.S.C. § 285.

**COUNT IV**  
**Direct Infringement of U.S. Patent No. 10,104,987**

36. SPG re-alleges and incorporates by reference into this Count IV the allegations set forth in paragraphs 1-15 of this Second Amended Complaint as though fully set forth herein.

37. Metro has directly infringed the '987 patent at least by importing, making, using, offering to sell or selling within the United States of America storage systems and workstations that embody the technology of the '987 patent, including, but not limited to, the inventions recited in claims 1-3, 5, 7, 8-9, 12-20, 23-25, 27-30, 32-38, 40, and 43-48 of the '987 patent.



38. As a result of Metro's infringement of the '987 patent, SPG has suffered irreparable harm and monetary damages, which continue to accrue, in an amount to be determined at trial.

39. On information and belief, Metro's acts infringing the '987 patent will continue after service of this Second Amended Complaint unless enjoined by the Court. Thus, unless preliminarily and permanently enjoined by this Court, Metro's acts of infringement will cause SPG further injury and damage, including immediate and irreparable harm that cannot be adequately compensated by monetary damages.

40. Metro's acts of infringement have been willful, deliberate, and knowingly performed with reckless disregard for SPG's exclusive rights in the '987 patent, justifying the assessment of enhanced damages pursuant to 15 U.S.C. § 284.

41. This is an exceptional case, justifying the awarding of attorneys' fees and costs pursuant to 35 U.S.C. § 285.

**COUNT V**  
**Induced Infringement of U.S. Patent No. 10,104,987**

42. SPG re-alleges and incorporates by reference into this Count V the allegations set forth in paragraphs 1-15 and 36-41 of this Second Amended Complaint as though fully set forth herein.

43. When a third party uses Metro's Smart Lever storage systems and work stations, that third party also infringes the '987 patent. In turn, Metro has induced infringement of claims 1-3, 5, 7, 8-9, 12-20, 23-25, 27-30, 32-38, 40, and 43-48 of the '987 patent under 35 U.S.C. § 271(b) by actively, knowingly, and intentionally encouraging and instructing third parties in their use of its infringing Smart Lever storage systems and work stations.

44. The '987 patent issued on October 23, 2018. Metro has been aware of the '987 patent since on or about the date it issued. Since at least that time, Metro has been aware that its Smart Lever storage systems and workstations infringe SPG's '987 patent. Notwithstanding this knowledge, since October 23, 2018, Metro has continued to sell its Smart Lever storage systems and work stations to third parties. On information and belief, since October 23, 2018, Metro has provided third parties with oral and written instructions regarding how to install and use its Smart Lever storage systems and workstations. For example, Metro continues to provide documentation and instructions for its Smart Lever storage systems via its website. As such, Metro has and continues knowingly and intentionally to encourage and instruct third parties' infringement of the '987 patent by their normal and intended use of the Smart Lever storage systems and work stations.

45. As a result of Metro's induced infringement of the '987 patent, SPG has suffered irreparable harm and monetary damages, which continue to accrue, in an amount to be determined at trial.

46. On information and belief, Metro's acts inducing infringement of the '987 patent will continue after service of this Second Amended Complaint unless enjoined by the Court. Thus, unless preliminarily and permanently enjoined by this Court, Metro's acts inducing infringement will cause SPG further injury and damage, including immediate and irreparable harm that cannot be adequately compensated by monetary damages.

47. Metro's acts of induced infringement have been willful, deliberate, and knowingly performed with reckless disregard for SPG's exclusive rights in the '987 patent, justifying the assessment of enhanced damages pursuant to 15 U.S.C. § 284.

48. This is an exceptional case, justifying the awarding of attorneys' fees and costs pursuant to 35 U.S.C. § 285.

**COUNT VI**  
**Contributory Infringement of U.S. Patent No. 10,104,987**

49. SPG re-alleges and incorporates by reference into this Count VI the allegations set forth in paragraphs 1-15 and 36-48 of this Second Amended Complaint as though fully set forth herein.

50. When a third party uses Metro's Smart Lever storage system and work stations, that third party also infringes the '987 patent. In turn, Metro has contributorily infringed claims 1-3, 5, 7, 8-9, 12-20, 23-25, 27-30, 32-38, 40, and 43-48 of the '987 patent under 35 U.S.C. § 271(c) by actively, knowingly, and intentionally encouraging and instructing third parties in their infringing uses of Metro's Smart Lever storage systems and work stations.

51. The '987 patent issued on October 23, 2018. Metro has been aware of the '987 patent since on or about the date it issued. Since at least that time, Metro has been aware that its Smart Lever storage systems and workstations infringe SPG's '987 patent. Notwithstanding this knowledge, since October 23, 2018, Metro has continued to sell its Smart Lever storage systems and work stations to third parties. On information and belief, since October 23, 2018, Metro has provided third parties with oral and written instructions regarding how to install and use its Smart Lever storage systems and workstations. For example, Metro continues to provide documentation and instructions for its Smart Lever storage systems via its website. Metro knows that its Smart Lever storage systems and work stations are especially made and adapted for use in a manner that infringes SPG's '987 patent, and they are not a staple article or commodity of commerce suitable for substantial non-infringing use. Nevertheless, Metro has and continues to

knowingly and intentionally encourage and instruct third parties in their use of Metro's infringing Smart Lever storage systems and work stations.

52. As a result of Metro's contributory infringement of the '987 patent, SPG has suffered irreparable harm and monetary damages, which continue to accrue, in an amount to be determined at trial.

53. On information and belief, Metro's acts contributing to infringement of the '987 patent will continue after service of this Second Amended Complaint unless enjoined by the Court. Thus, unless preliminarily and permanently enjoined by this Court, Metro's acts contributing to infringement will cause SPG further injury and damage, including immediate and irreparable harm that cannot be adequately compensated by monetary damages.

54. Metro's acts of contributory infringement have been willful, deliberate, and knowingly performed with reckless disregard for SPG's exclusive rights in the '987 patent, justifying the assessment of enhanced damages pursuant to 15 U.S.C. § 284.

55. This is an exceptional case, justifying the awarding of attorneys' fees and costs pursuant to 35 U.S.C. § 285.

***Prayer for Relief***

WHEREFORE, SPG respectfully requests that the Court enter judgment in favor of SPG and against Metro, granting the following relief:

A. a judgment that Metro has directly infringed, induced infringement of, and contributed to infringement of the '755 and '987 patents under 35 U.S.C. § 271;

B. a preliminary and permanent injunction pursuant to 35 U.S.C. § 283, preventing Metro, its officers, agents, servants, employees, successors, assignees, parents, subsidiaries,

affiliated or related companies, attorneys, and all others in active concert or participation with any of them from further directly or indirectly infringing the '755 and '987 patents;

- C. an award of damages adequate to compensate SPG for Metro's patent infringement, and no less than the damages provided for under 35 U.S.C. § 284;
- D. an award of enhanced damages under 35 U.S.C. § 284;
- E. an award of attorneys' fees under 35 U.S.C. § 285;
- F. an award of pre-judgment interest, post-judgment interest, and all costs associated with this action; and
- F. any other relief as the Court deems appropriate and just under the circumstances.

***Jury Demand***

SPG demands a trial by jury on all matters and issues properly tried to a jury pursuant to Federal Rules of Civil Procedure 38 and 39, and other applicable federal and state law.

Dated: November 1, 2018

Respectfully submitted,

**SPG INTERNATIONAL, LLC**

/s/ Matthew C. Cox

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**Certificate of Service**

I, Arthur Gollwitzer III, an attorney of record in this matter, hereby certify that on November 1, 2018, I electronically filed the following document:

**Second Amended Complaint**

with the Clerk of the United States District Court for the Middle District of Tennessee, Nashville Division, using the CM/ECF system, which will send notification and a copy of this filing to the following counsel of record:

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