

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

CALDWELL MANUFACTURING
COMPANY NORTH AMERICA, LLC

Plaintiff,

v.

AMESBURY GROUP, INC.,

Defendant.

Case No. 11-CV-6183-MAT

JURY TRIAL DEMANDED

AMENDED COMPLAINT

This is an action for patent infringement arising under the patent laws of the United States, Title 35 of the United States Code and relates to two U.S. patents owned by Caldwell Manufacturing Company North America, LLC (“Caldwell”): U.S. Patent Nos. 5,353,548 and 5,463,793 (collectively, “the Patents-in-Suit”).

THE PARTIES

1. Plaintiff Caldwell is a New York limited liability company with its principal place of business at 2605 Manitou Road, Rochester, New York 14624.

2. Defendant Amesbury Group, Inc. (“Amesbury” or “Defendant”) is a Delaware corporation with its principal place of business at 57 S. Hunt Road, Amesbury, Massachusetts 01913.

JURISDICTION AND VENUE

3. This is an action for patent infringement arising under the U.S. patent laws, 35 U.S.C. § 1 *et seq.* This Court has subject matter jurisdiction over the matters complained of under 28 U.S.C. §§ 1338(a) and 1331.

4. The jurisdiction of this Court over the Amesbury is proper because, inter alia, Amesbury places its products into the stream of commerce, which stream is directed at the State of New York, including this District, with the knowledge and/or understanding that such products would be sold in the State of New York, including this District. Amesbury also has purposely availed itself of the benefits and protections of the laws of the State of New York through regular, systematic and continuous contacts with the State of New York and by regularly conducting business in the State of New York.

5. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1400(b) and § 1391(b) and (c).

PATENTS-IN-SUIT

6. U.S. Patent No. 5,353,548 entitled Curl Spring Shoe Based Window Balance System was duly granted and assigned to Caldwell. The United States Patent and Trademark Office duly issued Reexamination Certificate Nos. B1 5,353,458 and 5,353,548 C2 for the patent (the “548 Patent”).

7. U.S Patent No. 5,463,793 entitled Sash Shoe System for Curl Spring Window Balance was duly granted and assigned to Caldwell. The United States Patent and Trademark Office duly issued Reexamination Certificate Nos. B1 5,463,793 and 5,463,793 C2 for the patent (the “793 Patent”).

8. Caldwell is the owner of all right, title and interest in the ‘548 and ‘793 Patents.

PRODUCTS AT ISSUE

9. Upon information and belief, Amesbury manufactures, uses, offers to sell, imports and/or sells window balances, including, but not limited to its inverted balance constant force products which infringe the Patents-In-Suit.

10. Upon information and belief, Amesbury, at a trade show in Las Vegas, Nevada in September 2010, displayed window balances which infringe claims of the Patents-in-Suit. A copy of an Amesbury product bulletin depicting window balances displayed by Amesbury at the Las Vegas trade show in September 2010 is attached as Exhibit A hereto. Photographs of the window balances as displayed by Amesbury at the Las Vegas trade show in September 2010 are attached as Exhibit B hereto.

11. Upon information and belief, Amesbury manufactures, uses, offers to sell, imports and/or sells the window balances, which infringe the Patents-in-Suit, depicted in Exhibit C hereto.

12. Upon information and belief, Amesbury manufactures, uses, offers to sell, imports and/or sells the window balances, which infringe the Patents-in-Suit, depicted in Exhibit D hereto.

FIRST CLAIM FOR RELIEF
(Infringement of the '548 Patent)

13. Caldwell incorporates by reference the allegations set forth in paragraphs 1 through 12 of this Complaint as though set forth in full herein.

14. Amesbury manufactures, uses, imports, sells and/or offers for sale products which infringe, either directly, by inducement, or contributorily, at least one or more of the claims of the '548 Patent.

15. The infringing products include, but are not limited to Amesbury's inverted constant force balances, including the window balances depicted in Exhibits A, B, C, and D hereto.

16. Amesbury is directly infringing and continues to infringe the '548 Patent by making, using, selling, importing and/or offering for sale products that infringe claims of the '548 Patent in violation of 35 U.S.C. § 271(a).

17. Amesbury is inducing and continues to induce others to infringe claims of the '548 Patent in violation of 35 U.S.C. § 271(b).

18. Upon information and belief, Amesbury has demonstrated for and/or instructed its customers or potential customers in how to use its window balances, including those depicted in Exhibits A, B, C, and D hereto, as part of a window balance system that infringes claims of the '548 Patent.

19. Upon information and belief, window balance systems that include the Amesbury window balances, including those depicted in Exhibits A, B, C, and D hereto, directly infringe claims of the '548 Patent.

20. Upon information and belief, one or more Amesbury customers directly infringe the '548 Patent by making, using, selling, importing and/or offering for sale products that incorporate Amesbury window balances, including those depicted in Exhibits A, B, C, or D hereto, and that infringe claims of the '548 Patent.

21. Upon information and belief, Amesbury had actual and/or constructive knowledge of the '548 Patent at the time it was committing its infringing activities.

22. U.S. Patent No. 7,191,562, which issued on March 20, 2007, and of which Amesbury is the assignee of record, cites the '548 Patent as a reference.

23. U.S. Patent No. 6,931,788, which issued on August 23, 2005, and of which Amesbury is the assignee of record, cites the '548 Patent as a reference.

24. U.S. Patent No. 6,820,368, which issued on November 23, 2004, and of which Amesbury is the assignee of record, cites the '548 Patent as a reference.

25. U.S. Patent No. D464,256, which issued on October 15, 2002, and of which Amesbury is the assignee of record, cites the '548 Patent as a reference.

26. U.S. Patent No. D462,258, which issued on September 3, 2002, and of which Amesbury is the assignee of record, cites the '548 Patent as a reference.

27. Upon information and belief, Amesbury knew that its actions would induce actual infringement of the '548 Patent.

28. Upon information and belief, Amesbury intended that its customers use Amesbury window balances, including those depicted in Exhibits A, B, C, or D, to infringe the '548 Patent.

29. Amesbury is contributorily infringing and continues to contributorily infringe claims of the '548 Patent in violation of 35 U.S.C. § 271(c).

30. Amesbury window balances, including those depicted in Exhibits A, B, C, and D, are material components of a window balance system that infringes the '548 Patent.

31. Amesbury window balances, including those depicted in Exhibits A, B, C, and D, are specially made for use that infringes the '548 Patent.

32. Amesbury window balances, including those depicted in Exhibits A, B, C, and D, are not capable of substantial noninfringing uses.

33. Upon information and belief, Amesbury knew at the time of its infringing activities that Amesbury window balances, including those depicted in Exhibits A, B, C, and D, are specially made for use that infringes the '548 Patent and are not capable of substantial noninfringing uses.

34. Upon information and belief, Amesbury knew that its customers were using and continue to use the Amesbury window balances, including those depicted in Exhibits A, B, C, or D, to infringe the '548 Patent.

35. Caldwell has at all times complied with 35 U.S.C. § 287 by properly marking its products with the patent numbers of the Patents-In-Suit.

36. Upon information and belief, Amesbury has had actual and/or constructive knowledge of the '548 Patent.

37. With this knowledge, Amesbury has intentionally, or with deliberate indifference, infringed claims of the '548 Patent.

38. On information and belief, Amesbury's conduct is willful and deliberate.

39. As a direct and proximate result of Amesbury's acts of patent infringement, Caldwell has been and continues to be injured and has sustained, and will continue to sustain, substantial damages in an amount not yet determined.

40. In addition, Caldwell has and will continue to suffer irreparable harm as a direct and proximate result of Amesbury's acts of patent infringement, for which Caldwell has no adequate remedy at law.

SECOND CLAIM FOR RELIEF
(Infringement of the '793 Patent)

41. Caldwell incorporates by reference the allegations set forth in paragraphs 1 through 12 of this Complaint as though set forth in full herein.

42. Amesbury manufactures, uses, imports, offers for sale, and/or sells products which infringe, either directly, by inducement, or contributorily, at least one or more of the claims of the '793 Patent.

43. The infringing products include, but are not limited to Amesbury's inverted constant force balances, including the window balances depicted in Exhibits A, B, C, and D hereto.

44. Amesbury is directly infringing and continues to infringe the '793 Patent by making, using, importing, selling, and/or offering for sale products that infringe the '793 Patent in violation of 35 U.S.C. § 271(a).

45. Amesbury is inducing and continues to induce others to infringe claims of the '793 Patent in violation of 35 U.S.C. § 271(b).

46. Upon information and belief, Amesbury has demonstrated for and/or instructed its customers or potential customers in how to use its window balances, including those depicted in Exhibits A, B, C, and D hereto, as part of window balances that infringe claims of the '793 Patent.

47. Upon information and belief, products that include Amesbury window balances, including those depicted in Exhibits A, B, C, and D hereto, directly infringe claims of the '793 Patent.

48. Upon information and belief, one or more Amesbury customers directly infringe the '793 Patent by making, using, selling, importing and/or offering for sale products that incorporate the Amesbury window balances, including those depicted in Exhibits A, B, C, or D, and that infringe claims of the '793 Patent.

49. Upon information and belief, Amesbury had actual and/or constructive knowledge of the '793 Patent at the time it was committing its infringing activities.

50. U.S. Patent No. 7,191,562, which issued on March 20, 2007, and of which Amesbury is the assignee of record, cites the '793 Patent as a reference.

51. U.S. Patent No. 6,931,788, which issued on August 23, 2005, and of which Amesbury is the assignee of record, cites the '793 Patent as a reference.

52. U.S. Patent No. 6,820,368, which issued on November 23, 2004, and of which Amesbury is the assignee of record, cites the '793 Patent as a reference.

53. U.S. Patent No. D464,256, which issued on October 15, 2002, and of which Amesbury is the assignee of record, cites the '793 Patent as a reference.

54. U.S. Patent No. D462,258, which issued on September 3, 2002, and of which Amesbury is the assignee of record, cites the '793 Patent as a reference.

55. Upon information and belief, Amesbury knew that its actions would induce actual infringement of the '793 Patent.

56. Upon information and belief, Amesbury intended that its customers use Amesbury window balances, including those depicted in Exhibits A, B, C, or D, to infringe the '793 Patent.

57. Amesbury is contributorily infringing and continues to contributorily infringe claims of the '793 Patent in violation of 35 U.S.C. § 271(c).

58. Amesbury window balances, including those depicted in Exhibits A, B, C, and D, are material components of a window balance that infringes the '793 Patent.

59. Amesbury window balances, including those depicted in Exhibits A, B, C, and D, are specially made for use that infringes the '793 Patent.

60. Amesbury window balances, including those depicted in Exhibits A, B, C, and D, are not capable of substantial noninfringing uses.

61. Upon information and belief, Amesbury knew at the time of its infringing activities that the Amesbury window balances, including those depicted in Exhibits A, B, C, and D, are specially made for use that infringes the '793 Patent and are not capable of substantial noninfringing uses.

62. Upon information and belief, Amesbury knew that its customers were using and continue to use the Amesbury window balances depicted in Exhibits A, B, C, or D to infringe the '793 Patent.

63. Caldwell has at all times complied with 35 U.S.C. § 287 by properly marking its products with the patent numbers of the Patents-In-Suit.

64. Upon information and belief, Amesbury has had actual and/or constructive knowledge of the '793 Patent.

65. With this knowledge, Amesbury has intentionally, or with deliberate indifference, infringed claims of the '793 Patent.

66. On information and belief, Amesbury's conduct is willful and deliberate.

67. As a direct and proximate result of Amesbury's acts of patent infringement, Caldwell has been and continues to be injured and has sustained, and will continue to sustain, substantial damages in an amount not yet determined.

68. In addition, Caldwell has and will continue to suffer irreparable harm as a direct and proximate result of Amesbury's acts of patent infringement, for which Caldwell has no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, Caldwell prays that this Court enter judgment:

1. Adjudging, finding, and declaring that Amesbury has infringed, induced infringement of, and/or contributed to infringement of claims of each of the Patents-in-Suit under 35 U.S.C. § 271;
2. Adjudging, finding, and declaring that Amesbury's infringement is willful and deliberate;
3. Adjudging, finding, and declaring that the Patents-in-Suit are valid and enforceable;
4. Preliminarily and permanently enjoining Amesbury and its subsidiaries, agents, officers, and employees, and all others acting in concert with them, from infringing, inducing infringement, and contributorily infringing the Patents-in-Suit;

5. Ordering Amesbury to pay Caldwell an amount that, as adequately as possible, compensates Caldwell for Amesbury's infringement, but no less than a reasonable royalty;
6. Ordering Amesbury to pay court costs, pre-judgment interest, post-judgment interest, and attorneys' fees under 35 U.S.C. §§ 284 and 285;
7. Finding that this is an "exceptional case" pursuant to 35 U.S.C. § 285, and awarding enhanced damages up to an including treble the amount of damages and the payment of attorneys' fees; and
8. Granting Caldwell such other and further relief as is just and proper, or as the Court deems appropriate.

JURY DEMAND

Caldwell demands a jury trial on all issues that may be so tried.

Dated: July 15, 2011

Respectfully submitted,

HARRIS BEACH PLLC

By: s/Neal L. Slifkin

Neal L. Slifkin, Esq.

Laura W. Smalley, Esq.

Attorneys for Plaintiff

99 Garnsey Road

Pittsford, New York 14534

Telephone: (585) 419-8800

Fax: (585) 419-8813

nslifkin@harrisbeach.com

lsmalley@harrisbeach.com

252773 1624298.1