

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION**

DELTA FAUCET COMPANY,)	
)	
Plaintiff,)	
)	
v.)	CASE NO. 1:20-cv-02800-SEB-MPB
)	
KOHLER CO.,)	JURY DEMAND
)	
Defendant.)	

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff, Delta Faucet Company (“Delta Faucet” or “Plaintiff”), for its Complaint against Defendant Kohler Co. (“Kohler” or “Defendant”), alleges as follows:

NATURE OF THE ACTION

1. This is an action for patent infringement under 35 U.S.C. § 271, *et. seq.*, by Plaintiff against Defendant for infringement of United States Patent No. 7,753,079 (“the ‘079 patent”), United States Patent No. 10,669,702 (“the ‘702 patent”), and United States Patent No. 10,724,217 (“the ‘217 patent”), (collectively the “patents in suit”), by making, using, offering to sell, selling and/or importing magnetic docking faucets.

PARTIES

2. Delta Faucet is a corporation organized and existing under the laws of Indiana, having a principal place of business at 55 East 111th Street, Indianapolis, Indiana, 46280.

3. On information and belief, Kohler is a corporation organized and existing under the laws of Wisconsin, having a principal place of business at 444 Highland Drive, Kohler, Wisconsin, 53044. On information and belief, Defendant Kohler also has a regular and

established place of business at 4335 E. 82nd St., Indianapolis, Indiana 46250.

4. Kohler is engaged in the business of designing, manufacturing, and selling kitchen and bath products and accessories, and is a competitor of Delta Faucet in the kitchen and bath market.

JURISDICTION AND VENUE

5. This Court has subject matter jurisdiction over the matters asserted in this Complaint under 28 U.S.C. §§ 1331 and 1338(a).

6. This Court has personal jurisdiction over Kohler because it has committed acts of patent infringement and/or induced acts of patent infringement by others in the State of Indiana and in this District. On information and belief, Kohler has conducted, and does regularly conduct, business within the State of Indiana and the Southern District of Indiana. Kohler directly and/or through intermediaries (including distributors, retailers, and others) has made, used, offered to sell, sold, and/or imported into the United States, including to customers located within the State of Indiana and this District, products that infringe one or more claims of the patents in suit. Kohler has purposefully and voluntarily placed these infringing products into the stream of commerce with the awareness and/or intent that they will be purchased by consumers in the State of Indiana and in this District.

7. On information and belief, Kohler has a regular and established place of business at 4335 E. 82nd St., Indianapolis, Indiana 46250 known as the Kohler Signature Store as shown at (<https://experience.kohler.com/3590339.html>). See Exhibit A. The Kohler Signature Store provides one on one sales through Kohler consultants and additionally, offers virtual tours and online shopping. See Exhibit A.

8. On information and belief, venue is proper in this District pursuant to 28 U.S.C.

§§ 1391 and 1400(b). Defendant has committed acts giving rise to Plaintiff's claims within and directed to this District, and has a regular and established place of business in this District. See Exhibit A.

THE '079 PATENT

9. The '079 patent, titled "Magnetic Coupling For Sprayheads," issued on July 13, 2010. The '079 patent issued from U.S. Application No. 12/059,403, filed August 7, 2008 ("the '403 application"). The '079 patent is a continuation-in-part of U.S. Application No. 11/393,450 filed on March 30, 2006, which claims priority to U.S. Provisional Application No. 60/691,389, filed on June 17, 2005. *Id.* A true and correct copy of the '079 patent is attached as Exhibit B.

10. Plaintiff Delta Faucet owns by assignment 100% of the right, title, and interest in and to the '079 patent. A true and correct copy of the '079 patent assignment is attached as Exhibit C.

11. As the owner of the '079 patent, Delta Faucet is authorized and has standing to bring legal action to enforce all rights arising under the '079 patent.

THE '702 PATENT

12. The '702 patent, titled "Magnetic Coupling For Sprayheads," issued on June 2, 2020. The '702 patent issued from U.S. Application No. 16/694,487, filed November 25, 2019 ("the '487 application"). The '702 patent is a continuation of U.S. Application No. 16/361,120 filed on March 21, 2019 (now U.S. Patent No. 10,738,444), which is a continuation of U.S. Application No. 13/052,814 filed on March 21, 2011 (now U.S. Patent No. 10,240,326), which is a continuation of U.S. Application No. 11/393,450 filed on March 30, 2006 (now U.S. Patent No. 7,909,061), which claims priority to U.S. Provisional Application No. 60/691,389, filed on June 17, 2005. *Id.* A true and correct copy of the '702 patent is attached as Exhibit D.

13. Plaintiff Delta Faucet owns by assignment 100% of the right, title, and interest in and to the '702 patent. A true and correct copy of the '079 patent assignment is attached as Exhibit E.

14. As the owner of the '702 patent, Delta Faucet is authorized and has standing to bring legal action to enforce all rights arising under the '702 patent.

THE '217 PATENT

15. The '217 patent, titled "Magnetic Coupling For Sprayheads," issued on July 28, 2020. The '217 patent issued from U.S. Application No. 16/694,479, filed November 25, 2019 ("the '479 application"). The '217 patent is a continuation of U.S. Application No. 16/361,120 filed on March 21, 2019 (now U.S. Patent No. 10,738,444), which is a continuation of U.S. Application No. 13/052,814 filed on March 21, 2011 (now U.S. Patent No. 10,240,326), which is a continuation of U.S. Application No. 11/393,450 filed on March 30, 2006 (now U.S. Patent No. 7,909,061), which claims priority to U.S. Provisional Application No. 60/691,389, filed on June 17, 2005. *Id.* A true and correct copy of the '217 patent is attached as Exhibit F.

16. Plaintiff Delta Faucet owns by assignment 100% of the right, title, and interest in and to the '217 patent. A true and correct copy of the '217 patent assignment is attached as Exhibit G.

17. As the owner of the '217 patent, Delta Faucet is authorized and has standing to bring legal action to enforce all rights arising under the '217 patent.

FACTUAL BACKGROUND

18. Since its founding in 1954, Delta Faucet established itself as a leader in the design and manufacture of high quality, innovative faucets.

19. Delta Faucet has and continues to employ multiple engineers with experience in

the plumbing industry, including several with substantial experience in product engineering and project management of faucets.

20. Delta Faucet and specifically engineer and inventor Alfred C. Nelson, has decades of experience in the plumbing industry including in the product engineering of faucets from concept to production. Mr. Nelson also has decades of experience in designing kitchen faucets, including in developing improved pull-down sprayheads.

21. Over a period of several years, Mr. Nelson analyzed various coupling arrangements for pull-down sprayheads on kitchen faucets and worked on developing an effective solution to long recognized problems of insecure, difficult to operate, and non-durable couplings.

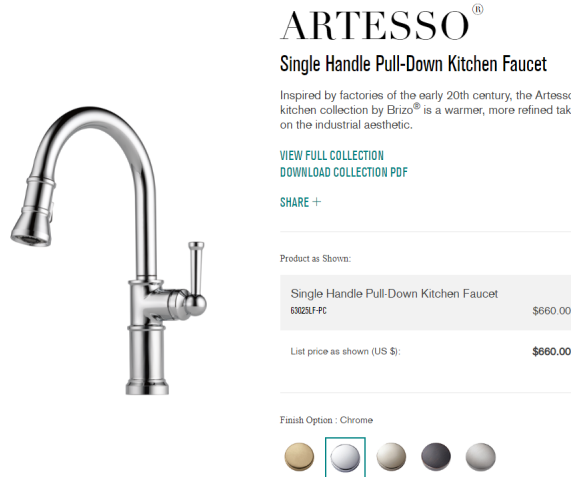
22. In recognition of a long-felt need for an improved coupling arrangement for faucet pull-down sprayheads, Mr. Nelson developed a magnetic docking system that provides an effective, simple to use, and durable coupling between the pull-down sprayhead and the spout.

23. In 2007, Delta Faucet launched MagnaTite® Docking. An example of a MagnaTite® Docking faucet is shown below:



VALO™
Single Handle Pull-Down
Kitchen Faucet with Soap
Dispenser and ShieldSpray®
Technology
MODEL#: 19791Z-BLSD-DST
[View Full Valo™ Kitchen Collection](#)
★★★★★ 4.0 (1) [Write a review](#) [Ask a question](#)

24. Delta Faucet thereafter launched MagneDock® Technology. An example of a MagneDock® Technology faucet is shown below:



25. Following introduction of MagnaTite® Docking, Delta Faucet experienced remarkable commercial success including through an increase in market share in the pull-down kitchen faucet category.

26. Prior to the development of the magnetic docking system by Delta Faucet, magnetic assemblies were not used in the industry to secure the sprayhead in a faucet assembly.

27. Delta Faucet holds intellectual property rights in and to the MagnaTite® Docking and MagneDock® Technology, including through the '079, '217, and '702 patents.

28. Delta Faucet has research and development, testing and engineering, sales and marketing, and business offices in Indiana and in this District, where it has and continues to employ skilled workers concerning MagnaTite® Docking and MagneDock® Technology.

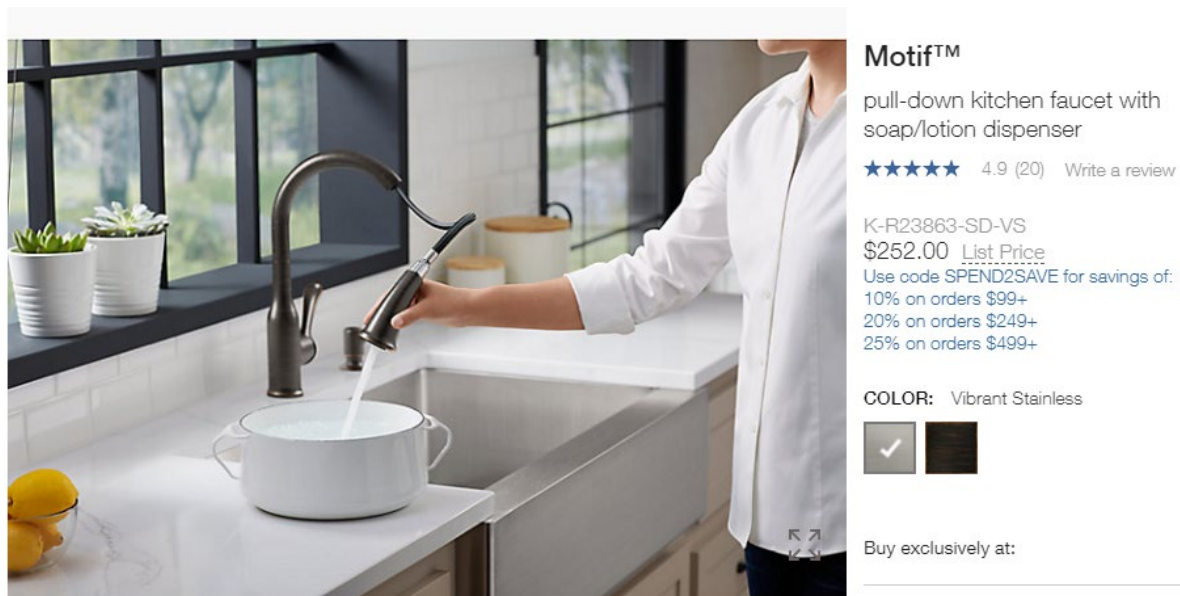
COUNT I (INFRINGEMENT OF THE '079 PATENT)

29. Plaintiff realleges and incorporates by reference all of the preceding paragraphs as if fully set forth in this paragraph.

30. On information and belief, faucets that infringe one or more claims of the '079 patent are identified as having a “DockNetik® magnetic docking system” (“Accused Products”)

on Kohler's website at www.us.kohler.com.

31. A non-limiting example of an Accused Product known as Motif™, is pictorially represented as follows:



- DockNetik® magnetic docking system securely locks the sprayhead into place when not in use.

[Source: <https://www.us.kohler.com/us/motif-pull-down-kitchen-faucet-w-soap-lotion-dispenser/productDetail/kitchen-sink-faucets/1375486.htm?skuId=1375461&brandId=empty&#parts-support>]

See also, <https://youtu.be/1A5UAtIB3Og>

32. The Accused Products, including the representative Motif™, are sold through various intermediaries, retailers and online as shown at https://www.us.kohler.com/us/storelocator/storeLocator.jsp?_requestid=2293972, including at a regular and established place of business at 4335 E. 82nd St., Indianapolis, Indiana 46250 known as the Kohler Signature Store. Exhibit A.

33. On information and belief, the representative Accused Product Motif™ is substantially the same for purposes of infringement as the Accused Products.

34. A claim chart that applies claim 1 of the '079 patent to the representative Accused Product Motif™ is attached as Exhibit H. The remaining Accused Products practice all the limitations of claim 1.

35. The Defendant has directly infringed and continues to directly infringe, has actively and knowingly induced and continues to actively and knowingly induce the infringement of one or more claims of the '079 patent, either literally or under the doctrine of equivalents, by making, using, selling, and/or offering for sale within the United States and/or importing into the United States the Accused Products.

36. Upon information and belief, Defendant has notice of the '079 patent. *First*, on information and belief, Defendant regularly surveys the patent literature—and especially that of its competitors—for relevant patents and has encountered the '079 patent. *Second*, this complaint informs Defendant about the '079 patent. *Third*, Plaintiff virtually marked and continues to virtually mark the '079 patent at <https://www.deltafaucetcompany.com/patent>, pursuant to 35 U.S.C. § 287(a). Despite knowledge and notice of the '079 Patent, Kohler has continued to offer for sale and sell the Accused Products to customers in the United States, without the consent or authority of Delta Faucet. Notwithstanding this knowledge, Defendant has knowingly or with reckless disregard willfully infringed the '079 patent and has acted despite an objectively high likelihood that its actions constitute infringement of Plaintiff's valid patent rights.

37. On information and belief, Kohler actively induces others to infringe the '079 Patent by selling the Accused Products to others with materials and instructions for operation, with the specific intent and knowledge that the materials direct, teach or assist others to infringe the '079 Patent. For example, on information and belief, Kohler induced infringement of the '079 Patent by encouraging and facilitating infringing use of the Accused Products by users of

the Accused Products in the United States, by taking active steps to encourage and facilitate others' direct infringement of the '079 Patent with knowledge of that infringement. The affirmative acts include, without limitation, advertising, marketing, promoting, offering for sale and/or selling the Accused Products as shown at www.us.kohler.com. Kohler further provides instructions, user manuals, advertising and/or marketing materials on Kohler's website that facilitate, direct, or encourage the direct infringement in the United States as shown at www.us.kohler.com. Defendant's infringing acts have caused, and are continuing to cause, damage and irreparable injury to Plaintiff, and Plaintiff will continue to suffer damage and irreparable injury unless and until Defendant's infringing acts are enjoined by this Court.

38. Plaintiff is entitled to injunctive relief and damages in accordance with 35 U.S.C. §§ 271, 281, 283, and 284.

39. Defendant's infringement of the '079 patent has been and continues to be willful and deliberate, justifying a trebling of damages under 35 U.S.C. § 284.

40. Defendant's infringement of the '079 patent is exceptional and entitles Plaintiff to attorneys' fees and costs under 35 U.S.C. § 285.

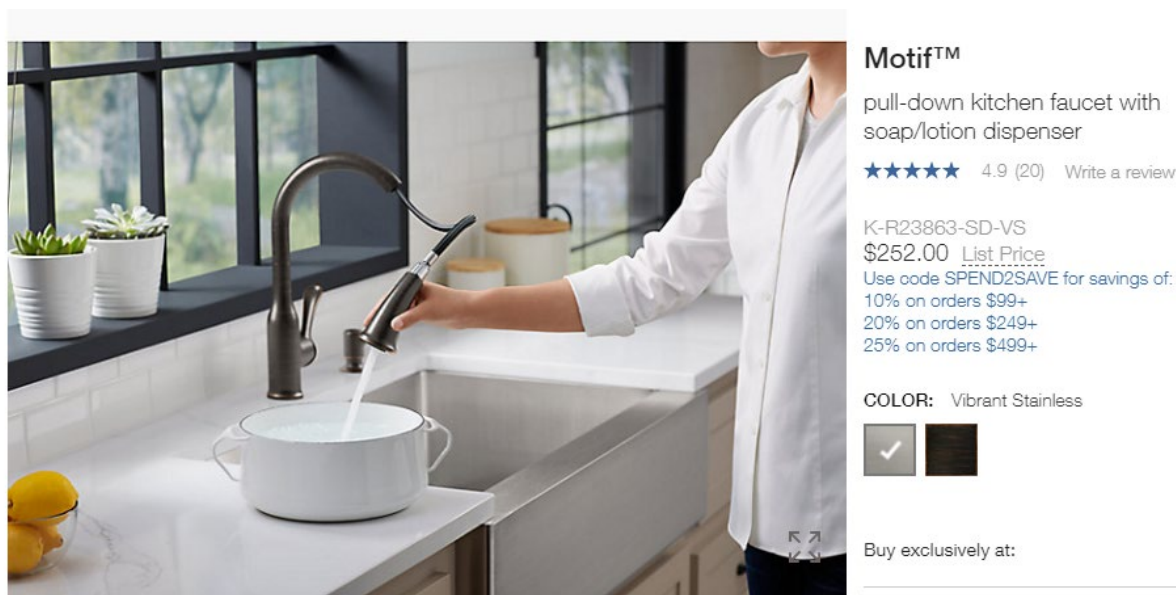
41. Therefore, Plaintiff seeks a judgment that Defendant directly infringes and/or induces infringement of at least claim 1 of the '079 Patent.

COUNT II (INFRINGEMENT OF THE '702 PATENT)

42. Plaintiff realleges and incorporates by reference all of the preceding paragraphs as if fully set forth in this paragraph.

43. On information and belief, faucets that infringe one or more claims of the '702 patent are identified as having a DockNetik® magnetic docking system ("Accused Products") on Kohler's website at www.us.kohler.com.

44. A non-limiting example of an Accused Product known as Motif™ is pictorially represented as follows:



- DockNetik® magnetic docking system securely locks the sprayhead into place when not in use.

[Source: <https://www.us.kohler.com/us/motif-pull-down-kitchen-faucet-w-soap-lotion-dispenser/productDetail/kitchen-sink-faucets/1375486.htm?skuId=1375461&brandId=empty&#parts-support>]

See also, <https://youtu.be/1A5UAtIB3Og>

45. The Accused Products, including the representative Motif™, are sold through various intermediaries, retailers and online as shown at https://www.us.kohler.com/us/storelocator/storeLocator.jsp?_requestid=2293972, including at a regular and established place of business at 4335 E. 82nd St., Indianapolis, Indiana 46250 known as the Kohler Signature Store. Exhibit A.

46. On information and belief, the representative Accused Product Motif™ is substantially the same for purposes of infringement as the Accused Products.

47. A claim chart that applies claim 1 of the '702 patent to the representative Accused

Product Motif™ is attached as Exhibit I. The remaining Accused Products practice all the limitations of claim 1.

48. The Defendant has directly infringed and continues to directly infringe, has actively and knowingly induced and continues to actively and knowingly induce the infringement of one or more claims of the '702 patent, either literally or under the doctrine of equivalents, by making, using, selling, and/or offering for sale within the United States and/or importing into the United States the Accused Products.

49. Upon information and belief, Defendant has notice of the '702 patent. *First*, on information and belief, Defendant regularly surveys the patent literature—and especially that of its competitors—for relevant patents and has encountered the '702 patent. *Second*, this complaint informs Defendant about the '702 patent. *Third*, Plaintiff virtually marked and continues to virtually mark the '702 patent at <https://www.deltafaucetcompany.com/patent>, pursuant to 35 U.S.C. § 287(a). Despite knowledge and notice of the '079 Patent, Kohler has continued to offer for sale and sell the Accused Products to customers in the United States without the consent or authority of Delta Faucet. Notwithstanding this knowledge, Defendant has knowingly or with reckless disregard willfully infringed the '702 patent and has acted despite an objectively high likelihood that its actions constituted infringement of Plaintiff's valid patent rights.

50. On information and belief, Kohler actively induces others to infringe the '702 Patent by selling the Accused Products to others with materials and instructions for operation with the specific intent and knowledge that the materials direct, teach or assist others to infringe the '702 Patent. For example, on information and belief, Kohler induced infringement of the '702 Patent by encouraging and facilitating infringing use of the Accused Products by users of the Accused Products in the United States, by taking active steps to encourage and facilitate

others' direct infringement of the '702 Patent with knowledge of that infringement. The affirmative acts include, without limitation, advertising, marketing, promoting, offering for sale and/or selling the Accused Products as shown at www.us.kohler.com. Kohler further provides instructions, user manuals, advertising and/or marketing materials on Kohler's website that facilitate, direct, or encourage the direct infringement in the United States as shown at www.us.kohler.com.

51. Defendant's infringing acts have caused, and are continuing to cause, damage and irreparable injury to Plaintiff, and Plaintiff will continue to suffer damage and irreparable injury unless and until Defendant's infringing acts are enjoined by this Court.

52. Plaintiff is entitled to injunctive relief and damages in accordance with 35 U.S.C. §§ 271, 281, 283, and 284.

53. Defendant's infringement of the '702 patent has been and continues to be willful and deliberate, justifying a trebling of damages under 35 U.S.C. § 284.

54. Defendant's infringement of the '702 patent is exceptional and entitles Plaintiff to attorneys' fees and costs under 35 U.S.C. § 285.

55. Therefore, Plaintiff seeks a judgment that Defendant directly infringes and/or induces infringement of at least claims 1, 2, 3, 5, 6, 9, 10, 12, 13, 14, 15, 16, 17, 19, 21, 22, 23, 25, 26, 27 and 28 of the '702 Patent.

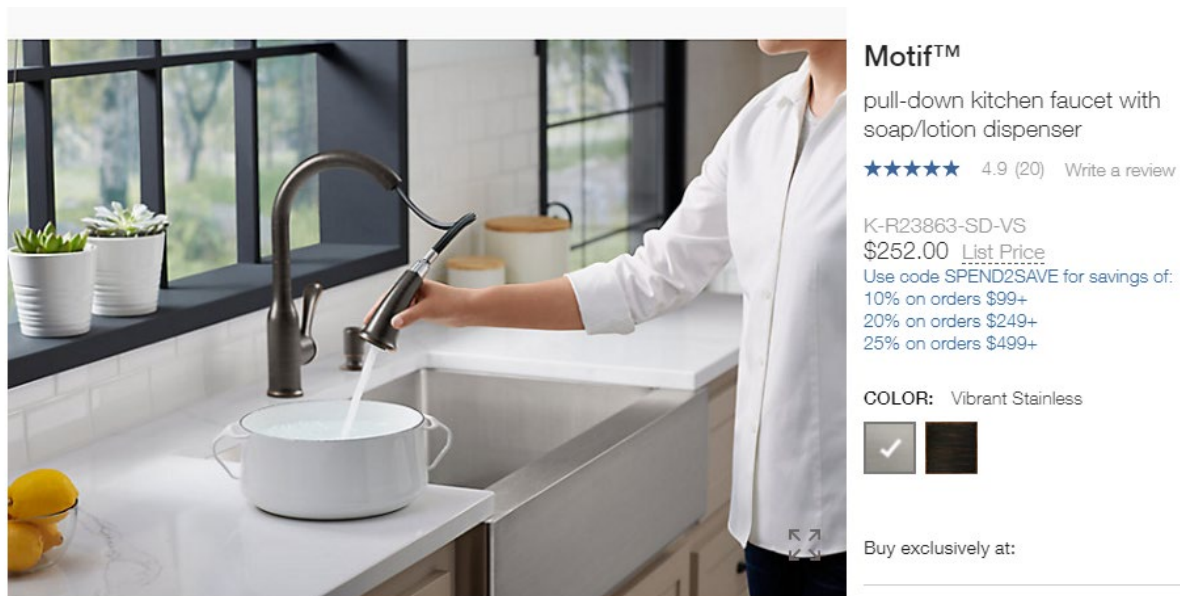
COUNT III (INFRINGEMENT OF THE '217 PATENT)

56. Plaintiff realleges and incorporates by reference all of the preceding paragraphs as if fully set forth in this paragraph.

57. On information and belief, faucets that infringe one or more claims of the '217 patent are identified as having a "DockNetik® magnetic docking system" ("Accused Products")

on Kohler's website at www.us.kohler.com.

58. A non-limiting example of an Accused Product known as Motif™ is pictorially represented as follows:



- DockNetik® magnetic docking system securely locks the sprayhead into place when not in use.

[Source: <https://www.us.kohler.com/us/motif-pull-down-kitchen-faucet-w-soap-lotion-dispenser/productDetail/kitchen-sink-faucets/1375486.htm?skuId=1375461&brandId=empty&#parts-support>]

See also, <https://youtu.be/1A5UAtIB3Og>

59. The Accused Products, including the representative Motif™, are sold through various intermediaries, retailers and online as shown at https://www.us.kohler.com/us/storelocator/storeLocator.jsp?_requestid=2293972, including at a regular and established place of business at 4335 E. 82nd St., Indianapolis, Indiana 46250 known as the Kohler Signature Store. Exhibit A.

60. On information and belief, the representative Accused Product Motif™ is substantially the same for purposes of infringement as the Accused Products.

61. A claim chart that applies claim 1 of the '217 patent to the representative Accused Product Motif™ is attached as Exhibit J. The remaining Accused Products practice all the limitations of claim 1.

62. The Defendant has directly infringed and continues to directly infringe, has actively and knowingly induced and continues to actively and knowingly induce the infringement of one or more claims of the '217 patent, either literally or under the doctrine of equivalents, by making, using, selling, and/or offering for sale within the United States and/or importing into the United States the Accused Products.

63. Upon information and belief, Defendant has notice of the '217 patent. *First*, on information and belief, Defendant regularly surveys the patent literature—and especially that of its competitors—for relevant patents and has encountered the '217 patent. *Second*, this complaint informs Defendant about the '217 patent. *Third*, Plaintiff virtually marked and continues to virtually mark the '217 patent at <https://www.deltafaucetcompany.com/patent>, pursuant to 35 U.S.C. § 287(a). Despite knowledge and notice of the '217 Patent, Kohler has continued to offer for sale and sell the Accused Products to customers in the United States, without the consent or authority of Delta Faucet. Notwithstanding this knowledge, Defendant has knowingly or with reckless disregard willfully infringed the '217 patent and has acted despite an objectively high likelihood that its actions constituted infringement of Plaintiff's valid patent rights.

64. On information and belief, Kohler actively induces others to infringe the '217 Patent by selling the Accused Products to others with materials and instructions for operation with the specific intent and knowledge that the materials direct, teach or assist others to infringe the '217 Patent. For example, on information and belief, Kohler induced infringement of the '217 Patent by encouraging and facilitating infringing use of the Accused Products by users of

the Accused Products in the United States, by taking active steps to encourage and facilitate others' direct infringement of the '217 Patent with knowledge of that infringement. The affirmative acts include, without limitation, advertising, marketing, promoting, offering for sale and/or selling the Accused Products as shown at www.us.kohler.com. Kohler further provides instructions, user manuals, advertising and/or marketing materials on Kohler's website that facilitate, direct, or encourage the direct infringement in the United States as shown at www.us.kohler.com.

65. Defendant's infringing acts have caused, and are continuing to cause, damage and irreparable injury to Plaintiff, and Plaintiff will continue to suffer damage and irreparable injury unless and until Defendant's infringing acts are enjoined by this Court.

66. Plaintiff is entitled to injunctive relief and damages in accordance with 35 U.S.C. §§ 271, 281, 283, and 284.

67. Defendant's infringement of the '217 patent has been and continues to be willful and deliberate, justifying a trebling of damages under 35 U.S.C. § 284.

68. Defendant's infringement of the '217 patent is exceptional and entitles Plaintiff to attorneys' fees and costs under 35 U.S.C. § 285.

69. Therefore, Plaintiff seeks a judgment that Defendant directly infringes and/or induces infringement of at least claims 1, 2, 3, 4, 6, 7, 8, 12, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28 and 30 of the '217 Patent.

PRAYER FOR RELIEF

Wherefore, Plaintiff respectfully requests that the Court enter judgment in its favor and against Defendant on the patent infringement claims set forth above and respectfully requests that this Court:

(a) enter judgment that, under 35 U.S.C. §§ 271(a) and (b), Defendant has infringed at least one claim of the '079 patent, the '702 patent, and the '217 patent;

(b) enjoining in accordance with 35 U.S.C. § 283, Defendant, and all affiliates, employees, agents, officers, directors, attorneys, successors, and assigns and all those acting on behalf of or in active concert or participation with Defendant, preliminarily and permanently from infringing the '079 patent, the '702 patent, and the '217 patent;

(c) award Plaintiff all available and legally permissible damages and relief sufficient to compensate Plaintiff for Defendant's infringement of the '079 patent, '702 patent, and the '217 patent, including to the full extent permitted by 35 U.S.C. § 284, together with interest, in an amount to be determined at trial;

(d) award Plaintiff treble damages under 35 U.S.C. § 284 as a result of Defendant's willful and deliberate infringement of the '079 patent, '702 patent, and the '217 patent;

(e) declare this to be an exception case under 35 U.S.C. § 285 and award Plaintiff costs, expenses and disbursements in this action, including reasonable attorneys' fees; and

(f) award Plaintiff such other and further relief that this Court deems just and proper.

Date: October 30, 2020

s/Michael A. Swift
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*Attorneys for Plaintiff, Delta Faucet
Company*

JURY DEMAND

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiff hereby demands a trial by jury on all issues triable of right by a jury.

Date: October 30, 2020

s/Michael A. Swift
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