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Attorneys for Plaintiff
WearForce, Pty Ltd

**IN THE UNITED STATES DISTRICT COURT
 FOR THE DISTRICT OF NEVADA**

WEARFORCE, PTY LTD,)	
)	CASE NO. 3:21-cv-284
<i>Plaintiff,</i>)	
)	COMPLAINT FOR PATENT
v.)	INFRINGEMENT
)	
TALON ENGINEERING, SDN BHD,)	
)	JURY TRIAL DEMANDED
<i>Defendant.</i>)	
)	

Plaintiff, WEARFORCE PTY LTD (“Plaintiff” or “WearForce”), by and through its attorneys HARNESS, DICKEY & PIERCE, PLC and DICKINSON WRIGHT PLLC, states as follows for its Complaint against TALON ENGINEERING, SDN BHD (“Defendant” or “Talon”):

NATURE OF THE ACTION

1. This is an action for patent infringement under 35 U.S.C. §§ 271, 283, 284, and 285. Talon, has made, used, offered for sale, sold, and/or imported replaceable shroud assemblies as part of its LOCKJAW product line (the “Accused Products”) that mount on the

wear edge of earthmoving machinery and that infringe Plaintiff's rights in U.S. Patent No. RE47,477 (the "RE'477 Patent") entitled "SHROUD ASSEMBLY".

THE PARTIES

2. WearForce is a proprietary limited company organized under the laws of Australia and has a principal place of business at 533 Abernethy Road, Kewdale, Western Australia, 6105.

3. WearForce has a branch office for North America located at 359 New Street, Quakertown, Pennsylvania 18951.

4. Talon is a private limited company organized under the laws of Malaysia and has a principal place of business at 10A, Jln Pengkalan Putra 1, Pusat Perniagaan Pengkalan Putra, Jln Pasir Puteh, 31650 Ipoh Perak, Malaysia.

5. On information and belief, Talon markets, imports, and sells its products, including the Accused Products, in the United States through a distributor named Komatsu Equipment Company, which has a principle place of business at 4460 Pioneer Way, Elko, Nevada 89801.

JURISDICTION AND VENUE

6. This Court has subject matter jurisdiction over this matter pursuant to 28 U.S.C. §§ 1331 and 1338(a).

7. This Court has personal jurisdiction over Defendant because Defendant has transacted business in Nevada by among other things, their acts of importing, marketing, distributing, providing, offering for sale, and/or selling the Accused Products in the United States that infringe the RE'477 Patent. Defendant has in the past and continues to cause harm to WearForce in Nevada and other parts of the United States as a result of acts they have and continue to commit both inside and outside of the state of Nevada. *See* Fed. R. Civ. P. 4(h).

8. Defendant offers for sale, sells, distributes, makes, and/or imports products into the United States and this judicial district. This includes importation, distribution, sale, offer of sale, installation, and use of the Accused Products in the United States and this judicial district.

1 9. For example, Defendant knowingly sells the Accused Products to Komatsu
2 Equipment Company in Elko, Nevada for importation and sale throughout the United States.

3 10. As another example, Defendant offers to sell, sells, imports, distributes, and/or
4 ships the Accused Products to distributor(s) and/or customers located in the United States and
5 this judicial district as components to be installed on the wear edge of earthmoving machinery.
6 Defendant facilitates the installation of those components on the wear edge of earthmoving
7 machinery by providing assembly instructions, manuals, videos, and templates (i.e., guide jigs)
8 to its U.S. distributor(s) and U.S. customers.

9 11. As a result, Defendant has directly and/or through a coordinated distribution
10 network regularly placed the Accused Product in the stream of commerce with the knowledge
11 and/or understanding that such products will be sold and used in this judicial district. Defendant
12 is subject to the general jurisdiction of this Court because it has regular and systemic contacts
13 with this forum such that the exercise of jurisdiction over it will not offend the traditional notions
14 of fair play and substantial justice.

15 12. Further, this Court has personal jurisdiction over Defendant because Defendant
16 has established minimum contacts with the forum by doing business through its Elko, Nevada
17 based distributor, such that the exercise of personal jurisdiction over Defendant will not offend
18 the traditional notions of fair play and substantial justice.

19 13. In addition, this Court has personal jurisdiction over Defendant because
20 Defendant has knowingly and actively engaged in acts that have infringed and will infringe
21 and/or contribute, induce, aid, and/or abet the direct infringement of the RE'477 Patent in this
22 judicial district. It is therefore reasonable and fair for this Court to exercise personal jurisdiction
23 over the Defendant in this case.

24 14. Venue over Defendant is proper in this judicial district under 28 U.S.C. §§
25 1391(c), 1391(d), and 1400(b) because Defendant has committed acts of infringement in this
26 judicial district and does business in this judicial district.

27 15. For instance, venue is proper because of the "long-established rule that suits

1 against aliens are wholly outside the operation of all the federal venue laws, general and special."
 2 *In re HTC Corp.*, 889 F.3d 1349, 1354 (Fed. Cir. 2018). The “venue laws (as opposed to
 3 requirements of personal jurisdiction) do not restrict the location of suits against alien
 4 defendants.” *Id.* at 1357.

5 **FACTUAL BACKGROUND**

6 16. WearForce is an Australian company that first opened its doors in 2003. It now
 7 has two locations in Western Australia and a location in Pennsylvania, which serves all of North
 8 America.

9 17. WearForce is an engineering and manufacturing company that primarily serves
 10 customers in the underground mining, surface mining, mobile mining, and earthmoving
 11 machinery industries. WearForce specializes in shrouds, bucket teeth, and wearplates that are
 12 designed to be installed on a Ground Engaging Tool (GET), such as an excavator bucket, to
 13 provide improved performance, abrasion (i.e., wear) resistance, durability, and service life.

14 18. WearForce is an innovative company and has obtained a number of patents for its
 15 products.

16 19. On July 2, 2019, the United States Patent and Trademark Office (the “Patent
 17 Office”) issued the RE‘477 Patent as a reissue of U.S. Patent No. 8,776,408. The original
 18 application for the RE‘477 Patent was filed in the United States on August 25, 2008 and claims
 19 priority to Australia Patent Application No. 2007/904570, which was filed on August 23, 2007.
 20 A true and correct copy of the RE‘477 Patent is attached as Exhibit A.

21 20. By way of assignment from the inventor, Allen Vaughan, and Casteck Solutions
 22 Pty Ltd of South Fremantle, Western Australia and Daxit Pty Ltd of Byford, Western Australia,
 23 WearForce became the sole owner of the RE‘477 Patent.

24 21. The RE‘477 Patent is generally directed to a protective shroud assembly for use
 25 on a wear edge of earthmoving machinery, where the shroud assembly comprises a locking
 26 means, a portion of which is rotatably received in the shroud such that the shroud can be easily
 27 secured to and removed from the wear edge. *See* RE‘477 Patent attached as Exhibit A, Abstract.

22. Defendant has and continues to make, use, sell, offer for sale, import, and/or distribute the Accused Products in the United States. For example, Defendant advertises the Accused Products on its website at www.talonet.com. Printouts from the Defendant's website dated January 12, 2021 are attached hereto as Exhibit B.

23. Plaintiff sells shroud assemblies under its "FASTLOCK SHARP SERIES" tradename ("Plaintiff's Patented Products"), which practice the claimed invention of the RE'477 Patent. A brochure advertising Plaintiff's Patented Products is attached as Exhibit C.

24. Both the Accused Products and Plaintiff's Patented Products are used in the underground mining, surface mining, mobile mining, and earthmoving machinery industries.

25. The Accused Products and Plaintiff's Patented Products are protective shroud assemblies for use on a wear edge of earthmoving machinery, such as Ground Engaging Tools (GET), where the wear edge has an attachment mechanism in the form of a boss fixed relative to the wear edge.

26. Both the Accused Products and Plaintiff's Patented Products include a shroud comprised of a leg portion that extends rearwardly from a first end of the shroud and that incorporates a channel.

27. In both the Accused Products and Plaintiff's Patented Products, the shroud has a second end with a wear region, which is adapted to engage the earth.

28. In both the Accused Products and Plaintiff's Patented Products, the shroud includes an aperture that extends through the leg portion from an upper surface of the leg portion through to the channel.

29. In both the Accused Products and Plaintiff's Patented Products the aperture includes an axis that is substantially perpendicular to the leg portion of the shroud.

30. Both the Accused Products and Plaintiff's Patented Products also include a locking mechanism for locking the shroud relative to the attachment mechanism, where the locking mechanism is adapted to be housed in the aperture and is rotatable about an axis which is transverse to a longitudinal extent of the leg portion between locked and unlocked positions. In

the locked position, the locking device co-operates with the attachment mechanism to lock the shroud relative to the wear edge. In the unlocked position, the shroud can be placed on or removed from the wear edge.

31. The Accused Products and Plaintiff's Patented Products compete in the same niche marketplace for Ground Engaging Tool (GET) shrouds.

32. When Defendant began operations in 2010, it was called TALON GET and was located in Perth, Western Australia, which is where Plaintiff's headquarters is located. In 2013, Defendant relocated to Ipoh Malaysia and changed its name to TALON Engineering. See the "About Us" webpage attached in Exhibit B.

33. As shown in the screen shot below taken from Defendant's website (Exhibit B), Defendant lists Komatsu Equipment Company located in Elko, Nevada as its distributor for the United States and Canada:



1 34. Plaintiff put Defendant on notice of the RE'477 Patent and their allegations of
2 infringement by letter correspondence from Plaintiff's counsel. The first letter was dated August
3 27, 2019 and was sent to Talon's distributor for North America, Komatsu Equipment Company,
4 located at 4460 Pioneer Way, Elko, Nevada 89801. Talon was cc'd. A true and correct copy of
5 this letter is attached hereto as Exhibit D.

6 35. Defendant responded to Plaintiff's August 27, 2019 correspondence in a letter
7 from Defendant's counsel dated September 10, 2019, a copy of which is attached hereto as
8 Exhibit E.

9 36. In its September 10, 2019 letter (Exhibit E), Defendant raised a non-infringement
10 defense, but did not raise any invalidity defenses.

11 37. Plaintiff refuted Defendant's assertions of non-infringement in a letter from
12 Plaintiff's counsel dated January 29, 2020, a copy of which is attached hereto as Exhibit F.

13 38. In its January 29, 2020 letter, Defendant was put on notice that Plaintiff
14 considered its infringement to be willful, making Defendant liable for enhanced damages under
15 35 U.S.C. § 284.

16 39. Defendant responded to Plaintiff's January 29, 2020 correspondence in a letter
17 from Defendant's counsel dated February 11, 2020, a copy of which is attached hereto as Exhibit
18 G.

19 40. In its February 11, 2020 letter (Exhibit G), Defendant reiterated its non-
20 infringement defense, but again did not raise any invalidity defenses.

21 41. Plaintiff refuted Defendant's assertions of non-infringement once more in a letter
22 from Plaintiff's counsel dated June 29, 2020, a copy of which is attached hereto as Exhibit H.

23 42. Defendant never responded to Plaintiff's June 29, 2020 letter.

24 43. Defendant knew of the RE'477 Patent and Plaintiff's allegations of infringement
25 by at least as early as September 10, 2019.

26 44. Defendant is also put on notice of its infringement of the RE'477 Patent by way
27 of the filing and service of this Complaint.

COUNT I**Direct Infringement Under 35 U.S.C. § 271(A)**

45. The Plaintiff incorporates by reference each and every one of the preceding allegations as if set forth fully herein.

46. Defendant's Accused Products include all of the elements of one or more claims of the RE'477 Patent, including by way of example only (and not limiting with respect to the number or identity of claims of the RE'477 Patent that will be asserted in the case) independent claim 35, as set forth below and shown in the marked up photographs of the Accused Products attached as Exhibit I:

- a. The Accused Products are advertised, sold, and installed as a protective shroud assembly for use on a wear edge of earthmoving machinery, where the wear edge has an attachment mechanism in the form of a boss fixed relative to the wear edge;
- b. The shroud assembly of the Accused Products comprises a shroud adapted to be received with respect to the wear edge, where the shroud comprises a leg portion extending rearwardly from a first end of the shroud and which incorporates a channel;
- c. The shroud of the Accused Products has a wear region at a second end thereof, where the wear region is adapted to engage the earth as the wear edge moves through the earth;
- d. The shroud of the Accused Products has an aperture therein, where the aperture extends through the leg portion such that an axis of the aperture is substantially perpendicular thereto, and where the aperture extends from an upper surface of the leg portion through to the channel; and
- e. The shroud assembly of the Accused Products comprises a locking mechanism for locking the shroud relative to the attachment mechanism, where the locking mechanism is adapted to be housed in the aperture and

1 is rotatable about an axis which is transverse to a longitudinal extent of the
2 leg portion between a locked position wherein the locking device co-
3 operates with the attachment mechanism to lock the shroud relative to the
4 wear edge and an unlocked position wherein the shroud can be placed on
5 or removed from the wear edge.

6 47. To the extent that one or more of the elements of any asserted claim of the
7 RE'477 Patent is not literally present in the Accused Products, then such element is present in
8 the Accused Products under the doctrine of equivalents because the corresponding feature in the
9 Accused Products performs substantially the same function, in substantially the same way, to
10 obtain substantially the same result as the claimed element and because there would be
11 insubstantial differences between the claimed element and the corresponding feature in the
12 Accused Products.

13 48. Therefore, the Defendant has and continues to directly infringe one or more
14 claims of the RE'477 Patent under 35 U.S.C. § 271(a).

15 49. Defendant knew or should have known that making, using, selling, offering to
16 sell, importing, and/or distributing the Accused Products in the United States constituted (and
17 continues to constitute) infringement of the RE'477 Patent.

18 50. Defendant's continued infringement of the RE'477 Patent after having learned of
19 the RE'477 Patent and Plaintiff's infringement allegations demonstrates Defendant's reckless
20 disregard for Plaintiff's patent rights.

21 51. Therefore, the Defendant's direct infringement of the RE'477 Patent has been
22 willful.

23 COUNT II

24 Induced Infringement Under 35 U.S.C. §§ 271(b) and 271(f)(1)

25 52. The Plaintiff incorporates by reference each and every one of the preceding
26 allegations as if set forth fully herein.

1 53. Defendant's sale and shipment of components of its LOCKJAW shroud
2 assemblies to U.S. distributors and to customers who subsequently re-sell and/or install such
3 components on a wear edge of earthmoving machinery, such as Ground Engaging Tools (GET),
4 induces third parties, such as its U.S. distributors and customers, to sell, offer for sale, install,
5 and use the components of its LOCKJAW shroud assemblies in a manner that directly infringes
6 one or more claims of the RE'477 Patent.

7 **Direct Infringement by Third-Party**

8 54. On information and belief, the Defendant has sold and/or shipped components of
9 its LOCKJAW shroud assemblies to U.S. distributors, such as Komatsu Equipment Company,
10 who then sell and/or offer for sale LOCKJAW shroud assemblies to customers in the United
11 States.

12 55. On information and belief, the Defendant's U.S. customers, such as American
13 Mining & Tunneling, LLC and Interwest Supply Company, Inc., install and use components of
14 Defendant's LOCKJAW shroud assemblies on the wear edge of earthmoving machinery, such as
15 Ground Engaging Tools (GET).

16 56. For example, the photograph included below (attached as Exhibit J) was taken of
17 an installation board that was at American Mining & Tunneling, LLC in Elko, Nevada that
18 shows how to install Defendant's LOCKJAW shroud assemblies on the wear edge of
19 earthmoving machinery:

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D²⁸W
ICKINSON WRIGHT
ATTORNEYS AT LAW



58. Therefore, the Defendant's U.S. customers via its U.S. distributor(s), including at least American Mining & Tunneling, LLC and Interwest Supply Company, Inc., directly infringe at least (and without limitation) independent claim 35 (among other dependent claims) of the RE'477 Patent.

Defendant's Actions To Induce Direct Infringement By Third Parties

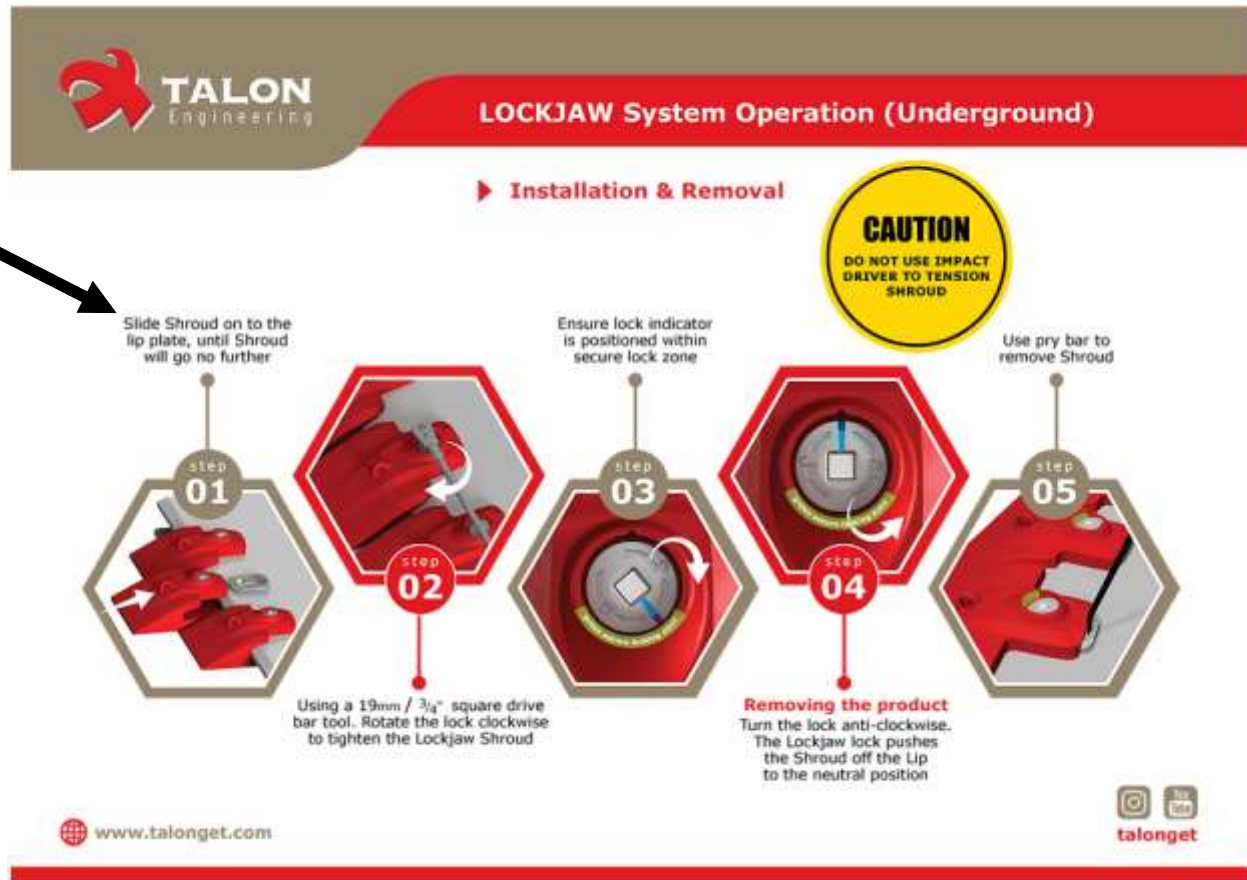
59. Defendant markets, promotes, and designed its LOCKJAW shroud assemblies specifically for installation and use on the wear edge of earthmoving machinery.

60. For example, as shown in the screen shot below, which was taken from the Defendant's website (<https://www.talonjet.com/lockjaw-system-operation>, Exhibit B), Defendant instructs its customers to "Slide Shroud on to the lip plate, until Shroud will go no further," where the lip plate is the wear edge of a piece of underground earthmoving machinery:

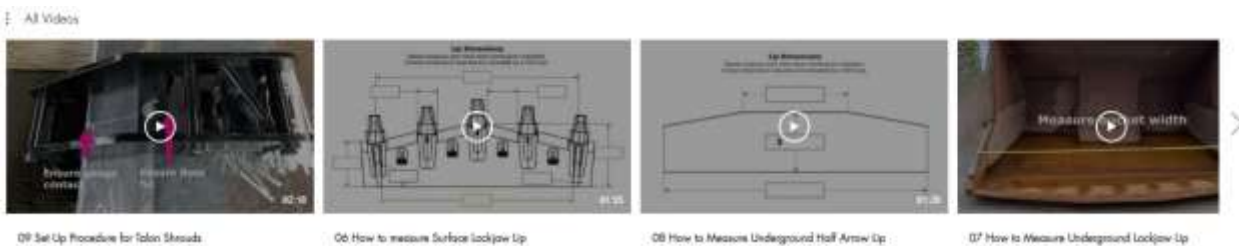
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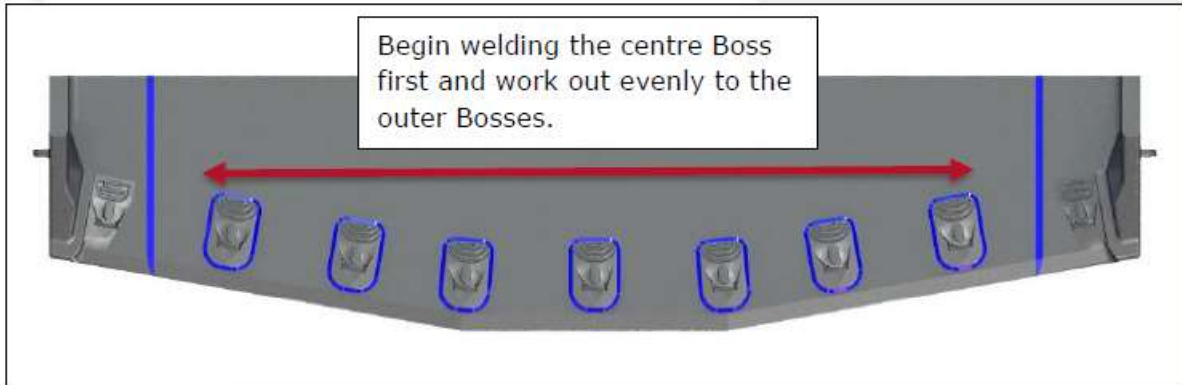
61. As shown in the screen shot below, Defendant's website (Exhibit B) also includes links to several videos that instruct customers to install Defendant's LOCKJAW shroud assemblies on the wear edge of earthmoving machinery:



62. The Defendant also has published a number of detailed installation manuals that instruct customers how to install and use Defendant's LOCKJAW shroud assemblies on the wear edge of earthmoving machinery.

63. For example, in an installation manual entitled "Product Welding Procedure – LOCKJAW Underground GET Detailed" dated October 13, 2017 (Doc. No. WP0005, Ver. No.

3, attached as Exhibit L), Defendant instructs its customers to weld bosses to the lip plate of underground mining equipment at the locations shown below in order to provide mounting locations for its LOCKJAW shroud assemblies:

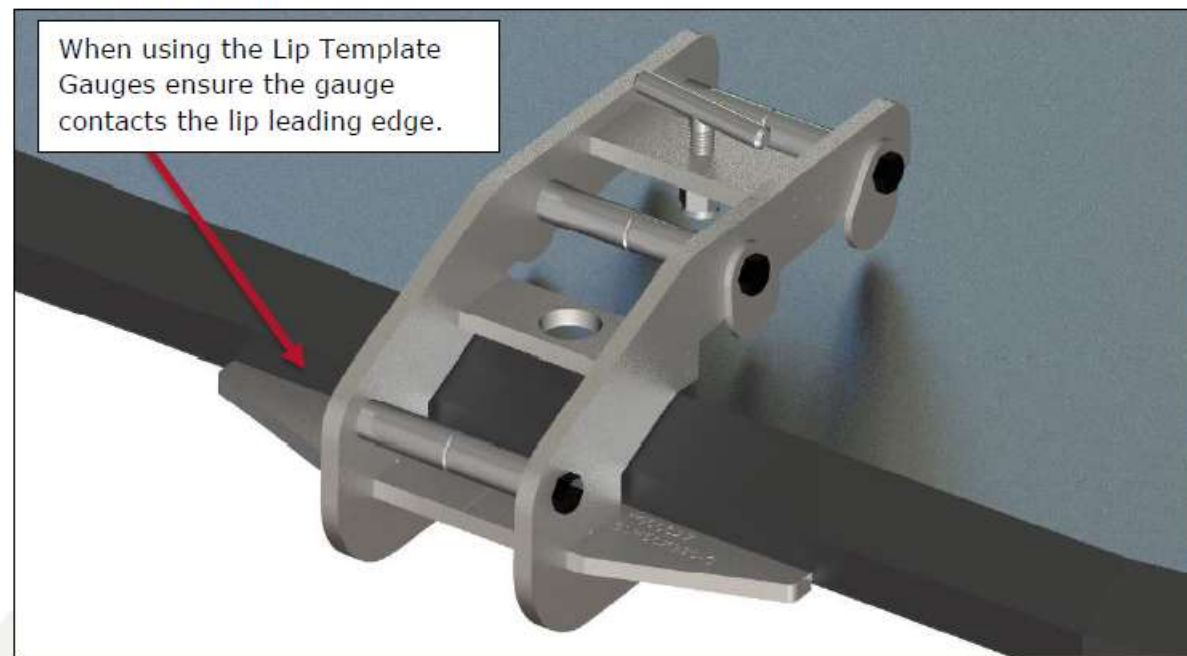


64. This instruction manual (Exhibit L) also states that “[b]oss positioning gauges [shown below] are available for purchase from your local Talon dealer upon request. The Setup Gauge enables easy and accurate positioning of the Talon Boss on the lip plate.”:

SECTION 3 – TALON LOCKJAW BOSS WELDING PROCESS

WELDING SEQUENCE

Mark out on the lip plate the required locations of the Talon Lockjaw Bosses as per your Lip Assembly Drawing. Use the Talon Lip Template Gauges to help set the gap sizes between the shrouds.



**Defendant's Knowledge That Customer Installation of its LOCKJAW
Shroud Assemblies Constitutes Direct Infringement of The RE'477 Patent**

65. In view of the facts alleged above, the Defendant has known of the RE'477 Patent since prior to the filing of this litigation.

66. In view of the facts alleged above, the Defendant has been willfully blind to the existence of the Plaintiff's rights in the RE'477 Patent.

67. The Defendant has known, or been willfully blind to the fact, that its actions have resulted and continue to result in direct infringement of the RE'477 Patent by third-parties, including for example its U.S. customers via its U.S. distributor(s), including for example, American Mining & Tunneling, LLC and Interwest Supply Company, Inc..

68. Since knowing of the existence of the RE'477 Patent, and further since receiving direct notice of its infringement from the Plaintiff, the Defendant has not taken any actions to re-design its LOCKJAW shroud assemblies to avoid infringement of the RE'477 Patent.

69. Since knowing of the RE'477 Patent, and further since receiving direct notice of its infringement from the Plaintiff, the Defendant has not taken any actions to refrain from inducing direct infringement of the RE'477 Patent by its U.S. customers via its U.S. distributor(s), including at least American Mining & Tunneling, LLC and Interwest Supply Company, Inc..

70. The Defendant continues to promote, market, and sell its LOCKJAW shroud assemblies and continues to induce third-parties to install and use its LOCKJAW shroud assemblies on the wear edge of earthmoving machinery, as evidenced by Defendant's website (Exhibit B) and installation manuals (Exhibit L).

71. Therefore, the Defendant has and continues to induce infringement of one or more claims of the RE'477 Patent under 35 U.S.C. §§271(b) and 271(f)(1).

72. There was and is an objectively high likelihood that the Defendant's encouragement of customers to install its LOCKJAW shroud assemblies on the wear edge of earthmoving machinery in the United States induced (and continues to induce) direct infringement of the RE'477 Patent by its customers.

73. The objectively high likelihood of inducing infringement of the RE'477 Patent was known by the Defendant or was so obvious that it should have been known to the Defendant.

74. Therefore, the Defendant's inducement of direct infringement of the RE'477 Patent by its customers has been willful.

COUNT III

Contributory Infringement Under 35 U.S.C. §§271(c) and 271(f)(2)

75. The Plaintiff incorporates by reference each and every one of the preceding allegations as if set forth fully herein.

76. The Defendant sells components of its LOCKJAW shroud assemblies to distributors and customers who re-sell and/or subsequently install said components on the wear edge of earthmoving machinery in the United States and therefore contributes to the direct infringement of one or more claims of the RE'477 Patent by third parties, such as its distributors and customers located in the United States.

Direct Infringement by Third-Party

77. The Defendant sold and/or shipped components of its LOCKJAW shroud assemblies to its distributors and customers located in the United States, including, for example, Komatsu Equipment Company, American Mining & Tunneling, LLC, and Interwest Supply Company, Inc..

78. On information and belief, the Defendant has sold and/or shipped components of its LOCKJAW shroud assemblies to U.S. distributors, such as Komatsu Equipment Company, who then sell and/or offer for sale LOCKJAW shroud assemblies to customers in the United States.

79. On information and belief, the Defendant's U.S. customers, such as American Mining & Tunneling, LLC and Interwest Supply Company, Inc., install and use components of Defendant's LOCKJAW shroud assemblies on the wear edge of earthmoving machinery, such as Ground Engaging Tools (GET).

1 80. Therefore, the Defendant's U.S. customers via its U.S. distributor(s), including
 2 American Mining & Tunneling, LLC and Interwest Supply Company, Inc., for example, directly
 3 infringe at least (and without limitation) independent claim 35 of the RE'477 Patent.

4 **The Components of Defendant's LOCKJAW Shroud Assemblies**
 5 **Are Material Parts of the Claimed Invention**

6 81. The components of Defendant's LOCKJAW shroud assemblies are material parts
 7 of the claimed invention in the RE'477 Patent.

8 82. On information and belief, Defendant's LOCKJAW shroud assemblies include
 9 each of every element of independent Claim 35 of the RE'477 Patent, except for the wear edge
 10 of earthmoving machinery recited in the preamble and subsequently referenced in the body of the
 11 claim, which is a piece of third-party equipment onto which Defendant's LOCKJAW shroud
 12 assemblies are installed.

13 **The Components of Defendant's LOCKJAW Shroud Assemblies Are Especially Made**
 14 **and/or Adapted For Use On The Wear Edge Of Earthmoving Machinery**

15 83. The components of Defendant's LOCKJAW shroud assemblies are specifically
 16 made and adapted to be installed and used on the wear edge of earthmoving machinery, such as
 17 Ground Engaging Tools (GET).

18 84. For example, the screen shot from Defendant's website (Exhibit B) shown below,
 19 explains the Defendant's LOCKJAW shroud assemblies were "developed specifically for large
 20 LHD's [i.e., "load, haul, dump" front-end loaders] in high wear applications" (emphasis added):

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LOCKJAW

The safe Locking System developed specifically for large LHD's in high wear applications

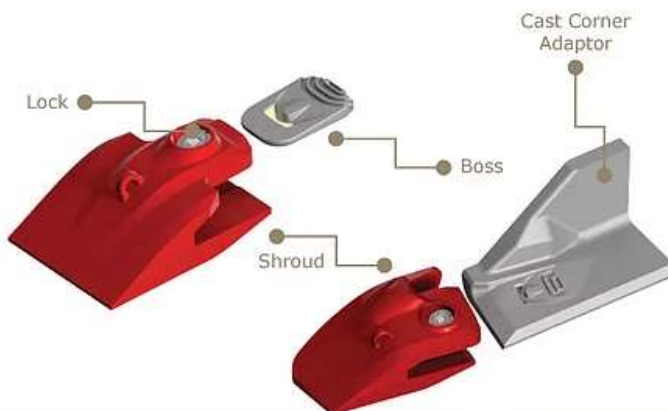
UNDERGROUND



Underground Shroud System

The Lockjaw system is a safe and simple solution that actively draws and separates the Shroud from the lip eliminating the need for the use of hammers

Utilising a standard 19mm / 3/4" square drive socket, the GET is solidly secured in place by rotating the lock clockwise



85. The components of Defendant's LOCKJAW shroud assemblies, including without limitation, the boss, lock, and shroud illustrated and labeled above, are not staple items or commodities of commerce.

86. The components of Defendant's LOCKJAW shroud assemblies, including without limitation, the boss, lock, and shroud illustrated and labeled above, have no substantial

1 non-infringing uses.

2 87. The components of Defendant's LOCKJAW shroud assemblies, including
3 without limitation, the boss, lock, and shroud illustrated and labeled above, are not intended or
4 promoted to be installed on something other than the wear edge of earthmoving machinery.

5 **Defendant's Knowledge That Customer Installation Of Its LOCKJAW**
6 **Shroud Assemblies On The Wear Edge Of Earthmoving Machinery**
7 **Constitutes Direct Infringement of The RE'477 Patent**

8 88. In view of the facts alleged above, the Defendant has known of the RE'477 Patent
9 since prior to the filing of this litigation.

10 89. In view of the facts alleged above, the Defendant has been willfully blind to the
11 existence of the Plaintiff's rights in the RE'477 Patent.

12 90. The Defendant has known that, or has been willfully blind to the fact that,
13 components of its LOCKJAW shroud assemblies are especially made or especially adapted for
14 use in an infringement of the RE'477 Patent and that third-parties, including for example its U.S.
15 customers via its U.S. distributor(s), have and continue to install components of its LOCKJAW
16 shroud assemblies on the wear edge of earthmoving machinery, resulting in the direct
17 infringement of the RE'477 Patent.

18 91. The Defendant has known that, or has been willfully blind to the fact that, its
19 LOCKJAW shroud assemblies directly infringe the RE'477 Patent, including when they are
20 installed and used on the wear edge of earthmoving machinery.

21 92. Since knowing of the existence of the RE'477 Patent, and further since receiving
22 direct notice of its infringement from the Plaintiff, the Defendant has not taken any actions to re-
23 design its LOCKJAW shroud assemblies to avoid infringement of the RE'477 Patent.

24 93. Since knowing of the RE'477 Patent, and further since receiving direct notice of
25 its infringement from the Plaintiff, the Defendant continues to sell components of its LOCKJAW
26 shroud assemblies that are especially made and/or adapted to be installed and used on the wear
27 edge of earthmoving machinery, resulting in the direct infringement of the RE'477 Patent by
28 third-parties.

1 94. Therefore, the Defendant has and continues to contribute to the direct
2 infringement of one or more claims of the RE'477 Patent by third parties under 35 U.S.C.
3 §§271(c) and 271(f)(2).

4 95. There was and is an objectively high likelihood that the Defendant's sale of
5 components of its LOCKJAW shroud assemblies especially made and/or adapted to be installed
6 and used on the wear edge of earthmoving machinery in the United States contributed to (and
7 continues to contribute to) the direct infringement of the RE'477 Patent by its distributors and
8 customers in the United States.

9 96. The objectively high likelihood of contributing to the direct infringement of the
10 RE'477 Patent was known by the Defendant or was so obvious that it should have been known to
11 the Defendant.

12 97. Therefore, the Defendant's contribution to the direct infringement of the RE'477
13 Patent by its U.S. distributors and U.S. customers has been willful.

14 **PRAYER FOR RELIEF**

15 WHEREFORE, the Plaintiff prays for relief as follows:

16 A. For a judgment declaring that the Defendant has infringed the RE'477 Patent;

17 B. For a judgment awarding the Plaintiff compensatory damages as a result of the
18 Defendant's infringement of the RE'477 Patent, together with interest and costs, and in no event
19 less than a reasonable royalty;

20 C. For an equitable accounting to be ordered for determining the profits of and other
21 sums the Defendant has derived from the complained-of patent infringement, and for such an
22 amount to be paid over to the Plaintiff as an equitable remedy;

23 D. For a judgment declaring that the Defendant's infringement of the RE'477 Patent
24 has been willful and deliberate;

25 E. For a judgment awarding the Plaintiff treble damages and pre-judgment interest
26 under 35 U.S.C. § 284 as a result of the Defendant's willful and deliberate infringement of the
27 RE'477 Patent;

F. For a judgment declaring that this case is exceptional and awarding the Plaintiffs expenses, costs, and attorneys' fees in accordance with 35 U.S.C. §§ 284-285 and Rule 54(d) of the Federal Rules of Civil Procedure;

G. For a grant of a permanent injunction pursuant to 35 U.S.C. § 283, enjoining the Defendant from further acts of infringement;

H. For an order directing the Defendant, its agents, servants, employees, partners, attorneys, successors, and assigns, and all those acting in concert with it, to deliver to this Court or to the Plaintiff all infringing products for destruction, or show proof of said destruction; and

I. For such other and further relief as the Court deems just and proper.

DEMAND FOR A JURY TRIAL

The Plaintiff hereby demands a trial by jury in this action.

Dated: June 24, 2021

Respectfully submitted,

By: /s/ Steven A. Caloiaro

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Local Counsel for Plaintiff

And

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