

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

UNIRAC, INC, a New Mexico corporation,

Plaintiff,

vs.

IRONRIDGE, INC., a California corporation;
and ESDEC, INC., a Delaware corporation,

Defendants.

Case No. 1:21-CV-00616-SCY-KK

AMENDED COMPLAINT

DEMAND FOR JURY TRIAL

Plaintiff UNIRAC, INC. (“Unirac” or “Plaintiff”) amends its original Complaint (Doc. 1) against Defendants IRONRIDGE, INC. (“IronRidge”) and ESDEC, INC. (“Esdec”) (collectively, “Defendants”), on information and belief, and alleges as follows:

INTRODUCTION

1. This action concerns Defendants’ breach of a Settlement and Patent License Agreement Between Unirac, Inc. and IronRidge Inc., dated December 15, 2011 (the “2011 Agreement”), breach of the implied covenant of good faith and fair dealing, and use of Unirac’s patents without license or compensation. While IronRidge previously held a restricted license to some of Unirac’s patents under the 2011 Agreement, it breached that agreement, and now together with its related company Esdec, are infringing Unirac’s patents.

2. This lawsuit is brought by Unirac to: (1) compensate Unirac for Defendants’ breach of the 2011 Agreement and breach of the implied covenant of good faith and fair dealing; (2) end Defendants’ unauthorized, willful, and infringing manufacture, use, sale, offers to sell, and/or importation into the United States products and/or components that incorporate Unirac’s patented inventions without Unirac’s permission and without compensating Unirac; and (3) recover damages adequate to compensate Unirac for Defendants’ unlawful and infringing actions.

THE PARTIES

3. Unirac is a corporation organized and existing under the laws of the State of New Mexico, with a principal place of business at 1411 Broadway Boulevard NE, Albuquerque, NM 87102.

4. On information and belief, IronRidge is a California corporation with its principal place of business at 28357 Industrial Blvd., Hayward, CA 94545. On information and belief IronRidge is a subsidiary of Esdec.

5. On information and belief, Esdec is a Delaware corporation authorized to do business in California with its principal place of business at 2700 Mitchell Drive, Walnut Creek, CA 94598. On information and belief, Esdec also maintains, or maintained at one time, an office at 976 Brady Ave. Suite 100, Atlanta, GA 30318.

JURISDICTION AND VENUE

6. This civil action for patent infringement arises, *inter alia*, under the patent laws of the United States, 35 U.S.C. § 100 *et seq.*, including pursuant to 35 U.S.C. § 271. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a).

7. This Court has subject matter jurisdiction over the breach of contract and breach of the implied covenant of good faith and fair dealing causes of action pursuant to 28 U.S.C. §§ 1332 and 1367. The parties are citizens of different states and the matter in controversy exceeds \$75,000.

8. Pursuant to 28 U.S.C. § 1367(a), this Court has supplemental jurisdiction over the breach of contract and breach of the implied covenant of good faith and fair dealing claims as they are related to the same case or controversy as the patent infringement claims.

9. This Court has personal jurisdiction over IronRidge as it has expressly consented to the same under Section 15(i) of the 2011 Agreement.

10. This Court has personal jurisdiction over Esdec. Esdec acquired IronRidge and its assets and is the successor-in-interest to IronRidge and subject to the 2011 Agreement, including the consent to personal jurisdiction before this Court.

11. Venue is proper in this Court under Section 15(i) of the 2011 Agreement, wherein the parties consent to venue in this Court.

BACKGROUND REGARDING UNIRAC AND THE PATENTS-IN-SUIT

12. Unirac is a leader in the development of technology for roof attachments, roof flashings, and systems for mounting solar panels onto roofs and other surfaces. Unirac has a long history of cutting-edge advancements and innovation in solar panel mounting systems. For this development and innovation, Unirac has been awarded numerous patents by the United States Patent and Trademark Office.

13. The United States Patent and Trademark Office duly and legally issued U.S. Patent No. 7,434,362 (the “’362 Patent”), entitled “System for Removably and Adjustably Mounting Device on a Surface,” on October 14, 2008. Unirac owns all substantial right, title, and interest in and to the ’362 Patent, including the right to sue and recover damages for infringement thereof, including past infringement. A copy of the ’362 Patent is attached as Exhibit 1.

14. The United States Patent and Trademark Office duly and legally issued U.S. Patent No. 8,128,044 (the “’044 Patent”), entitled “System for Mounting a Photovoltaic Module to a Surface,” on March 6, 2012. Unirac owns all substantial right, title, and interest in the ’044 Patent, including the right to sue and recover damages for infringement thereof, including past infringement. A copy of the ’044 Patent is attached as Exhibit 2.

15. The ’362 the ’044 Patents are hereinafter referred to as the “Asserted Patents.”

BACKGROUND REGARDING DEFENDANTS AND THEIR UNLAWFUL CONDUCT

16. Defendants IronRidge and Esdec are closely related companies that compete with Unirac in the solar panel mounting industry. Defendants make, use, sell, offer to sell, and/or import

into the United States solar panel mounting systems. While Defendants presently operate as a single business entity controlled by Esdec, prior to 2020 IronRidge and Esdec were separate, unrelated companies.

IronRidge I Patent Litigation and the 2011 Agreement

17. On January 5, 2011, Unirac filed a patent infringement case against IronRidge in this Court, *Unirac, Inc. v. Ironridge, Inc. et al* 1-11-cv-00010 (DNM) (the “IronRidge I Patent Litigation”). In the IronRidge I Patent Litigation, Unirac asserted the ’362 Patent against IronRidge due to IronRidge making, using, selling, and offering to sell solar panel mounting systems without fairly compensating Unirac. The accused mounting systems included IronRidge’s XRS Standard Rail, XRL Light Rail, attachments, clamps, and similar products covered by the ’362 Patent.

18. On December 15, 2011, Unirac and IronRidge resolved the IronRidge I Patent Litigation, entering into the 2011 Agreement. A redacted version of the 2011 Agreement, already filed by Defendants in this action (*see* Dkt. No. 10-2), is attached as Exhibit 7.

19. The 2011 Agreement provided a limited license to certain patents under Section 4, including the ’362 Patent as a “Patent-in-Suit” and the ’044 Patent as a “Related Patent.” In particular, under Section 4 of the 2011 Agreement, Unirac granted “IronRidge a fully paid-up, worldwide, non-exclusive, license to the Licensed Patents” to “make, have made use, sell, offer for sale, and import any and all Licensed Products.”

20. But such license grant under the 2011 Agreement is not without condition. Specifically, the patent license is subject to cancellation and revocation under Section 8 if IronRidge is not in compliance with the 2011 Agreement: “To the extent that IronRidge is in compliance with this Agreement, the license granted in Section 4 is non-cancelable and irrevocable.”

21. Relevant provisions of the 2011 Agreement with which IronRidge was required to comply included, *inter alia*, (1) a validity and non-challenge clause (Section 7), and (2) a clause

addressing limitations to the license, including in the event of an assignment or corporate reorganization (Section 11).

22. Section 7 of the 2011 Agreement—titled “Validity and Non-Contestation of Unirac’s Patents”—sets forth IronRidge’s ongoing obligations to recognize the validity of the ‘362 Patent and not to challenge, or assist any party or entity in any way in challenging the validity or enforceability of certain patents, including the Asserted Patents:

IronRidge agrees that it will not encourage, assist, aid or cooperate with any other third party, in challenging the validity or enforceability of the Licensed Patents in any administrative or judicial proceeding, after the Effective Date of this Agreement. For avoidance of doubt, the term “encourage, assist, aid or cooperate” includes, without limitation, providing any third party with analysis of any prior art to the Licensed Patents.

23. Section 11 of the 2011 Agreement relates to successors-in-interest and corporate reorganization. It provides, *inter alia*, that in the event of an assignment or transfer of the patent license due to a successor-in-interest or a corporate reorganization, the license shall only cover a specific set of existing IronRidge products and will not cover products of another party or successor entity:

IronRidge may assign or transfer the patent license in Section 4 above: (1) to a Successor-in-Interest, or (2) in the event of a corporate reorganization; provided, however, that such assigned or transferred patent license shall only cover the Licensed Products acquired. For the avoidance of doubt, the assigned or transferred patent license shall not cover any other products of the Successor-in-Interest or any third-party entity involved in a corporate reorganization.

24. The 2011 Agreement defines a “Successor-in-Interest” as “any individual, trust, corporation, partnership, joint venture, limited liability company, association, unincorporated organization or other legal entity that acquires ownership of all or substantially all of either: (i) the assets of a Party [i.e., IronRidge or Unirac] or (ii) the outstanding voting shares or securities of a Party.”

Esdec’s Acquisition of, and Domination and Control Over, IronRidge and Other Companies

25. Starting in late 2018, Esdec acquired several companies in the business of making and selling solar panel mounting systems and roof attachments. More specifically, in November 2018, Esdec acquired EcoFasten Solar, LLC (“EcoFasten”). <https://www.prnewswire.com/news-releases/esdec-acquires-panelclaw-301168790.html>¹. In September 2019, Esdec acquired IronRidge and Wencon Development, Inc. d/b/a QuickMount PV (“QuickMount”). <https://www.prnewswire.com/news-releases/esdec-acquires-ironridge-and-quick-mount-pv-300914836.html>. EcoFasten, IronRidge, and QuickMount are all competitors of Unirac. Esdec, IronRidge, EcoFasten, and QuickMount are collectively referred to as the “Esdec Entities.”

26. Following Esdec’s acquisitions of EcoFasten, IronRidge, and QuickMount, there is substantial overlap in the corporate structure of the Esdec Entities and the Esdec Entities have a community of interest in the performance of a common purpose—selling products in the solar mounting and railing industry and leveraging the collective intellectual property (IP) of the Esdec Entities in the market.

27. Esdec has held out to the public that the products and IP of IronRidge, EcoFasten, and QuickMount are all controlled by Esdec and shared among these entities. The Esdec Entities also share executives, confirming that IronRidge, EcoFasten, and QuickMount are subsidiaries and agents of Esdec, that each is directed and controlled by Esdec, and that the Esdec Entities are all part of the same joint or common enterprise.

28. For example, a webpage dated September 9, 2019 on Defendant IronRidge’s website (<https://www.ironridge.com/company/company-esdecironridge/>) states that the members of the “Esdec Group”— Esdec, EcoFasten, QuickMount and IronRidge—are “able to leverage a shared IP portfolio that is the broadest in the industry. IronRidge already had a number of exciting

¹ All cited websites last visited August 24, 2021, unless stated otherwise.

products coming down the pipeline, and now [following the Esdec acquisition allowing leverage of a shared IP portfolio and resources], we have the resources to accelerate this work.”

29. As another example, prior to Esdec’s acquisition of QuickMount, Marshall Green was the Vice President of Strategic Initiatives at QuickMount. In January 2020, following Esdec’s acquisition of QuickMount, Mr. Green became the Vice President of Legal and Intellectual Property at Esdec. In that role he “manage[d] the intellectual Property and legal affairs of the Esdec US entities, IronRidge, QuickMount, EcoFasten and Esdec US.” <https://www.linkedin.com/in/marshall-green-7b808a38/>. In June 2021, Mr. Green became the Global Vice President of Intellectual Property at Esdec Solar Group where he “coordinates all IP related activities for the ESDEC Solar Group worldwide” and is “responsible for the strategic offensive and defensive patent prosecution and enforcement, the competitive landscape monitoring, international strategic determination and product development support.” *Id.*

30. Esdec Solar Group’s Chief Executive Officer is Constantijn “Stijn” Vos. Mr. Vos’s address is listed as 976 Brady Ave. Suite 100, Atlanta, GA 30318, where Esdec maintains, or once maintained, a regular place of business. <https://www.linkedin.com/company/esdecusa/about/>. Mr. Vos is listed with the California Secretary of State as a Director of IronRidge, and as the Chief Executive Officer and a Director of QuickMount. Mr. Vos was also CEO of EcoFasten from November 2018 to September 2019.

31. Esdec Solar Group’s Chief Financial Officer is Boudewijn Nijdam. Mr. Nijdam’s address is also listed as 976 Brady Ave. Suite 100, Atlanta, GA 30318. Mr. Nijdam is listed with the California Secretary of State as the Secretary and a Director of IronRidge, and as the Secretary and a Director of QuickMount.

32. Another Esdec employee, Marc Naberhuis, also has an address of 976 Brady Ave. Suite 100, Atlanta, GA 30318. Mr. Naberhuis is listed with the California Secretary of State as a Director of IronRidge and as a Director of QuickMount.

33. According to an August 30, 2019 Agreement and Plan of Merger between Esdec and IronRidge, Esdec owns 100% of the shares of IronRidge. A copy of the August 30, 2019 Agreement and Plan of Merger is public record as an exhibit to a complaint filed in *Kaplan v. Esdec, Inc.*, No. RF20077090, (Cal. Sup. Ct. Alameda Cnty., filed October 9, 2020).

34. Upon information and belief, Esdec wholly and completely controls IronRidge, QuickMount, and EcoFasten through their overlapping agents, directors, officers, and employees, including at least, Messrs. Green, Vos, Nijdam, and Naberhuis.

35. Upon information and belief, Esdec also controls and directs all of IronRidge's intellectual property related actions and decisions through overlapping agents, directors, officers, and employees, including at least, Messrs. Green, Vos, Nijdam, and Naberhuis.

36. The agents, directors, and officers of IronRidge—including Messrs. Green, Vos, Nijdam, and Naberhuis—do not act independently in the interest of IronRidge, but instead take direction from Esdec and are also the agents, directors, and officers of Esdec as noted above.

37. For example, based on Mr. Green's LinkedIn page, Esdec controls, directs, and coordinates all of IronRidge's "IP related activities" and decisions through Mr. Green as IronRidge is a member of the "ESDEC Solar Group." See <https://www.linkedin.com/in/marshall-green-7b808a38/>. Likewise, Esdec controls, directs, and coordinates all of QuickMount and EcoFasten's "IP related activities" and decisions through at least Mr. Green since QuickMount and EcoFasten are also members of the ESDEC Solar Group. *Id.* Moreover, Esdec managed, through Mr. Green, the intellectual property and legal affairs of IronRidge, QuickMount and EcoFasten. *Id.* Mr. Green, therefore, acts as a collective agent for Esdec, IronRidge, QuickMount and EcoFasten and for the benefit of Esdec and as part of the joint and common Esdec enterprise.

38. As another example, after Esdec acquired EcoFasten, Mr. Nijdam—the CFO of Esdec Solar Group, and currently listed as Secretary and a Director of IronRidge and as the Secretary and a Director of QuickMount—acted as a representative and agent on behalf of

EcoFasten in settlement discussions with Unirac to resolve some of the legal disputes described in this amended complaint. Mr. Nijdam did so through a months-long email exchange with Unirac CEO Peter Lorenz. In a July 19, 2019 email, Mr. Lorenz raised the possibility of Unirac obtaining a license or covenant not to sue for “Esdec’s entire IP portfolio.” Later, in a September 10, 2019 email, after giving Unirac CEO Peter Lorenz a “heads up” about Esdec’s announcement that that it had acquired IronRidge and QuickMount, Mr. Nijdam suggested that any resolution of legal disputes include “identifying any IP infringements between the parties,” thus implying that he was also acting as an agent on behalf of IronRidge and QuickMount. Mr. Nijdam, therefore, appeared to act as a collective agent for Esdec, IronRidge, QuickMount and EcoFasten for the benefit of Esdec in its legal disputes with Unirac.

39. As another example, Defendant Esdec posts job openings—to join Esdec—in locations associated with QuickMount, IronRidge, and EcoFasten. For example, on its LinkedIn “jobs” page (<https://www.linkedin.com/company/esdecusa/jobs/>) Esdec has listed openings in Hayward, CA (IronRidge’s location), Walnut Creek, CA (QuickMount’s location), and Phoenix, AZ (EcoFasten’s location). On information and belief, Esdec has no operations in these locations outside of operations for IronRidge, QuickMount, or EcoFasten.

40. Upon information and belief, the financials of Esdec and IronRidge are intertwined, at least with respect to the payment of overlapping agents, officers, directors, and employees.

41. Upon information and belief, employees of Esdec direct and control the day-to-day operations of IronRidge, QuickMount, and/or EcoFasten and each of IronRidge, QuickMount, and EcoFasten are dominated by Esdec and serve to Esdec’s benefit. This is especially true with respect to intellectual property and legal matters, which Esdec employee Mr. Green manages for each of IronRidge, QuickMount, and EcoFasten as an employee of, and to the benefit of, Esdec. Upon information, belief, and Unirac’s past interactions with Esdec, Mr. Nijdam also directs and controls

legal matters for each of IronRidge, QuickMount, and EcoFasten as an employee/officer of, and to the benefit of, Esdec.

42. The activities and business of Esdec and IronRidge are interrelated and controlled by Esdec through overlapping agents, directors, officers, and employees. At minimum, Esdec and IronRidge's intellectual property and legal activities and businesses are interrelated and controlled by Esdec through its employee Mr. Green and officer Mr. Nijdam.

43. The Esdec Entities operate as a common or joint enterprise. As a result, Esdec, QuickMount, and EcoFasten are liable for the contractual obligations of IronRidge, including IronRidge's obligations under the 2011 Settlement Agreement.

44. At minimum, Esdec asserts such extensive dominion or control over IronRidge—especially in intellectual property decisions as they are made by Esdec employee Mr. Green on behalf of IronRidge—that IronRidge functions for the purposes of Esdec and not in a legitimate fashion to serve its own interests. As a result, IronRidge has acted as the alter ego of Esdec since Esdec acquired IronRidge in 2019, and Esdec is liable for the contractual obligations of IronRidge, including IronRidge's obligations under the 2011 Settlement Agreement.

Litigation Between the Esdec Entities and Unirac

45. Unirac and the Esdec Entities are currently involved in several pending litigations dating back to January 2017. The facts and circumstances related to a number of those actions are relevant to the present Complaint.

46. On November 14, 2019, EcoFasten filed a Complaint against Unirac in Arizona² for breach of contract (the "Arizona Litigation"); and requesting, among other things, that the court declare certain patents owned by Unirac to be the property of EcoFasten.

² The Arizona Litigation was originally filed in Arizona State Court, but was later removed to federal court.

47. On January 20, 2021 Unirac filed a lawsuit against EcoFasten and Esdec in the United States District Court for the District of Delaware (“Delaware Litigation”), alleging infringement of the Asserted Patents by EcoFasten’s and Esdec’s manufacturing, marketing, selling, and offering for sale the “ClickFit” family of products.

48. On January 20, 2021, Unirac filed a lawsuit against QuickMount and Esdec in the United States District Court for the Northern District of California (“California Litigation”), asserting infringement of the Asserted Patents by QuickMount and Esdec’s manufacturing, marketing, selling, and offering for sale the “QRail” family of products.

IronRidge’s Involvement In the California and Delaware Litigations, and Breach of the 2011 Agreement

49. On April 16, 2021, counsel for Esdec, QuickMount, and EcoFasten in the California and Delaware Litigations (Brian A. Biggs of DLA Piper LLP) sent a letter to Unirac’s counsel (Andrew Strickland of Lee & Hayes P.C. and Philip Woo of Duane Morris LLP) alleging a number of defenses. These alleged defenses indicate that Esdec and IronRidge have cooperated with the other Esdec Entities for the benefit of Esdec, and as a single enterprise, in defense of the litigations and in breach of the 2011 Agreement.

50. In particular, the April 2021 letter asserted that sales of the QRail products accused in the California Litigation are covered by the patent license of the 2011 Agreement because IronRidge, not QuickMount, sells the accused QRail products. The implication of the letter is that QuickMount received no revenue or accounted for no sales of QRail products to IronRidge after the corporate reorganization of the Esdec entities.

51. However, the patent license under the 2011 Agreement is limited, and in the event of an assignment, Section 11 of the agreement expressly provides that “the assigned or transferred patent license shall not cover any other products of the Successor-in-Interest or any third-party entity involved in a corporate reorganization.” The April 2021 letter suggests that, after Esdec’s

acquisition of QuickMount and IronRidge in September 2019, Esdec and IronRidge worked in concert with QuickMount in an improper attempt to shield infringing sales of the QRail products under the 2011 Agreement, thereby materially breaching Section 11 and/or breaching the implied covenant of good faith and fair dealing associated with the obligations of IronRidge and Esdec (as IronRidge's Successor-in-Interest) under Section 11.

52. The April 2021 letter also alleges that the '362 and '044 Patents are invalid. Indeed, on March 23, 2021, QuickMount and Esdec filed an answer and counterclaim in the California Litigation challenging the validity of the Asserted Patents. And on March 25, 2021, EcoFasten and Esdec filed an answer and counterclaim in the Delaware Litigation challenging the validity of the Asserted Patents.

53. In a May 14, 2021 letter responding to the April 2021 letter, Unirac's counsel pointed out that despite QuickMount's position that IronRidge, not QuickMount, sells QRail, QuickMount's website at the time (www.quickmountpv.com) made no indication of IronRidge's involvement. Specifically, the website touted QRail as QuickMount's product and provided potential customers with information about how to purchase QRail from QuickMount and its distributors, included a "Where to Buy" webpage, and a response to the FAQ "Can I buy directly from QuickMount PV?". Nowhere on QuickMount's website at that time was there any mention that QRail was available through IronRidge. In fact, the only references to "IronRidge" on QuickMount's website were references to IronRidge's XR Rail system and the Esdec acquisition. Nothing on the webpage linked QRail to IronRidge or suggested that QRail was sold by IronRidge.

54. After Esdec's counsel received Unirac's response pointing out that QuickMount's own website did not support the representation that QRail was being sold by IronRidge—which was at least four months after Unirac filed the California Action—QuickMount's website changed. Now, the URL www.quickmountpv.com redirects users to IronRidge's website, which has also

been modified to identify the QRail System as a product of IronRidge. Upon information and belief, this change was made as a direct result of Unirac counsel's May 14, 2021 letter.

55. Moreover, Esdec's "About" Page on its website (<https://usa.esdec.com/about-esdec/>) now states that the QuickMount "brand is managed by IronRidge." But this was not always so. As shown in an archive.org capture of Esdec's "About" Page on January 16, 2021—just days before Unirac filed its complaint against QuickMount in the California Litigation—Esdec's "About" page states that QuickMount "manufactures code-compliant, reliable solar mounting and racking systems for installing photovoltaic systems"; there is no mention that IronRidge manages or sells the QuickMount "brand." Esdec changed its website to indicate that QuickMount was now managed by IronRidge only after Unirac filed its complaint against QuickMount.

56. Upon information, belief, and the timeline of events recited above, Esdec directed and controlled QuickMount and IronRidge to transfer management of the QuickMount "brand" and products to IronRidge in a misguided attempt to shield QRail under the 2011 Agreement. Esdec did so for the improper purpose of avoiding patent infringement liability and was able to achieve that improper purpose through its dominion and control over IronRidge and QuickMount. None of IronRidge, QuickMount, or Esdec have offered or provided any explanation for a legitimate business purpose for why IronRidge, rather than QuickMount, should be selling the QRail product. Indeed, IronRidge was already offering, and continues to offer, its own XR Rail line of products which are substantially similar to QRail and compete with XR Rail in the market. If anything, selling the QuickMount QRail product through IronRidge is against IronRidge's own interests as QRail sales could cannibalize sales of XR Rail products.

57. Upon information and belief, Marshall Green authorized Esdec, EcoFasten and QuickMount's March 2021 filings of counterclaims alleging invalidity of the Asserted Patents in the California Litigation and the Delaware Litigation. As discussed above, Mr. Green previously served as Vice President of Strategic Initiatives at QuickMount, and later became the Vice

President of Legal and Intellectual Property at Esdec where he manages the intellectual property and legal affairs of Esdec, IronRidge, QuickMount, and EcoFasten.

58. Marshall Green is no stranger to patent litigation and licensing. While serving as Vice President of Strategic Initiatives at QuickMount, a role which he held from 2012-2020, QuickMount was involved in no less than four patent infringement disputes. Two of these disputes involved QuickMount's assertion of its own patents: *Wencon Development, Inc. v. Torr Industries, Inc.*, 2-17-cv-01770 (EDCA), and *Wencon Development, Inc. d/b/a Quick Mount PV v. Pegasus Solar, Inc.*, 5-18-cv-04034 (NDCA). Two other disputes involved QuickMount's defense against patents asserted against it: *Rillito River Solar LLC v. Wencon Development Inc.*, 2-16-cv-03245 (DAZ), and *Rillito River Solar LLC v. Wencon Development Inc.*, 4-17-cv-06739 (NDCA).

59. On information and belief, Mr. Green also makes legal and litigation strategy decisions for EcoFasten. For example, during March 2021, Mr. Green attended nearly every deposition taken in the Arizona Litigation as a client representative for EcoFasten.

60. On information and belief, Mr. Green is also involved in legal and intellectual property related decisions for IronRidge. On April 21, 2021, counsel for Unirac, Andrew Strickland, emailed Mr. Green requesting permission for Unirac to disclose the 2011 Agreement to a third party. On April 22, 2021, Mr. Green initially responded that he would "coordinate with [IronRidge CEO] Rich Tiu and our attorneys and respond in a timely manor [sic]." Mr. Green sent a follow-up email on April 29, 2021, stating that "[w]e have discussed the issue internally and John McIlvaine of The Webb Law Firm will be representing IronRidge in this matter." Mr. Green never denied that he was responsible for IronRidge legal issues related to the 2011 Agreement. Additionally, in a series of email correspondence between Mr. Strickland and Mr. McIlvaine in May 2021 regarding IronRidge's breach of the 2011 Agreement, Mr. McIlvaine copied Mr. Green but no other person at IronRidge or Esdec.

61. Through at least these experiences described herein, Mr. Green would have developed or come to some informed understanding of the value of intellectual property and the licensing thereof, as well as how to challenge patents.

62. Upon information and belief, Mr. Green has been making, and continues to make, the strategic decisions in the Arizona, Delaware, and California Litigations, as well as in the matter at hand, including the strategic and legal decisions related to challenging the validity of the Asserted Patents in each matter.

63. The Esdec Entities operate as a joint or common enterprise, especially when it comes to Mr. Green's role in managing the intellectual property decisions for the Esdec Entities. It is simply difficult to imagine that given Mr. Green's extensive background, experience, and involvement in intellectual property, working on behalf of multiple companies, now all related and facing a common opponent (Unirac), that Mr. Green in his role of managing the intellectual property and legal affairs of IronRidge did *not* provide assistance or help to Esdec, QuickMount, and EcoFasten to challenge the Asserted Patents. Therefore, it would be impossible for any of the Esdec Entities to work independently from one another on legal or intellectual property related matters, including the pending lawsuits between Unirac and the Esdec Entities.

64. As a result, the Esdec Entities' challenges to the validity of the Asserted Patents in the California and Delaware Litigations were a material breach of Section 7 of the 2011 Agreement which provides *inter alia* that IronRidge (and by extension all of the Esdec Entities) "recognizes that the ['362 Patent is] valid and enforceable."

65. In the alternative, if each of the Esdec Entities operate independently and are third parties to the 2011 Agreement it would be impossible for any of the Esdec Entities to work independently from one another on legal or intellectual property related matters because of the Esdec Entities' close relationship, Mr. Green's role as a joint agent managing intellectual property

and legal matters for each of these entities, and the common interest they share in Esdec's shared IP portfolio, product lines, and the pending lawsuits between Unirac and the Esdec Entities.

66. IronRidge's assistance and cooperation—via shared agent Mr. Green—with Esdec, QuickMount and EcoFasten to challenge the validity of the Asserted Patents in the California and Delaware Litigations was a material breach of Section 7 of the 2011 Agreement which provides *inter alia* that IronRidge “will not encourage, assist, aid or cooperate with any other third party, in challenging the validity or enforceability of the Licensed Patents in any administrative or judicial proceeding....”

Unirac Exercises Its Right to Revoke and Cancel the Patent License of the 2011 Agreement

67. On May 14, 2021, counsel for Unirac also sent a letter to Mr. McIlvaine, with copy to Mr. Biggs, notifying IronRidge of Unirac's revocation and cancellation of the patent license under the 2011 Agreement due to IronRidge's breach of the agreement. As such, IronRidge's XR Rail products are no longer licensed for the Asserted Patents. The May 14, 2021 letter also provided claim charts showing IronRidge's infringement of claim 3 of the '362 Patent and claim 5 of the '044 Patent through making, using, selling, and offering to sell the XR Rail family of products.

68. Over several weeks, phone calls, and correspondence, Mr. McIlvaine and Mr. Strickland discussed in good faith whether arbitration was appropriate to resolve the dispute concerning the 2011 Agreement. The parties did not agree.

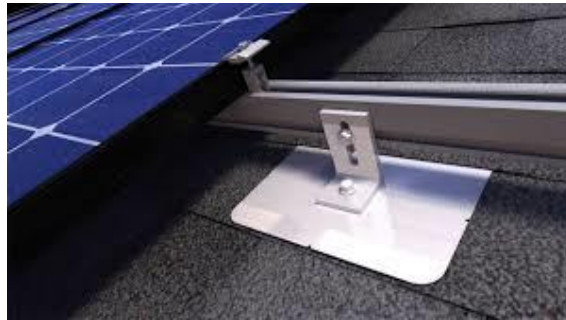
69. Mr. McIlvaine and Mr. Strickland also discussed in good faith whether IronRidge would be willing to waive the forum selection clause of the 2011 Agreement requiring that all disputes related to the agreement be brought in this Court. IronRidge was not willing to do so.

70. After discussing in good faith whether arbitration was appropriate to resolve the dispute concerning the 2011 Agreement and confirming that IronRidge would not waive the forum selection clause, Unirac prepared and filed the present complaint.

The Accused QRail and XR Rail Products, and the Esdec Entities' Related Activity

71. Defendants market, offer, and sell the “QRail” family or group products (the “Accused QRail Products”). <https://www.ironridge.com/quickmount/qrail-system/>.

72. The Accused QRail Products are a system for mounting solar panels to rooftops:



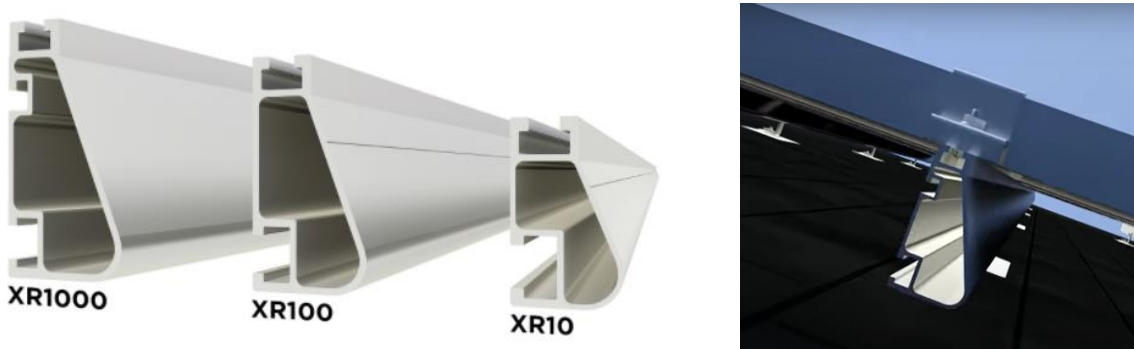
73. On information and belief, Defendants instruct users to use the Accused QRail Products as directed in the directions and guides for installation of the Accused QRail Products. <https://www.ironridge.com/quickmount/qrail-system/>.

74. On information and belief, third parties including solar panel installers and other customers of Defendants have used and continue to use the Accused QRail Products as directed by Defendants in the directions and guides for installation of the Accused QRail Products.

75. On information and belief, the Accused QRail Products have substantially no other use but the method described and shown in the directions and guides for installation of the Accused QRail Products.

76. IronRidge markets, offers, and sells the XR Rail family or group of components or products for mounting solar panels to rooftops (the “Accused XR Rail Products”). <https://www.ironridge.com/components/xr-rails/>.

77. The Accused XR Rail Products are a rooftop solar panel racking system where solar panel support rails are attached to a roof via roof mounts and solar panels are attached to support rails via mid-clamps and end-clamps:



78. On information and belief, Defendants instruct users to use the Accused XR Rail Products as directed in the directions and guides for installation of the Accused XR Rail Products. <https://www.ironridge.com/components/xr-rails/>.

79. On information and belief, third parties including solar panel installers and other customers of Defendants have used and continue to use the Accused XR Rail Products as directed by Defendants in the directions and guides for installation of the Accused XR Rail Products.

80. On information and belief, the Accused XR Rail Products have substantially no other use but the method described and shown in the directions and guides for installation of the Accused XR Rail Products.

81. Esdec manufactures, markets, and sells the Accused QRail Products and Accused XR Rail Products by exercising dominion and control over its agents and subsidiaries IronRidge and QuickMount, directing that the Accused QRail Products be provided under the QuickMount brand and that the Accused XR Rail Products be provided under the IronRidge brand, but that both product lines, regardless of branding, be sold through IronRidge.

82. Esdec and IronRidge represent to the public that the solar roof mounting products at issue are Esdec's products, that the Accused QRail Products and Accused XR Rail Products are proprietary products of Esdec, and Esdec directs and controls the manufacturing, marketing, and sales of the Accused QRail Products and Accused XR Rail Products. Esdec represents to the public that it "is the parent company of ... IronRidge ... [and a] leading provider[] of residential and commercial solar PV mounting systems," and that "Esdec USA develops, manufactures and supplies professional mounting structures for the mounting of solar panels to commercial and residential roofs." <https://www.linkedin.com/company/esdecusa>.

83. Esdec and IronRidge share directors and officers (including Messrs. Green, Vos, Nijdam, and Naberhuis), and strategic and intellectual property matters for both are directed and controlled by Esdec, and Mr. Green, as noted above.

84. Upon information and belief, IronRidge's intellectual property licenses are handled and controlled by Esdec and its employees for the benefit of Esdec.

85. Upon information and belief, Esdec provides the technology, development, design, manufacturing, testing, marketing, and sales infrastructure of the IronRidge products that infringe Unirac's patents.

86. Although IronRidge is incorporated separately from Esdec, IronRidge is a subsidiary and an agent of, and is directed and controlled by, Esdec, particularly with respect to the Accused QRail Products and the Accused XR Rail Products.

87. In this regard, Esdec also represents to the public that it, per se, offers the Accused QRail Products and the Accused XR Rail Products at issue in this litigation (either directly or through its controlled agent and subsidiary, IronRidge).

88. Esdec, both directly and through its controlled subsidiary and agent IronRidge, controls and directs the manufacture, market, and selling of the Accused QRail Products and the

Accused XR Rail Products, such that IronRidge is in a controlled principal/agency relationship with Esdec.

89. Since QRail and XR Rail are competing products in the market, IronRidge selling both is against its independent interest. Thus, IronRidge sells both QRail and XR Rail for Esdec's benefit—not IronRidge's—in an attempt limit Esdec and QuickMount's potential liability to Unirac for patent infringement in the California Action.

90. Accordingly, all of the accused infringing activities and the entities responsible for those activities are directed and controlled by Esdec, with IronRidge being operated as a controlled agent of Esdec.

91. Esdec and IronRidge have been on notice of the Asserted Patents since at least the filing and/or service of this Complaint.

92. Upon information and belief, Esdec performed substantial due diligence before acquiring IronRidge in September 2019 (as referenced in paragraph 27 of the complaint filed in *Kaplan v. Esdec, Inc.*, No. RF20077090, (Cal. Sup. Ct. Alameda Cnty., filed October 9, 2020)). Through that due diligence, Esdec would have learned of the IronRidge I Litigation, the '362 Patent, and that the Accused XR Rail Products practice the claims of the '362 Patent. As a result, Esdec has been on notice of IronRidge's potential infringement of the '362 Patent no later than September 2019.

93. Upon information and belief, when Esdec conducted its due diligence, it would have discussed with IronRidge the IronRidge I Litigation, the 2011 Agreement, and IronRidge's invalidity positions for the '362 Patent in the IronRidge I Litigation, which would include IronRidge providing Esdec with analysis of prior art to the '362 Patent before Esdec acquired IronRidge.

94. IronRidge has been on notice of at least the '362 Patent and that the Accused XR Rail Products practice the claims of the '362 Patent since at least the filing of the IronRidge I Litigation in January 2011.

95. Upon information and belief, the Accused QRail Products were originally developed, manufactured, marketed, offered, and sold by QuickMount after the execution of the 2011 Agreement, and QRail did not exist on the effective date of the 2011 Agreement.

96. The Accused QRail Products are products IronRidge makes, sells, or offers to sell as a result of being acquired by Esdec or, in the alternative, are third-party products it makes, sells, or offers to sell as a result of a corporate reorganization, *i.e.*, Esdec acquired both QuickMount and IronRidge allowing for IronRidge to sell QuickMount products such as the Accused QRail Products.

97. The Accused QRail Products are not a "Licensed Product" as that term is defined in the 2011 Agreement or under the parties' understanding of that term. The language of Section 11 (specifically "For the avoidance of doubt, the assigned or transferred patent license shall not cover any other products of the Successor-in-Interest or any third-party entity involved in a corporate reorganization") shows the parties' intent to limit the scope of "Licensed Products" and the phrase "any product designed by, made by, made for, made on behalf of, or sold by, IronRidge" to exclude products IronRidge makes, sells, or offers to sell as a result of being acquired or third-party products it makes, sells, or offers to sell as a result of corporate reorganization, such as the Accused QRail Products.

98. Upon information and belief, IronRidge worked in concert with QuickMount, and at the direction and control of Esdec, in an improper attempt to shield infringing sales of the Accused QRail Products with the Patent License in the 2011 Agreement. As a result, Defendants' actions have deprived, or attempted to deprive, Unirac of the benefit of enforcing its intellectual

property rights against non-IronRidge products or products sold by IronRidge as a result of a change in a successor-in-interest or a corporate reorganization.

99. Notwithstanding Unirac's termination of the patent license due to IronRidge's failure to comply with the non-challenge clause of the 2011 Agreement, IronRidge's recognition that the '362 Patent is valid and enforceable and its obligation to not challenge, or assist any party or entity in any way in challenging the validity or enforceability of the Asserted Patents, survives.

COUNT I

BREACH OF THE 2011 AGREEMENT

100. Unirac incorporates by reference and realleges the foregoing paragraphs as if fully set forth herein.

101. The 2011 Agreement is a valid, binding, and enforceable contract between Unirac and IronRidge.

102. Esdec is bound by IronRidge's obligations under the 2011 Agreement as IronRidge is the alter ego of Esdec. IronRidge is under the domination and control of Esdec. IronRidge operates not to serve its own goals and purposes, but instead those of Esdec. IronRidge acted at Esdec's direction for the improper purpose of attempting to shield Esdec and QuickMount's infringing sales of QRail under the 2011 Agreement to avoid patent infringement liability to Unirac, even though selling QRail—a competing product to XR Rail—is not within IronRidge's interests. None of IronRidge, Esdec, or QuickMount have offered or provided any explanation for a legitimate business purpose for why IronRidge, rather than QuickMount, should be selling the QRail product.

103. Esdec's actions, individually and through its controlled subsidiaries, have directly resulted in injury to Unirac, including but not limited to: (1) Unirac being forced to unnecessarily defend the validity of its patents against Esdec, EcoFasten, and QuickMount after being assisted by IronRidge and/or Esdec; (2) Unirac defending itself against multiple lawsuits by and through

Esdec and its controlled subsidiaries; (3) Unirac being required to file multiple lawsuits to protect its intellectual property rights; and (4) repeated and continued infringement of Unirac's intellectual property rights by Esdec through its controlled subsidiaries, including IronRidge.

104. Esdec is also bound by IronRidge's obligations under the 2011 Agreement by being in a joint enterprise and/or common enterprise with IronRidge.

105. Unirac has performed all conditions, covenants, promises, and obligations required by it to be performed in accordance with the terms and conditions of the 2011 Agreement; with the exception of the conditions, covenants, promises, and obligations, the performance of which were prevented, hindered, or frustrated by IronRidge and Esdec.

106. Unirac has not breached or violated the terms and conditions of the 2011 Agreement except for the conditions, covenants, promises, and obligations, the performance of which were prevented, hindered, or frustrated by IronRidge and Esdec.

107. IronRidge and Esdec are legally obligated and contractually bound to act as required by the 2011 Agreement. These obligations include the requirements under the validity and non-challenge provisions to recognize that the '362 Patent is valid and enforceable, and to not challenge, or assist any party or entity in any way in challenging the validity or enforceability of the '362 and '044 Patents.

108. IronRidge and Esdec materially breached the validity and non-challenge provisions of the 2011 Agreement by failing to recognize the '362 Patent is valid and enforceable.

109. In the alternative, IronRidge materially breached the validity and non-challenge provisions of the 2011 Agreement by encouraging, assisting, aiding, or cooperating with Esdec, QuickMount, and EcoFasten to challenge the validity of the Asserted Patents.

110. IronRidge further materially breached the validity and non-challenge provisions of the 2011 Agreement by providing Esdec (a third party at the time) with prior art and invalidity

analysis during Esdec's due diligence of IronRidge in 2019 before Esdec acquired IronRidge and QuickMount.

111. IronRidge is further required under the 2011 Agreement to not assign or transfer the patent license so as to cover any products of another party or entity, or a successor entity or third party involved in a corporate reorganization.

112. IronRidge materially breached the 2011 Agreement by attempting to assign or transfer the patent license to cover the QRail products, a third-party product that was only available to IronRidge through a Successor-in-Interest, corporate reorganization of the Esdec Entities, and through the direction and control of Esdec.

113. Upon information and belief, unless enjoined, Defendants will continue to (1) challenge the validity of the Asserted Patents and continue to encourage, assist, aid or cooperate with third parties in challenging the validity or enforceability of the Asserted Patents, and (2) attempt to assign or transfer the patent license of the 2011 Agreement to improperly shield third party products.

114. As a direct and proximate result of Defendants' breach of the Agreement, and until an injunction issues, Unirac has been and will continue to be damaged in an amount yet to be determined.

COUNT II

BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING

115. Unirac incorporates by reference and realleges the foregoing paragraphs as if fully set forth herein.

116. A duty of good faith and fair dealing is implied in every contract, including the 2011 Agreement.

117. Unirac and IronRidge are parties to the 2011 Agreement, and thus IronRidge owed a duty of good faith and fair dealing to Unirac.

118. The implied covenant of good faith and fair dealing further extends to Esdec as IronRidge is an alter ego of Esdec and/or because Esdec is in a joint or common enterprise with IronRidge.

119. The 2011 Agreement was entered into by the parties in settlement of the IronRidge I Patent Litigation, where the products at issue were IronRidge's XR Rail products. The Accused QRail products, originally offered by QuickMount and not sold by QuickMount at the time of the 2011 Agreement, were not at issue in the IronRidge I Patent Litigation, and thus were not covered under the patent license of the 2011 Agreement.

120. While the 2011 Agreement allows IronRidge to assign or transfer the patent license of the 2011 Agreement in certain situations, the agreement provides that the license will not cover products of another company or entity, or successor or third party involved in a corporate reorganization. Unirac thus had a reasonable expectation that in the event of an assignment or transfer of the patent license, a change of IronRidge's ownership, or a corporate reorganization, the products of another party, entity, successor, or third party would not be covered by the patent license.

121. Defendants acted in bad faith and evaded the spirit of the bargain with respect to the 2011 Agreement by improperly attempting to shield infringing sales of the Accused QRail Products with the patent license under the 2011 Agreement in clear violation of the parties' intent to the contrary. As a result, Defendants' actions have deprived, or attempted to deprive, Unirac of the benefit of enforcing its intellectual property rights against products not intended to be covered by the patent license of the 2011 Agreement.

122. Furthermore, in return for the dismissal of the IronRidge I Patent Litigation and the patent license under the 2011 Agreement, among other things, IronRidge (and later Esdec) was required to recognize the validity and enforceability of the '362 Patent and agreed that it would not assist a third party in challenging the validity or enforceability of the '362 and '044 Patents.

Unirac thus had a reasonable expectation that it would not have to defend the '362 and '044 Patents against invalidity challenges brought by IronRidge, entities related to IronRidge, or third parties assisted by IronRidge.

123. IronRidge has encouraged, assisted, aided or cooperated with other parties, in challenging the validity or enforceability of the Asserted Patents.

124. Alternatively, IronRidge, through the other Esdec Entities, has challenged the validity of the '362 patent.

125. Esdec challenged the validity of the Asserted Patents in the California Litigation and the Delaware Litigation.

126. Defendants have also acted in bad faith and evaded the spirit of the bargain with respect to the 2011 Agreement by improperly depriving Unirac of the benefit of not having to defend against invalidity allegations against the '362 and '044 Patents by IronRidge, Esdec, QuickMount, and EcoFasten in clear violation of the parties' intent to the contrary.

127. As a direct and proximate result of Defendants' breach of the implied covenant of good faith and fair dealing with respect to the 2011 Agreement, Unirac has been damaged in an amount yet to be determined.

COUNT III

INFRINGEMENT OF U.S. PAT. NO. 7,434,362

128. Unirac incorporates by reference and realleges the foregoing paragraphs as if fully set forth herein.

129. On information and belief, Defendants have infringed and continue to infringe each and every element of more than one claim of the '362 Patent under 35 U.S.C. § 271(a), either literally or under the doctrine of equivalents, by making, using, offering to sell, selling, and/or importing into the United States without authority or license from Unirac infringing systems for mounting solar panels to rooftops, such systems including the Accused QRail Products and the

Accused XR Rail Products. A claim chart detailing Defendants' infringement of the '362 Patent by the Accused QRail Products is attached as Exhibit 3. A claim chart detailing Defendants' infringement of the '362 Patent by the Accused XR Rail Products is attached as Exhibit 4.

130. Defendants indirectly infringe the '362 patent under 35 U.S.C. § 271(b) by inducing infringement by others, such as end-user customers or installers, by, for example, encouraging such users or installers to assemble or make the claimed systems with directions or guides for installation of the Accused QRail Products (<https://www.ironridge.com/quickmount/qrail-system/>) and the Accused XR Rail Products (<https://www.ironridge.com/components/xr-rails/>).

131. Defendants indirectly infringe the '362 Patent under 35 U.S.C. § 271(c) by contributing to infringement by others, such as end-user customers or installers by offering to sell and selling within the United States components (that is, the Accused QRail Products and the Accused XR Rail Products) that constitute a material part of the inventions claimed in the '362 Patent, and that are used to practice or implement one or more systems covered by the claims of the '362 patent. Defendants' end-user customers or installers directly infringe the '362 Patent, for example, by assembling or making the claimed systems by installation of the Accused QRail Products and the Accused XR Rail Products.

132. On information and belief, the Accused QRail Products and the Accused XR Rail Products have no other substantial non-infringing uses.

133. Defendants received actual notice of the Accused QRail Products' infringement of the '362 Patent no later than January 2021 when they became aware of the California Litigation. Esdec is a named defendant in the California Litigation. IronRidge at least became aware of the California Litigation through Marshall Green.

134. IronRidge received actual notice of the Accused XR Rail Products' infringement of the '362 Patent at least as early as December 2011. Esdec received actual notice of the Accused

XR Rail Products' infringement of the '362 Patent at least as early as September 2019, when it acquired IronRidge.

135. Unirac has suffered, and continues to suffer, damages as a result of Defendants' infringement of the '362 Patent. The extent of damage suffered by Unirac and caused by Defendants is not yet known, but the damage is substantial and will be determined at trial.

136. In addition, Unirac and Defendants are direct competitors. On information and belief, Esdec and its controlled agent IronRidge, will continue their infringing activities damaging Unirac unless and until enjoined by this Court.

137. Defendants' further infringement of the '362 Patent after the filing of the complaint in the California Litigation, has been and continues to be, willful, deliberate, and in disregard of Unirac's patent rights. Defendants' intentional, knowing, and willful infringement Entities Unirac to increased damages under 35 U.S.C. § 284 and to attorneys' fees and costs incurred in prosecuting this action under 35 U.S.C. § 285.

COUNT IV

INFRINGEMENT OF U.S. PAT. NO. 8,128,044

138. Unirac incorporates by reference and realleges the foregoing paragraphs as if fully set forth herein.

139. On information and belief, Defendants have infringed and continue to infringe each and every element of more than one claim of the '044 Patent under 35 U.S.C. § 271(a), either literally or under the doctrine of equivalents, by making, using, offering to sell, selling, and/or importing into the United States without authority or license from Unirac infringing systems for mounting solar panels to rooftops, such systems including the Accused QRail Products and the Accused XR Rail Products. A claim chart detailing Defendants' infringement of the '044 Patent by the Accused QRail Products is attached as Exhibit 5. A claim chart detailing Defendants' infringement of the '044 Patent by the Accused XR Rail Products is attached as Exhibit 6.

140. Defendants indirectly infringe the '044 patent under 35 U.S.C. § 271(b) by inducing infringement by others, such as end-user customers or installers, by, for example, encouraging such users or installers to assemble or make the claimed systems with directions or guides for installation of the Accused QRail Products (<https://www.ironridge.com/quickmount/qrail-system/>) and the Accused XR Rail Products (<https://www.ironridge.com/components/xr-rails/>).

141. Defendants indirectly infringe the '044 Patent under 35 U.S.C. § 271(c) by contributing to infringement by others, such as end-user customers or installers by offering to sell and selling within the United States components (that is, the Accused QRail Products and the Accused XR Rail Products) that constitute a material part of the inventions claimed in the '044 Patent, and that are used to practice or implement one or more systems covered by the claims of the '044 patent. Defendants' end-user customers or installers directly infringe the '044 Patent by, for example, by assembling or making the claimed systems by installation of the Accused QRail Products and the Accused XR Rail Products.

142. On information and belief, the Accused QRail Products and Accused XR Rail Products have no other substantial non-infringing uses.

143. Defendants received actual notice of the Accused QRail Products' infringement of the '044 Patent no later than January 2021 when they became aware of the California Litigation. Esdec is a named defendant in the California Litigation. IronRidge at least became aware of the California Litigation through Marshall Green.

144. Defendants received actual notice of the Accused XR Rail Products' infringement of the '044 Patent at least as early as May 14, 2021.

145. Unirac has suffered, and continues to suffer, damages as a result of Defendants' infringement of the '044 Patent. The extent of damage suffered by Unirac and caused by Defendants is not yet known, but the damage is substantial and will be determined at trial.

146. In addition, Unirac and Defendants are direct competitors. On information and belief, Esdec and its controlled agent, IronRidge, will continue their infringing activities damaging Unirac unless and until enjoined by this Court.

147. Defendants' further infringement of the '044 Patent after the filing of the complaint in the California Litigation has been, and continues to be, willful, deliberate, and in disregard of Unirac's patent rights. Defendants' intentional, knowing, and willful infringement Entities Unirac to increased damages under 35 U.S.C. § 284 and to attorneys' fees and costs incurred in prosecuting this action under 35 U.S.C. § 285.

PRAYER FOR RELIEF

Unirac respectfully prays for relief as follows:

- A. a judgment that the Asserted Patents are valid and enforceable;
- B. a judgment that each of the Defendants have infringed and continue to infringe one or more claims of the Asserted Patents and that their infringement is, and has been, deliberate and willful;
- C. an order that preliminarily and permanently enjoins each of the Defendants and their agents, officers, directors, employees, attorneys, successors, and assigns, all parent and subsidiary entities, and all those acting for or on the behalf of Defendants, or in active concert, participation, or combination with them, including customers and distributors, prohibiting Defendants from:
 - a. continuing acts that directly infringe, contributorily infringe, or induce infringement of the Asserted Patents,
 - b. making, using, selling, and/or importing infringing products, to include any colorable imitation thereof, and
 - c. otherwise infringing the Asserted Patents;

- D. judgment awarding Unirac all damages adequate to compensate for Defendants' infringement, and in no event less than a reasonable royalty for Defendants' infringement, including all pre-judgment and post-judgment interest at the maximum rate allowed by law;
- E. a judgment awarding Unirac treble damages pursuant to 35 U.S.C. § 284 as a result of Defendants' willful conduct;
- F. a judgment and order finding that this is an exceptional case within the meaning of 35 U.S.C. § 285 and awarding Plaintiff its reasonable Attorneys' Fees and Taxable Costs incurred in connection with this action, pursuant to 35 U.S.C. § 285;
- G. a judgment that Esdec and IronRidge have breached the 2011 Agreement and breached the implied covenant of good faith and fair dealing;
- H. a judgment awarding Unirac all damages adequate to compensate for IronRidge's breach of contract and breach of the implied covenant of good faith and fair dealing;
- I. a permanent injunction issued against IronRidge and its agents, officers, directors, employees, attorneys, successors, and assigns, and all those acting for or on the behalf of IronRidge, prohibiting them from challenging the validity of the '362 Patent and prohibiting them from encouraging, assisting, aiding, or cooperating with any part in challenging the validity or enforceability of the '362 or '044 Patents; and
- J. for such additional and further relief in law and equity, as the Court may deem just and proper.

DEMAND FOR JURY TRIAL

In accordance with Federal Rule of Civil Procedure 38(b), Unirac demands a trial by jury on all issues so triable.

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DATED: August 26, 2021

LEE & HAYES, P.C.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 26th day of August, 2021, I caused to be filed the foregoing Amended Complaint electronically through the CM/ECF system, causing all parties or counsel to be served by electronic means, as more fully reflected in the Notice of Electronic Filing.

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