

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

GOLDEN RULE FASTENERS INC.,

Plaintiff,

v.

R.P. LUMBER CO., INC.,

Defendant.

Civil Action No. 1:20-cv-00692

JURY TRIAL DEMANDED

Judge John J. Tharp Jr.

FIRST AMENDED COMPLAINT

Plaintiff GOLDEN RULE FASTENERS INC. (“Golden Rule”), by and through its undersigned counsel, files this First Amended Complaint for Patent Infringement against Defendant R.P. LUMBER CO., INC. (“R.P. Lumber“ of “Defendant”) as follows:

NATURE OF THE ACTION

1. This is a patent infringement action to stop Defendant’s infringement of the following United States Patents (collectively, the “Asserted Patents”) issued by the United States Patent and Trademark Office (“USPTO”), copies of which are attached hereto as **Exhibit A** and **Exhibit B**, respectively:

	U.S. Patent No.	Title
A.	8,141,303	Pipe Flashing Apparatus And Method
B.	8,464,475	Pipe Flashing Apparatus And Method

2. Golden Rule seeks monetary damages and injunctive relief.

PARTIES

3. Golden Rule is a corporation organized and existing under the laws of the State of Alabama and maintains its principal place of business at 5290 Alabama Highway 229 South,

Tallassee, Alabama, 36078 (Elmore County).

4. Based upon public information, Defendant is a corporation duly organized and existing under the laws of the Illinois and has its principal place of business (corporate headquarters) located at 514 E. Vandalia, Edwardsville, Illinois 62025.

5. Based upon public information, Defendant may be served through its registered agent, Robert L. Plummer, at its principal office.

JURISDICTION AND VENUE

6. Golden Rule repeats and re-alleges the allegations in the Paragraphs above as though fully set forth in their entirety.

7. This is an action for infringement of a United States patent arising under 35 U.S.C. §§ 271, 281, and 284–85, among others. This Court has subject matter jurisdiction of the action under 28 U.S.C. §§ 1331 and 1338(a).

8. Venue is proper against Defendant in this District pursuant to 28 U.S.C. § 1400(b) because it has maintained an established and regular places of business in this District and has committed acts of patent infringement in this District. *See In re: Cray Inc.*, 871 F.3d 1355, 1362-1363 (Fed. Cir. 2017).

9. The Court has personal jurisdiction over Defendant because: Defendant has minimum contacts within the State of Illinois and in this District; Defendant has purposefully availed itself of the privileges of conducting business in the State of Illinois and his District; Defendant has sought protection and benefit from the laws of the State of Illinois; Defendant regularly conducts business within the State of Illinois and within this District, and the causes of action arise directly from Defendant's business contacts and other activities in the State of Illinois and in this District.

10. Specifically, Defendant intends to do and does business in, has committed acts of infringement in, and continues to commit acts of infringement in this District directly, through intermediaries, by contributing to and through the inducement of third parties, and offers its products or services, including those accused of infringement here, to customers and potential customers located in Mississippi, including in this District.

11. Defendant commits acts of infringement from this District, including, but not limited to, use of the Accused Products and inducement of third parties to use the Accused Products.

THE ACCUSED PRODUCTS

12. Golden Rule repeats and re-alleges the allegations in the Paragraphs above as though fully set forth in their entirety.

13. Based upon public information, Defendant owns, operates, advertises, and/or controls the website www.rplumber.com, through which Defendant advertises, sells, offers to sell, provides and/or educates customers about its products and services. *See Exhibit C.*

14. Specifically, Defendant offers roof flashing products (*see Exhibit D*) including the at least the following products.

- Oatey Master Flash Series 14090 Roof Flashing – *see Exhibit E*

15. Golden Rule alleges that at least the products listed above (the “Accused Products”) infringe one or more claims of the Asserted Patents.

16. Defendant instructs its customer how to use the Accused Products at least through published specifications (including a link to the Oatey website for additional information) available on its website, *See Exhibit F.*

COUNT I: INFRINGEMENT OF U.S. PATENT NO. 8,141,303

17. Golden Rule repeats and re-alleges the allegations in the Paragraphs 1-16 above as though fully set forth in their entirety.

18. The USPTO issued U.S. Patent No. 8,141,303 (the “’303 patent”) on March 27, 2012 after full and fair examination of Application No. 12/604,933 that was filed on October 23, 2009. *See* Ex. A at A-1.

19. A Reexamination Certificate for the ’303 patent was issued on September 18, 2023 after full and fair examination of Application No. 90/014,255 that was filed on February 4, 2019 in which Claim 1 was cancelled, Claim 2 was not examined, and a new Claim 3 was added. *See* Ex. A at A-9 through A-10.

20. The written description of the ’303 patent describes in technical detail each of the limitations of the claims, allowing a skilled artisan to understand the scope of the claims and how the non-conventional and non-generic combination of claim limitations is patently distinct from and improved upon what may have been considered conventional or generic in the art at the time of the invention.

21. Golden Rule owns all substantial rights, interest, and title in and to the ’303 patent, including the sole and exclusive right to prosecute this action and enforce said patent against infringers, and to collect damages for all relevant times.

22. Golden Rule or its predecessors-in-interest have satisfied all statutory obligations required to collect pre-filing damages for the full period allowed by law for infringement of the ’303 patent.

23. Defendant has infringed one or more claims of the ’303 patent by making, having made,

using, importing, providing, supplying, distributing, selling, or offering the Accused Products to customers.

24. Golden Rule is informed and believes that Defendant has infringed and continues to infringe the '303 Patent, including Claim 3, either literally or under the doctrine of equivalents, through the manufacture and sale of the Accused Products. Based upon public information, Defendant has infringed and continues to infringe one or more claims of the '303 Patent because it ships distributes, makes, uses, imports, offers for sale, sells, and/or advertises roof flashing products that form a weather-proof seal about pipes of different diameters where installation of the flashing over the top of the pipe is not possible, including at least the Accused Products.

25. For example, the Accused Products infringe one or more of the claims of the '303 Patent by providing to Defendant's customers roof flashing with "specifically designed for the protection of electrical connections that come from a rooftop." The Accused Products provide "quick installation time and fire protection qualities [to] make it a great long term fit in a roofing electrical application" and are made of EPDM ("ethylene propylene diene monomer"), an elastomeric material. The Accused Products also possess a longitudinal opening that allows the flashing to be spread apart and placed about a pipe. Afterwards, the flashing's opening members are pressed together and secured by coupling members that seal the longitudinal opening. The Accused Products are available for sale on its website and at retailer locations in this district and throughout the United States. *See* Ex. D and Ex. E.

26. Since at least the date it was served with the Original Complaint, Defendant has indirectly infringed and continues to indirectly infringe one or more claims of the '303 patent by inducing others to directly infringe one or more claims of said patent. Defendant has induced and

continues to induce its subsidiaries, partners, employees, affiliates, and end-users, including Defendant's customers and potential customers, to directly infringe, either literally or under the doctrine of equivalents, one or more claims of the '303 patent by using the Accused Products. Defendant took active steps, directly or through contractual relationships with others, with the specific intent to cause them to use the Accused Products in a manner that infringes one or more claims of the '303 patent, including, for example, claim 3 of the '303 patent. Such steps by Defendant included, among other things, advising or directing personnel, contractors, or end-users to make or use the Accused Products in an infringing manner; advertising and promoting the use of the Accused Products in an infringing manner; or distributing instructions that guide users to use the Accused Products in an infringing manner. Defendant is performing these steps, which constitutes induced infringement with the knowledge of the '303 patent and with the knowledge that the induced acts constitute infringement. Defendant is aware that the normal and customary use of the Accused Products by others would infringe one or more claims of the '303 patent. Defendant's inducement is ongoing. *See* Ex. F.

27. Since at least the date it was served with the Original Complaint, Defendant has indirectly infringed and continues to indirectly infringe by contributing to the infringement of one or more claims of the '303 patent. Defendant has contributed and continues to contribute to the direct infringement of one or more claims of the '303 patent by personnel, contractors, customers, and other end users by encouraging them to use the Accused Products to perform the steps of the patented process as described in one or more claims of the '303 patent. The Accused Products have special features that are specially designed to be used in an infringing way and that have no substantial uses other than ones that infringe one or more claims of the '303 patent, including, for

example, claim 3 of the '303 patent. The special features constitute a material part of the invention of one or more of the claims of the '303 patent and are not staple articles of commerce suitable for substantial non-infringing use. Defendant's contributory infringement is ongoing. *See* Ex. F.

28. Defendant's aforesaid activities have been without authority and/or license from Golden Rule.

29. Defendant has had knowledge of the '303 patent and its infringing activity since at least the date it was served with the Original Complaint.

30. Furthermore, on information and belief, Defendant has a policy or practice of not reviewing the patents of others (including instructing its employees to not review the patents of others), and thus has been willfully blind of Golden Rule's patent rights.

31. Defendant's actions are at least objectively reckless as to the risk of infringing a valid patent and this objective risk was either known or should have been known by Defendant.

32. Since at least the date it was served with the Original Complaint, Defendant's direct and indirect infringement of one or more claims of the '303 patent is, has been, and continues to be willful, intentional, deliberate, or in conscious disregard of Plaintiff's rights under the patent.

33. Golden Rule has been damaged and continues to be damaged as a result of the infringing conduct by Defendant alleged above. Thus, Defendant is liable to Golden Rule in an amount that compensates it for such infringement, which by law cannot be less than a reasonable royalty, together with interest and costs as fixed by this Court under 35 U.S.C. § 284.

COUNT II: INFRINGEMENT OF U.S. PATENT NO. 8,464,475

34. Golden Rule repeats and re-alleges the allegations in the Paragraphs 1-16 above as though fully set forth in their entirety.

35. The USPTO issued U.S. Patent No. 8,464,475 (the “’475 patent”) on June 18, 2013 after full and fair examination of Application No. 13/723,588 that was filed on December 21, 2012. *See* Ex. B at B-1.

36. A Reexamination Certificate for the ’475 patent was issued on September 7, 2021 after full and fair examination of Application No. 90/014,256 that was filed on February 4, 2019 in which Claims 1-7 were cancelled, Claim 8 was amended, Claim 9 was determined to be patentable based on amended Claim 8, and a new Claims 10-12 were added. *See* Ex. B at B-9 through B-10.

37. The written description of the ’475 patent describes in technical detail each of the limitations of the claims, allowing a skilled artisan to understand the scope of the claims and how the non-conventional and non-generic combination of claim limitations is patently distinct from and improved upon what may have been considered conventional or generic in the art at the time of the invention.

38. Golden Rule owns all substantial rights, interest, and title in and to the ’475 patent, including the sole and exclusive right to prosecute this action and enforce said patent against infringers, and to collect damages for all relevant times.

39. Golden Rule or its predecessors-in-interest have satisfied all statutory obligations required to collect pre-filing damages for the full period allowed by law for infringement of the ’475 patent.

40. Defendant has infringed one or more claims of the ’475 patent by making, having made, using, importing, providing, supplying, distributing, selling, or offering the Accused Products to customers.

41. Golden Rule is informed and believes that Defendant has infringed and continues to

infringe the '475 Patent, including Claim 8, either literally or under the doctrine of equivalents, through the manufacture and sale of the Accused Products. Based upon public information, Defendant has infringed and continues to infringe one or more claims of the '475 Patent because it ships distributes, makes, uses, imports, offers for sale, sells, and/or advertises roof flashing products that form a weather-proof seal about pipes of different diameters where installation of the flashing over the top of the pipe is not possible, including at least the Accused Products.

42. For example, the Accused Products infringe one or more of the claims of the '303 Patent by providing to Defendant's customers roof flashing with "specifically designed for the protection of electrical connections that come from a rooftop." The Accused Products provide "quick installation time and fire protection qualities [to] make it a great long term fit in a roofing electrical application" and are made of EPDM ("ethylene propylene diene monomer"), an elastomeric material. The Accused Products also possess a longitudinal opening that allows the flashing to be spread apart and placed about a pipe. Afterwards, the flashing's opening members are pressed together and secured by coupling members that seal the longitudinal opening. The Accused Products are available for sale on its website and at retailer locations in this district and throughout the United States. *See* Ex. D and Ex. E.

43. Since at least the date it was served with the Original Complaint, Defendant has indirectly infringed and continues to indirectly infringe one or more claims of the '475 patent by inducing others to directly infringe one or more claims of said patent. Defendant has induced and continues to induce its subsidiaries, partners, employees, affiliates, and end-users, including Defendant's customers and potential customers, to directly infringe, either literally or under the doctrine of equivalents, one or more claims of the '475 patent by using the Accused Products.

Defendant took active steps, directly or through contractual relationships with others, with the specific intent to cause them to use the Accused Products in a manner that infringes one or more claims of the '475 patent, including, for example, claim 8 of the '475 patent. Such steps by Defendant included, among other things, advising or directing personnel, contractors, or end-users to make or use the Accused Products in an infringing manner; advertising and promoting the use of the Accused Products in an infringing manner; or distributing instructions that guide users to use the Accused Products in an infringing manner. Defendant is performing these steps, which constitutes induced infringement with the knowledge of the '475 patent and with the knowledge that the induced acts constitute infringement. Defendant is aware that the normal and customary use of the Accused Products by others would infringe one or more claims of the '475 patent. Defendant's inducement is ongoing. *See* Ex. F.

44. Since at least the date it was served with the Original Complaint, Defendant has indirectly infringed and continues to indirectly infringe by contributing to the infringement of one or more claims of the '475 patent. Defendant has contributed and continues to contribute to the direct infringement of one or more claims of the '475 patent by personnel, contractors, customers, and other end users by encouraging them to use the Accused Products to perform the steps of the patented process as described in one or more claims of the '475 patent. The Accused Products have special features that are specially designed to be used in an infringing way and that have no substantial uses other than ones that infringe one or more claims of the '475 patent, including, for example, claim 8 of the '475 patent. The special features constitute a material part of the invention of one or more of the claims of the '475 patent and are not staple articles of commerce suitable for substantial non-infringing use. Defendant's contributory infringement is ongoing. *See* Ex. F.

45. Defendant's aforesaid activities have been without authority and/or license from Golden Rule.

46. Defendant has had knowledge of the '475 patent and its infringing activity since at least the date it was served with the Original Complaint.

47. Furthermore, on information and belief, Defendant has a policy or practice of not reviewing the patents of others (including instructing its employees to not review the patents of others), and thus has been willfully blind of Golden Rule's patent rights.

48. Defendant's actions are at least objectively reckless as to the risk of infringing a valid patent and this objective risk was either known or should have been known by Defendant.

49. Since at least the date it was served with the Original Complaint, Defendant's direct and indirect infringement of one or more claims of the '475 patent is, has been, and continues to be willful, intentional, deliberate, or in conscious disregard of Plaintiff's rights under the patent.

50. Golden Rule has been damaged and continues to be damaged as a result of the infringing conduct by Defendant alleged above. Thus, Defendant is liable to Golden Rule in an amount that compensates it for such infringement, which by law cannot be less than a reasonable royalty, together with interest and costs as fixed by this Court under 35 U.S.C. § 284.

JURY DEMAND

51. Golden Rule hereby requests a trial by jury on all issues so triable by right.

PRAYER FOR RELIEF

52. WHEREFORE, Golden Rule requests that the Court find in its favor and against Defendant, and that the Court grant Alto Dynamics the following relief:

a. Judgment that one or more claims of the Asserted Patents has been infringed, either

literally or under the doctrine of equivalents, by Defendant or all others acting in concert therewith;

- b. Judgment that Defendant account for and pay to Golden Rule all damages to and costs incurred by Golden Rule because of Defendant's infringing activities and other conduct complained of herein pursuant to 35 U.S.C. § 284;
- c. Judgment that Defendant's infringement of the Asserted Patents be found willful, and that the Court award treble damages for the period of such willful infringement pursuant to 35 U.S.C. § 284;
- d. Injunctive relief pursuant to 35 U.S.C. § 283;
- e. Pre-judgment and post-judgment interest on the damages caused by Defendant's infringing activities and other conduct complained of herein;
- f. That this Court declare this an exceptional case and award Golden Rule its reasonable attorneys' fees and costs in accordance with 35 U.S.C. § 285; and
- g. All other and further relief as the Court may deem just and proper under the circumstances.

Dated: November 16, 2023

Respectfully submitted,

/s/ James F. McDonough, III

WEXLER WALLACE LLP

Mark R. Miller

55 W. Monroe Street, Suite 3300

Chicago, Illinois 60603

Telephone: (312) 346-2222

Facsimile: (312) 346-0022

Email: mrm@wexlerwallace.com

ROZIER HARDT MCDONOUGH, PLLC

James F. McDonough, III (GA 117088)*

659 Auburn Avenue NE, Unit 254

Atlanta, Georgia 30312

Telephone: (470) 480-9505

Email: jim@rhmtrial.com

For Plaintiff GOLDEN RULE FASTENERS INC.

* admitted *pro hac vice*

Exhibits

- A. U.S. Patent No. 8,141,303
- B. U.S. Patent No. 8,464,475
- C. Webpage: <https://www.rplumber.com/>
- D. Webpage:
<https://shop.rplumber.com/search?q=roof%20flashing&h=R.P.%20Lumber%20-%20Edwardsville,%20IL>
- E. Webpage: <https://shop.rplumber.com/c/building-materials/roofing-accessories/roof-flashing/p/oatey-master-flash-series-14090-roof-flashing-0-to-5-38-in-pipe-epdm-rubber-black>
- F. Technical Specification: Electrical Mast Connection Master Flash
(https://supplyhog.nyc3.cdn.digitaloceanspaces.com/orgill/docs/Oatey_102175581_Specification_Sheet.pdf)

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above and foregoing document has been served this day by electronic mail to all counsel of record who are deemed to have consented to electronic service *via* the Court's CM/ECF system.

Dated: November 16, 2023

/s/ James F. McDonough, III
James F. McDonough, III