

IN THE UNITED STATES DISTRICT COURTS, DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

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TEXAS EASTERN

BY

1. TRINITY INDUSTRIES, INC., §
2. THE TEXAS A&M UNIVERSITY §
SYSTEM, §
§
Plaintiffs, §

v. §

Case No.: **2-02C v -268**

1. CENTRAL FABRICATORS, INC., §
2. GREGORY INDUSTRIES, INC., §
3. UNIVERSAL INDUSTRIAL §
SALES, INC., §

Defendants. §

**COMPLAINT FOR
PATENT INFRINGEMENT**

COMPLAINT

Plaintiffs Trinity Industries, Inc., and The Texas A&M University System, by and through their undersigned counsel, assert this Complaint against Central Fabricators, Inc., Gregory Industries, Inc., and Universal Industrial Sales, Inc., averring as follows:

THE PARTIES

1. Plaintiff Trinity Industries, Inc. ("Trinity") is a Delaware corporation with its principal place of business located at 2525 Stemmons Freeway, Dallas, Texas, 75207.

2. Plaintiff The Texas A&M University System ("Texas A&M") is an educational institution organized and existing under the laws of the State of Texas and conducting business at various branches throughout Texas.

3. Upon information and belief, the first named defendant, Central Fabricators, Inc. ("Central"), is a corporation organized and existing under the laws of Mississippi, with a principal place of business at Old Natchez Trace Road, P.O. Box 565, Kosciusko, Mississippi, 39090.

4. Upon information and belief, the second named defendant, Gregory Industries, Inc. ("Gregory"), is a corporation organized and existing under the laws of the State of Ohio, with a principal place of business at 1723 Cleveland Avenue SW, Canton, Ohio, 44706.

5. Upon information and belief, the third named defendant, Universal Industrial Sales, Inc. ("Universal"), is a corporation organized and existing under the laws of the State of Utah, with a principal place of business at 435 N 1200 W, Lindon, Utah, 84042.

6. Unless otherwise specified, the acts complained of herein were committed by, on behalf of, and/or for the benefit of all three Defendants, to wit: Central, Gregory, and Universal.

NATURE OF THE ACTION

7. This is an action for patent infringement.

8. Count I of this Complaint avers that Central, Gregory, and Universal have infringed, contributed to infringement of, and/or actively induced others to infringe Texas A&M's U.S. Patent No. 4,928,928 ("the '928 Patent").

JURISDICTION AND VENUE

9. This action arises under the Patent Laws of the United States, 35 U.S.C. § 1 *et seq.*, including 35 U.S.C. § 271. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a).

10. This Court has personal jurisdiction over Central, Gregory and Universal because they conduct business in the State of Texas, and because they have infringed, contributed to the infringement of, and/or actively induce others to infringe the '928 Patent in Texas as alleged in this Complaint. Moreover, Central, Gregory and Universal continue to infringe, contribute to the infringement of, and/or actively induce others to infringe the '928 Patent in Texas.

11. Venue is proper in this Court pursuant to 28 U.S.C. 1400(b) in that each

defendant is subject to personal jurisdiction in the Eastern District of Texas, and thus each defendant resides in the Eastern District of Texas.

FACTUAL BACKGROUND

12. On May 29, 1990, U.S. Patent No. 4,928,928 was duly and legally issued to Texas A&M, as assignee of the inventors named therein, for an invention entitled "Guardrail Extruder Terminal." A true and correct copy of the '928 Patent is annexed hereto as Exhibit A and incorporated herein by reference. At all times since its original issue date, Texas A&M has been the owner of the entire right, title, and interest in the '928 Patent.

13. The novel technology claimed in the '928 Patent can be generally characterized as an energy absorbing guardrail end treatment for dissipating the impact energy produced when an automobile collides with a roadside guardrail. Since its introduction, this technology has been installed on highways throughout the United States and in many other countries.

14. Trinity, and its predecessor, under license granted by Texas A&M, has marketed a commercial embodiment of the '928 Patent since 1990. Under its license with Texas A&M, Trinity has the right to bring and maintain this action.

15. Upon information and belief, Central, Gregory, and Universal manufacture, distribute, and otherwise market guardrail end treatments and component parts for said end treatments that compete with Trinity's own highway safety products. Central's, Gregory's, and Universal's competing wares are marketed under the names Sequential Kinking Terminal, or SKT 350, and Flared Energy Absorbing Terminal, or FLEAT.

16. The SKT 350 and FLEAT infringe the '928 Patent.

17. Upon information and belief, Central, Gregory, and Universal have manufactured, distributed and otherwise marketed the infringing SKT 350 and FLEAT devices, and component

parts for said devices, without authority or license from Texas A&M or Trinity.

18. Central, Gregory, and Universal have profited by their infringing activities.

19. Texas A&M and Trinity have been damaged as a result of Central's, Gregory's, and Universal's infringing activities.

COUNT I
PATENT INFRINGEMENT UNDER 35 U.S.C. § 271 OF THE '928 PATENT

20. Trinity and Texas A&M incorporate by reference and reallege paragraphs 1 through 19 above.

21. Upon information and belief, Defendants Central, Gregory, and Universal have infringed and continue to infringe the '928 Patent by making, using, offering to sell, and selling SKT 350 and FLEAT devices, and component parts for said devices, that fall within the scope of the claims of the '928 Patent.

22. Upon information and belief, Central, Gregory, and Universal also have contributed to the infringement of the '928 Patent, and/or actively induced others to infringe the '928 Patent.

23. Trinity and Texas A&M are entitled to recover from Central, Gregory, and Universal the damages sustained by Trinity and Texas A&M as a result of Central's, Gregory's, and Universal's wrongful acts in an amount subject to proof at trial.

24. Central's, Gregory's, and Universal's infringement of the '928 Patent will continue to damage Trinity and Texas A&M, causing irreparable harm for which there is no adequate remedy at law, unless it is enjoined by this Court.

PRAYER FOR RELIEF

WHEREFORE, Trinity and Texas A&M ask this Court to enter judgment in their favor against Central, Gregory, and Universal granting the following relief:

A. An adjudication that Central, Gregory, and Universal have infringed and continue to infringe claims of the '928 Patent;

B. An accounting of all damages sustained by Trinity and Texas A&M as a result of Central's, Gregory's, and Universal's acts of infringement;

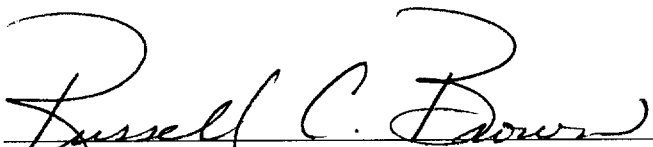
C. An award to Trinity and Texas A&M of actual damages adequate to compensate Trinity and Texas A&M for Central's, Gregory's, and Universal's acts of patent infringement, together with prejudgment interest;

D. Preliminary and permanent injunctive relief pursuant to 35 U.S.C. § 283, enjoining Central, Gregory, and Universal, and their agents, servants, employees, principals, officers, attorneys, successors, assignees, and all those in active concert or participation with them, including related individuals and entities, customers, representatives, dealers, and distributors from further acts of (1) infringement, (2) contributory infringement, and (3) active inducement to infringe with respect to the claims of the '928 Patent, and

E. Any further relief that this Court deems just and proper.

DATED: October ____, 2002

Respectfully submitted,

A handwritten signature in cursive script, reading "Russell C. Brown".

RUSSELL C. BROWN

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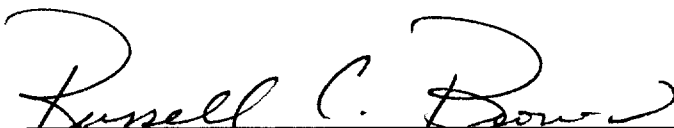
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A handwritten signature in cursive script, reading "Russell C. Brown".

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