

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

AMERICAN PILEDIVING EQUIPMENT, INC., a Washington corporation,	)	
	)	
Plaintiff	)	
	)	
v.	)	Case No.
HAMMER & STEEL, INC., a Missouri corporation,	)	
	)	<b>JURY TRIAL DEMANDED</b>
	)	
Defendant.	)	

**COMPLAINT FOR PATENT INFRINGEMENT**

COMES NOW Plaintiff, American Piledriving Equipment, Inc., by and through its undersigned attorneys, and for its Complaint against Defendant, Hammer & Steel, Inc., states and alleges as follows:

**PARTIES**

1. American Piledriving Equipment, Inc. (“APE”) is a corporation organized under the laws of the state of Washington. APE has its principal place of business in Kent, Washington.

2. On information and belief, Hydraulic Power Systems, Inc. (“HPSI”) is a corporation organized under the laws of the state of Missouri. HPSI has its principal place of business in Kansas City, Missouri. HPSI is a manufacturer and distributor of foundation construction equipment, such as piledrivers, earth augers, and pile driving leads.

3. On information and belief, at all times relevant hereto, Hammer & Steel, Inc. (“H & S”) was an authorized dealer for and agent of HPSI. H & S is a corporation organized under the laws of the state of Missouri and has a regular and established place of business in St. Louis,

Missouri. Furthermore, at all times relevant hereto, H & S did business in Missouri regarding the subject matter of this action.

### **JURISDICTION & VENUE**

4. This is an action for patent infringement, arising under the Patent Laws of the United States, 35 U.S.C. §§ 100 *et seq.*, and is brought to redress the infringement by defendant H & S of United States Patent No. 5,355,964 (hereinafter referred to as the “964 Patent”).

5. Subject matter jurisdiction over the claims asserted in this Complaint arises under 28 U.S.C. § 1331 in that this action involves a federal question. Subject matter over the claims also arises under 28 U.S.C. § 1338(a) in that this action arises under the Patent Laws of the United States.

6. This Court has personal jurisdiction over H & S because H & S resides within this Judicial District in that it maintains a regular and established place of business in St. Louis, Missouri.

7. Venue is proper in this Judicial District under 28 U.S.C. §§ 1391(b) and (c) and § 1400(b) because, on information and belief, H & S resides in this Judicial District and maintains a regular and established place of business in St. Louis, Missouri. H & S also transacted business in this Judicial District when this cause of action arose and such business activities included the patent infringement that forms the basis for this Complaint. Furthermore, a substantial part of the events giving rise to this Complaint for patent infringement occurred in this Judicial District.

### **FACTUAL BACKGROUND**

8. APE is a leading manufacturer and distributor of vibratory pile drivers/extractors, diesel hammers, drills, and other deep foundation construction equipment, and is known as an innovative leader in this business and technical area. APE's innovation in the pile driving and pile extraction business has drawn recent attention in that APE has developed a vibratory apparatus for use in pile driving equipment that has enhanced the ability to drive and/or extract piles efficiently. APE's vibratory apparatus overcomes significant problems associated with other kinds of pile driving equipment.

9. On October 18, 1994, United States Patent No. 5,355,964 (the '964 Patent) entitled "Pile Driving And/Or Pile Pulling Vibratory Assembly With Counterweights" was issued to John L. White. The '964 Patent was reexamined and the Ex Parte Reexamination Certificate issued on April 24, 2007 with all claims being confirmed without amendment. The '964 Patent has been assigned to APE. APE, therefore, has the right to bring this action. A true and correct copy of the original '964 Patent along with the Reexamination Certificate is attached hereto as **Exhibit A** and is incorporated herein by reference.

10. The invention described and claimed in the '964 Patent is a pile driving and/or pile extracting vibratory assembly for imparting a vibratory force to a pile. The vibratory assembly claimed in the '964 Patent uses counterweights that include insert receiving areas for receiving a solid insert made of a metal having a melting point of 328° C or greater. The Federal Circuit Court of Appeals has construed certain claims of the '964 Patent in its Opinion dated March 21, 2011 ("Federal Circuit's Opinion"). A copy of the Federal Circuit's Opinion is attached as **Exhibit B**.

11. On information and belief, H & S, as an agent and authorized dealer of HPSI, has used, leased, sold, offered for sale or lease, and/or distributed vibratory drivers/extractors throughout the United States that have counterweights that include tungsten inserts, including a certain configuration of the HPSI Model 250 and/or HPSI Model 500 vibrator driver/extractor hereinafter referred to as the “Early Model 250” and “Early Model 500.” The Federal Circuit’s Opinion identifies the configuration as the Early Model 500. On information and belief, H & S obtained the infringing vibrator drivers/extractors from HPSI.

12. On information and belief, H & S has used, sold and/or leased one or more of such vibratory drivers/extractors that include tungsten inserts.

13. On information and belief, H & S maintains a website that contains webpages making reference to the rental of HPSI Model 500 vibratory drivers/extractors. A true and correct copy of the webpages containing articles mentioning the rental of Model 500 vibratory drivers/extractors is attached hereto as **Exhibit C**.

14. The use, sale, lease, offer for sale or lease of HPSI’s Early Model 500 vibratory driver/extractor and/or HPSI’s Early Model 250 vibratory driver/extractor infringes one or more claims, including at least claims 16-18, of the ‘964 Patent under at least 35 U.S.C. § 271.

15. APE has not licensed either HPSI or H & S to practice the ‘964 Patent.

16. H & S’s ongoing and continuous activity constitutes patent infringement and is occurring, directly and/or through intermediaries, within the United States.

17. On information and belief, H & S’s use, sale, lease, and/or offer for sale or lease of HPSI’s Early Model 500 vibratory driver/extractor and/or HPSI’s Early Model 250 vibratory driver/extractor has caused and will continue to cause substantial damage, including lost revenues, to APE and irreparable injury for which APE has no adequate remedy at law. APE has

expended considerable sums in developing its pile driving/extracting vibratory assembly and anticipates considerable revenue from its patented vibratory assembly. The existence in the market of the infringing vibratory drivers/extractors is causing, and will in the future cause, substantial damage to APE. In order to prevent further harm, APE seeks a preliminary and permanent injunction and requests that the Court promptly schedule a trial on the merits.

**COUNT I**

**(Patent Infringement)**

18. The allegations of paragraphs 1 through 17 are incorporated herein by reference.

19. APE is the assignee of the entire interest in the '964 Patent.

20. At least HPSI's Early Model 500 vibratory driver/extractor incorporates the structural elements protected by the '964 Patent.

21. At least HPSI's Early Model 250 vibratory driver/extractor incorporates the structural elements protected by the '964 Patent.

22. H & S has for a time past and, on information and belief, still is infringing, including infringement and/or contributing to the infringement of one or more of the claims of the '964 Patent, by using, selling, leasing and/or offering for sale or lease at least HPSI's Early Model 500 vibratory/driver extractor and/or HPSI's Early Model 250 vibratory driver/extractor. This infringement has occurred and, on information and belief, continues to occur, directly or through intermediaries, throughout the United States, and will continue to occur unless enjoined by this Court.

23. H & S's conduct as set forth hereinabove gives rise to a cause of action for infringement of the '964 Patent, pursuant to 35 U.S.C. §§ 271 and 281.

24. H & S has been and, on information and belief, is still causing APE foreseeable tortious injury by infringing the '964 Patent, by using, selling, leasing and/or offering for sale or lease vibratory drivers/extractors embodying the invention claimed in the '964 Patent, including at least HPSI's Early Model 500 and/or HPSI's Early Model 250, and will continue to do so unless enjoined by this Court.

WHEREFORE, APE respectfully requests that this Court enter judgment in its favor and against H & S as follows:

A. That the Court decree and adjudge that United States Patent No. 5,355,964 entitled "Pile Driving And/Or Pile Pulling Vibratory Assembly With Counterweights" is valid, enforceable, and infringed by H & S using, selling, leasing and/or offering for sale or lease of at least HPSI's Early Model 500 vibratory driver/extractor;

B. That the Court decree and adjudge that United States Patent No. 5,355,964 is infringed by H & S using, selling, leasing and/or offering for sale or lease of at least HPSI's Early Model 250 vibratory driver/extractor;

C. An order of the Court temporarily, preliminarily, and permanently enjoining H & S and its respective officers, agents, employees, and any and all parties or persons acting in concert with any of them, from directly or indirectly infringing in any manner the '964 Patent, whether by using, selling, leasing, or offering to sell or lease any infringing vibratory driver/extractor or any components thereof or otherwise, pursuant to at least 35 U.S.C. § 283;

D. An award of APE's lost profits and other damages, in an amount to be proven at trial, pursuant to at least 35 U.S.C. § 284;

E. An award of a reasonable royalty to APE, in an amount to be proven at trial, pursuant to at least 35 U.S.C. § 284;

- F. Prejudgment interest, pursuant to at least 35 U.S.C. § 284;
- G. An award of APE's costs in bringing this action, pursuant to at least 35 U.S.C. § 284;
- H. That the Court find this action for patent infringement exceptional and that APE is entitled to an award of APE's attorney's fees, pursuant to 35 U.S.C. § 285;
- I. Post-judgment interest, pursuant to at least 28 U.S.C. § 1961(a); and
- J. For such other and further relief as the Court deems just and equitable.

**JURY TRIAL DEMANDED**

Plaintiff hereby demands a trial by jury in accordance with Rule 38 of the Federal Rules of Civil Procedure.

Date: May 9, 2011

Respectfully submitted,

GREENSFELDER, HEMKER & GALE, P.C.

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