

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS**

WBIP, LLC,

Plaintiff,

v.

KOHLER CO.,

Defendant.

CIVIL ACTION NO.

For its Complaint, Plaintiff alleges as follows:

**THE PARTIES**

1. Plaintiff WBIP, LLC (“Westerbeke”) is a limited liability company organized and existing under the laws of the Commonwealth of Massachusetts and having its principal place of business at 150 John Hancock Rd., Taunton, MA 02780-7319.

2. Defendant Kohler Co. (“Kohler”), upon information and belief, is a corporation organized and existing under the laws of State of Wisconsin and having its principal place of business at 444 Highland Drive, Kohler, WI 53044.

**JURISDICTION AND VENUE**

3. This is an action in law and equity for patent infringement, arising under the patent laws of the United States, Title 35 of the United States Code.

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

5. Venue is proper in this Court under 28 U.S.C. §§ 1391 and 1400(b).

6. This Court has personal jurisdiction over Kohler pursuant to Mass. Gen. L. ch. 223A § 3 at least because, upon information and belief, Kohler transacts business in the Commonwealth of Massachusetts.

**COUNT I – INFRINGEMENT OF THE ‘044 PATENT**

7. Westerbeke reaffirms and incorporates by reference each and every allegation contained in paragraphs 1 through 6 as if fully set forth herein.

8. This is a claim for patent infringement under 35 U.S.C. § 271 of Westerbeke’s U.S. Patent No. 7,314,044 (“the ‘044 patent”), entitled “Marine Emissions Control.” The ‘044 patent was duly and legally issued by the United States Patent and Trademark Office on January 1, 2008. A copy of the ‘044 patent is attached to this Complaint as Exhibit A.

9. Westerbeke is the sole owner and assignee of the ‘044 patent.

10. Upon information and belief, Kohler has infringed and continues to infringe at least claim 1 of the ‘044 patent by making, using, offering to sell, selling, and/or importing its Kohler Low Carbon Monoxide (CO) Gas Marine Generators, including at least models 4EFCD, 4EFKD, 5ECD, 5EKD, 6EFCD, 6EFKD, 7.3ECD, 7.5EKD, 8EFKD, 9EFGD, 10EGD, 10EKD, 11EFGD, 13EGD, and 15EGD, without permission from Westerbeke.

11. Upon information and belief, Kohler’s infringement of the ‘044 patent has been and continues to be taking place with objective recklessness, and despite an objectively high likelihood that Kohler’s actions constitute infringement of a valid patent.

12. Kohler has caused and will continue to cause Westerbeke irreparable injury and damage by infringing the ‘044 patent. Westerbeke will suffer further irreparable injury, for which Westerbeke has no adequate remedy at law, unless and until Kohler is enjoined by this Court.

13. Upon information and belief, Kohler will continue to infringe the '044 patent unless and until enjoined by this Court.

14. Westerbeke has given proper notice of its patent rights in the '044 patent. Specifically, Westerbeke marks its Westerbeke Safe-CO® Gasoline Generators with the word "patent" or the abbreviation "pat.," together with the number of the '044 patent, in compliance with the requirements of 35 U.S.C. § 287(a). Westerbeke's marking has been substantially consistent and continuous since the date of issue of the '044 patent. Prior to the date of issue of the '044 patent, Westerbeke substantially consistently and continuously marked its Westerbeke Safe-CO® Gasoline Generators with the words "patents pending."

#### **COUNT II – INFRINGEMENT OF THE '196 PATENT**

15. Westerbeke reaffirms and incorporates by reference each and every allegation contained in paragraphs 1 through 14 as if fully set forth herein.

16. This is a claim for patent infringement under 35 U.S.C. § 271 of Westerbeke's U.S. Patent No. 7,832,196 ("the '196 patent"), entitled "Electronic Emissions Control." The '196 patent was duly and legally issued by the United States Patent and Trademark Office on November 16, 2010. A copy of the '196 patent is attached to this Complaint as Exhibit B.

17. Westerbeke is the sole owner and assignee of the '196 patent.

18. Upon information and belief, Kohler has infringed and continues to infringe at least claim 1 of the '196 patent by making, using, offering to sell, selling, and/or importing its Kohler Low Carbon Monoxide (CO) Gas Marine Generators, including at least models 4EFCD, 4EFKD, 5ECD, 5EKD, 6EFCD, 6EFKD, 7.3ECD, 7.5EKD, 8EFKD, 9EFGD, 10EGD, 10EKD, 11EFGD, 13EGD, and 15EGD, without permission from Westerbeke.

19. Upon information and belief, Kohler's infringement of the '196 patent has been and continues to be taking place with objective recklessness, and despite an objectively high likelihood that Kohler's actions constitute infringement of a valid patent.

20. Kohler has caused and will continue to cause Westerbeke irreparable injury and damage by infringing the '196 patent. Westerbeke will suffer further irreparable injury, for which Westerbeke has no adequate remedy at law, unless and until Kohler is enjoined by this Court.

21. Upon information and belief, Kohler will continue to infringe the '196 patent unless and until enjoined by this Court.

22. Westerbeke has given proper notice of its patent rights in the '196 patent. Specifically, Westerbeke marks its Westerbeke Safe-CO® Gasoline Generators with the word "patent" or the abbreviation "pat.," together with the number of the '196 patent, in compliance with the requirements of 35 U.S.C. § 287(a). Westerbeke's marking has been substantially consistent and continuous since the date of issue of the '196 patent. Prior to the date of issue of the '196 patent, Westerbeke substantially consistently and continuously marked its Westerbeke Safe-CO® Gasoline Generators with the words "patents pending."

**PRAYER FOR RELIEF**

**WHEREFORE**, Westerbeke prays that this Court:

A. Enter judgment that Kohler has infringed United States Patent Nos. 7,314,044 and 7,832,196;

B. Enter an order preliminarily and permanently enjoining Kohler, its officers, agents, servants, employees, attorneys, and all persons acting in concert or participation with it from infringing the '044 and '196 patents;

- C. Award Westerbeke its damages resulting from Kohler's patent infringement pursuant to 35 U.S.C. § 284;
- D. Find that Kohler's patent infringement has been willful and increase the damages awarded to Westerbeke to three times the amount assessed, pursuant to 35 U.S.C. § 284;
- E. Find this to be an exceptional case and award Westerbeke its attorneys' fees and costs, pursuant to 35 U.S.C. § 285;
- F. Award Westerbeke prejudgment and post judgment interest on their damages; and
- G. Award Westerbeke such other and further relief as this Court deems just and proper.

**JURY DEMAND**

Plaintiff demands a trial by jury on all issues triable to a jury in this case.

Dated: March 4, 2011

Respectfully submitted,

*/s/ Andrea B. Reed*

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