

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 10-cv-00656-REB-CBS

CAUGHT FISH ENTERPRISES, LLC, a Colorado limited liability company; and
METAL ROOF INNOVATIONS, LTD., a Colorado corporation,

Plaintiffs,

v.

ACTION MANUFACTURING, LLC, a Colorado limited liability company,
RIDDELL AND COMPANY, a Colorado corporation, and
PAUL RIDDELL, an individual,

Defendants.

AMENDED COMPLAINT AND JURY DEMAND

Plaintiffs Caught Fish Enterprises, LLC ("Caught Fish") and Metal Roof Innovations, Ltd. ("MRI"), by and through their counsel, submit this Amended Complaint in accordance with Fed. R. Civ. P. 15(a)(1)(B), Defendants having served their Answer May 14, 2010. Caught Fish and MRI's previously filed Amended Complaint [Doc. No. 4] was filed to correct the designation of plaintiffs. That document was filed before the Complaint [Doc. No. 1] was served. The Amended Complaint and Complaint were thereafter contemporaneously served upon Riddell and Company on April 14, 2010 [Doc. No. 14], and contemporaneously served on Paul Riddell and Action Manufacturing, LLC on April 15, 2010 [Doc. No. 15, 16]. Therefore, as the first Amended Complaint was not an amendment under Rule 15(a)(1), the present Amended Complaint may be filed as matter of course under Fed. R. Civ. P. 15(a)(1)(B).

Although it is believed that the present Amended Complaint does not require leave of the Court under Fed. R. Civ. P. 15(a)(2), Caught Fish and MRI respectfully request that such leave be granted in the event the Court deems it necessary. Good cause for leave exists as the facts giving rise for this amendment stem from Defendants' actions with respect to the filing of Defendants' Answer and Counterclaims [Doc. No. 25] and Response to Caught Fish and MRI's Motion for Preliminary Injunction [Doc. No. 27]. Counsel for Defendants, having been informed of the present amendment on May 21, 2010, did not indicate that Defendants would oppose Caught Fish and MRI's right to amend as a matter of course.

Plaintiffs state and allege as follows for their Complaint against Defendants Action Manufacturing, LLC ("Action"), Riddell and Company ("Riddell") and Paul Riddell ("P. Riddell"):

I. PARTIES

1. Caught Fish is a Colorado limited liability company with its principal place of business in Colorado Springs, Colorado. Caught Fish is the owner of U.S. Patent Nos. 5,983,588 ("the '588 patent") and 6,164,033 ("the '033 patent") by assignment from Robert M.M. Haddock.

2. MRI is a Colorado corporation with its principal place of business in Colorado Springs, Colorado. MRI is a licensee of the '588 patent and the '033 patent. (Caught Fish and MRI will hereinafter be collectively referred to as "MRIL.")

3. Action is a limited liability company formed under the laws of Colorado, having a principal place of business at 12656 East Jamison Place, Unit 7, Englewood, Colorado

4. Riddell is a corporation formed under the laws of Colorado, having a principal place of business at 12656 East Jamison Place, Unit 7, Englewood, Colorado 80112. Upon information and belief, Riddell markets, offers for sale and sells mounting devices used on metal roofs.

5. P. Riddell is an individual having a business address of 12656 East Jamison Place, Unit 7, Englewood, Colorado 80112. At all times relevant hereto, upon information and belief, P. Riddell has been an officer of at least one of Action and Riddell. As an officer, P. Riddell has contributed to, aided and abetted Action's manufacture, and Riddell's distribution and sale of a number of products, including mounting devices used on metal roofs.

II. SUBJECT MATTER JURISDICTION

6. This is an action for patent infringement arising under the patent laws of the United States, 35 U.S.C. §§ 101 *et seq.*

7. This Court has subject matter jurisdiction over these patent infringement claims pursuant to 28 U.S.C. §§ 1331 and 1338.

III. PERSONAL JURISDICTION AND VENUE

8. Action manufactures a variety of products and devices used on or in connection with the installation and/or maintenance of metal roofs in Colorado, such roofs including standing metal seams. Upon information and belief, Action has manufactured

within the State of Colorado products that fall within one or more claims of the asserted patents.

9. Riddell solicits orders for Action's metal roof products and distributes print advertisements related thereto in Colorado and throughout the world. Upon information and belief, Riddell has sold and continues to sell metal roofing products and services throughout the country, including Colorado, and has a regular and established business presence within the State of Colorado. Further, upon information and belief, Riddell has sold and/or offered to sell within the State of Colorado products that fall within one or more claims of the asserted patents.

10. Upon information and belief, as an officer of at least one of Action and Riddell, P. Riddell has regularly and systematically conducted business in Colorado and has manufactured, offered to sell and/or has sold products accused of infringing one or more of the asserted patents in Colorado.

11. Action, Riddell, and P. Riddell (collectively "Action") are subject to personal jurisdiction in this judicial district.

12. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391 and 1400.

IV. GENERAL ALLEGATIONS

13. MRIL is in the business of developing, manufacturing, marketing and/or selling mounting devices for securing various apparatus to the standing seams of metal roofs.

A. The '588 Patent

14. On November 16, 1999, the United States Patent and Trademark Office ("USPTO") granted the '588 patent for a "Mounting Device for Building Surfaces," naming Robert M.M. Haddock as the inventor.

15. Among other things, the '588 patent describes and claims a novel device for mounting devices to standing metal roof seams. The device is generally comprised of a clamp that includes a mounting body having a slot extending therethrough. In operation, the clamp's slot is positioned over/about a standing seam on a metal roof and frictionally secured thereto.

16. MRIL manufactures, markets and sells devices incorporating the inventions disclosed and claimed in the '588 patent.

B. The '033 Patent

17. On December 26, 2000, the USPTO granted the '033 patent for a "Clamp for Securing Assemblies Other Than Snow Retention Device to a Raised Metal Seam Roof," naming Robert M.M. Haddock as the inventor.

18. Among other things, the '033 patent also describes and claims a novel device for securing various assemblies to a standing seam on a metal roof. In particular, at least one of the claimed devices is comprised of a body including a slot which can operatively be frictionally attached to a standing metal roof seam. The body also may be operatively attached to virtually any other assembly, other than a snow retention device.

19. MRIL manufactures, markets and sells devices incorporating the inventions disclosed and claimed in the '033 patent.

C. The Previous Litigation

20. Caught Fish and MRI previously filed an action against Action for infringement of the '588 and '033 patents, among other patents, in the United States District Court for the District of Colorado, Civil Docket No. 06-cv-00194-LTB-OES [Docs. No. 1, 3] (hereinafter "Previous Litigation"). (Caught Fish and MRI are collectively referred to as "Caught Fish" in the Previous Litigation).

21. Among other allegations, Caught Fish sought damages for Action's manufacture, sale and offer for sale of allegedly infringing "Windbar" and "Snowbar" products. [Doc. No. 1.]

22. Caught Fish also alleged, upon information and belief, that P. Riddell aided, abetted, contributed to and induced Action and Riddell to make, use, offer for sale and sell within the United States the allegedly infringing products. Additionally, Caught Fish alleged that P. Riddell had the authority and power to control all activities of Action and Riddell, including the activities of manufacture, distribution and sale of the allegedly infringing products. [Doc. No. 3, ¶ 29.]

23. In its Answer and Counterclaims [Doc. No. 7], Action asserted affirmative defenses, among others, of invalidity and unenforceability of the '588 and '033 patents under 35 U.S.C. §§ 101, 102, 103, 112, 251 and 252, and 37 C.F.R. § 1.56. [Doc. No. 7, Affirmative Defenses, ¶¶ 10-11.]

24. Action also brought declaratory judgment Counterclaims, requesting the Court declare the claims of the '588 and '033 patents invalid and unenforceable for failure to comply with the requirements of 35 U.S.C. §§ 101, *et seq.* [Doc. No. 7, ¶¶ 36-40, 46-50.]

25. In its Reply to Action's Counterclaims, Caught Fish requested the Court deny all of Action's requested relief. [Doc. No. 10.]

26. Ultimately, a settlement was reached between Caught Fish and Action at a settlement conference held May 30, 2006 by United States Magistrate Judge Michael E. Hegarty. [Doc. No. 23.] Subsequently, Caught Fish and Action executed a Confidential Settlement and Release Agreement ("Settlement Agreement") effective May 30, 2006.

27. Senior Judge Lewis T. Babcock subsequently issued an Order [Doc. No. 26] dismissing all claims, counterclaims and defenses raised in the Previous Litigation pursuant to the Stipulated Notice of Dismissal With Prejudice. That Order fully adjudicated the merits of Action's defenses and counterclaims regarding invalidity and/or unenforceability of the '588 and '033 patents, among other things.

D. Sale Of New Infringing Products By Action

28. Upon information and belief, Action is now making, using, offering for sale, and selling within the United States new systems for securing various assemblies to a standing seam on a metal roof. These products are sold under the names RoofClamp™ RCT and RoofClamp™ RC. The products include clamps that are comprised of a body, into which is formed a slot designed to accept the profile a standing metal roof seam and may be frictionally attached to a standing metal roof seam. The clamp may be operatively attached to virtually any other assembly to secure such assembly to a structure.

29. Upon information and belief, the RoofClamp™ RCT and RoofClamp™ RC products were not being manufactured, marketed, or offered for sale at the time of the Previous Litigation or the Settlement Agreement. The RoofClamp™ RCT and

RoofClamp™ RC are different products from the "Snowbar" or "Windbar" products specifically identified in and governed by the Settlement Agreement.

30. Prior to January 2006, and through the Previous Litigation and Settlement Agreement, MRIL put Action on notice of its various intellectual property, including the '588 and '033 patents.

E. Breach Of The Settlement Agreement

31. On April 12, 2010, MRIL filed a Motion to File Under Seal an unredacted copy of its Motion for Preliminary Injunction [Doc. No. 7] and included therewith a Redacted Motion for Entry of Preliminary Injunction. The redacted portions of that Motion specifically related to the Settlement Agreement. MRIL's Motion for Preliminary Injunction related to several important issues resolved in that earlier action, requiring the Court to have full access thereto and thus requiring MRIL to file a contemporaneous Redacted Motion to uphold and comply with confidentiality requirements the parties had agreed to in the Settlement Agreement.

32. The Court subsequently granted MRIL's Motion to File Under Seal an unredacted copy of its Motion for Preliminary Injunction. On April 21, 2010, MRIL filed under seal its Motion for Preliminary Injunction.

33. On May 14, 2010, Defendants filed their Answer and Counterclaims to MRIL's Complaint [Doc. No. 25] and their Response to MRIL's Motion for Preliminary Injunction [Doc. No. 27]. In violation of confidentiality restrictions agreed to by the parties, Defendants attached a complete and unredacted copy of the Settlement Agreement as Exhibit A to their Response, referenced and quoted confidential portions of the Settlement Agreement

in their Response, and incorporated confidential language from the Settlement Agreement in their Counterclaims (Third Claim for Relief). Defendants also included the affidavit of Ralph M. Martin as Exhibit B to their Response which includes numerous references to confidential portions of the Settlement Agreement. Defendants further improperly attached confidential sections of a 2006 deposition of Robert Haddock as Exhibit C to their Response. Defendants also included the affidavit of Paul Riddell as Exhibit D to their Response, a document which also contains numerous confidential references to the Settlement Agreement and the circumstances surrounding the formation thereof.

34. On May 18, 2010, MRIL filed an Unopposed Motion to Seal Defendants' Answer, Counterclaims, and Jury Demand and Response to Plaintiff's Unredacted Motion for Preliminary Injunction and Exhibits [Doc. No. 28].

35. On May 26, 2010, the Court granted MRIL's Unopposed Motion and ordered Defendants' Answer, Counterclaims, and Jury Demand [Doc. No. 25] and Defendants' Response to Plaintiffs' Unredacted Motion for Preliminary Injunction [Doc. No. 27] to be filed under seal. Upon information and belief, Defendants' Answer, Counterclaims, and Jury Demand [Doc. No. 25] and Defendants' Response to Plaintiffs' Unredacted Motion for Preliminary Injunction [Doc. No. 27] were therefore available for public inspection on the Public Access to Court Electronic Records system for a period of at least thirteen days. Upon information and belief, individuals located anywhere in the world having internet access were capable of viewing and archiving the Confidential Settlement Agreement and Defendants' improper references thereto during this time period.

V. FIRST CLAIM FOR RELIEF
(Infringement of U.S. Patent No. 5,983,588)

36. MRIL incorporates paragraphs 1 through 35 as though fully set forth herein.

37. Subsequent to the Settlement Agreement and Previous Litigation, Action has contributed to, and/or induced the infringement of and/or infringed the '588 patent by making, using, selling and/or offering for sale at least the RoofClamp™ RCT and RoofClamp™ RC products in the United States, all without license or authority from MRIL, in violation of 35 U.S.C. §§ 271(a), (b) and/or (c).

38. Action's infringing acts have been willful and wanton and in reckless disregard for MRIL's rights, entitling MRIL to seek a trebling of its actual damages under 35 U.S.C. § 284, and making this an exceptional case for which attorney's fees may be awarded pursuant to 35 U.S.C. § 285.

39. As a result of Action's infringing acts, MRIL has suffered and will continue to suffer irreparable injury for which there is no adequate remedy at law, entitling it to injunctive relief under 35 U.S.C. § 283.

VI. SECOND CLAIM FOR RELIEF
(Infringement of U.S. Patent No. 5,164,033)

40. MRIL incorporates paragraphs 1 through 39 as though fully set forth herein.

41. Subsequent to the Settlement Agreement and the Previous Litigation, Action contributed to, and/or induced the infringement of and/or infringed the '033 patent by making, using, selling and/or offering for sale at least the RoofClamp™ RCT and RoofClamp™ RC products in the United States, all without license or authority from MRIL, in violation of 35 U.S.C. §§ 271(a), (b) and/or (c).

42. Action's infringing acts have been willful and wanton and in reckless disregard for MRIL's rights, entitling MRIL to seek a trebling of its damages under 35 U.S.C. § 284, and making this an exceptional case for which attorney's fees should be awarded pursuant to 35 U.S.C. § 285.

43. As a result of Action's infringing acts, MRIL has suffered and will continue to suffer irreparable injury for which there is no adequate remedy at law, entitling it to injunctive relief under 35 U.S.C. § 283.

VII. THIRD CLAIM FOR RELIEF
(Breach of the Settlement Agreement)

44. MRIL incorporates paragraphs 1 through 43 as though fully set forth herein.

45. MRIL has been and is being damaged by Action's willful disclosure of confidential information, which constitutes a material breach of the Settlement Agreement.

46. As a consequence of Action's breach of the Settlement Agreement, MRIL has suffered damage in an amount according to proof.

47. As a result of Action's willful breach of material terms of the Settlement Agreement, MRIL has suffered and will continue to suffer irreparable injury for which there is no adequate remedy at law, entitling MRIL to injunctive relief.

WHEREFORE, Plaintiff MRIL prays that this Court enter its Judgment and enter an Order as follows:

1. Finding that Action, Riddell, and P. Riddell and their officers, agents, servants, employees, successors, assigns, and all persons in active concert with any of them, are precluded from pleading any defense or counterclaim of invalidity or unenforceability of U.S. Patent Nos. 5,983,588 and/or 6,164,033 now or in the future;

2. Preliminarily and permanently enjoining Action, Riddell, and P. Riddell and their officers, agents, servants, employees, successors, assigns, and all persons in active concert with any of them, from infringing and/or inducing others to infringe and/or contributing to the infringement of U.S. Patent Nos. 5,983,588 and/or 6,164,033;

3. Awarding to MRIL monetary damages in an amount equal to the greater of MRIL's lost profits or a reasonable royalty pursuant to 35 U.S.C. § 284, and trebling those damages by reason of the willful, wanton, and deliberate nature of Action's, Riddell's, and P. Riddell's infringement pursuant to 35 U.S.C. § 284;

4. Awarding to MRIL its reasonable attorney's fees pursuant to 35 U.S.C. § 285;

5. Awarding to MRIL its costs incurred in this action, including expert witness fees;

6. Awarding to MRIL prejudgment interest, post judgment interest and any such other and further relief as the Court may deem just and proper; and

7. For compensatory damages in an amount to be proven at trial and for prejudgment interest on said amount.

JURY DEMAND

MRIL hereby demands a trial by jury as to all issues so triable.

Dated: May 28, 2010

Respectfully submitted,

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ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

I hereby certify that on this 28th day of May, 2010, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following e-mail addresses:

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