

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS

HECKMANN BUILDING PRODUCTS,)
INC. and MASONRY TIE SYSTEM, INC.)
)
 Plaintiffs,)
) Civil Action No. 10-cv-4262
 v.)
)
 HOHMANN & BARNARD, INC., BLOK-)
 LOK[®] LIMITED, LIGHTHOUSE)
 MASONRY, INC., and DRISCOLL SALES)
& DISTRIBUTING, LLC,)
)
 Defendants.

FIRST AMENDED COMPLAINT

Plaintiffs Heckmann Building Products, Inc. (“HECKMANN”) and Masonry Tie System, Inc. (MASONRY) (collectively referred to as “Plaintiffs”), by and through its attorneys, for its Complaint against Defendants Hohmann & Barnard, Inc. (“HOHMANN”), Blok-Lok[®] Limited (“BLOK-LOK”), Lighthouse Masonry, Inc. (“LIGHTHOUSE”), and Driscoll Sales & Distributing, LLC (“DRISCOLL”) (collectively referred to as “Defendants”), allege and state as follows:

NATURE OF ACTION

1. This is a claim for patent infringement arising under the patent laws of the United States, Title 35 of the United States Code, including 35 U.S.C. §§ 271 and 281.

THE PARTIES

2. Plaintiff HECKMANN is incorporated under the laws of Illinois, having its principal place of business at 1501 North 31st Avenue, Melrose Park, IL 60160.

3. Plaintiff MASONRY is incorporated under the laws of New Jersey, having its principal place of business at 23 Red Hill Road, Warren, NJ 07059.

4. On information and belief, Defendant HOHMANN is incorporated under the laws of Delaware, having its principal place of business at 14515 North Outer 40 Drive, Ste 300, Chesterfield, NY 63017.

5. On information and belief, Defendant BLOK-LOK is organized under the laws of Canada, having its principal place of business at 30 Millwick Drive, Toronto, ON, Canada M9L 1Y3.

6. On information and belief, BLOK-LOK is a wholly owned subsidiary of HOHMANN.

7. On information and belief, Defendant LIGHTHOUSE is incorporated under the laws of Massachusetts, having its principal place of business at 150 John Vertente Boulevard, New Bedford, MA 02745.

8. On information and belief, Defendant DRISCOLL is incorporated under the laws of Massachusetts, having its principal place of business at 233 Libbey Industrial Parkway, Unit 4, Weymouth, MA 02189.

JURISDICTION AND VENUE

9. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338.

10. Venue is proper in this district under 28 U.S.C. § 1391(b) and (c).

11. This Court has personal jurisdiction over Defendants because they have transacted business in Illinois by availing themselves to residents of this State through printed brochures and online offerings of products that directly or indirectly infringe U.S. Patent No.7,415,803. Personal jurisdiction is vested in this Court pursuant to 735 ILCS 5/2-209.

PATENT AT ISSUE

12. U.S. Patent No.7,415,803 (“the ‘803 patent”), which is entitled “Double-Wing Wing Nut Anchor System and Method,” issued on August 26, 2008.

13. MASONRY is the assignee of the ‘803 patent by way of a transfer of rights from Joseph Bronner, the sole inventor of the ‘803 patent.

14. HECKMANN is the exclusive licensee of the ‘803 patent by way of agreement between MASONRY and HECKMANN.

15. Defendant BLOK-LOK was put on notice of the ‘803 patent by way of a letter sent to Ken Banks, C.O.O. of BLOK-LOK, on March 30, 2010, which included a copy of the ‘803 patent. A copy of the letter and a Federal Express confirmation of receipt by BLOK-LOK are attached hereto as Exhibit A.

16. Defendant HOHMANN was put on notice of the ‘803 patent by way of a letter sent to Ron Hohmann, Sr., Chairmen and CEO of HOHMANN, on March 30, 2010,

which included a copy of the '803 patent. A copy of the letter and a Federal Express confirmation of receipt by HOHMANN are attached hereto as Exhibit B. Further, a letter from Ronald Hohmann, Jr., dated April 15, 2010, confirming receipt of the March 30th letter is attached hereto as Exhibit C.

DEFENDANTS INFRINGING ACTIVITIES

17. HOHMANN and BLOK-LOK manufacture and sell masonry products and systems.

18. On information and belief, HOHMANN is currently selling wing nuts under the trade name "Wing Nut 2-Seal Tie™," ("HOHMANN WING NUT") which are available to the public at large, and the citizens of this State, through HOHMANN'S website at (http://www.h-b.com/images/leed/hb_leed_form.pdf), which is reproduced, in part, in Exhibit D.

19. On information and belief, HOHMANN is also selling the HOHMANN WING NUTS to the public at large, including the citizens of this State, through printed brochures such as the one shown in Exhibit E.

20. On information and belief, BLOK-LOK is currently selling wing nuts under the trade names "2-Seal Wing Nut" and "2-Seal Wing Nut Anchor Body," ("BLOK-LOK WING NUT") which are available to the public at large, and the citizens of this State, through BLOK-LOK'S website at (<http://www.entasia.com/blocklok-ia.html>), which is reproduced, in part, in Exhibit F.

21. On information and belief, Defendants are selling and offering to sell HOHMANN WING NUTS and BLOK-LOK WING NUTS to third parties with the

intention of inducing the infringement, or contributing to the infringement, of the '803 patent.

THE WORCESTER PSYCHIATRIC HOSPITAL PROJECT

22. On information and belief, LIGHTHOUSE is a construction services company who is the general contractor for a construction project at the Worcester Psychiatric Hospital ("PROJECT"), located at 305 Belmont Street, Worcester, MA.

23. On information and belief, HOHMANN has sold approximately 90,000 HOHMANN WING NUTS to LIGHTHOUSE for use on the PROJECT.

24. On information and belief, DRISCOLL is a supply house who acted as an intermediary in supplying the HOHMANN WING NUTS to LIGHTHOUSE for the PROJECT.

25. On information and belief, the HOHMANN WING NUTS are currently being installed at the PROJECT in direct violation of Plaintiffs' rights under the '803 patent.

COUNT ONE

INDUCED PATENT INFRINGEMENT – 35 U.S.C. § 271(b)

26. Plaintiffs repeat and reallege the averments of paragraphs 1-25 as if fully set forth herein.

27. Defendants HOHMANN and BLOK-LOK have knowledge of the '803 patent at least through the letters sent to them on March 30, 2010. See Exhibits A-C.

28. Defendants HOHMANN and BLOK-LOK are knowingly inducing the infringement of the '803 patent by the offering for sale of the HOHMANN and BLOK-

LOK WING NUTS. On information and belief Defendants HOHMANN and BLOK-LOK have also induced the infringement of the '803 patent by the sale of HOHMANN and BLOK-LOK WING NUTS and the subsequent use of same by third parties in the direct infringement of the '803 patent, e.g., the HOHMANN WING NUTS sold for the PROJECT.

29. On information and belief, DRISCOLL is also inducing the infringement of the '803 patent, as DRISCOLL is at least an agent of HOHMANN and stands in the same place as HOHMANN.

COUNT TWO

CONTRIBUTORY PATENT INFRINGEMENT – 35 U.S.C. § 271(c)

30. Plaintiffs repeat and reallege the averments of paragraphs 1-29 as if fully set forth herein.

31. Defendants HOHMANN and BLOK-LOK are offering for sale the HOHMANN and BLOK-LOK WING NUTS. On information and belief Defendants HOHMANN and BLOK-LOK have also sold HOHMANN and BLOK-LOK WING NUTS, e.g., the HOHMANN WING NUTS sold for the PROJECT.

32. The HOHMANN and BLOK-LOK WING NUTS constitute a material component of the invention of the '803 patent.

33. Defendants HOHMANN and BLOK-LOK have knowledge of the '803 patent and that the HOHMANN and BLOK-LOK WING NUTS were designed for an infringing use. Defendants HOHMANN and BLOK-LOK have knowledge of their

infringing activities at least through the letters sent to them on March 30, 2010. See Exhibits A-C.

34. The HOHMANN and BLOK-LOK WING NUTS are not staple articles of commerce as they are especially made or adapted for use in the infringement of the '803 patent, and do not have a substantial non-infringing use.

35. On information and belief, DRISCOLL is also contributing to the infringement of the '803 patent, as DRISCOLL is at least an agent of HOHMANN and stands in the same place as HOHMANN.

COUNT THREE

PATENT INFRINGEMENT – 35 U.S.C. § 271(a)

36. Plaintiffs repeat and reallege the averments of paragraphs 1-35 as if fully set forth herein.

37. On information and belief, Defendant LIGHTHOUSE is directly infringing the '803 patent by installing HOHMANN WING NUTS at the PROJECT in direct violation of Plaintiffs' rights under the '803 patent, which constitutes an unauthorized making or use of the claimed subject matter of the '803 patent.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs HECKMANN and MASONRY respectfully request that this Court enter judgment against Defendants HOHMANN, BLOK-LOK, DRISCOLL, and LIGHTHOUSE, including:

A. An accounting of all HOHMANN and BLOK-LOK WING NUTS manufactured, sold, or offered for sale in the United States or imported into the United States.

B. An accounting of all other wing nuts manufactured, sold, or offered for sale in the United States in violation of the '803 patent, or imported into the United States in violation of the '803 patent.

C. Finding that Defendants have directly and/or indirectly infringed the '803 patent in violation of 35 U.S.C. § 271(a), (b), & (c).

D. Awarding Plaintiffs actual damages and a reasonable royalty for all HOHMANN and BLOK-LOK WING NUTS, or any other infringing wing nuts, that have been manufactured, sold, used, or offered for sale in the United States, or imported into the United States, in violation of the '803 patent.

E. Preliminarily and permanently enjoining Defendants from manufacturing, selling, offering to sell, advertising, promoting, using, or importing any HOHMANN and BLOK-LOK WING NUTS, or any other infringing wing nuts, in violation of the '803 patent.

F. Ordering that the Defendants immediately cease the manufacturing, sale, offer for sale, advertising, promotion, use, or importation of all HOHMANN and BLOK-LOK WING NUTS, or any other infringing wing nuts, in violation of the '803 patent.

G. Awarding Plaintiffs such further relief as this Court deems just and proper.

JURY DEMAND

Pursuant to FED. R. CIV. P. 38(b), HECKMANN and MASONRY respectfully demand a trial by jury of all issues triable by a jury in their Complaint.

HECKMANN BUILDING PRODUCTS,
INC.
MASONRY TIE SYSTEM, INC.

Dated: July 23, 2010

By: /s/Nicholas P. Schmidbauer

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