

HONORABLE BENJAMIN H. SETTLE

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT TACOMA

PACTOOL INTERNATIONAL LTD.,
a Washington corporation,

Plaintiff,

v.

KETT TOOL COMPANY INC.,
an Ohio corporation, and
H. ROWE HOFFMAN,
chairman and part owner of Kett Tool Company,
Inc.,

Defendants.

CIVIL ACTION No. 3:06-cv-05367-BHS

FIRST AMENDED COMPLAINT

DEMAND FOR JURY TRIAL

Plaintiff PacTool International Ltd. ("PacTool"), for its First Amended Complaint against
Defendants Kett Tool Company Inc. ("Kett") and H. Rowe Hoffman herein, alleges as follows:

NATURE OF THE ACTION

1. This action is based on the Patent Laws of the United States, 35 U.S.C. § 1 *et seq.*
2. This action arises out of defendants' making, using, selling, and/or offering for sale products infringing the technology embodied in patents owned by PacTool.

THE PARTIES

3. Plaintiff PacTool is a corporation organized and existing under the laws of the State of Washington and having a place of business at 26139 United Road, Kingston, Washington 93846. A pioneer in the fiber-cement cutting technology, plaintiff has invented, manufactured, and sold hand-held fiber-cement cutting tools and related products since the 1990's. The U.S. Patent and Trademark Office ("PTO") has recognized PacTool's innovation and contributions to science and the useful arts by awarding it protection for its inventive hand-held fiber-cement cutting tool technology. Furthermore, PacTool has invested substantial resources in the research and development of its patented hand-held fiber-cement cutting tools.

4. Defendant Kett is a corporation organized and existing under the laws of the State of Ohio and having a place of business at 5055 Madison Road, Cincinnati, Ohio 45227. On information and belief, Kett is in the business of, *inter alia*, making, marketing, selling, and offering for sale hand-held fiber-cement cutting tools and related products, and regularly conducts business in this Judicial District. On information and belief, Kett sells cutting head assemblies, fiber-cement cutting blades, and other replacement parts for fiber-cement cutting shears that are incorporated into third party hand-held fiber-cement cutting tools.

5. Defendant H. Rowe Hoffman is, on information and belief, the Chairman, at least part owner, and an employee of Kett. He resides at 8445 Eustis Farm Lane, Cincinnati, Ohio 45243. On information and belief, Mr. Hoffman has ultimate decision making authority for, and control over, Kett's marketing, design, manufacture, sales, and offers for sale of cutting head assemblies, hand-held fiber-cement cutting tools, blades for handheld fiber-cement cutting tools, and other replacement parts for fiber-cement cutting tools, including the products accused of infringement in this case. Further, on information and belief, Mr. Hoffman has ultimate decision

1 making authority and control over Kett's sales of cutting head assemblies, fiber-cement cutting
 2 blades, and other replacement parts for fiber-cement cutting shears that are incorporated into
 3 third party hand-held fiber-cement cutting tools, including the products accused of infringement
 4 in this case.

5 JURISDICTION AND VENUE

6 6. This action arises under the Patent Act, 35 U.S.C. § 1 *et seq.* The Court has
 7 original subject matter jurisdiction over such claims pursuant to 28 U.S.C. §§ 1331 and 1338(a).

8 7. The Court has personal jurisdiction over the parties, and venue in this Judicial
 9 District is proper under 28 U.S.C. §§ 1391(a), (b), and (c), and/or 1400(b).

10 PLAINTIFF AND ITS RIGHTS

11 8. PacTool was incorporated in 1994 to, *inter alia*, design, develop, manufacture,
 12 and sell fiber-cement products and fiber-cement cutting tools. PacTool has sold, and continues
 13 to sell, these products in Washington and throughout the United States.

14 9. The PTO duly and lawfully issued United States Patent No. 5,993,303 ("the '303
 15 patent") on November 30, 1999, entitled *Hand-Held Cutting Tool For Cutting Fiber-Cement*
 16 *Siding* (See Exhibit 1), and United States Patent No. 6,250,998 ("the '998 patent") on June 26,
 17 2001, entitled *Hand-Held Cutting Tool For Fiber-Cement* (See Exhibit 2). Both the '303 and the
 18 '998 Patents were reexamined. The reexamination certificates issued December 1, 2009 and
 19 December 8, 2009 for the '303 and '998 Patents respectively. PacTool is the sole owner by
 20 assignment of the '303 and '998 patents, true and correct copies of which are attached hereto as
 21 Exhibits 1 and 2, respectively along with their corresponding reexamination certificates.
 22

23 DEFENDANTS AND THEIR UNLAWFUL ACTIVITIES

24 10. On information and belief, defendants are presently manufacturing, using, selling,
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 26

1 and/or offering to sell the hand-held fiber-cement cutting tools and related products, which
2 directly or indirectly infringe, by inducement or contribution, one or more claims of the '303 and
3 '998 patents described above.

4 11. On information and belief, defendants are knowingly selling hand-held fiber-
5 cement cutting tools and cutting head assemblies made or adapted for use as a material part of
6 PacTool's patented hand-held fiber-cement cutting tool inventions, knowing that defendant
7 Kett's cutting head assemblies are nonstaple articles made or adapted specifically for such use
8 and have no substantial noninfringing use, thereby contributing to the direct infringement by
9 others of one or more claims of PacTool's '303 and '998 patents.

10 12. On information and belief, defendants are actively and knowingly aiding and
11 abetting the direct infringement of PacTool's '303 and '998 patents with knowledge thereof by,
12 *inter alia*, designing hand-held fiber-cement cutting tools and cutting head assemblies that
13 infringe one or more claims of PacTool's '303 and '998 patents, advertising and selling its hand-
14 held fiber-cement cutting tools and cutting head assemblies, and distributing user manuals and
15 instructions therefor, thereby actively inducing the direct infringement by others of one or more
16 claims of PacTool's '303 and '998 patents.

17 13. On information and belief, Mr. Hoffman has ultimate decision-making authority
18 for, and control of, Kett as the Chairman and at least part owner of Kett and has the final authority
19 on all major decisions made at Kett. Mr. Hoffman had notice that PacTool owned the patents
20 asserted herein both before and after they were reexamined. Despite notice of PacTool's patents,
21 Mr. Hoffman knowingly infringed, induced infringement, and/or contributed to the infringement
22 by Kett and/or third parties by deciding that Kett would continue to manufacture, offer for sale, and
23 sell infringing devices.
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COUNT I: INFRINGEMENT OF THE '303 PATENT

14. Plaintiff repeats and realleges each of the allegations contained in paragraph Nos. 1-13 of this Complaint as if fully set forth herein.

15. On information and belief, defendants have been, and are, infringing—directly, contributorily, and/or by inducement—one or more claims of the '303 patent by manufacturing, using, selling, and/or offering for sale hand-held fiber-cement cutting tools and related products in the United States and in this Judicial District.

16. By infringing directly, contributorily, and by inducement one or more claims of the '303 patent, defendants have unfairly reaped a substantial commercial advantage and savings in research and development time and cost, all to plaintiff's detriment.

17. Defendants' activities with respect to its hand-held fiber-cement cutting tools and related products constitute willful infringement of one or more claims of the '303 patent.

18. Plaintiff has been, and will continue to be, damaged by such direct, contributory, and induced infringement in an amount to be proven at trial and in a manner and amount that cannot be fully measured or compensated in economic terms and for which there is no adequate remedy at law. The actions of defendants have damaged, and will continue to damage, plaintiff's business, market, reputation, and goodwill. Such irreparable damage will continue unless the acts of defendants are enjoined during the pendency of this action and thereafter. Plaintiff is, therefore, entitled to the remedies provided by 35 U.S.C. §§ 283-285.

COUNT II: INFRINGEMENT OF THE '998 PATENT

19. Plaintiff repeats and realleges each of the allegations contained in paragraph Nos. 1-13 of this Complaint as if fully set forth herein.

20. On information and belief, defendants have been, and are, infringing—directly,

1 contributorily, and/or by inducement—one or more claims of the ‘998 patent by manufacturing,
 2 using, selling, and/or offering for sale hand-held fiber-cement cutting tools and related products
 3 in the United States and in this Judicial District.

4 21. By infringing directly, contributorily, and by inducement one or more claims of
 5 the ‘998 patent, defendants have unfairly reaped a substantial commercial advantage and savings
 6 in research and development time and cost, all to plaintiff’s detriment.

7 22. Defendants’ activities with respect to its hand-held fiber-cement cutting tools and
 8 related products constitute willful infringement of one or more claims of the ‘998 patent.

9 23. Plaintiff has been, and will continue to be, damaged by such direct, contributory,
 10 and induced infringement in an amount to be proven at trial and in a manner and amount that
 11 cannot be fully measured or compensated in economic terms and for which there is no adequate
 12 remedy at law. The actions of defendants have damaged, and will continue to damage, plaintiff’s
 13 business, market, reputation, and goodwill. Such irreparable damage will continue unless the
 14 acts of defendants are enjoined during the pendency of this action and thereafter. Plaintiff is,
 15 therefore, entitled to the remedies provided by 35 U.S.C. §§ 283-285.
 16

17 **PRAYER FOR RELIEF**

18 WHEREFORE, plaintiff prays for judgment that:

19 1. Defendant Hoffman and defendant Kett and its officers, agents, servants,
 20 employees, and attorneys and all other persons in active concert or participation with any of
 21 them, be enjoined and restrained during the pendency of this action and permanently thereafter
 22 from infringing any claim of the ‘303 and ‘998 patents.

23 2. Defendants be ordered to pay such damages as have been sustained and adequate
 24 to compensate plaintiff for the patent infringement, including lost profits, but in no event less
 25 than a reasonable royalty, as provided by 35 U.S.C. § 284.
 26

1 3. Defendants' infringement of the '303 and '998 patents be found to have been
2 willfully committed by defendants and that the damages be increased to three times the amount
3 assessed, as provided by 35 U.S.C. § 284.

4 7. Defendants be ordered to pay the costs of this action and plaintiff's reasonable
5 attorneys' fees, and interest, as provided by 35 U.S.C. §§ 284 and 285.

6 8. Defendants be ordered to pay prejudgment interest on all sums awarded to
7 plaintiff as allowed by law.

8 9. Plaintiff have such other and further relief as this Court may deem just and
9 proper.

10 **DEMAND FOR JURY TRIAL**

11 Plaintiff demands a trial by jury as to all issues so triable.

12 DATED this 8th day of April, 2010.

13 DORSEY & WHITNEY LLP

14
15 s/ Paul T. Meiklejohn

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CERTIFICATE OF SERVICE

I, Paul T. Meiklejohn, certify that on April 8, 2010, the foregoing FIRST AMENDED COMPLAINT was electronically filed with the Clerk of the Court using the CM/ECF system and thereby served on counsel for Defendant Kett Tool Company Inc. via ECF-generated e-mail and notification.

Dated this 8th day of April 2010.

s/ Paul T. Meiklejohn
Paul T. Meiklejohn