

Peter E. Heuser, Idaho Bar No. 5315  
David P. Cooper, OSB No. 88036  
KOLISCH, HARTWELL, DICKINSON,  
McCORMACK & HEUSER  
200 Pacific Building  
520 S.W. Yamhill Street  
Portland, Oregon 97204  
Telephone: (503) 224-6655

U.S. COURTS

01 DEC 28 PM 2: 25

RECEIVED  
CAPTAIN W. S. BURKE  
CLERK IDAHO

**FEE PAID**  
**RCPT # 10751**

Attorneys for Plaintiff

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF IDAHO

ORIGINAL

RYCAIR, INC. )

Plaintiff, )

v. )

BOISE CASCADE CORPORATION )

Defendant. )

Civil Action No. **CV 01 - 0637 - S - LMB**

**COMPLAINT FOR  
PATENT INFRINGEMENT  
UNDER 35 U.S.C. § 271 AND  
FOR BREACH OF CONTRACT**

**DEMAND FOR JURY TRIAL**

Plaintiff Rycair, Inc. in this complaint against defendant alleges:

Jurisdiction and Venue

1. This is a civil suit for, among other things, patent infringement under the Patent Act of 1952, as amended, 35 U.S.C. § 1 et. seq., and specifically, 35 U.S.C. § 271. The Court has jurisdiction under 28 U.S.C. § 1338(a).

2. Venue is proper pursuant to 28 U.S.C. § 1440 and 28 U.S.C. § 1391.

①

Parties

3. Plaintiff Rycair, Inc. ("Rycair") is an Idaho corporation with a principal place of business at 4242 Eagleson Road, Suite 102, Boise, Idaho 83705 and a mailing address of P.O. Box 170265, Boise, Idaho 83717.

4. On information and belief, defendant Boise Cascade Corporation ("Boise Cascade") is a Delaware corporation with a principal place of business at 1111 West Jefferson Street, Boise, Idaho 83702.

Background

5. Rycair and Boise Cascade entered into a Technology License and Consulting Agreement (TLCA) on March 13, 1995 (copy attached as Exhibit A). Pursuant to the TLCA, Boise Cascade, LICENSEE, was the worldwide exclusive licensee of Rycair's patented composite forming/processing technology. In the TLCA, Rycair is referred to, with a related business organization called Engineered Composites, as LICENSORS. According to Section 5.2 of the TLCA, Boise Cascade is to commercialize Rycair's technology by building a factory within a set time period after Phase Three of commercialization begins. Specifically, Section 5.2 provides that Boise Cascade "shall complete construction of said factory within 24 months of the commencement of Phase Three, subject to extensions for delays beyond the reasonable control of LICENSEE."

6. On December 22, 1999, Boise Cascade notified Rycair in a letter that Phase Three had begun pursuant to Section 5.2 of the TLCA (copy of Boise Cascade's letter attached as Exhibit B).

7. According to Section 1.1 of the TLCA, Boise Cascade is the worldwide exclusive licensee of Rycair's patented composite forming/processing technology for 30 listed non-structural building material TPC products ("the Listed Products") identified in Attachment A to the TLCA. Section 1.10 of the TLCA requires that "LICENSORS and LICENSEE will use their best efforts in carrying out their obligations of the present agreement".

8. On numerous occasions since 1995, Rycair has asked for status on Boise Cascade's commercialization activity, and Boise Cascade has continually and consistently refused to provide any objective information with which Rycair could evaluate whether Boise Cascade was using its best efforts under the TLCA. Among other things, Rycair wanted to learn and evaluate Boise Cascade's best efforts relative to its obligations to commercialize worldwide all 30 Listed Products recited in Attachment A of the TLCA.

9. On information and belief, and based upon meetings and conversations with Boise Cascade representatives in 2001, Boise Cascade has made no effort to commercialize 29 of the 30 Listed Products since Boise Cascade executed the TLCA in 1995. The single Listed Product that Boise Cascade has made efforts to commercialize is siding, but Boise Cascade has failed to meet its obligation to complete construction of a factory by December 22, 2001 (see ¶ 5 above). In addition, Boise Cascade has made no effort to commercialize any of the Listed Products in countries outside of the United States and Canada.

10. In connection with the technology Rycair licensed under the TLCA, Rycair is the owner of U.S. Patent No. 5,824,246 entitled METHOD OF FORMING A THERMOACTIVE BINDER COMPOSITE ("the '246 patent") and issued on October 20, 1998. Rycair has the authority to enforce the '246 patent. A copy of the '246 patent is attached as Exhibit C.

Count 1 - Infringement of U.S. Patent No. 5,824,246

11. Rycair incorporates by reference all preceding paragraphs.

12. On information and belief, Boise Cascade has made, used, offered for sale and/or sold products that are covered by the '246 patent ("the Accused Products"), thereby infringing the '246 patent under 35 U.S.C. § 271(a).

13. On information and belief, Boise Cascade continues to make, use, offer for sale and/or sell the Accused Products without authority, thereby continuing infringement of the '246 patent under 35 U.S.C. § 271(a).

14. On information and belief, Boise Cascade's infringement is willful and will continue unless enjoined by this Court. Boise Cascade's acts have caused, and are causing, irreparable damage to Rycair. Rycair has no adequate remedy at law.

15. Boise Cascade's acts have also caused substantial monetary and other damages to Rycair in an amount to be determined at trial.

Count 2 - Breach of Contract

16. Rycair incorporates by reference all preceding paragraphs.

17. Over several years since 1995, Rycair has regularly demanded that Boise Cascade provide Rycair with information about Boise Cascade's performance of its obligations under the TLCA. Boise Cascade has refused and has never provided any information affording Rycair to make an objective determination of Boise Cascade's performance under the TLCA.

18. On information and belief, and rather than performing its contractual obligations under the TLCA, Boise Cascade has spent time, effort and money since March 13, 1995 on finding ways to make the Listed Products without using Rycair's technology ("the Anti-

Commercialization Efforts”). Boise Cascade’s performance of the Anti-Commercialization Efforts have been in direct conflict with Boise Cascade’s obligations to Rycair pursuant to the TLCA and during the term of the TLCA. In addition, the Anti-Commercialization Efforts have contributed to Boise Cascade’s delays in meeting its obligations under the TLCA.

19. The TLCA terminated at least as early as December 22, 2001 when Boise Cascade failed to complete construction of the factory within the 24-month time period required by the TLCA.

20. The TLCA terminated at least as early as December 22, 2001 when Boise Cascade failed to make any efforts to commercialize 29 of the 30 Listed Products in the TLCA after having executed the TLCA more than six years earlier, and failed to make any efforts to commercialize any of the 30 Listed Products in countries outside of the United States and Canada.

21. On information and belief, since March 13, 1995 Boise Cascade has willfully, recklessly, in bad faith, or otherwise intentionally disregarded its obligations under the TLCA.

22. On information and belief, Boise Cascade’s Anti-Commercialization Efforts, and other actions under the TLCA, have caused, and are causing, irreparable damage to Rycair. Rycair has no adequate remedy at law.

23. Boise Cascade’s Anti-Commercialization Efforts, and other actions under the TLCA, have also caused substantial monetary and other damages to Rycair in an amount to be determined at trial.

WHEREFORE, plaintiff Rycair prays for:

A. A finding by the Court that Boise Cascade has infringed U.S. Patent No.

5,824,246 under 35 U.S.C. § 271;

B. An award against Boise Cascade for the damages suffered by plaintiff Rycair as a result of Boise Cascade's acts of infringement;

C. An award of treble or other enhanced damages based upon Boise Cascade's willful patent infringement;

D. An injunction restraining Boise Cascade from infringing U.S. Patent No. 5,824,246;

E. An award of contract damages for Boise Cascade's breach of the Technology License and Consulting Agreement (TLCA);

F. An award of punitive damages for Boise Cascade's willful, bad faith or otherwise intentional disregard for its obligations under the TLCA;

G. A declaratory judgment that the TLCA was terminated at least as early as December 22, 2001;

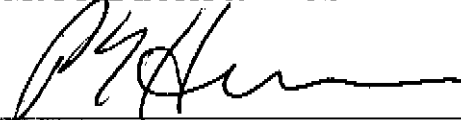
H. An award of attorney fees and costs; and

I. Such other and further relief as the Court may deem just and proper.

PLAINTIFF DEMANDS A TRIAL BY JURY.

DATED this 27th day of December, 2001.

KOLISCH, HARTWELL, DICKINSON,  
McCORMACK & HEUSER



Peter E. Heuser  
of Attorneys for Plaintiff

**UNABLE TO SCAN**

**ATTACHMENTS**

**PLEASE SEE COURT**

**FILE**