

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA**

(1) M-D BUILDING PRODUCTS, INC.)	
)	
Plaintiff,)	Case No.
v.)	
)	
(1) ENDURA PRODUCTS, INC.)	JURY TRIAL DEMANDED
)	
Defendant.)	

COMPLAINT FOR DECLARATORY RELIEF

Plaintiff M-D Building Products, Inc. ("M-D Building") complains of Defendant Endura, Inc. ("Endura") as follows:

PARTIES, JURISDICTION AND VENUE

Plaintiff M-D Building Products, Inc. ("M-D Building") complains of Defendant Endura, Inc. ("Endura") as follows:

1. Plaintiff M-D Building is an Oklahoma corporation having its principal place of business at 4041 N. Santa Fe, Oklahoma City, Oklahoma 73118.
2. Upon information and belief, Defendant Endura Products, Inc. is a North Carolina corporation having its principal place of business at 8817 West Market Street, Colfax, North Carolina 27235.
3. This Court has subject matter jurisdiction over M-D Building's claims under 28 U.S.C. §§ 1331 and 1338(a) because they arise under the patent statutes of the United States, Title 35, United States Code and the Declaratory Judgment Act, 28 U.S.C. §§ 2201-2202.
4. This Court has personal jurisdiction over Endura because: (i) Endura regularly and voluntarily does business in the State of Oklahoma and in this district and (ii) the parties are citizens of different states and the amount in controversy exceeds \$75,000.

5. Venue is proper in this district under 28 U.S.C. § 1391(b)-(c) because Endura is a corporation subject to personal jurisdiction in this district.

FACTS

6. Plaintiff M-D Building is a leader in the business of developing, manufacturing, and marketing quality building material products.
7. M-D Building manufactures, markets and sells products in a variety of building-related categories, including: weatherproofing, floor trim, levels and tools, professional floor covering metals and thresholds.
8. One of M-D Building's products is its SmartSill™ threshold assembly. The SmartSill™ threshold assembly serves the purpose of providing a seal between the floor and the bottom of a door.
9. The SmartSill™ threshold assembly includes a sill plate that is connected to a substrate. The sill plate does not include any channel. A trim piece snaps onto the rear edge of the substrate. A riser is inserted between the rear edge of the sill plate and the trim piece. The riser is supported by a series of T-nuts that are inserted into a T-shaped slot in the substrate. Screws are inserted between a pair of flanges associated with the riser and then screwed into the T-nuts to secure the riser. A number of holes are drilled into the substrate. The holes accommodate the length of screws and prevent the screws from "bottoming-out" on the substrate. The riser may be positioned anywhere along the substrate, as long as the screws are positioned above holes. Sidelight adapters may be installed next to the riser between the sill plate and the trim piece.

10. In a letter, dated March 23, 2004, counsel for Endura provided M-D Building actual notice of Endura's United States Patent No. 5,426,894 (the "'894 patent"); United States Patent No. 5,611,173 (the "'173 patent") and United States Patent No. 5,588,266 (the "'266 patent"). Endura's March 23, 2004 letter further provided that such notice was being given to allow M-D Building to "avoid any potential conflict with the rights afforded to Endura under the above patents." Endura's March 23, 2004 letter is attached hereto as Exhibit 1 and copies of the '894, '173 and '266 patents are attached hereto as Exhibits 2 - 4.
11. In response to Endura's March 23, 2004 letter, counsel for M-D Building sent a letter, dated April 6, 2004, setting forth a detailed analysis of the reasons why M-D Building's SmartSill™ threshold assembly does not infringe Endura's '894, '173 and '266 patents. A copy of M-D Building's April 6, 2004 letter is attached hereto as Exhibit 5.
12. Endura's '894 patent includes two independent claims-claims 1 and 14.
13. Claim 1 of the '894 patent requires "an elongated frame member formed with a longitudinally extending upwardly open channel and a sill shaped to provide a surface that extends laterally and slopes downwardly from one side of said channel to an outside edge of said frame member . . .".
14. The SmartSill™ threshold assembly does not have a frame member having a longitudinally extending upwardly open channel or any structure equivalent thereto.
15. Because the SmartSill™ threshold assembly does not have a frame member having a longitudinally extending upwardly open channel or any structure equivalent thereto, the SmartSill™ threshold assembly does not infringe claim 1 of the '894 patent.

16. Claim 14 of the '894 patent requires "an elongated aluminum frame formed with a longitudinally extending upwardly open U-shaped channel having a floor and spaced forward and rear walls that extend upwardly from said floor to respective rims ...".
17. The SmartSill™ threshold assembly lacks an elongated aluminum frame formed with a longitudinally extending upwardly open U-shaped channel having a floor and spaced forward and rear walls that extend upwardly from said floor to respective rims.
18. Because the SmartSill™ threshold assembly does not have the requisite frame member of claim 14 of the '894 patent, the SmartSill™ threshold assembly does not infringe claim 14 of the '894 patent.
19. The independent claims of the '173 and '266 patents are focused on a protective cover for a threshold sill assembly or the combination of a protective cover and threshold sill assembly.
20. Each of the independent claims of the '173 and '266 patents requires a protective cover having a tongue, tab or other inwardly projecting structure.
21. The SmartSill™ threshold assembly contains no such tongue, tab, or any other equivalent structure projecting inwardly from the cover that could satisfy the claims of the '173 or '266 patents.
22. Because the SmartSill™ threshold assembly contains no such tongue, tab, or any other equivalent structure, the SmartSill™ threshold assembly does not infringe any claim of the '173 patent or the '266 patent.
23. Despite M-D Building's detailed explanation of the reasons why its SmartSill™ threshold assembly does not infringe any claim of the '894, '173 or '266 patent, in a letter dated

April 29, 2004, Endura's counsel re-affirmed Endura's position that M-D Building's SmartSill™ threshold assembly is covered by Endura's '894, '173 and '266 patents and asserted that the claims of the Endura patents are entitled to extraordinarily broad constructions. A copy of Endura's April 29, 2004 letter is attached hereto as Exhibit 6.

24. In a letter dated June 17, 2004, counsel for M-D Building responded to Endura's April 29, 2004 correspondence, explaining that Endura's claim construction would impermissibly expand the scope of the patent claims in question to encompass a number of prior art references that are well-known in the industry. M-D Building's counsel also pointed out that Endura's proposed claim constructions are not supported by the specifications of the patents in question. A copy of M-D Building's June 17, 2004 letter is attached hereto as Exhibit 7.
25. Representatives for Endura and M-D Building agreed to meet in Atlanta, Georgia on June 24, 2004 in an attempt to resolve the disagreement as to whether M-D Building's SmartSill™ threshold assembly infringes Endura's '894, '173 and '266 patents. The parties' attempt to come to a resolution was unsuccessful.
26. On August 11, 2004, Endura filed an action in the United States District Court for the Middle District of North Carolina, styled Endura Products, Inc. v. Macklanburg-Duncan Co., d/b/a M-D Building Products, Case No. 1:04CV00722, alleging infringement of the '894, '173 and '266 patents.
27. M-D Building has no present relationship to Macklanburg-Duncan Co. and has had no relationship to Macklanburg-Duncan Co. since the Spring of 2000. Macklanburg-Duncan Co. does not do business as M-D Building Products, Inc.

28. Given Endura's correspondence to M-D Building asserting infringement and Endura's filing in North Carolina, albeit against the wrong defendant, M-D Building has a reasonable apprehension that Endura will bring suit against M-D Building for the alleged infringement of the '894, '173 and '266 patents.

COUNT I - UNITED STATES PATENT NO. 5,426,894

29. Paragraphs 1-28 are incorporated herein by reference.
30. M-D Building requests a declaratory judgment by this Court that M-D Building has not infringed the '894 patent.
31. By reason of the facts and beliefs set forth herein, a real, immediate and justiciable controversy exists between M-D Building and Endura with respect to the question of infringement of the '894 patent.
32. M-D Building has not infringed and does not presently infringe any valid and enforceable claim of the '894 patent.

COUNT II - UNITED STATES PATENT NO. 5,611,173

33. Paragraphs 1-32 are incorporated herein by reference.
34. M-D Building requests a declaratory judgment by this Court that M-D Building has not infringed the '173 patent.
35. By reason of the facts and beliefs set forth herein, a real, immediate and justiciable controversy exists between M-D Building and Endura with respect to the question of the infringement of the '173 patent.
36. M-D Building has not infringed and does not presently infringe any valid and enforceable claim of the '173 patent.

COUNT III - UNITED STATES PATENT NO. 5,588,266

37. Paragraphs 1-36 are incorporated herein by reference.
38. M-D Building requests a declaratory judgment by this Court that M-D Building has not infringed the '266 patent.
39. By reason of the facts and beliefs set forth herein, a real, immediate and justiciable controversy exists between M-D Building and Endura with respect to the question of the infringement of the '266 patent.
40. M-D Building has not infringed and does not presently infringe any valid and enforceable claim of the '266 patent.

DEMAND FOR RELIEF

WHEREFORE, M-D Building demands a jury trial and respectfully requests the Court to:

- (i) enter judgment declaring that M-D Building has not infringed United States Patent No. 5,426,894; United States Patent No. 5,611,173; and United States Patent No. 5,588,266;
- (ii) order Endura to pay M-D Building's attorneys fees and costs incurred in bringing this action, as authorized by 28 U.S.C. §2202;
- (iii) declare this case to be an exceptional case under the provisions of 35 U.S.C. §285 and to award M-D Building its reasonable attorneys' fees; and
- (iv) grant M-D Building such other and further relief as the Court may deem appropriate.

Dated: August 24, 2004

Respectfully submitted,

CROWE & DUNLEVY

By: s/ Jimmy Goodman

JIMMY K. GOODMAN, OBA # 3451

JOSEPH J. FERRETTI, OBA # 15231

20 North Broadway, Suite 1800

Oklahoma City, OK 73102-8273

405-235-7700 - Phone

405-235-6651 - Facsimile

and

HUSCH & EPPENBERGER, LLC

Michael H. Wetmore

Gregory E. Upchurch

Dutro E. Campbell, II

190 Carondelet Plaza, Suite 600

St. Louis, MO 63105-3441

314-480-1500 - Phone

314-480-1505 - Facsimile

ATTORNEYS FOR PLAINTIFF

M-D BUILDING PRODUCTS, INC.