

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WISCONSIN**

ILLINOIS TOOL WORKS INC.,

Plaintiff,

v.

Civil Action No. 08-C-756

BENJAMIN MOORE & CO., and THE
SHERWIN-WILLIAMS COMPANY,

Jury Trial Demanded

Defendants.

FIRST AMENDED COMPLAINT

Plaintiff, Illinois Tool Works Inc., for its First Amended Complaint against defendants Benjamin Moore & Co. and The Sherwin-Williams Company, alleges as follows:

THE PARTIES

1. Plaintiff Illinois Tool Works Inc. ("ITW") is an Illinois corporation having its principal place of business at 3600 West Lake Avenue, Glenview, Illinois 60025-5811.
2. Upon information and belief, defendant Benjamin Moore & Co. is a New Jersey corporation with its principal place of business at 101 Paragon Drive, Montvale, NJ 07645.
3. Upon information and belief, defendant The Sherwin-Williams Company is an Ohio corporation with its principal place of business at 101 Prospect Ave. NW, Cleveland, Ohio 44115-1075.

JURISDICTION AND VENUE

4. This action is for patent infringement pursuant to the patent laws of the United States, 35 U.S.C. § 1 *et seq.* This Court has subject matter jurisdiction over the action pursuant to 28 U.S. §§ 1331 and 1338(a).

5. This Court has personal jurisdiction over Benjamin Moore and Sherwin-Williams by virtue of their business activities in this jurisdiction and their acts of patent infringement in this jurisdiction.

6. Venue is proper in the Western District of Wisconsin pursuant to 28 U.S.C. §§ 1391(b) and (c) and 1400(b) because Benjamin Moore and Sherwin-Williams are subject to personal jurisdiction, do business, and have committed acts of infringement in this District.

CLAIM FOR PATENT INFRINGEMENT

7. On March 5, 2002, the United States Patent and Trademark Office duly and legally granted United States Patent No. 6,353,043 (“the ‘043 Patent”), entitled “Multi-Colored Epoxy Coating System,” to Brian Rice and Albert Turansky. ITW is the owner, by valid assignment, of all rights, title and interest in and to the ‘043 patent. A true and correct copy of the ‘043 patent is attached hereto as Exhibit A.

8. The ‘043 patent is directed to an epoxy coating base composition and a color system of tinting the composition in which a single base formulation of epoxy coating material can be combined with selected amounts of tinting compositions from one or more tinting sources to provide a selectively colored, high solids epoxy coating composition.

9. On information and belief, defendants have had actual and/or constructive knowledge of the ‘043 Patent since March 5, 2002, or shortly thereafter.

10. At no time have Benjamin Moore or Sherwin-Williams been licensed under the ‘043 patent.

11. Benjamin Moore has infringed and is currently infringing the ‘043 patent in violation of 35 U.S.C. § 271 *et seq.*, including Sections (a), (b), (c), and (f), directly, indirectly, contributorily, and by inducement of and action with others, regarding making, using, selling, offering to sell in the United States, and/or importing into the United States products that

embody one or more claims of the '043 patent, including without limitation its M40, CM40, and P40 100% Solids Epoxy Floor Coating products (collectively, the "P40 Product"). The P40 Product infringes one or more claims of the '043 patent, including without limitation Claims 1 – 7, 9 – 11, 17 – 19, 21, 22, 25 – 28, and 31 – 37.

12. Sherwin-Williams has infringed and is currently infringing the '043 patent in violation of 35 U.S.C. § 271 *et seq.*, including Sections (a), (b), (c), and (f), directly, indirectly, contributorily, and by inducement of and action with others, regarding making, using, selling, offering to sell in the United States, and/or importing into the United States products that embody one or more claims of the '043 patent, including without limitation its ArmorSeal 650 SL/RC 100% Solids Self-Leveling Epoxy Coating product. The ArmorSeal 650 SL/RC 100% Solids Self-Leveling Epoxy Coating product infringes one or more claims of the '043 patent, including without limitation Claims 1 – 7, 9 – 11, 17 – 19, 21, 22, 25 – 28, and 31 – 37.

13. Upon information and belief, Benjamin Moore has performed its infringing acts with full knowledge of ITW's rights in the '043 patent. Benjamin Moore's infringing acts have been and will continue to be willful and intentional.

14. Upon information and belief, Sherwin-Williams has performed its infringing acts with full knowledge of ITW's rights in the '043 patent. Sherwin-Williams's infringing acts have been and will continue to be willful and intentional.

15. As a result of defendants' infringing activities, ITW has suffered substantial injury and damages. Unless defendants are enjoined by this Court from engaging in further infringing activity, ITW will continue to suffer additional serious injury and damages for which ITW has no adequate remedies at law.

PRAYER FOR RELIEF

WHEREFORE, plaintiff ITW prays for a judgment that:

- A. Benjamin Moore and Sherwin-Williams have infringed the '043 patent;
- B. Benjamin Moore's and Sherwin-Williams' infringement of the '043 patent is willful;
- C. Benjamin Moore and Sherwin-Williams and their officers, directors, employees, agents, subsidiaries, licensees, servants, successors and assigns, and any and all persons acting in privity or in concert or participation with them, be preliminarily and permanently enjoined from infringement of the '043 patent under 35 U.S.C. § 283;
- D. ITW be awarded all damages adequate to compensate it for Benjamin Moore's and Sherwin-Williams' infringement of the '043 patent, and such damages be trebled under 35 U.S.C. § 284 and awarded to ITW, with prejudgment interest;
- E. This case be adjudged an exceptional case under 35 U.S.C. § 285, and that ITW be awarded attorneys' fees, costs, and all expenses incurred in this action;
- F. ITW be awarded such other and further relief as the Court may deem just and proper.

JURY DEMAND

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, ITW demands a trial by jury on all issues triable by jury.

Dated: May 8, 2009

WHYTE HIRSCHBOECK DUDEK S.C.

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