

**UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

Rhino Associates, L.P.)	
)	
)	Civil Action No. 1:04-cv-01611
)	
Plaintiff,)	Judge Conner
)	
v.)	
)	AMENDED COMPLAINT
)	FOR PATENT
Berg Manufacturing and Sales)	
)	
Defendant)	
)	
and)	
)	
Cencor Plastics, Inc.)	(JURY TRIAL DEMANDED)
)	
Defendant.)	
)	

Plaintiff, Rhino Associates, L.P. (“Rhino Associates”), for its amended complaint against Defendants, Berg Manufacturing and Sales Corporation (“Berg Manufacturing”) and Cencor Plastics, Inc. (“Cencor”), alleges as follows:

THE PARTIES

1. Plaintiff Rhino Associates is a Limited Partnership organized under the laws of the state of Pennsylvania having a principal place of business at 2408 Bradley Drive, Harrisburg, PA 17110.

2. Upon information and belief, Defendant Berg Manufacturing is a corporation organized under the laws of the state of Illinois having a principal place of business at 50 Messner Street, Wheeling, IL 60090.

3. Upon information and belief, Defendant Cencor Plastics, Inc., successor in interest to Berg Manufacturing, is a corporation organized under the laws of the state of Illinois having places of business at 50 Messner Street, Wheeling, IL 60090, 4100 W. 76th Street, Chicago, IL, and 3909 W. Harrison Street, Chicago, IL.

JURISDICTION AND VENUE

3. This is an action for patent infringement under the patent laws of the United States, 35 U.S.C. § 1 *et seq.*, and particularly 35 U.S.C. § 271.

4. This court has subject matter jurisdiction under 28 U.S.C. §§ 1331, 1332, and 1338(a).

5. Defendant Berg Manufacturing does business throughout the United States, and has made, used, sold and/or offered to sell products in Harrisburg, Pennsylvania, thereby establishing sufficient minimum contact. This Court has personal jurisdiction under Pennsylvania Long-Arm Statute 42 PA. CONS. STAT. § 5322.

6. Venue in the United States District Court for the Middle District of Pennsylvania is proper pursuant to 28 U.S.C. §§ 1391 and 1400(b) because Berg Manufacturing is a corporation over which the Court has personal jurisdiction.

7. Defendant Cencor has agreed in a stipulation to join this action and waive all argument regarding personal jurisdiction and venue.

8. Defendant Cencor does business throughout the United States, and has made, used, sold and/or offered to sell products in the Middle District of Pennsylvania, thereby establishing sufficient minimum contact. This Court has personal jurisdiction under Pennsylvania Long-Arm Statute 42 PA. CONS. STAT. § 5322.

9. Venue in the United States District Court for the Middle District of Pennsylvania is proper because Cencor voluntarily submitted to its jurisdiction and is also proper pursuant to 28 U.S.C. §§ 1391 and 1400(b) because Cencor is a corporation over which the Court has personal jurisdiction.

COUNT I: INFRINGEMENT OF U.S. PATENT NO. RE. 34,889

10. Rhino Associates incorporates and re-alleges paragraphs 1 through 9.

11. On April 4, 1995, U.S. Patent Number RE. 34,889 entitled “Vehicle Service Ramp” (“the ‘889 patent”) was duly and legally issued in the name of the inventors William W. Fogarty and Phillip M. Friday. A copy of the ‘889 patent was attached as Exhibit A to the original Complaint.

12. Rhino Associates is the owner by assignment of the entire right, title, and interest in and to the '889 patent with the right to sue for past, present, and future infringement of the '889 patent.

13. Upon information and belief, Berg Manufacturing has been and is directly infringing, contributorily infringing and/or inducing infringement of the '889 patent under 35 U.S.C. § 271.

14. Upon information and belief, Berg Manufacturing will continue to infringe the '889 patent unless enjoined by the Court.

15. Rhino Associates has been damaged by Berg Manufacturing's infringement of the '889 patent, and will continue to be damaged by that infringement unless Berg Manufacturing's infringement is enjoined by the Court.

16. The licensee of Rhino Associates has been marking the patent number of the '889 patent on substantially all of the licensee's products covered by the '889 patent.

17. Berg Manufacturing has actual knowledge of the '889 patent, and its prior and continuing infringement of the '889 patent was and is willful and deliberate.

COUNT II: INFRINGEMENT OF U.S. PATENT NO. RE. 34,889

18. Rhino Associates incorporates and re-alleges paragraphs 1 through 17.

19. Since about September 2005, Cencor and its predecessor(s) managed Berg Manufacturing and conducted its business.

20. In early October 2005, Cencor entered into a consulting agreement with Joel Berg, who is the president of Berg Manufacturing.

21. In early October 2005, Cencor entered into a consulting agreement with Stanley Berg, who is a general manager of Berg Manufacturing.

22. On October 24, 2005, Cencor purchased all right, title and interest in the assets of Berg Manufacturing from Crestmark Bank.

23. Upon information and belief, since about October 2005, Cencor has used its name interchangeably with that of Berg Manufacturing.

24. Upon information and belief, Cencor paid Bell, Boyd & Lloyd for legal services performed on behalf of Berg Manufacturing in this action.

25. Upon information and belief, Cencor has assumed the business of and is the successor in interest to Berg Manufacturing. As a successor in interest, Cencor is responsible for damages to Rhino Associates caused by Berg Manufacturing's acts of infringement.

26. Upon information and belief, since at least about September 2005, Cencor and its predecessors have been and are directly infringing, contributorily infringing and/or inducing infringement of the '889 patent under 35 U.S.C. § 271.

27. Upon information and belief, Cencor will continue to infringe the '889 patent unless enjoined by the Court.

28. Rhino Associates has been damaged by Cencor's infringement of the '889 patent, and will continue to be damaged by that infringement unless Cencor's infringement is enjoined by the Court.

29. Cencor has actual knowledge of the '889 patent and the Preliminary Injunction ordered by this Court on July 15, 2005, and its prior and continuing infringement of the '889 patent was and is willful and deliberate.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, Rhino Associates, prays for the following relief:

a. That Berg Manufacturing, its officers, agents, servants, employees and attorneys, and all persons in active concert or participation with them be enjoined, preliminarily and permanently, from making, using, selling, offering for sale or importing into the United States products and components which infringe U.S. Patent No. RE. 34,889;

b. That Rhino Associates be compensated by Berg Manufacturing and Cencor for the damages caused by Berg Manufacturing's infringement under 35 U.S.C. § 284, in an amount to be determined by an accounting, but not less than a reasonable royalty, plus interest;

c. That the award of damages for infringement of U.S. Patent No. RE. 34,889 be trebled as provided for by 35 U.S.C. § 284 for willful infringement by Berg Manufacturing;

d. That Cencor, its officers, agents, servants, employees and attorneys, and all persons in active concert or participation with them be enjoined, preliminarily and permanently, from making, using, selling, offering for sale or importing into the United States products and components which infringe U.S. Patent No. RE. 34,889;

e. That Rhino Associates be compensated for the damages caused by Cencor's infringement under 35 U.S.C. § 284, in an amount to be determined by an accounting, but not less than a reasonable royalty, plus interest;

f. That the award of damages for infringement of U.S. Patent No. RE. 34,889 be trebled as provided for by 35 U.S.C. § 284 for willful infringement by Cencor;

g. That Rhino Associates be awarded its costs and attorneys' fees incurred in prosecuting this action, as provided for by 35 U.S.C. § 285, plus interest; and

h. That Rhino Associates be awarded such other relief as the Court deems just and proper.

JURY DEMAND

Rhino Associates demands a jury trial on all issues so triable.

RHINO ASSOCIATES, L.P.

Dated: 5/16/06

By: /s/ Robert J. Tribeck

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CERTIFICATE OF SERVICE

I certify that on May 22, 2006, a true and accurate copy of the foregoing document was served upon the following in accordance with the Court electronic case filing procedures:

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