

IN THE UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF MICHIGAN

W.E. HALL COMPANY, INC.

Plaintiff,

v.

CHARLOTTE CORRUGATING, LLC,
MANNING's CULVERT, LLC., ST. REGIS
CULVERT, INC. and DOES 1-10,

Defendants.

Case No. C:01-CV-611

Hon. David W. McKeague

FIRST AMENDED COMPLAINT FOR PATENT INFRINGEMENT (PROPOSED)

Plaintiff, W.E. HALL COMPANY, INC. avers as follows:

PARTIES

1. W.E. HALL COMPANY, INC. (hereinafter referred to as "HALL") is a corporation organized and existing under the laws of the state of California and having a principal place of business at P.O. Box 2450, Newport Beach, California 92658.

2. Upon information and belief, Defendant Charlotte Culvert, Inc. (hereinafter referred to as "CHARLOTTE") is a limited liability company organized and existing under the laws of the State of Michigan, and having a principal place of business at 202 Morrell Street, Charlotte, Michigan 48813.

3. Upon information and belief, Defendant St. Regis Corrugating (hereinafter referred to as "ST. REGIS") is a corporation organized and existing under the laws of the State of Michigan, and having a principal place of business at 202 Morrell Street, Charlotte, Michigan 48813.

4. Upon information and belief, Defendant Manning's Culvert, LLC. (hereinafter referred to as "MANNING's") a limited liability company organized and existing under the laws of the State of Michigan, and having a principal place of business at 202 Morrell Street, Charlotte, Michigan 48813.

5. Upon information and belief, DOES 1-10, the identity of which are currently unknown, are individuals and/or entities conducting business in Ohio and within this Judicial District.

6. The true names and capacities, whether individual, corporate, associate, or otherwise of DOES 1-10, inclusive, are unknown to HALL, who therefore sues said DOES 1-10 by such fictitious names. HALL will seek leave of this Court to amend this Complaint to include their proper names and capacities when the same has been ascertained (CHARLOTTE, ST. REGIS, MANNING's and DOE Defendants hereinafter collectively referred to as "Defendants").

7. Upon information and belief, at all times hereinafter mentioned, Defendants and each of them, actively aided and abetted the activities of each other, were the agents and employees of each other, and at all times acted within the purpose, course and scope of said agency and employment, and each of such Defendants have ratified and approved the acts of the other Defendants and its agents.

8. Upon information and belief, any and all acts hereinafter ascribed to Defendants were done with the permission, consent, knowledge, and active inducement on the part of the other which together acted as agents in the performance of the acts hereinafter more particularly described.

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JURISDICTION AND VENUE

9. This action, as hereinafter more fully appears, arises under the patent laws of the United States as recited in Title 35 of the United States Code, and is for the infringement of United States Patent No. 4,838,317 by the Defendants. Jurisdiction for the Claim for Relief is based upon 28 U.S.C. §1331 (federal question) and §1338(a) (patents).

10. Venue is proper for all claims for relief under 28 U.S.C. §1391(b) and (c) and 28 U.S.C. §1400(b) as the Defendants conduct business in and/or have committed acts of infringement within this Judicial District.

U.S. PATENT NO. 4,838,317

11. United States Patent No. 4,838,317 was duly and lawfully issued in the name of James R. Andre and Larry Daniels on June 13, 1989, and since that date HALL has acquired, through assignment, the entire right, title and interest in said Letters Patent. A true and correct copy of United States Letters Patent No. 4,838,317 is attached hereto as **Exhibit A**.

INFRINGEMENT OF U.S. PATENT NO. 4,838,317

12. Upon information and belief, Defendants have directly infringed and are continuing to infringe, United States Letters Patent No. 4,838,317 by making, using, offering for sale and/or selling certain spiral ribbed pipe embodying the patented invention.

13. Upon information and belief, Defendants are actively inducing infringement by obtaining customers and developing markets for present and future infringing activities such that the conduct being induced constitutes direct infringement, and Defendants are actively and knowingly aiding and abetting direct infringement of HALL's U.S. Patent No. 4,838,317.

14. Upon information and belief, Defendants have advertised, manufactured, offered for sale and sold products incorporating the spiral rib pipe of the patented invention as recited in

United States Letters Patent 4,838,317 in the State of Ohio, and particularly within this Judicial District.

15. By reason of the infringement, inducement to infringe, and contributory infringement by Defendants, HALL has been and will continue to be seriously damaged and irreparably injured.

16. By a letter dated August 8, 2000, HALL placed CHARLOTTE on formal notice of HALL's patent rights in the spiral ribbed pipe technology, namely, Patent No. 4,838,317. A copy of said letter dated August 8, 2000 is attached hereto as **Exhibit B**.

17. By letters dated August 29, 2000, September 15, 2000, and February 26, 2001, HALL repeatedly requested confirmation that CHARLOTTE would contact HALL's counsel and agree to cease and desist from further infringement of HALL's patent rights. Copies of such letters are collectively attached hereto as **Exhibit C**. To date, CHARLOTTE has failed to contact HALL's counsel or cease and desist from further infringing activity.

18. Upon information and belief, Defendants' infringement of U.S. Patent No. 4,838,317 has been and continues to be willful entitling HALL to enhanced damages.

19. HALL has been damaged by Defendants' infringement which will continue unless enjoined by this Court.

WHEREFORE, HALL prays:

A. That this Court enter a determination that Defendants have infringed one or more claims of U.S. Patent No. 4,838,317;

B. For a preliminary and permanent injunction against further infringement, and active inducement of infringement, of United States Letters Patent No. 4,838,317 by Defendants;

C. For damages adequate to compensate HALL for past infringement of United States Letters Patent No. 4,838,317 and a determination of pre-judgment and post-judgment interest;

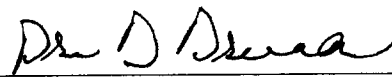
D. For a determination that Defendants' acts of infringement have been willful and therefore an award of enhanced damages up to three times the amount as provided by 35 U.S.C. §284;

E. For a finding by the Court that this case is exceptional under 28 U.S.C. §285 and an award for HALL's reasonable attorney's fees in this action;

F. For an assessment of costs against Defendants; and

G. For such and other further relief as may be required and appropriate in the discretion of this Court.

Dated: JAN 31, 2002

By: 

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William J. Brucker
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DEMAND FOR JURY TRIAL

Plaintiff HALL respectfully requests a trial by jury of all issues so triable in this action.

Dated: Jan 31, 2002

By: 

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PROOF OF SERVICE

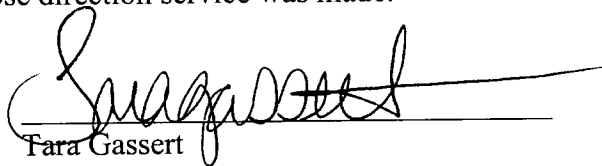
State of California)
)
County of Orange) ss.

I am over the age of 18 and not a party to the within action; my business address is
STETINA BRUNDA GARRED & BRUCKER, 75 Enterprise, Suite 250, Aliso Viejo, California
92656. On **January 31, 2002**, a copy of the attached **FIRST AMENDED COMPLAINT FOR
PATENT INFRINGEMENT (PROPOSED)** was served on all interested parties in this action
by U.S. Mail, postage prepaid, at the address as follows:

**Glenn Bellamy, Esq.
Greenbaum Doll & McDonald PLLC
2800 Chemed Center
255 Fifth Street
Cincinnati, Ohio 45202-4728**

**William M. Lee, Jr., Esq.
Peter J. Shakula, Esq.
Lee, Mann, Smith, McWilliams,
Sweeney & Ohlson
209 South LaSalle Street, Suite 410
Chicago, Illinois 60690-2786**

Executed on **January 31, 2002** at Aliso Viejo, California. I declare under penalty of
perjury that the above is true and correct. I declare that I am employed in the office of STETINA
BRUNDA GARRED & BRUCKER at whose direction service was made.


Tara Gassert