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8 **THE UNITED STATES DISTRICT COURT**
9 **FOR THE DISTRICT OF ARIZONA**

10 BUILDING INNOVATION INDUSTRIES,
11 L.L.C., an Arizona limited liability
12 company,

13 Plaintiff.

14 v.

15 YELENA ONKEN, individually and as
16 Personal Representative of the Estate of
17 Ronnie Dale Onken; and SHARI
18 HOWARD, an individual,

19 Defendants.

Case No. 06-1859-PHX-NVW

AMENDED COMPLAINT

(Declaratory Judgment Re: Ownership of
Patent Rights)

20 Building Innovation Industries, L.L.C., an Arizona limited liability company
21 (“BII”) for its cause of action against Yelena Onken, individually (“Onken”), and as
22 Personal Representative of the Probate Estate of Ronnie Dale Onken (the “Estate”), and
23 Shari Howard, an individual (“Howard”) states as follows.

JURISDICTION AND VENUE

24 1. This action concerns the interpretation and application of Federal Patent
25 Law and therefore jurisdiction is pursuant to 28 U.S.C.A. 1331 & 1338.

26 2. Venue is proper in this jurisdiction because all parties reside therein.

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PARTIES

3. BII is an Arizona limited liability company engaged in the manufacture and erection of pre-fabricated structures for both residential and commercial use.

4. Onken is the widow of Ronnie Dale Onken, deceased, who was a former resident of Maricopa County, Arizona.

5. Onken is also the Personal Representative of the Estate under Letters of Representation issued on September 19, 2005, in Case PB2005-002673, Maricopa County Superior Court.

6. Howard is an individual residing in Maricopa County, Arizona and is the Assignee of Onken’s and Estate’s interest in the Patent Application made the subject of this litigation.

GENERAL ALLEGATIONS

7. During the period May 2004 to July 2005, Ronnie Dale Onken was an independent contractor under contract to BII for the purposes of creating drawings for an innovative insulated structural panel for use by BII in its business involving a particular panel connection known as a “hat channel.”

8. Ronnie Dale Onken’s duties were to work with BII personnel, particularly Bruce H. Middleswart, a professional structural engineer and John Greenbank, Manager of BII, to put into drawings the designs created by them which designs were intended to be used in a patent application by BII once they were finished.

9. Ronnie Dale Onken assisted Mr. Middleswart and other BII employees in incorporating a “hat channel design” for use in the structural panels of BII which competed with other companies in this field.

1 10. The “hat channel” application was a confidential development by BII
2 whose function and design were protected from disclosure by oral agreement with all
3 personnel working for BII including Mr. Onken and Mr. Middleswart.

4 11. Mr. Onken orally agreed that if the design was completed that a patent
5 would be applied for by BII and Mr. Onken would receive a ten percent (10%)
6 ownership interest in BII but that if the device was patentable, BII would be the owner
7 and inventor of the patent.

8 12. Mr. Onken and all others working on the project, were instructed not to
9 share any calculations or drawings with outsiders. The practical work on the design
10 was conducted solely at the BII plant to preclude outsiders from knowledge of the
11 design.

12 13. The metal configuration for the connection between the panels was not a
13 new configuration but had been known in the industry for other uses for many years.
14 The use of preformed structural panels for building houses and commercial projects
15 was also utilized by other companies for many years. (See Exh. A & B attached).

16 14. The strength and load calculations for the panels utilizing the hat channel
17 design were done prior to November 2004 by Mr. Middleswart, some of which are
18 attached as Exh. C.

19 15. The hat channel design for BII’s panels was first used by BII to construct
20 a private residence for Richard Beery in Whitman, Arizona in October of 2004, as
21 shown on Exh. C hereto including Mr. Middleswart’s handwritten calculations.

22 16. Mr. Onken, prior to November 2004, knew that BII had contacted a
23 patent attorney to prepare a patent application covering the BII hat channel panels and
24 he himself was preparing drawings for that purpose.

25 17. However, Ronnie Dale Onken, without the knowledge or consent of BII
26 and in violation of his covenant of secrecy and confidentiality, engaged Paul N. Katz of

1 the Texas law firm of Baker, Botts, L.L.P. to prepare and file an Application for Letters
2 Patent with the U.S. Patent & Trademark Office in Mr. Onken's name only, seeking a
3 patent for the BII panel design.

4 18. Ronnie Dale Onken's Patent Application bears Provisional Patent
5 Application Serial Number 60/630,560 and lists himself, solely, as inventor and shows
6 a filing date of November 23, 2004, with attorney docketing number 0760400102.
7 (See Exh. D attached).

8 19. On November 18, 2005, Onken, after the death of her husband, Ronnie
9 Dale Onken, applied for Letters Patent bearing Patent Application Serial Number
10 11282351 and Publication Number 20060117689. (See Exh. E attached).

11 20. No final Patent has issued as of this date. The initial and provisional
12 patent applications are referred to collectively as the "Patent Application."

13 21. As of November 16, 2005, Howard was allegedly the assignee from the
14 Estate of the Onkens and the Estate's entire interest in the Patent Application.

15 22. At all times Ronnie Dale Onken, Onken and Howard knew that Ronnie
16 Dale Onken was not the sole inventor of the device design and system but at best a co-
17 inventor along with BII.

18 **FIRST CLAIM**

19 23. BII incorporates all allegations contained in paragraphs 1 through 22 in
20 this, its First Claim.

21 24. On November 23, 2004, Ronnie Dale Onken filed a patent application with
22 the U.S. Patent Office.

23 25. Prior to November 23, 2004, substantially similar devices had been in the
24 stream of commerce and used in the construction industry consisting of rigid foam core
25 panels held together by metal channels.
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1 (2) failing to disclose the prior art systems; and (3) failing to disclose the prior use and
2 sale of the design by BII with the intent to deceive the Patent and Trademark office.

3 34. Such omissions and affirmative misrepresentations were, and are, material
4 to the patent application process.

5 35. Because of Ronnie Dale Onken's inequitable conduct as above described,
6 the patent application now being prosecuted is invalid.

7 WHEREFORE, BII prays that his Court declare the Patent Application invalid.

8 **THIRD CLAIM**

9 36. BII incorporates all the allegations of paragraphs 1 through 35 in this, its
10 Third Claim.

11 37. Howard and others acting in concert with Howard are marketing and
12 selling or purporting to market and sell, devices revealed in the Patent Application or
13 grant unlawful licenses to practice the pending patent made the subject of this case.

14 38. The Patent Application sought to be issued is based wholly upon Ronnie
15 Dale Onken's unlawful use of BII's confidential, proprietary information, drawings
16 and schematics.

17 39. Howard's use of such confidential, proprietary information is a violation
18 of federal common law and the Arizona Trade Secrets Act (A.R.S. §44-401, *et seq.*)

19 40. The confidential, proprietary, trade secret information used in the Patent
20 Application was unlawfully taken and converted by Ronnie Dale Onken for his own
21 use and benefit in applying for a patent without the knowledge or permission of BII.

22 41. Ronnie Dale Onken, Onken, the Estate, Howard, and others acting in
23 concert with them, are presently using BII's confidential and proprietary trade secret
24 information in the prosecution of the Patent Application and selling or offering to sell
25 their products in violation of BII's rights. BII has no adequate remedy at law.
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42. Howard, Onken, the Estate and all others acting in concert with them must be enjoined preliminarily and permanently from using, selling or offering to sell products embodying the confidential and proprietary information of BII used to prosecute the Patent Application.

43. Unless enjoined, BII will suffer monetary and non-monetary business losses arising out of this unlawful conversion of trade secrets.

WHEREFORE, BII prays that this Court preliminarily and permanently enjoin the Defendants and all others acting in concert with them from selling or offering to sell devices utilizing the patent pending, confidential and proprietary trade secrets information of BII; to determine what damages have been and/or will be incurred by BII; for such other and further relief as the Court deems just and proper under the circumstances; and to find that the information so converted cannot be used to support the Patent Application.

RESPECTFULLY SUBMITTED this 31st day of October, 2006.

THE EAGLEBURGER LAW GROUP

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CERTIFICATE OF SERVICE (CM/ECF)

I hereby certify that on October 31, 2006, I electronically filed the foregoing Amended Complaint with the Clerk of Court for filing and uploading to the CM/ECF system with electronic notice to the following.

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