

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION**

IRWIN INDUSTRIAL TOOL COMPANY,)	
)	
Plaintiff,)	Civil Action No. _____
)	
v.)	JUDGE _____
)	
KLEIN TOOLS, INC.)	<u>JURY TRIAL DEMAND</u>
)	
Defendants.)	
)	
)	
)	

COMPLAINT

For its Complaint against Klein Tools, Inc. (“Klein”), plaintiff Irwin Industrial Tool Company (“Irwin”) states as follows:

NATURE OF ACTION

1. This is an action for patent infringement arising under Title 35 of the United States Code, seeking monetary damages and injunctive relief against Klein due to its continued violation of Irwin’s rights in U.S. Patent No. 6,890,133 (“the ‘133 Patent”).

THE PARTIES

2. Irwin is a corporation organized and existing under the laws of the State of Delaware, having a principle place of business at 8935 Northpointe Executive Drive, Huntersville, North Carolina 28078.

3. Upon information and belief, defendant Klein is a corporation organized and existing under the laws of the State of Delaware, having a principal place of business at 450 Bond Street, Lincolnshire, Illinois 60069. Klein has appointed Corporation Service Company,

located at 2711 Centerville Road Suite 400, Wilmington, Delaware 19808 as its agent for service of process.

JURISDICTION AND VENUE

4. Upon information and belief, Klein regularly conducts business in this judicial district and division through its acts of selling and offering for sale in this district and division various products including the infringing products described herein.

5. This action arises under the Patent Laws of the United States, Title 35, United States Code. This Court has jurisdiction under 28 U.S.C. §1331 and 1338(a).

6. Venue is proper in this district and division under 28 U.S.C. §§1391(b) and (c) and 1400(b).

FACTUAL BACKGROUND

7. Irwin is the owner by assignment of the '133 Patent entitled STEPPED DRILL BIT HAVING SPLIT TIP. The '133 Patent was duly and legally issued by the United States Patent and Trademark Office on May 10, 2005. A copy of the '133 Patent is attached as Exhibit A.

8. The '133 Patent is still in force and effect and is presumed valid under the U.S. patent laws.

9. Klein was previously a customer of Irwin. Specifically, Klein purchased and resold stepped drill bits from Irwin that were covered by the '133 Patent. During the fall of 2010 this relationship ended and subsequently Klein began selling stepped drill bits that infringe the '133 Patent. These infringing stepped drill bits are obtained from an unidentified source. Klein sells these infringing stepped drill bits without authority from Irwin. One non-limiting example of Klein's infringing product is identified by Klein as "Klein Tools 59009, Step Drill Bit #9."

10. Upon information and belief, Klein has notice of and is aware of the '133 Patent.

COUNT I: INFRINGEMENT OF THE '133 PATENT

11. Irwin incorporates by reference the allegations of Paragraphs 1-9 of this Complaint.

12. Klein has been and still is directly infringing the '133 Patent under 35 U.S.C. §271(a) by making, using, offering to sell, and/or selling products that directly infringe claims of the '133 Patent.

13. Upon information and belief, Klein's infringement of the '133 Patent will continue unless enjoined by this Court.

14. As a result of Klein's infringement, Irwin has suffered monetary damages in an amount not yet determined, and will continue to suffer irreparable harm in the future unless Klein's infringing activities are enjoined by this Court.

PRAYER FOR RELIEF

Plaintiff Irwin prays for the following relief:

- (a) A judgment that Klein has directly infringed and continues to infringe the '133 Patent;
- (b) A judgment against Klein awarding Irwin damages suffered by Irwin pursuant to 35 U.S.C. §284 on account of Klein's infringement of the '133 Patent;
- (c) A judgment against Klein awarding Irwin enhanced damages, pursuant to 35 U.S.C. §284;
- (d) A judgment that this is an exceptional case and that Irwin be awarded reasonable attorney fees and expenses pursuant to 35 U.S.C. §285;

- (e) A preliminary injunction against Klein and any entity acting in concert with Klein, pursuant to 35 U.S.C. §283, preventing Klein and any such entity from infringing the '133 Patent;
- (f) A permanent injunction against Klein and any entity acting in concert with Klein, pursuant to 35 U.S.C. §283, preventing Klein and any such entity from infringing the '133 Patent or, in the alternative, a post judgment royalty; and
- (g) A judgment that Klein be directed to pay Irwin its costs incurred herein and such other and further relief as the Court deems just and equitable.

JURY DEMAND

Plaintiff Irwin Industrial Tool Company respectfully requests a trial by jury as to all issues so triable.

Date: July 5, 2011

Respectfully submitted,

s/Robert A. Muckenfuss

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