

**IN UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

ERICO INTERNATIONAL CORPORATION	)	
	)	
Plaintiff,	)	Civil Action No. 1:04CV2249
	)	
v.	)	
	)	JUDGE ALDRICH
BREA TECHNOLOGIES, INC., et al.	)	
	)	<b>AMENDED COMPLAINT</b>
Defendants.	)	
	)	

For its Complaint against BREA Technologies, Inc. (“BREA”) and John Doe Company (“John Doe”) (collectively, “Defendants”), Plaintiff Erico International Corporation (“ERICO”) states as follows:

**THE PARTIES**

1. Plaintiff ERICO is a corporation organized and existing under the laws of the State of Ohio and having a place of business at 34600 Solon Road, Solon, Ohio 44139.
2. BREA a corporation organized and existing under the laws of the State of California, having its headquarters and principal place of business at 16555 Road Runner Road, Canyon Country, California 91387.

3. John Doe Company is a yet to be identified foreign company that, on information and belief, is located and doing business in the People's Republic of China.

### **FACTUAL BACKGROUND**

4. ERICO is the leading manufacturer and developer of a variety of steel and plastic fasteners and fixtures for use in the installation of electrical and communications cable, utilities and other infrastructures in buildings. The fasteners and fixtures ERICO manufactures and sells include cable supports known as J-Hooks, Electrical Fixtures, Mounting Plates and Slip-on Nuts.

5. ERICO has established its preeminent place in the market by protecting its intellectual property, requiring a rigorous quality assurance program and employing unmatched customer service. Under ERICO's quality assurance program, incoming steel is sampled and inspected for conformance to both the American Iron and Steel Institute ("AISI") specifications and ERICO's in-house standards. AISI has developed steel product standards that provide manufacturers and users of steel with generally recognized definitions, descriptions and practices pertaining to the manufacture, chemistry, metallurgy, material properties and adaptability of steel products. By specifying AISI steels for its products, ERICO and its customers can be confident that ERICO's products will meet the intended performance level, regardless of steel supplier. Also, ERICO tests products to simulate normal field applications. All of these measures ensure a continuous high level of quality.

6. As a further commitment to quality and customer service, ERICO is an ISO 9001 compliant company. The International Standards Organization ("ISO") is a network of national standards institutes from 146 countries working in partnership with various international organizations, governments, industries, businesses and consumer representatives to ensure high

quality products and customer service. The standards that have earned the ISO 9000 family a worldwide reputation are known “generic management standards. In other words, in order to be a member of the ISO 9000 family, a company must meet universal quality standards regardless of what products it sells. To meet these standards and be ISO complaint, a company must meet various customer and regulatory requirements and continually improve its performance in this regard. Once a company is certified ISO complaint, it may hold itself out as member and thus be known as meeting the stringent generic management system standards. ISO 9001 is awarded to companies such as ERICO that maintain in-house design and manufacturing capabilities.

7. In addition, ERICO products are carefully load-rated, subjected to exacting treatment and corrosion resistance standards, and carefully designed and manufactured to meet code requirements and regulations as well as specific applications. ERICO products are also tested on a sample basis by certified inspectors to ensure ERICO’s in-house quality requirements and industry standards, such as UL standards, are being met.

8. ERICO also has developed a strong intellectual property portfolio including United States patents protecting its inventive J-Hook cable support, Electrical Fixtures, Mounting Plates and Slip-on Nuts. This patent portfolio includes U.S. Patent No. 5,740,994 for the J-Hook, U.S. Patent No. 4,955,825 for the Electrical Fixture, U.S. Patent No. 5,448,011 for the Mounting Plate and U.S. Patent No. 6,050,766 for the Slip-on Nut.

9. In late August of 2004, ERICO learned that one of its nationwide distributors, Communication Supply Corporation (“CSC”), had begun selling knock-offs of ERICO’s patented products including J-Hooks, electrical fixtures, mounting plates and slip-on nuts. ERICO contacted CSC about the knock-off products. CSC agreed to cease selling these knock-

offs and provided ERICO with samples of the products as well as the name of the company that sold CSC the knock-off products.

10. According to CSC, it bought the products from Defendant BREA. Also according to CSC, BREA imported the products from a John Doe Company, an unknown manufacturing and importing company, located in the People's Republic of China.

11. ERICO tested the samples of Defendants' knock-off products that it received from CSC and found that these samples did not pass ERICO's rigorous testing and quality control programs. At least one of the knock-off products broke when installation was attempted.

12. On September 21, 2004, after conducting the testing on the Defendants' knock-off products, ERICO sent a "cease and desist" letter to BREA regarding its infringement of ERICO's patents. To date, BREA has not responded.

### **JURISDICTION AND VENUE**

13. 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. § 1338(a).

14. Venue is proper in this district under 28 U.S.C. §§ 1391(a) and (d) and 1400(b).

### **COUNT I: INFRINGEMENT OF THE '994 PATENT**

15. ERICO incorporates by reference herein the allegations of Paragraphs 1-14 of this Complaint.

16. ERICO is the owner by assignment of United States Patent No. 5,740,994 ("the '994 Patent") entitled CABLE SUPPORT AND METHOD. The '994 Patent was duly and

legally issued by the United States Patent and Trademark Office (“USPTO”) on April 21, 1998 and subject to a reexamination certificate, issued on September 23, 2003. The ‘994 Patent is still in force and effect and is presumed valid under the U.S. patent laws. A copy of the ‘994 Patent is attached as Exhibit A.

17. Defendants have been and still are directly infringing the ‘994 Patent under 35 U.S.C. § 271(a) by making, selling and/or offering for sale in the United States J-Hooks embodying the patented inventions. Defendants have been and still are indirectly infringing the ‘994 Patent under 35 U.S.C. § 271(b) by actively inducing direct infringement by other persons who use products that embody one or more of the claims of the ‘994 Patent when Defendants had knowledge of the ‘994 Patent and knew or should have known that their actions would induce direct infringement by others and intended that their actions would induce direct infringement by others. Defendants have been and still are indirectly infringing the ‘994 Patent under 35 U.S.C. § 271(c) by contributory infringement by providing non-staple articles of commerce to others for use in an infringing system with knowledge of the ‘994 Patent and knowledge that these non-staple articles of commerce are used as a material part of the claimed inventions of the ‘994 Patent. Defendants will continue to infringe unless enjoined by this court.

18. ERICO has provided Defendant BREA with written notice of BREA’s infringement.

19. Defendants have knowingly and willfully infringed the ‘994 Patent.

20. As a result of Defendants’ infringement, ERICO has suffered monetary damages in an amount not yet determined, and will continue to suffer irreparable harm in the future unless Defendants’ infringing activities are enjoined by this Court.

21. Unless preliminary and permanent injunctions are issued enjoining Defendants and their agents, servants, employees, attorneys, representatives, and all others acting on their behalf from infringing the '994 Patent, ERICO will be greatly and irreparably harmed.

**COUNT II: INFRINGEMENT OF THE '825 PATENT**

22. ERICO incorporates by reference herein the allegations of Paragraphs 1-21 of this Complaint.

23. ERICO is the owner by assignment of United States Patent No. 4,955,825 (“the ‘825 Patent”) entitled ELECTRICAL FIXTURE. The ‘825 Patent was duly and legally issued by the USPTO on September 11, 1990. The ‘825 Patent is still in force and effect and is presumed valid under the U.S. patent laws. A copy of the ‘825 Patent is attached as Exhibit B.

24. Defendants have been and still are directly infringing the ‘825 Patent under 35 U.S.C. § 271 by making, selling and/or offering for sale in the United States electrical fixtures embodying the patented inventions. Defendants will continue to infringe unless enjoined by this court.

25. Defendants have knowingly and willfully infringed the ‘825 Patent.

26. As a result of Defendants’ infringement, ERICO has suffered monetary damages in an amount not yet determined, and will continue to suffer irreparable harm in the future unless Defendants’ infringing activities are enjoined by this Court.

27. Unless preliminary and permanent injunctions are issued enjoining Defendants and their agents, servants, employees, attorneys, representatives, and all others acting on their behalf from infringing the ‘825 patent, ERICO will be greatly and irreparably harmed.

**COUNT III: INFRINGEMENT OF THE '011 PATENT**

28. ERICO incorporates by reference herein the allegations of Paragraphs 1-27 of this Complaint.

29. ERICO is the owner by assignment of United States Patent No. 5,448,011 (“the ‘011 Patent”) entitled LOW VOLTAGE MOUNTING PLATE AND METHOD OF INSTALLATION. The ‘011 Patent was duly and legally issued by the USPTO on September 5, 1995. The ‘011 Patent is still in force and effect and is presumed valid under the U.S. patent laws. A copy of the ‘011 Patent is attached as Exhibit C.

30. Defendants have been and still are directly infringing the ‘011 Patent under 35 U.S.C. § 271(a) by making, selling and/or offering for sale in the United States mounting plates and/or other components to end-user customers using systems and methods embodying the patented inventions. Defendants have been and still are indirectly infringing the ‘011 Patent under 35 U.S.C. § 271(b) by actively inducing direct infringement by other persons who use products that embody one or more of the claims of the ‘011 Patent when Defendants had knowledge of the ‘011 Patent and knew or should have known that their actions would induce direct infringement by others and intended that their actions would induce direct infringement by others. Defendants have been and still are indirectly infringing the ‘011 Patent under 35 U.S.C. § 271(c) by contributory infringement by providing non-staple articles of commerce to others for use in an infringing system or method with knowledge of the ‘011 Patent and knowledge that these non-staple articles of commerce are used as a material part of the claimed inventions of the ‘011 Patent. Defendants will continue to infringe unless enjoined by this court.

31. Defendants have knowingly and willfully infringed the ‘011 Patent.

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

33. Unless preliminary and permanent injunctions are issued enjoining Defendants and their agents, servants, employees, attorneys, representatives, and all others acting on their behalf from infringing the '011 patent, ERICO will be greatly and irreparably harmed.

#### **COUNT IV: INFRINGEMENT OF THE '766 PATENT**

34. ERICO incorporates by reference herein the allegations of Paragraphs 1-33 of this Complaint.

35. ERICO is the owner by assignment of United States Patent No. 6,050,766 ("the '766 Patent") entitled TWO-PART SLIP-ON NUT. The '766 Patent was duly and legally issued by the USPTO on April 18, 2000. The '766 Patent is still in force and effect and is presumed valid under the U.S. patent laws. A copy of the '766 Patent is attached as Exhibit D.

36. Defendants have been and still are directly infringing the '766 Patent under 35 U.S.C. § 271(a) by making, importing, selling and/or offering for sale in the United States slip-on nuts embodying the patented inventions. Defendants have been and still are indirectly infringing the '766 Patent under 35 U.S.C. § 271(b) by actively inducing direct infringement by other persons who use products that embody one or more of the claims of the '766 Patent when Defendants had knowledge of the '766 Patent and knew or should have known that their actions would induce direct infringement by others and intended that their actions would induce direct infringement by others. Defendants have been and still are indirectly infringing the '766 Patent under 35 U.S.C. § 271(c) by contributory infringement by providing non-staple articles of



commerce to others for use in an infringing system with knowledge of the '766 Patent and knowledge that these non-staple articles of commerce are used as a material part of the claimed inventions of the '766 Patent. Defendants will continue to infringe unless enjoined by this court.

37. Defendants have knowingly and willfully infringed the '766 Patent.

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

39. Unless preliminary and permanent injunctions are issued enjoining Defendants and their agents, servants, employees, attorneys, representatives, and all others acting on their behalf from infringing the '766 patent, ERICO will be greatly and irreparably harmed.

#### **PRAYER FOR RELIEF**

Plaintiff ERICO prays for the following relief:

- (a) A judgment that Defendants have directly infringed and/or indirectly infringed by contributory infringement and/or inducement, and continue to infringe the '994 Patent, the '825 Patent, the '011 Patent and the '766 Patent (collectively, the "patents-in-suit");
- (b) A judgment that Defendants' infringement of the patents-in-suit has been willful;
- (c) A judgment against Defendants awarding ERICO damages suffered by ERICO pursuant to 35 U.S.C. § 284 on account of Defendants' infringement of the patents-in-suit;
- (d) A judgment that ERICO's damages be trebled pursuant to 35 U.S.C. § 284 and that punitive damages be assessed against Defendants;

- (e) A preliminary injunction against Defendants and any entity acting in concert with Defendants, pursuant to 35 U.S.C. § 283, preventing Defendants and any such entity, from infringing any of the patents-in-suit;
- (f) A permanent injunction against Defendants and any entity acting in concert with Defendants, pursuant to 35 U.S.C. § 283, preventing Defendants and any such entity, from infringing any of the patents-in-suit;
- (g) A judgment that this is an exceptional case and that ERICO be awarded reasonable attorney fees pursuant to 35 U.S.C. § 285; and
- (h) A judgment that Defendants be directed to pay ERICO its costs incurred herein and such other and further relief as the Court deems just and equitable.

Dated: December 1, 2004

Respectfully submitted,

s/ Mark C. Johnson

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**JURY DEMAND**

Plaintiff ERICO respectfully requests a trial by jury as to all issues so triable.

Respectfully submitted,

*s/ Mark C. Johnson*

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