

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

SOUTHWIRE COMPANY,

Plaintiff,

v.

ENCORE WIRE CORPORATION and
CERRO WIRE INC.,

Defendants.

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Civil Action No. 6:09-cv-00289

JURY TRIAL DEMANDED

**COMPLAINT FOR PATENT INFRINGEMENT
AND DEMAND FOR JURY TRIAL**

Plaintiff SOUTHWIRE COMPANY (“SOUTHWIRE”) hereby files this Complaint for Patent Infringement against Defendants ENCORE WIRE CORPORATION (“ENCORE”) and CERRO WIRE INC. (“CERRO”), showing the Court as follows:

NATURE OF ACTION

1. This is an action in which SOUTHWIRE seeks damages and injunctive relief under the patent laws of the United States, 35 U.S.C. § 1 *et seq.*, because of ENCORE’s and CERRO’s infringement of SOUTHWIRE’s United States Patent No. 7,557,301 entitled “Method of Manufacturing Electrical Cable Having Reduced Required Force for Installation” (“the ’301 patent”).

THE PARTIES

2. SOUTHWIRE is a prominent cable and wire manufacturer. SOUTHWIRE is known for innovation, as it owns over 400 patents and expends significant resources in researching and developing new products for the cable and wire industry. SOUTHWIRE is a

Delaware corporation with its principal place of business at One Southwire Drive, Carrollton, Georgia 30119.

3. ENCORE is a Delaware corporation with its principal place of business at 1329 Millwood Rd., McKinney, Texas 75069. ENCORE is registered to do business in the State of Texas, with its registered agent, CT Corporation System, located at 350 North St. Paul St., Dallas, Texas 75201.

4. CERRO, formerly doing business as Cerro Wire & Cable Co., Inc., is a Delaware corporation with its principal place of business at 1099 Thompson Rd. SE, Hartselle, Alabama 35640-8471. CERRO is registered to do business in the State of Texas, with its registered agent, The Prentice-Hall Corporation System, located at 701 Brazos Street, Suite 1050, Austin, Texas 78701.

JURISDICTION AND VENUE

5. This Court has subject-matter jurisdiction over this matter pursuant to Title 28, United States Code, Sections 1331 and 1338(a).

6. On information and belief, ENCORE offers for sale, sells or causes to be sold electrical cables in this District and is thereby doing business in this District.

7. On information and belief, ENCORE, through its agents, offers for sale, causes to be offered for sale, sells, or causes to be sold electrical cables in this District and is thereby doing business in this District.

8. On information and belief, ENCORE is registered to do business in the State of Texas, with its principal place of business located in this District.

9. On information and belief, ENCORE is subject to this Court's specific and general personal jurisdiction pursuant to due process and/or the Texas Long Arm Statute, due at

least to its substantial business in this forum, including: (i) selling goods that infringe the '301 patent in this forum and (ii) regularly doing or soliciting business, engaging in other persistent courses of conduct, and/or deriving substantial revenue from goods and services provided to individuals in this State and in this Judicial District.

10. On information and belief, CERRO offers for sale, sells or causes to be sold electrical cables in this District and is thereby doing business in this District.

11. On information and belief, CERRO, through its agents, offers for sale, causes to be offered for sale, sells, or causes to be sold electrical cables in this District and is thereby doing business in this District.

12. On information and belief, CERRO is registered to do business in the State of Texas.

13. On information and belief, CERRO is subject to this Court's specific and general personal jurisdiction pursuant to due process and/or the Texas Long Arm Statute, due at least to its substantial business in this forum, including: (i) selling goods that infringe the '301 patent in this forum and (ii) regularly doing or soliciting business, engaging in other persistent courses of conduct, and/or deriving substantial revenue from goods and services provided to individuals in this State and in this Judicial District.

14. Venue is proper in this District under Title 28, United States Code, Sections 1391 and 1400(b).

UNDERLYING FACTS

15. The '301 patent generally relates to an electrical cable having a reduced required force for installation.

16. The '301 patent is continuation from Application No. 10/952,294, which led to the issuance of the United States Patent No. 7,411,129.

17. The United States Patent and Trademark Office ("USPTO") duly and legally issued the '301 patent on July 7, 2009.

18. The '301 patent is valid and enforceable.

19. By virtue of assignments recorded at the USPTO, all rights in, to, and under the '301 patent have been assigned to SOUTHWIRE, and SOUTHWIRE has the exclusive worldwide right to enforce the '301 patent.

COUNT I

Claim For Infringement of U.S. Patent No. 7,557,301 Against ENCORE

20. The allegations in Paragraphs 1 through 19 of this Complaint are incorporated by reference as if set forth in their entirety.

21. Upon information and belief, ENCORE has infringed one or more claims of the '301 patent by making electrical cables, including but not limited to Super Slick™ cables, utilizing SOUTHWIRE's patented process and continues to do so today.

22. Upon information and belief, ENCORE has infringed, contributed to the infringement of, or induced the infringement of the '301 Patent by using, selling, offering for sale, and/or importing into the United States electrical cables, including but not limited to Super Slick™ cables, and continues to do so today.

23. ENCORE's infringing acts, described in Paragraphs 21 and 22, have not been authorized by SOUTHWIRE and are in violation of SOUTHWIRE's patent rights.

24. As a direct result of ENCORE's infringing acts, SOUTHWIRE has suffered and continues to suffer damages and irreparable harm.

25. SOUTHWIRE has no adequate remedy at law for ENCORE's infringing acts. Unless and until ENCORE's infringing acts are enjoined by this Court, SOUTHWIRE will continue to be damaged and irreparably harmed.

COUNT II

Claim For Infringement of U.S. Patent No. 7,557,301 Against CERRO

26. The allegations in Paragraphs 1 through 19 of this Complaint are incorporated by reference as if set forth in their entirety.

27. Upon information and belief, CERRO has infringed one or more claims of the '301 patent by making electrical cables, including but not limited to Thermoplastic High Heat-resistant Nylon-coated and non-metallic sheathed cables, utilizing SOUTHWIRE's patented process and continues to do so today.

28. Upon information and belief, CERRO has infringed, contributed to the infringement of, or induced the infringement of the '301 Patent by using, selling, offering for sale, and/or importing into the United States electrical cables, including but not limited to Thermoplastic High Heat-resistant Nylon-coated and non-metallic sheathed cables, and continues to do so today.

29. CERRO's infringing acts, described in Paragraphs 27 and 28, have not been authorized by SOUTHWIRE and are in violation of SOUTHWIRE's patent rights.

30. As a direct result of CERRO's infringing acts, SOUTHWIRE has suffered and continues to suffer damages and irreparable harm.

31. SOUTHWIRE has no adequate remedy at law for CERRO's infringing acts. Unless and until CERRO's infringing acts are enjoined by this Court, SOUTHWIRE will continue to be damaged and irreparably harmed.

WHEREFORE, SOUTHWIRE prays that the Court:

- (a) Enter a judgment that ENCORE has infringed one or more claims of the '301 patent;
- (b) Enjoin ENCORE and those in privity with it from further acts of infringement of the '301 patent;
- (c) Award SOUTHWIRE damages adequate to compensate it for ENCORE's infringement of the '301 patent;
- (d) Enter a judgment that CERRO has infringed one or more claims of the '301 patent;
- (e) Enjoin CERRO and those in privity with it from further acts of infringement of the '301 patent;
- (f) Award SOUTHWIRE damages adequate to compensate it for CERRO's infringement of the '301 patent; and
- (g) Award SOUTHWIRE prejudgment interest, costs, and such further relief as the Court deems just and proper.

JURY TRIAL DEMAND

SOUTHWIRE requests a trial by jury of all issues triable to a jury raised in its Complaint for Patent Infringement.

Dated: July 7, 2009.

Respectfully submitted,

/s/ Jason W. Cook

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