

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN

Hart & Cooley, Inc.)	
a Delaware Corporation)	Case No.
)	
Plaintiff)	Hon.
)	
v.)	<u>JURY TRIAL DEMANDED</u>
)	
)	
American Valve, Inc.)	
a North Carolina Corporation, d/b/a)	
Accord Ventilation Products)	
)	
)	
Defendant)	
)	

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COMPLAINT AND JURY DEMAND

The Plaintiff, Hart & Cooley, Inc., (“H&C”), for its Complaint against Defendant, alleges and states:

PARTIES, JURISDICTION & VENUE

1. H&C is a Delaware corporation, with its principal place of business at 500 East Eighth Street, Holland, Michigan, 49423.

2. On information and belief, Defendant American Valve, Inc. (“AVI”), is a North Carolina Corporation, with its principal place of business at 8717 West Market St., P.O. Box 35229, Greensboro, North Carolina, 27409. On information and belief, Defendant AVI

manufactures and sells, among other things, products for the heating, ventilation and air conditioning (HVAC) industry. On information and belief, Accord Ventilation Products (“Accord”) is a d/b/a of AVI. Accord’s business address is P.O. Box 35229, Greensboro, North Carolina, 27425. Upon information and belief, Accord imports or manufactures and sells HVAC products in this judicial district, including vent registers and floor diffusers, in the residential market. Accord’s vent registers/floor diffusers are sold to retailers like Lowe’s Home Improvement Stores (“Lowe’s”) (*see Figure 1*).

3. This action is for patent infringement under the Patent Act of 1952, 35 U.S.C. § 271(a) and (b). This Court has subject matter jurisdiction over H&C’s claims, pursuant to 28 U.S.C. §§ 1331, 1332 and 1338. In addition to federal question jurisdiction, this Court has diversity jurisdiction because the parties are citizens of different states and the amount in controversy exceeds \$75,000.00, exclusive of interests and costs.

4. Upon information and belief, Defendant AVI is doing business within this judicial district as Accord, and has committed acts of infringement in this judicial district, and/or is subject to personal jurisdiction within this judicial district, therefore subjecting it to jurisdiction within this judicial district and making venue proper in this district pursuant to 28 U.S.C. §§ 1391 and 1400.

GENERAL ALLEGATIONS

5. H&C is a global supplier of HVAC products to commercial and residential markets. Its product portfolio includes, among other things, vent registers, grilles, floor diffusers, duct system components, gas vents, air ducts and air connectors for commercial and residential use. *See, www.hartandcooley.com.*

6. Upon information and belief, Defendant AVI is in the business of making, importing, using, selling and/or offering for sale products in the plumbing, heating and flow controls industry. See, www.americanvalve.com. Upon information and belief, Accord is a d/b/a of AVI. Accord is in the business of making, importing, using, selling or offering for sale ventilation products in the HVAC industry, including vent registers and floor diffusers. See, www.accord-air.com. It sells its vent registers/floor diffusers under the trade name “Simplicity *The Finishing Touch*” at Lowe’s stores throughout the State of Michigan and in this judicial district (see *Figure 1*).



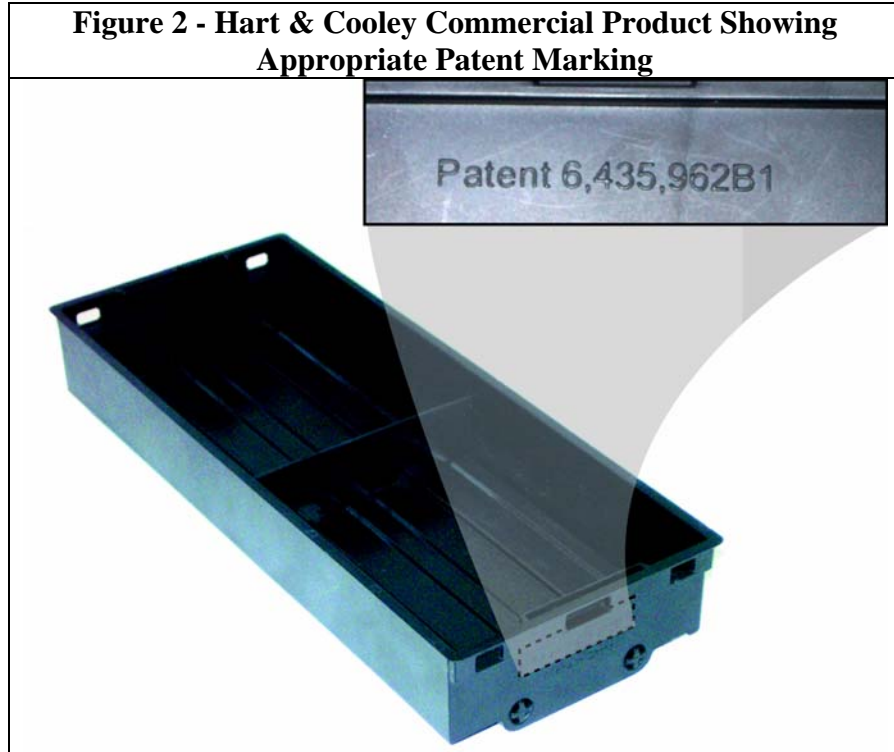
7. AVI and Accord will hereafter be collectively referred to as “Defendant.”

THE PATENT INFRINGEMENT

8. On August 20, 2002, United States Patent No. 6,435,962 ("the '962 Patent") titled "Operating Mechanism for Vent Louver" was duly and legally issued by the U.S. Patent & Trademark Office to Robert Herron and Patrick Herron ("the Herrons"). By way of an assignment, recorded with the U.S. Patent & Trademark Office on October 8, 2002, H&C is the owner of the '962 Patent. The '962 Patent is valid and remains in full force and effect. A copy of the '962 Patent is attached as ***Exhibit A***.

9. The '962 Patent covers an invention for a vent register that controls the flow of heated or cooled air through a vent. To effectively manage the flow of air through the vent, this particular invention involves a rack and pinion mechanism that translates linear motion of a lever to rotation of the vent dampers. This type of mechanism improved upon the control mechanisms incorporated in earlier vent registers.

10. Since the '962 Patent issued in 2002, H&C has sold in the United States a product covered by the '962 Patent and has marked its product with all appropriate and applicable patent markings under 35 U.S.C. §287, thus providing notice of its patent (*see Figure 2*).



11. On or about September 2004, H&C representatives in Holland, Michigan, learned that a local Lowe's store was selling a vent register (or "floor diffuser") that might come within the scope of the claims of the '962 Patent. The floor diffuser was distributed by "Accord Ventilation Products" under the trade name "*Simplicity The Finishing Touch*" ("the Accused Product"). H&C acquired the Accused Product shown below (*see Figures 3-4*). The Accused Product's label specifies that the product is "Made in China." The Accused Product is not marked with any patent designations.

Figure 3 – Accord Accused Product in Closed-louver Position (with Vent Register Removed)



Figure 4 – Accord Accused Product in Open-louver Position (with Vent Register Removed)



12. With the exception of color, lack of product marking, and slightly different mold injection points, the Accused Product is identical to H&C's patented product (see the side-by-side comparison of the drawings of H&C's patented invention with the Accused Product below in Figures 5-8). To illustrate the striking similarities between H&C's patent and the Accused Product, the common features between them are called out with the same reference numbers.

Figure 5 – Comparison of Fig. 1 of the ‘962 Patent with the Accord Accused Product

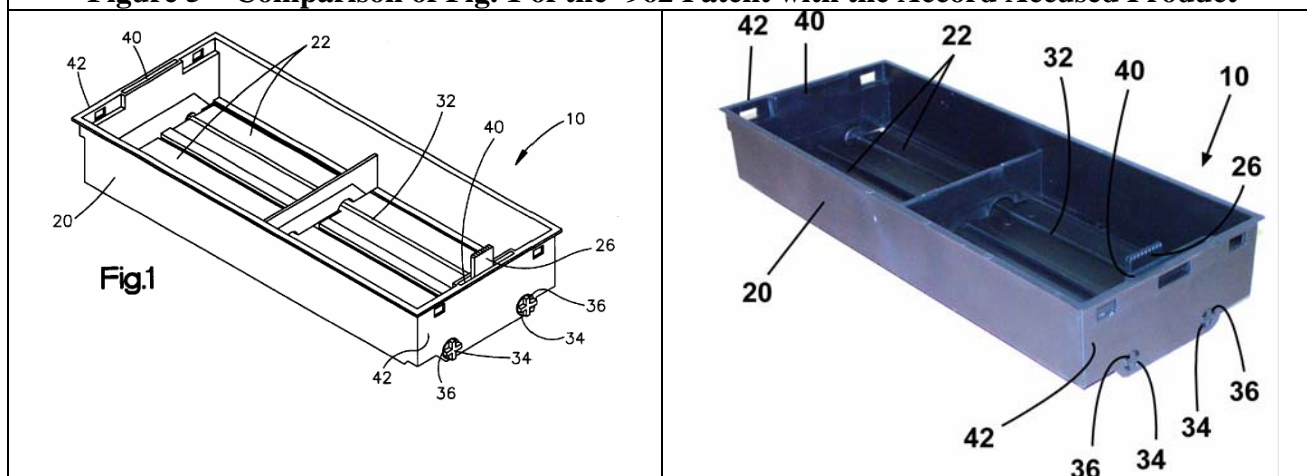


Figure 6 – Comparison of Fig. 2 of the ‘962 Patent with the Accord Accused Product

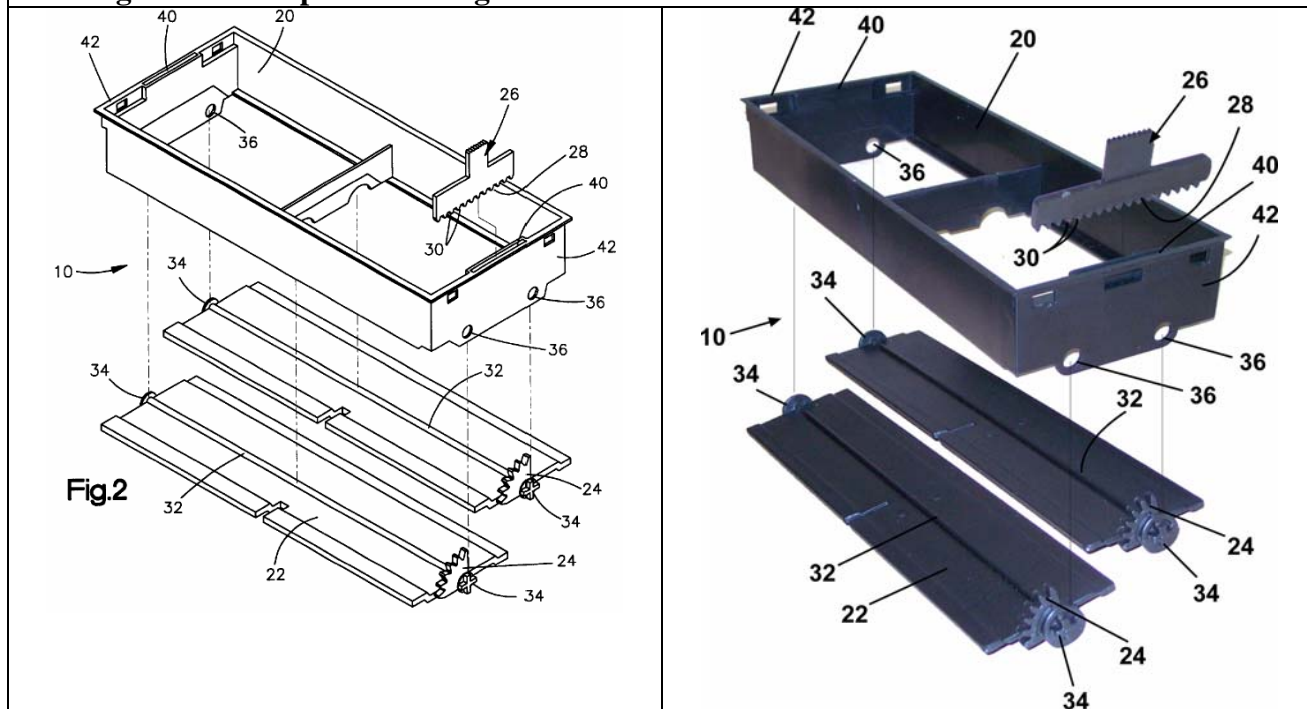


Figure 7 – Comparison of Fig. 3 of the ‘962 Patent with the Accord Accused Product (Accord Accused Product has end wall cut to reveal rack-and-pinion gearing)

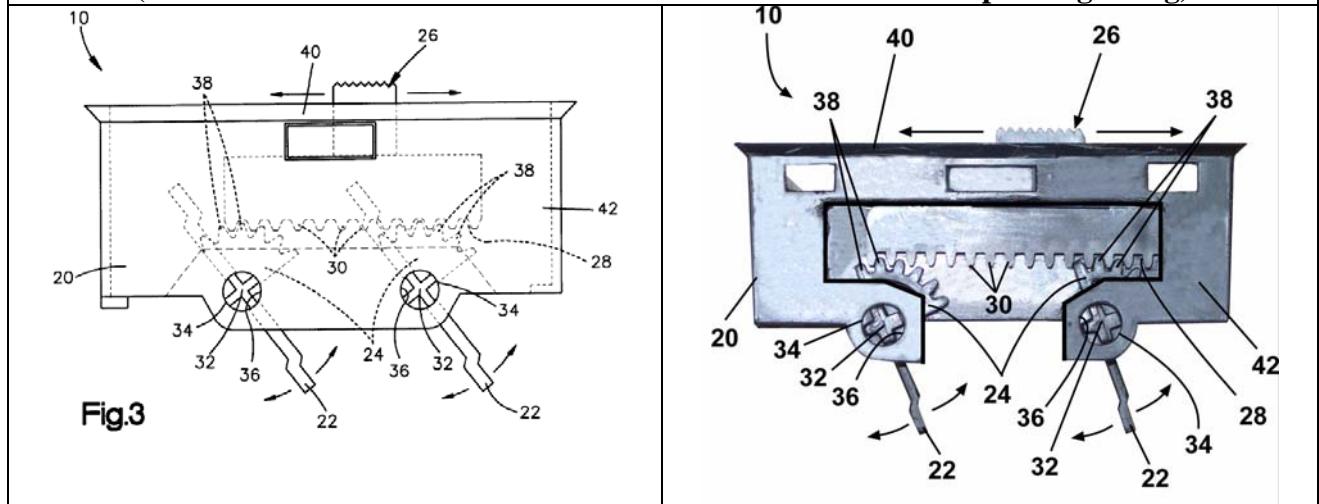
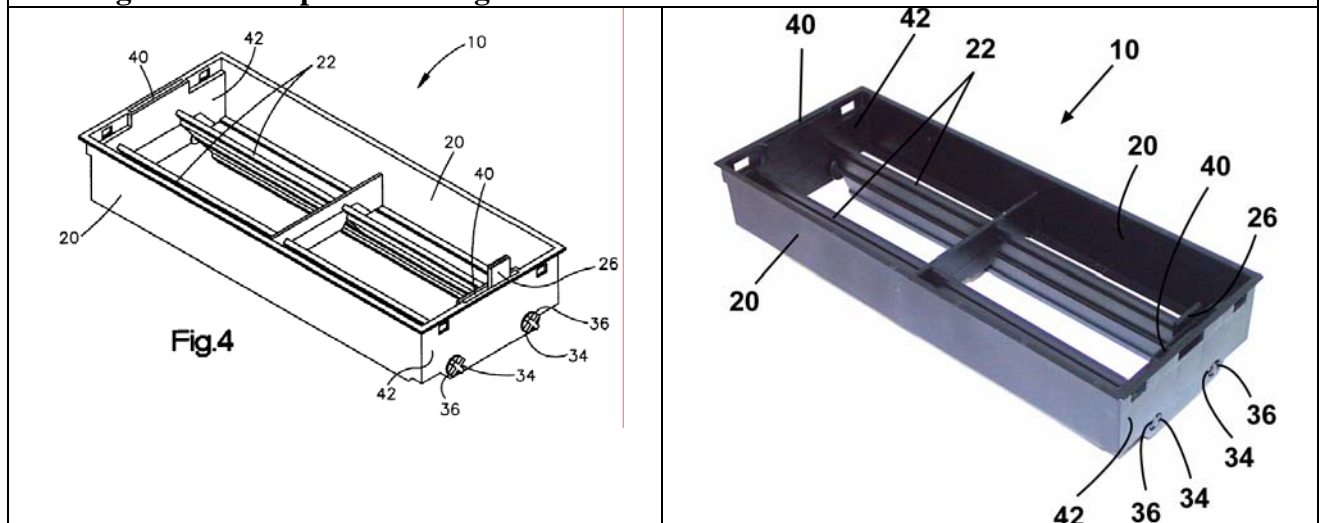


Figure 8 – Comparison of Fig. 4 of the ‘962 Patent with the Accord Accused Product



13. Upon information and belief, the President of AVI is Fredrick L. Guterman. Mr. Guterman is on the Education Committee of the Valve Manufacturers Association of America (“VMA”). The VMA is a trade organization that lobbies to protect the flow control industry in North America. Upon information and belief, the VMA publishes articles in its trade magazine on the perils of counterfeit products. However, also upon information and believe, Mr. Guterman’s company – AVI – owns and operates “Accord,” which is selling flow control

products, namely vent registers/floor diffusers, that are manufactured in China and that are nearly exact replicas of H&C's patented invention.

COUNT I

**PATENT INFRINGEMENT OF THE '962 PATENT
35 U.S.C. § 271(A) AND (B)**

14. H&C incorporates paragraphs 1-13 as if fully stated herein.

15. Defendant is making, importing, using, selling and/or offering for sale the Accused Product, namely, a vent register/floor diffuser, which literally infringes at least claims 1-4, 6-7 and 9 of the '962 Patent.

16. Defendant has been and still is making, importing, using, selling and/or offering for sale the Accused Product, namely, a vent register/floor diffuser, which includes, either literally or under the doctrine of equivalents, every element of at least claims 1-4, 6-7 and 9 of the '962 Patent.

17. The Defendant's foregoing activities constitute infringement of the '962 Patent in violation of 35 U.S.C. § 271(a) and (b), and Defendant will continue to infringe the '962 Patent until and unless enjoined by this Court.

18. Defendant has, by its conduct, caused H&C irreparable harm for which there is no adequate remedy at law.

19. On information and belief, Defendant's infringement has been willful.

20. H&C has suffered damage as a result of Defendant's infringement to date.

21. This is an exceptional case as that term is defined in 35 U.S.C. § 285.

PRAYER FOR RELIEF

WHEREFORE, H&Cs prays that this Court:

1. Award H&C monetary damages adequate to compensate H&C for past infringement consistent with 35 U.S.C. §284, and that the amount of damages assessed be trebled in view of the willful infringement, together with costs and prejudgment interest.
2. Award H&C its reasonable attorneys' fees pursuant to 35 U.S.C §285.
3. Grant and award any and all relief found necessary and proper under these circumstances.


JURY DEMAND

H&C demands a trial by jury pursuant to Fed. R. Civ. P. 38 as to all claims and issues in this lawsuit.

Respectfully submitted,

MCGARRY BAIR PC
Attorneys for Hart & Cooley, Inc.

Dated: November 5, 2004

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