

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA**

RAY BROS., INC.

v.

**INNOVATIVE METALS CO., INC.
AND GARLAND INDUSTRIES, INC.**

*** CIVIL ACTION NO.
*
* SECTION
*
* JUDGE
*
* MAGISTRATE JUDGE**

**COMPLAINT FOR DECLARATORY JUDGMENT OF PATENT NON-
INFRINGEMENT, PATENT INVALIDITY, MISUSE OF PATENT, FEDERAL
STATUTORY UNFAIR COMPETITION, COMMON LAW UNFAIR COMPETITION,
AND DEMAND FOR JURY TRIAL**

Plaintiff Alleges:

JURISDICTION

1. Plaintiff Ray Bros., Inc. (hereinafter "Ray Bros.") is and at all times relevant hereto was, a Louisiana corporation organized and doing business in the Parish of Orleans, State of Louisiana.

2. Plaintiff is informed and believes, and on the basis of such information and belief alleges that Defendant Innovative Metals Co., Inc. (hereinafter referred to as "IMETCO") is a corporation organized under the laws of the State of Delaware with a registered business address at 3800 East 91st Street, Cleveland, Ohio 44105.

3. Plaintiff is informed and believes, and on the basis of such information and belief alleges that Defendant Garland Industries, Inc. (hereinafter referred to as "Garland") is a corporation organized and doing business in the State of Ohio, having a registered business address at 3800 East 91st Street, Cleveland, Ohio 44105.

4. Defendants IMETCO and Garland are collectively referred to as "Defendants."

5. This Court has jurisdiction of this action because this litigation arises under the Patent Laws of the United States of America, namely 35 U.S.C. § 1 et seq. The Court has jurisdiction over this action under 28 U.S.C. § 1338 (patents).

6. The Court has jurisdiction of this action for related state law claims arising out of this litigation. The court has jurisdiction over this action under 28 U.S.C. § 1367(a) (supplemental jurisdiction).

7. This Court has personal jurisdiction over the Defendants because, on information and belief, Defendants conduct business in the State of Louisiana and within this district, including contracts with Louisiana corporations and the advertising and sale of products within this State and through the Internet to Louisiana residents.

8. Venue is proper in this district under 28 U.S.C. §§ 1391(a) and 1391(c).

GENERAL ALLEGATIONS

9. At all relevant times, Plaintiff Ray Bros. manufactured and installed a mechanically seamed standing seam roof panels known as RBI-MT240, which includes a clip designed for use with the standing seam roof panels. A copy of a drawing illustrating Plaintiff's advertising of RBI-MT240 is attached hereto as Exhibit 1.

10. Plaintiff is informed and believes, and on the basis of such information and belief alleges that on or about March 4, 2010 Defendants, through legal counsel, sent a cease and desist letter to Plaintiff Ray Bros.

11. The cease and desist letter received by Plaintiff from Defendants is attached hereto as Exhibit 2 and is incorporated herein by reference the same as if set forth verbatim.

12. A copy of the '045 Patent is attached hereto as Exhibit 3.

13. In the letter attached hereto as Exhibit 2, Defendants allege that Plaintiff's product RBI-MT240 "violates the claims" of U.S. patent No. 6,354,045 (Hereinafter referred to as the "'045 Patent").

14. Defendants further demand that Ray Bros. "immediately cease and desist from manufacturing, marketing and selling a panel roof system that violates the claims of the '045 patent."

15. Defendants also threaten Ray Bros. with "further legal remedies" unless Ray Bros. complies with their demand within fourteen (14) days.

16. Plaintiff is informed and believes, and on the basis of such information and belief alleges that the '045 patent issued on March 12, 2002, listing Mark Boone et al. as inventors.

17. Plaintiff is informed and believes, and on the basis of such information and belief alleges that the '045 patent was assigned first to Defendant IMETCO and later to Defendant Garland.

CLAIM FOR RELIEF

COUNT I

a. PATENT NON-INFRINGEMENT

18. Plaintiff re-alleges and incorporates herein by reference, the same as if set forth verbatim, the allegations contained in paragraphs 1 through 17.

19. Defendants have alleged that the '045 Patent is infringed by Plaintiff's RBI-MT240 roofing product.

20. Plaintiff, however, asserts that Plaintiff's products do not infringe the claims of the '045 Patent.

21. Plaintiff asserts that the RBI-MT240 roofing product manufactured by Plaintiff does not fall within any of the claims of the '045 Patent.

22. There is a continuing judiciable controversy between Plaintiff and Defendants as to Defendants' right to threaten or maintain suit for infringement of the '045 Patent, and as to the scope and enforceability thereof, and as to whether any of Plaintiff's products infringes any valid claim thereof.

23. Plaintiff has not infringed, willfully infringed, contributorily infringed, or induced others to infringe, any claim of the '045 Patent.

24. Plaintiff desires a judicial determination of their rights and duties, and declarations by this Court of non-infringement of the '045 Patent.

COUNT I

b. PATENT INVALIDITY

25. Plaintiff re-alleges and incorporates herein by reference, the same as if set forth verbatim, the allegations contained in paragraphs 1 through 24.

26. Defendants have asserted that the '045 Patent is valid and infringed by one or more of Plaintiff's products.

27. On information and belief, Plaintiff asserts that the solutions described in the '045 patent are well known in the industry, and thus, would be obvious in light of the prior art which results in the claims for the '045 Patent being not patentable under 35 U.S.C. § 103.

28. Plaintiff is informed and believes, and on the basis of such information and belief alleges, that the claims of the '045 Patent are invalid and therefore cannot be infringed by any of Plaintiff's products.

29. There is a continuing judiciable controversy between Plaintiff and Defendants as to Defendants' right to threaten or maintain suit for infringement of the '045 Patent, and as to the validity and enforceability thereof.

30. Plaintiff asserts that the '045 Patent is invalid for failing to comply with the patent laws of the United States, including but not limited to 35 U.S.C. §§ 102, 103, and/or 112.

31. Plaintiffs desire a judicial determination of their rights and duties, and declarations by this Court of invalidity of the '045 Patent.

COUNT II. MISUSE OF PATENT

32. Plaintiff re-alleges and incorporates herein by reference, the same as if set forth verbatim, the allegations contained in paragraphs 1 through 31.

33. Plaintiff is informed and believes, and on the basis of such information and belief alleges, that Defendants threatened legal action against Plaintiff Ray Bros. in order to remove Plaintiff's RBI-MT-240 roofing product from the marketplace.

34. Plaintiff asserts that Defendants letter attached hereto as Exhibit 2 is attempting to prevent Plaintiff from all advertising, distribution and sale of the non-infringing RBI-MT240 roofing product demonstrates an attempt by Defendants to remove competition from the marketplace through the unlawful use of the '045 Patent.

35. Plaintiffs desire a judicial determination of their rights and duties, and declarations by this Court of unenforceability of the '045 Patent under the doctrine of patent misuse.

COUNT III. FEDERAL STATUTORY UNFAIR COMPETITION

36. Plaintiff re-alleges and incorporates herein by reference, the same as if set forth verbatim, the allegations contained in paragraphs 1 through 35.

37. Plaintiff is informed and believes, and on the basis of such information and belief alleges, that Defendants have mischaracterized Plaintiff's products as an infringement of the '045 Patent.

38. Plaintiff is informed and believes, and on the basis of such information and belief alleges, that Defendants' mischaracterization of Plaintiff's products has and will continue to lead to the loss of reputation and goodwill associated with Plaintiff's products.

39. Plaintiff is informed and believes, and on the basis of such information and belief alleges, Defendants' mischaracterization of Plaintiff's RBI-MT240 roofing product constitutes Federal Unfair Competition under 15 U.S.C. § 1125(a), commonly known as § 42 (a) of the Lanham Act.

COUNT IV. COMMON LAW UNFAIR COMPETITION

40. Plaintiff re-alleges and incorporates herein by reference, the same as if set forth verbatim, the allegations contained in paragraphs 1 through 39.

41. Plaintiff is informed and believes, and on the basis of such information and belief alleges, that Defendants have mischaracterized Plaintiff's products as an infringement of the '045 Patent.

42. Plaintiff is informed and believes, and on the basis of such information and belief alleges, that Defendants' mischaracterization of Plaintiff's products has and will continue to lead to the loss of reputation and goodwill associated with Plaintiff's products.

43. Plaintiff is informed and believes, and on the basis of such information and belief alleges, Defendants' mischaracterization of Plaintiff's RBI-MT240 roofing product constitutes Common Law Unfair Competition.

WHEREFORE, plaintiff prays for relief as follows:

- a. The Court declare that United States Patent number 6,354,045 and each claim thereof, is invalid;
- b. The Court declare that United States Patent number 6,354,045 and each claim thereof, is not infringed by Plaintiff;
- c. The Court declare that United States Patent number 6,354,045 is unenforceable;
- d. A preliminary and permanent injunction issue against Defendants' further assertion of allegations of patent infringement against Plaintiff;
- e. Plaintiffs be awarded damages in an amount to be determined by the Court;
- f. Plaintiff be awarded its attorneys' fees;
- g. Plaintiff be awarded his costs of suit herein;
- h. That a determination be made that this is an exceptional case and that Plaintiff be awarded its reasonable attorneys' fees and costs; and
- i. Plaintiff be awarded such other and further relief as the Court deems just and proper.

Dated: April 12, 2010

JURY TRIAL DEMANDED

Plaintiff hereby requests trial by jury on all counts of this complaint.

Respectfully submitted,

/s/Thomas S. Keaty
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