

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. _____

ENGLERT, INC.,
a New Jersey corporation,

Plaintiff,

v.

NEW TECH MACHINERY CORP.,
a Colorado corporation,

Defendant.

COMPLAINT AND JURY DEMAND

Plaintiff Englert, Inc. ("Englert"), by and through its undersigned attorneys, for its
Complaint against New Tech Machinery Corporation ("New Tech") states as follows:

PARTIES

1. Plaintiff Englert is a New Jersey Corporation with its principal place of business
in Perth Amboy, New Jersey.

2. Upon information and belief, Defendant New Tech is a Colorado corporation with
its principal place of business at 1300 40th Street, Denver, Colorado 80205.

JURISDICTION AND VENUE

3. This is a civil action for patent infringement and declaratory judgment of patent
non-infringement arising under the patent laws of the United States, 35 U.S.C. § 101, *et. seq.*

4. This Court has jurisdiction over the subject matter of this action pursuant to 28
U.S.C. §§ 1331, 1338(a), 2201 and 2202.

5. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391 and 1400.

GENERAL ALLEGATIONS

6. On January 3, 2006, U.S. Patent No. 6,981,397 ("the '397 Patent"), entitled "Roll Forming Machine with Improved Adjustability and Profile Changing Capability," was duly and legally issued to inventor Bruce E. Meyer. A true and correct copy of the '397 Patent is attached as Exhibit 1. By assignment, Englert owns all right, title and interest in and to the '397 Patent.

7. Upon information and belief, New Tech is the owner by assignment of U.S. Patent No. 5,425,259 ("the '259 Patent"), entitled "Forming Machine for Bending Metal Strips." A true and correct copy of the '259 Patent is attached as Exhibit 2.

8. On October 10, 2008, New Tech instituted Civil Action No. 08-CV-02212 in this Court (the "Action"), accusing Englert of infringing the '259 Patent. As a part of ongoing settlement discussions, New Tech and Englert subsequently agreed to dismiss the Action without prejudice.

9. On April 10, 2008, New Tech and Englert filed a Stipulated Motion for Dismissal of the Action. That Motion was granted on April 13, 2008, with the Court ordering the Action dismissed without prejudice.

10. Following dismissal of the Action, New Tech and Englert engaged in further settlement discussions regarding, among other things, Englert's alleged infringement of the '259 Patent. However, no settlement was achieved. Accordingly, an actual case or controversy remains regarding Englert's alleged infringement of the '259 Patent.

FIRST CLAIM FOR RELIEF
(Infringement of the '397 Patent)

11. Englert incorporates herein by reference each and every allegation in paragraphs 1 through 10.

12. New Tech is making, using, selling and/or offering to sell in the United States and/or importing into the United States, metal bending machines.

13. New Tech's activities in making, using, selling and/or offering to sell in the United States and/or importing into the United States, metal bending machines constitute direct infringement of the '397 Patent, in violation of 35 U.S.C. § 271(a).

14. Upon information and belief, New Tech is inducing direct infringement of the '397 Patent by others by actively instructing, assisting, and/or encouraging others to practice one or more of the inventions claimed in the '397 Patent, in violation of 35 U.S.C. § 271(b).

15. Upon information and belief, New Tech is contributing to direct infringement of the '397 Patent by others by offering to sell or selling one or more components which constitute a material part of the invention defined by the claims of the '397 Patent, knowing the same to be especially made or especially adapted for use in an infringement of the '397 Patent, and which components are not staple articles or commodities of commerce suitable for substantial non-infringing use, in violation of 35 U.S.C. § 271(c).

16. New Tech's actions in infringing the '397 Patent have been, and are, willful, deliberate and/or in conscious disregard of Englert's and/or its predecessor-in-interest's rights, making this an exceptional case within the meaning of 35 U.S.C. § 285 and entitling Englert to the award of its attorneys' fees.

17. New Tech's infringement of the '397 Patent has caused and will continue to cause damage to Englert in an amount to be ascertained at trial.

18. New Tech's infringement of the '397 Patent has caused and will continue to cause irreparable injury to Englert as to which there exists no adequate remedy at law. New Tech's infringement of the '397 Patent will continue unless enjoined by this Court.

SECOND CLAIM FOR RELIEF
(Declaratory Judgment of Non-Infringement of the '259 Patent)

19. Englert incorporates herein by reference each and every allegation in paragraphs 1 through 18.

20. New Tech has accused Englert of infringing the '259 Patent.

21. As properly construed, Englert does not infringe any valid and enforceable claim of the '259 Patent. Further, Englert's allegedly infringing activities are protected under the First Sale Doctrine.

22. Englert is now entitled to a declaration of non-infringement of the '259 Patent pursuant to 28 U.S.C. § 2201.

PRAYER FOR RELIEF

WHEREFORE, Englert requests that judgment be entered in its favor and against New Tech as follows:

- A. Declaring that New Tech has infringed United States Patent No. 6,981,397;
- B. Issuing temporary, preliminary, and permanent injunctions enjoining New Tech, its officers, agents, subsidiaries, and employees, and those in privity or in act of concert with any of the foregoing, from further activities that constitute infringement of the United States Patent No. 6,981,397, pursuant to 35 U.S.C. § 283;
- C. Awarding Englert damages arising out of New Tech's infringement of United States Patent No. 6,981,397 in an amount not less than a reasonable royalty for each act of

infringement, and trebling those damages pursuant to 35 U.S.C. § 284, together with costs and pre- and post-judgment interest;

D. Declaring that United States Patent No. 5,425,259 is not infringed by the making, using, offering to sell, selling or importing of any of Englert's products, including Englert's Metal Man Multi-Panel Machine;

E. Issuing temporary, preliminary and permanent injunctions enjoining New Tech, its officers, agents, subsidiaries, and employees, and those in privity or in act of concert with any of the foregoing, from:

1. Threatening to assert or asserting United States Patent No. 5,425,259 against Englert, its agents, employees, suppliers or customers; and

2. Claiming that Englert or its products infringe any claim of United States Patent No. 5,425,259;

F. Finding that this is an "exceptional case" within the meaning of 35 U.S.C. § 285 and awarding reasonable attorneys' fees to Englert; and

G. Awarding Englert such further legal and equitable relief as the Court deems just and proper.

JURY DEMAND

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Englert demands a trial by jury on all issues so triable.

DATED: September 4, 2009.

Respectfully submitted,

By: s/ Benjamin B. Lieb

Benjamin B. Lieb

blieb@sheridanross.com

SHERIDAN ROSS P.C.

1560 Broadway, Suite 1200

Denver, Colorado 80202-5141

Telephone: 303-863-9700

Facsimile: 303-863-0223

E-mail: litigation@sheridanross.com

ATTORNEYS FOR PLAINTIFF ENGLERT, INC.