

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

BLACKLIDGE EMULSIONS, INC.

12241 Bernard Parkway
Suite 200
Gulfport, Mississippi 39503

Plaintiff,

v.

RUSSELL STANDARD CORPORATION

c/o Registered Agent
285 Kappa Drive
Suite 300
Pittsburgh, Pennsylvania 15238

Defendants.

Judge:

Case No.

COMPLAINT

(Jury Demand Endorsed Heron)

Plaintiff Blacklidge Emulsions, Inc. ("Blacklidge") files this Complaint for patent infringement and injunctive relief against Defendant Russell Standard Corporation ("Russell Standard"), stating as follows:

THE PARTIES

1. Blacklidge is a corporation organized and existing under the laws of the State of Mississippi with its principal place of business in Harrison County, Mississippi.
2. Upon information and belief, Russell Standard is a corporation organized and existing under the laws of the State of Pennsylvania with its principal place of business in Allegheny County, Pennsylvania.

JURISDICTION AND VENUE

3. This Complaint for patent infringement arises under the patent laws of the United States, Title 35, United States Code, and this court has jurisdiction over those claims pursuant to 28 U.S.C.A. § 1338, which directs that district courts shall have original jurisdiction of any civil action arising under any Act of Congress relating to patents, and pursuant to 28 U.S.C.A. §§ 1331 and 1332.

4. This Court has personal jurisdiction over Russell Standard as Russell Standard has perpetrated acts of patent infringement in the State of Ohio and pursuant to Ohio Rev. Code Annotated § 2307.382 (West 2012).

5. Venue is proper in this Court pursuant to 28 U.S.C.A. §§ 1391 and 1400 because a substantial part of the events giving rise to this patent infringement action occurred in this judicial district and Russell Standard has committed acts of infringement in this judicial district.

FACTUAL BACKGROUND

6. Blacklidge is the owner of U.S. Patent No. 7,503,724 (“the ‘724 Patent”) and U.S. Patent No. 7,918,624 (“the ‘624 Patent”) (collectively referred to as the “Blacklidge Patents”), both of which disclose and claim methods for bonding a layer of asphalt pavement material to a substrate paving layer. (A copy of the Blacklidge Patents is attached as Exhibit “A”.)

7. In the ‘724 Patent, the disclosed methods incorporate an asphalt composition that is selected to have a penetration value of about 20 decimillimeters (“dmm”) as measured using the industry standard propagated by the American Association of State Highway and Transportation Officials as AASHTO T49 and also a softening point greater than about 140°F when applied and cured.

8. The '624 Patent additionally discloses and claims the use of an asphalt composition having a penetration value less than about 40 dmm and a softening point greater than about 140°F.

9. Both of the Blacklidge Patents also disclose and claim the resulting pavement structure created by using the claimed methods.

10. The technology disclosed and claimed in the Blacklidge Patents is unique in that it provides for a durable low tack surface at ambient temperatures capable of resisting damage, i.e. tracking or other movement from the desired application area, because of vehicular and/or construction traffic. The tack coat then activates upon the application of the new hot or warm mix asphalt overlay to provide a strong bond between the existing and new asphaltic surface.

11. Russell Standard has distributed, sold, and/or offered to sell products that infringe the Blacklidge Patents.

12. Upon information and belief, the infringing products are labeled ANTTC and CNTTC (hereinafter referred to collectively as the "Infringing Products").

13. Upon information and belief, ANTTC stands for "Anionic Non Tracking Tack Coat" and CNTTC stands for "Cationic Non Tracking Tack Coat."

14. CNTTC is described as being traffic-ready in 15-30 minutes and non-tracking so there is no staining.

15. Upon information and belief, Russell Standard has asserted that the Infringing Products meet Ohio's requirements for a trackless tack coat materials.

16. Russell Standard's fulfillment of Ohio requirements thereby infringe one or more of the Blacklidge Patents.

17. Upon information and belief, Russell Standard provided laboratory test results to the Ohio Department of Transportation indicating that at least one of the Infringing Products has a penetration value of less than 20 dmm.

18. A penetration value of less than 20 dmm falls within the claim language of Blacklidge Patents.

19. Upon information and belief, both of Russell Standard's Infringing Products, ANTTC and CNTTC, have a penetration value of less than 40 dmm and a softening point of greater than 140°F.

COUNT I - PATENT INFRINGEMENT OF THE '724 PATENT

20. Blacklidge hereby re-alleges and incorporates by reference the allegations of paragraphs 1 through 15 of this Complaint.

21. Upon information and belief, Russell Standard is or has directly infringed one or more claims of the '724 Patent by making, using, importing, offering for sale, and/or selling road paving materials that practice the claims of the '724 Patent, including but not limited to the following Russell Standard products:

ANTTC and

CNTTC.

22. Russell Standard's making, using, offering for sale, and/or selling of the Infringing Products is without consent, authority, or license from Blacklidge.

23. Upon information and belief, Russell Standard has indirectly infringed the '724 Patent under 35 U.S.C. § 271(b) by actively inducing customers to infringe the '724 Patent.

24. Upon information and belief, Russell Standard actively induces road construction contractors to practice the claims of the '724 Patent in conjunction with Russell Standard's Infringing Products in creating roadways.

25. Upon information and belief, Russell Standard's customers are directly infringing the '724 Patent by making roadways within the United States that incorporate Russell Standard's Infringing Products.

26. Upon information and belief, Russell Standard has further indirectly infringed the '724 Patent under 35 U.S.C. § 271(c) by offering to sell or selling components (the Infringing Products) for the construction of roadways that it knew to be especially made or especially adapted for use as claimed in the '724 Patent, the components not being staple articles or commodities of commerce suitable for substantial non-infringing uses.

27. Russell Standard will continue to induce the infringement of, and contributorily infringe, the '724 patent unless enjoined by the Court.

28. Alternatively, Russell Standard's making, using, offering for sale, and/or selling of the Infringing Products is infringing the '724 Patent under the doctrine of equivalents under 35 U.S.C. §271(a), (b), and/or (c).

29. Russell Standard is or has been, at all times relevant to this action, fully aware of and have or had actual knowledge of the '724 Patent.

30. Russell Standard has made profits from its infringement of the '724 Patent and Blacklidge has suffered damages for which it is entitled to relief under 35 U.S.C.A. § 284.

31. Russell Standard's act of infringing the '724 Patent is or was deliberate and willful, and will continue unless enjoined by this Court.

32. As a result, the deliberate and willful nature of Russell Standard's act of infringing the '724 Patent, such damages should be increased to the maximum amount allowed by law, including an award of attorneys' fees.

COUNT II - PATENT INFRINGEMENT OF THE '624 PATENT

33. Blacklidge hereby re-alleges and incorporates by reference the allegations of paragraphs 1 through 27 of this Complaint.

34. Upon information and belief, Russell Standard is or has directly infringed one or more claims of the '624 Patent by making, using, importing, offering for sale, and/or selling road paving materials that practice the claims of the '624 Patent, including but not limited to the following Russell Standard products:

ANTTC and

CNTTC.

35. Russell Standard's making, using, offering for sale, and/or selling of the Infringing Products is without consent, authority, or license from Blacklidge.

36. Upon information and belief, Russell Standard has indirectly infringed the '624 Patent under 35 U.S.C. § 271(b) by actively inducing customers to infringe the '624 Patent.

37. Upon information and belief, Russell Standard actively induces road construction contractors to practice the claims of the '624 Patent in conjunction with Russell Standard's Infringing Products in creating roadways.

38. Upon information and belief, Russell Standard's customers are directly infringing the '624 Patent by making roadways within the United States that incorporate Russell Standard's Infringing Products.

39. Upon information and belief, Russell Standard has further indirectly infringed the '624 Patent under 35 U.S.C. § 271(c) by offering to sell or selling components (the Infringing Products) for the construction of roadways that it knew to be especially made or especially adapted for use as claimed in the '624 Patent, the components not being staple articles or commodities of commerce suitable for substantial non-infringing uses.

40. Russell Standard will continue to induce the infringement of, and contributorily infringe, the '624 patent unless enjoined by the Court.

41. Alternatively, Russell Standard's making, using, offering for sale, and/or selling of the Infringing Products is infringing the '624 Patent under the doctrine of equivalents under 35 U.S.C. §271(a), (b), and/or (c).

42. Russell Standard is or has been, at all times relevant to this action, fully aware of and have or had actual knowledge of the '624 Patent.

43. Russell Standard has made profits from its infringement of the '624 Patent and Blacklidge has suffered damages for which it is entitled to relief under 35 U.S.C.A. § 284.

44. Russell Standard's act of infringing the '624 Patent is or was deliberate and willful, and will continue unless enjoined by this Court.

45. As a result, the deliberate and willful nature of Russell Standard's act of infringing the '624 Patent, such damages should be increased to the maximum amount allowed by law, including an award of attorneys' fees.

PRAYER FOR RELIEF

WHEREFORE, Blacklidge Emulsions, Inc. respectfully prays for the following relief:

- A. That Russell Standard and all of its subsidiaries, affiliates, officers, agents, servants, employees, attorneys, and their heirs, successors and assigns, and all persons acting in concert or participation with it and each of them, be immediately enjoined and restrained, preliminarily and permanently, without bond, from manufacturing, importing, distributing, selling or offering for sale products manufactured that directly and/or indirectly infringe (literally or under the doctrine of equivalents) the Blacklidge Patents; and deliver to Blacklidge for destruction all products that infringe the Blacklidge Patents complete with such products instructions, technical data sheets, and other written literature;
- B. A determination that Russell Standard has infringed and is infringing one or more claims of the '724 Patent;
- C. A determination that Russell Standard has infringed and is infringing one or more claims of the '624 Patent;
- D. An award of damages suffered by Blacklidge as a result of the conduct of Russell Standard complained of herein, including but not limited to damages for patent infringement pursuant to 35 U.S.C. § 284 in an amount to be determined at trial, but in no event less than a reasonable royalty for infringement of the Asserted Patents;
- E. A determination that this case is exceptional pursuant to provision of 35 U.S.C. § 285;

- F. All damages available for Russell Standard's willful patent infringement, including without limitation, attorneys' fees and treble damages under 35 U.S.C.A. §§ 284 and 285;
- G. Prejudgment and post-judgment interest; and
- H. Such other, further, or different relief as this Court may deem just and proper.

/s/ Gregory J. Phillips

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Attorneys for Plaintiff Blacklidge Emulsions, Inc

JURY DEMAND

Blacklidge, under Rule 38 of the Federal Rules of Civil Procedure, respectfully demands a trial by jury of any issues triable of right by a jury.

/s/ Gregory J. Phillips

Gregory J. Phillips (0077601)
One of the Attorneys for Plaintiff