

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

KATCH KAN LTD,

Plaintiff,

v.

LEROY ROHDE, BUILDER, INC.,
a Texas Corporation, doing business as
SEGUIN MACHINING & SUPPLY,

Defendant.

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CIVIL ACTION NO. 4:12-cv-02188

Jury Demanded

ORIGINAL COMPLAINT

Plaintiff Katch Kan Ltd files this Original Complaint against Defendant Leroy Rohde, Builder, Inc., d/b/a Seguin Machining & Supply as set forth below:

I. PARTIES

1. Plaintiff Katch Kan Ltd (“Katch Kan”) is a Canadian corporation with its principal place of business located at 8210 McIntyre Road, Edmonton Alberta, Canada T6E 5C4.

2. Defendant Leroy Rohde, Builder, Inc. (hereafter “SMS”) is a corporation organized under the laws of the State of Texas, doing business as Seguin Machining & Supply, having a place of business located at 221 E. IH-10, Seguin, TX 78155. SMS may be served with a copy of this Original Complaint by serving its registered agent, Mr. Leroy Rohde, at 221 E. IH-10, Seguin, Texas, 78155.

II. NATURE OF THIS ACTION

3. This is an action for patent infringement arising under the patent laws of the United States, 35 U.S.C. § 101, et seq., and particularly 35 U.S.C. §§ 271-287.

III. JURISDICTION AND VENUE

4. This Court has exclusive subject matter jurisdiction over this action under 28 U.S.C. § 1338(a).

5. Defendant SMS is subject to personal jurisdiction by virtue of its contacts with the State of Texas, and with the Southern District of Texas in particular. SMS voluntarily does business in this district.

6. Venue is proper in this district under 28 U.S.C. §§ 1391(b)-(c) and 1400(b).

IV. FACTS

7. On December 23, 2003, U.S. Patent No. 6,666,287 (“the ‘287 patent”) was duly and legally issued by the U.S. Patent and Trademark Office (“PTO”) to Mr. Quinn Holtby for an invention relating to a “Method And Apparatus For Enclosing An Oil Drilling Rig.” A true and correct copy of the ‘287 patent is attached hereto as Exhibit A. The ‘287 patent is presumed valid pursuant to 35 U.S.C. § 282.

8. Katch Kan manufactures and rents spill containment devices under the name “Adjustable Containment Enclosure (ACE)” in conjunction with associated products (such as its “2nd Stage Low Profile Katch Kan” or the “Upper Katch Kan”) under its “Rig Safety & Zero Spill Systems” product lines. Katch Kan’s spill containment devices have been very successful in the market since their introduction. Katch Kan has manufactured, rented, and installed hundreds of its spill containment devices that incorporate the patented technology.

9. On information and belief, SMS is a machine shop offering various welded metal products, and is engaged primarily in the business of making and selling metal cattle guards.

10. On information and belief, in or around late 2010 to early 2011, SMS contacted Petrohawk Energy Corporation (“Petrohawk”), a customer of Katch Kan that had rented and installed Katch Kan spill containment devices practicing the ‘287 patent and other Katch Kan

patents, in an effort to solicit business from Petrohawk. On information and belief, SMS contacted Petrohawk in Yorktown, Texas, located in DeWitt County, Texas. On information and belief, SMS initially approached Petrohawk to manufacture and sell its metal cattle guards for Petrohawk drill sites.

11. On information and belief, SMS was not previously engaged in providing equipment for use on oil and gas drilling rigs.

12. On information and belief, Petrohawk personnel rebuffed SMS's offer to build and install metal cattle guards, but provided SMS with a sketch/figure of Katch Kan's patented spill containment device and inquired into SMS's ability to manufacture such a device. On information and belief, having been provided with a sketch/figure of the Katch Kan patented spill containment device, SMS acknowledged its ability to manufacture and sell such a spill containment device, whereupon Petrohawk requested that SMS build and sell an oil rig spill containment device modeled after the Katch Kan products practicing the '287 patent.

13. SMS makes, uses, sells and/or offers to sell "The Blue MOC (Mud Overflow Container)" (hereinafter, "Blue MOC"), an oil rig spill containment device. The Blue MOC is covered by the claims of the '287 patent when installed on an oil rig.

14. On information and belief, SMS initially built and sold the Blue MOC devices covered by the claims of the '287 patent to Petrohawk in the period of late 2010 to early 2011, modeling the Blue MOC after the sketch/figure of the Katch Kan patented spill containment device. On information and belief, the Blue MOC devices have been sold, installed, and used on Petrohawk rigs operating in DeWitt County, Texas, and possibly other counties.

15. On information and belief, SMS was involved in installing at least one Blue MOC device on a Petrohawk rig, thereby directly infringing the method claims of the '287 patent.

16. SMS manufactures, offers for sale, and sells the Blue MOC with knowledge, and for the express purpose, that the devices will be used on an oil rig. The installation and/or use of the Blue MOC on an oil rig constitutes a direct infringement of the '287 patent.

17. The Blue MOC is specifically designed for use as a spill containment device on an oil rig and, therefore, does not have any substantial non-infringing uses.

18. In or around June 2011, SMS contacted Katch Kan via an intermediary, a business broker, to propose a sale of SMS's Blue MOC product line to Katch Kan. Upon information and belief, SMS contacted Katch Kan with the knowledge that Katch Kan was in the business of providing patented spill containment devices for oil rigs and that the Blue MOC devices were manufactured for the same use.

19. In or around June or July 2011, a Katch Kan employee, Mr. Mark Fischer, participated in a meeting with the President of SMS, Mr. Leroy Rohde. Mr. Rohde tendered an offer to sell Katch Kan the Blue MOC product line and to discontinue its own manufacture of the Blue MOC in return for a payment of \$15 million. At the meeting, Mr. Fischer informed Mr. Rohde that Katch Kan's own spill containment devices practiced patents covering the technology, whereupon Mr. Rohde acknowledged that he knew Katch Kan's spill containment devices were patented.

V. PATENT INFRINGEMENT CLAIMS

20. Paragraphs 1 – 19 are incorporated by reference.

21. SMS has been, and still is, making, using, offering to sell, and/or selling products that infringe one or more valid claims of the '287 patent without authority or license from Katch Kan.

22. Upon information and belief, SMS is also contributing to the infringement of one or more valid claims of the '287 patent by others and is inducing others to infringe the '287 patent.

23. Upon information and belief, SMS's infringing activities have been willful and deliberate. Upon information and belief, SMS was actually aware of the '287 patent and willfully committed acts of infringement.

24. As a result of SMS's infringing activities, Katch Kan has suffered actual damages in an amount to be determined at trial. Additionally, as a result of the willful and deliberate nature of SMS's infringing activities, Katch Kan is entitled to a trebling of its actual damages and is entitled to recover its attorney's fees and costs incurred in prosecuting this action, as provided for in 35 U.S.C. §§ 284-285.

25. SMS's acts of infringement have caused irreparable harm to Katch Kan for which there is no adequate remedy at law, and will continue to cause irreparable harm to Katch Kan unless SMS is preliminarily and permanently enjoined by this Court.

VI. PRAYER FOR RELIEF

Wherefore, Katch Kan respectfully requests that this Honorable Court enter judgment against SMS, granting Katch Kan the following relief:

- A. a preliminary and permanent injunction enjoining SMS, its owners, affiliates, officers, directors, managers, agents, servants, employees, trainees, and all persons in active concert or participation with it, from continuing to infringe United States Patent No. 6,666,287;
- B. a judgment that United States Patent No. 6,666,287 has been and continues to be directly infringed by SMS;
- C. a judgment that United States Patent No. 6,666,287 has been and continues to be contributorily infringed by SMS;
- D. a judgment that SMS has induced and continues to induce infringement of United States Patent No. 6,666,287;

- E. an award of damages adequate to compensate Katch Kan for SMS's infringement of United States Patent No. 6,666,287;
- F. a determination that SMS's infringement of United States Patent No. 6,666,287 has been willful and deliberate;
- G. an award of treble damages based on the willful and deliberate nature of SMS's infringement;
- H. a determination that this case is "exceptional" under 35 U.S.C. § 285, thereby entitling Katch Kan to an award of its reasonable attorney's fees and costs incurred in prosecuting this action;
- I. an award of pre-judgment and post-judgment interest on all damages computed; and
- J. such other relief as this Court deems fair and appropriate.

VII. JURY DEMAND

Katch Kan demands a trial by jury.

DATED: July 20, 2012

Respectfully Submitted,

By : /s/ Eric S. Schlichter
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