

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO**

Civil Action No. 08-CV-02212-CMA

NEW TECH MACHINERY CORP., a Colorado corporation,

Plaintiff,

vs.

ENGLERT, INC., a New Jersey corporation,

Defendant.

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**AMENDED COMPLAINT**

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Plaintiff New Tech Machinery Corp. (“New Tech”), by and through its undersigned attorneys, for its Amended Complaint against Defendant Englert, Inc. (“Englert” or “Defendant”) states as follows:

**PARTIES, JURISDICTION AND VENUE**

1. Plaintiff New Tech is a Colorado corporation with its principal place of business in Denver, Colorado.

2. Upon information and belief, Defendant Englert is a New Jersey corporation with its principal place of business in Perth Amboy, New Jersey. Englert has a regional office located at 1221 East 56th Avenue in Denver, Colorado. Upon information and belief, Englert makes, sells, and offers for sale metal forming machines, including roof panel forming machines, throughout the United States and in the District of Colorado.

3. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331, 1338(a), 2201 and 2202, as this action arises under the patent laws, Title 35, U.S.C., and is an action for a declaratory judgment.

4. Venue is proper in this district pursuant to 28 U.S.C. § 1391.

### **ALLEGATIONS**

#### **The ‘259 Patent**

5. Prior to July 6, 1992, Lawrence F. Coben and Bruce E. Meyer conceived and invented a new and useful forming machine for bending metal strips.

6. On June 20, 1995, United States Patent No. 5,425,259 (“the ‘259 Patent”) was issued to Messrs. Coben and Meyer by the United States Patent and Trademark Office for their invention of a forming machine for bending metal strips. A copy of the ‘259 Patent is attached to this amended complaint as **Exhibit 1** and is incorporated by reference. The ‘259 Patent is presumed valid under 35 U.S.C. § 282.

7. New Tech is the assignee of the ‘259 Patent.

8. As the owner of the ‘259 Patent, New Tech has the right to bring an action for infringement of the ‘259 Patent.

9. Englert has made, used, sold, offered for sale and imported, roof panel forming machines for bending metal strips, including those known as Metal Man Multi-Panel machines. At least these forming machines, and possibly other models as well, infringe one or more claims of the ‘259 Patent.

**The ‘397 Patent**

10. New Tech makes and sells metal forming machines that are covered by the ‘259 Patent.

11. Upon information and belief, Englert is the assignee of U.S. Patent No. 6,981,397 B2 (the “‘397 Patent”). The ‘397 Patent is entitled “Roll Forming Machine with Improved Adjustability and Profile Changing Capability,” and is attached as **Exhibit 2**.

12. By letter dated September 19, 2008, Englert (through its counsel) stated its belief that New Tech’s “SSQ MultiPro” roof panel machine infringes the ‘397 Patent. The letter demanded that New Tech’s attorney respond to the letter and explain New Tech’s noninfringement position. The letter further indicated that Englert “will consider all the legal remedies available to it.” A copy of Englert’s letter is attached as **Exhibit 3**.

13. Contrary to Englert’s contention, the SSQ MultiPro roof panel machine does not infringe the ‘397 Patent.

14. Englert’s letter has created substantial uncertainty in that it has placed New Tech in the untenable position of either manufacturing and selling the SSQ MultiPro roof panel machine that Englert alleges infringes the ‘397 Patent, or abandoning the manufacture and sale of the roof panel machine, even though New Tech believes it does not infringe.

15. As a result of Englert’s actions, an actual and justiciable controversy exists between New Tech and Englert concerning whether New Tech’s SSQ MultiPro roof panel machine infringes any valid claim of the ‘397 Patent.

**FIRST CLAIM FOR RELIEF**

**(PATENT INFRINGEMENT OF THE ‘259 PATENT UNDER 35 U.S.C. § 271)**

16. New Tech incorporates into this cause of action the allegations contained in the preceding paragraphs of this Complaint.

17. Englert has infringed, directly and/or indirectly, the ‘259 Patent by making, selling, offering to sell, importing, and using a forming machine for bending metal strips, and/or actively inducing and/or contributing to the infringement of the ‘259 Patent, and will continue to do so unless enjoined by this Court.

18. At least as early as receipt of this Complaint, Englert has had actual knowledge of the ‘259 Patent and its infringement of the ‘259 Patent is knowing and willful.

19. New Tech has been and will continue to be damaged by the infringements.

20. New Tech has been and will continue to incur irreparable harm that can only be fully redressed by injunctive relief pursuant to 35 U.S.C. § 283.

21. New Tech is entitled to enhanced damages, attorneys fees, expert witness fees, and costs pursuant to 35 U.S.C. §§ 284 and 285.

**SECOND CLAIM FOR RELIEF**

**(DECLARATORY JUDGMENT OF NONINFRINGEMENT OF THE ‘397 PATENT)**

22. New Tech incorporates into this cause of action the allegations contained in the preceding paragraphs of this Complaint.

23. Englert (through its counsel) has accused New Tech’s “SSQ MultiPro” roof panel machine of infringing the ‘397 Patent.

24. Contrary to Englert’s contention, the SSQ MultiPro roof panel machine does not infringe any valid and enforceable claim of the ‘397 Patent.

25. As described in detail above, Englert's letter and infringement allegations have created substantial uncertainty for New Tech because New Tech believes the SSQ MultiPro roof panel machine does not infringe the '397 Patent.

26. As a result of Englert's actions, an actual and justiciable controversy exists between New Tech and Englert concerning whether New Tech's SSQ MultiPro roof panel machine infringes any valid claim of the '397 Patent.

### **JURY DEMAND**

New Tech demands a trial by jury on all issues raised in this Complaint.

### **PRAYER FOR RELIEF**

Wherefore, New Tech prays for this Court to enter judgment in its favor:

A. Permanently enjoining and restraining Englert, its officers, managers, members, agents, parents, subsidiaries, principals, successors in interest, and those acting in concert with it from directly or indirectly infringing, inducing, or contributing to the infringement of the '259 Patent;

B. Awarding New Tech damages adequate to compensate for infringing the '259 Patent in accordance with 35 U.S.C. § 284;

C. Declaring that New Tech does not infringe any valid and enforceable claim of the '397 Patent;

D. Awarding to New Tech its attorneys fees, costs, expert witness fees, and expenses incurred in connection with this action pursuant to 35 U.S.C. § 285, and other applicable laws;

E. Awarding to New Tech prejudgment and post-judgment interest; and

F. Awarding such other and further relief as the Court deems equitable and appropriate.

Dated December 23, 2008.

Respectfully submitted,

s/ Lee F. Johnston

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**ATTORNEYS FOR PLAINTIFF  
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### **CERTIFICATE OF SERVICE**

I hereby certify that on December 23, 2008, I caused to be electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following:

Benjamin B. Lieb, Esq.  
Sheridan Ross P.C.  
1560 Broadway, Suite 1200  
Denver, Colorado 80202

Further, I hereby certify that that a true and correct copy of the foregoing has been transmitted via email and mailed via First Class U.S. Mail, postage prepaid to the following:

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*s/ Lee F. Johnston*

Lee F. Johnston

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