



because, on information and belief, GS offers for sale, sells, distributes, and ships products according to the claims of the patent-in-suit in this district.

6. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391(c) and 1400(b) because GS is doing business in this district and because, upon information and belief, wrongful acts committed by GS have occurred in, and are causing injury to, ESCO in this district.

**COUNT I – INFRINGEMENT OF U.S. PATENT NO. 5,469,648**

7. On November 28, 1995, the United States Patent and Trademark Office duly and legally issued U.S. Patent No. 5,469,648 (“the ‘648 patent”) to inventors Larren F. Jones et al., who assigned to ESCO the entire right, title, and interest in and to the ‘648 patent, including all rights to recover for all infringements thereof. A copy of the ‘648 patent is attached as Exhibit A.

8. GS has infringed the ‘648 patent by offering to sell and selling products that are covered by one or more claims of the ‘648 patent, including, but not limited to, points for excavating teeth, at least some of which were sold under the “VxxSYL” designation.

9. ESCO has been damaged by the infringement by GS.

10. Furthermore, the GS acts accused of infringement have been without express or implied license by ESCO, are in violation of ESCO’s rights, and may continue unless enjoined by this Court.

11. GS has infringed in willful disregard of the ‘648 patent and the rights created thereunder.

12. This is an exceptional case because of GS’s willful infringement.

13. ESCO has been and will continue to be irreparably harmed by GS’s infringement of the ‘648 patent.

**DEMAND FOR JURY TRIAL**

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

**RELIEF SOUGHT**

**WHEREFORE**, ESCO prays:

- A. For an injunction against further infringement of the '648 patent by GS, its officers, agents, servants, employees, attorneys, and all those persons in active concert or participation with it or controlled by it;
- B. For damages to compensate ESCO for the infringement of the '648 patent, together with prejudgment and postjudgment interest;
- C. For an assessment of costs against GS;
- D. For treble damages pursuant to 35 U.S.C. § 284 because infringement by GS has been willful;
- E. For judgment that this is an exceptional case under 35 U.S.C. § 285, and that GS shall pay to ESCO all its attorneys' fees; and
- F. For all such other and further relief as this Court deems just and proper.

Respectfully submitted,

Dated: March 26, 2010  
Miami, Florida

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