

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

AIR VENT, INC.,)	
Plaintiff,)	
)	Civil Action No. 02: 10-cv-01699-TFM
v.)	
)	
OWENS CORNING CORPORATION,)	Jury Trial Demanded
Defendant.)	

PLAINTIFF'S SECOND AMENDED COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff Air Vent, Inc. ("Plaintiff"), by its attorneys, Tucker Arensberg, P.C. and Meredith & Keyhani, PLLC, for its Second Amended Complaint against defendant Owens Corning Corporation ("Defendant"), alleges as follows:

I. THE PARTIES

1. Plaintiff is a Delaware corporation, having a principal place of business at 4117 Pinnacle Point Drive, Suite 400, Dallas, Texas 75211.

2. Plaintiff is the owner by assignment of United States patents No. 6,299,528 ("the '528 Patent"), entitled "End-Ventilating Adjustable Pitch Arcuate Roof Ventilator," issued October 9, 2001 (**Ex. A**); and No. 6,482,084 ("the '084 Patent"), entitled "End-Ventilating Adjustable Pitch Arcuate Roof Ventilator," issued November 19, 2002 (**Ex. B**) (collectively "Patents-in-Suit").

3. Plaintiff is in the business and is a market leader, *inter alia*, of manufacturing and selling building construction products, including without limitation, roof ridge ventilators ("ridge vents"), certain of which are sold under the name and trademark "ShingleVent® II," which product is covered by and marked with the numbers of the '528 Patent and the '084 Patent.

4. On information and belief, Defendant is a Delaware corporation, having a principal place of business at One Owens Corning Parkway, Toledo, Ohio 43659.

5. Defendant is engaged in the business of manufacturing and selling residential and commercial building materials, including the business of offering and selling within the United States ridge vent products for providing roof ventilation as set forth in one or more claims of the Patents-in-Suit.

II. JURISDICTION AND VENUE

6. This action arises under the Patent Laws of the United States, Title 35 United States Code §§ 1 *et seq.*

7. Venue is proper in this District pursuant to 28 United States Code § 1400(b).

III. FACTUAL BACKGROUND

8. From 2000 through 2008 Plaintiff manufactured for and sold to Defendant a four foot version of a ridge vent product under the name "VentSure Rigid Strip" that was substantially the same structurally and functionally as the ShingleVent II product. In late January 2009, Defendant notified Plaintiff that it was terminating its contractual relationship with Plaintiff for the purchase of ridge vent products that Plaintiff had been selling to Defendant. Defendant received its last units of Plaintiff's ridge vent product in March 2009.

9. Plaintiff first became aware of Defendant's entrance into the ridge vent market with a VentSure ridge vent product called the "VentSure 4 Foot Strip" ("VentSure Product") of its own manufacture in June 2010, when Defendant participated, along with Plaintiff and other ridge vent manufacturers and suppliers in an auction conducted by Menard, Inc., a large home improvement supply chain with headquarters in Eau Claire, Wisconsin, for 100,000 pieces of ridge vent product. At that time, Defendant significantly underbid the competition, including Plaintiff, and won the order. Since that time Defendant has continued to aggressively market and sell the VentSure Product.

10. In or about September of 2010, Plaintiff's lead engineer obtained a sample of Defendant's new VentSure Product, carefully examined it and turned the matter over to legal counsel.

11. It has since been determined that the VentSure Product incorporates the same ventilation technology disclosed and claimed in the '528 and '084 Patents. In particular, the VentSure Product embodies the same design concept in which a circuitous path of air flows through two parallel sets of tabs between the interior of a roof and the outside ambient as disclosed and claimed in Plaintiff's '528 and '084 Patents.

12. Defendant has willfully infringed the Patents-in-Suit as it had actual knowledge of these patents at the time of its infringement through its purchase of the VentSure Product from Plaintiff.

13. By reason of Defendant's prior knowledge of the construction and proprietary nature of the ShingleVent II product, and the substantially identical ridge vent product that Plaintiff manufactured for it under its prior agreement, Defendant knew or had reason to believe that its VentSure Product infringed Plaintiff's '528 and '084 Patents. Despite having this knowledge, Defendant willfully and in bad faith offers to sell, has sold and continues to sell the infringing VentSure Product.

IV. COUNT 1: INFRINGEMENT OF THE '528 PATENT

14. Plaintiff repeats and realleges each and every allegation set forth in Paragraphs 1 through 13 as if fully set forth herein.

15. Defendant's aforesaid activities constitute direct infringement of the '528 Patent. Upon information and belief, Defendant will continue to infringe the '528 Patent unless enjoined by this Court.

16. As a result of Defendant's infringing conduct, Plaintiff has been irreparably damaged to an extent not yet determined and Plaintiff will continue to be irreparably damaged by such acts in the future unless Defendant is enjoined by this Court from further acts of infringement.

17. Plaintiff is entitled to recover damages in an amount that adequately compensates it for Defendant's willful infringement, which damages should be increased up to three times the amount found or assessed.

V. COUNT 2: INFRINGEMENT OF THE '084 PATENT

18. Plaintiff repeats and realleges each and every allegation set forth in Paragraphs 1 through 17 as if fully set forth herein.

19. Defendant's aforesaid activities constitute direct infringement of the '084 Patent. Upon information and belief, Defendant will continue to infringe the '084 Patent unless enjoined by this Court.

20. As a result of Defendant's infringing conduct, Plaintiff has been irreparably damaged to an extent not yet determined and Plaintiff will continue to be irreparably damaged by such acts in the future unless Defendant is enjoined by this Court from further acts of infringement.

21. Plaintiff is entitled to recover damages in an amount that adequately compensates it for Defendant's willful infringement, which damages should be increased up to three times the amount found or assessed.

WHEREFORE, Plaintiff prays for a judgment against Defendant Owens Corning Corporation as follows:

(a) That Defendant be adjudged to have directly infringed U.S. patents No. 6,299,528 and No. 6,482,084, by making or having made, offering to sell and selling its VentSure Product, and that said infringement be declared willful;

(b) That Defendant, its officers, agents, servants, employees, parents, subsidiaries, divisions, affiliates, successors, and all others in active concert or participation with it or acting on its behalf, be preliminarily and permanently enjoined from further infringement of said patents;

(c) That Defendant be ordered to account for and pay to Plaintiff all damages caused to said Plaintiff by reason of Defendant's infringement of said U.S. patents No. 6,299,528 and No. 6,482,084, including enhanced damages for willful infringement;

(d) That Plaintiff be granted prejudgment interest on the damages caused to it by reason of Defendant's infringement of said U.S. patents No. 6,299,528 and No. 6,482,084;

(e) Determining that this is an exceptional case, pursuant to 35 U.S.C. § 285, and awarding Plaintiff its attorney fees; and

(f) Granting Plaintiff such other and further relief as the Court may find just and equitable to remedy such infringement.

VI. DEMAND FOR JURY TRIAL

Pursuant to Rule 38, Fed. R. Civ. P., Plaintiff demands a jury trial for all issues triable as of right by a jury in this case.

Dated: August 29, 2012

Respectfully submitted,

TUCKER ARENSBERG, P.C.

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