

**IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
KANSAS CITY DIVISION**

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| BRENT E. SMITH and AES RAPTOR, LLC |) | |
| |) | |
| Plaintiffs, |) | |
| |) | |
| v. |) | Case No. _____ |
| |) | |
| GARLOCK EQUIPMENT COMPANY, |) | |
| |) | |
| Defendant. |) | |

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiffs Brent E. Smith (“Smith”) and AES Raptor, LLC (“AES”) (collectively, “Plaintiffs”), through their undersigned attorneys, file this Complaint against Defendant Garlock Equipment Company (“Garlock”), and state and allege as follows:

Parties

1. Smith is a natural person residing in Weston, Missouri.
2. AES is a for-profit limited liability company formed under the laws of the State of Missouri with a principal place of business at 1349 Taney, North Kansas City, MO 64116. AES designs and manufactures fall protection products for use by commercial roofers and sheet metal workers. These products include the AES Raptor Stinger™ and the AES Raptor TriRex™. The sole member of AES is Smith.
3. Garlock is a for-profit corporation formed under the laws of the State of Minnesota with a principal place of business at 2601 Niagara Lane North, Plymouth, MN 55447. Garlock can be served through its Chief Executive Officer, Randy Rollins at the foregoing address. Garlock manufactures and sells products and equipment, including safety equipment, used by professional roofing contractors.

Jurisdiction and Venue

4. This action arises under the patent laws of the United States, 35 U.S.C. § 1, *et seq.* This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

5. This Court has personal jurisdiction over Garlock because Garlock has purposefully availed itself of the privilege of conducting business within this State and this District by, among other things, offering for sale and selling the Cobra Multi-Man Mobile Fall Protection Cart and the Cobra Twin-Man Mobile Fall Protection Cart.

6. Venue is proper in this District and Division pursuant to 28 U.S.C. §§ 1391 and 1400.

Factual Background

7. On August 14, 2012, United States Patent No. 8,240,431 (“the ‘431 Patent”) entitled “Apparatus and Method of Arresting a Fall” issued to Smith. Since its issuance, the ‘431 Patent has been in full force and effect. The ‘431 Patent is valid and enforceable. Smith has commercialized the invention claimed in the ‘431 Patent through AES, incorporating this invention in the AES Raptor Stinger™ and the AES Raptor TriRex™ products. Smith owns all right, title and interest to the ‘431 Patent, including the right to sue for past, present and future infringements. Smith has properly marked the AES Raptor Stinger™ and the AES Raptor TriRex™ products pursuant to 35 U.S.C. § 287(a). A true and correct copy of the ‘431 Patent is attached hereto as Exhibit A.

8. On December 20, 2007, United States Patent Application Publication No. US 2007/0289811 (“the ‘811 Publication”) was published. A true and correct copy of the ‘811 Publication is attached hereto as Exhibit B.

9. The application of the '811 Publication issued as the '431 Patent, and the '811 Publication includes claims that are substantially identical to the claims of the '431 Patent.

10. Garlock has infringed and continues to infringe the '431 Patent by making, using, offering to sell, and/or selling in the United States, and/or importing into the United States, products or processes that practice the invention claimed in the '431 Patent. These products include the Cobra Multi-Man Mobile Fall Protection Cart and the Cobra Twin-Man Mobile Fall Protection Cart, which are covered by claims 1 and/or 5 in the '431 Patent.

11. Garlock also provides infringing products or processes to distributors, dealers, customers, and/or others with detailed instructions and information on how to use and/or sell the infringing products or processes. Garlock's acts constitute inducement to infringe the '431 Patent whenever its distributors, dealers, customers, and/or others use and/or sell Garlock's infringing products or processes.

12. Garlock has profited through infringement of the '431 Patent. As a result of Garlock's unlawful infringement of the '431 Patent, Plaintiffs have suffered and will continue to suffer damage. Plaintiffs are entitled to recover from Garlock the damages they suffered as a result of Garlock's unlawful acts.

13. On information and belief, Garlock's infringement of the '431 Patent was and is willful and deliberate, entitling Plaintiffs to enhanced damages and reasonable attorney's fees and costs.

14. On information and belief, Garlock intends to continue its unlawful infringing activity, and Plaintiffs will continue to suffer irreparable harm from such activity—for which there is no adequate remedy at law—unless Garlock is enjoined by this Court.

COUNT I
Infringement of the '431 Patent

15. Plaintiffs incorporate by reference their foregoing allegations as if fully set forth herein.

16. Garlock has directly and/or indirectly infringed, either literally or under the doctrine of equivalents, one or more claims of the '431 Patent by making, using, offering to sell, and/or selling in the United States, and/or importing into the United States, products or processes that practice the invention claimed in the '431 Patent.

17. Garlock has induced others to infringe one or more claims of the '431 Patent by providing infringing products or processes to distributors, dealers, customers, and/or others with detailed instructions and information on how to use and/or sell the infringing products or processes.

18. Garlock's activities have been without express or implied license from Plaintiffs.

19. As a result of the infringement of the '431 Patent, Plaintiffs have been damaged, will be further damaged, and it entitled to be compensated for such damages pursuant to 35 U.S.C. § 284 in an amount to be determined at trial.

COUNT II
Infringement of the Smith's Provisional Rights in the '431 Patent

20. Plaintiffs incorporate by reference their foregoing allegations as if fully set forth herein.

21. On information and belief, Garlock had actual knowledge of the '811 Publication, its specification and claims.

22. On information and belief, pursuant to 35 U.S.C. § 154(d), Garlock has directly and/or indirectly infringed, either literally or through the doctrine of equivalents, Smith's provisional

patent rights in one or more claims of the '431 Patent by making, using, offering to sell, and/or selling in the United States, and/or importing into the United States, products or processes that practice the invention claimed in the '431 Patent.

23. Garlock's activities have been without express or implied license from Plaintiffs.

24. As a result of Garlock's infringement of Smith's provisional rights in the claims of the '431 Patent, Smith is entitled to recover a reasonable royalty pursuant to 35 U.S.C. § 154(d)(1).

Willful Infringement

25. Plaintiffs incorporate by reference their foregoing allegations as if fully set forth herein.

26. On information and belief, Garlock's past and continuing infringement of the '431 Patent has been deliberate and willful. Its conduct warrants an award of treble damages pursuant to 35 U.S.C. § 284. Moreover, this is an exceptional case as set forth in 35 U.S.C. § 285 warranting an award of attorney's fees.

Jury Trial Demand

Plaintiffs demand trial by jury on all issues so triable.

Prayer for Relief

WHEREFORE, upon final hearing or trial, Plaintiffs pray for the following relief:

- A. A judgment that Garlock has infringed the '431 Patent;
- B. A judgment that Garlock has infringed Smith's provisional rights in the claims of the '431 Patent;
- C. A judgment and order permanently restraining and enjoining Garlock and its directors, officers, employees, servants, agents, affiliates, subsidiaries, distributors,

dealers, others controlled by them, and all persons in active concert or participation with any of them, from further infringing the '431 Patent;

- D. A judgment and order requiring Garlock to pay Smith a reasonable royalty for infringing on his provisional rights in the claims of the '431 Patent pursuant to 35 U.S.C. § 154(d)(1);
- E. A judgment and order requiring Garlock to pay damages to Plaintiffs adequate to compensate them for Garlock's wrongful infringing acts in accordance with 35 U.S.C. § 284;
- F. A judgment and order requiring Garlock to pay increased damages up to three times, in view of its willful and deliberate infringement of the '431 Patent;
- G. A finding in favor of Plaintiffs that this is an exceptional case under 35 U.S.C. § 285 and an award of Plaintiffs of their costs, including reasonable attorney's fees and other expenses incurred in connection with this action;
- H. A judgment and order requiring Garlock to pay Plaintiffs pre-judgment interest under 35 U.S.C. § 284 and post-judgment interest under 28 U.S.C. § 1961 on all damages awarded; and
- I. Such other and further relief as the Court deems just and appropriate.

Respectfully submitted,

**GRAVES BARTLE MARCUS & GARRETT,
LLC**

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