

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF COLORADO

D THREE ENTERPRISES, LLC,

Plaintiff,

v.

SUNMODO CORPORATION,

Defendant.

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Case No. 1:15-cv-1151

JURY TRIAL DEMANDED

PLAINTIFF’S ORIGINAL COMPLAINT

Plaintiff D THREE ENTERPRISES, LLC (“Plaintiff”) files this Original Complaint against Defendant SUNMODO CORPORATION, alleging as follows:

I. THE PARTIES

1. D THREE ENTERPRISES, LLC (“Plaintiff”) is a Limited Liability Company organized and existing under the laws of the State of Colorado, with a principal place of business in Lafayette, Colorado.

2. Upon information and belief, Defendant SUNMODO CORPORATION (“SunModo”) is a corporation organized and existing under the laws of the State of Washington, with a principal place of business in Vancouver, WA. Defendant SunModo may be served with process by serving its Registered Agent, Jun Liu at 1118 NW Klickitat Lane, Camas, WA 98607.

II. JURISDICTION AND VENUE

3. This is an action for infringement of a United States patent. Federal question jurisdiction is conferred to this Court over such action under 28 U.S.C. §§ 1331 and 1338(a).

4. Upon information and belief, Defendant has had minimum contacts with the District of Colorado such that this venue is fair and reasonable. Defendant has committed such

purposeful acts and/or transactions in this district that it reasonably should know and expect that it could be hauled into this Court as a consequence of such activity. Upon information and belief, Defendant has transacted and, at the time of the filing of this Complaint, is transacting business within the District of Colorado.

5. For these reasons, personal jurisdiction exists and venue is proper in this Court under 28 U.S.C. §§ 1391(b) and (c) and 28 U.S.C. § 1400(b).

III. PATENT INFRINGEMENT

6. On April 8, 2014, United States Patent No. 8,689,517 B2 (“the ’517 Patent”) was duly and legally issued for “ROOF MOUNT SEALING ASSEMBLY.” A true and correct copy of the ’517 Patent is attached hereto as Exhibit “A” and made a part hereof.

7. On April 29, 2014, United States Patent No. 8,707,655 B2 (“the ’655 Patent”) was duly and legally issued for “ROOF MOUNT SEALING ASSEMBLY.” A true and correct copy of the ’655 Patent is attached hereto as Exhibit “B” and made a part hereof.

8. The ’517 and ’655 Patents are referred to collectively as the “Patents-in-Suit.”

9. By way of assignment, Plaintiff is the owner of all right, title and interest in and to the Patents-in-Suit, with all rights to enforce them against infringers and to collect damages for all relevant times, including the right to prosecute this action.

10. On information and belief, Defendant, without authority, consent, right, or license, and in direct infringement of the Patents-in-Suit, manufactures, has manufactured, makes, has made, uses, imports, has imported, markets, sells, and/or offers for sale systems and/or products that directly infringe one or more claims of the Patents-in-Suit. By way of example only, its EZ Mount assembly with Standoff for Shingle Roofs (Kit #K10070-002) directly infringes at least

claims 1 and 14 of the '517 Patent and at least claims 1, 2, 3, 4, 5, 7, 8, 9, 11, and 13 of the '655 Patent. In addition, Defendant's EZ Mount L-Foot Kit for Shingle Roofs (Kit #K10068-001) infringes at least claims 1, 2, 3, 4, 5, 7, and 8 of the '655 Patent.

11. Plaintiff expressly reserves the right to assert additional claims of the Patents-in-Suit and expressly reserves the right to assert additional patents.

12. Plaintiff has been damaged as a result of Defendant's infringing conduct. Defendant is, thus, liable to Plaintiff in an amount that adequately compensates for its infringement, which, by law, cannot be less than a reasonable royalty, together with interest and costs as fixed by this Court under 35 U.S.C. § 284.

13. Upon information and belief, Defendant will continue its infringement of the Patents-in-Suit unless enjoined by the Court. Defendant's infringing conduct has caused Plaintiff irreparable harm and will continue to cause such harm without the issuance of an injunction.

IV. JURY DEMAND

14. Plaintiff hereby requests a trial by jury pursuant to Rule 38 of the Federal Rules of Civil Procedure.

V. RELATED CASES

15. This case is related to three other cases that are being filed concurrently herewith, namely: *D Three Enterprises, LLC v. Rillito River Solar LLC d/b/a EcoFasten Solar*, for infringement of U.S. Patent No. 8,689,517 (one of the two Patents-in-Suit in this suit); *D Three Enterprises, LLC v. EJOT Fastening Systems L.P.*, for infringement of U.S. Patent No. 8,833,032; and *D Three Enterprises, LLC v. Quickscrews International Corp.*, for infringement of U.S. Patent No. 8,833,032. All of the three above-referenced U.S. Patents are titled "Roof Mount Sealing

Assembly”; trace their lineage to the same parent patents (U.S. Patent Nos. 8,707,654, 8,448,405, and 8,661,765) and to the same provisional application (No. 61/150,301, filed on February 5, 2009); list the same inventors, namely, Richard F. Schaefer of Fort Lupton, Colorado, David Kreutzman, of Louisville, Colorado, and Don N. Tamm, of Denver, Colorado; and are owned or controlled by the same entity, namely, Plaintiff D Three Enterprises, LLC. Pursuant to the joinder provision of the America Invents Act, 35 U.S.C. § 299, these four lawsuits were filed separately. However, for the sake of judicial efficiency, for the convenience of the parties and witnesses, and to avoid the risk of conflicting claim constructions, Plaintiff respectfully submits that all four lawsuits should be consolidated for all pre-trial purposes, including discovery, claim construction, motion practice, and pre-trial conferences.

VI. PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that the Court find in its favor and against Defendant, and that the Court grant Plaintiff the following relief:

- a. Judgment that one or more claims of the Patents-in-Suit have been directly infringed, either literally and/or under the doctrine of equivalents, by Defendant;
- b. Judgment that Defendant account for and pay to Plaintiff all damages to and costs incurred by Plaintiff because of Defendant’s infringing activities and other conduct complained of herein;
- c. That Defendant’s infringement be found to be willful from the time Defendant became aware of the infringing nature of its services, which is the time of filing of Plaintiff’s Complaint at the latest, and that the Court award treble damages for the period of such willful infringement pursuant to 35 U.S.C. § 284.
- d. That Plaintiff be granted pre-judgment and post-judgment interest on the damages caused by Defendant’s infringing activities and other conduct complained of herein;
- e. That the Court declare this an exceptional case and award Plaintiff its reasonable attorney’s fees and costs in accordance with 35 U.S.C. § 285;

- f. That Defendant be permanently enjoined from any further activity or conduct that infringes one or more claims of the Patents-in-Suit; and
- g. That Plaintiff be granted such other and further relief as the Court may deem just and proper under the circumstances.

Dated: June 2, 2015.

Respectfully submitted,

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