

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF KENTUCKY
AT LOUISVILLE

BUZICK CONSTRUCTION, INC.

Plaintiff

Case No. 3:22-cv-105-DJH

v.

Jury Trial Demanded

SULLIVAN & COZART, INC.

Defendants

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff, Buzick Construction (“Buzick”), a Kentucky corporation, by and through its attorneys, hereby demands a jury trial and complains of the Defendant, Sullivan & Cozart, Inc. (“Sullivan & Cozart” or “Defendant”) as follows:

NATURE OF THE ACTION

1. This is a civil action for patent infringement, injunctive relief, and damages arising under the United States Patent Act, 35 U.S.C. §§ 1, *et seq.*, to enjoin infringement and obtain damages resulting from Defendant’s unauthorized manufacture and use of a patented construction template that infringes one of more claims of the United States Patent 8,109,394 (“the ‘394 Patent”) entitled “CONSTRUCTION TEMPLATE.” [Exhibit A]. Buzick seeks injunctive relief to prevent Defendant from continuing to infringe the ‘394 Patent. In addition, Plaintiff seeks to recover monetary damages resulting from Defendant’s past infringement.

2. This action for patent infringement involves Defendant’s manufacture and use of an infringing construction template within the United States.

THE PARTIES

3. Plaintiff Buzick Construction, Inc. is a corporation organized and existing under the laws of Kentucky, with a principal place of business located at 702 Beechwood Avenue,

Bardstown, Kentucky 40004 in Nelson County, within the Western District of Kentucky.

4. On information and belief, Sullivan & Cozart, Inc., (“Sullivan & Cozart”) is a Kentucky corporation with a primary place of business located 822 W Kentucky St, Louisville, KY 40203. On information and belief, Sullivan is a construction company that builds bourbon barrel rickhouses among other structures.

JURISDICTION AND VENUE

5. This Court has jurisdiction over the subject matter of this patent infringement action pursuant to the United States Patent Act, 35 U.S.C. §§ 1, et seq., including particularly § 271 *et seq.*, and pursuant to 28 U.S.C. §§ 1331, 1367, and 1338(a).

6. Sullivan & Cozart is subject to personal jurisdiction in Kentucky and requiring Defendants to respond to this action will not violate due process. Defendants have committed acts of literal infringement, infringement under the Doctrine of Equivalents, contributory infringement, and/or inducement of infringement, of one or more of the claims of US Patent 8,109,394 (“the ‘394 Patent”) resulting in injury in this judicial district and division. Defendants are subject to the personal jurisdiction of this Court and are amenable to service of process as they are residents of this judicial district.

7. Venue lies in this district pursuant to 28 U.S.C. §§ 1391(b) and (c), and 1400(b) because the Defendant resides in this judicial district, has committed acts of infringement in this judicial district, and has a regular and established place of business in this judicial district.

GENERAL ALLEGATIONS

8. Buzick is the exclusive licensee of all rights to the ‘394 Patent, which is valid and subsisting. The ‘394 Patent is directed to a construction template useful in the assembly of racks for storing barrels and has found particular usefulness in the distilled spirits industry.

9. The '394 Patent was duly and legally issued on February 7, 2012.

10. Buzick has the legal right to enforce the patent-in-suit against Sullivan & Cozart.

11. Buzick has spent considerable time, effort, and resources developing its patented construction template which provides a competitive advantage over its competition.

12. Without authorization, Sullivan & Cozart have copied protected elements of the '394 Patent and in so doing have infringed and caused harm and damage to Buzick.

SULLIVAN & COZART'S ACTS INFRINGE THE '394 PATENT

13. Sullivan & Cozart makes and uses a construction template that directly infringes, contributorily infringes, or induces others to infringe one or more claims of each of the '394 Patent. The infringing product is a construction template manufactured and used by the Defendant in this judicial district.

14. The Defendant has had actual notice of the '394 Patent since at least as early as July 1, 2020. Buzick, by certified letter from Plaintiff's counsel James P. Willett, sent a copy of the '394 Patent with a cease and desist demand to the Defendant by certified mail dated June 26, 2020. [Exhibit B]. The Defendant, through counsel, responded to the Plaintiff's cease and desist demand in a letter dated August 31, 2020. [Exhibit C]. Over Plaintiff's requests for the Defendant to cease and desist from all infringing actions, the Defendant has continued to infringe.

15. The Defendant's response to Plaintiff's cease and desist letter [Exhibit C] provides images of the infringing device.

16. The Defendant, in the Spring of 2020, visited a Buzick rickhouse construction site with, upon information and belief, the specific intent to view, photograph, and measure the patented construction template.

17.

18. Plaintiff's patented construction template provides a competitive advantage in that a rickhouse can be build cheaper and/or faster than by conventional methods.

19. The Defendant has manufactured and used construction templates covered under the claims of the '394 Patent to build at least two rickhouses for Louisville Distilling Co., LLC, and likely others.

**BUZICK HAS BEEN IRREPARABLY HARMED
BY DEFENDANT'S CONTINUED INFRINGEMENT**

20. Plaintiff has been irreparably harmed by Defendant's infringement of the '394 Patent.

21. The Defendant's unauthorized, infringing manufacture and use of construction templates that infringe the '394 Patent threatens the value of the exclusive license to the '394 Patent by diminishing Plaintiff's rights as an exclusive licensee of the '394 Patent to exclude others from making, using, selling, offering to sell and/or importing the patented invention.

22. Defendant's disregard for Buzick's property rights similarly threatens Plaintiff's relationships with potential and existing customers.

23. Defendant has enjoyed and continues to derive a competitive advantage by infringing the '394 Patent and will derive a competitive advantage over Plaintiff by using the exclusively licensed '394 Patent without paying compensation for such use. Accordingly, unless and until Defendant's acts of infringement are enjoined, Plaintiff will suffer irreparable harm for which there is no adequate remedy at law.

COUNT I

Infringement of United States Patent No. 8,109,394

24. Plaintiff hereby incorporates by reference the preceding paragraphs as if fully

restated herein.

25. Buzick is the exclusive licensee of all rights to make, use, sell, offer to sell, and import/export goods that fall within the scope of the claims of the '394 Patent, including the right to sue thereon and the right to recover for infringement thereof.

26. Defendant, at the minimum, makes and uses construction templates within the United States that infringe, directly and/or indirectly, one or more of the claims of the '394 Patent.

27. Defendant has infringed one or more of the claims of the '394 Patent through the aforementioned acts and will continue to do so unless enjoined by this Court. Defendant's wrongful conduct has caused Plaintiff to suffer irreparable harm resulting from the loss of its lawfully licensed patent rights to exclude others from making, using, selling, offering to sell and importing the patented invention.

28. Defendant's infringement of the '394 Patent is knowing, willful and deliberate.

29. Plaintiff is entitled to recover adequate damages to compensate for Defendant's infringement.

COUNT II

Willful Infringement of the '394 Patent

30. Plaintiff hereby incorporates the preceding paragraphs by reference as if fully restated herein.

31. Defendant has had actual knowledge of the patent-in-suit since no later than on or about July 1, 2020, at which time the Defendant received notice of Buzick's rights under the '394 Patent pursuant to [35 U.S.C. § 287](#).

32. Defendant's past and continuing infringement with actual knowledge of and in

conscious and reckless disregard to the '394 Patent is willful and deliberate under 35 U.S.C. § 284 and at least for these reasons makes this an exceptional case under 35 U.S.C. § 285.

33. Buzick is entitled to enhanced damages and reasonable attorney fees adequate to compensate for Defendant's infringement and other conduct.

COUNT III

Tortious Interference with Prospective Business

34. Plaintiff hereby incorporates the preceding paragraphs by reference as if fully restated herein.

35. Plaintiff has the expectancy of valid business relationships with distillers who would hire it to build rickhouses.

36. Defendant knew of the aforementioned expectation of business relationships.

37. The Defendant intentionally interfered with the aforementioned expectation of business relationships by using Plaintiff's patented construction template to offer construction services at a price and/or build time equivalent to or better than that offered by Buzick.

38. The Defendant had improper motives in that it intended to illegally use the patented construction template in order to offer its construction services at a reduced cost and/or build time that it would otherwise be able to offer and thus place Plaintiff at a competitive disadvantage.

39. The Defendant's intentional interference with Plaintiff's expected business relationships have resulted in a loss of business opportunities and the inappropriate enrichment of the Defendant.

40. The aforementioned activities by the Defendant have an anticompetitive effect in that they stymie progress and innovation by violating the time-limited monopoly offered under

the patent laws of the United States to holders of valid patent rights.

41. Plaintiff has lost and will continue to lose sales revenue and goodwill due to the loss of a competitive advantage from its use of the patented construction template.

PRAYER FOR RELIEF

WHEREFORE, Buzick Construction, Inc. prays for judgment against Sullivan & Cozart, Inc. as follows and for the following relief:

- A. That Defendants be held to have infringed the '394 Patent;
- B. That Defendant and its subsidiaries, affiliates, parents, successors, assigns, officers, agents, servants, employees, attorneys, and all persons acting in concert or in participation with it, be temporarily and preliminarily enjoined during the pendency of this action, and permanently enjoined thereafter from infringing, contributing to the infringement of, and inducing infringement of the '394 Patent, and specifically from directly or indirectly making, using, selling, importing or offering for sale, any products embodying the invention of the '394 Patent during the life of its claims without the express written authority of Plaintiff;
- C. That Defendant be directed to give a full accounting, including post-verdict accounting, for all gains, profits, advantages, and unjust enrichment derived from its violations of law to determine an award to fully compensate Buzick for all damages attributable to Defendant's infringement of the '394 Patent in an amount consistent with proof at trial and in no event less than a reasonable royalty;
- D. That this case be deemed exceptional, and that Plaintiff be awarded reasonable attorney's fees in accordance with 35 U.S.C. § 285;
- E. That Defendant's infringement be found to be willful and that all damages awarded be trebled in accordance with 35 U.S.C. § 284;

F. That Defendant be ordered to deliver to Plaintiff, for destruction at Plaintiff's option, any and all prototypes, models, molds, tooling, and equipment fabricated for manufacture of any and all products that infringe any claim of the '394 Patent;

G. That this Court assess pre-judgment and post-judgment interests and costs against the Defendant, together with an award of such interests and costs, in accordance with 35 U.S.C. § 284; and

H. That Plaintiff have such other, further, and different relief as this Court deems proper under the circumstances.

DEMAND FOR JURY TRIAL

Buzick Construction demands a trial by jury of all matters to which it is entitled to trial by jury pursuant to Fed. R. Civ. P. 38.

Respectfully submitted,

/s/ James M. Francis

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