

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

BARRETTE OUTDOOR LIVING,
Inc.

Plaintiff,

v.

USA FENCE COMPANY,

Defendant.

Civil Action No. 8:23-cv-00063

JURY TRIAL DEMANDED

**COMPLAINT FOR PATENT INFRINGEMENT
AND DEMAND FOR JURY TRIAL**

NOW COMES the Plaintiff, Barrette Outdoor Living, Inc., and for its
Complaint against the Defendant states as follows:

THE NATURE OF THE COMPLAINT

1. This is an action at law and in equity for patent infringement. In particular, the Defendant has infringed one or more duly issued patents of the Plaintiff.

THE PARTIES

2. Plaintiff Barrette Outdoor Living, Inc. is a corporation organized under the laws of Ohio and has a principal place of business in Middleburg Heights, Ohio.

3. Upon information and belief, Defendant USA Fence Company (“USA Fence”) is a corporation organized under the laws of Florida and has its principal place of business at 1209 44th Avenue East, Bradenton, Florida 34203.

JURISDICTION AND VENUE

4. This is an action for patent infringement. The patent claims arise under the patent laws of the United States, including specifically 35 U.S.C. §281. This Court has subject matter jurisdiction in this matter pursuant to 28 U.S.C. §§1331, 1338, and 35 U.S.C. §281 because this action arises under the patent laws of the United States, 35 U.S.C. §1 *et seq.*

5. This Court has personal jurisdiction over the Defendant by virtue of Defendant’s residence and principal place of business and solicitation of business within the State of Florida, within this judicial district and elsewhere.

6. Venue is proper in the Middle District of Florida pursuant to 28 U.S.C. §1391(b)(2) and/or 28 U.S.C. §1400(b) because a substantial part of the events giving rise to the claims occurred in this judicial district, the Defendant is subject to personal jurisdiction in this district, and infringement has occurred within this judicial district.

FACTUAL ALLEGATIONS

7. The Plaintiff is in the business of providing high quality fencing and railing products, including extruded metal fencing and railings, for both residential and commercial applications.

8. Plaintiff is the owner by assignment of a number of duly issued United States Patents, including Patent No. 8,413,965, Patent No. 9,151,075, Patent No. 9,551,164, and Patent No. 9,963,905 (the “Patents”) directed to a fencing apparatus and a method of manufacturing a fencing apparatus.

9. The named inventor of these Patents has assigned the Patents to the Plaintiff corporation and the assignment has been duly recorded in the United States Patent and Trademark Office. Thus, Plaintiff is the owner of record of the Patents.

10. Plaintiff’s U.S. Patent No. 8,413,965 (the ‘965 Patent) is an apparatus patent that discloses and claims a fencing/railing apparatus with a sliding pivotal connection between the pickets and the rails. *See Exhibit 1.*

11. The ‘965 Patent issued on April 9, 2013, and Defendant has had actual and/or constructive knowledge of the Patent since that date.

12. Plaintiff’s U.S. Patent No. 9,151,075 (the ‘075 Patent) is an apparatus patent that discloses and claims a fencing/railing apparatus with a sliding pivotal connection between the pickets and the rails. *See Exhibit 2.*

13. Plaintiff's U.S. Patent No. 9,551,164 (the '164 Patent) is an apparatus patent that discloses and claims a fencing/railing apparatus with a sliding pivotal connection between the pickets and the rails. *See Exhibit 3.*

14. Plaintiff's U.S. Patent No. 9,963,905 (the '905 Patent) is an apparatus patent that discloses and claims a fencing/railing apparatus with a sliding pivotal connection between the pickets and the rails. *See Exhibit 4.*

15. Upon information and belief, the Defendant sells an infringing copy of the patented fencing/railing. Such fencing includes at least Fortress Fence Products AP-FT3 48"-2" x 72" EP (.060)-T3 (Item # 403207212M) and Fortress Fence Products FT3-ATHENS 48" RES-71-T3 (Item # 413487141M) (collectively, the "USA/Fortress Fences"). *See Exhibits 5, 6 and 7*, respectively.

16. The Defendant has been and is currently offering for sale and/or selling a fencing/railing that infringes the '965 Patent and/or the '075 Patent and/or the '164 Patent and/or the '905 Patent.

17. Upon information and belief, the Defendant's prior and ongoing sale of fencing/railing apparatus infringes one or more of the independent and dependent claims of each of the Patents.

18. For example, the USA/Fortress Fences sold or offered for sale by the Defendant includes each of the elements of Claims 1, 2, 5, 6, and 8-12 of the '965 Patent.

19. The USA/Fortress Fences sold and offered for sale by the Defendant has aluminum pickets and rails, with the rails having an extruded profile that allows aluminum connectors to be inserted therein during the assembly of the fence. The connectors are pivotally connected to the pickets by elements that act as pivot axles. The connectors are slidably connected to the rails and held in place in the rails by ledges formed in the rails. The ledges also have beveled lower edges to allow the connectors to be inserted into the rails. During back and forth racking of the pickets relative to the rails, the connector strips can be observed sliding back and forth. *See Exhibit 7.*

20. The following is a comparison of the USA/Fortress Fences to Claim 1 of the '965 Patent, with cited features and arrangements being depicted (in some instances with labeling of described features) in **Exhibit 7** attached hereto and made a part hereof:

U.S. Pat. No. 8,413,965	
1. A fencing/railing assembly adapted to be positioned between a pair of posts and mounted thereto, the assembly comprising:	The USA/Fortress Fences are fencing assemblies offered to be installed between a pair of posts.

<p>a plurality of vertical pickets, each picket comprising an upper end and a lower end opposite the upper end,</p>	<p>The USA/Fortress Fence has pickets with upper and lower ends.</p>
<p>each picket further comprising at least one pivot hole formed therein between the upper and lower ends;</p>	<p>The pickets have pivot holes formed therein.</p>
<p>a plurality of elongate rails extending transverse to the pickets, each rail having a first end and a second end opposite the first end, and having at least an upper wall and a side wall, each rail further comprising a plurality of picket openings formed therein and spaced longitudinally along the upper wall thereof, wherein the plurality of pickets are each individually received in a respective one of the plurality of picket openings; and</p>	<p>The USA/Fortress Fence has rails that extend transversely to the pickets. The rails have upper wall and sidewalls and with picket openings formed in the upper wall thereof. The pickets are received in the picket openings.</p>
<p>one or more connectors for connecting the plurality of pickets to the plurality of</p>	<p>The USA/Fortress Fence includes elongate connectors inside the rails that</p>

<p>rails, each connector comprising an elongate strip with opposing first and second sides, wherein at least one boss extends from the first side of the strip, and a sliding surface is formed on the second side;</p>	<p>connect the pickets to the rails. The connectors are in the form of a strip. A cylindrical boss extends from a first side of the strip. A sliding surface is formed on a second side of the strip.</p>
<p>wherein each at least one boss of a respective connector is inserted into the at least one pivot hole in a respective one of the plurality of pickets such that the connector is pivotably connected to the picket, and</p>	<p>The bosses of the connectors are inserted into pivot holes in the pickets such that the connectors are pivotably connected to the pickets.</p>
<p>wherein the sliding surface of the respective connector is slidably engaged with an inner surface of the side wall of a respective one of the plurality of rails;</p>	<p>The USA/Fortress Fence has hidden connectors within the rails that slides relative to the rails.</p>
<p>whereby pivoting the upper end of the respective picket towards the first end of the respective rail causes the respective connector to slide along the inner</p>	<p>The USA/Fortress Fence has rails that extend transversely to the pickets and the hidden connector contributes to the range of motion in racking. The pivotal</p>

<p>surface of the side wall of the respective rail towards the second end of the respective rail, and vice versa, in such a manner that a pivotal range of the plurality of pickets relative to the plurality of rails is at least about 20 degrees in each direction.</p>	<p>range of the pickets to the rails is more than 20 degrees in each direction.</p>
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21. The following is a comparison of the USA/Fortress Fences to Claims 1 and 19 of the '075 Patent, with cited features and arrangements being depicted in Exhibit 7 attached hereto and made a part hereof:

<p>U.S. Pat. No. 9,151,075</p>	
<p>1. A fencing/railing assembly adapted to be positioned between a pair of posts and mounted thereto, the assembly comprising:</p>	<p>The USA/Fortress Fences are fencing assemblies offered to be installed between a pair of posts.</p>
<p>a plurality of vertical pickets, each picket comprising an upper end and a lower end opposite the upper end,</p>	<p>The USA/Fortress Fence has a plurality of vertical pickets, each comprising upper and lower ends.</p>
<p>each picket further comprising at least one pivot hole formed therein between the upper and lower ends;</p>	<p>The pickets have pivot holes formed therein.</p>

<p>a plurality of elongate rails extending transverse to the pickets, each rail having a first end and a second end opposite the first end, and having at least an upper wall and a side wall, each rail further comprising a plurality of picket openings formed therein and spaced longitudinally along the upper wall thereof, wherein the plurality of pickets are each individually received in a respective one of the plurality of picket openings; and</p>	<p>The USA/Fortress Fence has a plurality of elongate rails. Each rail has an upper wall and a side wall, and further comprises a first end and second end opposite the first end. Each rail further comprises a plurality of picket openings formed therein and spaced longitudinally along the upper wall thereof, wherein each one of the plurality of pickets is received in a respective one of the plurality of picket openings.</p>
<p>one or more connectors for connecting the plurality of pickets to the plurality of rails, each connector comprising an elongate strip with opposing first and second sides, wherein at least one boss extends from the first side of the strip, and a sliding surface is formed on the second side;</p>	<p>The USA/Fortress Fence has connectors that assemble to and connect the plurality of pickets to the plurality of rails. Each connector comprises a first side and a second side. The first side comprises bosses extending therefrom and second side comprises a sliding surface.</p> <p>The USA/Fortress Fence connector includes rivets with cylindrical bosses extending from one side of the connector and engaging the pivots holes.</p>

<p>wherein the at least one boss of each connector is inserted into the at least one pivot hole in a respective one of the plurality of pickets such that the connector is pivotably connected to the picket, and</p>	<p>The bosses of each connector are inserted into the pivot holes provided on the pickets which allows the connectors to pivot relative to the pickets.</p>
<p>wherein the sliding surface of each connector is slidably engaged with an inner surface of the side wall of a respective one of the plurality of rails,</p>	<p>The USA/Fortress Fence has a hidden connector within the rails that slides relative to the rails.</p>
<p>wherein each connector provides a pivotal connection to the respective picket to permit a pivoting motion therebetween, and a slidable connection to the respective rail to permit a sliding motion therebetween, to permit a combination pivoting and sliding motion between the rail and the picket, and</p>	<p>The USA/Fortress Fence connectors are pivotally connected to the pickets to permit a pivoting motion therebetween and slidably connected to the rails to permit a sliding motion therebetween, thereby providing a combination of pivoting and sliding motion between the rails and the pickets.</p>
<p>whereby pivoting the upper end of the respective picket towards the first end of the respective rail causes the respective connector to slide along the inner surface of the side wall of the respective rail towards the second end of the respective rail, and vice versa, in such a</p>	<p>The USA/Fortress Fence has rails that extend transversely to the pickets and the “hidden fastener technology” contributes to the range of motion in racking. The pivotal range of the pickets to the rails more than 20 degrees in each direction.</p>

<p>manner that a pivotal range of the plurality of pickets relative to the plurality of rails is at least about 20 degrees in each direction.</p>	
<p>19. A fencing/railing assembly adapted to be positioned between a pair of posts and mounted thereto, the assembly comprising:</p>	<p>The USA/Fortress Fence is a fencing assembly offered to be installed between a pair of posts.</p>
<p>a plurality of vertical pickets, each picket comprising an upper end and a lower end opposite the upper end, each picket further comprising a plurality of holes formed therein between the upper and lower ends;</p>	<p>The USA/Fortress Fence has pickets with upper and lower ends. The pickets have pivot holes formed therein.</p>
<p>a plurality of elongate rails extending transverse to the pickets, each rail having a first end and a second end opposite the first end, and having at least an upper wall and a side wall, each rail further comprising a plurality of picket openings formed therein and spaced longitudinally along the upper wall thereof, wherein the plurality of pickets are each individually received in a</p>	<p>The USA/Fortress Fence has rails that extend transversely to the pickets. Each rail has a first end and a second end opposite the first end, and further includes an upper wall and two side walls. The pickets are received in the picket openings.</p>

<p>respective one of the plurality of picket openings; and</p>	
<p>a plurality of connectors for connecting the plurality of pickets to the plurality of rails, each connector comprising an elongate strip with opposing first and second sides and sized to span multiple of the pickets, wherein a series of bosses formed at regular spaced-apart intervals extend from the first side of the strip, and a sliding surface is formed on the second side;</p>	<p>The USA/Fortress Fence has connectors that assemble to and connect the plurality of pickets to the plurality of rails. Each connector comprises a first side and a second side. The first side comprises bosses extending therefrom and second side comprises a sliding surface.</p> <p>The USA/Fortress Fence connector includes rivets with cylindrical bosses extending from one side of the connector and engaging the pivots holes.</p>
<p>wherein each boss of each connector is inserted into a respective one of the pivot holes in a respective one of the plurality of pickets such that the connector is pivotably connected to multiple of the pickets,</p>	<p>The USA/Fortress Fence connectors include rivets with cylindrical bosses extending from one side of the connector and engaging the pivots holes.</p>
<p>and wherein the sliding surface of each connector is slidably engaged with an inner surface of the side wall of a respective one of the plurality of rails,</p>	<p>The USA/Fortress Fence has a hidden connector within the rails that slides relative to the rails.</p>

<p>wherein each connector provides a pivotal connection to the respective pickets to permit a pivoting motion therebetween, and a slidable connection to the respective rail to permit a sliding motion therebetween, to permit a combination pivoting and sliding motion between the rail and the picket,</p>	<p>The USA/Fortress Fence connectors are pivotally connected to the pickets to permit a pivoting motion therebetween and slidably connected to the rails to permit a sliding motion therebetween, thereby providing a combination of pivoting and sliding motion between the rails and the pickets.</p>
<p>whereby pivoting the upper end of the respective picket towards the first end of the respective rail causes the respective connector to slide along the inner surface of the side wall of the respective rail towards the second end of the respective rail, and vice versa, in such a manner that a pivotal range of the plurality of pickets relative to the plurality of rails is at least about 20 degrees in each direction, and</p>	<p>The USA/Fortress Fence has rails that extend transversely to the pickets and the hidden connectors contributes to the range of motion in racking. The pivotal range of the pickets to the rails more than 20 degrees in each direction.</p>
<p>wherein each boss includes a circular nub and each pivot hole includes a circular opening for receiving the respective nub such that the pivotal range of the pickets relative to the rails is not limited by interaction of the connector strips with the pickets.</p>	<p>The USA/Fortress Fence connector includes rivets with cylindrical nubs extending from one side of the connector and engaging the pivots holes. The pivotal range of the pickets relative to the rails is not limited by</p>

	interaction of the connector strips with the pickets.
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22. The following is a comparison of the USA/ Fortress Fences to Claims 1 and 17 of the '164 Patent, with cited features and arrangements being depicted in **Exhibit 7** attached hereto and made a part hereof:

U.S. Pat. No. 9,551,164	
1. A fencing/railing assembly adapted to be positioned between a pair of posts and mounted thereto, the assembly comprising:	The USA/Fortress Fences are fencing assemblies offered to be installed between a pair of posts.
a plurality of vertical pickets, each picket comprising an upper end and a lower end opposite the upper end,	The USA/Fortress Fence has a plurality of vertical pickets, each comprising upper and lower ends.
each picket further comprising at least one pivot hole formed therein at a position between the upper and lower ends;	The pickets have pivot holes formed therein.
a plurality of elongate rails extending transverse to the pickets, each rail having a first end and a second end opposite the first end, and having at least an upper wall and a side wall, each rail further comprising a plurality of picket openings formed therein and spaced	The USA/Fortress Fence has a plurality of elongate rails. Each rail has an upper wall and a side wall, and further comprises a first end and second end opposite the first end. Each rail further comprises a plurality of picket openings formed therein and spaced

<p>longitudinally along the upper wall thereof, wherein each one of the plurality of pickets is received in a respective one of the plurality of picket openings; and</p>	<p>longitudinally along the upper wall thereof, wherein each one of the plurality of pickets is received in a respective one of the plurality of picket openings.</p>
<p>one or more connectors that assemble to and connect the plurality of pickets to the plurality of rails, each connector comprising an elongate strip with opposing first and second sides, wherein at least one boss extends from the first side of the strip, and a sliding surface is formed on the second side of the strip;</p>	<p>The USA/Fortress Fence has connectors that assemble to and connect the plurality of pickets to the plurality of rails. Each connector comprises a first side and a second side. The first side comprises bosses extending therefrom and second side comprises a sliding surface.</p> <p>The USA/Fortress Fence connector includes rivets with cylindrical bosses extending from one side of the connector and engaging the pivots holes.</p>
<p>wherein the at least one boss of each connector is inserted into the at least one pivot hole in a respective one of the plurality of pickets such that the connector is pivotably connected to the picket,</p>	<p>The bosses of each connector are inserted into the pivot holes provided on the pickets which allows the connector to pivot relative to the pickets.</p>
<p>wherein the sliding surface of each connector is slidably engaged with an</p>	<p>The connector strips slide along the inner surface of the rail side walls.</p>

inner surface of the side wall of a respective one of the plurality of rails,	
wherein each connector provides a pivotal connection to the respective picket to permit a pivoting motion therebetween,	The USA/Fortress Fence connectors are pivotally connected to the pickets to permit a pivoting motion therebetween.
and a slidable connection to the respective rail to permit a sliding motion therebetween, to permit a combination pivoting and sliding motion between the rail and the picket, wherein pivoting the upper end of the respective picket towards the first end of the respective rail causes the respective connector to slide along the inner surface of the side wall of the respective rail towards the second end of the respective rail, and vice versa,	The USA/Fortress Fence includes hidden connectors within the rails that slide relative to the rails.
in such a manner that a pivotal range of the plurality of pickets relative to the plurality of rails is at least about 20 degrees in each direction, and	The USA/Fortress Fence has rails that extend transversely to the pickets and the connectors contribute to the range of motion in racking. The range of motion is greater than 20 degrees in each direction.
wherein the rails each have an inner profile that is sized and shaped to retain	The rails of the USA/Fortress Fence comprise an inner profile that is sized

<p>the connector strips between the rails and the pickets, and wherein a leading, inner edge of each rail is beveled to facilitate slipping the rail over the connector strip while the connector strip is connected to the pickets.</p>	<p>and shaped to retain the connector strips between the rails and the pickets. The leading, inner edge of each rail is beveled to allow the rails to be slipped over the connector strips while the connector strips are connected to the pickets.</p>
<p>17. A fencing/railing assembly adapted to be positioned between a pair of posts and mounted thereto, the assembly comprising:</p>	<p>The USA/Fortress Fence is a fencing assembly offered to be installed between a pair of posts. <i>See Exhibits 5 and 7.</i></p>
<p>a plurality of vertical pickets, each picket comprising an upper end and a lower end opposite the upper end, each picket further comprising a plurality of holes formed therein at a position between the upper and lower ends;</p>	<p>The USA/Fortress Fence has pickets with upper and lower ends. The pickets have pivot holes formed therein.</p>
<p>a plurality of elongate rails extending transverse to the pickets, each rail having a first end and a second end opposite the first end, and having at least an upper wall and a side wall,</p>	<p>The USA/Fortress Fence includes rails that extend transversely to the pickets. Each rail has a first end and a second end opposite the first end, and further includes an upper wall and two side walls.</p>
<p>each rail further comprising a plurality of picket openings formed therein and</p>	<p>The rails have picket openings formed in an upper wall and sidewalls. The</p>

<p>spaced longitudinally along the upper wall thereof, wherein each one of the plurality of pickets is received in a respective one of the plurality of picket openings; and</p>	<p>pickets are received in the picket openings.</p>
<p>a plurality of connectors that assemble to and connect the plurality of pickets to the plurality of rails, each connector comprising an elongate strip with opposing first and second sides and sized to span multiple of the pickets, wherein a series of bosses formed at regular spaced-apart intervals extend from the first side of the strip, and a sliding surface is formed on the second side of the strip; wherein each boss of each connector is inserted into a respective one of the pivot holes in a respective one of the plurality of pickets such that the connector is pivotably connected to multiple of the pickets,</p>	<p>The USA/Fortress Fence has connectors that connect the plurality of pickets to the plurality of rails. Each connector comprises a first side and a second side. The first side comprises bosses extending therefrom and second side comprises a sliding surface. The USA/Fortress Fence connector includes rivets with cylindrical bosses extending from one side of the connector and engaging the pivots holes.</p>
<p>wherein the sliding surface of each connector is slidably engaged with an inner surface of the side wall of a respective one of the plurality of rails,</p>	<p>The USA/Fortress Fence has hidden connectors within the rails that slides relative to the rails.</p>

<p>wherein each connector provides a pivotal connection to the respective pickets to permit a pivoting motion therebetween, and</p>	<p>The USA/Fortress Fence connectors are pivotally connected to the pickets to allow the connectors to pivot relative to the pickets.</p>
<p>a slidable connection to the respective rail to permit a sliding motion therebetween, to permit a combination pivoting and sliding motion between the rail and the picket,</p>	<p>The connector strips slide along the inner surface of the rail side walls as the rail and connectors pivot relative to the pickets.</p>
<p>wherein pivoting the upper end of the respective picket towards the first end of the respective rail causes the respective connector to slide along the inner surface of the side wall of the respective rail towards the second end of the respective rail, and vice versa, in such a manner that a pivotal range of the plurality of pickets relative to the plurality of rails is at least about 20 degrees in each direction,</p>	<p>The USA/Fortress Fence includes rails that extend transversely to the pickets and the hidden sliding connectors contribute to the range of motion in racking. The range of motion is greater than 20 degrees in each direction.</p>
<p>wherein each boss includes a circular nub and each pivot hole includes a circular opening for receiving the respective nub such that the pivotal range of the pickets relative to the rails</p>	<p>The USA/Fortress Fence connector includes rivets with cylindrical nubs extending from one side of the connector and engaging the pivots holes.</p>

is not limited by interaction of the connector strips with the pickets, and	
wherein the rails each have an inner profile that is sized and shaped to retain the connector strips between the rails and the pickets, and	The rails of the USA/Fortress Fence comprise an inner profile that is sized and shaped to retain the connector strips between the rails and the pickets.
wherein a leading, inner edge of each rail is beveled to facilitate slipping the rail over the respective connector strip while the connector strip is connected to the respective pickets.	The leading, inner edge of each rail is beveled to allow the rails to be slipped over the connector strips while the connector strips are connected to the pickets.

23. The following is a comparison of the USA/Fortress Fences to Claim 1 of the '905 Patent, with cited features and arrangements being depicted in **Exhibit 7** attached hereto and made a part hereof:

U.S. Pat. No. 9,963,905	
1. A fencing/railing assembly adapted to be positioned between a pair of posts and mounted thereto, the assembly comprising:	The USA/Fortress Fences are fencing assemblies offered to be installed between a pair of posts.
a plurality of vertical pickets, each picket comprising an upper end and a lower end opposite the upper end;	The USA/Fortress Fence has a plurality of vertical pickets, each comprising upper and lower ends.
a plurality of elongate rails extending transverse to the pickets, each rail	The USA/Fortress Fence has a plurality of elongate rails. Each rail has an upper

<p>having a first end and a second end opposite the first end, and having at least an upper wall and a side wall, with at least one rail further comprising a plurality of picket openings formed therein and spaced longitudinally along the upper wall thereof, wherein each one of the plurality of pickets is received in a respective one of the plurality of picket openings; and</p>	<p>wall and a side wall, and further comprises a first end and second end opposite the first end. Each rail further comprises a plurality of picket openings formed therein and spaced longitudinally along the upper wall thereof, wherein each one of the plurality of pickets is received in a respective one of the plurality of picket openings.</p>
<p>one or more connectors that assemble to and connect the plurality of pickets to the plurality of rails, each connector comprising an elongate strip with opposing first and second sides;</p>	<p>The USA/Fortress Fence includes connectors that are assembled to the rails. The connectors also connect the pickets to the rails.</p>
<p>wherein each connector is coupled to a respective one of the plurality of pickets in a manner such that the connector is pivotably connected to the picket, and</p>	<p>The connectors are pivotally connected to the pickets.</p>
<p>herein the sliding surface of each connector is slidably engaged with an inner portion of a respective one of the plurality of rails, and</p>	<p>The sliding surface the connector is slidably engaged with an inner portion of the rail.</p>
<p>wherein each connector is pivotally connected to the respective picket to</p>	<p>The connectors are pivotally connected to the pickets and allow a pivoting motion therebetween.</p>

<p>permit a pivoting motion therebetween, and</p>	
<p>wherein the connector is slidably connected to the respective rail to permit a sliding motion therebetween, to permit a combination pivoting and sliding motion between the rail and the picket,</p>	<p>The connector strips slide along the inner surface of the rail side walls as the rail and connectors pivot relative to the pickets.</p>
<p>wherein pivoting the upper end of the respective picket towards the first end of the respective rail causes the respective connector to slide along the respective rail towards the second end of the respective rail, and vice versa, in such a manner that a pivotal range of the plurality of pickets relative to the plurality of rails is at least about 20 degrees in each direction, and</p>	<p>The range of motion is greater than 20 degrees in each direction.</p>
<p>wherein the rails each have an inner profile that is sized and shaped to retain the connector strips between the rails and the pickets, and wherein a leading, inner edge of each rail is beveled to facilitate slipping the rail over the connector strip while the connector strip is connected to the pickets,</p>	<p>The rails of the USA/Fortress Fence comprise an inner profile that is sized and shaped to retain the connector strips between the rails and the pickets. The leading, inner edge of each rail is beveled to allow the rails to be slipped over the connector strips while the</p>

	connector strips are connected to the pickets.
wherein each connector includes at least one projection and each picket includes at least one pivot hole for receiving the at least one projection such that the pivotal range of the pickets relative to the rails is not limited by interaction of the connector strips with the pickets and	The pickets have pivot holes for receiving projections of the connectors. When assembled, the connectors can pivot relative to the pickets and are not limited by the interaction of the connectors with the pickets. The USA/Fortress Fence connector includes rivets with cylindrical projections extending from one side of the connector and engaging the pivots holes.
wherein the pivotal range of the plurality of pickets relative to the plurality of rails is at least about 25 degrees in each direction.	The range of motion is greater than 25 degrees in each direction.

24. The Defendant is not authorized in any way to use the Patents owned by the Plaintiff. The Defendant is without a license, express or implied, to infringe the Patents.

25. The aforementioned activities of Defendant have injured and threaten future injury to the Plaintiff. More specifically, the Defendant's activities have caused the Plaintiff to lose sales that it otherwise would have made but for the sales of the Defendant.

COUNT NO. 1

(Patent Infringement under 35 U.S.C. §271)
(Infringement of the '965 Patent)

26. The Plaintiff hereby incorporates by reference each above statement, as if each is fully re-written herein.

27. The Defendant has been and is currently offering for sale and/or selling an apparatus, in particular a fencing/railing, that infringes one or more claims of the '965 Patent.

28. The Defendant's conduct is an infringement of the '965 Patent and is in violation of 35 U.S.C. §271 within this judicial district and elsewhere.

29. The Defendant will, on information and belief, continue to offer for sale and/or sell the infringing fencing/railing unless enjoined by this Court.

30. Upon information and belief, the Defendant has been, and is, directly infringing, actively inducing infringement of, and/or contributorily infringing the '965 Patent.

31. Plaintiff is entitled to an injunction, pursuant to 35 U.S.C. §283, restraining Defendant and its officers, agents, employees, and all persons acting in concert with them from engaging in further patent infringement of Plaintiff's '965 Patent.

COUNT NO. 2
(Patent Infringement under 35 U.S.C. §271)
(Infringement of '075 Patent)

32. The Plaintiff hereby incorporates by reference paragraphs 1-25 written above, as if each is fully re-written herein.

33. The Defendant has been and is currently offering for sale and/or selling an apparatus, in particular a fencing/railing, that infringes one or more claims of the '075 Patent.

34. The Defendant's conduct is an infringement of the '075 Patent and is in violation of 35 U.S.C. §271 within this judicial district and elsewhere.

35. The Defendant will, on information and belief, continue to offer for sale and/or sell the infringing fencing/railing unless enjoined by this Court.

36. Upon information and belief, the Defendant has been, and is, directly infringing, actively inducing infringement of, and/or contributorily infringing the '075 Patent.

37. Plaintiff is entitled to an injunction, pursuant to 35 U.S.C. §283, restraining Defendant and its officers, agents, employees, and all persons acting in concert with them from engaging in further patent infringement of Plaintiff's '075 Patent.

COUNT NO. 3
(Patent Infringement under 35 U.S.C. §271)
(Infringement of the '164 Patent)

38. The Plaintiff hereby incorporates by reference paragraphs 1-25 written above, as if each is fully re-written herein.

39. The Defendant has been and is currently offering for sale and/or selling an apparatus, in particular a fencing/railing, that infringes one or more claims of the '164 Patent.

40. The Defendants' conduct is an infringement of the '164 Patent and is in violation of 35 U.S.C. §271 within this judicial district and elsewhere.

41. The Defendant will, on information and belief, continue to offer for sale and/or sell the infringing fencing/railing unless enjoined by this Court.

42. Upon information and belief, the Defendant has been, and is, infringing, actively inducing infringement of, and/or contributorily infringing the '164 Patent.

43. Plaintiff is entitled to an injunction, pursuant to 35 U.S.C. §283, restraining Defendant and its officers, agents, employees, and all persons acting in concert with them from engaging in further patent infringement of Plaintiff's '164 Patent.

COUNT NO. 4
(Patent Infringement under 35 U.S.C. §271)
(Infringement of the '905 Patent)

44. The Plaintiff hereby incorporates by reference paragraphs 1-25 written above, as if each is fully re-written herein.

45. The Defendant has been and is currently offering for sale and/or selling an apparatus, in particular a fencing/railing, that infringes one or more claims of the '905 Patent.

46. The Defendant's conduct is an infringement of the '905 Patent and is in violation of 35 U.S.C. §271 within this judicial district and elsewhere.

47. The Defendant will, on information and belief, continue to offer for sale and sell the infringing fencing/railing unless enjoined by this Court.

48. Upon information and belief, the Defendant has been, and is, infringing, actively inducing infringement of, and/or contributorily infringing the '905 Patent.

49. Plaintiff is entitled to an injunction, pursuant to 35 U.S.C. §283, restraining Defendant and its officers, agents, employees, and all persons acting in concert with them from engaging in further patent infringement of Plaintiff's '905 Patent.

PRAYER FOR RELIEF / REQUEST FOR REMEDIES

WHEREFORE, the Plaintiff prays that this Court enter an Order in favor of Plaintiff and against the Defendant as follows:

- A) That judgment be entered in favor of Plaintiff Barrette on all counts, that Defendant takes nothing and that costs and reasonable attorney's fees be awarded to Plaintiff;
- B) An injunction enjoining the Defendant and its officers, agents, subsidiaries, successors, employees, representatives, and assigns from making, using, selling or offering to sell any product that infringes the '965 Patent;
- C) An injunction enjoining the Defendant and its officers, agents, subsidiaries, successors, employees, representatives, and assigns from making, using, selling or offering to sell any product that infringes the '075 Patent;
- D) An injunction enjoining the Defendant and its officers, agents, subsidiaries, successors, employees, representatives, and assigns from making, using, selling or offering to sell any product that infringes the '164 Patent;
- E) An injunction enjoining the Defendant and its officers, agents, subsidiaries, successors, employees, representatives, and assigns from making, using, selling or offering to sell any product that infringes the '905 Patent;
- F) An accounting for damages resulting from Defendant's patent infringement, induced infringement and/or contributory infringement and the trebling of such damages if such infringement is found to have been of a knowing, willful, and wanton nature;
- G) An assessment of interest on the damages so computed;

- H) An award of attorney's fees and costs in this action under 35 U.S.C. §285;
- I) Judgment against the Defendant for an accounting and monetary award in an amount to be determined at trial;
- J) Requiring the Defendant to account to the Plaintiff for all sales and purchases that have occurred to date, and requiring the Defendant to disgorge any and all profits derived by Defendant for selling infringing product;
- K) Requiring the Defendant to pay damages to Plaintiff adequate to compensate for the infringement, and in no event less than a reasonable royalty for the use made of the inventions by the Defendant, together with interest and costs as fixed by the Court;
- L) Requiring the Defendant to provide full disclosure of any and all information relating to its supplier or suppliers of infringing product or component parts thereof;
- M) Damages according to each cause of action herein;
- N) Prejudgment interest;
- O) An award of attorney's fees to the Plaintiff; and
- P) Awarding Plaintiff such other and further relief as the court shall deem just and equitable under the circumstances.

JURY DEMAND

WHEREFORE, the Plaintiff requests a trial by jury on all issues so triable.

Respectfully Submitted,

/s/ Mario J. Donato, Jr.

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