

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

**WESTLAKE ROYAL BUILDING
PRODUCTS INC.,**

Plaintiff,

v.

R.H. TAMLYN & SONS, INC.,

Defendant.

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Civil Action No.

JURY TRIAL DEMANDED

**ORIGINAL COMPLAINT FOR PATENT INFRINGEMENT
AND FOR INJUNCTIVE RELIEF**

Plaintiff Westlake Royal Building Products Inc. (“Westlake” or “Plaintiff”) files this Original Complaint for Patent Infringement and for Injunctive Relief against Defendant R.H. Tamlyn & Sons, Inc.¹ (“Tamlyn” or “Defendant”).

NATURE OF THE ACTION

1. This is an action for patent infringement arising under the patent laws of the United States, 35 U.S.C. § 101 *et seq.* This action involves U.S. Patent No. 8,881,468 (the “’468 Patent”). See Ex. A (the ’468 Patent).

2. Tamlyn directly and indirectly infringes the ’468 Patent. Tamlyn makes, uses, offers to sell, sells and/or imports, without authorization, various fixture mounting assemblies including under the XTREMEBLOCK™ brand that infringe the ’468 Patent, including but not limited to: XTREMEBLOCK™ MB Series Insert Mount Blocks such as the “Solid Insert

¹ According to Texas Secretary of State public records, “Inc.” is the current live entity. At other times Defendant has operated as R.H. TAMLYN & SONS, LP. Plaintiff will work with Defendant to ensure any proper parties are joined.

XTREMEBLOCK™,” “Split Mount XTREMEBLOCK™,” “Receptacle XTREMEBLOCK™,” and “Round Hole XTREMEBLOCK™,” and XTREMEBLOCK™ MP Series One Piece Mounting Blocks such as the “Receptacle XTREMEBLOCK™” and “Round Hole XTREMEBLOCK™.”

3. Tamlyn’s products directly compete with Westlake’s patented products and Westlake seeks relief to prevent permanent damage to its market share and to recover its lost profits, or at least to recover reasonable royalties.

THE PARTIES

4. Plaintiff Westlake is a corporation organized under the laws of the State of Delaware, having its principal place of business at 2801 Post Oak Boulevard, Houston, 77056. Plaintiff Westlake is the owner of the ’468 Patent.

5. Defendant Tamlyn is a Texas corporation having its principal place of business at 13623 Pike Road, Stafford, Texas 77477. Tamlyn may be served through its registered agent, John T. Tamlyn, 13623 Pike Road, Stafford, Texas 77477 or wherever he may be found.

JURISDICTION AND VENUE

6. This Court has original subject matter jurisdiction over this action in accordance with 28 U.S.C. §§ 1331 and 1338(a) because this action arises under the patent laws of the United States, 35 U.S.C. § 101, *et seq.*

7. This Court has personal jurisdiction over Defendant Tamlyn because Defendant Tamlyn resides in the State of Texas within this District, maintains a regular and established place of business in the State of Texas within this District, and has committed acts of patent infringement in the State of Texas and in this District.

8. Venue is proper in this District under 28 U.S.C. §§ 1391 and 1400(b) because Defendant Tamlyn is incorporated in the State of Texas and has committed, and continues to commit, acts of patent infringement within this District.

FACTUAL BACKGROUND

A. Westlake's Innovative Fixture Mounting Bracket

9. This case involves patented technology for a fixture mounting assembly for attaching to an outside wall of a building under construction. Ex. A, '468 Patent, at Abstract. In particular, the technology includes a mounting bracket, mounting block, and flashing component for use in protecting a fixture connected to the outside wall of a building. Ex. A, 8:9–26.

10. Historically, materials used for siding on the outside of houses and other buildings included vinyl siding or Masonite®. Ex. A, 1:29–33. However, more recently consumers have turned to synthetic materials, such as fiber cement siding. Fiber cement siding is typically installed on the outside wall of the construction by attaching fiber cement planks to studs for a nice exterior finish to a construction project. Ex. A, 1:29–38. Such construction projects include outside fixtures, such as lights, spigots, vents, and other utility equipment that must be accommodated for during wall construction. Accordingly, the engineers installing the siding must work around these outside fixtures, while being mindful of their placement and location to maintain functionality and a seamless appearance upon completion. Ex. A, 1:39–43.

11. Prior to the '468 Patent, in order to achieve a polished look wall mount systems for attaching fixtures required the installer to extensively trim components, which were separate components from actual fixture mounting. Moreover, the mounting assemblies required a separate piece that had to be purchased, measured, trimmed, and installed for a seamless appearance and to function. Ex. A, 1:39–43. For example, U.S. Patent 5,000,409, which is incorporated by reference

to the '468 Patent, discloses a wall mounting bracket that is screwed directly into the siding. Ex. A, 1:8–10.

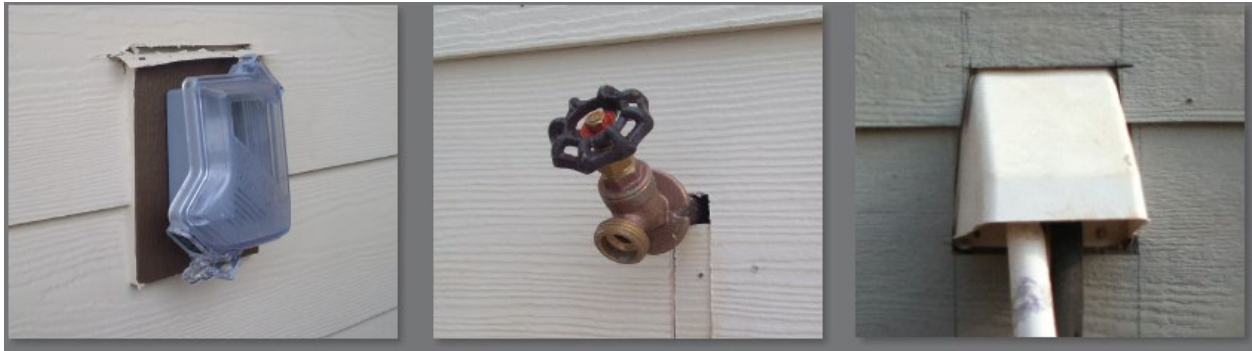
12. To compound these long-standing complications, fixtures come in a variety of shapes and sizes. Pieces that engaged the fixtures in prior mounting assemblies were fixed and non-detachable. Accordingly, installers have no flexibility to customize the fixture and protective siding job. Ex. A, 1:39–58.

13. Thus, fixture installations benefit from modular designs that allow for proper sizing for fixtures of all types and sizes. Ex. A, 2:46–50; *see* Ex. E, 1. Consequently, the inventors of the '468 Patent recognized that there is a need for a fixture mounting assembly that provides access to the wall of the structure, a place for fixtures to be mounted with precision, and a mechanism for installing newer types of siding, such as HardiPlank™, around the mounting assembly with a continuous and seamless appearance upon completion. Ex. A, 2:59–67.

B. The '468 Patent

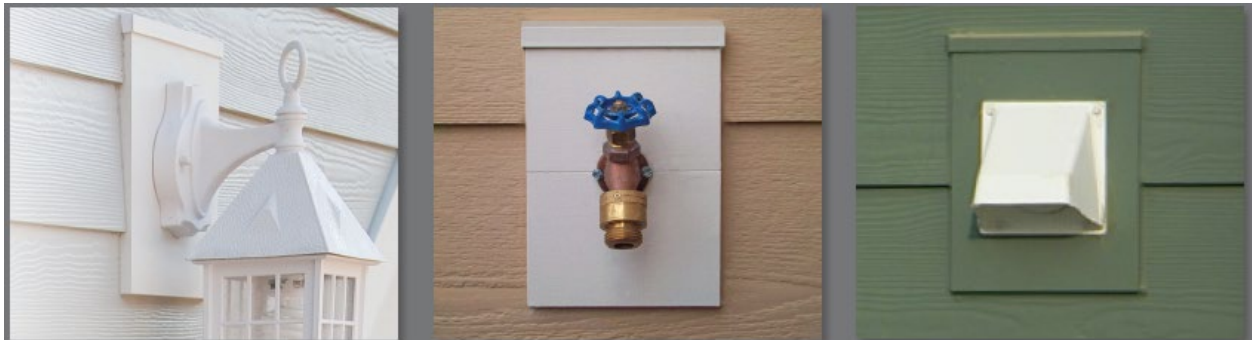
14. The '468 Patent generally describes and claims a mounting assembly for use in protecting a fixture connected to an outside wall of a building, the mounting assembly comprises: a mounting bracket for attaching to the wall of the building, said mounting bracket defining a mounting bracket opening for the fixture to fit through the mounting bracket; a flashing component extending from said mounting bracket over the mounting bracket opening; and a detachable mounting block connected to said mounting bracket and defining a second opening for receiving the fixture, said flashing component having an angled top portion defining a cavity; and said mounting block fitting over said mounting bracket and having a top edge fitting into said cavity below said angled top portion so that said flashing component directs rain over said mounting block. Ex. A, Claim 1.

15. Use of the system and assembly described and claimed in the '468 Patent provides for a convenient, aesthetically pleasing mechanism for installing fixtures (e.g. lights, electrical sockets, spigots, hose bibs, and vents) to the side of a building that is to be covered with protective siding. Ex. A; 4:2–6. The fixture mounting assembly of the '468 Patent further provides a continuous and consistent appearance when used with fiber cement siding (i.e., HardiPlank™) and additional protective features to ensure that fixtures or other penetrations on the outside of the house are protected from the elements. Ex. A. Fixture installation prior to '468 Patent:



Ex. C.

Improved fixture mounting assemblies disclosed in the '468 Patent:

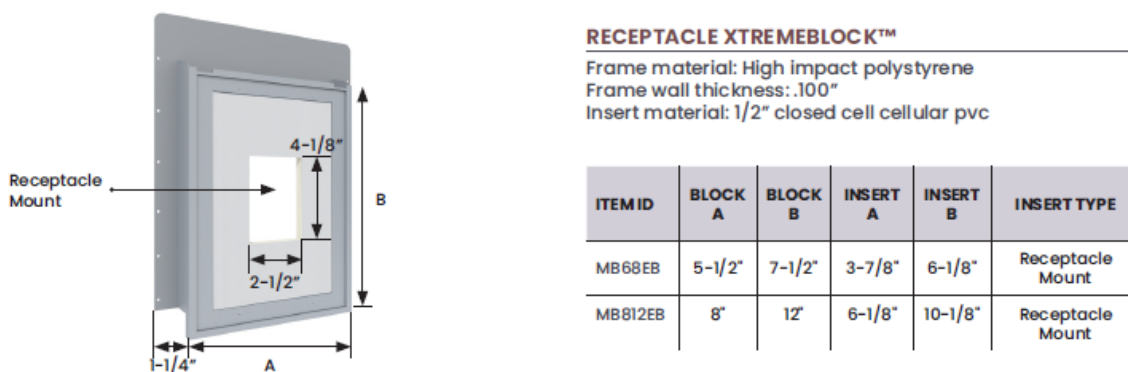


Id.; see also Ex. E.

16. Westlake's exterior mounting block, Sturdimount® Mount Block, which are designed especially for fixture mounting assemblies covered by the '468 Patent, "provide a strong, smooth mounting surface that complements uneven exterior finishes." *Id.* As Westlake explains

in its marketing literature, SturdiMount® is “pre-flashed and pre-assembled for protection against water damage;” “saves time and labor;” “provides a clean more finished look;” and may be used “on fiber cement, cedar, engineered wood, and composite siding.” Ex. D. This success has led to efforts to copy Westlake’s products and technology.

17. On December 16, 2022, Westlake sent Tamlyn a letter (ATTN: Miguel Gonzales, President/COO of Tamlyn) notifying Tamlyn of the ’468 Patent, stating that “[i]t has come to [Westlake’s] attention that Tamlyn sells XTREMEBLOCK™ products...which may infringe Westlake’s intellectual property.” Ex. B. Westlake provided an excerpt from Tamlyn’s marketing materials as an example of an infringing XTREMEBLOCK™ product.



Ex. H, 241. The December 16 letter further requested Tamlyn’s confirmation that Tamlyn had ceased the sale of XTREMEBOCK™ products by January 6, 2023. *Id.* Importantly, in an effort to “understand Tamlyn’s positions and try to resolve these issues...,” Westlake proposed a teleconference at Tamlyn’s earliest availability.

18. In response to Westlake’s December 16 letter, Tamlyn sent a letter dated January 4, 2023. Ex. F. In the January 4 letter, Tamlyn stated that it was “presently reviewing the letter and the assertions therein” but nonetheless rejected Westlake’s teleconference offer stating that “[a]t this time it is premature to have the requested teleconference.” *Id.* Instead, Tamlyn presented

that “sometime in January 2023” it would either contact Westlake regarding a teleconference, or “provide a response by way of return letter.” *Id.* Tamlyn failed to confirm that it had ceased to sell XTREMEBLOCK™ products.

19. On February 7, 2023, Tamlyn responded by return letter stating that it was confused as to what products Westlake was alleging infringed the '468 Patents, despite the fact that Tamlyn had refused Westlake’s teleconference offer to discuss just that. Ex. G. Further, Tamlyn requested a “detail application and interpretation of each claim element relative to corresponding features of each accused product.” *Id.* Lastly, Tamlyn asserted that the XTREMEBLOCK™ products were based in part on subject matter described in an patent owned by Tamlyn; however, Tamlyn failed to identify the patent in its February 7 return letter. *Id.* Based upon this unreasonable approach by Tamlyn, this suit is necessary.



20. Tamlyn infringes and continues to infringe the '468 Patent by making, using, importing, selling and/or offering for sale products and systems in this district and elsewhere in the United States that infringe the '468 Patent literally, directly or indirectly, or under the doctrine of equivalents. Specifically, Tamlyn makes, uses, imports, sells, and/or offers for sale its XTREMEBLOCK™ products, (photo of exemplar above, marked “Patent Pending” but with no reference) which infringe the '468 Patent literally, directly or indirectly, or under the doctrine of equivalents. On information and belief, since at least December 16, 2022, Tamlyn has willfully infringed by continuing to sell its XTREMEBLOCK products, including in the District.

COUNT I: INFRINGEMENT OF THE '468 PATENT

21. Westlake incorporates herein each paragraph above by reference.

22. On November 11, 2014, the United States Patent and Trademark Office (“USPTO”) issued the '468 Patent, titled “Fixture Wall Mount Assembly with Integral Flashing.” Plaintiff Westlake is the owner of the '468 Patent. The '468 Patent is valid, enforceable, and was duly issued in full compliance with Titled 35 of the United States Code.

23. On information and belief, Tamlyn, in violation of 35 U.S.C. § 271, directly infringes—literally and/or under the doctrine of equivalents—at least representative Claims 1 and 18 of the '468 Patent by making, using, offering to sell, selling, and/or importing various mounting assemblies for protecting fixtures (including at least the XTREMEBLOCK™ products) and components thereof.

24. Claim 1 of the '468 Patent recites:

1. A mounting assembly for use in protecting a fixture connected to an outside wall of a building, the mounting assembly comprising:

a mounting bracket for attaching to the wall of the building, said mounting bracket defining a mounting bracket opening for the fixture to fit through the mounting bracket;

a flashing component extending from said mounting bracket over the mounting bracket opening; and

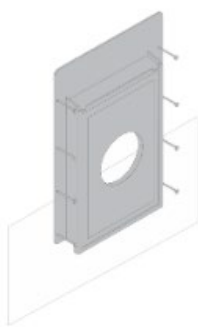
a detachable mounting block connected to said mounting bracket and defining a second opening for receiving the fixture;

said flashing component having an angled top portion defining a cavity; and said mounting block fitting over said mounting bracket and having a top edge fitting into said cavity below said angled top portion so that said flashing component directs rain over said mounting block.

25. On information and belief, Tamlyn infringes Claim 1 by making, using, offering to sell, selling, and/or importing XTREMEBLOCK™ products. To the extent the preamble is limiting, Tamlyn performs it. As shown in the examples below, Tamlyn's XTREMEBLOCK™ products are mounting assemblies for use in protecting a fixture connected to an outside wall of a building.

General Mounting Instructions

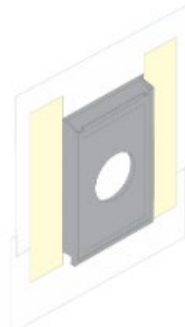
As with all exterior building components, XtremeBlock™ products must be installed in "shingle" fashion in accordance with the IRC section 703.1 (or local equivalent) to minimize water intrusion. Please ensure that each component of the installation overlaps the component below. XtremeBlock™ helps you to meet the code requirements by providing a built-in flashing on the top of the component and an overlapping bottom drip edge.



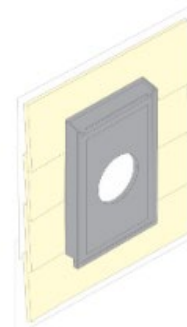
STEP 1 : Center hole in XtremeBlock™ over the receptacle or pipe or hole in the wall. Fasten in place with 6 nails (12 ga x 1.5") or with 6 screws (#8 x 1.5"). Ensure that the bottom of the block overlaps the housewrap below the block as shown at left.



STEP 2 : Install the housewrap over the top flange of the XtremeBlock™ as shown. Keep the edges of the housewrap back 1/2" from the sides of the XtremeBlock™ to allow the flashing tape to stick on to both the housewrap and the side flanges of the XtremeBlock™. If the housewrap is already installed before the installation of the XtremeBlock™, slice a horizontal cut in line with the top of the XtremeBlock™ face and slide the XtremeBlock™ underneath the housewrap.



STEP 3 : Place flashing tape over side flanges of the XtremeBlock™ to seal the housewrap to the XtremeBlock™ side flanges. If you have had to slit the housewrap at the top of the XtremeBlock™ then you should also place a strip of flashing tape along the top flange of the XtremeBlock™ to seal the horizontal cut in the housewrap (not shown at left). DO NOT tape the bottom of the XtremeBlock™ to the housewrap as you would block the interior weep holes from functioning.



STEP 4 : Finish the installation by fitting the siding - plank or panel - around the perimeter of the XtremeBlock™ ensuring that the top cut is kept a minimum of 3/8" up from the top flange of the XtremeBlock™. At the sides of the XtremeBlock™ the siding may be brought as close as is practical. Ensure that the siding portion below the XtremeBlock™ is behind the bottom drip flange of the XtremeBlock™. Apply caulk down each side of the XtremeBlock™ between the siding and the XtremeBlock™. DO NOT caulk along the bottom edges of the XtremeBlock™.

See Ex. J, <https://www.tamlyn.com/dev/xtremeblocks.html#> (last accessed on March 20, 2023).

STEP 1



STEP 2



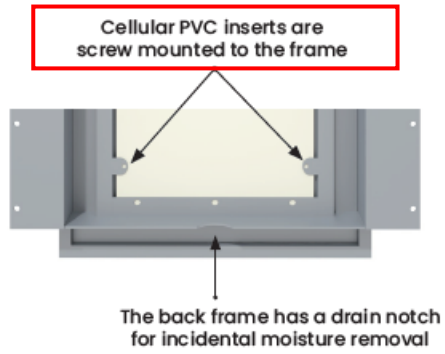
STEP 3



STEP 4



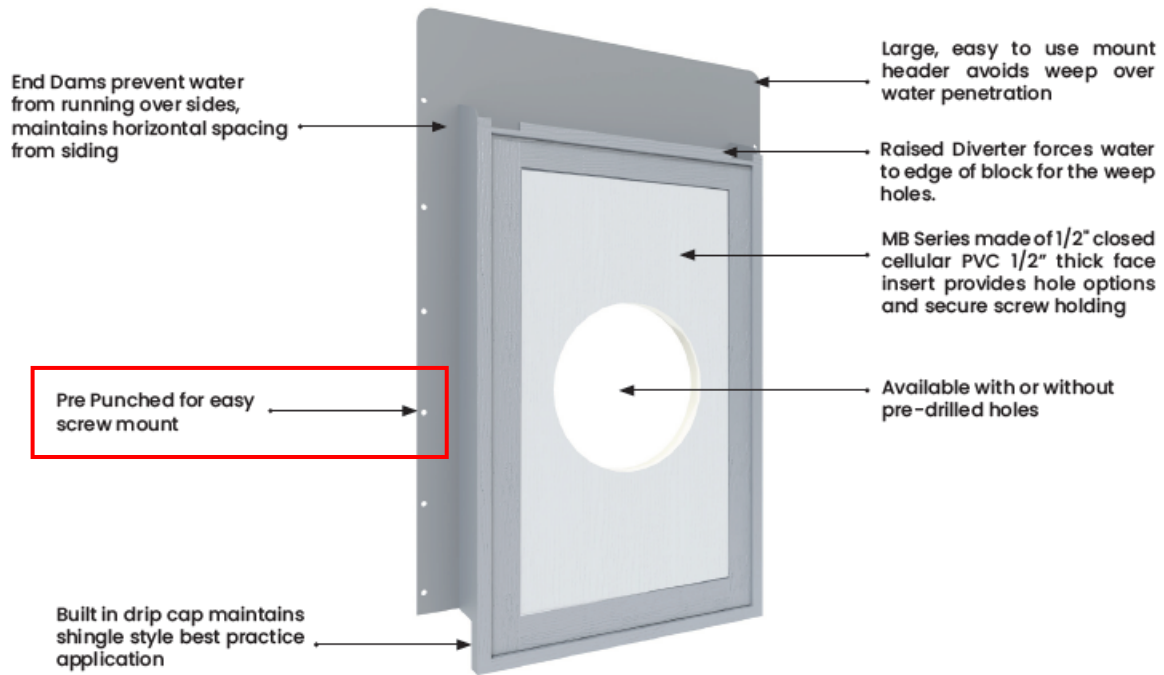
Ex. H, 242.



DESIGN FEATURES

Whenever real workable solutions are needed, count on TAMLYN to provide the answers. The XtremeBlock™ is made from predominately recycled materials in our continuing efforts to be good stewards of the environment. It has been uniquely designed to maximize moisture movement away from the envelope of the structure while offering a pleasing appearance. Lightweight, easy to install, primed and ready to paint or prefinished to match the siding color.

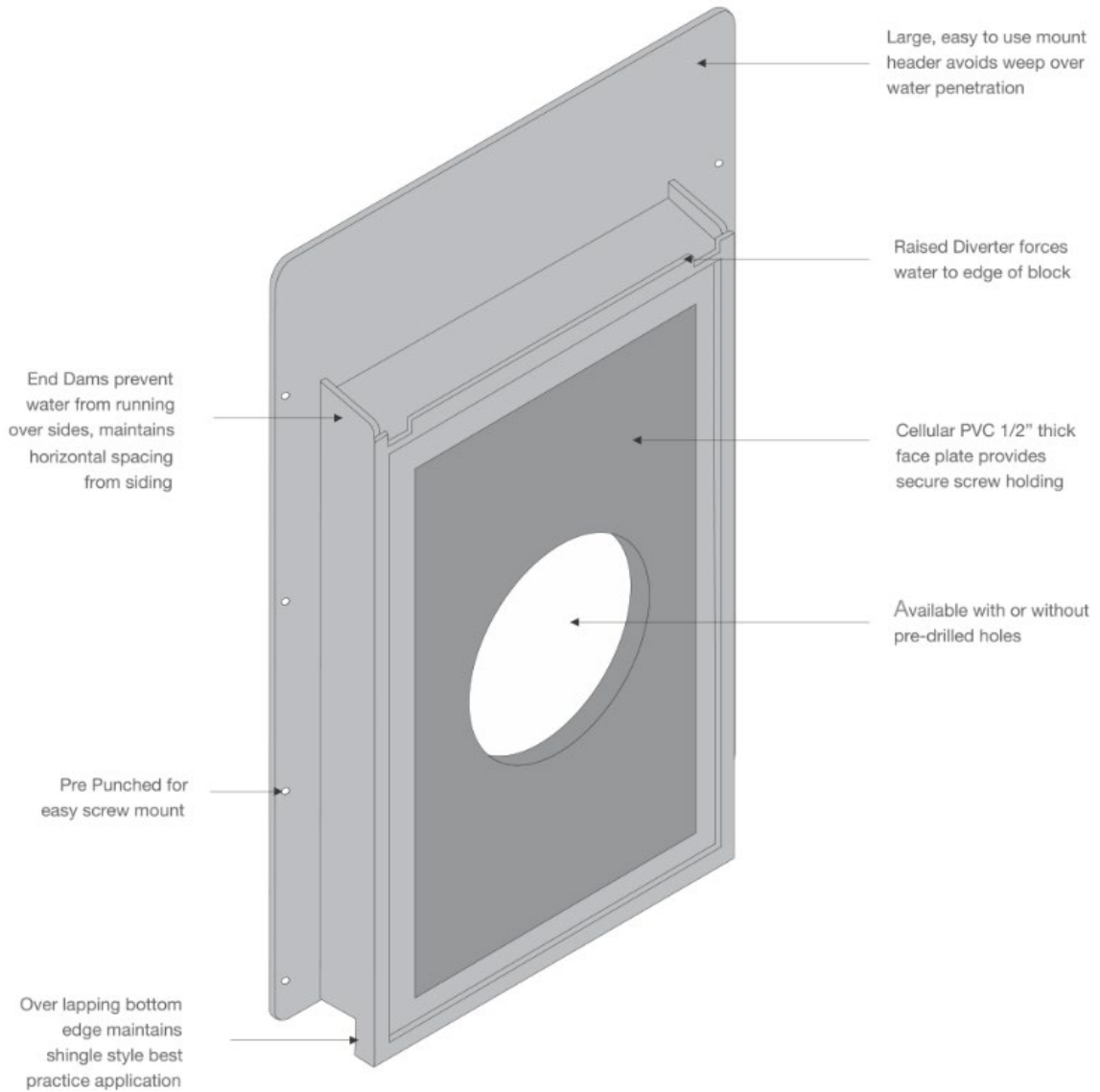
XtremeBlock™ is the prime choice from top to bottom and front to back for these reasons.



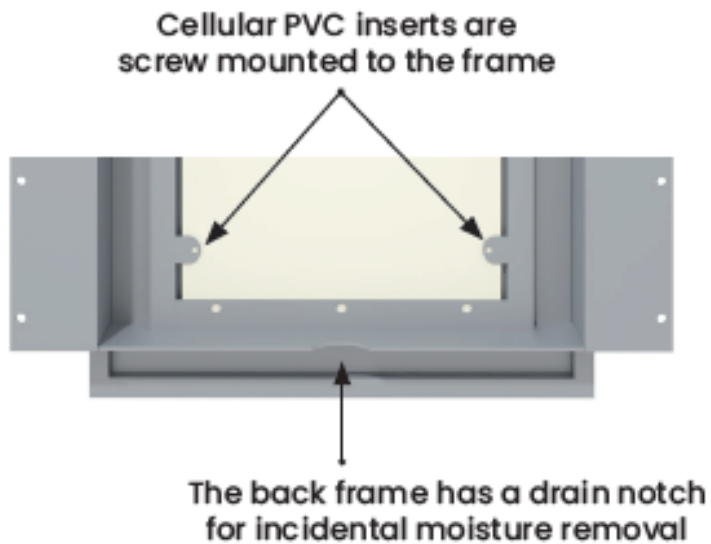
MP Series is a one piece injection molded XtremeBlock™ available in 6" x 8" with 5-1/2" x 3-1/4" electric box hole and 8" x 12" with 4" round hole.

Ex. H, 240; *see also* Ex. I.

26. Tamlyn's XTREMEBLOCK™ products include a mounting bracket for attaching to the wall of the building.

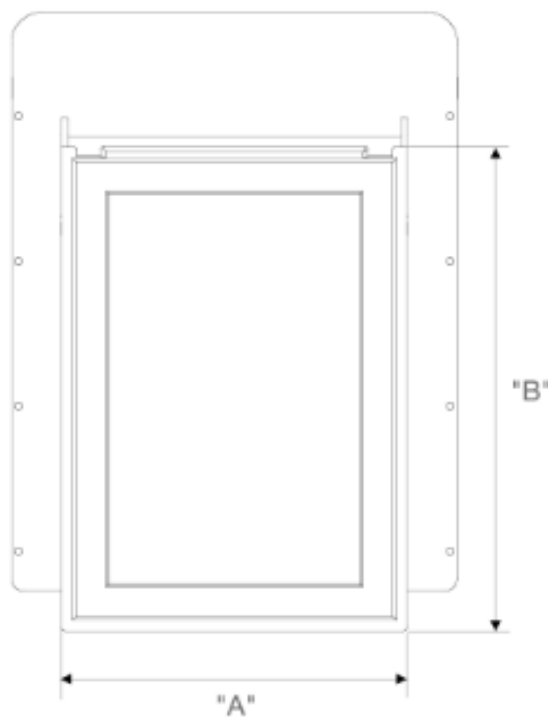


See Ex. J, <https://www.tamlyn.com/dev/xtremeblocks.html#> (last accessed on March 20, 2023).



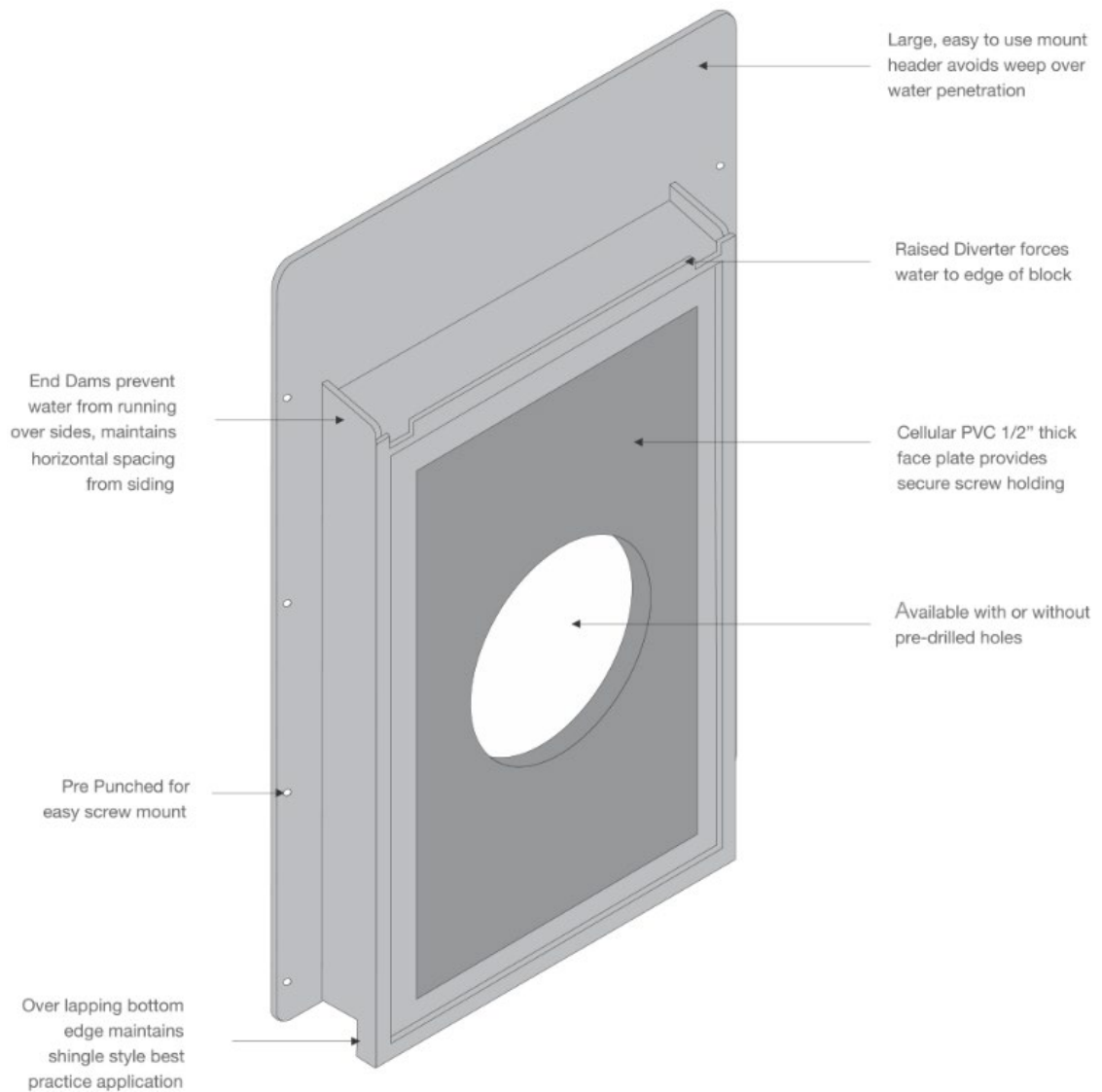
Ex. H, 240.

27. Tamlyn's XTREMEBLOCK™ products include a mounting bracket defining a mounting bracket opening for the fixture to fit through the mounting bracket.

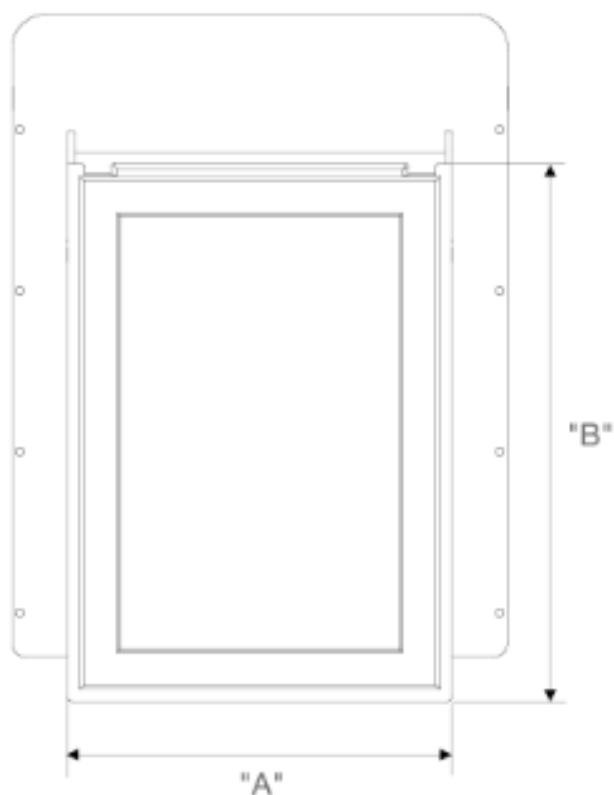


See Ex. J, <https://www.tamlyn.com/dev/xtremeblocks.html#> (last accessed on March 20, 2023).

28. Tamlyn's XTREMEBLOCK™ products include a flashing component extending from the mounting bracket over the opening.

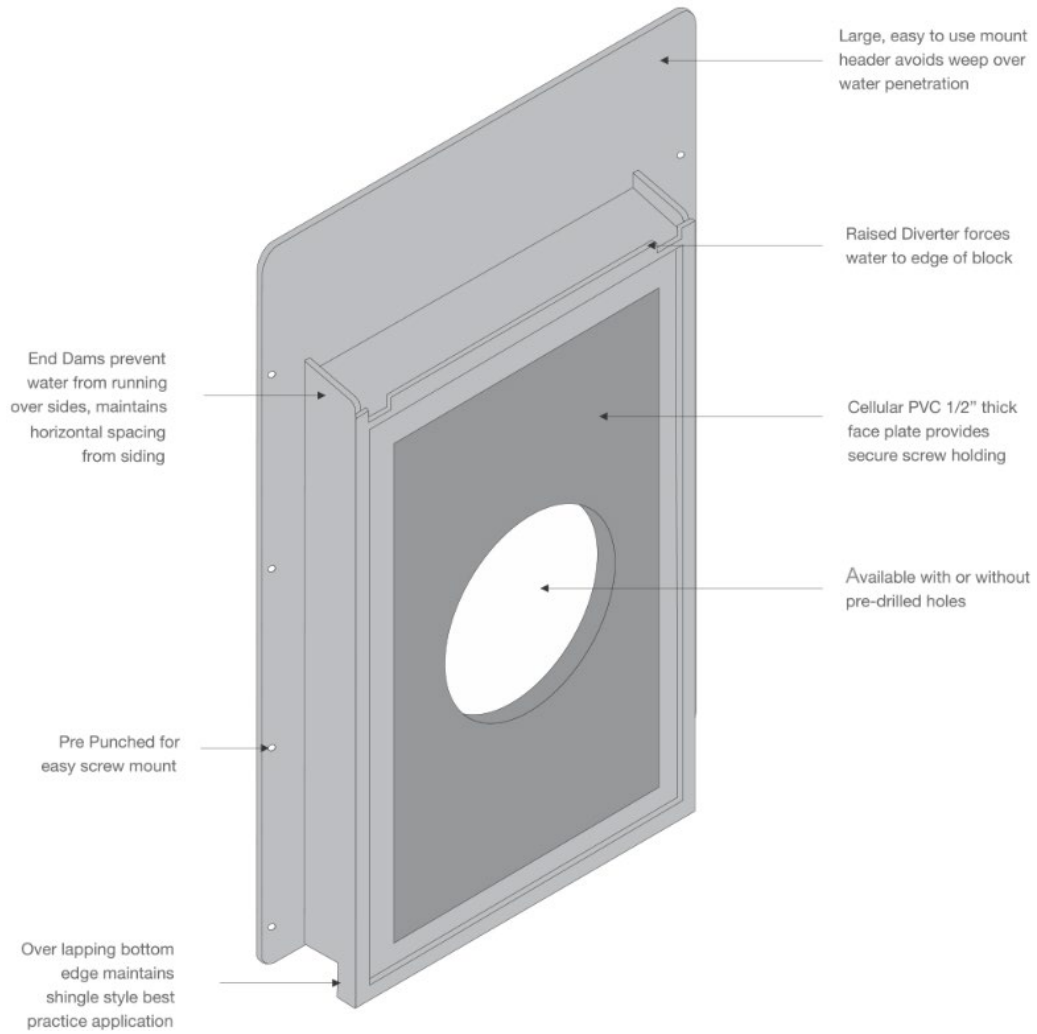


See id.



See id.

29. Tamlyn's XTREMEBLOCK™ products include a detachable mounting block connected to the mounting bracket and defining a second opening for receiving a fixture.



See *id.*

INSERT MOUNT BLOCKS



See Ex. K, <https://tamlyn.com/products-page.php?p=xb> (last accessed: March 20, 2023).

HOW TO ORDER AND SPECIFY XTREMEBLOCK™

MB812-1R-XX

BASE CODE

HOLE
OPTION

COLOR
OPTIONS

BASE CODE	DESCRIPTION
MB812	8" x 12" with insert -all options up to max 4" hole
MB68	5-1/2" x 7-1/2" with insert -all options up to max 2" hole
MP68EB	5-1/2" x 7-1/2" with electric box cut - no options
MP8124R	8" x 12" with 4" round hole - no options

HOLE OPTION	DESCRIPTION
1R	1" round hole centered
15R	1-1/2" round hole centered
4R	4" round hole centered
SM	Split mount cut with 1" round hole
EB	Single electric box cut centered

COLOR OPTIONS	DESCRIPTION
XX	Specify color using our standard code

Ex. H, 240.

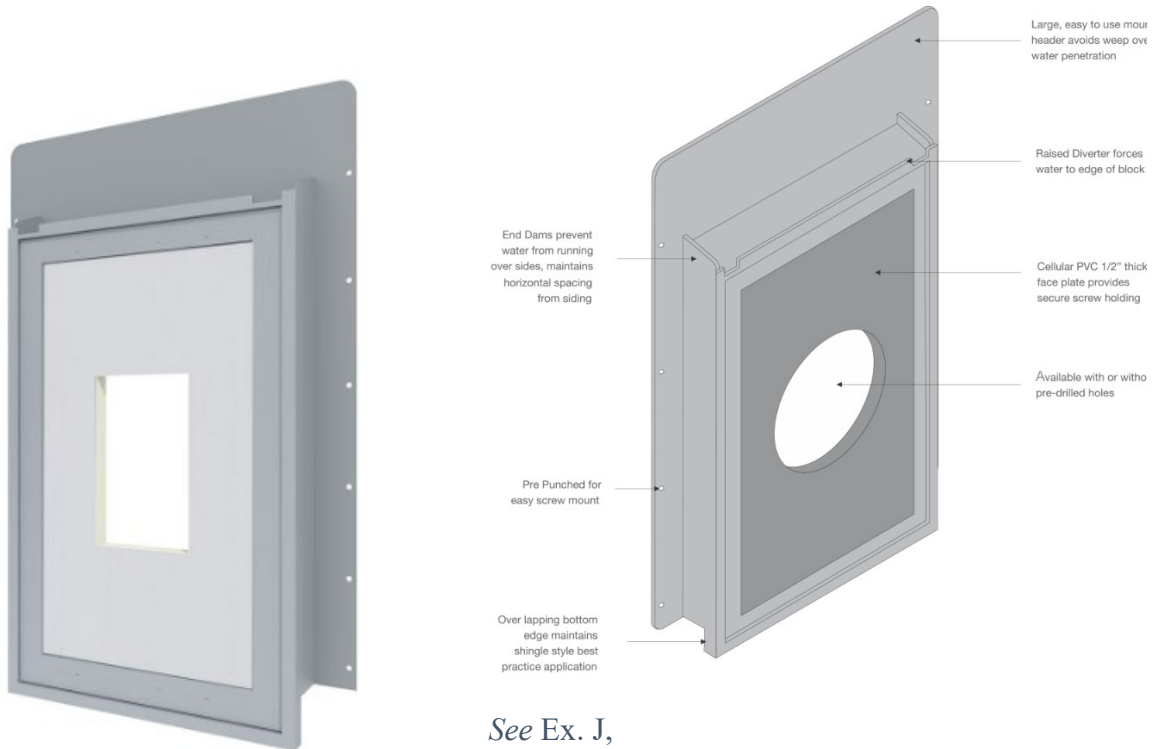
30. The flashing component has an angled top portion defining a cavity.



See Ex. K, <https://tamlyn.com/main-products-page.php?p=xb&i=0&s=InsertMountBlocks> (last accessed: March 20, 2023).

See Ex. L, <https://tamlyn.com/XB/index.htm> (last accessed: March 20, 2023).

31. The mounting block fits over the mounting bracket and has a top edge that fits into the cavity below the angled top portion so that the flashing component directs rain over said mounting block.



See Ex. J,
<https://www.tamlyn.com/dev/xtremeblocks.html#>
(last accessed on March 20, 2023).

See Ex. K, <https://tamlyn.com/main-products-page.php?p=xb&i=0&s=InsertMountBlocks> (last accessed: March 20, 2023).

32. Claim 18 of the '468 Patent recites:

18. A mounting bracket for use in providing protection to a fixture extending from an outside wall of a building through a mounting bracket opening and a mounting block that fits around the fixture, the mounting bracket comprising:

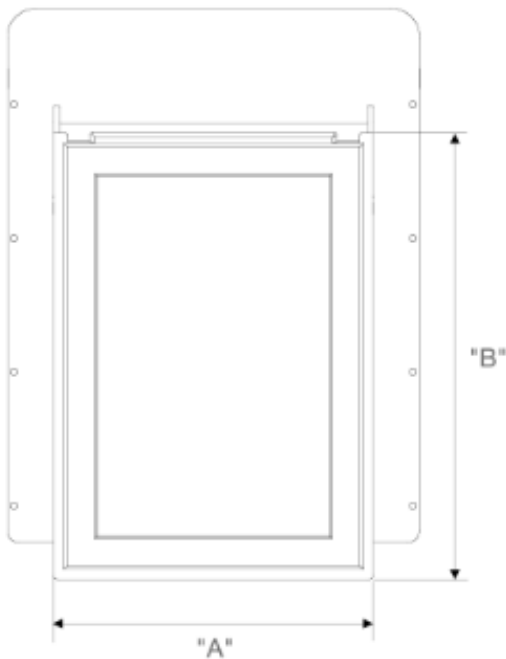
a front face;

a flashing component extending from said front face, said flashing component defining a drip cap for positioning over the fixture, said flashing component including:

an angled top portion that is planar; and

a bottom portion extending from said angled top portion substantially parallel to said front face defining a cavity for receiving the mounting block.

33. On information and belief, Tamlyn infringes Claim 18 by making, using, offering to sell, selling, and/or importing XTREMEBLOCK™ products. To the extent the preamble is limited, Tamlyn performs it. As shown in the examples below, Tamlyn's XTREMEBLOCK™ products include a mounting bracket for use in providing protection to a fixture extending from an outside wall of a building through a mounting bracket opening and a mounting block that fits around the fixture.



See Ex. J,
<https://www.tamlyn.com/dev/xtremeblocks.html#> (last accessed on March 20, 2023).

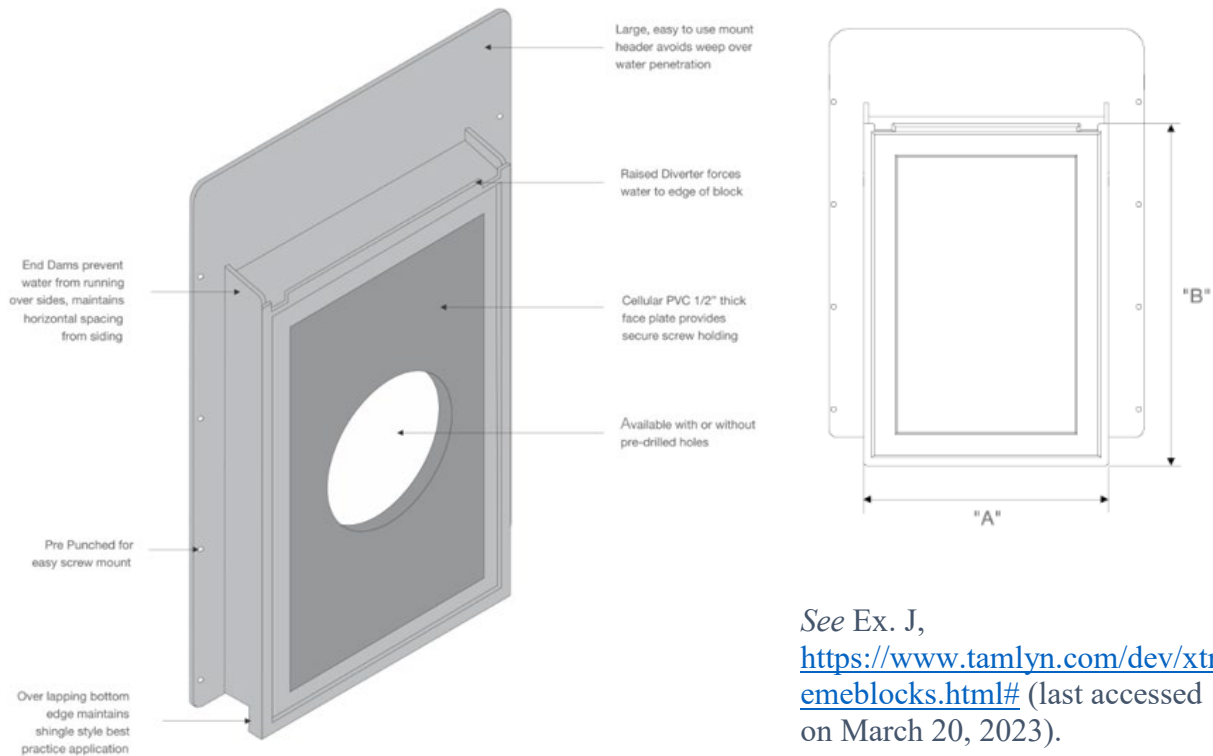


See Ex. L, <https://tamlyn.com/XB/index.html> (last accessed on March 21, 2023).



See Ex J.
<https://www.tamlyn.com/dev/xtremeblocks.html> (last accessed on March 21, 2023).

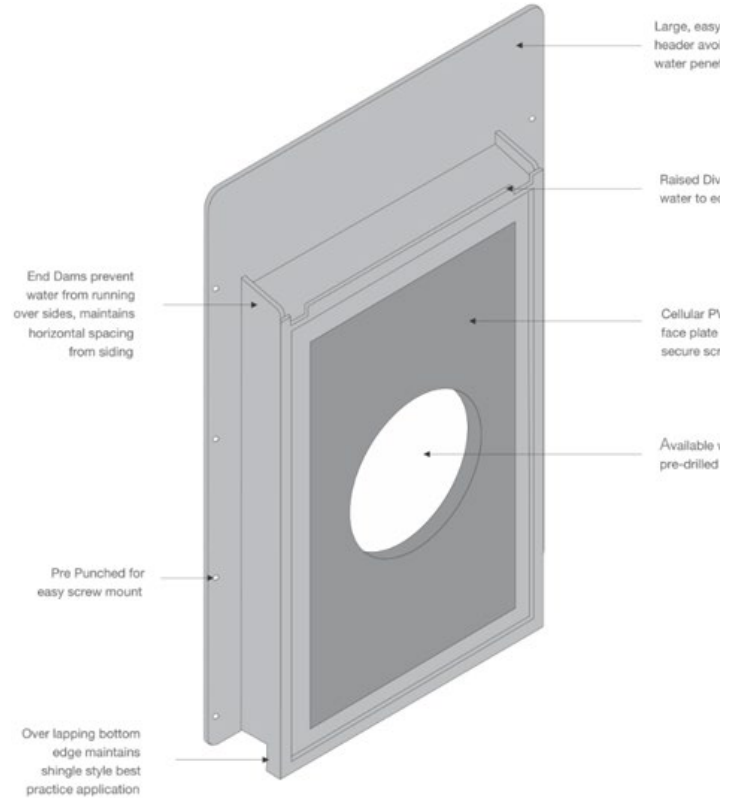
34. Tamlyn's XTREMEBLOCK™ products include a mounting bracket that includes a front face.



See Ex. J, <https://www.tamlyn.com/dev/xtr emeblocks.html#> (last accessed on March 20, 2023).

See Ex. J, <https://www.tamlyn.com/dev/xtremeblocks.html#> (last accessed on March 20, 2023).

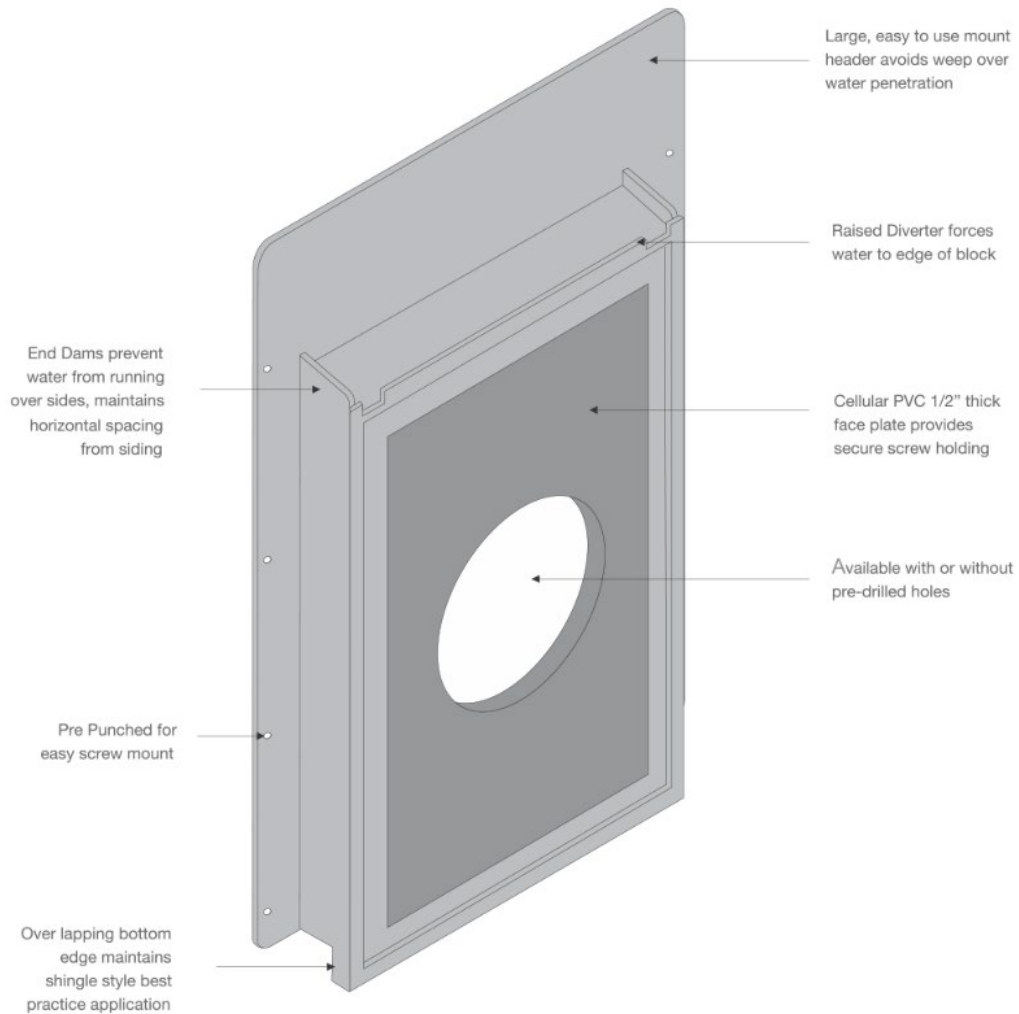
35. Tamlyn's XTREMEBLOCK™ products include a flashing component that extends from the front face and defines a drip cap over the fixture.



See Ex. K, <https://tamlyn.com/main-products-page.php?p=xb&i=0&s=InsertMountBlocks> (last accessed: March 20, 2023).

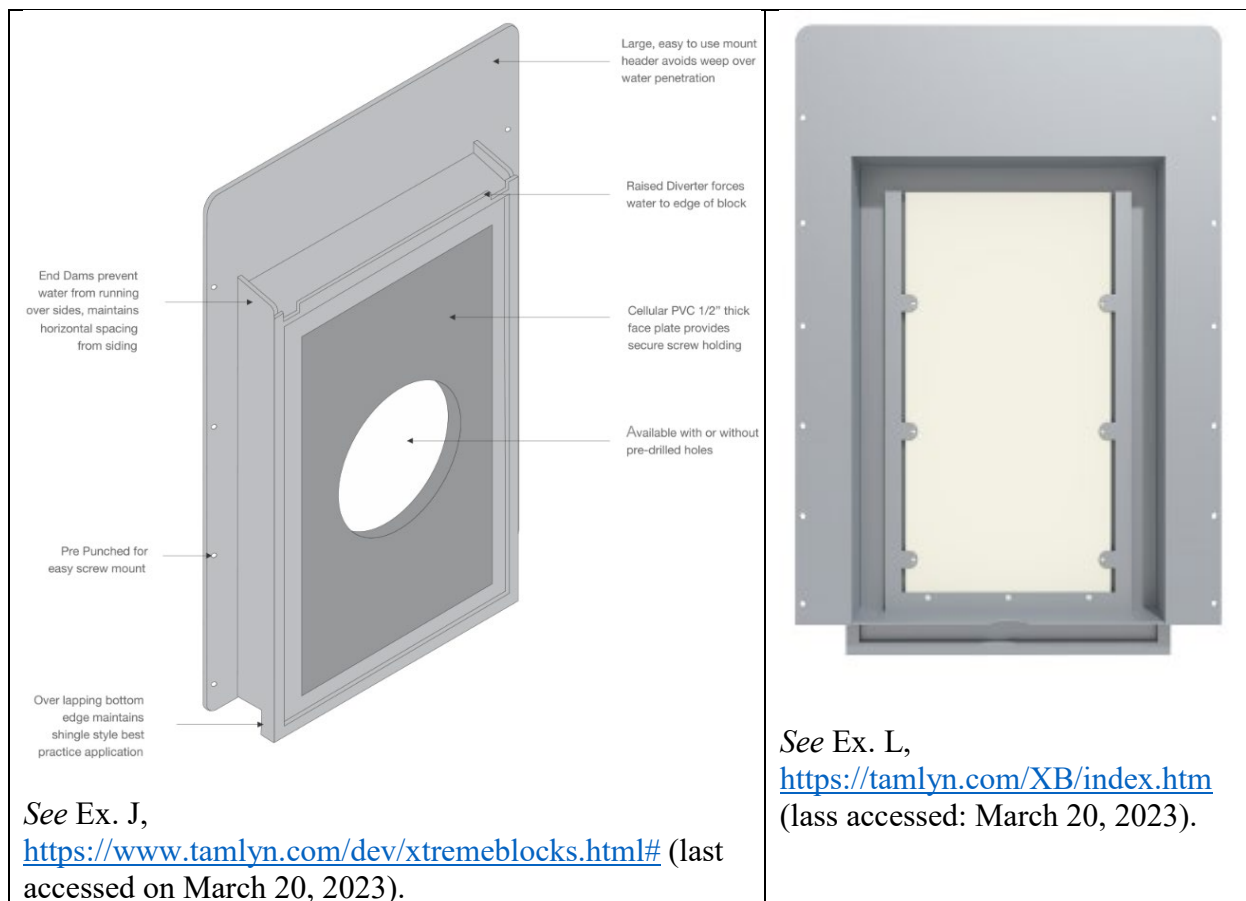
See Ex. J, <https://www.tamlyn.com/dev/xtremeblocks.html#> (last accessed on March 20, 2023).

36. Tamlyn's XTREMEBLOCK™ products include an angled top portion that is planar.



See Ex. J, <https://www.tamlyn.com/dev/xtremeblocks.html#> (last accessed on March 20, 2023).

37. Tamlyn's XTREMEBLOCK™ products include a bottom portion of the flashing component that extends from the angled top portion substantially parallel to the front face defining a cavity for receiving the mounting block.



38. Westlake, under 35 U.S.C. § 284, seeks damages adequate to compensate for the infringement of Tamlyn.

39. In addition to directly—literally and/or under the doctrine of equivalents—Tamlyn knowingly induces and/or contributes to the infringement of the '468 Patent, including at least Claims 1 and 18, by inducing and/or contributing to the infringement of customers and end-users of the Tamlyn's XTREMEBLOCK™ products.

40. Tamlyn has known of the '468 Patent since at least as early as December 16, 2022 (Ex. B), when Westlake notified Tamlyn of the '468 Patent in its December 16, 2022 letter.

41. On information and belief, Tamlyn's continuous infringement after obtaining knowledge of the '468 Patent amounts to willful infringement.

DAMAGES AND INJUNCTIVE RELIEF

42. Westlake incorporates herein each paragraph above by reference.

43. Tamlyn's continued infringement of the '468 Patent has damaged and will continue to damage Westlake in an amount to be proven at trial.

44. Unless and until it is enjoined by this Court, Tamlyn will continue to infringe the '468 Patent, directly—literally and/or under the doctrine of equivalents—or indirectly. Tamlyn's infringing acts are causing and will continue to cause Westlake irreparable harm, for which there is no adequate remedy at law. Under 35 U.S.C § 283, Westlake is entitled to a permanent injunction against further infringement.

45. Westlake is entitled to recover its reasonable and necessary attorney fees and costs of suit.

JURY DEMAND

46. Westlake respectfully requests a jury trial on any issue so triable by right.

PRAYER FOR RELIEF

WHEREFORE, Westlake respectfully requests the following relief:

A. Enter judgment that Tamlyn has infringed the '468 Patent and that such infringement was willful;

B. Enter an Order enjoining Tamlyn, its agents, officers, servants, employees, attorneys, and all persons in active concert or participation with Tamlyn who receive notice of the order from further infringement of the '468 Patent;

C. Award Westlake damages in an amount sufficient to compensate it for Tamlyn's infringement of the '468 Patent, including enhanced damages, together with pre-judgment and post-judgment interest and costs in accordance with 35 U.S.C. § 284;

D. Award Westlake an accounting for acts of infringement not presented at trial and an award by the Court of additional damages for any such acts of infringement;

E. Declare this case to be “exceptional” under 35 U.S.C. § 285 and award Westlake its attorney fees, expenses and costs incurred in this action; and

F. Award Westlake such further relief to which the Court finds Westlake entitled under law or equity.

Dated: April 5, 2023

Respectfully submitted,

By: /s/ B. Todd Patterson

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S.D. Texas Bar No. 17583
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Westlake Royal Building Products Inc.*