

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN
MILWAUKEE DIVISION

SWi, LLC,)	
)	
)	
Plaintiff,)	
)	
v.)	Case No. 2:24-cv-00110
)	Jury Trial Requested
)	
A to Z Quality Fencing, LLC,)	
)	
Defendant.)	

COMPLAINT

Plaintiff, for his Complaint, alleges as follows:

THE PARTIES

1. Plaintiff, SWi, LLC (“SWi” or “Plaintiff”), is a Wyoming limited liability company having a place of business at 5920 West Yellowstone Highway, Casper, Wyoming 82604.

2. On information and belief, defendant A to Z Quality Fencing, LLC (“A to Z” or “Defendant”) is a Wisconsin limited liability company having a place of business at 5717 Black Walnut Drive, Hartford, Wisconsin 53027.

JURISDICTION AND VENUE

3. This is a civil action for patent infringement arising under the patent laws of the United States, United States Code, Title 35 including, without limitation, Sections 271, 281, 283, 284 and 285, and subject matter jurisdiction of this court is conferred by United States Code, Title 28, Section 1338(a).

4. This Court has personal jurisdiction over defendant A to Z because A to Z is a Wisconsin limited liability company and because A to Z conducts continuous and systematic business within Wisconsin and within this district from its principal place of business in Hartford, Wisconsin, and has committed infringing acts within Wisconsin and within this district.

5. Venue is proper in this district under 28 U.S.C. §1400(b) because Defendant A to Z Quality Fencing, LLC is a Wisconsin limited liability company and therefore resides in Wisconsin.

STATEMENT OF FACTS

6. Plaintiff repeats and re-alleges each and every allegation of the paragraphs above as though fully set forth herein.

7. SWi is the lawful owner of United States Patent No. 10,954,687, entitled “Fence Installation Method” (“the ’687 patent”).

8. The ’687 patent has been duly examined and issued by the United States Patent and Trademark Office (“USPTO”).

9. A true and correct copy of the ’687 patent is attached as Exhibit A.

10. As the owner of the ’687 patent, SWi is authorized and has standing to bring legal action to enforce all rights arising under the ’687 patent.

11. The ’687 patent claims include methods for installing a fence.

12. Defendant A to Z was first registered as a Wisconsin limited liability company on September 20, 2002, and its registered agent is Renee Smith, 5717 Black Walnut Drive, Hartford Wisconsin, 53027-8500.

13. Upon information and belief, Aaron Smith is the Owner of Defendant A to Z.

14. Defendant A to Z operates a website at the domain atozqualityfencing.com.

15. Defendant A to Z installs fences, including installing fences using post-drivers where a piston drives a post vertically into the ground to create solid and stable fences. An outer covering of vinyl, aluminum, or cedar wood slides over the post. See, <https://atozqualityfencing.com/how-a-post-driver-revolutionized-our-fencing-business/>.

16. Upon information and belief, A to Z calls its process of installing fences using post-drivers to drive a post vertically into the ground and where an outer covering of vinyl, aluminum, or cedar wood slides over the post “No Mess, No Dig Fence Installation.”

17. Defendant A to Z’s website at <https://atozqualityfencing.com/how-a-post-driver-revolutionized-our-fencing-business/> describes the “No Mess, No Dig Fence Installation” and demonstrates use of a cylindrical galvanized steel posts or beams, i.e. post or beams without longitudinal channels, that are advanced into a ground surface so the cylindrical beams or posts attain a substantially vertical orientation.

18. Defendant A to Z’s website at <https://atozqualityfencing.com/how-a-post-driver-revolutionized-our-fencing-business/> demonstrates that high-density stiffeners (donuts) are placed on the cylindrical beams or posts and then a fence post sleeve or tube is a first tube is slid over the cylindrical beams or posts so that the fence post sleeve or tube automatically attains the substantially vertical orientation.

19. Defendant A to Z’s website at <https://atozqualityfencing.com/how-a-post-driver-revolutionized-our-fencing-business/> demonstrates that fence rails are fit between the steel posts by inserting the fence rails through holes in the fence post sleeves or tubes.

20. Defendant A to Z’s website at <https://atozqualityfencing.com/how-a-post-driver-revolutionized-our-fencing-business/> states: “we manufacture high-quality fence materials and

make them available to other professional fence installers and DIY homeowners so they can use this process.”

21. Defendant A to Z also operates a division called “A to Z Fence Supplies” that makes A to Z’s fence supplies available to other contractors and DIYers throughout Minnesota and Wisconsin.

22. Upon information and belief, Defendant A to Z has sold or is planning to sell posts or beams having longitudinal channels, e.g “I-beams”, for use in conjunction with its “No Mess, No Dig Fence Installation” where an outer covering of vinyl, aluminum, or cedar wood slides over the I-beam.

23. Upon information and belief, when Defendant A to Z uses posts or beams having longitudinal channels, e.g “I-beams”, for use in conjunction with its “No Mess, No Dig Fence Installation” where an outer covering of vinyl, aluminum, or cedar wood slides over the I-beam, no stiffeners (donuts) are utilized.

24. Defendant A to Z published a Facebook post on or about January 21, 2024 showing posts or beams having longitudinal channels, e.g “I-beams”, attached as Exhibit B. The January 21, 2024 Facebook post attached as Exhibit B states, in part, “We are introducing our line of post and rail stiffeners. From 5x5, 4x4, 2.5x2.5 and even 2x2 post stiffeners to any rail stiffener you can imagine. Give us a call for pricing. Also looking for distributors around the country.”

25. Exhibit B further includes comments to the Facebook post, including a comment from Donald Conelly asking: “Aren’t these patent protected?” and another comment from Kevin Nelson stating in part “I think the patent is more for the process?”

26. Exhibit B further includes responses to the comments from Donald Connelly and Kevin Nelson from Aaron Smith, who, upon information and belief, is an owner of Defendant A to Z.

27. Exhibit B demonstrates that Aaron Smith responded to Kevin Nelson stating: “Kevin Nelson even the process won’t hold up. It’s been used all over our industry for many years...advent of social media just made it more prevalent. People should want competition in materials not try to monopolize it.”

28. On information and belief, Defendant A to Z has begun selling or is planning to sell and/or install and/or facilitate the installation of fencing systems posts or beams having longitudinal channels, e.g “I-beams” wherein a first I-beam that includes a first longitudinal channel and a first top is advanced into a ground surface so the first I-beam attains a substantially vertical orientation.

29. On information and belief, Defendant A to Z has begun selling or is planning to sell and/or install and/or facilitate the installation of fencing systems posts or beams having longitudinal channels, e.g “I-beams” wherein a second I-beam that includes a second longitudinal channel is advanced into the ground surface distal from the first I-beam so the second I-beam attains the substantially vertical orientation where the second longitudinal channel that faces toward the first longitudinal channel of the first I-beam.

30. On information and belief, Defendant A to Z has begun selling or is planning to sell and/or install and/or facilitate the installation of fencing systems posts or beams having longitudinal channels, e.g “I-beams” wherein a first tube is slid over the first I-beam so that the first tube automatically attains the substantially vertical orientation, the first tube defining a first hole, the first hole opening toward the first longitudinal channel.

31. On information and belief, Defendant A to Z has begun selling or is planning to sell and/or install and/or facilitate the installation of fencing systems posts or beams having longitudinal channels, e,g “I-beams” wherein a second tube is placed over the second I-beam so that the second tube automatically attains the substantially vertical orientation, the second tube defining a second hole, the second hole opening toward the second longitudinal channel, and the second tube includes a second top.

32. On information and belief, Defendant A to Z has begun selling or is planning to sell and/or install and/or facilitate the installation of fencing systems posts or beams having longitudinal channels, e,g “I-beams” wherein a first rail end of an elongated, self-supporting first rail is inserted through the first hole defined by the first tube so the first rail end enters the first longitudinal channel of the first I-beam, and the first rail includes a second rail end distal from the first rail end.

33. On information and belief, Defendant A to Z has begun selling or is planning to sell and/or install and/or facilitate the installation of fencing systems posts or beams having longitudinal channels, e,g “I-beams” wherein the second rail end of the first rail is inserted through the second hole defined by the second tube.

34. On information and belief, Defendant A to Z has begun selling or is planning to sell and/or install and/or facilitate the installation of fencing systems posts or beams having longitudinal channels, e,g “I-beams” wherein the second tube on the second I-beam is moved so the second rail end moves with the second tube in the second hole and so that the second rail end enters the second longitudinal channel from above and moves vertically downward within the second longitudinal rail.

35. On January 22, 2024, legal counsel for Plaintiff SWi sent correspondence to defendant A to Z, demanding that they cease infringement of the '687 patent.

36. Defendant A to Z directly infringes one or more claims of the '687 patent when selling or installing its “No Mess, No Dig Fence Installation” with posts or beams having longitudinal channels, e,g “I-beams.”

37. Defendant A to Z indirectly infringes one or more claims of the '687 patent when it sells posts or beams having longitudinal channels, e,g “I-beams” where an outer covering of vinyl, aluminum, or cedar wood slides over the I-beam for installation by others.

COUNT I – INFRINGEMENT OF U.S. PATENT NO. 10,954,687

38. Plaintiff repeats and re-alleges each and every allegation of the paragraphs above as though fully set forth herein.

39. Defendant A to Z infringed, and is currently infringing, at least claims 1, 4-8, 10, 13-18 and 20 of the '687 patent in violation of 35 U.S.C. § 271(a) by using and selling, without license or authority, the “No Mess, No Dig Fence Installation” with posts or beams having longitudinal channels, e,g “I-beams”, which practices the claimed methods of the '687 patent.

40. Defendant A to Z has actively induced infringement, and is currently actively inducing infringement, of at least claims 1, 4-8, 10, 13-18 and 20 of the '687 patent in violation of 35 U.S.C. § 271(b) by promoting, advertising, instructing, facilitating, and supporting others, without license or authority, to use and sell the “No Mess, No Dig Fence Installation” with posts or beams having longitudinal channels, e,g “I-beams”, which practices the claimed methods of the '687 patent.

41. Defendant A to Z has contributed to infringement, and is currently contributing to infringement, of at least claims 1, 4-8, 10, 13-18 and 20 of the '687 patent in violation of 35 U.S.C. § 271(c) by selling and/or offering to sell and/or importing into the United States, without

license or authority, posts or beams having longitudinal channels, e.g “I-beams” for performing the “No Mess, No Dig Fence Installation” with at least fence post sleeves or tubes, which practices the claimed methods of the ’687 patent.

42. The posts or beams having longitudinal channels, e.g “I-beams” together with at least fence post sleeves or tubes constitute a material part of performing at least claims 1, 4-8, 10, 13-18 and 20 of the ’687 patent, are especially made or especially adapted for use in an infringement of at least claims 1, 6, 7, 8 and 9 of the ’687 patent.

43. Defendant A to Z was aware of the ’687 patent when defendant offered for sale posts or beams having longitudinal channels, e.g “I-beams” for performing the “No Mess, No Dig Fence Installation,” which practices the claimed methods of the ’687 patent.

44. On information and belief, defendant specifically intends to induce infringement of the ’687 patent and knows it will induce acts that constitute infringement of the ’687 patent.

45. Defendant engaged in the foregoing conduct with respect to the ’687 patent during the term of the patent and without authority from plaintiff SWi.

46. Defendant’s infringement of one or more claims of the ’687 patent has been and will continue to be willful, deliberate and intentional.

47. As a direct and proximate result of defendants’ infringement of one or more claims of the ’687 patent, plaintiff SWi has been and will continue to be irreparably damaged and deprived of its rights in the ’687 patent in amounts not yet determined, and for which plaintiff SWi is entitled to relief.

PRAYER FOR RELIEF

WHEREFORE, plaintiff Swi prays for a judgment that:

- A. Defendant has infringed the ’687 patent;
- B. Defendant’s infringement of the ’687 patent is willful;

C. Defendant, its officers, directors, employees, agents, subsidiaries, licensees, servants, successors and assigns, and any and all persons acting in privity or in concert or participation with such defendant, be permanently enjoined from infringement of the '687 patent under 35 U.S.C. § 283;

D. Plaintiff be awarded all damages adequate to compensate plaintiff for Defendant's infringement of the '687 patent, and such damages be trebled under 35 U.S.C. § 284 and awarded to Plaintiff, with pre-judgment and post-judgment interest as allowed by law;

E. This case be adjudged an exceptional case under 35 U.S.C. § 285, and Plaintiff be awarded attorneys' fees, expert witness fees, costs, and all expenses incurred in this action, with interest;

F. Plaintiff be awarded all actual and compensatory damages; and

G. Plaintiff be awarded such other and further relief as the Court deems just and proper.

JURY DEMAND

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiff demands a trial by jury on all issues triable by jury.

Date: January 26, 2024

Respectfully submitted,

s/Aaron T. Olejniczak
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VERIFICATION

Verification of Pleading

Declaration under Penalty of Perjury Form

by Party

SWi, LLC v. A to Z Quality Fencing, LLC

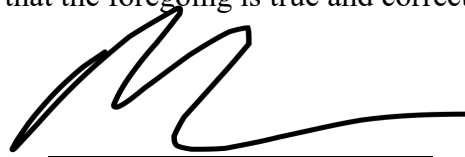
I, Mark Olson, declare I am a Principal of SWi, LLC, Plaintiff in the above-entitled matter.

I have read the foregoing Complaint and know the contents thereof.

The same is true of my own knowledge, except as to those matters which are therein stated on information and belief, and, as to those matters, I believe it to be true.

I declare under penalty of perjury that the foregoing is true and correct.

Date: January 26, 2024



Mark Olson
SWi, LLC