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17 UNITED STATES DISTRICT COURT
18 DISTRICT OF NEVADA
19

20 ESCO CORPORATION

21 Plaintiff,

22 v.

23 CASHMAN EQUIPMENT COMPANY,
24 CATERPILLAR GLOBAL MINING LLC,
25 CATERPILLAR INC., and RAPTOR
MINING PRODUCTS INC.

26 Defendants.

Case No.:

COMPLAINT FOR PATENT INFRINGEMENT
AND DEMAND FOR JURY TRIAL

27 Plaintiff ESCO Corporation ("ESCO"), by and through its undersigned counsel, for its
28

1 Complaint against Defendants Cashman Equipment Company (“Cashman”), Caterpillar Global
2 Mining LLC (Caterpillar Global”), Caterpillar Inc. (“Caterpillar”), and Raptor Mining Products
3 Inc. (“Raptor”) (collectively “Defendants”)¹, hereby demand a jury trial and allege as follows:

4 **JURISDICTION AND VENUE**

5 1. This is an action for patent infringement arising under the patent laws of the
6 United States, 35 U.S.C. § 1 *et seq.*, and particularly 35 U.S.C. § 271 *et seq.*

7 2. This Court has subject matter jurisdiction over this dispute pursuant to 28 U.S.C.
8 §§ 1331 and 1338(a).

9 3. This Court has personal jurisdiction over the Caterpillar Defendants because, *inter*
10 *alia*, the Caterpillar Defendants’ products, including the LM Series ground engaging tool system
11 having the R180 locking system and/or the CapSure® locking system (collectively, the
12 “Caterpillar Defendants’ locking systems”), have been and are sold in, distributed to and/or
13 shipped into the State of Nevada, and because upon information and belief the Caterpillar
14 Defendants have done and are doing business in the State of Nevada.

15 4. This Court has personal jurisdiction over Raptor because, *inter alia*, Raptor’s
16 products, including the Predator® system, have been and are sold in, distributed to and/or
17 shipped into the State of Nevada. Upon information and belief, Raptor has knowingly and
18 intentionally placed its products, including the Predator® system, into the stream of commerce
19 through established distribution channels expecting them to be shipped into and purchased by
20 customers in this judicial district.

21 5. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391(b)-(c) and
22 § 1400(b).

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¹ Cashman, Caterpillar and Caterpillar Global are collectively referred to herein as “Caterpillar Defendants.”

THE PARTIES

6. ESCO is a corporation organized and existing under the laws of the State of Oregon and having a principal place of business at 2141 N.W. 25th Avenue, Portland, Oregon 97210.

7. On information and belief, Cashman is a corporation organized and existing under the laws of Nevada and having a principal place of business located at 3300 St. Rose Parkway, Henderson, Nevada 89052.

8. On information and belief, Caterpillar Global is a corporation organized and existing under the laws of Delaware and having a principal place of business located at 1 Bucyrus Way, Oak Creek, Wisconsin 53154.

9. On information and belief, Caterpillar is a corporation organized and existing under the laws of Delaware and having a principal place of business located at 100 N.E. Adams Street, Peoria, Illinois 61629.

10. On information and belief, Raptor is a corporation organized and existing under the laws of Canada and having a principal place of business located at 15712 112 Avenue N.W. Edmonton, Alberta, Canada T5M 2W1.

BACKGROUND

11. ESCO is a leading global developer and manufacturer of highly engineered ground engaging tools, wear parts and replacement products used in resource mining, infrastructure, and industrial applications that are essential to the productivity of ESCO's customers' machines. Amongst many other products, ESCO designs, manufactures, and sells ground engaging tools.

12. ESCO is the owner by assignment of U.S. Patent No. 8,689,472 ("the '472 patent").

13. The Caterpillar Defendants manufacture, import, offer to sell, and/or sell the Caterpillar Defendants' locking systems for heavy machinery as well as products that incorporate the Caterpillar Defendants' locking systems.

1 14. On information and belief, Raptor manufactures, imports, offers to sell, and sells
2 the Predator® system for heavy machinery and equipment for various uses.

3 15. On information and belief, the structure and operation of at least one of the
4 Caterpillar Defendants' locking systems and the Predator® system are the same design. On
5 information and belief, the locking mechanisms utilized in at least one of the Caterpillar
6 Defendants' locking systems and the Predator® system are the same design.

7 16. On information and belief, at least Caterpillar and Raptor have been acting in
8 concert with one another with respect to the actions complained of herein.

9 17. On information and belief, Cashman has been and still offers for sale and sells the
10 Caterpillar Defendants' locking systems and the Predator® system for heavy machinery as well
11 as products that incorporate these systems.

12 **COUNT I – INFRINGEMENT OF U.S. PATENT NO. 8,689,472**

13 18. Paragraphs 1-17 are realleged and reincorporated by reference as if fully set forth
14 herein.

15 19. At 12:00 a.m. EDT on April 8, 2014 [9:00 p.m. PDT on April 7, 2014], the United
16 States Patent and Trademark Office duly and legally issued the '472 patent entitled "Wear
17 Assembly." ESCO is the owner of the '472 patent by virtue of assignment of all rights, title, and
18 interest to the '472 patent, including all rights to recover for all infringements thereof.

19 20. On information and belief, the Caterpillar Defendants are infringing the '472
20 patent literally, directly, contributorily, by way of inducement, and/or under the doctrine of
21 equivalents by making, using, offering to sell, selling, and/or importing products that are covered
22 by one or more valid claims of the '472 patent. The present infringing acts include, but are not
23 limited to, manufacturing, importing, offers to sell and/or sales of the Caterpillar Defendants'
24 locking systems and their associated products.

25 21. On information and belief, Raptor and Cashman are infringing the '472 patent
26 literally, directly, contributorily, by way of inducement, and/or under the doctrine of equivalents
27 by making, using, offering to sell, selling, and/or importing products that are covered by one or
28 more valid claims of the '472 patent. The present infringing acts include, but are not limited to,

1 manufacturing, importing, offers to sell and/or sales of the Predator® system and its associated
2 products.

3 22. ESCO is and will continue to be damaged by the Defendants' infringement.

4 23. On information and belief, Defendants' continued infringement of the '472 patent
5 is willful.

6 24. The Defendants' acts of infringement have been without express or implied
7 license by ESCO, are in violation of ESCO's rights, and will continue unless enjoined by this
8 Court.

9 25. ESCO is and will continue to be irreparably harmed by the Defendants'
10 infringement of the '472 patent.

11 **DEMAND FOR JURY TRIAL**

12 26. ESCO is and will continue to be irreparably harmed by Defendants' acts of
13 infringement. Pursuant to Federal Rule of Civil Procedure 38 and the Seventh Amendment to the
14 Constitution of the United States of America, ESCO hereby demands a trial by jury on all issues
15 raised in this action that are so triable.

16 **PRAYER FOR RELIEF**

17 **WHEREFORE**, the Plaintiff ESCO prays that this Court award to it the following relief:

- 18 A. A declaration that Defendants have been and are still infringing valid
19 claims of the '472 patent literally, directly, contributorily, by way of
20 inducement, and/or under the doctrine of equivalents;
- 21 B. An injunction pursuant to Federal Rule of Civil Procedure 65 that those
22 subject to the injunction cease and desist from infringing the claims of the
23 '472 patent literally, directly, contributorily, by way of inducement, and/or
24 under the doctrine of equivalents;
- 25 C. An Order that Defendants notify purchasers and users of the infringing
26 products that the products infringe the '472 patent and that Defendants
27 recall all infringing products sold or otherwise distributed;
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- 1 D. An Order directing Defendants to provide an accounting to determine the
2 damages suffered by Plaintiff as a result of Defendants' infringing conduct
3 before it shall cease and desist, such damages of Plaintiff including, but
4 not limited to, its lost profits and no less than a reasonable royalty;
- 5 E. An Order directing Defendants to pay Plaintiff the amount of damages that
6 it has sustained as a result of Defendants' acts of patent infringement, and
7 that such damages be trebled for willfulness, pursuant to 35 U.S.C. § 284;
- 8 F. That Plaintiff be awarded its fees and costs, including its attorneys' fees
9 pursuant to 35 U.S.C. § 285, and pre-judgment interest and post-judgment
10 interest; and
- 11 G. That this Court award Plaintiff such other and further relief as the Court
12 deems just and proper.

13 Dated this 7th day of April 2014.

14 WATSON ROUNDS

15 /s/ Michael D. Rounds

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