

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

CERTAINTEED CORPORATION,

Plaintiff,

v.

OWENS CORNING,

Defendant.

Civil Action No. _____

Demand for Jury Trial

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff CertainTeed Corporation (“CertainTeed”) files this Complaint for Patent Infringement against Owens Corning (“Defendant”) and, in support thereof, alleges as follows:

THE PARTIES

1. Plaintiff CertainTeed Corporation is a corporation organized under the laws of Delaware with a principal place of business at 750 East Swedesford Road, Valley Forge, PA 19482.

2. Upon information and belief, Defendant Owens Corning is a corporation organized under the laws of Delaware with a principal place of business at One Owens Corning Parkway, Toledo, OH 43659. Defendant has appointed The Corporation Trust Company, 1209 Orange Street, Wilmington, DE 19801 as its agent for service of process.

NATURE OF THE ACTION

3. This is an action for patent infringement, arising pursuant to the patent laws of the United States, 35 U.S.C. §§ 1, *et seq.* and seeking damages and injunctive relief pursuant to 35 U.S.C. §§ 281-285.

JURISDICTION AND VENUE

4. Subject matter jurisdiction is proper in this Court pursuant to 28 U.S.C. §§ 1331 and 1338(a).

5. The Court has personal jurisdiction over Defendant because Defendant has committed and continues to commit acts of infringement in violation of 35 U.S.C. § 271 in this District, and places infringing products into the stream of commerce, with the knowledge or understanding that such products are sold in this District. Such acts by Defendant cause injury to CertainTeed within this District. The Court further has personal jurisdiction over Defendant because Defendant is a resident of this District.

6. Venue is proper in this jurisdiction pursuant to 28 U.S.C. §§ 1391(b) and (c) and 28 U.S.C. § 1400(b).

STATEMENT OF THE FACTS

7. On August 24, 2010, U.S. Patent No. 7,781,046 (“the ‘046 Patent”), entitled “Shingle with Reinforcement Layer” was duly and legally issued by the United States Patent & Trademark Office. A true and accurate copy of the ‘046 Patent is attached as Exhibit A.

8. On February 26, 2013, U.S. Patent No. 8,383,228 (“the ‘228 Patent”), entitled “Shingle with Reinforcement Layer” was duly and legally issued by the United States Patent & Trademark Office. A true and accurate copy of the ‘228 Patent is attached as Exhibit B.

9. On April 2, 2013, U.S. Patent No. 8,409,689 (“the ‘689 Patent”), entitled “Shingle with Reinforcement Layer” was duly and legally issued by the United States Patent & Trademark Office. A true and accurate copy of the ‘689 Patent is attached as Exhibit C.

10. On November 26, 2013, U.S. Patent No. 8,592,025 (“the ‘025 Patent”), entitled “Shingle with Reinforcement Layer” was duly and legally issued by the United States Patent & Trademark Office. A true and accurate copy of the ‘025 Patent is attached as Exhibit D.

11. On December 31, 2013, U.S. Patent No. 8,615,968 (“the ‘968 Patent”), entitled “Shingle with Reinforcement Layer” was duly and legally issued by the United States Patent & Trademark Office. A true and accurate copy of the ‘968 Patent is attached as Exhibit E.

12. CertainTeed, by assignment, owns all right, title, and interest in and to the ‘046 Patent, the ‘228 Patent, the ‘689 Patent, the ‘025 Patent, and the ‘968 Patent (collectively, “the Asserted Patents”).

13. CertainTeed is a leading North American manufacturer of building materials including roofing, siding, trim, fence, railing, decking, insulation, gypsum, and ceiling products. Among other things, CertainTeed manufactures and sells roofing products, including shingles, for the commercial and residential markets.

14. CertainTeed developed, manufactures, and sells a line of innovative shingle products (the “Impact Resistant” or “IR” shingles) covered by one or more claims of the Asserted Patents.

15. Defendant is a competitor of CertainTeed and is engaged in the business of manufacturing building materials including, among other things, roofing products.

16. Defendant has directly infringed, or induced or contributed to the infringement of the Asserted Patents by making, using, selling, or offering for sale in this judicial district and elsewhere certain roofing products, including its TruDefinition® Duration Series Shingles with SureNail® Technology (“SureNail® Shingles”) and TruDefinition® Duration STORM®

Impact-Resistant Shingles with SureNail® and WeatherGuard® Technology (“STORM® Shingles”) products, which practice at least one claim of the Asserted Patents.

17. Upon information and belief, Defendant sells or offers for sale its SureNail® Shingles and/or STORM® Shingles to third party companies and/or individuals for resale, offer for resale, use, and/or installation. Resale, offer for resale, use, and/or installation of the SureNail® Shingles and/or STORM® Shingles by a third party company or individual constitute direct infringement of one or more claims of the Asserted Patents. Upon information and belief, Defendant promotes, contracts with, or provides instructions to said third party companies and/or individuals encouraging or requiring the resale, offer for resale, use, and/or installation of the SureNail® Shingles and/or STORM® Shingles, knowing that such acts constitute direct infringement of the Asserted Patents.

18. Certain claims of the Asserted Patents are directed to a “roof having a shingle” (e.g., Claim 13 of the ‘228 Patent), a “roof with a plurality of shingles” (e.g., Claim 6 of the ‘025 Patent), and an “array of shingles applied to a roof” (e.g., Claim 1 of the ‘968 Patent). Defendant’s SureNail® Shingles and/or STORM® Shingles constitute a material part of the invention described by such certain claims, are especially made or adapted for use in infringement of such certain claims, and have no substantial non-infringing uses.

19. At least as early as August 29, 2013, CertainTeed gave Defendant notice of infringement of the ‘046 Patent, the ‘228 Patent, and the ‘689 Patent, and notice of the patent applications or publications that led to the ‘025 Patent and the ‘968 Patent, in a conference call between inside counsel for CertainTeed and Defendant. Further, CertainTeed marks at least some of its IR shingles with at least one of the patent numbers of the Asserted Patents.

20. At least as early as August 29, 2013, Defendant has had knowledge of the '046 Patent, the '228 Patent, the '689 Patent, and the patent applications or publications that led to the '025 Patent and the '968 Patent. Upon information and belief, Defendant has had knowledge of at least the '046 Patent since much earlier than August 29, 2013, perhaps as early as August 24, 2010, the date of issuance of the '046 Patent. Upon information and belief, Defendant has had knowledge of the '228 Patent, the '689 Patent, the '025 Patent, and the '968 Patent on or shortly after their issuance dates because it was monitoring the progress of the patent applications related to the '046 Patent. Defendant also has knowledge of the Asserted Patents as of the date of the filing of this Complaint.

21. Defendant's infringement has damaged CertainTeed, in an amount yet to be ascertained, and has irreparably harmed, and continues to irreparably harm, CertainTeed, including by usurping CertainTeed's sales and business opportunities.

COUNT I – INFRINGEMENT OF U.S. PATENT NO. 7,781,046

22. CertainTeed realleges and incorporates by reference the allegations stated in paragraphs 1 through 18 of this Complaint as if fully set forth herein.

23. Defendant has directly infringed and continues to infringe one or more claims of the '046 Patent, either literally or under the doctrine of equivalents, by making, using, offering for sale, or selling certain roofing products, including its SureNail® Shingles and STORM® Shingles products, which embody each element of at least one claim of the '046 Patent, without the authorization, consent, or permission of CertainTeed.

24. Defendant has knowingly and intentionally induced, and continues to knowingly and intentionally induce, others in this judicial district and throughout the United States to perform acts that directly infringe at least one claim of the '046 patent, such as to use, sell, offer for sale, and/or import roofing products; Defendant knows such acts by others infringe the '046

Patent; and Defendant took action intending to cause others to directly infringe, including by selling or offering for sale SureNail® Shingles and STORM® Shingles products to third party companies and/or individuals, and explicitly promoting, instructing, or requiring said third party companies and/or individuals to resell, offer for resale, use, and/or install the SureNail® Shingles and/or STORM® Shingles, knowing that such acts constitute direct infringement of the '046 Patent.

25. Defendant's past and continuing infringement of the '046 Patent has damaged CertainTeed in an amount to be determined at trial.

26. Defendant's past and continuing infringement of the '046 Patent has irreparably harmed CertainTeed, and Defendant's infringement will continue unless enjoined by this Court pursuant to 35 U.S.C. § 283.

27. Upon information and belief, such infringement has been, and will continue to be, willful, making this an exceptional case and entitling CertainTeed to increased damages and reasonable attorneys' fees pursuant to 35 U.S.C. §§ 284 and 285.

COUNT II – INFRINGEMENT OF U.S. PATENT NO. 8,383,228

28. CertainTeed realleges and incorporates by reference the allegations stated in paragraphs 1 through 18 of this Complaint as if fully set forth herein.

29. Defendant has directly infringed and continues to infringe one or more claims of the '228 Patent, either literally or under the doctrine of equivalents, by making, using, offering for sale, or selling certain roofing products, including its SureNail® Shingles and STORM® Shingles products, which embody each element of at least one claim of the '228 Patent, without the authorization, consent, or permission of CertainTeed.

30. Defendant has knowingly and intentionally induced, and continues to knowingly and intentionally induce, others in this judicial district and throughout the United States to

perform acts that directly infringe at least one claim of the '228 patent, such as to use, sell, offer for sale, and/or import roofing products; Defendant knows such acts by others infringe the '228 Patent; and Defendant took action intending to cause others to directly infringe, including by selling or offering for sale SureNail® Shingles and STORM® Shingles products to third party companies and/or individuals, and explicitly promoting, instructing, or requiring said third party companies and/or individuals to resell, offer for resale, use, and/or install the SureNail® Shingles and/or STORM® Shingles, knowing that such acts constitute direct infringement of the '228 Patent.

31. Defendant has contributed to the infringement of the '228 Patent and continues to do so by making, using, offering for sale, or selling SureNail® Shingles and STORM® Shingles products to customers, knowing that these products directly infringe the '228 Patent, constitute a material part of the invention, were especially made or especially adapted for use in infringement of the '228 Patent, and have no substantial non-infringing uses.

32. Defendant's past and continuing infringement of the '228 Patent has damaged CertainTeed in an amount to be determined at trial.

33. Defendant's past and continuing infringement of the '228 Patent has irreparably harmed CertainTeed, and Defendant's infringement will continue unless enjoined by this Court pursuant to 35 U.S.C. § 283.

34. Upon information and belief, such infringement has been, and will continue to be, willful, making this an exceptional case and entitling CertainTeed to increased damages and reasonable attorneys' fees pursuant to 35 U.S.C. §§ 284 and 285.

COUNT III – INFRINGEMENT OF U.S. PATENT NO. 8,409,689

35. CertainTeed realleges and incorporates by reference the allegations stated in paragraphs 1 through 18 of this Complaint as if fully set forth herein.

36. Defendant has directly infringed and continues to infringe one or more claims of the ‘689 Patent, either literally or under the doctrine of equivalents, by making, using, offering for sale, or selling certain roofing products, including its SureNail® Shingles and STORM® Shingles products, which embody each element of at least one claim of the ‘689 Patent, without the authorization, consent, or permission of CertainTeed.

37. Defendant has knowingly and intentionally induced, and continues to knowingly and intentionally induce, others in this judicial district and throughout the United States to perform acts that directly infringe at least one claim of the ‘689 patent, such as to use, sell, offer for sale, and/or import roofing products; Defendant knows such acts by others infringe the ‘689 Patent; and Defendant took action intending to cause others to directly infringe, including by selling or offering for sale SureNail® Shingles and STORM® Shingles products to third party companies and/or individuals, and explicitly promoting, instructing, or requiring said third party companies and/or individuals to resell, offer for resale, use, and/or install the SureNail® Shingles and/or STORM® Shingles, knowing that such acts constitute direct infringement of the ‘689 Patent.

38. Defendant’s past and continuing infringement of the ‘689 Patent has damaged CertainTeed in an amount to be determined at trial.

39. Defendant’s past and continuing infringement of the ‘689 Patent has irreparably harmed CertainTeed, and Defendant’s infringement will continue unless enjoined by this Court pursuant to 35 U.S.C. § 283.

40. Upon information and belief, such infringement has been, and will continue to be, willful, making this an exceptional case and entitling CertainTeed to increased damages and reasonable attorneys' fees pursuant to 35 U.S.C. §§ 284 and 285.

COUNT IV – INFRINGEMENT OF U.S. PATENT NO. 8,592,025

41. CertainTeed realleges and incorporates by reference the allegations stated in paragraphs 1 through 18 of this Complaint as if fully set forth herein.

42. Defendant has directly infringed and continues to infringe one or more claims of the '025 Patent, either literally or under the doctrine of equivalents, by making, using, offering for sale, or selling certain roofing products, including its SureNail® Shingles and STORM® Shingles products, which embody each element of at least one claim of the '025 Patent, without the authorization, consent, or permission of CertainTeed.

43. Defendant has knowingly and intentionally induced, and continues to knowingly and intentionally induce, others in this judicial district and throughout the United States to perform acts that directly infringe at least one claim of the '025 patent, such as to use, sell, offer for sale, and/or import roofing products; Defendant knows such acts by others infringe the '025 Patent; and Defendant took action intending to cause others to directly infringe, including by selling or offering for sale SureNail® Shingles and STORM® Shingles products to third party companies and/or individuals, and explicitly promoting, instructing, or requiring said third party companies and/or individuals to resell, offer for resale, use, and/or install the SureNail® Shingles and/or STORM® Shingles, knowing that such acts constitute direct infringement of the '025 Patent.

44. Defendant has contributed to the infringement of the '025 Patent and continues to do so by making, using, offering for sale, or selling SureNail® Shingles and STORM® Shingles

products to customers, knowing that these products directly infringe the '025 Patent, constitute a material part of the invention, were especially made or especially adapted for use in infringement of the '025 Patent, and have no substantial non-infringing uses

45. Defendant's past and continuing infringement of the '025 Patent has damaged CertainTeed in an amount to be determined at trial.

46. Defendant's past and continuing infringement of the '025 Patent has irreparably harmed CertainTeed, and Defendant's infringement will continue unless enjoined by this Court pursuant to 35 U.S.C. § 283.

47. Upon information and belief, such infringement has been, and will continue to be, willful, making this an exceptional case and entitling CertainTeed to increased damages and reasonable attorneys' fees pursuant to 35 U.S.C. §§ 284 and 285.

COUNT V – INFRINGEMENT OF U.S. PATENT NO. 8,615,968

48. CertainTeed realleges and incorporates by reference the allegations stated in paragraphs 1 through 18 of this Complaint as if fully set forth herein.

49. Defendant has directly infringed and continues to infringe one or more claims of the '968 Patent, either literally or under the doctrine of equivalents, by making, using, offering for sale, or selling certain roofing products, including its SureNail® Shingles and STORM® Shingles products, which embody each element of at least one claim of the '968 Patent, without the authorization, consent, or permission of CertainTeed.

50. Defendant has knowingly and intentionally induced, and continues to knowingly and intentionally induce, others in this judicial district and throughout the United States to perform acts that directly infringe at least one claim of the '968 patent, such as to use, sell, offer for sale, and/or import roofing products; Defendant knows such acts by others infringe the '968

Patent; and Defendant took action intending to cause others to directly infringe, including by selling or offering for sale SureNail® Shingles and STORM® Shingles products to third party companies and/or individuals, and explicitly promoting, instructing, or requiring said third party companies and/or individuals to resell, offer for resale, use, and/or install the SureNail® Shingles and/or STORM® Shingles, knowing that such acts constitute direct infringement of the '968 Patent.

51. Defendant has contributed to the infringement of the '968 Patent and continues to do so by making, using, offering for sale, or selling SureNail® Shingles and STORM® Shingles products to customers, knowing that these products directly infringe the '968 Patent, constitute a material part of the invention, were especially made or especially adapted for use in infringement of the '968 Patent, and have no substantial non-infringing uses.

52. Defendant's past and continuing infringement of the '968 Patent has damaged CertainTeed in an amount to be determined at trial.

53. Defendant's past and continuing infringement of the '968 Patent has irreparably harmed CertainTeed, and Defendant's infringement will continue unless enjoined by this Court pursuant to 35 U.S.C. § 283.

54. Upon information and belief, such infringement has been, and will continue to be, willful, making this an exceptional case and entitling CertainTeed to increased damages and reasonable attorneys' fees pursuant to 35 U.S.C. §§ 284 and 285.

PRAYER FOR RELIEF

WHEREFORE, CertainTeed respectfully requests that the Court:

(1) Declare that the claims of the '046 Patent, the '228 Patent, the '689 Patent, the '025 Patent, and the '968 Patent are valid and enforceable;

(2) Declare that Defendant has directly infringed, induced others to infringe, and/or contributed to the infringement of the '046 Patent, the '228 Patent, the '689 Patent, the '025 Patent, and the '968 Patent, and that Defendant has willfully infringed CertainTeed's patent rights, as asserted herein;

(3) Declare that Defendant has no legal or equitable defenses to CertainTeed's allegations of infringement;

(4) Preliminarily and permanently enjoin Defendant under 35 U.S.C. § 283 from directly infringing, inducing others to infringe, or contributing to the infringement of the '046 Patent, the '228 Patent, the '689 Patent, the '025 Patent, and the '968 Patent, including by specifically prohibiting Defendant and its agents, servants, employees, affiliates, divisions, and subsidiaries, and those in association with them, from making, using, offering to sell, selling, and importing into the United States any product which falls within the scope of any claim of the '046 Patent, the '228 Patent, the '689 Patent, the '025 Patent, and the '968 Patent;

(5) Award CertainTeed damages in an amount to be proved at trial to compensate CertainTeed for damages caused by Defendant's direct and indirect infringement of the '046 Patent, the '228 Patent, the '689 Patent, the '025 Patent, and the '968 Patent;

(6) Award CertainTeed increased damages pursuant to 35 U.S.C. § 284;

(7) Award CertainTeed its attorneys' fees and litigation expenses, pursuant to 35 U.S.C. § 285;

(8) Award CertainTeed prejudgment interest and costs pursuant to 35 U.S.C. § 284;

(9) Award CertainTeed such other and further relief as the Court may deem appropriate.

JURY DEMAND

CertainTeed hereby demands trial by jury on all claims and issues so triable.

Dated: April 22, 2014

WOMBLE CARLYLE SANDRIDGE & RICE, LLP

/s/ Kristen Healey Cramer

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