

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK**

LIBERTY PUMPS, INC.,

Plaintiff,

v.

FRANKLIN ELECTRIC CO., INC.,

Defendant,

COMPLAINT

Civil Action No.

1. Plaintiff Liberty Pumps, Inc. (“Liberty”) files this Complaint for patent infringement against Defendant Franklin Electric Co., Inc. (“Franklin”).

PARTIES

2. Plaintiff Liberty is a corporation organized and existing under the laws of the State of New York, with its corporate headquarters located in Bergen, New York.

3. Upon information and belief, Defendant Franklin is a corporation organized and existing under the laws of the State of Indiana, with its corporate headquarters in Fort Wayne, Indiana.

JURISDICTION AND VENUE

4. This action arises under the patent laws of the United States, including 35 U.S.C. §§ 154 and 271. This Court has jurisdiction over the subject-matter of this action under 28 U.S.C. § 1338(a).

5. Venue is proper in the United States District Court for the Western District of New York pursuant to 28 U.S.C. § 1391 and 1400(b).

6. This Court has personal jurisdiction over Franklin because, upon information and belief, Franklin sells products, including products that are the subject of this patent infringement suit, to persons in New York and within this District. Upon information and belief, Franklin has purposefully availed itself of the benefits and protections of the laws of the State of New York through regular, systemic and continuous contacts with the State of New York and by regularly conducting business in the State of New York and in this District.

PATENTS-IN-SUIT

7. On September 3, 2013, the United States Patent and Trademark Office duly and legally issued to Donald M. Pohler United States Patent No. 8,523,532, entitled “Sewage Handling System, Cover, and Controls” (the “’532 Patent”). A true and correct copy of the ’532 Patent is attached hereto as Exhibit A.

8. On November 18, 2014, the United States Patent and Trademark Office duly and legally issued to Donald M. Pohler United States Patent No. 8,888,465, entitled “Sewage Handling System, Cover, and Controls” (the “’465 Patent”). A true and correct copy of the ’465 Patent is attached hereto as Exhibit B.

9. The ’532 Patent and the ’465 Patent together shall hereinafter be referred to as the “Patents-in-Suit.”

10. Liberty is the assignee and owner of all right, title, and interest in the Patents-in-Suit.

FIRST CAUSE OF ACTION
(Infringement of the ’532 Patent)

11. Plaintiff repeats, realleges, and incorporates hereunder by reference the allegations contained in paragraphs 1 through 10 above.

12. Upon information and belief, Franklin manufactures, uses, imports, sells and/or offers for sale products that infringe at least one or more claims of the '532 Patent.

13. Franklin's infringing products include without limitation the "LittleGiant Pit+Plus sewage basin" that, upon information and belief, is depicted in a Franklin brochure entitled "LittleGIANT PIT+PLUS PREMIUM SIMPLEX SYSTEMS".

14. Liberty has at all times complied with 35 U.S.C. § 287, by properly marking its products with the patent number.

15. Upon information and belief, Franklin has had actual knowledge of the '532 Patent.

16. With this knowledge, Franklin has intentionally, or with deliberate indifference, infringed claims of the '532 Patent.

17. Upon information and belief, Franklin's infringement is willful and deliberate.

18. As a direct and proximate result of Franklin's patent infringement, Liberty has been and continues to be injured and has sustained, and will continue to sustain, substantial damages in an amount not yet determined.

19. In addition, Liberty has and will continue to suffer irreparable harm as a direct and proximate cause of Franklin's acts of patent infringement, and Liberty has no adequate remedy at law.

SECOND CAUSE OF ACTION
(Infringement of the '465 Patent)

20. Plaintiff repeats, realleges, and incorporates hereunder by reference the allegations contained in paragraphs 1 through 19 above.

21. Upon information and belief, Franklin manufactures, uses, imports, sells and/or offers for sale products that infringe at least one or more claims of the '465 Patent.

22. Franklin's infringing products include without limitation the "LittleGiant Pit+Plus sewage basin" that, upon information and belief, is depicted in a Franklin brochure entitled "LittleGIANT PIT+PLUS PREMIUM SIMPLEX SYSTEMS".

23. Liberty has at all times complied with 35 U.S.C. § 287, by properly marking its products with the patent number.

24. Upon information and belief, Franklin has had actual knowledge of the '465 Patent.

25. With this knowledge, Franklin has intentionally, or with deliberate indifference, infringed claims of the '465 Patent.

26. Upon information and belief, Franklin's infringement is willful and deliberate.

27. As a direct and proximate result of Franklin's patent infringement, Liberty has been and continues to be injured and has sustained, and will continue to sustain, substantial damages in an amount not yet determined.

28. In addition, Liberty has and will continue to suffer irreparable harm as a direct and proximate cause of Franklin's acts of patent infringement, and Liberty has no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Liberty respectfully requests that this Court enter judgment in its favor and against Defendant Franklin, granting the following relief:

- a. Adjudging, finding, and declaring that Franklin has infringed claims of each of the Patents-in-Suit under 35 U.S.C. § 271;
- b. Awarding Liberty damages pursuant to 35 U.S.C. § 284;
- c. Awarding Liberty interest on its damages pursuant to 35 U.S.C. § 284;

- d. Adjudging, finding, and declaring that Franklin's infringement is willful and deliberate;
- e. Awarding Liberty enhanced damages pursuant to 35 U.S.C. § 284;
- f. Adjudging, finding, and declaring that Franklin's conduct renders this an exceptional case pursuant to 35 U.S.C. § 285;
- g. Awarding Liberty attorneys' fees pursuant to 35 U.S.C. § 285;
- h. Preliminarily and permanently enjoining Franklin and its subsidiaries, agents, officers, and employees, and all others acting in concert with them, from infringing the Patents-in-Suit; and
- i. Granting such other and further relief as this Court may deem just and proper.

JURY DEMAND

Liberty demands a jury trial on all issues that may be so tried.

Dated: October 23, 2015
Rochester, New York

HARRIS BEACH PLLC

By: s/Neal L. Slifkin
Neal L. Slifkin, Esq.
Laura W. Smalley, Esq.
Steven P. Nonkes, Esq.
Attorneys for Plaintiff
99 Garnsey Road
Pittsford, NY 14534
Telephone: 585-419-8800
nslifkin@harrisbeach.com
lsmalley@harrisbeach.com
snonkes@harrisbeach.com