

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF FLORIDA  
WEST PALM BEACH DIVISION**

**Case Number: 9:17-cv-80171**

Q.E.P.CO., INC., a Delaware corporation

Plaintiff,

v.

ACUFLOOR, LLC, a Texas limited liability  
company,

Defendant.

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**COMPLAINT FOR PATENT INFRINGEMENT**

**JURY TRIAL DEMANDED**

Plaintiff. Q.E.P. CO., INC., by and through undersigned counsel, brings this civil action for patent infringement against ACUFLOOR, LLC, and alleges as follows:

**PARTIES, JURISDICTION AND VENUE**

1. This is an action for patent infringement arising under the patent laws of the United States, 35 U.S.C. §§ 1 *et seq.* to enjoin and obtain damages resulting from ACUFLOOR's unauthorized manufacture, use, offer to sell and sale in the United States of tile leveling spacers and associated wedges in violation of Q.E.P.CO., Inc.'s rights under U.S. Patent No. 7,992,354.

2. Q.E.P.CO., Inc. ("QEP") is a Delaware Corporation with its principal place of business at 1001 Broken Sound Parkway, Boca Raton, Florida 33487.

3. ACUFLOOR, LLC., is a Texas Limited Liability Company currently having an address listed with the United States Patent and Trademark Office at 349 New Hope Road,

Sunnyvale, Texas, 75182. ACUFLOOR may be served by serving its registered agent, Joshua Aaron Bunch, at the same address.

4. ACUFLOOR is subject to personal jurisdiction because it operates, conducts, and engages in, or carries on business within this state, on a regular, continuous and systematic basis including offering for sale and selling the Accused Products within this state.

5. This Court has exclusive subject matter jurisdiction of the patent infringement count pursuant to 28 U.S.C. §1338(a) under the Patent Laws of the United States.

6. Venue is proper in this judicial district and division at least pursuant to 28 U.S.C. §1400(b) and 28 U.S.C. §1391(b) because ACUFLOOR has committed acts of infringement within this judicial district and division.

**FACTS COMMON TO AND APPLICABLE TO ALL COUNTS**

7. Prior to March 26, 2007, Robert C. Doda, Jr. invented a novel and non-obvious Device for Leveling and Aligning Tiles and Method for Leveling and Aligning Tiles.

8. Doda applied for and obtained United States Patent No. 7,992,354 entitled “Device for Leveling and Aligning Tiles and Method for Leveling and Aligning Tiles” which was duly and legally issued on August 9, 2011 (the ‘354 Patent). A true and correct copy of the ‘354 Patent is attached as Exhibit A.

9. Doda assigned all right, title and interest in and to the ‘354 Patent to QEP in March 24, 2008, which was recorded at the United States Patent and Trademark Office on March 24, 2008 at Reel 20754, Frame 561. A copy of the records of the United States Patent and Trademark Office relating to the activities referred to in this paragraph is attached as Exhibit B.

10. In general, non-legal terms, the ‘354 Patent relates to a device that is used to level tiles during installation thus preventing “lippage” or uneven tile heights.

11. In general, non-legal terms, ACUFLOOR sells tile spacers and wedges (hereafter Accused Products) used to level tiles during installation thus preventing “lippage” or uneven tile heights

12. On or about November 5, 2015, QEP. put ACUFLOOR on written notice that its Accused Products infringed the ‘354 patent by mailing ACUFLOOR an explanatory letter and including a copy of the ‘354 Patent.

13. The letter referred to in the immediately preceding paragraph was not returned by the United States Postal Service.

14. ACUFLOOR’s advertisements, including but not limited to information on its website, instructs persons on how to use Accused Products.

15. ACUFLOOR intends that its Accused Products be used for leveling tiles during installation and for preventing lippage.

16. ACUFLOOR intends that its customers use its Accused Products in accordance with one or more of claims 1-3 and 8 of the ‘354 Patent.

17. ACUFLOOR intended at least since the dates referred to in Paragraph 12, that its customers and third party users of its Accused Products operate such Accused Products in accordance with ACUFLOOR’s instructions.

18. ACUFLOOR does not advertise any use of the Accused Products other than for tile installation.

19. ACUFLOOR does not know of any use of the Accused Products other than for tile installation.

20. ACUFLOOR has, since at least as early as the date specified in Paragraph 12, intended that its customers and third party users of its Accused P products would directly infringe at least one of claims 1-3 and 8 of the '354 Patent.

21. ACUFLOOR has, since at least as early as the dates specified in Paragraph 12, acted with willful blindness as to whether or not its customers and third party users of its Accused Products would infringe at least one of claims 1-3 and 8 of the '354 Patent.

22. ACUFLOOR, since at least as early as the dates specified in Paragraph 12, had no knowledge of any use of its Accused Products other than to infringe at least one of c claims 1-3 and 8 of the '354 Patent.

23. ACUFLOOR's Accused Products, constitute a material part of the invention of at least one of claims 1-3 and 8 of the '354 Patent.

24. ACUFLOOR does not advertise any use of its Accused Products other than for tile installation.

25. ACUFLOOR does not know of any substantial use of its Accused Products other than for tile installation.

26. ACUFLOOR does not know of any substantial use of its Accused Products other than to infringe one or more claims of the '354 Patent.

27. There is no substantial use of the ACUFLOOR Accused Products other than to infringe one or more claims of the '354 Patent.

28. There is no substantial non-infringing use of the ACUFLOOR Accused Products.

29. ACUFLOOR's Accused Products are not staple articles of commerce.

30. ACUFLOOR's Accused Products, at least after the date specified in Paragraph 12 hereof, were especially sold to infringe at least one claim in the '354 Patent.

31. ACUFLOOR's Accused Products, at least after the date specified in Paragraph 12, were especially adapted, made and sold to provide system claimed in the '354 Patent.

32. ACUFLOOR's Accused Products at least after the date specified in Paragraph 12, were especially made or adapted and sold to be used to infringe one or more claims of the '354 Patent.

33. ACUFLOOR's Accused Products, at least after the date specified in Paragraph 12, were especially made or adapted and sold to enable users to make and use a system that falls within the scope of one or more claims of the '354 Patent.

34. ACUFLOOR's Accused Products are not staple articles of commerce having a substantial non-infringing use.

35. ACUFLOOR knew, at least as early as the dates specified in Paragraph 12, that its Accused Products are not staple articles of commerce having a substantial non-infringing use and are especially made or adapted to be used to infringe one or more claims of the '354 Patent.

### **COUNT I**

#### **ACCUFLOOR'S INDIRECT INFRINGEMENT (CONTRIBUTORY) OF U.S. PATENT NO. 7,992,354**

36. Q.E.P.CO., Inc. re-alleges paragraphs 1-35 as fully and completely as if set forth herein verbatim.

37. Beginning on or after August 9, 2011, ACUFLOOR offered for sale and/or sold the Accused Products.

38. Beginning on or after August 9, 2011, ACUFLOOR ACUFLOOR advertised the use of the Accused Products on its website for tile installation.

39. On information and belief, there are no known uses for the Accused Products other than to level tiles during installation thus preventing "lippage" or uneven tile heights.

40. ACUFLOOR does not advertise any use for the Accused Products other than to level tiles during installation thus preventing “lippage” or uneven tile heights.

41. On information and belief, ACUFLOOR intends that, the Accused Products are to be used during the installation of tiles to prevent “lippage” or uneven tile heights.

42. The intended combination of tiles and Accused Products directly infringes at least one of claims 1-3 and 8 of the ‘354 Patent.

43. Subsequent to August 9, 2011, ACUFLOOR has contributorily infringed at least claims 1-3 and 8 of the ‘354 Patent by the conduct described in this Count I in violation of 35 U.S.C. § 271(c).

44. Q.E.P.CO., Inc. has complied with the marking requirements of 35 U.S.C. § 287.

45. Q.E.P.CO., Inc. has put ACUFLOOR on actual notice of its infringing activities as alleged in this Count I.

46. The activities of ACUFLOOR as set forth in this Count I have been without license, permission or authorization from Q.E.P.CO., Inc.

47. The activities of ACUFLOOR as set forth in this Count I have been and continue to be to the injury and detriment of Q.E.P.CO., Inc. and irreparable harm to Q.E.P.CO., Inc.

48. The activities of ACUFLOOR as set forth in this Count I have been deliberate and willful.

49. Q.E.P.CO., Inc. has engaged the undersigned attorneys and has agreed to pay them a reasonable fee.

**COUNT II**

**ACUFLOOR'S INDIRECT INFRINGEMENT (INDUCEMENT) OF U.S. PATENT NO. 7,922,354**

50. Q.E.P.CO., Inc. re-alleges paragraphs 36 - 42 as fully and completely as if set forth herein verbatim.

51. Subsequent to August 9, 2011, ACUFLOOR ACUFLOOR has induced infringement of at least one of claims 1-3 and 8 of the '354 Patent by the conduct described in this Count II in violation of 35 U.S.C. § 271(b).

52. Q.E.P.CO., Inc. has complied with the marking requirements of 35 U.S.C. § 287.

53. Q.E.P.CO., Inc. has put ACUFLOOR on actual notice of its infringing activities as alleged in this Count II.

54. The activities of ACUFLOOR as set forth in this Count II have been without license, permission or authorization from Q.E.P.CO., Inc.

55. The activities of ACUFLOOR as set forth in this Count II have been and continue to be to the injury and detriment of Q.E.P.CO., Inc. and irreparable harm to Q.E.P.CO., Inc.

56. The activities of ACUFLOOR as set forth in this Count I have been deliberate and willful.

57. Q.E.P.CO., Inc. has engaged the undersigned attorneys and has agreed to pay them a reasonable fee.

**WHEREFORE, Q.E.P.CO., INC. PRAYS:**

A. For judgment that ACUFLOOR has indirectly infringed at least one claim of the '354 Patent;

B. For an accounting and an award of damages sufficient to compensate Q.E.P.CO., Inc. for the infringement but in no event less than a reasonable royalty;

C. That the Court Enter a Temporary Restraining Order, as well as Preliminary Injunction, in favor of Q.E.P.CO., Inc., enjoining ACUFLOOR and all other persons in active concert or participation with them, either directly or indirectly, from:

i. making, using, selling, importing, repairing, assembling or offering for sale “Accused Products” the use of which for their intended purpose result in infringement of any claim of the ‘354 patent;

ii. infringing any claim of the ‘354 patent;

iii. aiding, contributing, inducing other to and/or cooperating with third parties who make, use, sell, import, assemble or offer for sale parts or components that when finally assembled and/or used will infringe the ‘354 patent;

D. That the Court Enter a Permanent Injunction in favor of Q.E.P.CO., Inc. enjoining the patent infringement by ACUFLOOR;

E. That the Court determine that this is an exceptional case;

F. That the Court award Q.E.P.CO., Inc. its attorney fees under 35 U.S.C. § 285;

G. That the Court award Q.E.P.CO., Inc. its costs; and

H. For such other and further relief as to the Court appears just and proper.

### **DEMAND FOR JURY TRIAL**

Q.E.P.CO., Inc. demands a trial by jury on all claims so triable.

DATED: February 13, 2017

Respectfully submitted,

/s/ Jerold I. Schneider

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