

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION**

DELTA FAUCET COMPANY,)	
)	
Plaintiff,)	
)	CASE NO. 1:17-CV-1222
v.)	
)	JURY DEMAND
KOHLER CO.,)	
)	
Defendant.)	

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff, Delta Faucet Company (“Delta Faucet”), for its Complaint for Patent Infringement against Defendant Kohler Co., alleges as follows:

THE PARTIES

1. Delta Faucet is a corporation organized and existing under the laws of the State of Indiana, having a principal place of business at 55 East 111th Street, Indianapolis, Indiana, 46280.
2. Kohler Co. (“Kohler”), upon information and belief, is a company organized and existing under the laws of the State of Wisconsin, with a principal place of business at 444 Highland Drive, Kohler, Wisconsin, 53044.
3. Kohler is engaged in the business of designing, manufacturing, and selling kitchen and bath products and accessories, and is a competitor of Delta Faucet in the kitchen and bath market.

JURISDICTION AND VENUE

4. Delta Faucet realleges and incorporates by reference, as if fully set forth herein, the allegations in paragraphs 1-3, above.

5. This is an action for patent infringement arising under the laws of the United States, Title 35 of the United States Code, specifically relating to U.S. Patent No. 7,360,723 (the “’723 Patent”). This Court has exclusive subject matter jurisdiction over this action pursuant to 28 U.S.C. § § 1331 and 1338(a).

6. This Court has personal jurisdiction over Kohler. On information and belief, Kohler has conducted, and does regularly conduct, business within the State of Indiana and the Southern District of Indiana. Kohler—directly and/or through intermediaries (including distributors, retailers, and others)—has made, used, offered to sell, sold, and/or imported into the United States, including to customers located within the State of Indiana and this district, products that infringe one or more claims of the ’723 Patent. Kohler has purposefully and voluntarily placed infringing products into the stream of commerce with the awareness and/or intent that they will be purchased by consumers in the State of Indiana and in this District.

7. Venue is proper in this judicial district under 28 U.S.C. § § 1391 and 1400(b).

FACTUAL BACKGROUND

8. Delta Faucet realleges and incorporates by reference, as if fully set forth herein, the allegations in paragraphs 1-7, above.

9. The ’723 Patent, titled “Showerhead System With Integrated Handle,” was duly and legally issued by the United States Patent and Trademark Office (“PTO”) on April 22, 2008, to inventor Moty Lev. A true and accurate copy of the ’723 Patent is attached hereto as Exhibit A.

10. Delta Faucet sells products that practice the inventions claimed in the ’723 Patent. For example, Delta Faucet’s In2ition® showerheads are embodiments of the ’723 Patent.

11. Kohler is infringing the '723 Patent directly, jointly, contributorily, and/or by inducement, by making, using, importing, selling, or offering for sale showerheads that embody claims in the '723 Patent, without Delta Faucet's authority. Specifically, upon information and belief, Kohler offers for sale and sells its Converge line of showerheads, including at least the following products: Model # R77753-CP, Model # R77753-BN, Model # R77634-CP, and Model # R77634-BN. These and any other similarly configured products (collectively the "Accused Products") infringe at least one claim of the '723 Patent.

12. The Accused Products are or were available, and are or were being offered for sale and sold at least at Lowe's stores and/or via the internet at www.lowes.com, including to customers located within the State of Indiana and this District.

13. Kohler's infringement has been, and continues to be, willful and deliberate.

14. On information and belief, Kohler had actual notice of the '723 Patent.

15. With knowledge of the '723 Patent and its infringing conduct, Kohler continues to willfully infringe the '723 Patent by making, using, selling, offering to sell, and/or importing the Accused Products into the United States.

16. Delta Faucet has suffered and will continue to suffer damages from Kohler's acts of infringement complained of herein.

INFRINGEMENT OF U.S. PATENT NO. 7,360,723

17. Delta Faucet realleges and incorporates by reference, as if fully set forth herein, the allegations in paragraphs 1-16, above.

18. The '723 Patent is valid and enforceable.

19. Delta Faucet has an exclusive license to the '723 Patent from Sidus Technologies, Inc. to make, have made, use, distribute, offer for sale, sell, and import products, and has the right to sue for any infringement thereof.

20. Kohler has directly infringed, either individually or as part of a joint enterprise, and is still directly infringing, at least claims 1-5 of '723 Patent, literally or by the doctrine of equivalents, by making, using, offering to sell and selling, and/or importing the Accused Products.

21. More specifically, the Accused Products are showerhead systems that have “a fixed fluid dispensing unit supported at a location. . . comprising at least one nozzle in fluid communication with the fluid supply,” and have “a removable fluid dispensing unit releasably secured to a receptacle established with said fixed dispensing unit forming an integral dispensing face with said fixed dispensing unit and. . . at least one additional nozzle being connected to a hose in fluid communication with the fluid supply when said removable fluid dispensing unit is dissociated from said fixed fluid dispensing unit;” and “the fluid supply adapted to being in selective communication with at least one of said fixed and said removable fluid dispensing unit.”

22. The Accused Products have “a plurality of nozzles associated with said fixed fluid dispensing unit.”

23. The Accused Products have “a plurality of nozzles associated with said removable fluid dispensing unit.”

24. The Accused Products’ “plurality of nozzles associated with said fixed fluid dispensing unit are located contiguous to one another.”

25. The Accused Products' "fixed fluid dispensing unit has a recess to which is matingly engaged said removable unit."

26. Upon information and belief, Kohler will continue to infringe the '723 Patent, causing immediate and irreparable harm to Delta Faucet, unless this Court enjoins and restrains Kohler's activities.

27. Kohler's acts of infringement have deprived, and will continue to deprive, Delta Faucet of sales, profits, and other related revenue that Delta Faucet would have made or would enjoy in the future; has injured Delta Faucet in other respects; and will continue to cause Delta Faucet added injury and damage unless and until the Court enters an injunction prohibiting further infringement, and specifically enjoins further manufacture, use, offers for sale, sale, and importation of the Accused Products.

28. Delta Faucet is entitled to recover damages adequate to compensate it for Kohler's infringement, including, but not limited to, lost profits, a reasonable royalty, including a reasonable royalty pursuant to 35 U.S.C. § 154(d), treble damages, pre and post judgment interest at the maximum allowable rate, costs, attorneys' fees, and other such relief this Court deems proper.

29. On information and belief, Kohler's infringement of the '723 Patent is willful and justifies a trebling of damages pursuant to 35 U.S.C. § 284. Further, this is an exceptional case supporting an award of reasonable attorneys' fees pursuant to 35 U.S.C. § 285.

REQUEST FOR RELIEF

WHEREFORE, Delta Faucet respectfully requests that the Court enter judgment in its favor and against Kohler, and provide Delta Faucet the following relief:

- A. Order, adjudge, and decree that U.S. Patent 7,360,723 is valid, enforceable, and infringed by Kohler;
- B. Enter a permanent injunction against Kohler enjoining it, its directors, officers, agents, employees, successors, subsidiaries, assigns, and all persons acting in privity or in concert or participation with Kohler from making, using, selling, or offering for sale in the United States, or importing into the United States, any and all products and/or services embodying the patented inventions claimed in the '723 Patent;
- C. Award Delta Faucet its damages for patent infringement pursuant to 35 U.S.C. § 284, and pre and post judgment interest as allowed by law;
- D. Order, adjudge, and decree that Kohler's infringement of the '723 Patent has been deliberate and willful, and award Delta Faucet treble damages under 35 U.S.C. § 284;
- E. Find that this case is "exceptional" under 35 U.S.C. § 285, and award Delta Faucet its costs and reasonable attorney's fees as provided in 35 U.S.C. § 285; and
- F. Award Delta Faucet such other and further relief as the Court deems just and proper.

REQUEST FOR TRIAL BY JURY

Plaintiff Delta Faucet Company respectfully requests a trial by jury on all issues so triable.

Dated: April 18, 2017

Respectfully submitted,

/s/ R. Trevor Carter

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