

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

SAFETY TUBS COMPANY, LLC,	§	
Plaintiff,	§	
	§	
	§	
v.	§	C.A. No. _____
	§	
	§	JURY TRIAL DEMANDED
JACUZZI, INC.,	§	
Defendant.	§	INJUNCTIVE RELIEF SOUGHT

ORIGINAL COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff Safety Tubs Company, LLC (“Safety Tubs”), by and through its undersigned counsel, for its complaint against Defendant Jacuzzi, Inc. (“Defendant”), states as follows:

I. NATURE OF THE ACTION

1. This is a civil action under the patent laws of the United States, 35 U.S.C. § 1 *et seq.*, for infringement of U.S. Patent Nos. 7,788,783 (“the ‘783 patent”), issued September 7, 2010, entitled, “Method of Manufacturing Walk-In Tubs” and 7,299,509 (“the ‘509 patent”), issued November 27, 2007, entitled, “Side Door for Walk-In Tub.”

II. THE PARTIES

2. Safety Tubs is a Delaware limited liability company having a principal place of business address at 1100 Avenue S., Grand Prairie, Texas 75050. Safety Tubs regularly engages in business in Texas and sells product throughout the United States.

3. On information and belief, Defendant, Jacuzzi, Inc., is a Delaware corporation having a headquarters and principal place of business at 13925 City Center Dr., Suite 200, Chino Hills, CA 91709 and a manufacturing facility located in Valdosta, Georgia.

4. On information and belief, Defendant sells products, including the products referenced herein directly, through its website, through dealers and/or otherwise, in this District.

III. JURISDICTION AND VENUE

5. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1338(a), in that it involves substantial claims arising under the United States Patent Act, 35 U.S.C. § 1 *et seq.*

6. Defendant is subject to personal jurisdiction because Defendant has continuous and systematic contacts with this District including, without limitation, the regular transaction of business within this District, and also because Safety Tubs' claims arise from Defendant's transactions of business in this District and from Defendant's commission of tortious acts in this District, which acts have caused damage to Safety Tubs in this and other judicial districts, through Defendant's infringement of the claims of the '509 patent by selling and offering for sale walk-in tubs according to the claimed walk-in tub door patent in this district and by selling or offering for sale in this district walk-in tubs made by the claimed method of the '783 patent.

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

IV. COUNT I – PATENT INFRINGEMENT

8. The allegations of paragraphs 1-7 above are incorporated by reference as if fully set forth herein.

9. On November 27, 2007, the '509 patent, entitled "Side Door for Walk-In Tub," and naming Andre J. Neidich as the inventor, was duly and legally issued. A true and accurate copy of the '509 patent is attached to this Complaint as Exhibit A.

10. Safety Tubs Company, LLC became owner of all right, title and interest in and to the '509 patent by virtue of a *nunc pro tunc* assignment from Andre J. Neidich dated November 16, 2010, which was recorded in the United States Patent and Trademark Office (PTO) beginning at Reel 025400, Frame 0253 on November 23, 2010 and/or by virtue of a chain of title from Andre J. Neidich to Safety Tubs Company, LLC. Such chain of title includes an assignment by Mr. Neidich of his rights to Safety Tubs Holding, LLC (with an error in the assignee name inadvertently listed as "Safety Tubs") dated October 13, 2006, which was recorded on October 15, 2007 at the U.S. PTO beginning at Reel 019963, Frame 0956. A second assignment dated January 30, 2008 was also prepared from Andre J. Neidich to Safety Tubs Holdings, LLC and was submitted to the U.S. PTO and recorded on August 26, 2010. Safety Tubs Holdings, LLC assigned its rights in the '509 patent to Safety Tubs Company, LLC on July 22, 2010, which assignment was recorded on July 22, 2010 at the U.S. PTO beginning at Reel 024723, Frame 0347. The original assignment document of October 13, 2006 could not be located for correction in the assignee name with the PTO. As a result, the *nunc pro tunc* assignment was executed and submitted for recordation to clarify the rights to Plaintiff, Safety Tubs Company, LLC, herein.

11. On September 7, 2010, the '783 patent, entitled "Method for Manufacturing Walk-In Tubs," and naming Andre J. Neidich as the inventor, was duly and legally issued. A true and accurate copy of the '783 patent is attached to this Complaint as Exhibit B.

12. Plaintiff, Safety Tubs Company, LLC, became owner of all right, title and interest in and to the '783 patent by virtue of a *nunc pro tunc* assignment from the inventor Andre J. Neidich to Safety Tubs Company, LLC dated November 16, 2010, which was recorded on November 23, 2010 in the United States Patent and Trademark Office (PTO) at Reel 025400,

beginning at Frame 0253; and/or by virtue of a chain of title from Andre J. Neidich to Safety Tubs Company, LLC. Such chain of title including an assignment from Andre J. Neidich, to Safety Tubs Holdings, LLC, by an original assignment (now lost) having a typographical error in the assignee name (listed as “Safety Tubs”), dated October 19, 2006 (recorded January 8, 2007 at Reel 018722, beginning at Frame 0466) and/or by a later correct assignment from Andre J. Neidich to Safety Tubs Holdings, LLC dated October 19, 2006 (recorded August 26, 2010 at Reel 024894, beginning at Frame 0218); and then a transfer of rights from Safety Tubs Holdings, LLC to Safety Tubs Company, LLC, dated July 22, 2010 (recorded July 22, 2010 at Reel 024723, beginning at Frame 0347).

13. The ‘509 and the ‘783 patents are valid and enforceable, and all maintenance payments which could be made have been made.

14. Upon information and belief, Defendant has infringed and continues to infringe one or more claims of the ‘509 patent, in violation of 35 U.S.C. § 271, by manufacturing, having made, using, selling and/or offering for sale, and/or contributing to infringement by others by using, selling, and/or offering for sale walk-in tub products having side entry walk-in tub doors in the United States, including, but not limited to, products of Defendant sold under the name FINESTRA®, including but not limited to FINESTRA® Model 6030 and Model 6036, and under the name, LORA®, including but not limited to LORA® Model 5230.

15. Upon information and belief, Defendant has infringed and continues to infringe one or more claims of the ‘783 patent, in violation of 35 U.S.C. § 271, by manufacturing or having made walk-in tubs according to the ‘783 patent and by using, selling and/or offering to sell, and/or contributing to the infringement by others by using, selling, and/or offering for sale

walk-in tub products made according to the '783 patent in the United States, including, but not limited to, products under the names FINESTRA and LORA.

16. Such acts of infringement of the '509 and the '783 patents are occurring, have occurred in the past, and will continue to occur without the authority or license of Safety Tubs unless this Court enjoins Defendant's infringing activities.

17. Upon information and belief, Defendant had constructive knowledge of the '509 and the '783 patents and has been aware of the '509 patent since as early as November 27, 2007, the date the patent was issued, and has been aware of the '783 patent since as early as September 7, 2010, the date the patent was issued.

18. Defendant has also had actual notice of the '509 and the '783 patents since at least March 30, 2011, by way of a certified letter from Safety Tubs' Senior Vice-President and General Counsel, Maria Chiclana, Esq. to Defendant's Vice-President and General Counsel, Anthony Lovallo, Esq. Further, the pending applications which issued as the '509 and the '783 patents were brought to the attention of Defendant in communications between March and May of 2007 concerning the pending applications and loss of trade secrets through the systematic hiring by Defendant of key employees of Safety Tubs' third party contract manufacturer, Clarke Products, Inc. ("CPI"), which employees were privy to various confidential, proprietary and trade secret aspects of the development of Safety Tubs' technology underlying the '509 and the '783 patents. (See Exhibit C). Upon information and belief, Jacuzzi hired the three key CPI employees, Phil Weeks (CPI's Vice-President), Brett Mueller (CPI's Vice-President of Operations) and Richard Romo (CPI's Project Manager for the Safety Tubs line of products). Mr. Weeks was given the title of President of the Bath Division at Jacuzzi. Mr. Mueller was made President of Engineering, and Mr. Romo was hired as a Project Development Engineer.

These three employees were each given responsibility for developing a walk-in tub that would compete with Safety Tub's developing new tub technology.

19. Upon information and belief, Defendant's behavior and hiring of such CPI key employees with confidential and proprietary knowledge of Safety Tubs' intellectual property and subsequent development of a walk-in tub product line under the name FINESTRA, followed by later infringement upon issuance of each of Safety Tubs' '509 and '783 patents, and continued infringement without cessation indicates infringement based on improper and unauthorized copying and piracy of technology as claimed in the '509 and the '783 patents and as such represents willful and deliberate conduct on the part of Defendant. Thus, Defendant's infringing activities constitute willful patent infringement as of the issued dates of each of the patents, warranting the assessment of increased damages pursuant to 35 U.S.C. § 284, and an award of Safety Tubs' attorneys' fees and costs, as this is an exceptional case pursuant to 35 U.S.C. § 285.

20. Defendant markets products that directly compete with and have competed with Safety Tubs' products directly, through distributors and/or dealers, and profits for Safety Tubs' walk-in tub products have been diminished by the sale of Defendant's infringing products. As a result of the sale and/or distribution of Defendant's infringing products, Safety Tubs has lost profits.

21. Safety Tubs has been, is being, and will continue to be damaged by Defendant's infringing activities. Safety Tubs' harm resulting from Defendant's infringement is irreparable and cannot be remedied in its entirety by the recovery of money damages, and Safety Tubs has no adequate remedy at law.

V. PRAYER FOR RELIEF

WHEREFORE, Plaintiff Safety Tubs prays that this Honorable Court issue the following relief:

a. That this Court, pursuant to 35 U.S.C. § 283, issue an injunction permanently enjoining Defendant, its principals, officers, directors, agents, servants, employees, assignees, licensees, and all those persons in active concert or participation with Defendant, from further infringement and/or contribution to infringement of the '509 and the '783 patents;

b. That this Court, pursuant to 35 U.S.C. § 284, enter judgment against Defendant for damages for infringement, including lost profits and/or reasonable royalties, from as early as November 27, 2007, the date of issuance of the '509 patent for infringement thereof and from as early as September 7, 2010, the date of issuance of the '783 patent for infringement thereof and, for each patent, including treble damages because of the willful and deliberate nature of such infringement;

c. That this Court, pursuant to 35 U.S.C. § 285, award Safety Tubs its attorneys' fees in connection with this action, as this is an exceptional case;

d. That this Court award Safety Tubs its costs and pre-judgment interest; and

e. That this Court grant such other and further relief to Safety Tubs as this Court may deem just and proper.

VI. DEMAND FOR JURY TRIAL

Safety Tubs demands a trial by jury as to all issues triable by jury in this action.

Dated: November 14, 2011

Respectfully Submitted,

/s/ Brian C. McCormack

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