

Fight Against Rust-Oleum— The Alan Stuart Story

He was Shocked

Alan Stuart is a former mechanic from the steel mills of Wheeling-Pittsburgh Steel, residing now in Mingo Junction, Ohio. Alan is a classic "garage inventor," and realized one fine Saturday morning in April of 2001 a surprising way to make the faded vinyl siding on his house look brand new. Chafing at being chastised by his wife when he could not scrub the spatter from his grill off his vinyl siding using conventional cleaners, Alan threw caution to the wind, took a bucket, mixed in all the organic solvents he could find in his garage, and wiped this cocktail on his siding. He was shocked. Not only was the grill grease gone, but the original color and luster returned. The siding was rejuvenated, and stayed looking great for weeks, then months, and then years. This is all the more astonishing because applying organic solvents to vinyl siding is exactly what the siding industry says not to do (i.e., to avoid dissolving the vinyl).

Infringement on Patent No.666,999,1

Alan applied for a patent in March of 2002, and then sought to license his technology to a variety of solvent companies. Zinsser took the most interest, but the proposed deal terms were so paltry that Alan walked away from seeking a corporate partner. Instead, he commercialized the product himself under in May 2002 the name "New Side."

Alan thought his entanglements with corporate chemical companies were over, that is, until one day he was watching TV and saw an advertisement for "Wipe-New." This was being sold by Rust-Oleum, which is a subsidiary of the same company, RPM, that had acquired Zinsser. From publicly available descriptions of the chemicals, he could tell that the chemical makeup of the Wipe-New product infringed.

Alan sued (case # 2:16-cv-00622). Swift action was needed, because his patent expires on 3/22/2022. He served his complaint on September 23, 2016. The discovery obtained in the case throughout 2017 confirmed the infringement. Brazenly, Rust-Oleum launched yet another larger-sized "Wipe New" product late in 2017 specifically for vinyl siding.

The Southern federal district of Ohio court held its Markman hearing in December 2017. Normally, this case progression would have allowed for a claim construction ruling in the Spring of 2018, with a jury trial by the end of the year. However, Alan has had his day in court put on hold by the America Invents Act.

The Waiting Game

Rust-Oleum waited 363 days after service of the complaint to file an IPR petition (i.e., 2 days before the deadline). Despite waiting, essentially a full year to file its petition, Rust-Oleum still pressed for a stay of the litigation while the PTAB rules on the petition. While Alan fully expects to win in the IPR, nonetheless his day in court has been put on the shelf. Even though Rust-Oleum could have filed its petition at any time in the litigation, its delay in filing for an IPR was not held against it by the court in awarding a stay. So, Alan has to wait an additional year to get his day in court, and meanwhile the countdown to his patent expiration continues to tick. Justice delayed is justice denied, and in this case the

added one-year delay is solely caused by Rust-Oleum's strategic ploy to file its IPR petition at the last possible moment.

Alan Stuart is not a patent troll. He is a handyman with a knack for crazy solutions to stubborn problems. He did all the right things— he invested in a patent, invested in a product, and invested his time trying to license his technology to corporate interests. Ultimately, when he saw his technology being hawked on TV, he had no choice but to sue.

Hoping for the Best

Litigation is a long, emotionally draining process. Now, however, the only leverage he has, with an upcoming jury trial, has been put on the back-burner. Alan Stuart is not the kind of bad actor the AIA sought to shut down. But he is caught in the same net, with his patent protection put on hold and that is really unfortunate.

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