

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

**GELLYFISH TECHNOLOGY OF
TEXAS, LLC**

Plaintiff,

v.

HAWORTH, INC.,

Defendant.

CIVIL CASE NO. 2:13-cv-565

JURY TRIAL DEMANDED

PLAINTIFF'S ORIGINAL COMPLAINT

1. Plaintiff GELLYFISH TECHNOLOGY OF TEXAS, LLC, files this Original Complaint against the above-named Defendant, alleging as follows:

THE PARTIES

2. Plaintiff GELLYFISH TECHNOLOGY OF TEXAS, LLC ("GTT") is a Texas Limited Liability Company with its principal place of business at 104 East Houston Street, Suite 165, Marshall, Texas 75670.

3. Upon information and belief, Defendant HAWORTH, INC. ("Haworth" or "Defendant") is a Michigan corporation with its principal place of business at One Haworth Center, Holland, Michigan 49423-9576. Defendant may be served with process through its registered agent Carl J. Nelson, also at One Haworth Center, Holland, Michigan 49423-9576.

JURISDICTION AND VENUE

4. This is an action for infringement of a United States patent arising under 35 U.S.C. §§ 271, 281, and 284-285, among others. This Court has subject matter jurisdiction of this action under Title 28 U.S.C. §1331 and §1338(a).

5. The Court has general and specific personal jurisdiction over Defendant, and venue is proper pursuant to 28 U.S.C. §§ 1391 and 1400(b). Defendant has substantial contacts with the forum as a result of conducting substantial business within the State of Texas and within this District. Upon information and belief, Defendant regularly solicits business in the State of Texas and in this District, and derives substantial revenue from products and/or services provided to individuals residing in the State of Texas and in this District. Defendant, directly and/or through intermediaries, has purposefully and voluntarily placed one or more of its infringing products, as described below, into the stream of commerce with the expectation that they will be purchased by consumers in the Eastern District of Texas. These products have been and continue to be purchased by consumers in the Eastern District of Texas. Defendant, directly and/or through intermediaries, has committed the tort of patent infringement within the State of Texas, and, more particularly, within the Eastern District of Texas.

6. Venue is proper in the Eastern District of Texas pursuant to 28 U.S.C. §§1391 and 1400(b).

COUNT I

INFRINGEMENT OF U.S. PATENT NO. 5,547,251

7. GTT refers to and incorporates herein the allegations of Paragraphs 1-6 above.

8. United States Patent No. 5,547,251 (“the ’251 Patent”), entitled “Back Support Adjusting Apparatus For Chair With Backrest Flexible Upholstery,” was duly and legally issued by the United States Patent and Trademark Office on August 20, 1996 after full and fair examination.

9. Mr. Peter W. Axelson is listed as the inventor of the ’251 Patent.

10. GTT is the assignee of all rights, title and interest in and to the ’251 Patent and possess all substantial right of recovery under the ’251 Patent, including the right to sue for past infringement. A copy of the ’251 Patent is attached as Exhibit A.

11. Upon information and belief, Defendant has been and now is directly, literally, and/or upon information and belief, jointly, equivalently, and/or indirectly infringing (by way of inducing infringement by others, and/or contributing to the infringement by others) the ’251 Patent in the State of Texas, in this judicial district, and elsewhere in the United States by, among other things, making, using, operating, offering to sell, and/or selling flexible upholstery chairs that provide adjustable lumbar support, that are covered by one or more claims of the ’251 Patent, and to the injury of GTT. (Examples of such flexible upholstery chairs that provide adjustable lumbar support include, without limitation, Defendant’s Zody Task, Zody Executive, Very Task, and Very Executive products, which are described online at <http://www.haworth.com/home/seating>.) Defendant is thus liable for infringement of the ’251 Patent pursuant to 35 U.S.C. § 271.

12. Defendant has been and now is indirectly infringing by way of **inducing** infringement by others of the ’251 Patent in the State of Texas, in this judicial district, and elsewhere in the United States, by, among other things, making, using, importing,

offering for sale, and/or selling, without a license or authority, products for use in systems (“The Accused Products”) that infringe the ’251 Patent. The accused products include, without limitation, Defendant’s Zody Task, Zody Executive, Very Task, and Very Executive products. For example, Defendant’s Zody Task and Zody Executive products fall within the scope of claims 1, 2, 3, 6, 7, 8, 11, and 13 of the ’251 Patent, as evidenced by product descriptions found in Defendant’s Zody Brochure. A copy of Defendant’s Zody Brochure is attached as Exhibit B. For example, Defendant’s Zody product “enables a broad range of users to position the lumbar pad in the small of the back, helping to maintain the lumbar curvature in the spine of the lower back when the user is seated. The combination of the frame flex, mesh construction, lumbar pad, lumbar pad spring suspension and asymmetrical adjustment and pelvic support make up the PAL™ system’s unsurpassed ability to provide comfortable ergonomic support for a broad range of users.” *Id.* at 8. Moreover, “Users can distribute pressure to the lower back asymmetrically according to their personal preferences. The wave in the middle takes pressure off the spine.” *Id.* at unnumbered foldout following p. 7.

13. Those whom Defendant induces to infringe are end users of the Accused Products. Defendant had knowledge of the ’251 Patent at least as early as Defendant’s receipt of GTT’s Letter of August 30, 2012, and from that time forward Defendant had specific intent to induce infringement by others of the ’251 Patent. (A copy of GTT’s Letter of August 30, 2012 is attached as Exhibit C.) By making, using, importing, offering for sale, and/or selling such products, Defendant induces end users to infringe at least the aforementioned claims of the ’251 Patent. *See* Exhibit B. By so doing,

Defendant has injured GTT and is thus liable to GTT for indirect infringement of the '251 Patent under 35 U.S.C. § 271.

14. Defendant has been and now is indirectly infringing by way of **contributing** to the infringement by others of the '251 Patent in the State of Texas, in this judicial district, and elsewhere in the United States, by, among other things, making, using, importing, offering for sale, and/or selling, without a license or authority, components ("The Accused Components") especially designed for use in a patented invention, which are not staple articles of commerce suitable for substantial noninfringing use. The Accused Components include, without limitation, Defendant's Zody Task and Zody Executive products. The Accused Components are especially designed for use in systems which implement the claims 1, 2, 3, 6, 7, 8, 11, and 13 of the '251 Patent, as evidenced by product descriptions found in Defendant's Zody Brochure. *See* Exhibit B. For example, the lumbar support apparatus of Defendant's Zody product "enables a broad range of users to position the lumbar pad in the small of the back, helping to maintain the lumbar curvature in the spine of the lower back when the user is seated. The combination of the frame flex, mesh construction, lumbar pad, lumbar pad spring suspension and asymmetrical adjustment and pelvic support make up the PAL™ system's unsurpassed ability to provide comfortable ergonomic support for a broad range of users." *Id.* at 8. Moreover, "Users can distribute pressure to the lower back asymmetrically according to their personal preferences. The wave in the middle takes pressure off the spine." *Id.* at unnumbered foldout following p. 7.

15. Defendant contributes to infringement of the '251 Patent by end users of the Accused Components. Defendant had knowledge of the '251 Patent at least as early

as Defendant's receipt of GTT's Letter of August 30, 2012, and from that time forward Defendant had specific intent to contribute to the infringement by others of the '251 Patent. *See* Exhibit C. Components like Defendant's Zody Task and Zody Executive have no substantial non-infringing uses aside from use in systems that infringe '251 Patent. *See* Exhibit B. By making, using, importing, offering for sale, and/or selling such products, Defendant contributes to end users' infringement of at least the aforementioned claims of the '251 Patent. *See id.* By so doing, Defendant has injured GTT and is thus liable to GTT for indirect infringement of the '251 Patent under 35 U.S.C. § 271.

16. To the extent that facts learned in discovery show that Defendant's infringement is, or has been willful, Plaintiff reserves the right to request such a finding at time of trial.

17. On information and belief, Defendant has continued to infringe the '251 Patent since receiving GTT's Letter of August 30, 2012. Exhibit C. On information and belief, such continued infringement has been objectively reckless including because Defendant has (1) acted despite an objectively high likelihood that its actions constituted infringement of a valid patent and (2) knew or should have known of that objectively high risk. Accordingly, GTT seeks a willfulness finding against Defendant relative to its infringement of the '251 Patent entitling GTT to increase damages under 35 U.S.C. § 284 as well as attorneys' fees and costs under 35 U.S.C. § 285.

18. GTT is entitled to recover from Defendant the damages sustained by GTT as a result of Defendant's wrongful acts in an amount subject to proof at trial.

19. Upon and information and belief, Defendant's infringement of the '251 Patent has been willful and deliberate, entitling GTT to enhanced damages under 35 U.S.C. § 284 and to attorneys' fees and costs incurred in prosecuting this action under 35 U.S.C. §285.

JURY DEMAND

20. GTT demands a trial by jury on all issues.

21. PRAYER FOR RELIEF

22. Plaintiff Gellyfish Technology of Texas, LLC respectfully requests this Court to enter judgment in its favor against Defendant, granting the following relief:

23. An adjudication that Defendant has infringed and continues to infringe claims of the '251 Patent;

24. An award to GTT of damages adequate to compensate GTT for Defendant's acts of infringement together with prejudgment interest;

25. An award to GTT of enhanced damages, up to and including trebling of GTT's damages pursuant to 35 U.S.C. § 284, for Defendant's willful infringement;

26. An award of GTT's costs of suit and reasonable attorneys' fees pursuant to 35 U.S.C. §285 due to the exceptional nature of this case, or as otherwise permitted by law;

27. A grant of permanent injunction pursuant to 35 U.S.C. § 283, enjoining Defendant from further acts of infringement; and

28. Any further relief that this Court deems just and proper.

Dated: July 29, 2013

Respectfully Submitted,

**GELLYFISH TECHNOLOGY OF
TEXAS, LLC**

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