



5. Upon investigation and information, personal jurisdiction exists generally over Defendant because it has sufficient minimum contacts with this forum as a result of regularly transacting, and regularly continuing to transact business in, and regularly soliciting and regularly continuing to solicit business within the State of New York, and the Northern District of New York.

6. Upon investigation and information, personal jurisdiction also exists specifically over Defendant because of its conduct in making, using, selling, and/or offering to sell products infringing Temper's patent, within the State of New York, and the Northern District of New York.

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

### **BACKGROUND**

8. Temper owns all right, title and interest in and under United States Patent No. 8,662,557 ('557 Patent), titled TRAIN AXLE ASSEMBLY, which was duly, legally issued on March 4, 2014. Temper acquired all right, title and interest in and under the '557 Patent by an assignment from the inventors of the '557 Patent, John E. Rode and Sean E. Strait, executed on March 10 and 11, 2014, respectively, and recorded with the U.S. Patent Office on March 17, 2014 at Reel 032454, Frame 0326. A true and correct copy of the '557 Patent is annexed hereto and incorporated herein as **Exhibit "A"**.

9. Plaintiff Temper makes, offers for sale and sells rail bearing backing rings for use on a train axle assembly.

10. In its product brochure, Defendant claims to offer the "world's most reliable bearings for heavy haul rail operations" and to be a "premier supplier of systems, components

and equipment with worldwide manufacturing capacity." Defendant's product brochure offers a variety of bearings and backing rings for its Brenco® line of bearings including its Tru-Fit® Backing Rings. In this product brochure, Defendant depicts one of its bearings assembled on a train axle. A true and accurate copy of one of Defendant's product brochure for its Brenco® line of bearings is attached hereto and incorporated herein as **Exhibit "B."**

11. Upon investigation and information, Defendant imports, makes, uses, offers for sale and/or sells rail bearings and/or backing rings, including its Tru-Fit® Backing Rings, which when used, made, offered for sale and/or sold in conjunction with a train axle or train axle and bearing assembly, infringe the '557 Patent, and/or when assembled with a train axle, are used in a manner that infringes on the '557 Patent.

12. Upon investigation and information, Defendant uses, makes, offers for sale and/or sells train axles and/or train axle and bearing assemblies that include its Tru-Fit® Backing Rings, and thereby directly infringes the '557 Patent in violation of 35 U.S.C. §271(a).

13. Upon investigation and information, Defendant's customers make and use train axles and/or train axle and bearing assemblies that include Defendant's Tru-Fit® Backing Rings, and thereby directly infringe the '557 Patent.

14. Defendant specifically intends its customers to directly infringe the '557 Patent and has had knowledge of its customers' direct infringement of the '557 Patent since at least March 12, 2014.

15. By letter dated March 12, 2014, Temper notified Defendant of its infringement of the '557 Patent. A true and accurate copy of the letter dated March 12, 2014 is annexed hereto and incorporated herein as **Exhibit "D"**.

16. Upon investigation and information, Defendant advertises and instructs its customers to use and/or assemble its Tru-Fit® Backing Rings on train axle assemblies thereby inducing the customers' direct infringement of the '557 Patent. Such advertisements include the brochure set forth in **Exhibit "B"** and the statements made therein. The brochure set forth in Exhibit "B" is presently accessible and available for viewing and download on Defendant's website, [www.amstedrail.com](http://www.amstedrail.com).

17. Upon investigation and information, Defendant imports, makes, uses, offers for sale and/or sells, and encourages and intends for its customers to use and assemble its rail bearings and/or backing rings, including its Tru-Fit® Backing Rings, with a train axle or train axle and bearing assembly in a manner that infringes on the '557 Patent. Defendant's conduct amounts to active inducement of infringement in violation of 35 U.S.C. §271(b).

18. Upon information and belief, the rail bearings and backing rings imported, made, used, offered for sale and/or sold by Defendant have no substantial non-infringing uses and cannot be used for purposes other than infringing the claims of the '557 Patent. Defendant's conduct amounts to contributory infringement in violation of 35 U.S.C. §271(c).

19. Upon investigation and information, Defendant has transacted and continues to transact business in, and regularly has solicited and regularly continues to solicit business in this judicial district.

20. Upon investigation and information, Defendant has committed and continues to commit acts of infringement as set forth herein in this judicial district and elsewhere, by making, using, offering for sale and/or selling rail bearings and/or backing rings for use on a train axle and bearing assembly that are protected by the '557 Patent, including the rail bearings and backing rings depicted on Defendant's website, and/or by making, using, offering for sale and/or

selling train axles or train axle and bearing assemblies that include the rail bearings depicted on Defendant's website. True and correct copies of the Defendant's website pages containing a picture and description of an infringing rail bearing printed on April 22, 2014 is annexed hereto and incorporated herein as **Exhibit "C"**.

21. Despite formal notification of infringement of the '557 Patent, Defendant continues to make, use, offer for sale and/or sell products containing technology protected by the '557 Patent and specifically intends for its customers to infringe the '557 patent knowing that its customers acts, including assembling of train axle assemblies, constitute infringement of the '557 patent .

**FIRST CAUSE OF ACTION**  
**(Patent Infringement of '557 against Defendant)**

22. Plaintiff Temper repeats and realleges each and every allegation contained in paragraphs 1 through 21 above.

23. Defendant infringes, contributes to and/or induces infringement of, and continues to infringe, contribute to, and/or induce infringement of the '557 Patent by its involvement in making, using, offering for sale, importing and/or selling rail bearing backing rings for use on a train axle and bearing assembly are covered by one or more claims of the '557 Patent.

24. Defendant has been infringing, and will continue to infringe the '557 Patent. Defendant's infringing activities have included, but should not be limited to direct infringement, contributory infringement and/or inducement of infringement within the meaning of 35 U.S.C. §271(a) through (c), (f) and (g).

25. Defendant has committed acts of infringement in this regard of Temper's rights in the '557 Patent.

26. Upon investigation and information, Defendant's infringement has been willful, deliberate and intentional.

27. As a result of Defendant's acts, Temper has been damaged, and will continue to be damaged.

28. Defendant's infringement has damaged Temper in an amount that is unknown and cannot, at the present time, be fully ascertained.

29. Unless enjoined by this court, Defendant will continue to infringe Temper's '557 Patent rights causing irreparable injury.

**DEMAND FOR JURY TRIAL**

30. Plaintiff Temper hereby demands a trial by jury.

**DEMAND FOR RELIEF**

**WHEREFORE**, Plaintiff, Temper, prays for the entry of judgment from this Court ordering:

- (a) A preliminary and permanent injunction against the Defendant, and all persons acting in concert, or participation therewith, or persons acting or purporting to act on their behalf, including, but not limited to its officers, directors, partners, owners, agents, representatives, employees, attorneys, successors and assigns and any and all persons acting in concert or privity therewith, from infringing the '557 Patent as provided in 35 U.S.C. §283;
- (b) A finding that Defendant has infringed the '557 Patent;
- (c) A finding that Defendant's infringement of the '557 Patent has been willful;
- (d) An award to Plaintiff Temper of its damages resulting from the infringement of the '557 Patent, as provided in 35 U.S.C. §284;
- (e) An award to Plaintiff Temper of treble damages as provided in 35 U.S.C. §284;

- (f) An award to Plaintiff Temper of prejudgment interest on all damages incurred;
- (g) An award to Plaintiff Temper for its costs in this action, together, with reasonable attorney's fees as provided in 35 U.S.C. §285;
- (h) The recall and destruction of all materials within the control of Defendant, and its agents or distributors which in any way infringe upon the '557 Patent; and
- (i) Such other and further relief against Defendant in favor of Temper as this court deems just, equitable and proper.

Dated: April 24, 2014

Respectfully submitted,

/s/ Nicholas Mesiti

Nicholas Mesiti, Esq. (BRN-102,192)

Brett M. Hutton, Esq. (BRN-510,995)

HESLIN ROTHENBERG FARLEY & MESITI P.C.

5 Columbia Circle

Albany, NY 12203-5160

Telephone: (518) 452-5600

Facsimile: (518) 452-5579

**Attorneys for Plaintiff:  
Temper Axle Products Corporation**