

FILED

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION**

May -2 PM 1:00

**ESSENTIAL MEDICAL SUPPLY,
INC.,** a Florida corporation,

Plaintiff,

vs.

Case No.: 6:14-cv-693-ORL-36TBS

MEDSLANT, LLC, a Georgia limited
liability corporation, **ADELE CAMENS**,
an individual, and **WILLIAM F. MAYES**,
an individual,

JURY TRIAL REQUESTED

Defendants.

_____ /

COMPLAINT

Plaintiff Essential Medical Supply, Inc., through its undersigned counsel, for its
Complaint against Defendants, MedSlant, LLC, Adele Camens and William F. Mayes
states:

THE PARTIES

1. Plaintiff Essential Medical Supply, Inc. ("EMS") is a Florida corporation
with a principal place of business at 6420 Hazeltine National Drive, Orlando, Florida.

2. Upon information and belief, Defendant MedSlant, LLC ("MedSlant") is a
Georgia corporation having its principal place of business at 5525 West Idlewood Lane
NW, Atlanta, Georgia.

3. Upon information and belief, Defendant Adele Camens is an individual
residing in Atlanta, Georgia.

4. Upon information and belief, Defendant William F. Mayes is an individual residing in Atlanta, Georgia.

JURISDICTION AND VENUE

5. This is a claim for declaratory judgment under 28 U.S.C. §§ 2201 and 2202 seeking a final judgment that Plaintiff has not infringed and is not infringing Defendants' United States patent, and that Defendants' United States patent is invalid pursuant to the patent laws of the United States, Title 35 of the United States Code (35 U.S.C. §§ 101 *et seq.*). The Court likewise has subject matter jurisdiction over the action pursuant to 28 U.S.C. §1331 and §1338(a), as it involves substantial claims arising under the patent laws of the United States.

6. In addition, this Court has jurisdiction over Plaintiff's common law tortious interference claim pursuant to 17 U.S.C. §1332 because there is diversity of citizenship and the damages at issue are believed to exceed \$75,000, exclusive of attorneys' fees, interest, and costs.

7. Defendants have subjected themselves to *in personam* jurisdiction in the Middle District of Florida, since they have sent notifications threatening legal action for patent infringement to a customer of EMS, which is located in this judicial district. Similarly, upon information and belief, Defendant Mayes has exclusively licensed his patent rights to Defendants MedSlant and Camens for exploitation in Florida and in this judicial district. Finally, EMS has suffered injury to its business in this forum.

8. Venue properly lies within this judicial district and division, pursuant to 28 U.S.C. §1391 and §1400.

FACTUAL ALLEGATIONS COMMON TO ALL COUNTS

9. EMS is a specialty retailer of the “Folding Bed Wedge” home and hospital bedding, accessories and related products, including but not limited to home and hospital supplies.

10. Among the products sold by EMS is the “Folding Bed Wedge” home and hospital bedding product.

11. Upon information and belief, Defendant Mayes is the inventor of U.S. Design Patent No. D446,676 which issued on August 21, 2001 and is entitled “Acid Reflux Wedge Pillow” (hereinafter the “Patent-in-Suit”), a true and correct copy of which is attached hereto as Exhibit A.

12. Upon information and belief, Defendant Mayes is an employee of Defendant MedSlant.

13. The official assignments database maintained at the United States Patent and Trademark Office does not reflect that the Patent-in-Suit has been assigned, and therefore it is presumed to be owned by Defendant Mayes. Upon information and belief, Defendants MedSlant and Camens are the unrecorded assignees or exclusive licensees of the Patent-in-Suit.

14. Upon information and belief, Defendants operate the www.MedSlant.com fully-interactive website where consumers in the United States, including in Florida and in this judicial district, can purchase the “MedSlant Wedge Pillow,” which Defendants’ website claims is sold under the Patent-in-Suit. Additionally, to the extent Mayes has sold its “MedSlant Wedge Pillow” under the Patent-in-Suit in Florida and in this judicial district (whether through assignment or under license from Defendants Camens and

Mayes), each Defendant has knowingly and intentionally exploited the Florida market under the Patent-in-Suit.

15. Upon information and belief, Defendant Mayes heavily promotes the “MedSlant Wedge Pillow,” sold under the Patent-in-Suit that has been assigned and/or licensed by Defendants Camens and Mayes, throughout the United States. For example, as described at www.MedSlant.com the “MedSlant Wedge Pillow” has allegedly been “featured in” various U.S. publications and media outlets, such as USA TODAY, SELF MAGAZINE, MORE MAGAZINE, QVC and others.

16. On April 3, 2014, Defendant Camens submitted a notice to Amazon.com on behalf of MedSlant alleging that Defendants have rights in the Patent-in-Suit, and charging EMS with infringement thereof. A copy of this correspondence is attached hereto as Exhibit B.

17. In the notice sent to Amazon.com, Defendants assert that the Patent-in-Suit covers the “fold of the wedge,” and the Patent-in-Suit has been “Infringed.” (See Exhibit B.)

18. Defendants’ infringement notification presents a substantial controversy between the parties, who have adverse legal interests, of sufficient immediacy and reality to warrant issuance of a declaratory judgment as to EMS non-infringement and the invalidity of the Patent-in-Suit.

19. EMS has not infringed, directly or indirectly, any valid claim of the Patent-in-Suit, and cannot therefore be liable for infringement.

COUNT ONE

Declaratory Judgment of Non-Infringement of the Patent-in-Suit

20. Count One is an action under 28 U.S.C. §2201 against all Defendants seeking a Declaratory Judgment that EMS does not infringe the Patent-in-Suit.

21. EMS herein restates and incorporates by reference into this Count the allegations of paragraphs 1-19 above.

22. No product made, used, sold or offered for sale by EMS or its customers infringes any valid claim of the Patent-in-Suit.

23. The conduct of Defendants has presented a substantial controversy between the parties, which have adverse legal interests, of sufficient immediacy and reality to warrant issuance of a declaratory judgment as to EMS non-infringement of the Patent-in-Suit.

24. Wherefore, EMS is entitled to a Declaratory Judgment that it does not directly or indirectly infringe any valid claim of the Patent-in-Suit, whether under a theory of literal infringement or infringement under the doctrine of equivalents.

25. This case is exceptional under 35 U.S.C. §285.

WHEREFORE, EMS asks this Court to enter judgment against Defendants:

- a) Finding the Patent-in-Suit not infringed by any products of EMS;
- b) Prohibiting Defendants from making further claims of litigation against EMS or its customers for patent infringement;
- c) Finding this case is exceptional under 35 U.S.C. §285, awarding EMS its attorneys' fees and costs; and
- d) Such and other relief as the Court deems appropriate.

COUNT TWO

Declaratory Judgment of Invalidity of the Patent-in-Suit

26. Count Two is an action under 28 U.S.C. §2201 against all Defendants seeking a Declaratory Judgment that the Patent-in-Suit are invalid.

27. EMS herein restates and incorporates by reference into this Count the allegations of paragraphs 1-19 above.

28. Upon information and belief, one or more claims of the Patent-in-Suit is invalid for violation of one or more provisions of 35 U.S.C. §102, §103, §112 and/or §171.

29. The conduct of Defendants presents a substantial controversy between the parties, who have adverse legal interests, of sufficient immediacy and reality to warrant issuance of a declaratory judgment as to the invalidity of the Patent-in-Suit.

30. Wherefore, EMS is entitled to a Declaratory Judgment that the Patent-in-Suit is invalid under 35 U.S.C. §102, §103, §112 and/or §171.

31. This case is exceptional under 35 U.S.C. §285.

WHEREFORE, EMS asks this Court to enter judgment against Defendants:

- e) Finding the Patent-in-Suit invalid;
- f) Prohibiting Defendants from making further claims of litigation against EMS for patent infringement;
- g) Finding this case is exceptional under 35 U.S.C. §285, awarding EMS its attorneys' fees and costs; and
- h) Such and other relief as the Court deems appropriate.

COUNT THREE

Tortious Interference

32. Count Three is an action under the common law of Florida against Defendants MedSlant and Camens for tortious interference with EMS's contractual and business relationships.

33. EMS herein restates and incorporates by reference into this Count the allegations of paragraphs 1-19 above.

34. This Count Three is asserted in the alternative, if Defendants MedSlant and Camens are found not to be valid assignees and/or exclusive licensees of the Patent-in-Suit.

35. Upon information and belief, Defendant Mayes has not exclusively licensed or properly assigned his rights to the Patent-in-Suit to Defendants MedSlant and Camens.

36. Upon information and belief, Defendants MedSlant and Camens have falsely claimed ownership and/or rights in the Patent-in-Suit.

37. Upon information and belief, Defendants MedSlant and Camens have, therefore, intentionally and unjustifiably interfered with EMS's prospective and existing contractual and business relationships through improper means. Defendant's improper means include, without limitation, false and misleading representations about EMS's products, false and misleading representations about the scope of Defendants' intellectual property rights, and improper threats of litigation.

38. Upon information and belief, Defendants MedSlant and Camens have made an objectively baseless assertion of rights in the Patent-in-Suit.

39. Defendants MedSlant and Camens had knowledge of EMS's contractual or business relationships at the time they improperly, intentionally, and unjustifiably interfered with those relationships.

40. EMS has suffered damages as a direct and proximate result of Defendants' conduct.

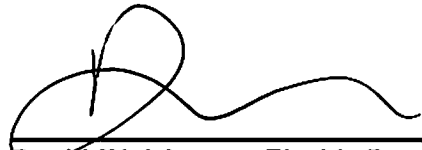
WHEREFORE, EMS asks this Court to enter judgment against Defendants:

- i) Awarding compensatory damages;
- j) Attorneys' fees and costs; and
- k) Such and other relief as the Court deems appropriate.

JURY DEMAND

Essential Medical Supply, Inc. demands a jury trial on all issues so triable.

Respectfully submitted May 2, 2014



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