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OPTIMER PERFORMANCE FIBERS, INC.

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9 **UNITED STATES DISTRICT COURT**
10 **CENTRAL DISTRICT OF CALIFORNIA**

11 OPTIMER PERFORMANCE FIBERS,
12 INC., a Delaware corporation,

13 Plaintiff,

14 v.

15 BPS DIRECT, LLC, a Delaware
corporation, and BASS PRO OUTDOOR
16 WORLD, LLC, a Missouri corporation,

17 Defendants.
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Case No. 8:15-cv-1820

**COMPLAINT FOR PATENT
INFRINGEMENT AND DEMAND
FOR JURY TRIAL**

21 Plaintiff OPTIMER PERFORMANCE FIBERS, INC., by and through its
22 undersigned counsel, hereby brings this Complaint for Patent Infringement against
23 defendant BPS DIRECT, LLC and defendant BASS PRO OUTDOOR WORLD,
24 LLC (collectively, “Defendants”) demanding a trial by jury, and alleging as follows:

25 **PARTIES**

26 1. Plaintiff OPTIMER PERFORMANCE FIBERS, INC. (“OPTIMER”)
27 is a Delaware corporation with its principal place of business at 300 West Adams
28 Street, Suite 500, Chicago, Illinois 60606.

PATENT-IN-SUIT

8. United States Patent Number 5,888,914, entitled “Synthetic Fiber Fabrics With Enhanced Hydrophilicity And Comfort” (hereinafter, “the ‘914 Patent”) was duly and legally issued by the United States Patent and Trademark Office on March 30, 1999. A true and correct copy of the ‘914 Patent is attached hereto as Exhibit 1.

9. OPTIMER is the assignee of all rights in the ‘914 Patent.

10. The ‘914 Patent covers, *inter alia*, a spun yarn consisting essentially of about 85 to 90 weight % of a single hydrophobic fiber component and about 10 to 15 weight % of hydrophilic fiber.

11. To the extent necessary, OPTIMER has complied with the marking requirements of 35 U.S.C. § 287 for all time periods relevant to Defendants’ infringement.

DEFENDANTS’ WILLFUL INFRINGEMENT

12. OPTIMER is informed and believes, and on that basis alleges, that Defendants make, use, sell, offer for sale, and import clothing made from fabric that infringes the ‘914 Patent.

13. By way of example, Defendants make, use, sell, offer for sale, and, on information and belief, import products such as the “Ascend Long-Sleeve Trail T-Shirt for Ladies,” which is available at — <http://www.basspro.com/Ascend-LongSleeve-Trail-TShirt-for-Ladies/product/15021808221411/> — that infringe the ‘914 Patent.

14. Defendants have been on notice of their infringement of the ‘914 Patent since at least October 1, 2015, when counsel for OPTIMER sent a letter to Defendants informing them of the same.

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1 15. In good faith, and demonstrating considerable patience, OPTIMER
2 has communicated with Defendants in an effort to reach an amicable resolution to
3 this matter on very reasonable terms. Defendants have refused to license the '914
4 Patent.

5 **FIRST CAUSE OF ACTION**

6 **Infringement of United States Patent Number 5,888,914**

7 16. OPTIMER repeats and realleges the allegations of paragraphs 1-15,
8 above, as if fully set forth herein.

9 17. OPTIMER is the assignee and owner of all rights, title, and interests
10 in and to the '914 Patent, now and for the entire period of, and relevant to,
11 the infringement, including the right to assert all causes of action arising under
12 the '914 Patent.

13 18. Defendants are, and have been, on notice of the '914 Patent since prior
14 to the filing of this lawsuit.

15 19. Defendants have been, and continue to, directly infringe, literally
16 and/or under the doctrine of equivalents, the '914 Patent under 35 U.S.C. § 271.

17 20. Defendants' infringement of the '914 Patent has been willful.

18 **PRAYER FOR RELIEF**

19 WHEREFORE, OPTIMER respectfully requests that the Court enter a
20 judgment in its favor as follows:

21 a. Declaring that Defendants have infringed United States Patent
22 Number 5,888,914;

23 b. Awarding OPTIMER damages adequate to compensate for
24 Defendants' infringing activities, including supplemental damages for any post-
25 verdict infringement up until entry of the final judgment with an accounting as
26 needed, together with prejudgment and post-judgment interest on the damages
27 awarded; all of these damages to be enhanced in an amount up to treble the amount
28 of compensatory damages as justified under 35 U.S.C. § 284;

1 b. Declaring that this case is exceptional under 35 U.S.C. § 285
2 and awarding OPTIMER its reasonable costs and expenses of litigation, including
3 attorneys' and experts' fees; and

4 d. Awarding OPTIMER such other and further relief as the Court
5 may deem just and proper.

6 **JURY DEMAND**

7 OPTIMER demands a trial by jury as to all claims and all issues properly
8 triable thereby.

9 DATED: November 6, 2015

BALLARD SPAHR LLP

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11 /s/ Terrence M. Jones
 Terrence M. Jones

12 Attorneys for Plaintiff
13 OPTIMER PERFORMANCE FIBERS,
14 INC.