

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION**

COMPOSITE RESOURCES, INC.)	
)	
Plaintiff,)	
)	
v.)	Civ. Action No.: 3:17-cv-00072-FDW-DSC
)	
COMBAT MEDICAL SYSTEMS, LLC and)	
ALPHAPOINTE,)	
)	
Defendants.)	
_____)	

FIRST AMENDED COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff, COMPOSITE RESOURCES, INC., by way of Complaint against Defendants, COMBAT MEDICAL SYSTEMS, LLC and ALPHAPOINTE, alleges and states:

THE PARTIES

1. Plaintiff, COMPOSITE RESOURCES, INC., is a corporation organized and existing under the laws of the State of South Carolina, having a place of business at 485 Lakeshore Parkway, Rock Hill, South Carolina 29730 (hereinafter referred to as “COMPOSITE RESOURCES”).

2. Upon information and belief, Defendant COMBAT MEDICAL SYSTEMS, LLC (hereinafter referred to as “CMS”) is a limited liability company organized and existing under the laws of the State of North Carolina, having a place of business at 5555 Harrisburg Industrial Park Drive, Harrisburg, North Carolina 28075.

3. Upon information and belief, Defendant ALPHAPOINTE is a not-for profit corporation organized under the laws of the State of Missouri with its headquarters located at 7501 Prospect, Kansas City, Missouri 64132.

JURISDICTION AND VENUE

3. This is an action for patent infringement arising under the patent laws of the United States, Title 35 of the United States Code. Jurisdiction is conferred pursuant to 28 U.S.C. §1338(a).

4. Venue is proper in this Judicial District pursuant to 28 U.S.C. §1391(b) and §1400(b), because Defendants do business in this district and are subject to personal jurisdiction here, a part of the events or omissions giving rise to the claims occurred here, and the alleged infringement is occurring here because Defendants make, use, import, offer for sale, and sell infringing products in this Judicial District. Defendant CMS has its place of business in the Judicial District.

BACKGROUND FACTS

5. COMPOSITE RESOURCES is the owner by assignment of all right, title and interest in and to United States Letters Patent No. 7,842,067, which is entitled “Tourniquet and Method of Use,” and which was duly and legally issued on November 30, 2010 (hereinafter referred to as “the ‘067 Patent”). COMPOSITE RESOURCES has been the owner of the ‘067 Patent at all times relevant to this action. The ‘067 Patent is valid and in full force and effect. A copy of the ‘067 Patent is attached hereto as Exhibit A.

6. COMPOSITE RESOURCES is the owner by assignment of all right, title and interest in and to United States Letters Patent No. 7,892,253, which is entitled “Tourniquet and Method of Use,” and which was duly and legally issued on February 22, 2011 (hereinafter referred to as “the ‘253 Patent”). COMPOSITE RESOURCES has been the owner of the ‘253 Patent at all times relevant to this action. The ‘253 Patent is valid and in full force and effect. A copy of the ‘253 Patent is attached hereto as Exhibit B.

7. COMPOSITE RESOURCES is located in Rock Hill, South Carolina, where it makes and sells the COMBAT APPLICATION TOURNIQUET® covered by the ‘067 and ‘253 Patents, and has done so for several years. The COMBAT APPLICATION TOURNIQUET® has enjoyed substantial commercial success and recognition in the trade. The COMBAT APPLICATION TOURNIQUET® is marked pursuant to 35 U.S.C. §287 with notice of the ‘067 and ‘253 Patents.

8. On information and belief, Defendant ALPHAPOINTE makes, uses, imports, offers for sale and/or sells its “Tactical Mechanical Tourniquet” (hereinafter “the TMT Product”) that infringes one or more claims of the ‘067 Patent and the ‘253 Patent. The infringing TMT Product includes, but is not limited to, that product identified by the designation NSN:6515-010656-6191. Defendant CMS, as the primary distributor of Defendant ALPHAPOINTE, offers for sale and sells the TMT Product in this Judicial District and throughout the United States. A copy of promotional materials illustrating the TMT Product is attached hereto as Exhibit C. A copy of the operation instructions of the infringing TMT Product is attached hereto as Exhibit D.

9. Defendants ALPHAPOINTE and CMS make, use, import, offers for sale, and/or sell the TMT Product in direct competition with the COMBAT APPLICATION TOURNIQUET® sold by Plaintiff COMPOSITE RESOURCES.

COUNT ONE- PATENT INFRINGEMENT ('067 PATENT)

10. Plaintiff COMPOSITE RESOURCES incorporates herein by reference Paragraphs 1 through 9 of this Complaint, as if set forth in full.

11. The manufacture, use, import, offer for sale and/or sale of the TMT Product by Defendants ALPHAPOINTE and CMS in this Judicial District and elsewhere in the United States constitutes infringement of the '067 Patent under 35 U.S.C. §271.

12. The infringing TMT Product made, used, imported, offered for sale and/or sold by Defendants ALPHAPOINTE and CMS is a tourniquet for restricting a flow of blood in a body part, as claimed in at least Claim 15 of the '067 Patent.

13. The infringing TMT Product made, used, imported, offered for sale and/or sold by Defendants ALPHAPOINTE and CMS has a means for circumferentially surrounding the body part, as claimed in at least Claim 15 of the '067 Patent.

14. The infringing TMT Product made, used, imported, offered for sale and/or sold by Defendants ALPHAPOINTE and CMS has a means for compressing the body part, which means for compressing is slidably engaged with the means for circumferentially surrounding, as claimed in at least Claim 15 of the '067 Patent.

15. The infringing TMT Product made, used, imported, offered for sale and/or sold by Defendants ALPHAPOINTE and CMS has a means for tensioning the means for compressing, which means for tensioning comprises a rotatable member, as claimed in at least Claim 15 of the '067 Patent.

16. The infringing TMT Product made, used, imported, offered for sale and/or sold by Defendants ALPHAPOINTE and CMS has a means for looping a portion of the means for circumferentially surrounding the body part, wherein the means for looping is connected to the

means for circumferentially surrounding and the means for compressing the body part, as claimed in at least Claim 15 of the '067 Patent.

17. Defendants ALPHAPOINTE's and CMS' infringement of the '067 Patent has been and is in violation of COMPOSITE RESOURCES' patent rights, and it is believed that Defendants ALPHAPOINTE and CMS will continue to infringe COMPOSITE RESOURCES' patent rights unless enjoined by this Court.

18. Defendants ALPHAPOINTE's and CMS' infringement of these claims of the '067 Patent is, and has been, direct, indirect, literal, by equivalents, through inducement, and/or by contributing to the direct infringement of others.

19. On information and belief, Defendants ALPHAPOINTE's and CMS' acts of infringement have been and are willful and deliberate, with full knowledge of COMPOSITE RESOURCES' rights in the '067 Patent.

20. As a result of Defendants ALPHAPOINTE's and CMS' infringement of the '067 Patent, COMPOSITE RESOURCES has been damaged by loss of sales of its COMBAT APPLICATION TOURNIQUET® covered by the '067 Patent, loss of profits and/or loss of royalties, or in other respects, and will continue to be damaged in an amount yet to be determined. COMPOSITE RESOURCES has suffered and will continue to suffer irreparable injury unless the infringing activities of Defendants ALPHAPOINTE and CMS are enjoined.

21. By virtue of Defendants ALPHAPOINTE's and CMS' willful and deliberate infringement, this is an "exceptional case" within the meaning of 35 U.S.C. §285 and warrants an award of treble damages pursuant to 35 U.S.C. §284.

COUNT TWO- PATENT INFRINGEMENT ('253 PATENT)

22. Plaintiff COMPOSITE RESOURCES incorporates herein by reference Paragraphs 1 through 21 of this Complaint as if set forth in full.

23. The manufacture, use, import, offer for sale and/or sale of the TMT Product by Defendants ALPHAPOINTE and CMS in this Judicial District and elsewhere in the United States constitutes infringement of the '253 Patent under 35 U.S.C. §271.

24. The infringing TMT Product made, used, imported, offered for sale and/or sold by Defendants ALPHAPOINTE and CMS is a tourniquet for restricting a flow of blood in a body part, as claimed in at least Claim 9 of the '253 Patent.

25. The infringing TMT Product made, used, imported, offered for sale and/or sold by Defendants ALPHAPOINTE and CMS has an outer sleeve having first and second ends, as claimed in at least Claim 9 of the '253 Patent.

26. The infringing TMT Product made, used, imported, offered for sale and/or sold by Defendants ALPHAPOINTE and CMS has a buckle connected to the second end of the outer sleeve, as claimed in at least Claim 9 of the '253 Patent.

27. The infringing TMT Product made, used, imported, offered for sale and/or sold by Defendants ALPHAPOINTE and CMS has an inner strap in slidable engagement with the outer sleeve, as claimed in at least Claim 9 of the '253 Patent.

28. The infringing TMT Product made, used, imported, offered for sale and/or sold by Defendants ALPHAPOINTE and CMS has a windlass connected to the inner strap, as claimed in at least Claim 9 of the '253 Patent.

29. Defendants ALPHAPOINTE's and CMS' infringement of the '253 Patent has been and is in violation of COMPOSITE RESOURCES' patent rights, and it is believed that Defendant

CMS will continue to infringe COMPOSITE RESOURCES' patent rights unless enjoined by this Court.

30. Defendants ALPHAPOINTE's and CMS' infringement of these claims of the '253 Patent is, and has been, direct, indirect, literal, by equivalents, through inducement, and/or by contributing to the direct infringement of others.

31. On information and belief, Defendants ALPHAPOINTE's and CMS' acts of infringement have been and are willful and deliberate, with full knowledge of COMPOSITE RESOURCES' rights in the '253 Patent.

32. As a result of Defendants ALPHAPOINTE's and CMS' infringement of the '253 Patent, COMPOSITE RESOURCES has been damaged by loss of sales of its products covered by the '253 Patent, loss of profits and/or loss of royalties, or in other respects, and will continue to be damaged in an amount yet to be determined. COMPOSITE RESOURCES has suffered and will continue to suffer irreparable injury unless the infringing activities of Defendants ALPHAPOINTE and CMS are enjoined.

33. By virtue of Defendants ALPHAPOINTE's and CMS' willful and deliberate infringement, this is an "exceptional case" within the meaning of 35 U.S.C. §285 and warrants an award of treble damages pursuant to 35 U.S.C. §284.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff COMPOSITE RESOURCES prays for the following relief:

A. Judgment for COMPOSITE RESOURCES on its causes of action for patent infringement under 35 U.S.C. §271 against Defendants ALPHAPOINTE and CMS.

B. Preliminary and permanent injunction enjoining Defendants ALPHAPOINTE and CMS, their officers, directors, agents and employees and all those in active concert or participation with them who receive actual notice of the judgment by personal service or otherwise, from making, using, importing, offering for sale, and selling in the United States any product embodying the invention of the '067 Patent and from any further acts of infringement, contributory infringement and inducement of infringement of the '067 Patent.

C. Preliminary and permanent injunction enjoining Defendants ALPHAPOINTE and CMS, their officers, directors, agents and employees and all those in active concert or participation with them who receive actual notice of the judgment by personal service or otherwise, from making, using, importing, offering for sale, and selling in the United States any product embodying the invention of the '253 Patent and from any further acts of infringement, contributory infringement and inducement of infringement of the '253 Patent.

D. An accounting, assessment, and award of compensatory and punitive damages, including, but not limited to loss of profits and/or royalties, to COMPOSITE RESOURCES by reason of the wrongs committed by Defendants ALPHAPOINTE and CMS, including an award of increased damages pursuant to 35 U.S.C. §284, for Defendants' willful and deliberate patent infringement.

E. A finding that this is an exceptional case and an award of interest, including pre- and post-judgment interest, and costs of this action together with COMPOSITE RESOURCES' reasonable attorneys' fees pursuant to 35 U.S.C. §285.

F. Such other and further relief as this Court deems just and proper.

JURY DEMAND

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, COMPOSITE RESOURCES demands a trial by jury of all issues triable as of right by jury in the above action.

Respectfully submitted,

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Dated: February 22, 2017