

017-025

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS**

OLIVE SHADE LLC,

Plaintiff,

v.

MEDACTA USA, INC.,

Defendant.

Civil Action No. 17-cv-8008

TRIAL BY JURY DEMANDED

COMPLAINT FOR PATENT INFRINGEMENT

COMES NOW, Plaintiff, Olive Shade LLC, (“Olive Shade”), through the undersigned attorneys, and respectfully alleges, states, and prays as follows:

NATURE OF THE ACTION

1. This is an action for patent infringement under the Patent Laws of the United States, Title 35 United States Code (“U.S.C.”) to prevent and enjoin defendant Medacta USA Inc., (“Defendant” or “Medacta”), from infringing and profiting from, in an illegal and unauthorized manner and without authorization and/or of the consent from Olive Shade, United States Patent No. 6,861,954 (the “’954 Patent”) (the “Patent-In-Suit”) pursuant to 35 U.S.C. § 271, and to recover damages, attorney’s fees, and costs.

THE PARTIES

2. Plaintiff Olive Shade is a corporation organized under the laws of Texas having a mailing address at 15922 Eldorado Pkwy., Suite 500-1501, Frisco, TX 75035.

3. On information and belief, Defendant is a company organized under the laws of Delaware with its principal place of business at 1556 West Carroll Avenue, Chicago, Illinois 60607. Upon information and belief, Defendant may be served with process at Corporation

Service Company, 251 Little Falls Drive, Wilmington, DE 19808.

JURISDICTION AND VENUE

4. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a) because the action arises under the patent laws of the United States, 35 U.S.C. §§ 1 *et seq.*

5. This Court has personal jurisdiction over Defendant by virtue of its systematic and continuous contacts with this jurisdiction, including having a principal place of business in Illinois, as well as because of the injury to Olive Shade, and the cause of action Olive Shade has risen, as alleged herein.

6. Defendant is subject to this Court's personal jurisdiction pursuant to due process and/or the Illinois Long-Arm Statute, due to at least its substantial business in this forum, including: (i) at least a portion of the infringement alleged herein; and (ii) regularly doing or soliciting business, engaging in other persistent courses of conduct, and/or deriving substantial revenue from goods and services provided to individuals in Illinois.

7. Venue lies in this District under 28 U.S.C. § 1400(b) because, among other reasons Defendant has committed acts of infringement and has a regular and established place of business in this District. For example, Defendant is incorporated in this District.

THE PATENT-IN-SUIT

8. On July 25, 2000, the United States Patent and Trademark Office ("USPTO") duly and legally issued the '954 Patent, entitled "Method and Apparatus for Peer-To-Peer Communication" after a full and fair examination.

9. Olive Shade is presently the owner of the patent and possesses all right, title and interest in and to the '954 Patent. Olive Shade owns all rights of recovery under the '954 Patent,

including the exclusive right to recover for past infringement. The '954 Patent is valid and enforceable. A copy of the '954 Patent is attached hereto as Exhibit A.

10. The '954 Patent contains three independent claims and sixteen dependent claims.

11. The '954 patent discloses, *inter alia*, a system and method for tracking and associating a group of medical products with a group location based on a group radio frequency identification device signal.

DESCRIPTION OF THE ACCUSED INSTRUMENTALITIES

12. Defendant uses products, such as the Terso Solutions RFID-enabled "Mobile Case" (hereinafter "Accused Product"), which comprise a first unit of a medical product (e.g., a first orthopedic implant/surgical item inside the case) including a first unit radio frequency identification ("RFID") device (e.g., an RFID tag attached to the packaging of the first orthopedic implant/surgical item), the first unit RFID device uniquely identifying the medical product and the first unit (e.g., the RFID tag identifies the specific orthopedic implant/surgical item).¹

¹ See <http://www.rfidjournal.com/articles/view?15119/>, last visited October 15, 2017.



When Terso's [RFID Mobile Case](#) is opened and then closed, its built-in Impinj RS500 [reader](#) interrogates the [RFID tag](#) attached to each surgical item, then forwards that data to the Jetstream software via a cellular connection.



Medacta USA is testing two Terso cases filled with implants for hip surgeries.

13. The Accused Product comprises a second unit of the medical product (e.g., a second orthopedic implant/surgical item inside the case) having a second unit RFID device (e.g., an RFID tag attached to the packaging of the second orthopedic implant/surgical item), the second unit RFID device uniquely identifying the medical product and the second unit (e.g., the RFID tag identifies the specific orthopedic implant/surgical item).²

14. The Accused Product comprises packaging combining the first unit and the second unit into a group, the packaging having a group RFID device, the group RFID device uniquely identifying the medical product, the first unit and the second unit. For example, the first and second tagged orthopedic implant/surgical items are stored in a mobile case that includes an RFID reader that can capture each tag's unique RFID number, which is linked to that product's description and serial number.³

15. The Accused Product includes the elements described in paragraphs 12-14 which are covered by at least claim 9 of the '954 patent.

COUNT I
(INFRINGEMENT OF THE '954 PATENT)

16. Plaintiff re-alleges and incorporates by reference the allegations set forth in paragraphs 1-15.

17. Defendant has directly infringed and continues to directly infringe at least claim 9 of the '954 patent. In particular, Defendant uses (at least through internal testing) the Accused Product, as described above, without authority in the United States, including this District, and will continue to do so unless enjoined by this Court. For example, and according to publicly

² *Id.*

³ See <http://www.rfidjournal.com/articles/view?15119/2>, last visited October 15, 2017.

available information, Defendant has been using the Accused Product since at least 2016.⁴ As a direct and proximate result of Defendant's direct infringement of the '954 patent, Plaintiff has been and continues to be damaged.

18. Defendant has had knowledge of its infringement of the '954 Patent at least as of the service of the present complaint.

19. By engaging in the conduct described herein, Defendant has injured Olive Shade and is thus liable for infringement of the '954 Patent, pursuant to 35 U.S.C. § 271.

20. Defendant has committed these acts of infringement without license or authorization.

21. To the extent that facts learned in discovery show that Defendant's infringement of the '954 Patent is or has been willful, Olive Shade reserves the right to request such a finding at the time of trial.

22. As a result of Defendant's infringement of the '954 Patent, Olive Shade has suffered harm and monetary damages and is entitled to a monetary judgment in an amount adequate to compensate for Defendant's past infringement, together with interests and costs.

23. Olive Shade will continue to suffer harm and damages in the future unless Defendant's infringing activities are enjoined by this Court. As such, Olive Shade is entitled to compensation for any continuing or future infringement up until the date that Defendant is finally and permanently enjoined from further infringement.

DEMAND FOR JURY TRIAL

24. Olive Shade demands a trial by jury of any and all causes of action.

⁴ <https://www.tersosolutions.com/news/terso-solutions-and-medacta-usa-partner-for-rfid-mobile-case-early-access-program-1/>, last visited October 15, 2017.

PRAYER FOR RELIEF

Olive Shade respectfully prays for the following relief:

25. That Defendant be adjudged to have infringed the Patent-In-Suit;
26. That Defendant, its officers, directors, agents, servants, employees, attorneys, affiliates, divisions, branches, parents, and those persons in active concert or participation with any of them, be permanently restrained and enjoined from directly infringing the Patent-In-Suit;
27. An award of damages pursuant to 35 U.S.C. § 284 sufficient to compensate Olive Shade for Defendant's past infringement and any continuing and/or future infringement up until the date that Defendant is finally and permanently enjoined from further infringement, including compensatory damages;
28. An assessment of pre-judgment and post-judgment interests and costs against Defendant, together with an award of such interests and costs, in accordance with 35 U.S.C. § 284; and
29. That Olive Shade be given such other and further relief as this Court may deem just and proper.

Dated: November 6, 2017

Respectfully submitted,

/s/ Eugenio J. Torres-Oyola
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**ATTORNEYS FOR PLAINTIFF OLIVE
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