

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

OLIVE SHADE LLC,

Plaintiff,

v.

XERAFY LIMITED,

Defendant.

C.A. No.

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 Xerafy Limited, (“Defendant” or “Xerafy”), 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, Texas 75035.

3. On information and belief, Defendant is a company organized under the laws of the state of the Territory of the British Virgin Islands, having a principal place of business at 3102 Maple Avenue, Suite 450, Dallas, Texas 75201. Upon information and belief, Defendant may be served with process at the same address.

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, 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 Delaware Long-Arm Statute, *Del Code. Ann. Tit. 3, §3104*, 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 Delaware.

7. Defendant has conducted and does conduct business within the State of Delaware, including the geographic region within the District of Delaware, directly or through intermediaries, or offers and advertises (including through the use of interactive web pages with promotional material) products or services, or uses services or products in Delaware, including this judicial district, in a manner that infringes the Patent-In-Suit.

8. Venue lies in this District under 28 U.S.C. § 1391(c)(3) because Defendant is a foreign defendant.

THE PATENT-IN-SUIT

9. On March 1, 2005, the United States Patent and Trademark Office (“USPTO”) duly and legally issued the ’954 Patent, entitled “Tracking Medical Products with Integrated Circuits” after a full and fair examination.

10. 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.

11. The ’954 Patent contains four independent claims and twenty-three dependent claims.

12. 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

13. Defendant’s accused products, including but not limited to the “Xerafy Autoclavable Tags designed for healthcare” inventory management solution (hereinafter “Accused Product”), comprise an assembly of medical products (e.g., healthcare products with affixed RFID tags), comprising a first unit of a medical product (e.g., a single unit of a healthcare product) including a first unit radio frequency identification (“RF ID”) device (e.g., an RFID tag attached to a first surgical instrument or sponge), the first unit RF ID device uniquely identifying the medical product and the first unit (e.g., Xerafy RFID solution identifies a unique specific healthcare product name and an instrument ID of the unit of the healthcare product by RFID tag

attached to the unit of the healthcare product)).¹

Xerafy Autoclavable XXS Series EPC UHF RFID-On-Metal Tags

Xerafy's XXS series metal tags are the world's smallest passive UHF Class 1 Gen 2 tags. The XXS tags complement the XS series to create more opportunities for even smaller assets to be RFID-enabled. These ultra-small tags simplify the embedding process and allow source tagging solutions to be explored. The XXS series also come in the autoclavable version, specially designed for the tagging of surgical instruments in the healthcare market.



RFID tag

Features:

- World's smallest RFID metal tag
- Can be embedded in metal
- Withstands repeated autoclave and chemical washes

Series Specifications:

EPC Class 1 Gen 2 (ISO 18000-6C)	512-bit user memory
Passive UHF RFID transponders	64-bit TID; 96-EPC bits, extendible to 480 bits

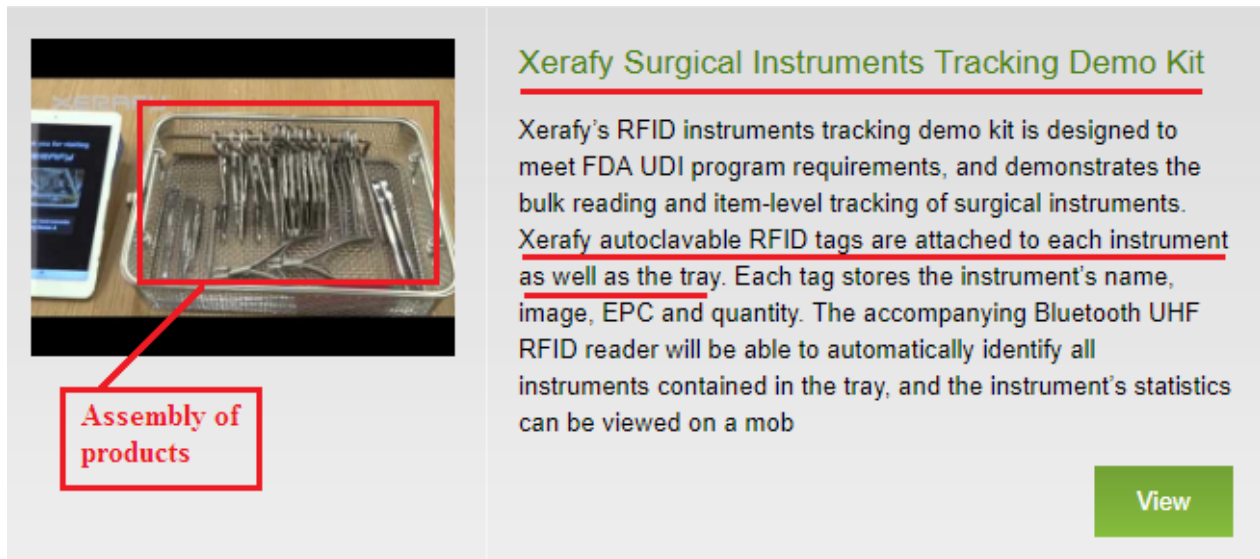
Source: http://www.xerafy.com/userfiles/uploads/datasheets/Xerafy_Autoclavable%20Dash%20XXS_Datasheet.pdf

14. The Accused Product comprises a second unit of the medical product (e.g., a second unit of a healthcare product) having a second unit RF ID device (e.g., an RFID tag attached to a second unit of the healthcare product), the second unit RF ID device uniquely identifying the medical product and the second unit (e.g., Xerafy RFID solution identifies a unique specific medication product name and an instrument ID of the unit of the healthcare product by RFID tag attached to the unit of the healthcare product).

15. The Accused Product comprises packaging combining the first unit and the second unit into a group (e.g., the healthcare product units are kept in group in a specific tray), the packaging (e.g., a specific tray) having a group RF ID device (e.g., RFID tag attached to the tray),

¹ http://www.xerafy.com/userfiles/uploads/datasheets/Xerafy_Autoclavable%20Dash%20XXS_Datasheet.pdf, last visited February 25, 2019.

the group RF ID device (e.g., RFID tag attached to the tray) uniquely identifying the medical product, the first unit and the second unit (e.g., Xerafy RFID solutions identifies a tray and its instruments). For example, tagged medical/surgical items are stored in trays that are also tagged. The tag on the tray identifies the medical/surgical items that are stored inside.



Source: <http://www.xerafy.com/en/resources/videos>

16. The Accused Product includes the elements described in paragraphs 13-15 which are covered by at least claim 9 of the '954 patent.

COUNT I
(DIRECT INFRINGEMENT OF THE '954 PATENT)

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

18. Defendant, at least during internal testing of the Accused Product, has directly infringed and continues to directly infringe at least claim 9 of the '954 patent by using the Accused Product, as described above, without authority in the United States, and will continue to do so unless enjoined by this Court. As a direct and proximate result of Defendant's direct infringement of the '954 patent, Plaintiff has been and continues to be damaged.

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

20. 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.

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

22. 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.

23. 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.

24. 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.

COUNT II
(INDIRECT INFRINGEMENT OF THE '954 PATENT)

25. Plaintiff realleges and incorporates by reference the allegations set forth in paragraphs 1 to 24.

26. In violation of 35 U.S.C. § 271, Defendant is now, and has been indirectly infringing the '954 patent.

27. Defendant has had knowledge of infringement of the '954 patent at least as of the service of the present complaint.

28. Defendant has indirectly infringed and continues to indirectly infringe at least claim 9 of the '954 patent by actively inducing its respective customers, users, and/or licensees to directly infringe by using the Accused product. Defendant engaged or will have engaged in such inducement having knowledge of the '954 patent. Furthermore, Defendant knew or should have known that its action would induce direct infringement by others and intended that its actions would induce direct infringement by others. For example, Defendant sells, offers to sell and advertises the Accused Product through websites or digital distribution platforms that are available in Delaware, specifically intending that its customers use it. Furthermore, Defendant's customers' use of the Accused Product is facilitated by the invention described in the '954 patent. As a direct and proximate result of Defendant's indirect infringement by inducement of the '954 patent, Plaintiff has been and continues to be damaged.

29. 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.

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

31. As a result of Defendant's infringement of the '954 patent, Olive Shade has suffered 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. Olive Shade will continue to suffer 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 and/or future infringement up until the date that Defendant is finally and permanently enjoined from further infringement.

DEMAND FOR JURY TRIAL

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

PRAYER FOR RELIEF

WHEREFORE, Olive Shade prays for the following relief:

33. That Defendant be adjudged to have directly infringed the Patents-In-Suit either literally or under the doctrine of equivalents;

34. An accounting of all infringing sales including, but not limited to, those sales not presented at trial;

35. 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 ‘Patents-In-Suit’;

36. An award of damages pursuant to 35 U.S.C. § 284 sufficient to compensate Olive Shade for the Defendant’s past infringement and any continuing or future infringement up until the date that Defendant is finally and permanently enjoined from further infringement, including compensatory damages;

37. An assessment of pre-judgment and post-judgment interest and costs against Defendant, together with an award of such interest and costs, in accordance with 35 U.S.C. § 284; and

38. That Olive Shade have such other and further relief as this Court may deem just and proper.

Dated: February 27, 2019

Respectfully Submitted,

DEVLIN LAW FIRM LLC

/s/ Timothy Devlin

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(*Pro Hac Vice* Application Pending)

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(*Pro Hac Vice* Application Pending)

**ATTORNEYS FOR PLAINTIFF
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