

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
AIKEN DIVISION**

|   |   |                                   |
|---|---|-----------------------------------|
| Carolina Covertech, Inc.                                | ) |                                   |
|   | ) | Case No. <u>1:21-cv-02882-CMC</u> |
| Plaintiff,  | ) |                                   |
|   | ) |                                   |
| v.  | ) | <b>COMPLAINT</b>                  |
|   | ) |                                   |
| ALP, Inc. (d/b/a ALP Lockdown Shades<br>and ALP Sewing) | ) |                                   |
|   | ) |                                   |
| Defendant.  | ) |                                   |
| _____   | ) |                                   |

COMES NOW Plaintiff Carolina Covertech, Inc. alleging as follows:

**NATURE OF THE ACTION**

1. This is an action under the Federal Declaratory Judgments Act, 28 U.S.C. §§ 2201 and 2202.
2. Plaintiff Carolina Covertech, Inc. seeks a declaration of this Court that *Gaetano*, U.S. Pat. No. D860,682, filed May 14, 2018, issued September 24, 2019 (the “682 Patent”) is invalid and/or non-infringed.

**PARTIES AND JURISDICTION**

3. Plaintiff Carolina Covertech, Inc. is a South Carolina corporation having its principal place of business in North Augusta, South Carolina.
4. Defendant ALP, Inc. (d/b/a ALP Lockdown Shades and ALP Sewing) is a New Jersey corporation having its principal place of business in North Bergen, New Jersey.
5. This Court has subject matter jurisdiction over this matter pursuant to 28 U.S.C. §§ 1331, 1338(a) & (b), and 1367(a), because this matter asserts claims that “aris[e] under the Constitution, laws, or treaties of the United States” or “aris[e] under any Act of Congress relating

to patents, plant variety protection, copyrights and trademarks,” or are supplemental to such claims.

6. In addition, this Court possesses subject matter jurisdiction over this case pursuant to 28 U.S.C. § 1332, because it is an action between citizens of states and citizens or subjects of a foreign state, and the amount in controversy that would be the subject of the declaratory judgment requested herein exceeds the sum or value of \$75,000.00.

7. Courts of this state may exercise personal jurisdiction over the Defendant because Defendant has sufficient minimum contacts with the state of South Carolina.

8. Venue is proper in this Court pursuant to 28 U.S.C. § 1391, *inter alia*, because a substantial part of the events or omissions giving rise to the claim occurred in this District and because Defendant is subject to personal jurisdiction in South Carolina.

### FACTS

9. Plaintiff and Defendant are competitors in the business of selling window shades that are particularly suitable for use in school rooms.

10. In cease and desist demand letters that Defendant directed to one of Plaintiff’s customers, dated August 18, 2021, attached hereto as Exhibit A, and to a division of Plaintiff, School Safety Solution, dated August 23, 2021, attached hereto as Exhibit B:

- a. Defendant represented that it is the owner of the ‘682 Patent, attached hereto as Exhibit C;
- b. Defendant accused Plaintiff’s window shade product (“Accused Product”) of infringing the ‘682 Patent;
- c. Plaintiff and Plaintiff’s customer, who purchases and resells Plaintiff’s products, were accused of infringing the ‘682 Patent by selling the Accused Product;

- d. Defendant demanded that Plaintiff and Plaintiff's customer cease and desist purchasing and reselling the Accused Product; and
- e. Defendant threatened legal action, including a claim for injunctive relief and damages against Plaintiff and Plaintiff's customer, thereby interfering with Plaintiff's business relationship with that customer.

11. The '682 Patent is invalid because the invention claimed therein was obvious under 35 U.S.C §103 in view of an earlier-filed patent owned by Plaintiff, *Bacolas*, U.S. Pat. No. D728,264, filed March 1, 2013, issued May 5, 2015, attached hereto as Exhibit D, and other prior art.

12. The '682 Patent is invalid because the inventor named therein was not the first to conceive and reduce to practice the invention claimed therein.

13. The '682 Patent is invalid because the invention claimed therein, or an obvious variation, was publicly used and sold more than one year prior to its filing date.

14. The '682 Patent is invalid because the application it arose from was certified as a micro-entity application, and Defendant, upon information and belief, is not a micro-entity.

15. Additionally, or alternatively, Plaintiff's accused products do not infringe the '682 Patent because they do not include each of the elements claimed therein and are not substantially the same in design.

16. Additionally, or alternatively, the Accused Product does not infringe the '682 Patent because it does not include each of the elements claimed therein and in the eye of an ordinary observer, giving such attention as a purchaser usually gives, the two designs are not substantially the same, and the ordinary observer would not be deceived thereby.

**COUNT I**

**DECLARATION OF NON-INFRINGEMENT**

17. Plaintiff incorporates by reference, as if set forth at length, the allegations of Paragraphs 1 through 16 of the Complaint set forth above.

18. Plaintiff respectfully requests that this Court adjudicate: (1) that neither Plaintiff nor any person or entity making, using or selling the Accused Product is not and has not infringed the '682 Patent; and (2) that Plaintiff has the continued right to make, use and sell its window shades, including the Accused Product; and (3) the respective rights of the parties in view of the '682 Patent.

**COUNT II**

**DECLARATION OF INVALIDITY AND CANCELLATION OF '682 PATENT**

19. Plaintiff incorporates by reference, as if set forth at length, the allegations of Paragraphs 1 through 16 of the Complaint set forth above.

20. Plaintiff respectfully requests that this Court find the '682 Patent to be invalid and order cancellation of the '682 Patent.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff respectfully requests and prays this Honorable Court to grant it judgment against Defendant, granting the following relief:

A declaratory judgment to the effect that:

- a) neither Plaintiff nor any customer of Plaintiff has infringed the '682 Patent by selling or using the Accused Product
- b) Plaintiff has the continued right to continue to make, use and sell its window shades, including the Accused Product, free from any claim of infringement of the '682 Patent;
- c) the '682 Patent is invalid as being obvious in view of prior art;

- d) the '682 Patent is invalid because the inventor named therein was not the first to conceive and reduce to practice the invention claimed therein;
- e) the '682 Patent is invalid because the invention claimed therein, or an obvious variation, was publicly used and sold more than one year prior to its filing date;
- f) the '682 Patent is invalid because Defendant is not a micro-entity;
- g) such other declaration as is consistent with the evidence in this case;
- h) Plaintiff recover its reasonable attorney fees;
- i) Plaintiff recover of its costs of this action; and
- j) such other and further relief as the Court may deem just and appropriate.

*s/ Jason S. Smith/*

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September 7, 2021