

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

RHEEM MANUFACTURING  
COMPANY and RHEEM SALES  
COMPANY, INC.,

*Plaintiffs,*

v.

A. O. SMITH CORPORATION,

*Defendant.*

C.A. No. \_\_\_\_\_

JURY TRIAL DEMANDED

**COMPLAINT**

Rheem Manufacturing Company and Rheem Sales Company, Inc. (collectively, “Rheem”) through their undersigned counsel, allege the following for their Complaint against A. O. Smith Corporation (“AOS”):

**NATURE OF THE ACTION AND SUMMARY OF THE PROCEEDINGS**

1. This is an action for declaratory judgment, seeking a declaration of non-infringement with respect to U.S. Patent No. 8,375,897 (“the ’897 patent”) (Ex. A) under the patent laws of the United States, 35 U.S.C. §§ 1 *et seq.*, and the Declaratory Judgment Act, 28 U.S.C. §§ 2201-2202. By this action, Rheem seeks to resolve an actual, immediate, and substantial controversy with AOS as to the ’897 patent.

2. This action for declaratory judgment arises from Defendant AOS’s unwarranted and unfounded allegations that Rheem’s gas-fired Universal Ultra Low

NOx water heater products, and the use thereof, infringe the sole claim of the '897 patent.

3. On June 29, 2021, AOS filed a lawsuit against Plaintiff Rheem Manufacturing Company asserting infringement of the '897 patent. *See AOS Holding Company et al v. Rheem Manufacturing Company*, Case No. 1-21-cv-00947 (“Delaware Action”), Dkt. 1 at 1 (D. Del. June 29, 2021). Despite voluntarily dismissing the Delaware Action *without prejudice* a month later, and without having served the complaint,<sup>1</sup> AOS has repeatedly, and more recently persistently, threatened Rheem with another lawsuit asserting infringement of the '897 patent involving the same Rheem products AOS accused in the Delaware Action, including at least Rheem’s Universal Ultra Low NOx gas water heaters designated with model numbers beginning with the prefix GNU, including at least Model Nos. GNU75-125, GNU82-156, GNU37-200, GNU76-200, GNU91-200, GNU100-200, GNU72-250, GNU100-250, GNU100-270, GNU65-360, and GNU100-400 (the “Rheem GNU Water Heaters”).<sup>2</sup>

4. Nor was that the first time that AOS had sued Rheem on intellectual property matters. In 2018, AOS sued Rheem Manufacturing Company in the Eastern

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<sup>1</sup> *AOS Holding Company et al v. Rheem Manufacturing Company*, Case No. 1-21-cv-00947, Dkt. 6 (D. Del. July 26, 2021).

<sup>2</sup> *AOS Holding Company et al v. Rheem Manufacturing Company*, Case No. 1-21-cv-00947, Dkt. 1 at 2 (D. Del. June 29, 2021).

District of Wisconsin alleging claims of false advertising, in violation of the Lanham Act and other state and common law allegations, related to Rheem Manufacturing Company advertising that it is “America’s #1 Water Heating Brand”.<sup>3</sup> The court there granted Rheem Manufacturing Company’s motion to dismiss and judgment was entered in Rheem Manufacturing Company’s favor.<sup>4</sup>

5. AOS’s prior and current actions created, and continue to create, a real and immediate controversy between AOS and Rheem as to whether Rheem’s products and services, including Rheem GNU Water Heaters, infringe the ’897 patent. The facts supporting this real, immediate, and justiciable controversy are detailed in this Complaint and include, but are not limited to: (a) AOS’s prior lawsuit against Bradford White Corporation, *AOS Holding Company et al v. Bradford White Corp.*, Case No. 1-18-cv-00412 (D. Del. Mar. 16, 2018) (the “Bradford White Litigation”), during which AOS’s technical expert testified at trial in August 2020 that the Rheem GNU Water Heaters, and use thereof, infringe the ’897 patent; (b) AOS’s prior lawsuits filed against Plaintiff Rheem Manufacturing Company, including the complaint in the prior Delaware Action, which alleged, among other things, that “Rheem has directly infringed the ’897 patent at least by importing,

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<sup>3</sup> *A. O. Smith Corporation v. Rheem Manufacturing Company*, Case No. 18-cv-1405, Dkt. 1 (E.D. Wis. Sept. 20, 2018).

<sup>4</sup> *A. O. Smith Corporation v. Rheem Manufacturing Company*, Case No. 18-cv-1405, Dkts. 22 and 23 (E.D. Wis. Apr. 3, 2019).

making, using, offering to sell or selling within the United States the Rheem GNU water heaters” and that “Rheem induces infringement of claim 1 of the ’897 patent by installers and/or users of the Rheem GNU water heaters;”<sup>5</sup> (c) AOS has sent numerous correspondence to Rheem personnel based in this District alleging infringement of the ’897 patent; (d) AOS’s outside counsel, which served as litigation counsel in both the Bradford White Litigation and the prior Delaware Action against Rheem, has sent numerous correspondence to Rheem’s outside counsel in this District alleging Rheem’s infringement of the ’897 patent; (e) AOS sent Rheem a report from AOS’s litigation technical expert witness that allegedly shows Rheem’s infringement of the ’897 patent; (f) AOS has identified to Rheem alleged acts by Rheem and Rheem’s installers and customers that AOS alleges infringe the ’897 patent; (g) AOS and Rheem conducted an in-person meeting in Atlanta, Georgia in September 2023 regarding AOS’s assertion of infringement of the ’897 patent, and since that in-person meeting, AOS continues to maintain that Rheem infringes the ’897 patent; and (h) AOS presently demands that Rheem stipulate to a tolling of the limitation of damages period pursuant to 35 U.S.C. § 286 retroactively from June 29, 2021 (the date of the filing of the Delaware Action)—a stipulation that would be meaningless but for AOS’s imminent plans to file its

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<sup>5</sup> *AOS Holding Company et al v. Rheem Manufacturing Company*, Case No. 1-21-cv-00947, Dkt. 1 at 5-7 (D. Del. June 29, 2021).

second lawsuit against Rheem, further contributing to the substantiality and immediacy of the controversy between Rheem and AOS with respect to the '897 patent.

6. Neither the Rheem GNU Water Heaters, nor the use thereof, infringe the sole claim of the '897 patent. Moreover, the accused Rheem GNU Water Heaters are materially the same—structurally, operationally, and functionally—as Rheem's prior art predecessor GN line of water heater products with respect to all limitations of the sole claim of the '897 patent. Rheem has demonstrated to AOS that the GN line of water heaters were publicly available and used throughout the United States for more than a year before the earliest possible priority date of the '897 patent.

### **THE PARTIES**

7. Plaintiff Rheem Manufacturing Company is a corporation organized and existing under the laws of the State of Delaware with its principal place of business at 1100 Abernathy Road, Suite 1700, Atlanta, Georgia 30328.

8. Plaintiff Rheem Sales Company, Inc. is a corporation organized and existing under the laws of the State of Delaware with its principal place of business at 1100 Abernathy Road, Suite 1700, Atlanta, Georgia 30328.

9. Rheem is among the country's leading manufacturers of residential and commercial water heaters and boilers, as well as heating, ventilating and air conditioning (HVAC) equipment. Rheem's operating segments include heating &

cooling systems (*e.g.*, heat pumps and air conditioners) for commercial and residential applications, water heating systems (*e.g.*, heat pump water heaters, gas water heaters, and electric water heaters) for commercial and residential applications, and pool & spa heaters. As a leader in heating, cooling and water heating innovation, Rheem strives for operational excellence, working smarter and more sustainably to consume fewer resources, generate less waste and ensure simpler, safer processes.

10. Rheem Manufacturing Company has been based in this District for more than seventeen years, moving its organizational headquarters to Atlanta from New York in 2006.

11. Rheem Sales Company, Inc. is a wholly-owned subsidiary of Rheem Manufacturing Company, and maintains its headquarters in Atlanta, Georgia. Rheem Sales Company, Inc. develops, tests, manufactures, provides warranties on, and sells through its distributors and retailers Rheem's water heating products, including the Rheem GNU Water Heaters.

12. Rheem's Water Heating Division opened its headquarters in Roswell, Georgia in 2017, just 10 miles away from Rheem's corporate headquarters, and houses Rheem's Innovation Learning Center for educating plumbers and contractors from around the southeast region. Rheem and its Atlanta-based facilities are home to a significant number of its employees and operations, including more than 500

employees responsible for research and development, product management, sourcing, sales, marketing, accounting, legal, and corporate leadership associated with Rheem's water heater products. Rheem makes available the Rheem GNU Water Heaters to customers and end users through its distributors and retailers throughout the United States, including in this District.

13. On information and belief, Defendant AOS is a corporation duly organized and existing under the laws of the State of Delaware having its principal place of business at 11270 West Park Place, Suite 170, Milwaukee, Wisconsin. On information and belief, AOS may be served by service of process upon its registered agent, The Prentice Hall Corp. System located at 2 Sun Court, Suite 400, Peachtree Corners, GA 30092.<sup>6</sup> AOS, as an out-of-state corporation that is registered and authorized to do business in Georgia, is subject to the general jurisdiction of Georgia's state courts. *See Cooper Tire & Rubber Co. v. McCall*, 312 Ga. 422, 424 (2021), *cert. denied*, 143 S. Ct. 2689 (2023).

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<sup>6</sup> *A. O. Smith Corporation*, Georgia Corporations Division Business Search, available at <https://ecorp.sos.ga.gov/BusinessSearch/BusinessInformation?businessId=728077&businessType=Foreign%20Profit%20Corporation&fromSearch=True> (last visited Oct. 11, 2023).

14. On information and belief, AOS Holding Company was a corporation duly organized under the laws of the State of Delaware, and a wholly-owned subsidiary of A. O. Smith Corporation.<sup>7</sup>

15. AOS Holding Company is listed on the face of the '897 patent as its assignee.<sup>8</sup> On information and belief, AOS Holding Company was the sole assignee of the '897 patent, and held all rights, title and interest in and to the '897 patent, since its issuance until at least July 31, 2023. *See, e.g.*, Delaware Action, Dkt. 1 at 4.

16. On information and belief, AOS Holding Company merged with Defendant AOS effective as of July 31, 2023, and AOS Holding Company assigned to Defendant AOS all past, present and future rights, title and interest in and to the '897 patent on the same day.<sup>9</sup>

### **JURISDICTION AND VENUE**

17. This Court has subject matter jurisdiction over Rheem's declaratory judgment Complaint under 28 U.S.C. §§ 1331, 1338(a), 2201, and 2202. As explained herein, there is a definite, concrete, and substantial controversy between

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<sup>7</sup> *See, e.g., AOS Holding Company et al v. Rheem Manufacturing Company*, Case No. 1-21-cv-00947, Dkt. 1 at 3 (D. Del. June 29, 2021).

<sup>8</sup> '897 patent (Ex. A) at 1.

<sup>9</sup> *Status Search for AOS Holding Company*, Delaware Department of State: Division of Corporations (Ex. B); *Patent Assignment and Cover Sheet*, USPTO (Aug. 9, 2023) (Ex. C).



the parties, of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

18. In addition, this action arises under the patent laws of the United States, 35 U.S.C. § 1 *et seq.*

19. This Court has personal jurisdiction over AOS because AOS has directed communications to Rheem in this District threatening legal action against Rheem and has consciously and purposely engaged in actions to avail itself of the jurisdiction of this District, including that it has regularly and systematically transacted business in this District and that it indicated in this District its intention to assert its rights under the '897 patent by pursuing claims of infringement against Rheem. AOS's purposeful actions include at least those actions described in this Complaint.

20. On or around June 29, 2021, AOS's Executive Vice President, General Counsel, and Secretary, Jim Stern, called Rheem Manufacturing Company's Chief Legal Officer, Scott Bates (who is located in Atlanta, Georgia), informing Rheem of the filing of the Delaware Action and accusing Rheem of infringing the '897 Patent.

21. On January 10, 2022, AOS's outside counsel—which served as litigation counsel in both the Bradford White Litigation and the prior Delaware Action against Rheem—sent Rheem's outside counsel at the time (which is located in Atlanta, Georgia) a report from AOS's litigation expert that allegedly

demonstrates infringement of the '897 patent by at least one Rheem GNU Water Heater product.

22. On February 25, 2022, Rheem's outside counsel responded with a detailed letter informing AOS that Rheem does not, and cannot, infringe the '897 patent, and the reasons for that conclusion.

23. On March 10, 2022, AOS's outside counsel again reached out to Rheem's outside counsel in Atlanta, Georgia, requesting additional information with respect to Rheem's February 2022 letter that Rheem does not and cannot infringe the '897 patent.

24. On March 31, 2022, Rheem's outside counsel responded that Rheem, while confident in its previously outlined positions, is not inclined to share confidential information with AOS.

25. On May 15, 2023, Jim Stern (AOS's Executive Vice President, General Counsel, and Secretary) again contacted Scott Bates (Rheem Manufacturing Company's Chief Legal Officer, located in Atlanta, Georgia) requesting a meeting with Rheem to discuss Rheem's alleged infringement of the '897 Patent. AOS and Rheem agreed to an in-person meeting, and conducted that in-person meeting in Atlanta, Georgia on September 7, 2023.

26. Throughout 2022 to the present, and more frequently and aggressively since May 2023, AOS's outside counsel repeatedly directed its correspondence to

Rheem's outside counsel in Atlanta, Georgia, regarding AOS's allegations that Rheem infringes the '897 patent.

27. AOS's relevant actions with regard to its attempts to assert its rights under the '897 patent are discussed further herein. AOS has consciously and purposely engaged in actions within this District to assert its rights under the '897 patent, availing itself of jurisdiction in this District.

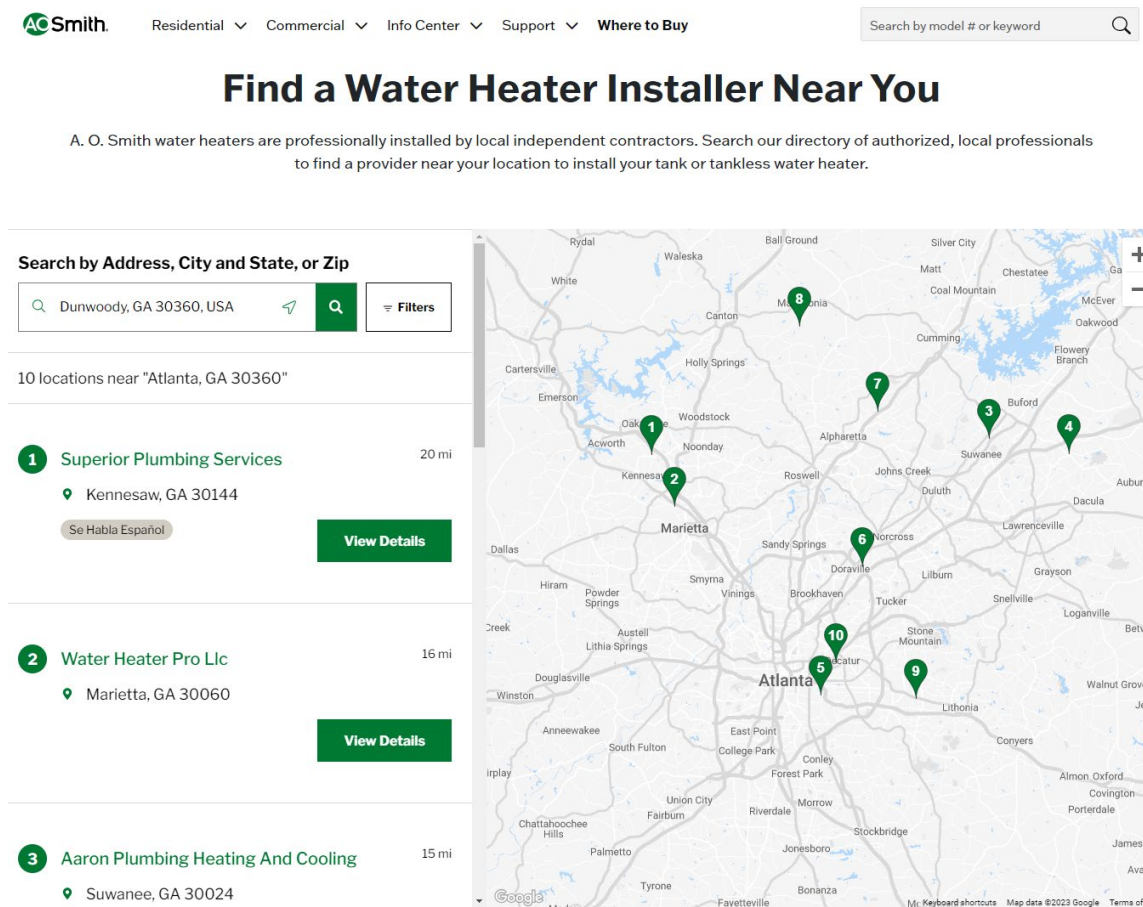
28. On information and belief, AOS has a Manufacturer's Representative, Harry Warren of Ga., LLC, located at 2861 Bankers Industrial Dr., Suite B, Doraville, Georgia 30360, which AOS markets on its website and which has AOS agents that regularly conduct AOS business in this District.<sup>10</sup>

29. On information and belief, AOS alleges that its customers have practiced and continue to practice the '897 patent by using AOS water heaters, including within this District. On information and belief, AOS sells its water heater products to customers through Authorized Water Heater Installers and authorized representatives in this District, as marketed on its website descriptions on "where to buy" its products at <https://www.hotwater.com/where-to-buy.html>. On information and belief, AOS has thirty-four "Authorized Water Heater Installer[s]" that sell AOS

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<sup>10</sup> *Manufacturer's Rep Locator*, A. O. Smith, available at <https://www.hotwater.com/sales-rep-lookup> (last visited Oct. 11, 2023); *Sales Representative List*, A. O. Smith, available at [https://www.aosmith.com/uploadedFiles/AOSmith\\_PRO/Site\\_Assets/Documents/AOS\\_Pro\\_WholesaleRepList.pdf](https://www.aosmith.com/uploadedFiles/AOSmith_PRO/Site_Assets/Documents/AOS_Pro_WholesaleRepList.pdf) (last visited Oct. 11, 2023).

water heaters in Georgia, where twenty-four Authorized Water Heater Installers are located within this District.<sup>11</sup> For example, on information and belief, AOS has at least 10 Authorized Water Heater Installers near Atlanta, Georgia alone, as seen on AOS's website:



30. On information and belief, AOS maintains Water Heater Repair & Service Providers in this District to support repair, parts purchase, and maintenance of its water heater products, including those products through which AOS alleges its

<sup>11</sup> *Find an Authorized Water Heater Installer*, A. O. Smith Corp., available at <https://local.hotwater.com/where-to-buy/georgia> (last visited Oct. 11, 2023).

customers practice the '897 patent.<sup>12</sup> On information and belief, customers can receive repair services, parts purchase services, and maintenance services for AOS products through the Water Heater Repair & Service Providers. On information and belief, AOS provides specialized training, parts discounts, priority caller support and more for its contractors through AOS's Service Provider Program:<sup>13</sup>

**Service Provider Enrollment**

Qualify your business in A. O. Smith's Service Provider Program to conduct installations, service and repairs for A. O. Smith products. As a partner in the program, you'll receive specialized training, parts discounts, priority caller support & more. Contact a local Sales Rep to learn more.

[Find A Sales Rep](#)

**Benefits of Being an A. O. Smith Contracted Service Provider**

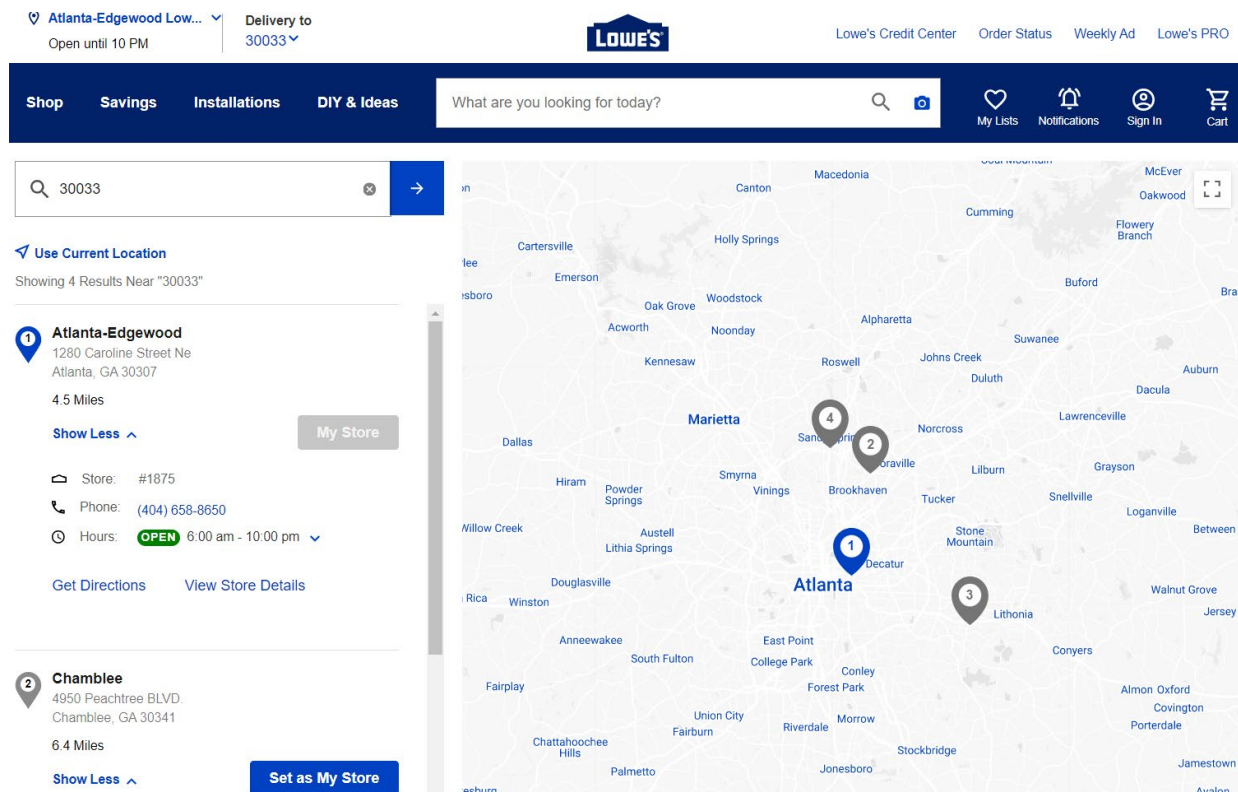
- Specialized Service Training**  
Service Providers receive exclusive manufacturing training to ensure you have the tools you need to install A. O. Smith products.
- Parts Discounts**  
Our Service Providers benefit from volume part discounts. It's just one of the ways we say thank you for being our partner!
- Priority Caller Support**  
We put you first. As a contracted Service Provider your calls will be prioritized ahead of other callers so you can get the answers you need to quickly complete each job.

<sup>12</sup> *Find A Local Service Provider*, A. O. Smith Corp., available at <https://www.hotwater.com/support/find-a-service-provider.html> (last visited Oct. 11, 2023); see also *AOS Holding Co. v. Bradford White Corp.*, 2021 WL 5411103 at \*8 (D. Del., Mar. 31, 2021).

<sup>13</sup> *Service Provider Enrollment*, A. O. Smith Corp., available at <https://www.hotwater.com/pros/service-provider-enrollment.html> (last visited Oct. 11, 2023).

On information and belief, Water Heater Repair & Service Providers must “qualify” in AOS’s Service Provider Program to enroll as AOS’s service provider in this district.<sup>14</sup>

31. On information and belief, AOS further sells its water heater products through retailers such as Lowe’s, which maintains numerous physical locations within Georgia, including at least four locations near Atlanta, Georgia alone, as seen on Lowe’s website:<sup>15</sup>



<sup>14</sup> *Id.*

<sup>15</sup> *A. O. Smith Water Heaters*, Lowe’s, available at <https://www.lowes.com/search?searchTerm=ao%20smith%20water%20heater> (last visited Oct. 11, 2023); *Georgia Locations*, Lowe’s, available at <https://www.lowes.com/Lowes-Stores/Georgia/GA> (last visited Oct. 11, 2023); *Lowe’s near 30033*, Lowe’s, available at <https://www.lowes.com/store> (last visited Oct. 11, 2023).



32. The actions set forth above and in the paragraphs that follow bear a direct connection to, and form the basis for, Rheem's claims against AOS and have created a real, live, immediate, and justiciable case or controversy between Rheem and AOS. AOS has asserted rights under the '897 patent based on certain identified ongoing and planned activity of Rheem, including Rheem importing, making, using, offering to sell and selling within the United States the Rheem GNU Water Heaters, and Rheem contends that it has the right to engage in the accused activity without license. AOS previously filed the Delaware Action against Rheem Manufacturing Company alleging infringement of the '897 patent, and after voluntarily dismissing the suit without prejudice, has repeatedly reached into this District asserting infringement of the '897 patent, placing Rheem under imminent threat of litigation while AOS seeks to compel Rheem to take a license to the '897 patent, including via the September 2023 in-person meeting in Atlanta, Georgia between the parties. Moreover, leading into that September 2023 meeting, AOS requested that Rheem stipulate to a tolling of the limitation of damages period pursuant to 35 U.S.C. § 286 retroactively from June 1, 2023; however, subsequent to that September 2023 meeting and the failure to resolve this dispute, AOS now demands that Rheem stipulate to an additional more than two-years-tolling of the limitation of damages, retroactively from *June 29, 2021* (the date of the Delaware Action). It is therefore

no surprise that Rheem now reasonably apprehends an imminent patent infringement lawsuit by AOS under the '897 patent.

33. AOS has sufficient minimum contacts with this District such that AOS is subject to specific personal jurisdiction for this Complaint. AOS has engaged in actions in this District that form the basis of Rheem's claims against AOS and that have created a real, live, immediate, and justiciable case or controversy between AOS and Rheem. In addition, on information and belief, AOS provides services and products related to the technology of interest of the '897 patent to this District, and to customers within this District that AOS alleges practice the '897 patent with AOS products. The exercise of personal jurisdiction in this District based on these repeated and highly pertinent contacts does not offend traditional notions of fairness and substantial justice.

34. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391(b) and 1400, including because, under Federal Circuit law, venue in declaratory judgment actions for non-infringement of patents is determined under the general venue statute, 28 U.S.C. § 1391.

35. Under 28 U.S.C. § 1391(b)(1), venue is proper in any judicial district where a defendant resides. An entity with the capacity to sue and be sued, such as AOS, is deemed to reside, if a defendant, in any judicial district in which such defendant is subject to the court's personal jurisdiction with respect to the civil action



in question under 28 U.S.C. § 1391(c). As demonstrated in this Complaint, AOS is subject to personal jurisdiction with respect to this action, and thus, for the purposes of this action, venue is proper under 28 U.S.C. § 1391(b)(1).

36. For the reasons set forth herein, venue is also proper under 28 U.S.C. § 1391(b)(2), given that a substantial part of the events or omissions giving rise to the claim occurred and/or a substantial part of property that is the subject of the action is situated in this District.

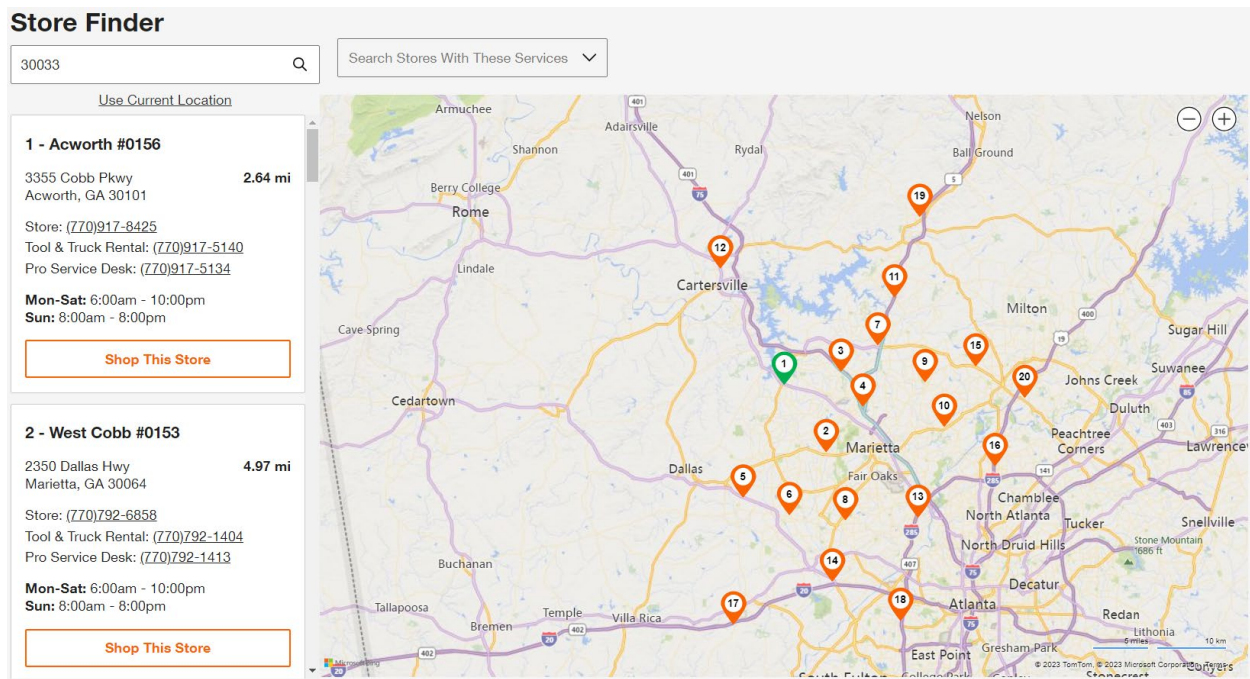
### **FACTUAL BACKGROUND**

37. The technologies at issue are certain equipment and processes used for gas-fired water heaters.

38. Plaintiffs are worldwide leaders and innovators in residential and commercial water heaters, providing sustainable, high-efficiency water heating solutions, including those for gas-fired water heaters. Plaintiffs devote significant resources to their research and development, and provide innovative products and product features to their customers. For example, Rheem's efforts have resulted in its ability to offer high-performing, energy-efficient water heaters such as Ultra Low NOx water heaters, including the Rheem GNU Water Heaters.

39. AOS and AOS Holding Company filed the prior Delaware Action against Rheem Manufacturing Company, alleging that Rheem Manufacturing Company infringed the '897 patent at least by importing, making, using, offering to

sell or selling the Rheem GNU Water Heaters. Rheem Sales Company, Inc. sells and distributes—through its distributors and retailers—the Rheem GNU Water Heaters throughout the United States, including in this District. One such retailer through which Rheem’s GNU Water Heaters are sold is Home Depot, which maintains numerous physical locations within this District.<sup>16</sup>



<sup>16</sup> *Rheem Products*, Home Depot, available at <https://www.homedepot.com/s/rheem%20gnu?NCNI-5> (last visited Oct. 11, 2023); *Georgia Locations*, Home Depot, available at <https://www.homedepot.com/l/GA> (last visited Oct. 11, 2023).

*Activities Regarding the '897 Patent*

40. On March 16, 2018, AOS and AOS Holding Company filed a complaint in the U.S. District Court of the District of Delaware alleging that Bradford White Corp. infringed the '897 patent.<sup>17</sup>

41. Rheem was not involved in the Bradford White Litigation. Rheem was not a party to the Bradford White Litigation, and did not participate in the Bradford White Litigation.<sup>18</sup>

42. During the Bradford White Litigation, in an effort to support its claim for lost profits and its contention that there are no noninfringing alternatives in the market, AOS alleged that the Rheem GNU Water Heaters, and the use thereof, infringed the '897 patent. For example, on August 17, 2020, during the bench trial in the Bradford White Litigation, AOS's technical expert, Dr. Emad Tanbour, testified that Rheem's GNU100-200 model infringed claim 1 of the '897 patent.<sup>19</sup> Dr. Tanbour also testified during the bench trial in the Bradford White Litigation regarding his "infringement testing report regarding the third-party units [he] tested for Rheem and American Standard."<sup>20</sup>

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<sup>17</sup> *AOS Holding Company et al v. Bradford White Corp.*, Case No. 1-18-cv-00412 (D. Del. Mar. 16, 2018) ("Bradford White Litigation").

<sup>18</sup> *AOS Holding Co. v. Bradford White Corp.*, 2021 WL 5411103 at n. 24 (D. Del., Mar. 31, 2021).

<sup>19</sup> *AOS Holding Company et al v. Bradford White Corp.*, Case No. 1-18-cv-00412, Dkt. 189 at 20-21, 42, 90 (D. Del. Sept. 20, 2020).

<sup>20</sup> *Id.* at 223.

43. On March 31, 2021, after a bench trial, the District of Delaware court found that Bradford White infringed the '897 patent.<sup>21</sup>

44. Rheem was not a party to, and was not involved in any way in, the Bradford White Litigation.

45. On June 29, 2021, AOS and AOS Holding Company filed the Delaware Action against Rheem Manufacturing Company. In its complaint in the Delaware Action, AOS and AOS Holding Company alleged that “[Rheem Manufacturing Company] has directly infringed the '897 patent at least by importing, making, using, offering to sell or selling within the United States the Rheem GNU water heaters that embody the technology of the '897 patent, including the inventions recited in claim 1 of the '897 patent”.<sup>22</sup> AOS and AOS Holding Company further alleged that the “Rheem GNU water heaters directly infringe AOS’s '897 patent or induce infringement by their installers and/or users,” that “[Rheem Manufacturing Company] directly performs all the steps of claim 1 of the '897 patent or directs or controls the performance of all the steps of claim 1 of the '897 patent, and therefore is the entity responsible for infringement of the '897 patent,” and that “[a]lternatively, [Rheem Manufacturing Company] induces infringement of claim 1

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<sup>21</sup> *AOS Holding Co. v. Bradford White Corp.*, 2021 WL 5411103 (D. Del., Mar. 31, 2021).

<sup>22</sup> *AOS Holding Company et al v. Rheem Manufacturing Company*, Case No. 1-21-cv-00947, Dkt. 1 at 5 (D. Del. June 29, 2021).

of the '897 patent by installers and/or users of the Rheem GNU water heaters in that the Rheem GNU water heaters are manufactured and sold by Rheem as complete, self-contained water heaters that when used as directed, encourage, recommend and/or promote use of the Rheem GNU water heaters in a manner that infringes claim 1 of the '897 patent.”<sup>23</sup>

46. On June 29, 2021, on the same day AOS and AOS Holding Company filed the Delaware Action against Rheem Manufacturing Company, AOS and AOS Holding Company filed a complaint in the U.S. District Court for the District of Delaware against Ariston Thermo USA, LLC and Water Heating Technologies Corp. alleging infringement of the '897 patent for “importing, making, using, offering to sell or selling within the United States the American Standard ULN water heaters that embody the technology of the '897 patent.”<sup>24</sup> As discussed above, in the Bradford White Litigation, AOS alleged that the American Standard ULN water heaters, like the Rheem GNU Water Heaters, infringed the '897 patent.<sup>25</sup>

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<sup>23</sup> *Id.* at 3, 6-7.

<sup>24</sup> *AOS Holding Company et al v. Water Heating Technologies Corp. et al*, Case No. 1-21-cv-00951, Dkt. 1 at 5 (D. Del. June 29, 2021).

<sup>25</sup> *AOS Holding Co. v. Bradford White Corp.*, 2021 WL 5411103 at \*36 (D. Del., Mar. 31, 2021).

47. On July 26, 2021, AOS and AOS Holding Company voluntarily dismissed the Delaware Action against Rheem Manufacturing Company, without prejudice.<sup>26</sup>

48. AOS and AOS Holding Company did not serve Rheem Manufacturing Company, or any other Rheem entity, the complaint in the Delaware Action (*AOS Holding Company et al v. Rheem Manufacturing Company*, Case No. 1-21-cv-00947 (D. Del.)).

49. On July 26, 2021, AOS and AOS Holding Company voluntarily dismissed the aforementioned litigation against Ariston Thermo USA, LLC and Water Heating Technologies Corp., without prejudice.<sup>27</sup>

50. On January 10, 2022, AOS's litigation counsel sent Rheem's outside counsel at the time (located in Atlanta, Georgia) a report from AOS's litigation technical expert witness that allegedly demonstrates infringement of the '897 patent by at least one Rheem GNU Water Heater product.

51. On February 25, 2022, Rheem's outside counsel in Atlanta, Georgia, informed AOS that Rheem cannot infringe the '897 patent, including because: (a) the Rheem GNU Water Heaters do not meet every limitation of the claim of the

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<sup>26</sup> *AOS Holding Company et al v. Rheem Manufacturing Company*, Case No. 1-21-cv-00947, Dkt. 6 (D. Del. July 26, 2021).

<sup>27</sup> *AOS Holding Company et al v. Water Heating Technologies Corp. et al*, Case No. 1-21-cv-00951, Dkt. 6 (D. Del. July 26, 2021).

'897 patent; (b) AOS's test results on the accused Rheem GNU Water Heaters that AOS shared with Rheem's outside counsel demonstrate non-infringement of the '897 patent; and further because (c) the accused Rheem GNU Water Heaters are materially the same as Rheem's predecessor GN water heater products with respect to all limitations of the sole claim of the '897 patent—including because Rheem's own testing of those two lines of products demonstrates that the pressures measured at the relevant locations with respect to the '897 patent claim are materially the same—and thus, to the extent the sample GNU product infringes the '897 patent under AOS's claim interpretation and testing parameters, the sample GN product invalidates the '897 patent.

52. On March 10, 2022, AOS's litigation counsel contacted Rheem's outside counsel (located in Atlanta, Georgia) requesting that Rheem produce to AOS certain Rheem internal proprietary documents and information regarding, among other things, Rheem's assertion of non-infringement, Rheem's GNU Water Heaters, Rheem's predecessor GN water heater products, and Rheem's testing of those products referenced in Rheem's February 25, 2022 letter.

53. On August 3, 2022, the Federal Circuit affirmed the judgment against Bradford White Corp. for infringing the '897 patent.<sup>28</sup>

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<sup>28</sup> *AOS Holding Co. v. Bradford White Corp.*, 2022 WL 3053891 (Fed. Cir. Aug. 3, 2022).



54. On October 20, 2022, Jim Stern (AOS's Executive Vice President, General Counsel, and Secretary) contacted Scott Bates (Rheem Manufacturing Company's Chief Legal Officer, located in Atlanta, Georgia) by email, requesting a call regarding AOS's allegations that Rheem infringes the '897 patent. Messrs. Bates and Stern had a call on or around October 24, 2022, during which Mr. Stern again alleged that Rheem infringed the '897 patent.

55. On November 8, 2022, AOS's litigation counsel provided to Rheem's current outside counsel (also located in Atlanta, Georgia) the report from AOS's litigation technical expert witness that allegedly demonstrates Rheem's infringement of the '897 patent, and offered to provide that report to Rheem's internal legal and other technical personnel. AOS's litigation counsel stated that its position in the dispute had not changed and gave Rheem until November 22, 2022, to provide AOS a "substantive proposal" to resolve the dispute, along with all the Rheem internal documents and information AOS's litigation counsel had sought from Rheem in its March 10, 2022 correspondence.

56. On March 21, 2023, Rheem's outside counsel in Atlanta, Georgia, provided AOS's litigation counsel Rheem's results from additional testing of a Rheem accused GNU Water Heater and a Rheem GN water heater, which demonstrated again that to the extent AOS maintains its allegation that the Rheem GNU Water Heaters practice a limitation of the '897 patent claim, then the Rheem

GN line of water heaters, which were introduced to the market as early as 2001, likewise have these features and functions of the '897 patent claim.

57. After several more discussions between the parties, on or around May 15, 2023, Jim Stern (AOS's Executive Vice President, General Counsel, and Secretary) again contacted Mr. Bates (Rheem Manufacturing Company's Chief Legal Officer, located in Atlanta, Georgia) requesting a meeting with Rheem to discuss Rheem's alleged infringement of the '897 Patent. AOS and Rheem ultimately agreed to hold an in-person meeting, and held that in-person meeting in Atlanta, Georgia on September 7, 2023.

58. Leading up to that September 2023 meeting, on or around June 6, 2023, AOS requested that Rheem stipulate to a tolling of the limitation of damages period pursuant to 35 U.S.C. § 286 retroactively from June 1, 2023, as though AOS had filed suit against Rheem on that day. No such stipulation was agreed to by Rheem and AOS.

59. AOS and Rheem did not resolve the present dispute regarding Rheem's alleged infringement of the '897 patent during, or after, the September 7, 2023 in-person meeting in Atlanta, Georgia.

60. After the September 7, 2023 in-person meeting, AOS altered its prior damages tolling request and has since repeatedly demanded that Rheem stipulate to a tolling of the limitation of damages period pursuant to 35 U.S.C. § 286

retroactively, going even further into the past, from June 29, 2021 (the date AOS filed its complaint in the Delaware Action).

61. AOS is not entitled to such a stipulation, or relief, tolling the limitation of damages period because at least AOS voluntarily dismissed the Delaware Action, without prejudice, and without ever having served the complaint in that action, and without ever requiring, or even requesting, such a stipulation as a condition of such voluntary dismissal. Such a tolling stipulation, and AOS's present motive for obtaining it, would be meaningless but for AOS's imminent plans to file its second lawsuit against Rheem alleging infringement of the '897 patent.

62. In the Bradford White Litigation, AOS sought, and was awarded, damages in the form of lost profits. On information and belief, AOS contends that it is entitled to damages arising from Rheem's alleged infringement of the '897 patent in the form of lost profits based on Rheem making, using, offering to sell and selling the Rheem GNU Water Heaters throughout the United States, including within this District. On information and belief, AOS contends that it would have made sales of its own products, including within this District, but for Rheem's alleged acts of infringement.

63. Rheem and AOS have adverse legal interests with respect to the question of infringement of the '897 patent, particularly in view of the Bradford White Litigation, the Delaware Action, and the September 2023 in-person meeting

in Atlanta, Georgia and subsequent interaction between the parties. Given the repeated and persistent allegations of infringement of the '897 patent, the failure to resolve this dispute during the September 2023 in-person meeting, and AOS's subsequent demands to toll the limitation for patent infringement damages period, along with the other activities set forth above, the dispute between Rheem and AOS is immediate and real.

64. Through at least its actions set forth in this Complaint, AOS has established sufficient minimum contacts with the Northern District of Georgia such that AOS is subject to specific personal jurisdiction in this District. Further, the exercise of personal jurisdiction based on these repeated and highly pertinent contacts does not offend traditional notions of fairness and substantial justice.

### ***The '897 Patent***

65. The '897 patent—which AOS alleges Rheem infringes—bears an issue date of February 19, 2013, and lists a claim of priority to August 16, 2006, as a continuation of application number 11/464,998, which is listed as issuing as U.S. Patent No. 7,634,977. The '897 patent bears the title “Gas Water Heater” and lists Herbert Edward Smith and Gordon Stretch as inventors.

66. The '897 patent has only one issued claim, a method claim, which is presented as follows:

1. A method of interfacing a natural convection vent construction with a water heater, the method comprising:

providing a water heater having a burner, a blower, and a flue;  
creating products of combustion with the burner;

forcing the products of combustion into the flue under positive pressure with the blower;

interposing an exhaust plenum between the flue and the natural convection vent construction;

dropping the pressure of the products of combustion to near atmospheric pressure within the plenum; and

permitting the products of combustion to rise out of the plenum and into the natural convection vent construction substantially entirely under the influence of natural convection;

wherein the natural convection vent construction includes a draft hood, the method further comprising mixing ambient air with the products of combustion as the products of combustion flow into the draft hood.

67. In the Delaware Action, AOS alleged that “Rheem has directly infringed the ’897 patent at least by importing, making, using, offering to sell or selling within the United States the Rheem GNU Water Heaters,” that “Rheem directly performs all the steps of claim 1 of the ’897 patent or directs or controls the performance of all the steps of claim 1 of the ’897 patent, and therefore is the entity responsible for infringement of the ’897 patent,” and that, “[a]lternatively, Rheem

induces infringement of claim 1 of the '897 patent by installers and/or users of the Rheem GNU Water Heaters... manufactured and sold by Rheem..."<sup>29</sup>

68. AOS, in its communications to Rheem and Rheem's outside counsel, continues to assert that Rheem infringes the '897 patent at least by importing, making, using, offering to sell or selling within the United States the Rheem GNU Water Heaters, directly performs all the steps of claim 1 of the '897 patent, and induces infringement of claim 1 of the '897 patent by installers and/or customers and users of the Rheem GNU Water Heaters by directing, encouraging, recommending and/or promoting the use of the Rheem GNU Water Heaters in a manner that infringes claim 1 of the '897 patent.

**COUNT I**  
**DECLARATORY JUDGMENT OF NON-INFRINGEMENT**  
**OF THE '897 PATENT**

69. Rheem repeats and realleges and incorporates the preceding paragraphs as if fully set forth herein.

70. Rheem has not infringed and does not infringe, directly or indirectly, any claim of the '897 patent, either literally or under the doctrine of equivalents, under 35 U.S.C. § 271, including but not limited to through Rheem's importing, making, using, offering to sell, selling, and/or supplying the Rheem GNU Water

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<sup>29</sup> *AOS Holding Company et al v. Rheem Manufacturing Company*, Case No. 1-21-cv-00947, Dkt. 1 at 5-7 (D. Del. June 29, 2021).

Heaters. The Rheem GNU Water Heaters do not infringe the '897 patent, and use of the Rheem GNU Water Heaters by Rheem, its installers, customers or other persons does not infringe the '897 patent for multiple reasons, including, but not limited to, those identified below.

71. The court in the Bradford White Litigation construed certain claim limitations of the '897 patent.<sup>30</sup> As described above, Rheem was not a party to the Bradford White Litigation, and did not participate in the Bradford White Litigation. Rheem does not infringe the '897 patent, either under the constructions set forth in the Bradford White Litigation or under any proper construction of the sole claim of the '897 patent.<sup>31</sup>

72. For example, Rheem GNU Water Heaters, and use of the Rheem GNU Water Heaters, do not meet at least the element “providing a water heater having a burner, a blower, and a flue” as recited in claim 1 of the '897 patent. The Rheem GNU Water Heaters do not have “a flue” as required by a proper construction of this term in claim 1 of the '897 patent.

73. The '897 patent specification describes the “flue” of the invention as being “formed from a single, seamless tube that is bent to include the straight

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<sup>30</sup> *AOS Holding Company et al v. Bradford White Corp.*, Case No. 1-18-cv-412, Dkt. 61 (D. Del. Jan. 25, 2019), Dkt. 77 (D. Del. June 4, 2019).

<sup>31</sup> At the present time, Rheem takes no position as to the proper construction of any term in the sole claim of the '897 patent.



segments 95, 100 and the loop 105,” and defines the term “seamless” “to describe a tube that includes no circumferential welded joints joining segments of the tube together....”<sup>32</sup> The ’897 patent emphasizes the importance of using a “single, seamless tube” because “[w]eld joints and the material around weld joints are often particularly vulnerable to failure under fatigue, which may arise from the periodic heating and cooling in the normal operation of a water heater,” and thus, “[t]he present invention therefore reduces the likelihood of fatigue failure within the flue tube by using a single seamless tube.”<sup>33</sup> Accordingly, “a flue,” as claimed in the ’897 patent, requires (i) a single tube that (ii) includes no circumferential welded joints joining segments of the tube together.

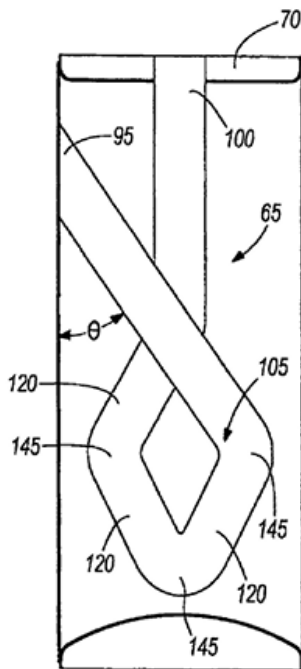


FIG. 4

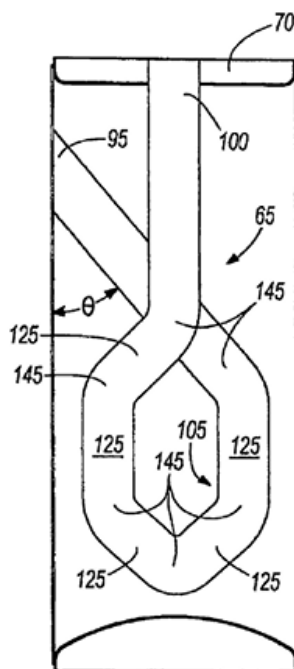


FIG. 5

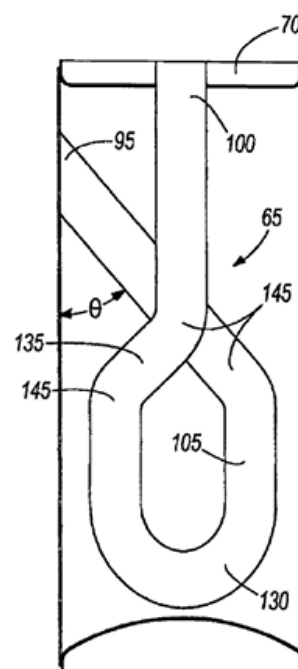


FIG. 6

<sup>32</sup> ’897 Patent (Ex. A) at 4:20-27.

<sup>33</sup> *Id.* at 4:31-36.

74. The Rheem GNU Water Heaters do not have “a flue” as required by claim 1 of the ’897 patent. For example, the Rheem GNU Water Heaters do not have a single seamless tube corresponding to the claimed “a flue” element of claim 1 of the ’897 patent.

75. As another example, the Rheem GNU Water Heaters, and the use of the Rheem GNU Water Heaters, do not meet at least the claim limitations “dropping the pressure of the products of combustion to near atmospheric pressure within the plenum” and “permitting the products of combustion to rise out of the plenum and into the natural convection vent construction substantially entirely under the influence of natural convection,” as recited in claim 1 of the ’897 patent.

76. In the Bradford White Litigation, the court construed the phrase “near atmospheric pressure” to mean “a pressure sufficient to allow the products of combustion to rise out of the plenum substantially entirely under the influence of natural convection” and construed the phrase “substantially entirely under the influence of natural convection” to mean “at a pressure near or below atmospheric pressure and without the influence of the power burner, such that a Category I venting system can be used.”<sup>34</sup> AOS asserts infringement by Rheem under these prior claim constructions.

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<sup>34</sup> *AOS Holding Company et al v. Bradford White Corp.*, Case No. 1-18-cv-00412, Dkt. 61 at 5 (D. Del. Jan. 25, 2019), Dkt. 77 at 8 (D. Del. June 4, 2019).

77. Based on AOS’s testing of the Rheem GNU Water Heaters that AOS provided to Rheem and upon which AOS asserts Rheem’s infringement of the ’897 patent—and unlike the Bradford White water heaters found to infringe the ’897 patent in the Bradford White Litigation—the Rheem GNU Water Heaters maintain a positive pressure of the products of combustion at the exit of the structure that AOS asserts is the “plenum.”<sup>35</sup> Rheem tested the Rheem GNU Water Heaters using the testing methodology described by AOS’s expert witness during his testimony in the Bradford White Litigation,<sup>36</sup> and Rheem’s testing—using AOS’s testing methodology—also demonstrates that the Rheem GNU Water Heaters maintain a positive pressure of the products of combustion at the exit of the structure that AOS asserts is the “plenum.” Rheem disclosed the results of that testing to AOS in Rheem’s March 21, 2023 letter to AOS’s litigation counsel.<sup>37</sup>

78. The Rheem GNU Water Heaters, and the use of the Rheem GNU Water Heaters, do not meet the “dropping the pressure of the products of combustion to near atmospheric pressure within the plenum” claim element of the ’897 patent if

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<sup>35</sup> See, e.g., *AOS Holding Company et al v. Bradford White Corp.*, Case No. 1-18-cv-00412, Dkt. 189 at 87-88, 107 (D. Del. Sept. 20, 2020).

<sup>36</sup> *Id.* at 223.

<sup>37</sup> Rheem does not admit that AOS’s testing methodology is an industry standard testing methodology, or that AOS’s testing methodology is necessarily a proper testing methodology in the context of claim 1 of the ’897 patent.

the pressure of the products of combustion does not drop to “near atmospheric pressure” when exiting the “plenum.”

79. Based on AOS’s testing of the Rheem GNU Water Heaters, the Rheem GNU Water Heaters and use of the Rheem GNU Water Heaters do not create pressure of the products of combustion near atmospheric pressure at the exit of the structure that AOS asserts is the “plenum,” or “within the plenum” according to claim 1 of the ’897.<sup>38</sup> Because the pressure of the products of combustion at the exit of the structure that AOS asserts is the “plenum” is not “near atmospheric pressure,” the Rheem GNU Water Heaters, and the use of the Rheem GNU Water Heaters, do not meet at least the claim element “dropping the pressure of the products of combustion to near atmospheric pressure within the plenum” as recited in claim 1 of the ’897 patent.

80. In the alternative, and to the extent AOS asserts that the positive pressure of the products of combustion are “near atmospheric pressure” at the exit of the structure that AOS asserts is the “plenum” in the Rheem GNU Water Heaters, then the positive pressure of the products of combustion at the entrance of the structure that AOS asserts is the “plenum” in the Rheem GNU Water Heaters<sup>39</sup> is also “near atmospheric pressure,” and the Rheem GNU Water Heaters, and the use

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<sup>38</sup> See, e.g., *AOS Holding Company et al v. Bradford White Corp.*, Case No. 1-18-cv-00412, Dkt. 189 at 106-107 (D. Del. Sept. 20, 2020).

<sup>39</sup> See, e.g., *id.* at 105.

of the Rheem GNU Water Heaters, do not meet at least the claim element of “dropping the pressure of the products of combustion to near atmospheric pressure within the plenum” as recited in claim 1 of the ’897 patent.

81. The Rheem GNU Water Heaters, and the use of the Rheem GNU Water Heaters, do not meet the “dropping the pressure of the products of combustion to near atmospheric pressure within the plenum” claim element of the ’897 patent if the pressure of the products of combustion is already “near atmospheric pressure” before entering the “plenum.”

82. In addition, the Rheem GNU Water Heaters, and the use of the Rheem GNU Water Heaters, do not meet the claim element of “permitting the products of combustion to rise out of the plenum and into the natural convection vent construction substantially entirely under the influence of natural convection” as recited in claim 1 of the ’897 patent. As discussed above, in the Bradford White Litigation the court construed the phrase “substantially entirely under the influence of natural convection” to mean “at a pressure near or below atmospheric pressure and without the influence of the power burner, such that a Category I venting system can be used.”<sup>40</sup> The positive pressure of the products of combustion maintained by the Rheem GNU Water Heaters at the exit of the structure that AOS asserts is the

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<sup>40</sup> *AOS Holding Company et al v. Bradford White Corp.*, Case No. 1-18-cv-00412, Dkt. 61 at 5 (D. Del. Jan. 25, 2019).

“plenum” (discussed above) is neither near or below atmospheric pressure, nor without the influence of the power burner.<sup>41</sup>

83. The Rheem GNU Water Heaters, and the use of the Rheem GNU Water Heaters, do not meet the “permitting the products of combustion to rise out of the plenum and into the natural convection vent construction substantially entirely under the influence of natural convection” claim element of the ’897 patent if the products of combustion that rise out of the plenum and into the natural convection vent construction are not without the influence of the power burner.

84. In the Rheem GNU Water Heaters, and during use of the Rheem GNU Water Heaters, the products of combustion that rise out of the plenum and into the natural convection vent construction are not without the influence of the power burner.

85. The Rheem GNU Water Heaters, and the use of the Rheem GNU Water Heaters, do not meet the “permitting the products of combustion to rise out of the plenum and into the natural convection vent construction substantially entirely under the influence of natural convection” claim element of the ’897 patent if the products of combustion that rise out of the plenum and into the natural convection vent construction are not at a pressure near or below atmospheric pressure.

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<sup>41</sup> See, e.g., *AOS Holding Company et al v. Bradford White Corp.*, Case No. 1-18-cv-00412, Dkt. 189 at 84-86, 106-107 (D. Del. Sept. 20, 2020).

86. In the Rheem GNU Water Heaters, and during use of the Rheem GNU Water Heaters, the products of combustion that rise out of the plenum and into the natural convection vent construction are not at a pressure near or below atmospheric pressure.

87. In yet another example, and as discussed above in this Complaint, Rheem's predecessor GN water heaters and Rheem's and its customers' prior use of Rheem's GN water heaters is another reason Rheem does not infringe the '897 patent. Rheem's and its customers' use of Rheem's GN water heaters predates the earliest possible priority date of the '897 patent.

88. In the complaint in the prior Delaware Action, AOS alleged that the “[t]he invention recited in claim 1 of the '897 patent permits a water heater to have a power burner on the input end and an atmospheric vent on the output end, interposing an exhaust plenum between the flue and the vent,” and that “[t]he invention therefore enables the water heater to operate at high energy input levels while avoiding the complex and costly venting configurations normally required with a power burner.”<sup>42</sup>

89. However, Rheem's GN line of water heaters also have a power burner on the input end (*e.g.*, a burner and a blower) and an atmospheric vent on the output

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<sup>42</sup> *AOS Holding Company et al v. Rheem Manufacturing Company*, Case No. 1-21-cv-00947, Dkt. 1 at 2 (D. Del. June 29, 2021).

end (e.g., a natural convection vent construction). Rheem's GN line of water heaters were made, used, sold, offered for sale, installed and serviced in the United States since at least 2001. Rheem's GN water heaters are the predecessor line of water heaters to the current Rheem GNU Water Heaters. Rheem's GN line of water heaters have materially the same structure as the corresponding structures in the Rheem GNU Water Heaters that AOS has alleged satisfy the structural limitations of the sole claim of the '897 patent.

90. Rheem tested its predecessor GN water heaters and its accused Rheem GNU Water Heaters using the testing methodology described by AOS's expert witness during his testimony in the Bradford White Litigation.<sup>43</sup> Rheem provided those test results to AOS. The test results demonstrate that the predecessor GN water heaters operate and function materially the same as the accused Rheem GNU Water Heaters with respect to all limitations of the sole claim of the '897 patent—including with respect to the internal pressure values at the locations identified by AOS in its infringement allegations made to Rheem.

91. Rheem has already explained to AOS in its February 25, 2022, and March 21, 2023 letters (discussed above), and during the September 2023 in-person meeting, that the allegedly infringing structure, function and operation of the Rheem

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<sup>43</sup> *AOS Holding Company et al v. Bradford White Corp.*, Case No. 1-18-cv-00412, Dkt. 189 at 223 (D. Del. Sept. 20, 2020).



GNU Water Heaters (*e.g.*, GNU 100-200) are materially the same as Rheem's prior art GN line of water heaters (*e.g.*, GN 100-200) with respect to all limitations of the sole claim of the '897 patent. Rheem's GN line of water heaters were publicly and commercially available as early as 2001 and have not been abandoned. The accused structures, functions and operations of the Rheem products were publicly available and used since before August 15, 2005—more than a year before the earliest possible priority date of the '897 patent—and thus Rheem cannot infringe any valid claim of the '897 patent by importing, making, using, offering to sell, selling, installing, servicing or supplying the Rheem GNU Water Heaters.



GN100-200



GNU100-200

92. It is axiomatic that that which infringes if after, invalidates if before. Despite the clear invalidity of the sole claim of the '897 patent—at least in view of

AOS's infringement allegations as applied to Rheem's predecessor GN water heaters—Rheem does not present here a declaratory judgment claim for invalidity of the '897 patent because doing so would risk estopping Rheem under 35 U.S.C. § 315(a) from presenting certain invalidity arguments based on other prior art before the Patent Trial and Appeal Board. The presence or omission of such claims here should not be taken as any admission by Rheem as to the validity or invalidity of the '897 patent. Rheem reserves all rights to assert invalidity in the future, as is permitted, without risk of estoppel under 35 U.S.C. § 315.

93. Rheem is entitled to a declaration pursuant to 28 U.S.C. §§ 2201 and 2202 that Rheem and its distributors, retailers, installers and customers do not infringe, directly or indirectly, any claim of the '897 patent, either literally or under the doctrine of equivalents, by importing, making, using, offering to sell, selling, installing, servicing or supplying the Rheem GNU Water Heaters.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs Rheem Manufacturing Company and Rheem Sales Company, Inc. respectfully request that this Court enter judgment in their favor as follows:

(a) Declaring that Rheem and Rheem's GNU Water Heaters have not infringed and do not infringe, directly or indirectly or contributorily, any claim of U.S. Patent No. 8,375,897, either literally or under the doctrine of equivalents;

(b) Declaring this to be an exceptional case and awarding Rheem its costs, expenses, and disbursements in this action, including reasonable attorney fees, pursuant to 28 U.S.C. § 285; and

(c) Awarding Rheem such further and additional relief as the Court deems just, proper and equitable.

### **JURY DEMAND**

Rheem hereby requests a trial by jury on all issues so triable.

Dated: October 13, 2023

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