

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

ALPS SOUTH CORPORATION,
a Florida corporation,

Plaintiff,

v.

Case No. _____

THE OHIO WILLOW WOOD
COMPANY, an Ohio corporation,

Defendant.

_____/

COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiff, ALPS SOUTH CORPORATION, sues Defendant, THE OHIO WILLOW WOOD COMPANY, and as its complaint states as follows:

JURISDICTION AND VENUE

1. This is an action for a declaratory judgment pursuant to 28 U.S.C. §2201 and Rule 57, Federal Rules of Civil Procedure, for the purpose of determining a question of actual controversy between Plaintiff and Defendant. Plaintiff seeks a declaration that a patent owned by Defendant is invalid and that, even if it were valid, Plaintiff is not infringing Defendant's patent.

2. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§1331 and 1338(a).

3. Defendant is subject to jurisdiction in Florida because it has engaged in business in, or has an office in, the State of Florida. Defendant is also subject to jurisdiction in Florida because it is engaged in substantial and not isolated activity within the State of Florida.

4. Venue is proper in this district and in this division under 28 U.S.C. §§ 1391 and 1400.

THE PARTIES

5. Plaintiff is a Florida corporation with its principal place of business in St. Petersburg, Florida. Plaintiff is engaged in the business of manufacturing and selling prosthetic liners for use by customers who have prosthetic limbs.

6. Defendant is a corporation incorporated under the laws of the State of Ohio, with its principal place of business in Mt. Sterling, Ohio. Defendant is registered to do business in the State of Florida. Defendant is engaged in the same type of business as, and is a competitor of, Plaintiff.

THE '182 PATENT

7. On November 6, 2007, United States Letters Patent 7,291,182 B1 (the "182 Patent"), entitled "Gel and Cushioning Devices", was issued to inventor Bruce G. Kania. A true and correct copy of the '182 Patent is attached hereto as Exhibit "1".

8. The application from which the '182 Patent issued was assigned by the inventor to Defendant, along with the entire right, title, and interest in and to the '182 Patent.

DECLARATORY JUDGMENT AGAINST DEFENDANT

9. Defendant has previously sued Plaintiff under United States Letter Patent No. 5,830,237 ("the '237 Patent"), of which the '182 Patent is a continuation, without prior notice, claiming that Plaintiff's prosthetic liners infringe the '237 Patent. Plaintiff counterclaimed for invalidity, and that action is now stayed while the '237 Patent is re-examined by the United States Patent Office.

10. Defendant's actions have created a real and reasonable apprehension in Plaintiff that it faces an infringement suit over the '182 Patent if Plaintiff continues its present course of conduct.

11. An actual controversy exists between Plaintiff and Defendant as to whether Defendant's '182 Patent is valid and whether, even if it were valid, Plaintiff infringes the '182 Patent.

12. Plaintiff and Defendant have opposing interests of such immediacy that a declaration of rights is warranted.

13. A declaration of rights will serve the useful purpose of clarifying and settling the legal relations at issue. A declaration of rights will also afford relief from the uncertainty, insecurity, and controversy giving rise to these proceedings.

14. Plaintiff is entitled to a declaration that Defendant's '182 Patent is invalid and should be cancelled. Defendant's '182 Patent is invalid because it was anticipated by the prior art, and also because, on information and belief, relevant prior art was not disclosed to the patent examiner during the prosecution history.

15. Plaintiff is further entitled to a declaration that even if Defendant's '182 Patent were valid, Plaintiff is not infringing the '182 Patent.

16. All conditions precedent to the institution and maintenance of this action have occurred, have been performed, or have been excused or waived.

17. Plaintiff has retained the law firm of Shumaker, Loop & Kendrick, LLP to represent it in this action and is obligated to pay its attorneys a reasonable fee for their services.

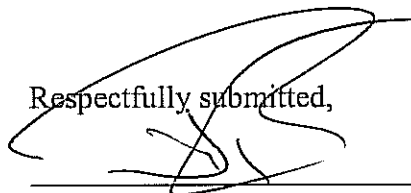
WHEREFORE, Plaintiff respectfully requests this Court to (a) enter a declaratory judgment that Defendant's '182 Patent is invalid and enter an Order cancelling the '182 Patent;

(b) enter a declaratory judgment that even if Defendant's '182 Patent were valid, Plaintiff is not infringing the '182 Patent; (c) award to Plaintiff attorneys' fees and the costs of bringing this action; and (d) grant to Plaintiff all other relief this Court deems just and appropriate.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury on all issues so triable.

Respectfully submitted,



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