

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

WEIR WARMAN, LTD.
an Australian corporation
1 Marden Street
Artarmon, New South Wales
Australia

Plaintiff,

Case No. _____

v.

OEMic INDUSTRIES INC.
a Canadian corporation
11300 Daniels Road
Richmond, British Columbia
Canada

WESTCOMM PUMP & EQUIPMENT LTD.
a Canadian corporation
3700, 400 – 3rd Avenue S.W.
Calgary, Alberta
Canada

Defendants.

**COMPLAINT
(JURY TRIAL DEMANDED)
(INJUNCTIVE RELIEF SOUGHT)**

Plaintiff Weir Warman, Ltd. (“Weir Warman”) for its complaint against defendants OEMic Industries Inc. (“OEMic”) and Westcomm Pump & Equipment Ltd. (“Westcomm”) alleges and states as follows:

1. Plaintiff Weir Warman is an Australian corporation with its principal place of business at 1 Marden Street, Artarmon, New South Wales, Australia. Weir Warman is engaged in the business of manufacturing, distributing and selling pumps and pump

components, among other things. Weir Warman manufactures, distributes and sells many such pumps and pump components under the “Warman” name.

2. Weir Warman is exclusively represented in North America by an affiliated corporation, Weir Slurry Group, Inc. (“Weir Slurry”), which has its principal place of business at 2701 South Stoughton Road, Madison, Wisconsin 53716. Weir Slurry makes and sells pumps, impellers and other pump parts using technology it licenses from Weir Warman, including the technology encompassed by the claims of the ‘149 Patent described below.

3. Defendant OEMic is a corporation incorporated in British Columbia, Canada with its principal place of business at 11300 Daniels Road, Richmond, British Columbia, Canada. OEMic is engaged in the business of distributing, offering to sell and selling pumps and pump components, among other things.

4. Defendant Westcomm is a corporation incorporated in Alberta, Canada with its principal place of business at 3700, 400 – 3rd Avenue S.W., Calgary, Alberta, Canada. Westcomm is engaged in the business of distributing, offering to sell and selling pumps and pump components, among other things.

5. This is a civil action for patent infringement. The Court has jurisdiction of this action under 28 U.S.C. §§ 1331 and 1338.

6. Venue is proper in this district. A substantial part of the events and omissions giving rise to the claims which are the subject of this action occurred within this District and within the Tampa Division of this District, including without limitation the following:

- a. Since at least late 2004, OEMic has stated on its website that it has impellers and other pump parts for sale. OEMic also provided a telephone number which

customers could call to order products. An employee of Weir Slurry located in Lakeland, Florida, in this District, obtained this information by viewing OEMic's website in Lakeland, Florida.

- b. The Weir Slurry employee then telephoned from Lakeland, Florida, in this District, the number listed on OEMic's website as OEMic's telephone number, to inquire whether "Warman" pump parts were available for sale. When the employee expressed interest in ordering "Warman" pump parts from OEMic, the person who answered the telephone call did not indicate the parts would come from a source other than OEMic. Weir Slurry understood that any parts ordered would come from OEMic.
- c. At Weir Slurry's request, Mid-State Machine & Fabrication Co. ("Mid-State") of Lakeland, Florida, in this District, ordered an impeller ("Impeller") and other parts for "Warman" pumps from OEMic on Weir Slurry's behalf. Mid-State placed the order from Lakeland, Florida.
- d. Defendants then caused the Impeller and parts to be delivered to Mid-State in Lakeland, Florida, in this District. Mid-State then delivered the Impeller and parts to Weir Slurry in Lakeland, Florida, in this District.
- e. The Impeller delivered to Mid-State and subsequently delivered to Weir Slurry infringed the '149 Patent as alleged below.
- f. Westcomm and OEMic designated the Impeller as part number "OEMic 0683/D68." Westcomm and OEMic designated at least one of the other parts shipped to Mid-State with a number beginning with the prefix "OEMic."
- g. Until recently, both OEMic and Westcomm had a place of business at the same address in Calgary, Alberta, Canada and used the same telephone number and facsimile telephone number at the Calgary address.
- h. OEMic operates a website which is accessible to users of the Internet, including all users of the Internet in the state of Florida and in this District.
- i. OEMic's website includes the following:
 - i. The website is interactive. It allows customers to order parts from OEMic directly over the website. The website also allows customers to contact OEMic over the website via e-mail and obtain responses from OEMic via e-mail.
 - ii. The website indicates that OEMic offers "OEMic Slurry Pump After Market Parts Suitable for Use with Warman pumps."

- iii. The website contains an icon stating: "Warman customer enter here – Your alternative choice!" The icon leads to a portion of OEMic's website that allows a customer looking for Warman replacement parts to enter information about such parts and obtain information as to the availability of such parts.
- iv. The website offers the following announcement: "Distributor wanted!! We are looking for qualified distributor for OEMic slurry pump parts to replace Warman (R) parts. The companies or persons who have Warman (R) products experience are really welcome!"
- v. The website offers for sale and states: "Warman pump aftermarket parts. OEMic pump parts are interchangeable with Warman OEM parts. Our parts covered Warman series: AH(R), M slurry pump (ST-AH, F-AH, TU-AH) from 2" x 1" to 20" x 18" H, HH G, GH L, LR AF Froth Pump AHP SP, SPR Sump Pump S, SH Solution Pump."
- j. Westcomm operates a website which is accessible to users of the Internet, including all users of the Internet in the state of Florida and in this District. Westcomm's website is interactive. It allows persons who access the website to exchange communications with Westcomm.
- k. Westcomm's website offers for sale "OEMic slurry pump parts suitable for use with Warman pumps."
- l. Plaintiffs believe further investigation and discovery are likely to show that Westcomm and OEMic have sold and offered for sale additional products infringing the '149 Patent described below in the Tampa Division of this District.

7. Weir Warman is the owner by assignment of United States Patent No. 5,242,149 ("the '149 Patent"), which was issued by the U.S. Patent and Trademark Office on October 12, 1993. A copy of the '149 Patent is attached as Exhibit A and incorporated by reference.

8. The Impeller infringes the '149 Patent.

9. Westcomm has infringed and is infringing the '149 Patent in violation of 35 U.S.C. § 271, directly and indirectly, by making, using, offering to sell and/or selling within the United States products and things which infringe the '149 Patent.

10. On information and belief, OEMic has infringed and is infringing the '149 Patent in violation of 35 U.S.C. § 271, directly and indirectly, by making, using, offering to sell and/or selling within the United States products and things which infringe the '149 Patent. The statements in this paragraph are likely to have evidentiary support after a reasonable opportunity for further investigation and discovery.

11. On information and belief, Westcomm and OEMic have induced and are inducing infringement of the '149 Patent and have contributorily infringed and are contributorily infringing the '149 Patent, all in violation of 35 U.S.C. § 271. The statements in this paragraph are likely to have evidentiary support after a reasonable opportunity for further investigation and discovery.

12. On information and belief, the acts of infringement described in paragraphs 5-10 above were and are willful. The statements in this paragraph are likely to have evidentiary support after a reasonable opportunity for further investigation and discovery.

13. On information and belief, Westcomm and OEMic will continue to infringe, induce infringement of and contributorily infringe the '149 Patent unless their activities are enjoined by this Court. The statements in this paragraph are likely to have evidentiary support after a reasonable opportunity for further investigation and discovery.

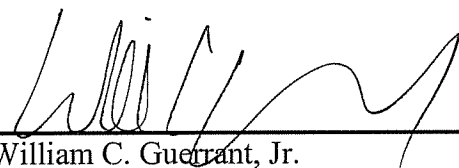
WHEREFORE, plaintiffs demand the following:

- A. An injunction enjoining OEMic and Westcomm from making, distributing, selling or offering for sale any products that infringe the '149 Patent.
- B. Judgment in their favor and against defendants OEMic and Westcomm for actual and treble damages in an amount to be determined at trial.

- C. Judgment for actual costs and, pursuant to 35 U.S.C. §285, attorneys' fees in this action.
- D. Their taxable costs in this action.
- E. Such other relief as the Court shall deem just and equitable.

**PLAINTIFFS DEMAND TRIAL BY A JURY
OF ALL ISSUES SO TRIABLE IN THIS ACTION.**

Dated: August 4, 2005.



William C. Guerrant, Jr.
Florida Bar No.: 0516058
HILL, WARD & HENDERSON, P.A.
101 East Kennedy Boulevard, Suite 3700
P.O. Box 2231
Tampa, FL 33601
813-221-3900 (voice)
831-221-2900 (fax)
wguerrant@hwhlaw.com

Jon P. Axelrod (WI Bar No. 1012131)
Joseph A. Ranney (WI Bar No. 1005007)
Joseph T. Leone (WI Bar No. 1018149)
DEWITT ROSS & STEVENS S.C.
Two East Mifflin Street, Suite 600
Madison, WI 53703-2865
608-255-8891 (voice)
608-252-9243 (fax)

ATTORNEYS FOR PLAINTIFFS