

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MAGNA DONNELLY CORPORATION,

Plaintiff,

Case No. 1:08-CV-0160

Hon. Paul Maloney

vs.

PILKINGTON NORTH AMERICA, INC.,
NSG UK ENTERPRISES LIMITED, NIPPON
SHEET GLASS CO., LTD. and UNITED L-N
GLASS, INC.,

Defendants.

FIRST AMENDED COMPLAINT AND JURY DEMAND

Magna Donnelly Corporation (“Magna Donnelly”) hereby complains of Pilkington North America, Inc., NSG UK Enterprises Limited, Nippon Sheet Glass Co., Ltd. and United L-N Glass, Inc., (the Defendants are hereinafter collectively referred to as “NSG”), and alleges as follows:

THE PARTIES

1. Magna Donnelly is a corporation organized and existing under the laws of the State of Michigan, having a registered address of 30600 Telegraph Road, Bingham Farms, Michigan, 48025. Magna Donnelly is also doing business under the registered assumed name “Donnelly Corporation.”

2. Pilkington North America, Inc. is a corporation organized and existing under the laws of the State of Delaware, and having a place of business as 811 Madison Ave, Toledo, Ohio, 43697. Pilkington North America, Inc. is a subsidiary of NSG UK Enterprises Limited.

3. NSG UK Enterprises Limited is a foreign corporation with its headquarters in St. Helens, Great Britain. In June of 2006, NSG UK Enterprises Limited acquired the Pilkington businesses and became a member of the NSG Group and a wholly owned subsidiary of Nippon Sheet Glass Co. Ltd.

4. Nippon Sheet Glass Co. Ltd. is a foreign corporation with its headquarters in Tokyo, Japan. Nippon Sheet Glass Co. Ltd. is a parent corporation of NSG UK Enterprises Limited.

5. United L-N Glass, Inc. is a corporation organized and existing under the laws of the State of Delaware, and having a place of business as 811 Madison Ave, Toledo, Ohio, 43697. United L-N Glass, Inc. is a subsidiary of NSG Co. Ltd.

6. Pilkington North America, Inc., NSG UK Enterprises Limited, Nippon Sheet Glass Co. Ltd. and United L-N Glass, Inc., upon information and belief, work collectively to develop, manufacture, market and/or sell glass products, including glass products directed toward the automobile industry.

7. Pilkington North America, Inc., NSG UK Enterprises Limited, Nippon Sheet Glass Co. Ltd. and United L-N Glass, Inc., upon information and belief, are doing business within the State of Michigan and within the Western District of Michigan, and are engaged in continuous and systematic business within the Western District of Michigan, including the commission of acts of infringement as hereinafter stated.

JURISDICTION AND VENUE

8. The cause of action for patent infringement arises under the Patent Laws of the United States, Title 35 U.S.C. §§101 and 271, and this Court has federal jurisdiction of this claim pursuant to 28 U.S.C. §§1331 and 1338 *et seq.*

9. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391 and 1400.

COUNT 1

**INFRINGEMENT OF THE '225 PATENT
(VIOLATION OF 35 U.S.C. §§ 101 AND 271)**

10. Magna Donnelly repeats and re-alleges each and every allegation contained in the above-paragraphs as if fully set forth herein.

11. On February 19, 2008, United States Letters Patent No. 7,332,225, entitled "BONDED VEHICULAR GLASS ASSEMBLIES UTILIZING TWO-COMPONENT URETHANES ADHESIVE", was duly and legally issued by the United States Patents and Trademark Office. A true and correct copy of United States Patent No. 7,332,225 is attached hereto as **Exhibit A** (hereinafter the "'225 Patent").

12. Magna Donnelly is the current Assignee of all right, title, and interest in the '225 Patent, including the right to bring and maintain this action with respect to the '225 Patent.

13. NSG has, upon information and belief, in the past been and still is infringing the '225 Patent by making, importing, using, selling, and/or offering for sale in and to the United States products incorporating hinged vehicle windows embodying the patented inventions of the '225 Patent.

14. On information and belief, NSG has so infringed and continues so to infringe the '225 Patent with knowledge and/or reckless disregard amounting to knowledge of such infringement.

15. On information and belief, NSG, acting alone and acting in concert with and through agents and/or intermediaries, has used infringing products within this judicial district and has placed products infringing one or more claims of the '225 Patent in the stream of

commerce with knowledge that the likely destination of the infringing products is within this judicial district and throughout the United States.

16. Despite any statement to the contrary, and upon information and belief, NSG will continue to infringe the '225 Patent unless enjoined by the Court.

17. Upon information and belief, NSG's infringement has resulted in damage to Magna Donnelly and will continue to do so unless enjoined by this Court.

18. Magna Donnelly has no adequate remedy at law and is, therefore, entitled to a permanent injunction prohibiting further infringement by NSG.

19. NSG's manufacture, use, sale, offer to sell, and/or distribution of these products that infringe the '225 Patent have caused Magna Donnelly to suffer damages in an amount not yet determined but will be proven at trial.

20. Magna Donnelly, therefore, seeks judgment as set forth herein.

COUNT 2

CONTRIBUTORY INFRINGEMENT OF THE '225 PATENT (VIOLATION OF 35 U.S.C. §§ 101 AND 271)

21. Magna Donnelly repeats and re-alleges each and every allegation contained in the above-paragraphs as if fully set forth herein.

22. On information and belief, NSG makes, imports, sells and/or offers to sell hinged vehicle windows with knowledge and/or reckless disregard amounting to knowledge that such products or components constitute a material part of the inventions of the '225 Patent and that they are especially made or especially adapted for use in infringement of the '225 Patent, and that such hinged vehicle windows are not a staple article or commodity of commerce which would be suitable for substantial non-infringing use. The actions of NSG constitute contributory infringement of the '225 Patent.

23. On information and belief, NSG has committed such contributory infringement and continues so to commit such contributory infringement of the '225 Patent with knowledge and/or reckless disregard amounting to knowledge of such infringement.

24. NSG's contributory infringement of the '225 Patent has caused Magna Donnelly to suffer damages in an amount not yet determined but which amount will be proven at trial.

25. Magna Donnelly has no adequate remedy at law, and NSG's contributory infringement of the '225 Patent has violated Magna Donnelly's exclusive rights under the '225 Patent and irreparably damaged Magna Donnelly, and will cause added injury and loss to Magna Donnelly unless and until NSG's contributory infringement is enjoined by this Court.

26. Magna Donnelly, therefore, seeks judgment as set forth herein.

COUNT 3

INDUCEMENT OF INFRINGEMENT OF THE '225 PATENT (VIOLATION OF 35 U.S.C. §§ 101 AND 271)

27. Magna Donnelly repeats and re-alleges each and every allegation contained in the above-paragraphs as if fully set forth herein.

28. On information and belief, NSG has actively induced the infringement of one or more claims of the '225 Patent, including actively inducing infringement by its customers.

29. NSG's inducement of infringement of the '225 Patent has caused Magna Donnelly to suffer damages in an amount not yet determined but which amount will be proven at trial.

30. Magna Donnelly has no adequate remedy at law, and NSG's inducement of infringement of the '225 Patent has violated Magna Donnelly's exclusive rights under the '225 Patent and irreparably damaged Magna Donnelly, and will cause added injury and loss to Magna Donnelly unless and until NSG's inducement of infringement is enjoined by this Court.

31. Magna Donnelly, therefore, seeks judgment as set forth herein.

COUNT 4

WILLFUL INFRINGEMENT OF THE '225 PATENT

32. Magna Donnelly repeats and re-alleges each and every allegation contained in the above-paragraphs as if fully set forth herein.

33. On information and belief, NSG's infringement, contributory infringement, and inducement of infringement have been willful, wanton and deliberate and has occurred with NSG's full knowledge of the '225 Patent.

34. Magna Donnelly, therefore, seeks judgment as set forth herein.

COUNT 5

**INFRINGEMENT OF THE '338 PATENT
(VIOLATION OF 35 U.S.C. §§ 101 AND 271)**

35. Magna Donnelly repeats and re-alleges each and every allegation contained in the above-paragraphs as if fully set forth herein.

36. On April 22, 2008, United States Letters Patent No. 7,360,338, entitled "Window Assembly Suitable For Use In A Vehicle," was duly and legally issued by the United States Patents and Trademark Office. A true and correct copy of United States Patent No. 7,360,338 is attached hereto as **Exhibit B** (hereinafter the "338 Patent").

37. Magna Donnelly is the current Assignee of all right, title, and interest in the '338 Patent, including the right to bring and maintain this action with respect to the '338 Patent.

38. NSG has, upon information and belief, in the past been and still is infringing the '338 Patent by making, importing, using, selling, and/or offering for sale in and to the United States products incorporating hinged vehicle windows embodying the patented inventions of the '338 Patent.

39. On information and belief, NSG has so infringed and continues so to infringe the '338 Patent with knowledge and/or reckless disregard amounting to knowledge of such infringement.

40. On information and belief, NSG, acting alone and acting in concert with and through agents and/or intermediaries, has used infringing products within this judicial district and has placed products infringing one or more claims of the '338 Patent in the stream of commerce with knowledge that the likely destination of the infringing products is within this judicial district and throughout the United States.

41. Despite any statement to the contrary, and upon information and belief, NSG will continue to infringe the '338 Patent unless enjoined by the Court.

42. Upon information and belief, NSG's infringement has resulted in damage to Magna Donnelly and will continue to do so unless enjoined by this Court.

43. Magna Donnelly has no adequate remedy at law and is, therefore, entitled to a permanent injunction prohibiting further infringement by NSG.

44. NSG's manufacture, use, sale, offer to sell, and/or distribution of these products that infringe the '338 Patent have caused Magna Donnelly to suffer damages in an amount not yet determined but will be proven at trial.

45. Magna Donnelly, therefore, seeks judgment as set forth herein.

COUNT 6

**CONTRIBUTORY INFRINGEMENT OF THE '338 PATENT
(VIOLATION OF 35 U.S.C. §§ 101 AND 271)**

46. Magna Donnelly repeats and re-alleges each and every allegation contained in the above-paragraphs as if fully set forth herein.

47. On information and belief, NSG makes, imports, sells and/or offers to sell hinged vehicle windows with knowledge and/or reckless disregard amounting to knowledge that such products or components constitute a material part of the inventions of the '338 Patent and that they are especially made or especially adapted for use in infringement of the '338 Patent, and that such hinged vehicle windows are not a staple article or commodity of commerce which would be suitable for substantial non-infringing use. The actions of NSG constitute contributory infringement of the '338 Patent.

48. On information and belief, NSG has committed such contributory infringement and continues so to commit such contributory infringement of the '338 Patent with knowledge and/or reckless disregard amounting to knowledge of such infringement.

49. NSG's contributory infringement of the '338 Patent has caused Magna Donnelly to suffer damages in an amount not yet determined but which amount will be proven at trial.

50. Magna Donnelly has no adequate remedy at law, and NSG's contributory infringement of the '338 Patent has violated Magna Donnelly's exclusive rights under the '338 Patent and irreparably damaged Magna Donnelly, and will cause added injury and loss to Magna Donnelly unless and until NSG's contributory infringement is enjoined by this Court.

51. Magna Donnelly, therefore, seeks judgment as set forth herein.

COUNT 7

**INDUCEMENT OF INFRINGEMENT OF THE '338 PATENT
(VIOLATION OF 35 U.S.C. §§ 101 AND 271)**

52. Magna Donnelly repeats and re-alleges each and every allegation contained in the above-paragraphs as if fully set forth herein.

53. On information and belief, NSG has actively induced the infringement of one or more claims of the '338 Patent, including actively inducing infringement by its customers.

54. NSG's inducement of infringement of the '338 Patent has caused Magna Donnelly to suffer damages in an amount not yet determined but which amount will be proven at trial.

55. Magna Donnelly has no adequate remedy at law, and NSG's inducement of infringement of the '338 Patent has violated Magna Donnelly's exclusive rights under the '338 Patent and irreparably damaged Magna Donnelly, and will cause added injury and loss to Magna Donnelly unless and until NSG's inducement of infringement is enjoined by this Court.

56. Magna Donnelly, therefore, seeks judgment as set forth herein.

COUNT 8

WILLFUL INFRINGEMENT OF THE '338 PATENT

57. Magna Donnelly repeats and re-alleges each and every allegation contained in the above-paragraphs as if fully set forth herein.

58. On information and belief, NSG's infringement, contributory infringement, and inducement of infringement have been willful, wanton and deliberate and has occurred with NSG's full knowledge of the '338 Patent.

59. Magna Donnelly, therefore, seeks judgment as set forth herein.

WHEREFORE, Magna Donnelly demands that judgment be entered in its favor against NSG as follows:

- A. Permanently enjoining NSG, and its officers, agents, servants, employees, attorneys, and all those persons in privity or in active concert or participation with them, from further manufacture, importation, sale, offer for sale, and/or use of a product which infringes, contributorily infringes, or induces infringement of the Patents-in-suit.

- B. Permanently enjoining NSG, and its officers, agents, servants, employees, attorneys, and all those persons in privity or in active concert or participation with them, from further acts of infringement of the Patents-in-suit.
- C. Ordering an accounting.
- D. Awarding damages in an amount to be determined at trial, but adequate to compensate Magna Donnelly for NSG's infringement, contributory infringement, and inducement of infringement of the Patents-in-suit.
- E. Increasing the damages up to three times the amount found or assessed for NSG's willful acts of infringement.
- F. Awarding prejudgment interest and costs.
- G. Finding this to be an exceptional case and awarding reasonable attorneys' fees to Magna Donnelly.
- H. Such other and further relief as this Court deems necessary and appropriate.

Respectfully submitted,

HOWARD & HOWARD ATTORNEYS, P.C.

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Dated: April 22, 2008

JURY DEMAND

Plaintiff requests a jury for all issues triable by jury in this action.

Respectfully submitted,

HOWARD & HOWARD ATTORNEYS, P.C.

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Dated: April 22, 2008