

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

FILED
CHARLOTTE, N.C.
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U.S. DISTRICT COURT
WESTERN DISTRICT OF N.C.

ROBERTS POLYPRO INC.,
Plaintiff,
vs.
TODD M. ADDISON AND ULTRA FLEX
PACKAGING CORPORATION,
Defendant.

Case No.: 3:03CV69-MU

**AMENDED
COMPLAINT FOR
DECLARATORY JUDGMENT**

COMES NOW, Plaintiff, Roberts PolyPro Inc. ("Roberts PolyPro"), complaining of Defendants, Todd M. Addison ("Addison") and Ultra Flex Packaging Corporation ("Ultra Flex"), and alleges as follows:

PARTIES

1. Roberts PolyPro is a corporation organized and existing under the laws of the State of North Carolina, with its principal place of business at 5416 Wyoming Avenue, Charlotte, North Carolina, 28273-8861.
2. On information and belief, Addison is an individual having a residence in Greenwich, Connecticut, and is a named inventor of United States Patent Nos. 6,186,934 B1 and 6,428,208 B1.
3. On information and belief, Ultra Flex is a corporation with its principal place of business in Brooklyn, New York and is the named assignee on the face of U.S. Patent No. 6,428,208 B1 and the presumed licensee or unrecorded assignee of U.S. Patent No. 6,186,934 B1.

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JURISDICTION

4. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 2201, 28 U.S.C. §§ 1331, 1332 and 1338. This action includes a request for a declaratory judgment of invalidity, non-infringement and unenforceability.

VENUE

5. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391 and 1400, in that Ultra Flex is subject to personal jurisdiction in this district and a substantial part of the events giving rise to this action occurred in this judicial district.

FIRST CAUSE OF ACTION

6. Addison is a named inventor of United States Patent No. 6,186,934 B1, issued February 13, 2001, for a “hanger bag.” (The “934 patent”). Addison is also the named inventor of United States Patent No. 6,428,208 B1, issued August 6, 2002, for an “internal profile hanger with outwardly projecting tab member with informational indicia thereon.” (The “208 patent”). The 208 patent is a continuation-in-part application of the 934 patent.
7. An actual controversy exists between the parties hereto regarding the validity, enforceability and infringement of the aforementioned patents.
8. Roberts PolyPro has at all times relevant hereto manufactured and sold products of the type accused of infringement by Defendants, and continues to manufacture and sell such products. Defendants’ conduct has created on the part of Roberts PolyPro a reasonable apprehension that Roberts PolyPro is faced with an infringement suit if it continues to manufacture and sell such products.

9. Defendants' conduct includes, *inter alia*, filing a petition to make special connected with the filing of the aforementioned patents due to alleged infringement by plaintiff, which constitutes a reasonable threat of suit.
10. Roberts PolyPro has not infringed and is not now infringing any of the aforesaid patents of Defendants.
11. Ultra Flex has made prior sales of a product covered by the claims of the 934 and 208 patents. These sales were in an amount greater than one and were made over one year prior to the filing of the 934 patent.
12. Defendants failed to disclose the aforementioned prior sales to the patent examiner during the prosecution of the aforementioned patents.
13. During the prosecution of the 208 patent, Defendants failed to disclose prior art that was used during a reexamination of the 934 patent which was highly relevant to the patentability of the 208 patent.
14. The 934 and 208 patents are invalid because Defendants violated the prior sale bar of 35 U.S.C. § 102(b).
15. Upon information and belief, the 934 and 208 patents are invalid as a result of Defendants' failure to satisfy their duty of disclosure to the United States Patent and Trademark Office ("PTO") and/or their engaging in inequitable conduct during the prosecution of said patents. 37 C.F.R. § 1.56.
16. As the 934 and 208 patents are invalid, there can be no infringement by Roberts PolyPro.

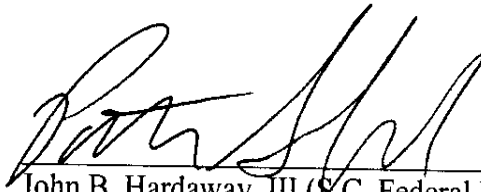
PRAYER FOR RELIEF

WHEREFORE, plaintiff Roberts PolyPro respectfully prays for the following relief:

1. that this Court enter an Order declaring that Roberts PolyPro has not infringed the 934 patent or the 208 patent;
2. that this Court enter an Order declaring that each and every one of the claims

of the 934 patent and the 208 patent are invalid, void and without force and effect;

3. that this Court enter an Order declaring that the 934 patent and the 208 patent are unenforceable;
4. that this Court award Roberts PolyPro its attorneys' fees, costs and expenses in bringing this action; and
5. that this Court grant such other and further relief as this Court may deem appropriate.



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Stephen J. Shaw (S.C. Federal ID #7846)

James H. Pulliam (N.C. Federal ID # 16797)

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