

HOURIGAN, KLUGER & QUINN  
A PROFESSIONAL CORPORATION

BY: ARTHUR L. PICCONE, ESQUIRE  
JENNIFER L. ROGERS, ESQUIRE

ATTORNEY FOR PLAINTIFF

IDENTIFICATION NO. 018707 (ALP) 79772 (JLR)

LAW OFFICES  
600 THIRD AVENUE  
KINGSTON, PA 18704-5815  
(570) 287-3000

---

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

**CIVIL ACTION NO.: 3:05-CV-1855**

**NOBLE FIBER TECHNOLOGIES, LLC,  
a Pennsylvania limited liability corporation,**

**Plaintiff,**

**v.**

**ARGENTUM MEDICAL, LLC, a  
Delaware limited liability corporation,**

**ARGENTUM INTERNATIONAL, LLC, a  
Georgia limited liability corporation,**

**ARGENTUM RESEARCH, INC., a  
Georgia corporation, and**

**TOM MILLER, an individual.**

**Defendants.**

---

**AMENDED COMPLAINT**

Plaintiff, Noble Fiber Technologies, LLC, ("Noble") by and through its undersigned attorneys, hereby files its Amended Complaint for injunctive relief, general damages, special damages, punitive damages and declaratory relief against Defendants, Argentum Medical, LLC

("Argentum Medical"), Argentum International, LLC ("Argentum International"), Argentum Research, Inc. ("Argentum Research"), and Tom Miller states as follows:

**PARTIES, JURISDICTION AND VENUE**

1. Noble is a Pennsylvania limited liability corporation with its principal place of business at 300 Palm Street, Scranton, Pennsylvania. Noble markets and distributes worldwide a silver fiber which is incorporated into fabrics for, inter alia, medical uses.

2. Argentum Medical is a Delaware limited liability corporation with its principal place of business in Willowbrook, Illinois. Argentum Medical is a competitor of Noble in the wound care market and also sells products worldwide incorporating silver fiber, directly to customers through a completely interactive web site, [www.silverlon.com](http://www.silverlon.com), and to medical professionals through a national network of dealers who sell Argentum products in every state, including Pennsylvania.

3. Argentum International is a Georgia limited liability corporation with its principal place of business in Lakemont, Georgia. On information and belief, Argentum International is the current assignee of U.S. Patent No. 6,087,549 ("the '549 Patent"), U.S. Patent No. 6,861,570 ("the '570 Patent") and U.S. Patent Application 09/613,961 ("the '961 Application"). A copy of the '549 Patent, the '570 Patent, and the claims of the '961 Application alleged by Argentum Medical to be allowed are attached.

4. Argentum Research is a Georgia corporation with its principal place of business in Lakemont, Georgia.

5. Tom Miller is an individual residing in Illinois and, on information and belief, the Sales and Marketing contact for Argentum Medical. For various acts as stated herein, Tom Miller is an agent of Argentum Medical, Argentum International, and Argentum Research.

6. Argentum Medical represents that Argentum Medical is the exclusive licensee of the '570 Patent and the '961 Application. As the exclusive licensee, Argentum Medical would hold all rights to practice the inventions claimed in the '570 Patent and the '961 Application in accordance with the terms of the exclusive license agreement.

7. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§1331 and 1338(a) and (b) for federal questions relating to patents and unfair competition, and §1332 as a civil action between citizens of different states where the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs.

8. The Court has jurisdiction to hear a justiciable controversy pursuant to the Declaratory Judgment Act, 28 U.S.C. §2201 et seq.

9. The Court has personal jurisdiction over Argentum Medical pursuant to 42 Pa. Cons. Stat. Ann. §5301(a)(2) and §5322(b), over Tom Miller, Argentum International, and Argentum Research pursuant to §5322(b), and venue is proper in this judicial district because plaintiff resides here; the injury to Noble from the defendants' conduct has occurred, and will occur here; and defendants have purposefully directed their activities toward Noble in Pennsylvania.

### **NATURE OF THE COMPLAINT**

10. In this action, Noble seeks the Court's declaratory judgment that: (a) Noble and its products do not infringe any claims of the '549 Patent and the '570 Patent; (b) the claims of the '549 Patent and the '570 Patent are invalid; and (c) the claims of the '549 Patent and the '570 Patent are unenforceable. Noble also seeks equitable and legal relief from the acts of Argentum Medical, Argentum International, Argentum Research, and Tom Miller—individually and as agent of Argentum Medical, Argentum International, and Argentum Research—that violate

Section 43 of the Lanham Act, 15 U.S.C. §1125, and that constitute under Pennsylvania law Tortious Interference with Contractual Relations and Common Law Commercial Disparagement.

### **GENERAL ALLEGATIONS**

11. The face of U.S. Patent No. 6,087,549 ("the '549 Patent") indicates it issued on July 11, 2000; that the application number was 08/935,026; and the inventor is A. Bart Flick ("Flick"). On information and belief, Flick assigned the 08/935,026 application and its continuations, divisions, and continuations-in-part to Argentum International on September 18, 1997; Argentum International, assigned the '549 patent to Argentum Research on February 25, 2001; and Argentum Research. assigned the '549 patent back to Argentum International, on February 15, 2005.

12. The face of U.S. Patent No. 6,861,570 ("the '570 Patent") indicates it issued on March 1, 2005; the application number was 09/531,245; and the application was a continuation of U.S. Patent No. 6,087,549; and the inventor is A. Bart Flick. On information and belief, Argentum International assigned the 09/531,245 application to Argentum Research on February 25, 2001; and Argentum Research assigned the 09/531,245 application to Argentum International on November 11, 2004.

13. Upon information and belief U.S. Application 09/613,961 is a child of the '549 patent and was filed on July 11, 2000. Upon information and belief, as a child of the '549 patent, the '961 Application is assigned to Argentum International.

14. Upon information and belief, Argentum International's only asset is intellectual property.

15. Argentum Medical, Argentum International, Argentum Research, and Tom Miller, individually and on behalf of Argentum Medical, Argentum International, and Argentum Research, have engaged in a systematic effort to falsely promulgate misleading descriptions of

fact and misleading representations of fact in its commercial promotion, and to misrepresent the characteristics and qualities of Noble's goods and the scope of the '549 Patent, the '570 Patent, and the '961 Application.

16. Argentum Medical, Argentum International, and Argentum Research, and Tom Miller, individually and on behalf of Argentum Medical, Argentum International, and Argentum Research, have advised Noble customers and distributors falsely and misrepresented that Noble's products infringe '549 Patent, the 570 Patent, and the '961 Application.

17. Julius Zorn, Inc. ("Juzo") operating under the brand Juzo manufactures and sells therapeutic compression support stocking, gloves and the like. Juzo's products include stockings that use silver fiber fabrics developed by Noble.

18. Argentum Medical and Argentum Research, and Tom Miller, individually and as an agent for Argentum Medical and Argentum Research, the assignee of the '549 patent and the 09/531,245 application (which later issued as the '570 patent) at the time of the communication with Juzo, accused Juzo of infringing "Silverlon's patents," by Juzo's use of the Noble silver fiber technology.

19. Argentum Medical, Argentum Research, and Tom Miller, individually and as agent for Argentum Medical and Argentum Research, further misrepresented to Juzo that Noble knows its products infringe "Silverlon's patents" but will not tell Juzo of such.

20. In particular, Tom Miller represented to Juzo that William McNally, President and CEO of Noble Fiber, knows that Noble is infringing Argentum's patent, but William McNally has hidden the knowledge from Juzo.

21. Tom Miller stated to Juzo that Johnson & Johnson is also infringing the Argentum patent rights, but Johnson & Johnson is too big to sue, and that Argentum will not pursue Juzo because Juzo did not sell compression wound dressings.

22. J & D Wilkie, Ltd. has considered utilizing Noble's silver fiber technology in some of its textile products.

23. On June 30, 2005, Tom Miller, individually and on behalf of Argentum Medical and Argentum International, the assignee of the '549 Patent, the '570 patent and the '961 Application, sent an e-mail to J & D Wilkie falsely stating that "Noble Fiber will be infringing on Argentum's IP if they promote or sell a silver fiber for physiological condition."

24. On April 8, 2005, Argentum Medical sent Noble a letter raising issues of infringement of the '570 Patent and related patents and patent applications by making, using, selling, offering to sell or import certain of Noble's products by Noble, its manufacturer, or its distributors.

25. As mentioned above, the '570 Patent is a continuation of the '549 Patent, and the '961 Application is also a child patent of the '549 Patent.

26. On May 11, 2005, Argentum Medical again wrote to Noble a virtually identical letter in which it raised issues of infringement of the allowed claims of the '961 Application and related patents and applications by making, using, selling, offering to sell, or import certain of Noble's products by Noble, its manufacturer, or its distributor.

27. Noble has responded to these charges with a denial of any infringement and a request for an explanation from Argentum Medical of its infringement claims.

28. Argentum Medical has refused to explain its infringement charges.

29. Argentum Medical, Argentum Research, Argentum International and Tom Miller are aware of the narrow scope of the claims of the '549 Patent, the '570 Patent, and the '961 Application. Argentum's website [www.silverlon.com](http://www.silverlon.com) recognizes the well-known history of silver and silver-coated fabrics for medicinal purposes.

30. Noble reasonably believes that unless Argentum Medical, Argentum International, Argentum Research, and Tom Miller, individually and on behalf of Argentum Medical, Argentum International, Argentum Research, are prevented by injunction from further disseminating false and misleading representations and mis-descriptions of fact, Noble is and will be irreparably harmed.

31. The correspondence from and conduct of Argentum Medical, Argentum International, and Argentum Research, and of Tom Miller, individually and on behalf of Argentum Medical, Argentum International, and Argentum Research, have created a reasonable apprehension on Noble's part that it and/or its manufacturer, distributors and customers are faced with an infringement suit if they continue to use products which defendants allege are covered by the claims of the '549 Patent, the '570 Patent and the '961 Application. Defendants' actions have actually hindered and prevented Noble's ability to sell its products.

32. As a result, a justiciable controversy exists between Argentum and Noble as to the non-infringement, invalidity, and unenforceability of the '549 Patent and '570 Patent.

## **COUNT I**

### **DECLARATORY RELIEF – NONINFRINGEMENT – '549 PATENT**

33. Noble hereby incorporates and realleges Paragraphs 1 through 32 above as though fully set forth herein.

34. None of the claims of the '549 Patent are infringed, either literally or under the doctrine of equivalents, by Noble's products because, without limitation, products embodying such claims are not made, used, offered for sale, or sold by Noble.

35. Noble is entitled to a declaratory judgment of this Court that the claims of the '549 Patent are not infringed by Noble, its products, or the use thereof.

**COUNT II**

**DECLARATORY RELIEF –  
NONINFRINGEMENT – '570 PATENT**

36. Noble hereby incorporates and realleges Paragraphs 1 through 32 above as though fully set forth herein.

37. None of the claims of the '570 Patent are infringed, either literally or under the doctrine of equivalents, by Noble's products because, without limitation, products embodying such claims are not made, used, offered for sale, or sold by Noble.

38. Noble is entitled to a declaratory judgment of this Court that the claims of the '570 Patent are not infringed by Noble, its products, or the use thereof.

**COUNT III**

**DECLARATORY RELIEF –  
INVALIDITY – '549 PATENT**

39. Noble hereby incorporates and realleges Paragraphs 1 through 32 above as though fully set forth herein.

40. The '549 Patent is invalid for failure to comply with the patent laws of the United States, including but not limited to, 35 U.S.C. §§102, 103, 112, 251 and 252.

41. Noble is entitled to a declaratory judgment of this Court that the claims of the '549 Patent are invalid.

**COUNT IV**

**DECLARATORY RELIEF –  
INVALIDITY – '570 PATENT**

42. Noble hereby incorporates and realleges Paragraphs 1 through 32 above as though fully set forth herein.

43. The '570 Patent is invalid for failure to comply with the patent laws of the United States, including but not limited to, 35 U.S.C. §§102, 103, 112, 251 and 252.



44. Noble is entitled to a declaratory judgment of this Court that the claims of the '570 Patent are invalid.

**COUNT V**

**DECLARATORY RELIEF –  
UNENFORCEABILITY OF THE '549 PATENT**

45. Noble hereby incorporates and realleges Paragraphs 1 through 32 above as though fully set forth herein.

46. The '549 Patent is unenforceable because Argentum Medical, Argentum Research, Argentum International, and Tom Miller, as agent for Argentum Medical, Argentum Research, and Argentum International, have grossly exaggerated the scope of the claims of the '549 Patent, impermissibly broadening the scope of the patent grant in a manner that has chilled the demand for Noble's products and that has resulted in an anticompetitive effect.

47. Noble is entitled to a declaratory judgment of this Court that the claims of the '549 Patent are unenforceable.

**COUNT VI**

**DECLARATORY RELIEF –  
UNENFORCEABILITY OF THE '570 PATENT**

48. Noble hereby incorporates and realleges Paragraphs 1 through 32 above as though fully set forth herein.

49. The '570 Patent is unenforceable because Argentum Medical, Argentum Research, Argentum International, and Tom Miller, as agent for Argentum Medical, Argentum Research, and Argentum International, has grossly exaggerated the scope of the claims of the '570 Patent, impermissibly broadening the scope of the patent grant in a manner that has chilled the demand for Noble's products and that has resulted in an anticompetitive effect.

50. Noble is entitled to a declaratory judgment of this Court that the claims of the '570 Patent are unenforceable.

## COUNT VII

### **VIOLATION OF SECTION 43 OF THE LANHAM ACT, 15 U.S.C. §1125**

51. Noble incorporates and realleges paragraphs 1 – 50 as though fully set forth herein.

52. Tom Miller and Argentum Medical and Argentum Research, through its agent Tom Miller, made statements to Juzo that Noble's products infringe "Silverlon's patent", which was a false and misleading description of fact and representation of fact used in commercial promotion, which misrepresented the nature, characteristics and qualities of Noble's goods in violation of 15 U.S.C. §1125(a)(1)(B).

53. Tom Miller and Argentum Medical and Argentum International, through its agent Tom Miller, made statements to J & D Wilkie that Noble Fiber will be infringing Argentum's IP if they promote a silver fiber for physiological condition, which is a false and misleading descriptions of fact and representations of fact used in commercial promotion, which misrepresent the nature, characteristics and qualities of Noble's goods in violation of 15 U.S.C. §1125(a)(1)(B).

54. Tom Miller, Argentum Medical, Argentum Research, and Argentum International, through its agent Tom Miller, made allegations of infringement in bad faith because they knew or had reckless disregard of the limited scope of the claims of the '549 Patent, the '570 Patent, and the '961 Application.

55. Noble is harmed by the false claims on infringement by Tom Miller, Argentum Medical, Argentum Research, and Argentum International.

**COUNT VIII**

**TORTIOUS INTERFERENCE WITH CONTRACTUAL RELATIONS**

56. Noble incorporates and realleges paragraphs 1 – 50 as though fully set forth herein.

57. Tom Miller, Argentum Medical, and Argentum International, through its agent Tom Miller, made false statements to J & D Wilkie, Ltd, that that Noble Fiber will be infringing Argentum's IP if they promote or sell a silver fiber with physiological condition, with the intent that J & D Wilkie not perform a contract with Noble.

58. Tom Miller, Argentum Medical, and Argentum International, through its agent Tom Miller made allegations of infringement in bad faith because they knew or had reckless disregard of the limited scope of the claims of the '549 Patent, the '570 Patent, and the '961 Application.

59. Tom Miller, Argentum Medical, and Argentum International have no privilege to make these statements.

60. Noble has suffered damages from the statements of Tom Miller, Argentum Medical, and Argentum International, through its agent Tom Miller.

**COUNT IX**

**COMMON LAW COMMERCIAL DISPARAGEMENT**

61. Noble incorporates and realleges paragraphs 1 – 50 as though fully set forth herein.

62. Tom Miller and Argentum Medical and Argentum Research, through its agent Tom Miller, made statements to Juzo that Noble's products infringe "Silverlon's patent", that are untrue and incorrect.

63. Tom Miller, Argentum Medical and Argentum Research have no privilege to make such a statement.

64. Tom Miller, Argentum Medical and Argentum Research, through its agent Tom Miller, made the statement in bad faith because they knew or had reckless disregard of the scope of the '549 Patent, the '570 Patent, and the '961 Application.

65. Noble has suffered a direct pecuniary loss as a result of the disparagement.

66. Tom Miller and Argentum Medical and Argentum International, through its agent of Tom Miller, made statements to J & D Wilkie that Noble Fiber will be infringing Argentum's IP if they promote a silver fiber for physiological condition, which is untrue and incorrect.

67. Tom Miller, Argentum Medical and Argentum International have no privilege to make such a statement.

68. Tom Miller, Argentum Medical and Argentum International, through its agent Tom Miller, made the statement in bad faith because they knew or had reckless disregard of the scope of the '549 Patent, the '570 Patent, and the '961 Application.

69. Noble has suffered a direct pecuniary loss as a result of the disparagement.

**PRAYER FOR RELIEF**

**FOR COUNTS I - VI:**

Noble requests this honorable Court to enter judgment in its favor:

a. Declaring that the '549 Patent and each of its claims are not infringed by Noble, Noble's products, or the use thereof;

b. Declaring that the '570 Patent and each of its claims are not infringed by Noble, Noble's products, or the use thereof;

c. Declaring that the '549 Patent and each of its claims are invalid;

d. Declaring that the '570 Patent and each of its claims are invalid;

- e. Declaring that the '549 Patent is unenforceable;
- f. Declaring that the '570 Patent is unenforceable;
- g. Awarding Noble its costs and reasonable attorneys' fees incurred in connection with this action, including without limitation, pursuant to 35 U.S.C. §285; and
- h. Granting Noble such other and further relief as this Court may deem just and proper.

**FOR COUNT VII:**

Noble requests this honorable Court to enter judgment:

- a. Permanently enjoining Argentum Medical, Argentum International, Argentum Research, any parent, subsidiaries, agents, attorneys, successors and assigns, and all persons acting on its behalf and control, from continuing to violate 15 U.S.C. §1125(a);
- b. Permanently enjoining Tom Miller, as an agent for Argentum Medical, Argentum Research, and Argentum International and individually, from continuing to violate 15 U.S.C. §1125(a);
- c. Awarding Noble all profits of Argentum Medical, Argentum Research and Argentum International from sales resulting from violation of this Act, together with Noble's damages and the costs and expenses of this action, and that such award be increased by three times the amount found as actual damages as provided by 15 U.S.C. §1117, together with prejudgment interest;
- d. Finding Tom Miller individually and jointly and severally liable for Noble's damages; and
- e. Finding the case exceptional and award reasonable attorneys' fees to Noble.

**FOR COUNT VIII-IX:**

Noble requests this honorable Court to enter judgment:

a. Awarding compensatory damages against Argentum Medical, Argentum International, Argentum Research and Tom Miller, individually and as an agent for Argentum Medical, Argentum International, and Argentum Research for tortious interference and commercial disparagement, including attorneys' fees, costs and expenses, and prejudgment interest;

b. Awarding punitive damages adequate to punish Argentum Medical, Argentum Research, Argentum International, and Tom Miller, as agent Argentum Medical, Argentum Research, Argentum International, and Tom Miller, for willful commercial disparagement and to deter such reprehensible commercial behavior.

Dated: \_\_\_\_\_, 2005

Respectfully submitted,

**HOURIGAN, KLUGER & QUINN, P.C.**  
ARTHUR L PICCONE, ESQUIRE  
JENNIFER ROGERS, ESQUIRE  
600 Third Avenue  
Kingston, Pennsylvania 18704

Jennifer L. Rogers/s

**AKERMAN SENTERFITT**  
JOSEPH W. BAIN, ESQ.  
Florida Bar No. 860360  
222 Lakeview Avenue, Suite 400  
West Palm Beach, Florida 33401-6147  
Telephone: (561) 653-5000  
Facsimile: (561) 563-5333  
E-mail: j.bain@akerman.com

Joseph W. Bain/s