

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF NORTH CAROLINA  
Civil Action No. 07-754

SV INTERNATIONAL CORPORATION,	)	
	)	
Plaintiff,	)	COMPLAINT FOR DECLARATORY
	)	JUDGMENT OF NON-INFRINGEMENT,
v.	)	INVALIDITY, AND/OR
	)	UNENFORCEABILITY OF U.S. PATENT
XIAMEN QUAN YU	)	NOS. 6,582,021 AND 6,662,519
WOOD PRODUCTS CO., LTD., and	)	
	)	
FU JIAN QUANYU INDUSTRY	)	
CO. LTD.,	)	
	)	
Defendants.	)	

Plaintiff, SV International Corporation ("SV International"), files this complaint for declaratory judgment relating to U.S. Patent Nos. 6,582,021 against Defendant Xiamen Quan Yu Wood Products Co., Ltd. ("Xiamen") and relating to U.S. Patent No. 6,662,519 against Defendant Fu Jian Quanyu Industry Co., Ltd. ("Fu Jian") as follows:

**PARTIES**

1. Plaintiff SV International is a corporation organized and existing under the laws of the State of North Carolina, with a principal place of business in Greensboro, North Carolina. SV International is doing business within the State of North Carolina.

2. Upon information and belief, Defendant Xiamen is a corporation organized and existing under the laws of China with a principal place of business at Gaolin Industry Area, Heshan Town, Huli District, Xiamen 361009, China. Upon information and belief, Defendant Xiamen is doing business within the State of North Carolina. Upon information and belief, Defendant is commonly owned and managed with Defendant Fu Jian.

4. Upon information and belief, Defendant Fu Jian is a corporation organized and existing under the laws of China with a principal place of business at Xingtai Industry Area, Changtai Vill, Zhanghou, Fujian 363900, China. Upon information and belief, Defendant Fu Jian is doing business within the State of North Carolina. Upon information and belief, Defendant Fu Jian is commonly owned and managed with Defendant Xiamen.

#### **JURISDICTION AND VENUE**

4. Jurisdiction is based upon 28 U.S.C. §§ 1331, 1338, 2201, and 2202. Upon information and belief, Defendants are doing business within the State of North Carolina and this action arises under the Patent Laws of the United States.

5. Upon information and belief, venue is proper in this district under 28 U.S.C. § 1391.

#### **BACKGROUND OF THE CLAIM**

6. U.S. Patent No. 6,582,021 (the "'021 Patent" or the "Handrail Patent") is, on information and belief, owned by Xiamen through an assignment recorded with the U. S. Patent and Trademark Office on December 22, 2005. The '021 Patent is listed on Fu Jian's website at <http://fj.quanyu.com/wood/jl01.jsp> as one of Fu Jian's patented products.

8. U.S. Patent No. 6,662,519 (the "'519 Patent" or the "Newel Post Patent") is, on information and belief, owned by Fu Jian through an assignment recorded with the U. S. Patent and Trademark Office on September 25, 2005.at the U.S. Patent and Trademark Office. The '519 Patent is listed on Fu Jian's website at <http://fj.quanyu.com/wood/jl03.jsp> as one of Fu Jian's patented products.

9. SV International has been offering for sale in the United States a handrail made from oak veneer for over a year.

10. On or about March 31, 2006, SV International received a letter from Joseph T. Leone of DeWitt Ross & Stevens, accusing SV International of infringing the Handrail Patent and threatening to litigate if SV International did not cease and desist from selling its oak veneer handrail. This threat was made on behalf of Xiamen. A copy of the cease and desist letter is attached as Exhibit 1.

11. As a result of Defendant's letter, SV International has a reasonable apprehension that litigation will be brought against it by Xiamen for infringement of the Handrail Patent.

12. SV International denies that it in any way infringes the Handrail Patent, at least insofar as any claim thereof is valid or enforceable.

13. SV International does not make, use, sell or offer for sale and has not made, used, sold or offered for sale in the United States any products which infringe any valid claims of the Handrail Patent, either directly or indirectly, contributorily or otherwise, and has not actively induced any others to so infringe. Because Defendant has made allegations in Exhibit 1 to the contrary, an actual, justiciable controversy exists between SV International and Defendant.

19. SV International has been offering for sale in the United States a newel post made from oak veneer since early 2001.

20. On or about August 7, 2006, SV International's customer, Lowe's received a letter from Joseph T. Leone of DeWitt Ross & Stevens, accusing Lowe's of infringing the Newel Post Patent and threatening to litigate if Lowe's did not cease and desist from selling its oak veneer newel post. This threat was made on behalf of Xiamen, which has since assigned the Newel Post Patent to Fu Jian. A copy of the cease and desist letter is attached as Exhibit 2.

21. On or about October 2, 2006, counsel for SV International wrote a letter to counsel for Xiamen with evidence of the invalidity of the Newel Post patent and an explanation of SV's noninfringement defense. No response to this letter was ever received from Xiamen.

21. On or about September 25, 2007, the Newel Post patent was assigned from Xiamen to Fu Jian. On September 26, 2007, Fu Jian filed a patent infringement suit against SV International's customers ECMD and Lowe's (the "Lawsuit").

21. As a result of Defendant's letter and the Lawsuit, SV International has a reasonable apprehension that litigation will be brought against it by Fu Jian for infringement of the Newel Post Patent.

22. SV International denies that it in any way infringes the Newel Post Patent, at least insofar as any claim thereof is valid or enforceable.

23. SV International does not make, use, sell or offer for sale and has not made, used, sold or offered for sale in the United States any products which infringe any valid claims of the Newel Post Patent, either directly or indirectly, contributorily or otherwise, and has not actively induced any others to so infringe. Because Defendant Fu Jian has made allegations in Exhibit 2 and in the Lawsuit to the contrary, an actual, justiciable controversy exists between SV International and Defendant.

### **COUNT I – DECLARATORY JUDGMENT**

24. Paragraphs 1 through 23 are incorporated herein by reference.

25. There is a substantial and continuing justiciable controversy between SV International and Defendants as to Defendants' right to threaten or maintain suit for infringement

of the patents, and as to the validity, enforceability and scope thereof, and as to whether any of SV International's products infringe any valid claim thereof.

26. SV International alleges on information and belief that each of the patents are not infringed, are invalid, and/or are unenforceable, for one or more of the following reasons:

a. SV International has not infringed any claim of the patent.

b. By reason of the proceedings in the Patent Office during the prosecution of the application which resulted in the patent as shown by the file wrapper thereof, Defendants are estopped to claim for the patent a construction that would cause said patent to cover or include any apparatus or device or product or method manufactured, used, offered for sale, or sold by SV International.

c. The patentee did not invent the subject matter patented, nor did they make any invention or discovery, novel, original, or otherwise, within the meaning of Title 35 of the United States Code.

d. The alleged invention was made by another in this country before the patent's alleged date of invention, and such other person had not abandoned, suppressed, or concealed it.

e. New matter was introduced into the disclosure and claims during the prosecution of the application for said patent.

f. The patent does not particularly point out and distinctly claim the part, improvement, steps, or combination which the patentee claims as its invention, as required by Title 35, United States Code.

g. The claims are not directed to patentable combinations, but are directed to mere aggregations of parts or steps, means, or elements which were matters of common

knowledge in the art to which said patent relates before the alleged invention and more than one year prior to the date of the application for said patent.

h. In light of the prior art at the time the alleged invention was made, the subject matter as claimed in the patent would have been obvious to a person skilled in the art to which the alleged invention relates and does not constitute a patentable invention.

i. The alleged invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the patentee of the patent in suit.

j. The alleged invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of the application for patent in the United States.

k. Patentee has abandoned the invention.

l. The alleged invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the patentee, or on an international application pursuant to 35 U.S.C. § 371(c), before the invention thereof by the patentee.

m. If there be an invention in the subject matter of the patent in suit, which is denied, the patent nevertheless was not obtained in a manner consistent with the provisions of Title 35, United States Code and/or 37 C.F.R. § 1.56.

n. On information and belief, Defendant has so misused the patent in suit and has so used it in violation of the antitrust laws, as to render it unenforceable.

**COUNT II – UNFAIR OR DECEPTIVE TRADE PRACTICES**

27. Paragraphs 1 through 26 are incorporated herein by reference.

28. Defendants have asserted the Newel Post patent against two of Plaintiff's customers, ECMD and Lowe's, in the Lawsuit filed in Wisconsin.

29. Defendants are aware that the Newel Post patent is invalid and not infringed by the products sold by SV International and its customers ECMD and Lowe's.

30. Defendants' filing of the Lawsuit cannot have been made with any expectation of success based on the evidence of invalidity and noninfringement previously provided to Xiamen. The motivation for the filing of the Lawsuit, therefore, is alleged on information and belief to be to harass and oppress SV International's customers with baseless litigation.

28. The aforesaid actions of Defendants are unfair or deceptive trade practices in or affecting commerce under NCGS Chapter 75-1.1.

29. By virtue of Defendants' frivolous and baseless assertion of the patents against SV International and its customers, SV International has been injured.

WHEREFORE, SV International demands

1. Entry of judgment that Defendant are without right or authority to threaten or to maintain suit against SV International or its customers for alleged infringement of United States Patent No. 6,582,021 and U.S. Patent No. 6,662,519; and that said patents are invalid, unenforceable and/or that said patents are not infringed by SV International because of the making, selling, or using of any products made, used or sold by SV International.

2. Entry of a preliminary injunction enjoining each Defendant, its parent, affiliates, officers, agents, servants, employees, and attorneys and those persons in active concert or participation with them who receive actual notice thereof, from initiating infringement litigation

and from threatening SV International or any of its customers, dealers, agents, servants, licensees, or employees, or any prospective or present sellers, dealers, licensees or users of SV International's products, with infringement litigation or charging of any of them, either verbally or in writing, with infringement of the patents because of the manufacture, use or selling, or offering for sale of products supplied by SV International, to be made permanent following trial.

3. Entry of judgment awarding SV International its damages caused by Defendants' actions, and awarding SV International treble damages caused by Defendant's unfair trade practices.

4. Entry of judgment for the costs and reasonable attorneys' fees incurred by SV International herein.

5. Such other and further relief as the Court may deem appropriate.

6. Trial by jury of all issues so triable.

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