

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

FILED
JAMES BONINI
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The Ohio Willow Wood Company)
 15441 Scioto Darby Road)
 P. O. Box 130)
 Mt. Sterling, Ohio 43143)
)
 Plaintiff,)
 v.)
)
 Fillauer Companies, Inc.)
 2710 Amnicola Highway)
 Chattanooga, Tennessee 37406;)
)
 Fillauer LLC)
 2710 Amnicola Highway)
 Chattanooga, Tennessee 37406; and)
)
 Fillauer Orthotics & Prosthetics, Inc.)
 2710 Amnicola Highway)
 Chattanooga, Tennessee 37406;)
)
 Defendants.)

U.S. DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

Case No. **2 : 06 cv 108**

JUDGE FROST
MAGISTRATE JUDGE ABEL

COMPLAINT FOR PATENT INFRINGEMENT
(WITH JURY DEMAND)

Plaintiff, The Ohio Willow Wood Company ("Ohio Willow Wood"), by and through its attorneys, hereby complains and alleges against Defendants, Fillauer Companies, Inc. ("Fillauer"), Fillauer LLC, and Fillauer Orthotics & Prosthetics, Inc. ("Fillauer O & P") as follows:

PARTIES TO THIS CIVIL ACTION

1. Plaintiff Ohio Willow Wood is an Ohio corporation having its principal place of business in Mt. Sterling, Ohio.
2. Defendant Fillauer is upon information and belief a Tennessee corporation with its principal office in Chattanooga, Tennessee.

3. Defendant Fillauer LLC is upon information and belief a Tennessee limited liability company with its principal office in Chattanooga, Tennessee.

4. Defendant Fillauer O & P is upon information and belief a Tennessee corporation with its principal office in Chattanooga, Tennessee.

JURISDICTION & VENUE

5. This is a civil action for damages, injunctive relief, attorney fees and other appropriate relief for patent infringement arising under the patent laws of the United States, Title 35 of the United States Code.

6. Subject matter jurisdiction is proper under 28 U.S.C. §§ 1331, 1332 and 1338(a).

7. The Court has personal jurisdiction over Defendants at least by virtue of Defendants' Internet business activities in this judicial district and elsewhere in the state of Ohio, by virtue of Defendants' national advertisement in this judicial district and elsewhere in the state of Ohio, and by virtue of Defendants' commission of acts of infringement in Ohio and in this district.

8. Venue in this district is proper under 28 U.S.C. §§ 1391(b), 1391(c) and 1400(b) at least by virtue of Defendants' Internet business activities within this judicial district and elsewhere throughout the state of Ohio, by virtue of Defendants' national advertisement within this judicial district and elsewhere throughout the state of Ohio, and by virtue of Defendants' commission of acts of infringement in Ohio and in this district.

STATEMENT OF CLAIM

9. The allegations of paragraphs 1-8 are incorporated as if fully set forth herein.

10. Ohio Willow Wood is the owner of all right, title, and interest in and to United States Letters Patent No. 5,830,237 entitled "Gel and Cushioning Devices" (hereinafter "the

'237 patent"), which duly and legally issued to Ohio Willow Wood on November 3, 1998, as assignee of the inventor. A copy of the '237 patent is attached hereto as Exhibit "A".

11. Ohio Willow Wood is the owner of all right, title, and interest in and to United States Letters Patent No. 6,406,499 entitled "Gel and Cushioning Devices" (hereinafter "the '499 patent"), which duly and legally issued to Ohio Willow Wood on June 18, 2002, as assignee of the inventor. A copy of the '499 patent is attached hereto as Exhibit "B".

12. Ohio Willow Wood is the owner of all right, title, and interest in and to United States Letters Patent No. 6,964,688 entitled "Tube Sock-Shaped Covering" (hereinafter "the '688 patent"), which duly and legally issued to Ohio Willow Wood on November 15, 2005, as assignee of the inventor. A copy of the '688 patent is attached hereto as Exhibit "C".

13. Ohio Willow Wood is the owner of all right, title, and interest in and to United States Letters Patent No. 6,267,787 entitled "Prosthetic Attachment Locking Assembly Having Prosthetic Attachment Lock" (hereinafter "the '787 patent"), which duly and legally issued to Ohio Willow Wood on July 31, 2001, as assignee of the inventors. A copy of the '787 patent is attached hereto as Exhibit "D".

14. Ohio Willow Wood is the owner of all right, title, and interest in and to United States Letters Patent No. 6,605,118 entitled "Prosthetic Attachment Locking Assembly Having Prosthetic Attachment Lock" (hereinafter "the '118 patent"), which duly and legally issued to Ohio Willow Wood on August 12, 2003, as assignee of the inventors. A copy of the '118 patent is attached hereto as Exhibit "E".

COUNT I – PATENT INFRINGEMENT

15. The allegations of paragraphs 1-14 are incorporated as if fully set forth herein.

16. Defendants Fillauer, Fillauer LLC, and Fillauer O & P have been and are now infringing one or more claims of the '237, '499, '688, '787 and '118 patents: (1) by making, using, offering to sell, and/or selling within this judicial district, and elsewhere in the United States, products which embody the inventions claimed in the '237, '499, '688, '787 and '118 patents; (2) by actively inducing others to infringe the '237, '499, '688, '787 and '118 patents; and/or (3) by contributing to the infringement of the '237, '499, '688, '787 and '118 patents.

17. Defendants' activities with respect to the '237, '499, '688, '787 and '118 patents are without authority or license from Ohio Willow Wood.

18. Defendants have been and will continue making, using, offering to sell, and/or selling products that infringe the '237, '499, '688, '787 and '118 patents without a license from Ohio Willow Wood.

19. Defendants' infringement, contributory infringement, and/or active inducement of infringement of the '237, '499, '688, '787 and '118 patents has been willful and deliberate, and Defendants will continue their activities to Ohio Willow Wood's detriment unless enjoined by this Court. As a result of Defendants' willful and deliberate infringement, this is an "exceptional case" within the meaning of 35 U.S.C. § 285.

20. As a result of said infringement by Defendants, Ohio Willow Wood has been damaged and will continue to be damaged in an amount to be determined at trial.

21. Ohio Willow Wood has also suffered and will continue to suffer irreparable harm unless this Court enjoins Defendants' activities.

RELIEF

WHEREFORE, Ohio Willow Wood demands judgment against Defendants as follows:

- (a) A ruling that Defendants have been and are infringing, contributing to the infringement of, and/or actively inducing infringement of the '237, '499, '688, '787 and '118 patents;
- (b) That the infringement, contributory infringement, and/or active inducement of infringement by Defendants has been willful and deliberate;
- (c) That this is an "exceptional case" under 35 U.S.C. § 285;
- (d) That, pursuant to 35 U.S.C. § 283, Defendants, its officers, directors, agents, assigns, and employees, and all others acting in concert or participation with them or under their authority, be permanently enjoined from making, using, offering to sell, and selling infringing products and from otherwise infringing, contributing to infringement of, and actively inducing infringement of the '237, '499, '688, '787 and '118 patents;
- (e) For an accounting of damages to Ohio Willow Wood arising from Defendants' acts of infringement, contributory infringement, and active inducement of infringement, said damages including lost profits, but in no event less than a reasonable royalty to be paid by Defendants as a result of Defendants' infringing activities;
- (f) For an award to Ohio Willow Wood of three times the actual damages and lost profits or royalties so determined by the accounting, together with interest and costs as provided for under 35 U.S.C. § 284;
- (g) For the costs of this action together with Ohio Willow Wood's attorneys' fees under 35 U.S.C. § 285; and
- (h) Such other and further relief as the Court deems just and proper.

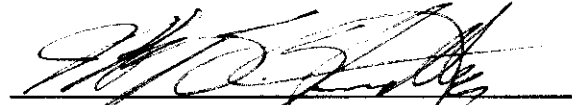
DEMAND FOR A JURY TRIAL

As a matter of right, Ohio Willow Wood demands a trial by jury of all issues triable by a jury in this case.

Respectfully submitted,

The Ohio Willow Wood Company

Dated: Feb. 10, 2006



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