

FILED  
UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

~OAKWOOD METAL FABRICATING  
CO., INC., a Michigan corporation,  
~OAKWOOD ENERGY MANAGEMENT, INC.,  
a Michigan corporation,  
*Plaintiffs,*

ORIGINAL

vs.

CLERK'S OFFICE  
DETROIT

HONORABLE VICTORIA A. ROBERTS  
MAGISTRATE JUDGE-PEPE

CIVIL ACTION NO. 01-73932

~CONCEPT ANALYSIS CORPORATION,  
a Michigan corporation,  
PAUL GLANCE and PATRICK GLANCE, natural persons,  
~LDM TECHNOLOGIES, a Michigan corporation  
*Defendants.*

JURY TRIAL DEMANDED

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AMENDED COMPLAINT

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## **I. THE PARTIES**

1. Plaintiff, Oakwood Metal Fabricating Co., Inc. is a Michigan corporation having its principal place of business at 1100 Oakwood Blvd., Dearborn, MI 48124.

2. Plaintiff Oakwood Energy Management, Inc., is a Michigan corporation having its principal place of business at 1100 Oakwood Blvd., Dearborn, MI 48124. Hereinafter, plaintiffs Oakwood Metal Fabricating Co., Inc., and Oakwood Energy Management, Inc., are collectively referred to as "Oakwood."

3. Defendant, Concept Analysis Corporation ("Concept") is a Michigan corporation having its principal place of business at 14789 Keel St., Plymouth, MI 00004-8170.

4. Defendants Paul Glance and Patrick Glance are natural persons residing in Michigan and are principals of Concept. These three defendants are collectively referred to as the "Concept defendants."

5. Defendant, LDM Technologies, Inc. ("LDM") is a Michigan corporation having its headquarters at 2500 Executive Hills Dr., Auburn Hills, MI 48326-2983.



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## II. JURISDICTION AND VENUE

6. Count One of this Complaint is presented under the Patent Act, 35 U.S.C. §100, *et seq.* Subject matter jurisdiction is conferred upon the Court pursuant to 28 U.S.C. §§1331 and 1338.

7. Counts Two - Four of this Complaint are presented under state law, and subject matter jurisdiction is conferred upon the Court pursuant to 28 U.S.C. § 1338(b) and 28 U.S.C. § 1367 (supplemental jurisdiction).

8. Venue is proper in this district under 28 U.S.C. §§ 1391 and 1400.

## III. UNDERLYING FACTS

9. Plaintiff Oakwood is a supplier to the automotive industry's Original Equipment Manufacturers ("OEMs"). Oakwood supplies OEMs with various automotive products and services, including: plastic injection molding, energy management products, padded products, tools and molds.

10. Defendant Concept is an engineering test facility and a designer of engineering products, including energy absorbers for passenger safety in automobile car crashes.

11. Defendant LDM is an automotive supplier which manufactures energy absorbers and numerous other products. On information and belief, LDM is a supplier to various OEMs, including Ford, Chrysler-Daimler, GM, Mercedes-Benz, UW Audi, Honda, Mitsubishi, Jaguar, Toyota, Isuzu, BMW, and Nissan.

12. In December of 1994, Oakwood and Concept discussed the possibility of entering into a business relationship in which Oakwood would work with Concept to develop energy absorbers.

13. On January 5, 1995, The Oakwood Metal Fabricating Company and defendant Concept entered into a "Confidentiality Agreement," which governed the performance of services for Oakwood by Concept. To enable Concept to perform services for Oakwood, Oakwood disclosed certain confidential and proprietary information to Concept. "Confidential Information" is defined in the Confidentiality Agreement as "...all information, know-how and data, whether technical or work products, trade secrets, reports, documentation, software and devices that are disclosed or made available by Oakwood to Concept Analysis."

14. Concept undertook certain obligations, and specifically "agree[d] to treat the Confidential Information in strict confidence", "[t]o use the Confidential Information only for purposes necessary to further the purpose of joint Oakwood and Concept Analysis programs and projects," "[n]ot to copy any part or all of the Confidential Information, without the prior consent of Oakwood," "[n]ot to disclose the Confidential Information outside of Concept

Analysis, and "to disclose Confidential Information to its employees only to the extent necessary to carry out the purposes for which the Confidential Information was disclosed to Concept Analysis by Oakwood," and "[n]ot to disclose the existence of discussions between Oakwood and Concept Analysis." As principals of Concept, Paul and Patrick Glance were individually bound by these confidentiality restrictions.

15. The Confidentiality Agreement provided that "the restrictions and obligations [on use of Oakwood's Confidential Information by Concept bound] Concept for seven years [from January 5, 1995, *i.e.* until January 5, 2002]."

16. During at least the initial period of the Confidentiality Agreement, Oakwood and Concept worked together to design, develop and test energy absorbers for use in vehicles.

17. On February 3, 1998, Oakwood and Concept entered into a Professional Services Agreement to further define the working relationship between Oakwood and Concept. As principals of Concept, Paul and Patrick Glance were individually bound by this agreement.

18. With respect to patents, the Professional Services Agreement provides that "Oakwood will retain all proprietary rights for any products and inventions that arise from the work."



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19. The Professional Services Agreement further provides that “[t]he existing Confidentiality Agreement CAC [‘Concept’] signed with Oakwood remains in effect.”

20. On February 21, 2000 Concept terminated the Professional Services Agreement, but stated that “Future testing can be accomplished on a purchase order, per test basis....”

21. After the termination of the Professional Service Agreement, Concept in fact performed services for Oakwood on a purchase order-by-purchase order basis.

22. Upon information and belief, the Concept defendants began to design energy absorbers for LDM while undertaking similar services for Oakwood.

23. Upon information and belief, the Concept defendants have utilized Oakwood’s proprietary technology to design energy absorbers for LDM.

24. Upon information and belief, LDM sells the energy absorbers designed by the Concept defendants with the use of Oakwood’s Confidential Information to several of the same OEMs to which Oakwood sells its energy absorbers.



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25. On March 13, 2001, U.S. Patent No. 6,199,942 ("the '942 patent") was duly and lawfully issued for a "Modular Energy Absorbing Assembly" to Oakwood Energy Management, Inc., who is the owner by assignment of the '942 patent.

26. On June 19, 2001, U.S. Patent No. 6,247,745 ("the '745 patent") was duly and lawfully issued for a "Formed Energy Absorber" to Oakwood Energy Management, Inc., who is the owner by assignment of the '745 patent. The '745 patent is a continuation of the application that led to the '942 patent.

**IV. COUNT ONE - PATENT INFRINGEMENT UNDER  
35 U.S.C. § 271(a), (b), & (c)**

27. Oakwood repeats and incorporates by reference the allegations of paragraphs 1 through 26.

28. The Concept defendants have been, and still are, infringing the '942 patent by making, selling, offering for sale, and using, within this judicial district and elsewhere, energy absorbers, and will continue to do so unless enjoined by this Court.

29. The Concept defendants have been, and still are, actively inducing others to infringe the '942 patent by making, selling, offering for sale, and using, within this judicial

district and elsewhere, energy absorbers, and will continue to do so unless enjoined by this Court.

30. Oakwood has suffered damages arising from the acts of direct and inducing infringement of the '942 patent by the Concept defendants in an amount that cannot yet be fully ascertained.

31. LDM has been, and still is, infringing the '942 patent by making, selling, offering for sale, and using, within this judicial district and elsewhere, energy absorbers, and will continue to do so unless enjoined by this Court.

32. LDM has been, and still is, contributorily infringing to direct infringement of the '942 patent by others with respect to the energy absorbers and will continue to do so unless enjoined by this Court.

33. Oakwood has suffered damages arising from the acts of direct and contributory infringement of the '942 patent by LDM in an amount that cannot yet be fully ascertained.

34. The Concept defendants have been, and still are, infringing the '745 patent by making, selling, offering for sale, and using, within this judicial district and elsewhere, energy absorbers, and will continue to do so unless enjoined by this Court.



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35. The Concept defendants have been, and still are, actively inducing others to infringe the '745 patent by making, selling, offering for sale, and using, within this judicial district and elsewhere, energy absorbers, and will continue to do so unless enjoined by this Court.

36. Oakwood has suffered damages arising from the acts of direct and inducing infringement of the '745 patent by the Concept defendants in an amount that cannot yet be fully ascertained.

37. LDM has been, and still is, infringing the '745 patent by making, selling, offering for sale, and using, within this judicial district and elsewhere, energy absorbers, and will continue to do so unless enjoined by this Court.

38. LDM has been, and still is, contributorily infringing to direct infringement of the '745 patent by others with respect to the energy absorbers and will continue to do so unless enjoined by this Court.

39. Oakwood has suffered damages arising from the acts of direct and contributory infringement of the '745 patent by LDM in an amount that cannot yet be fully ascertained.



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**V. COUNT TWO - BREACH OF CONTRACT**

40. Oakwood repeats and incorporates by reference the allegations of paragraphs 1 through 39.

41. The Confidentiality Agreement was a binding contract between Oakwood and Concept.

42. The Professional Services Agreement was a binding contract between Oakwood and Concept.

43. On information and belief, the Concept defendants breached the Confidentiality Agreement by disclosing to LDM at least part of Oakwood's Confidential Information.

44. The Concept defendants breached the Professional Services Agreement prior to its termination by failing to assign to Oakwood "all proprietary rights for any products and inventions that arise from the work."

45. By reason of the Concept defendants' joint and several acts, Oakwood has suffered and will continue to suffer damage.

**VI. COUNT THREE - INTERFERENCE WITH CONTRACTUAL RELATIONS**

46. Oakwood repeats and incorporates by reference the allegations of paragraphs 1 through 45.

47. Oakwood had entered into a contractual relationship with Concept based on the Confidentiality Agreement and the Professional Services Agreement when LDM interfered with that contractual relationship.

48. On information and belief, LDM knew that Oakwood and Concept had a contractual relationship based on the Confidentiality Agreement and the Professional Services Agreement.

49. On information and belief, LDM intentionally interfered with the contractual relationship based on the Confidentiality Agreement and the Professional Services Agreement.

50. LDM improperly interfered with the contractual relationship based on the Confidentiality Agreement and the Professional Services Agreement.

51. LDM's conduct caused the Concept defendants to breach the Confidentiality Agreement and the Professional Services Agreement.



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52. Oakwood has been damaged as a result of LDM's conduct.

**VII. COUNT FOUR - UNFAIR COMPETITION**

53. Oakwood repeats and incorporates by reference the allegations of paragraphs 1 through 52.

54. By misusing Oakwood's Confidential Information and using it to develop energy absorbers manufactured by LDM, the Concept defendants and LDM have engaged in unfair competition in violation of Oakwood's rights at common law.

55. As a direct result of the Concept defendants' and LDM's conduct, Oakwood has suffered and continues to suffer due to the irreparable loss of Confidential Information and related proprietary rights.

56. Oakwood has no adequate remedy at law because its damages for loss of Confidential Information cannot be calculated in monetary terms.

57. Unless and until the Concept defendants, LDM and all others acting in concert with them are immediately enjoined from using Oakwood's Confidential Information, Oakwood will suffer great and irreparable harm.



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### **VIII. REQUEST FOR RELIEF**

**WHEREFORE**, Oakwood asks the Court to:

- A. Enter a preliminary and permanent injunction to enjoin the Concept defendants, or any of them, from infringing Oakwood's '942 patent.
- B. Enter a preliminary and permanent injunction to enjoin LDM from infringing Oakwood's '942 patent.
- C. Award Oakwood damages against the Concept defendants adequate to compensate Oakwood for the infringement of the '942 patent, and to increase the damages up to three times the amount found or assessed in accordance with 35 U.S.C. § 284.
- D. Award Oakwood damages against LDM adequate to compensate Oakwood for the infringement of the '942 patent, and to increase the damages up to three times the amount found or assessed in accordance with 35 U.S.C. § 284.
- E. Enter a preliminary and permanent injunction to enjoin the Concept defendants, or any of them, from infringing Oakwood's '745 patent.
- F. Enter a preliminary and permanent injunction to enjoin LDM from infringing Oakwood's '745 patent.
- G. Award Oakwood damages against the Concept defendants adequate to compensate Oakwood for the infringement of the '745 patent, and to increase the damages up to three times the amount found or assessed in accordance with 35 U.S.C. § 284.



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H. Award Oakwood damages against LDM adequate to compensate Oakwood for the infringement of the '745 patent, and to increase the damages up to three times the amount found or assessed in accordance with 35 U.S.C. § 284.

I. Determine this case to be "exceptional," in the sense of 35 U.S.C. § 285.

J. Award Oakwood its reasonable attorney fees in accordance with 35 U.S.C. § 285.

K. Award Oakwood its lost profits that Oakwood expected to receive as a result of the contractual relationship based on the Confidentiality Agreement and the Professional Services Agreement between Oakwood and Concept.

L. Award Oakwood the expenses incurred in anticipating or relying on the performance of the Concept defendants as part of the contractual relationship based on the Confidentiality Agreement and the Professional Services Agreement.

M. Award Oakwood the consequential damages caused by the loss of the contractual relationship between Oakwood and Concept based on the Confidentiality Agreement and the Professional Services Agreement.

N. Enjoining the Concept defendants and LDM from using, disclosing, practicing or in any way taking commercial advantage of any of Oakwood's Confidential Information, including without limitation, Oakwood's energy absorber technology and further enjoining Concept and LDM from destroying, secreting, hiding, transferring, conveying or otherwise disseminating any documents or intangible things which in any way relate to any aspect of Oakwood's present or future business or to any energy absorber technology.



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O. Issue a preliminary and permanent injunction prohibiting the Concept defendants and LDM from making any use of Oakwood's Confidential Information or from disclosing, selling or in any way conveying Oakwood's Confidential Information.

P. Issuance of a preliminary and permanent injunction prohibiting the Concept defendants and LDM from selling any energy absorbers they have manufactured or will manufacture using Oakwood's Confidential Information.

Q. Award Oakwood its interest and costs.

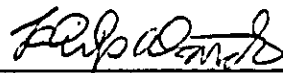
R. Award Oakwood such other relief as is just and equitable on the proofs.

#### IX. DEMAND FOR JURY TRIAL

Oakwood demands trial by jury for all issues so triable.

Respectfully submitted,

**BROOKS & KUSHMAN P.C.**

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**CERTIFICATE OF SERVICE**

I certify that I served:

**AMENDED COMPLAINT  
and CERTIFICATE OF SERVICE**

on June 21, 2002 by:

     delivering

  X   mailing (via First-Class mail)

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