

**ORIGINAL**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF GEORGIA**

FILED IN CLERK'S OFFICE  
U.S.D.C. Atlanta

AUG 28 2009

JAMES M. HATTEN, Clerk  
By: *[Signature]*  
Deputy Clerk

OWEN MUMFORD USA INC.,

Plaintiff,

v.

DELTA HI-TECH, INC.,

Defendant.

CIVIL ACTION FILE NO.

**1 : 09 - CV - 2363**  
**JURY TRIAL DEMANDED**

**CAP**

**COMPLAINT FOR PATENT INFRINGEMENT**

For its complaint herein, Plaintiff alleges as follows:

**THE PARTIES**

1. Plaintiff Owen Mumford USA Inc. (hereinafter "Owen Mumford"), is a company organized and existing under the laws of Georgia, with a principal place of business at 1755 West Oak Commons Court, Marietta, Georgia 30062.

2. Upon information and belief, Defendant Delta Hi-Tech, Inc. (hereinafter "Delta Hi-Tech"), is a corporation incorporated under the laws of Utah, and maintains its headquarters and principal place of business at 3762 South 150 East, Salt Lake City, Utah 84115.

### **JURISDICTION AND VENUE**

3. This action arises under the patent laws of the United States of America and jurisdiction is predicated upon 28 U.S.C. §§ 1331 and 1338(a).

4. Jurisdiction is proper in this Court because, upon information and belief, Delta Hi-Tech regularly transacts business within this judicial district, giving rise to general and specific personal jurisdiction over Delta Hi-Tech pursuant to the Georgia long arm statute (O.C.G.A. § 9-10-91).

5. Venue is proper in this Court under 28 U.S.C. § 1391(c) and Local Rule 3.1 because, upon information and belief, Delta Hi-Tech regularly engages in business in this judicial district, regularly solicits business in this judicial district, and derives substantial revenue from goods sold and used in this judicial district.

### **COUNT I**

6. Owen Mumford is the owner as assignee of United States Patent No. 5,487,748 (“the ‘748 patent”), a copy of which is attached as Exhibit 1, which is entitled “Blood Sampling Device.”

7. The ‘748 patent covers disposable blood sampling devices with a protective cap that breaks away from the lancet prior to use. Blood sampling devices covered by the ‘748 patent have been widely sold in this country by Plaintiff Owen Mumford.

8. Upon information and belief, Delta Hi-Tech imports, sells, and offers to sell its Safety Lancet in this jurisdiction and elsewhere in the United States in competition with Owen Mumford.

9. Upon information and belief, Delta Hi-Tech's Safety Lancet appropriates the blood sampling device design articulated in the '748 patent.

10. Claim 1 of the '748 patent recites "[a] disposable pricker comprising an elongate body with a lancet non-rotatably carried therein, the lancet tip normally being within the body, a spring urging the lancet in a direction to project its tip from the body, a trigger mechanism carried by the body with a portion within the body arranged to retain the lancet in a fully retracted position energizing the spring and a second portion outside the body manually actuable to release the lancet to cause the tip to have a momentary position projecting from an opening in the forward end of the body, and a cap encasing the lancet tip and having a shank traversing said opening, wherein said shank extends outwardly of said body through said opening a distance sufficient to permit said lancet to be moved against the action of said spring to said fully retracted position solely by pushing said cap further into said body through said opening, and wherein said cap is breakable free of the lancet by twisting when so retracted to leave the tip exposed within said body."

11. Upon information and belief, Delta Hi-Tech's Safety Lancet comprises an elongate body with a lancet non-rotatably carried therein.

12. Upon information and belief, Delta Hi-Tech's Safety Lancet tip is normally located within the body, with a spring urging the lancet in a direction to project its tip from the body.

13. Upon information and belief, Delta Hi-Tech's Safety Lancet has a trigger mechanism that is carried by the body with a portion within the body arranged to retain the lancet in a fully retracted position energizing the spring and a second portion outside the body manually actuable to release the lancet to cause the tip to have a momentary position projecting from an opening in the forward end of the body.

14. Upon information and belief, Delta Hi-Tech's Safety Lancet has a cap encasing the lancet tip and having a shank traversing the opening, wherein the shank extends outwardly of the body through the opening a distance sufficient to permit the lancet to be moved against the action of the spring to a fully retracted position solely by pushing the cap further into the body through the opening, and wherein the cap is breakable free of the lancet by twisting when so retracted to leave the tip exposed within the body.

15. The sale and offer for sale of the Safety Lancet by Delta Hi-Tech infringes, literally or by doctrine of equivalents, the '748 patent in violation of 35 U.S.C. § 271, *et seq.*

16. Owen Mumford has been damaged by Delta Hi-Tech's infringement of the '748 patent, and its continued sales of the Safety Lancet has caused Owen Mumford monetary damages. The injury to Owen Mumford is continuing and irreparable unless enjoined by this Court.

### **PRAYER FOR RELIEF**

17. Plaintiff respectfully requests that the Court enter a Judgment that:
- a. Delta Hi-Tech has infringed the '748 patent;
  - b. Delta Hi-Tech, its officers, agents, attorneys, licensees, employees, its successors in interest and assigns, and all others acting in privity or concert with it, are permanently enjoined from engaging in the commercial manufacture, use, offer for sale, or sale of blood sampling devices as claimed by the '748 patent, and all other acts of infringement of the '748 patent, prior to the expiration of that patent; and
  - c. An accounting be had for the damages resulting from Delta Hi-Tech's infringement of the '748 patent caused by the infringing activities of Delta

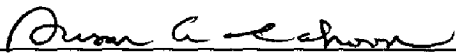
Hi-Tech, and that the damages so ascertained be awarded together with interest and costs.

18. Plaintiff further respectfully requests that the Court award to Owen Mumford such other and further relief as the Court may deem appropriate under the circumstances.

**DEMAND FOR JURY TRIAL**

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiff hereby demands a trial by jury on all issues so triable as a matter of right.

Submitted this 28<sup>th</sup> day of August, 2009.

  
\_\_\_\_\_  
Susan A. Cahoon  
Georgia Bar Number 102000  
Camilla C. Williams  
Georgia Bar Number 762927  
KILPATRICK STOCKTON LLP  
1100 Peachtree Street  
Suite 2800  
Atlanta, Georgia 30309  
Tel.: (404) 815-6500  
Fax: (404) 815-6555  
ccwilliams@kilpatrickstockton.com  
*Counsel for Plaintiff Owen Mumford USA Inc.*