

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

<p>MEDLINE INDUSTRIES, INC.</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">v.</p> <p>ESSENTIAL MEDICAL SUPPLY, INC.</p> <p style="text-align: center;">Defendant.</p>	<p>Civil Action No.:</p> <p>TRIAL BY JURY DEMANDED</p>
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COMPLAINT IN CIVIL ACTION

Plaintiff Medline Industries, Inc. (hereinafter “Plaintiff”), for its complaint against Defendant, Essential Medical Supply, Inc., alleges as follows:

INTRODUCTION

1. This is an action brought by Plaintiff arising under the patent laws of the United States and/or the state of Illinois.
2. Plaintiff seeks an injunction and damages against Defendant for infringement of Plaintiff’s patent rights.

THE PARTIES

3. Plaintiff is an Illinois corporation having its principal place of business at 1 Medline Place, Mundelein, Illinois 60060.
4. Upon information and belief, Defendant Essential Medical Supply, Inc. (“Essential Medical” or “Defendant”) is a Florida corporation having its principal place of

business at 6420 Hazeltine National Drive Orlando, Florida 32822, and conducts business in the state of Illinois and within this judicial district.

JURISDICTION AND VENUE

5. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338 and 35 U.S.C. § 281 for claims arising under 35 U.S.C. §§ 1 *et seq.*, the Patent Laws of the United States.

6. This Court has personal jurisdiction over Defendant pursuant to 735 I.L.C.S. § 5/2-209, which authorizes an exercise of personal jurisdiction to the extent consistent with federal due process. Personal jurisdiction is proper here because Defendant has sufficient minimum contacts with Illinois such that the maintenance of this suit does not offend traditional notions of fair play and substantial justice.

7. Defendant has offered for sale, sold, and/or otherwise distributed infringing transport chair products in the state of Illinois. For example, Defendant's infringing transport chair products are offered for sale and, upon information and belief, sold by multiple distributors located in Illinois and within this district, including but not limited to, Lang Home Medical Equipment, Inc. ("Lang Home Medical"), Buffalo Grove, Illinois (*see* Exhibit C), Buffalo Grove Drug Co., Inc. (d/b/a Mark Drug Medical Supply) ("Mark Drug Medical"), Wheeling, Illinois (*see* Exhibit D), and ABC Medical Services, Inc. ("ABC Medical"), Lansing, Illinois (*see* Exhibit E).

8. Defendant further caused infringing transport chair products to be offered for sale and sold in Illinois. For example, Defendant's infringing transport chair products are offered for sale at www.amazon.com, and have been sold to purchasers in Illinois (*see, e.g.*, Exhibits H and I). As further examples, Defendant's infringing transport chair products are offered for sale and,

upon information and belief, sold to purchasers in Illinois through multiple distributors in this district, including but not limited to, Lang Home Medical (*see* Exhibit C), Mark Drug Medical (*see* Exhibit D), ABC Medical (*see* Exhibit E), and H. D. Smith Wholesale Drug Co. (“H. D. Smith”) (*see* Exhibits F and G).

9. Upon information and belief, Defendant has multiple established distribution channels in Illinois and in this district with several entities, including but not limited to, Lang Home Medical (*see* Exhibit C), Mark Drug Medical (*see* Exhibit D), ABC Medical (*see* Exhibit E), H. D. Smith (*see* Exhibits F and G), and www.amazon.com, an on-line retailer that markets products to, and is accessed by, residents of Illinois (*see* Exhibits H and I). Furthermore, upon information and belief, Defendant, by and through a distributor, markets infringing transport chair products to Illinois residents, including, by way of example, the promotion in Exhibit F. Defendant knew the likely destination of its products, and has established connections with Illinois. Defendant’s established distribution channels indicates an expectation that infringing transport chair products will be purchased by consumers in Illinois.

10. Defendant solicits contact from customers in Illinois (*see* Exhibit J), and invites prospective dealers in Illinois to sell Defendant’s products (*see* Exhibit K).

11. Defendant has purposefully directed its activities at residents in Illinois, the claim here arises out of or relates to those activities, and Defendant knew that its conduct and connections with this district were such that they should reasonably have anticipated being brought into court in the Northern District of Illinois. The assertion of personal jurisdiction is reasonable and fair.

12. Venue in this Court is based upon 28 U.S.C. §§ 1391 and 1400.

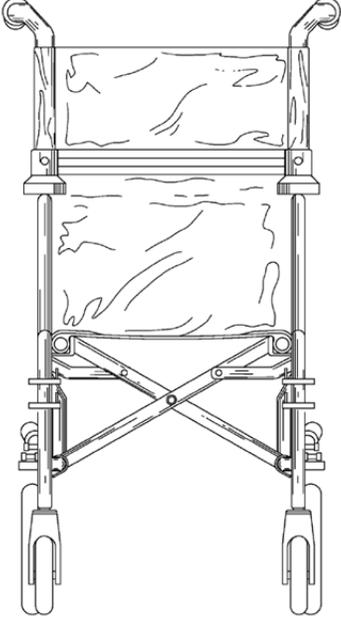
FACTUAL BACKGROUND

13. United States Design Patent No. D635,895 (“the ‘895 patent”; attached at Exhibit A), entitled “Transport Wheelchair,” was duly and legally issued on April 12, 2011, and lists David P. Jacobs, Ishwor P. Adhikari, and Richard P. Derks as inventors.

14. All rights, title, and interest in and to the ‘895 patent has been assigned to Plaintiff.

15. United States Design Patent No. D624,459 (“the ‘459 patent”; attached as Exhibit B), entitled “Transport Wheelchair,” was duly and legally issued on September 28, 2010, and lists David P. Jacobs, Ishwor P. Adhikari, and Richard P. Derks as inventors.

16. Defendant offers for sale transport chair products, and sells such transport chair products; for example, the FeatherlightTM Transport Chair Item # H3005R, is offered for sale and, upon information and belief, sold through Lang Home Medical (*see* Exhibit C), Mark Drug Medical (*see* Exhibit D), ABC Medical (*see* Exhibit E), H. D. Smith (*see* Exhibits F and G), and www.amazon.com (*see* Exhibits H and I) (hereinafter “accused transport chair products”). Below is a side-by-side comparison of the ‘895 and ‘459 patents with the accused products.

<u>'895 Patent</u>	<u>Accused Transport Chair Products</u>
 <p data-bbox="435 907 532 940">FIG. 1</p>	
 <p data-bbox="435 1600 532 1633">FIG. 2</p>	

'895 Patent

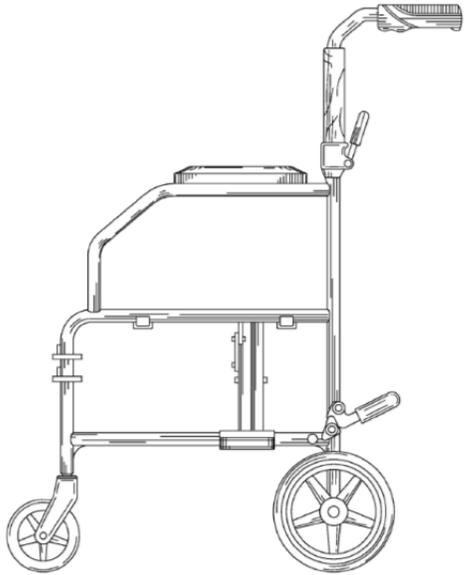


FIG. 3

Accused Transport Chair Products

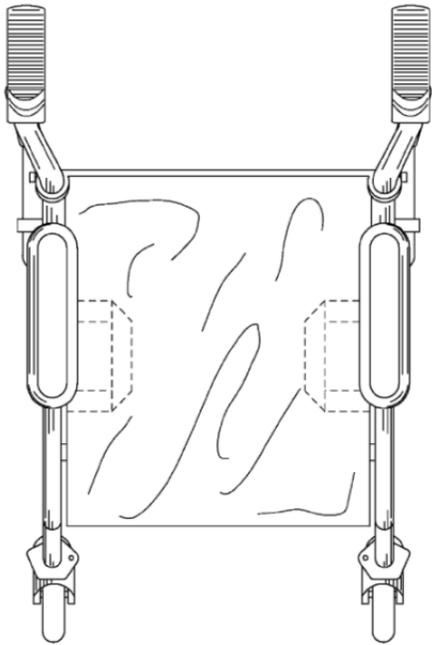
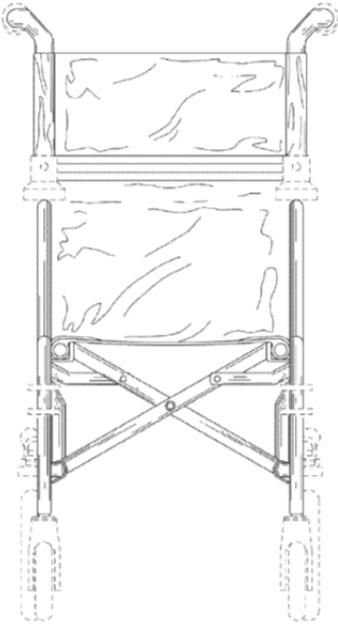
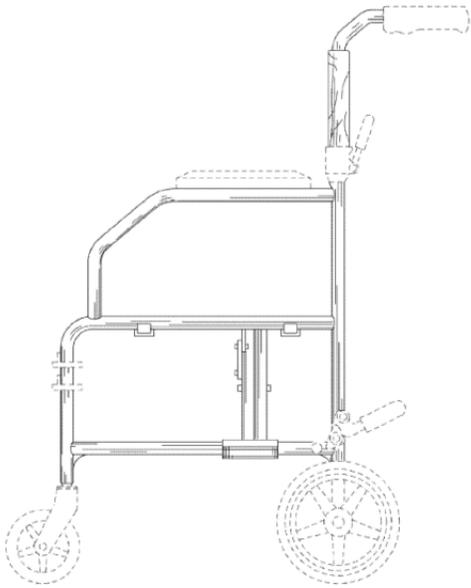
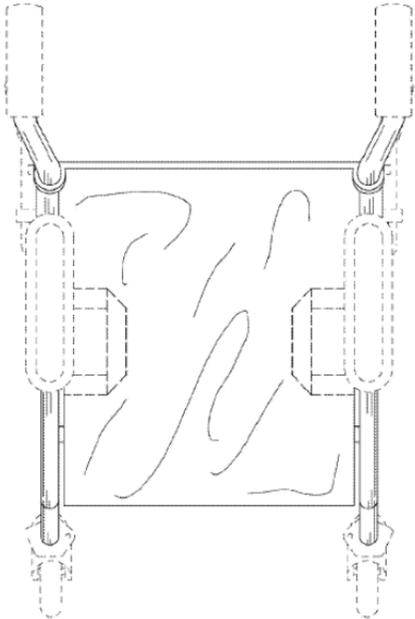


FIG. 4



<u>'459 Patent</u>	<u>Accused Transport Chair Products</u>
 <p data-bbox="440 877 532 911">FIG. 1</p>	
 <p data-bbox="440 1562 532 1596">FIG. 2</p>	

<u>'459 Patent</u>	<u>Accused Transport Chair Products</u>
 <p data-bbox="440 877 532 907">FIG. 3</p>	
 <p data-bbox="440 1566 532 1596">FIG. 4</p>	

17. Upon information and belief, accused transport chair products (*see, e.g.*, Exhibit I) have been purchased by Illinois residents through www.amazon.com and delivered to addresses in Illinois.

COUNT I
PATENT INFRINGEMENT OF U.S. DESIGN PATENT NO. D635,895

18. Plaintiff hereby re-alleges the allegations of Paragraphs 1-17 of this complaint as if fully set forth herein.

19. Upon information and belief, Defendant has for a time past, and continues, to infringe, either literally or under the doctrine of equivalents, the '895 patent by making, using, selling, offering for sale, and/or importing transport chair products embodying the patented invention to customers in the United States, either directly or through intermediaries, where they have been made available for sale and sold in Illinois, and/or contributing to and/or inducing the infringement by others. An example of such transport chair products is shown in Exhibits C-F and H-I.

20. After a reasonable opportunity for further investigation or discovery, it is likely that the evidence will show that Defendant's infringing activities have continued, despite Defendant's knowledge of Plaintiff's rights in and to the '895 patent and/or with knowledge that Defendant does not have the right to practice any invention claimed by the '895 patent. Accordingly, Defendant is willfully infringing the '895 patent.

21. By the foregoing acts and otherwise, Defendant will continue to infringe Plaintiff's rights in the '895 patent unless restrained by this Court.

22. As a result of Defendant's patent infringement, Plaintiff has suffered and continues to suffer irreparable injury, for which it has no adequate remedy at law.

COUNT II
PATENT INFRINGEMENT OF U.S. DESIGN PATENT NO. D624,459

23. Plaintiff hereby re-alleges the allegations of Paragraphs 1-22 of this complaint as if fully set forth herein.

24. Upon information and belief, Defendant has for a time past, and continues, to infringe, either literally or under the doctrine of equivalents, the '459 patent by making, using, selling, offering for sale, and/or importing transport chair products embodying the patented invention to customers in the United States, either directly or through intermediaries, where they have been made available for sale and sold in Illinois, and/or contributing to and/or inducing the infringement by others. An example of such transport chair products is shown in Exhibits C-F and H-I.

25. After a reasonable opportunity for further investigation or discovery, it is likely that the evidence will show that Defendant's infringing activities have continued, despite Defendant's knowledge of Plaintiff's rights in and to the '459 patent and/or with knowledge that Defendant does not have the right to practice any invention claimed by the '459 patent. Accordingly, Defendant is willfully infringing the '459 patent.

26. By the foregoing acts and otherwise, Defendant will continue to infringe Plaintiff's rights in the '459 patent unless restrained by this Court.

27. As a result of Defendant's patent infringement, Plaintiff has suffered and continues to suffer irreparable injury, for which it has no adequate remedy at law.

WHEREFORE, Plaintiff prays for the following relief:

1. A finding that the '895 and '459 patents are valid, and that Defendant has infringed the '895 and '459 patents.

2. An injunction permanently enjoining Defendant, its directors, officers, agents, servants, employees and all other persons in active concert or privity or in participation with it, from:

- a. directly or indirectly infringing the '895 and '459 patents;
- b. continuing to make, use, sell, or offer to sell any products which infringe the '895 and '459 patents; and
- c. assisting, inducing, or aiding or abetting any other person or entity in engaging in any of the activities prohibited in subparagraphs (a) through (b) above.

3. An order requiring the impounding and destruction of all products in the possession of Defendant that infringe the '895 and '459 patents.

4. An order requiring Defendant to file with the Court and serve on the Plaintiff, within 30 days after service of the Court's order as herein prayed, a report (or other form of proof) in writing under oath setting forth in detail the manner and form in which Defendant has complied with the Court's injunction.

5. A judgment entered for Plaintiff and against Defendant for all damages sustained by Plaintiff and/or any applicable statutory damages (including for Defendant's acts of patent infringement), including disgorgement of Defendant's profits under 35 U.S.C. § 289, any damages sustained by Plaintiff, costs and attorneys' fees of this action, treble damages, and prejudgment interest.

6. An accounting from Defendant for all gains, profits, and advantages derived from acts of patent infringement and/or other violations of the law as alleged herein.

7. An order requiring that all gains, profits, and advantages derived by Defendant from acts of patent infringement and/or other violations of the law as alleged herein is deemed to be in constructive trust for the benefit of Plaintiff.

8. An order for such other, further, and different just and equitable relief as the Court deems proper under the circumstances, including punitive damages if appropriate pursuant to the evidence of record.

JURY DEMAND

Plaintiff hereby demands a trial by jury on all issues so triable.

Dated: June 29, 2012

Respectfully submitted,

/s/ Christopher V. Carani

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