

THE OHIO WILLOW WOOD COMPANY,  
  
Plaintiff,  
  
v.  
  
THERMO-PLY, INC.  
  
Defendant.

**CIVIL COMPLAINT  
WITH JURY DEMAND**

Plaintiff, THE OHIO WILLOW WOOD COMPANY (“Ohio Willow Wood”), for its Complaint against Defendant THERMO-PLY, INC. (“Thermo-Ply”) avers as follows:

1. Plaintiff, Ohio Willow Wood, is an Ohio Corporation having its principal place of business at 15441 Scioto Darby Road, Mt. Sterling, Ohio 43143.
2. Defendant, Thermo-Ply, is a Florida corporation having a principal place of business at 11811 31<sup>st</sup> Court North, St. Petersburg, Florida 33716.
3. Upon information and belief Defendant Thermo-Ply also has an address at 1120 Boca Ciega Isle, St. Pete Beach, Florida 33706.

4. This is an action for patent infringement in violation of 35 U.S.C. § 271(a), (b), and (c).

## **JURISDICTION AND VENUE**

5. This case involves an action for patent infringement that arises under the patent laws of the United States, Title 35 of the United States Code. Subject matter jurisdiction is proper under 28 U.S.C. § 1331, 1332 and 1338(a).

6. The Court has personal jurisdiction over Defendant by virtue of Defendant's sale of, and/or offer to sell products, and intending that its products be sold, in the State of Ohio and within this judicial district.

7. Venue in this district is proper under 28 U.S.C. § 1391(b), 1391(c) and 1400(b) at least by virtue of Defendant's conduct within and aimed at this judicial district and elsewhere throughout the state of Ohio.

## **STATEMENT OF CLAIM**

8. The allegations of the preceding paragraphs are incorporated as if fully set forth herein.

9. Ohio Willow Wood is the owner of all right, title, and interest in and to United States Letters Patent No. 8,523,951 entitled "Prosthetic Socket Interface and Assembly" (hereinafter "the '951 patent"), which duly and legally issued to Ohio Willow Wood on September 3, 2013, as assignee.

10. The '951 patent was issued for an invention known in the prosthetics art as a "gel liner." The '951 patent additionally includes claims directed to a prosthetic assembly including both a prosthetic leg and gel liner.

## **FACTUAL BACKGROUND**

11. Ohio Willow Wood is the owner of multiple patents having claims directed to fabric covered gel liners including United States Patent No. 5,830,237 (the '237 Patent), U.S. Patent No. 6,964,688 (the '688 patent), and the '951 Patent.

12. Thermo-Ply is a manufacturer and supplier of prosthetic solutions to amputee patients.
13. Thermo-Ply manufactures, uses, sells and/or offers for sale a variety of prosthetic products including gel locking liners and/or gel cushion liners.
14. A locking liner is a prosthetic liner that has a distal attachment for locking the liner into place within a prosthetic socket.
15. Included in the products made and sold by Thermo-Ply are products which Thermo-Ply makes and sells to DAW Industries, Inc., said products known in the industry as the “Cool Liner.”
16. Thermo-Ply has stated that DAW Industries, Inc. is its “chief” distributor.
17. In Case No. 2:04-cv-1222, which was filed in the Southern District of Ohio in December of 2004, Ohio Willow Wood sued DAW alleging that DAW’s sale of the DAW Cool Liners was infringing Ohio Willow Wood’s ’237 Patent.
18. In Case No. 2:05-cv-1038, also filed in the Southern District of Ohio in November of 2005, Ohio Willow Wood sued DAW alleging that DAW’s sale of the DAW Cool Liners was infringing Ohio Willow Wood’s ’688 Patent. Case Nos. 2:04-cv-1222 and 2:05-cv-1038 were concluded by a settlement that was reached by Ohio Willow Wood and DAW, on or about October 5, 2012 (referred to herein as the “Settlement Agreement”) and the case was dismissed with prejudice on October 9, 2012.
19. The Settlement Agreement provided a covenant-not-to sue as to DAW and suppliers of DAW Industries, for patent infringement for “Cool Liner” products, as to OWW patents including the ’237 Patent and the ’688 Patent and any patents genealogically related to the ’688 Patent, which would include the now issued ’951

Patent. This present case directed at Thermo-Ply is not accusing any products covered by the Settlement Agreement.

20. Thermo-Ply received a copy of the Settlement Agreement at least as early as January, 2013.

21. With respect to the Settlement Agreement, Thermo-Ply has stated that the “settlement agreement with DAW does not unconditionally release and covenant not to sue Thermo-Ply for patent infringement based on Thermo-Ply ‘making’ or continuing to ‘make’ fabric covered thermoplastic liners.” *See* Thermo-Ply’s Reply in Support of Motion to Reactivate which is hereby attached as Exhibit A.

22. Thermo-Ply has asserted that the Settlement Agreement does not preclude Ohio Willow Wood from suing Thermo-Ply for patent infringement based on “making” fabric covered thermoplastic liners.

23. Upon information and belief Thermo-Ply or one or more entities acting under the direction or control of Thermo-Ply or in concert with Thermo-Ply, makes fabric covered gel liners not covered by the Settlement Agreement, which infringe the claims of the ‘951 Patent (hereinafter the “Thermo-Ply Accused Liners”).

24. Upon information and belief the Thermo-Ply Accused Liners are prosthetic components having a layer of durable fabric of a shape having a proximal open end for introduction of a residual leg.

25. Upon information and belief the Thermo-Ply Accused Liners are prosthetic components having a closed end for covering a distal end of said residual leg.

26. Upon information and belief the Thermo-Ply Accused Liners have a sufficient length of fabric to rise from the distal end of a residual leg over an entire portion of the residual leg to be covered by a prosthetic socket.
27. Upon information and belief the Thermo-Ply Accused Liners have a cushioning gel layer made from a block copolymer and plasticizing oil secured to the inside surface of the fabric.
28. Upon information and belief the Thermo-Ply Accused Liners have a gel layer in direct contact with a residual leg cushioning the residual leg inside a prosthetic socket.
29. Upon information and belief the Thermo-Ply Accused Liners have an outer surface of fabric free of gel.
30. Upon information and belief the Thermo-Ply Accused Liners have a thickness such that the fabric and gel act as a standalone interface between the residual leg and a prosthetic liner.
31. Upon information and belief the Thermo-Ply Accused Liners have sufficient flexibility and elasticity to conform to the shape of a residual leg.
32. Upon information and belief the Thermo-Ply Accused Liners are capable of eliminating air pockets between the residual leg and the gel layer.
33. Upon information and belief, the Thermo-Ply Accused Liners have a seamless gel layer.
34. Upon information and belief at least some of the Thermo-Ply Accused Liners have a gel layer that is thicker at the closed end than at the open end.
35. Upon information and belief the Thermo-Ply Accused Liners have a gel made with mineral oil.
36. Upon information and belief the Thermo-Ply Accused Liners have a length of 10-25 inches from the open end to the closed end.

37. Upon information and belief at least some of the Thermo-Ply Accused Liners have an overall thickness between 0.150-0.500 inches.
38. Upon information and belief the Thermo-Ply Accused Liners enclose and cushion a residual leg of an amputee while the residual leg resides within a prosthetic socket.
39. Upon information and belief the Thermo-Ply Accused Liners have fabric seamlessly coated on only the inside surface with a block copolymer and mineral oil composition.
40. Upon information and belief the Thermo-Ply Accused Liners are standalone residual leg-prosthetic socket interfaces.
41. Upon information and belief the Thermo-Ply Accused Liners have a fabric covering between about 0.025 and 0.200 inches thick.
42. Upon information and belief the Thermo-Ply Accused Liners have a continuous and seamless layer of cushioning and shape-conforming block copolymer and mineral oil gel composition residing on only an interior surface of the fabric.
43. Upon information and belief the Thermo-Ply Accused Liners have a gel composition extending from the closed end of the fabric and coving the entire portion of the residual leg to be inserted into a prosthetic liner.
44. Upon information and belief the Thermo-Ply Accused Liners are a tube-shaped cushion liner.
45. Upon information and belief a number of Thermo-Ply Accused Liners, which infringe the claims of the '951 Patent, are not sold to DAW.

#### **COUNT I – PATENT INFRINGEMENT**

46. The allegations of the preceding paragraphs are incorporated as if fully set forth herein.

47. The Defendant is infringing the '951 patent by manufacturing, using, selling, and/or offering for sale the Thermo-Ply Accused Liners, that embody the patented invention, and the Defendant will continue to do so unless enjoined by this Court.

48. Defendant's activities with respect to the '951 patent are without authority or license from Ohio Willow Wood.

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

50. Ohio Willow Wood has also suffered and will continue to suffer irreparable injury unless this Court enjoins Defendant.

### **RELIEF**

**WHEREFORE**, Ohio Willow Wood demands judgment against Defendant as follows:

- (a) A ruling that Defendant has infringed, contributed to the infringement of, and/or actively induced infringement of the '951 patent;
- (b) That this is an "exceptional case" under 35 U.S.C. § 285;
- (c) That, pursuant to 35 U.S.C. § 283, Defendant, its officers, directors, agents, assigns, and employees, and all others acting in concert with them or under their authority be preliminarily and permanently enjoined from making, using, offering to sell, and selling infringing products and from otherwise infringing, contributing to the infringement, and actively inducing infringement of the '951 patent.
- (d) For an accounting of damages to Ohio Willow Wood arising from Defendant's acts of infringement, contributory infringement, and/or active inducement of infringement, the damages including lost profits, but in no event less than a reasonable royalty to be paid by Defendant as a result of Defendant's infringing activities;

- (e) 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;
- (f) For the cost of this action together with Ohio Willow Wood's attorneys' fees under 35 U.S.C. §285; and
- (g) Such other and further relief as the Court deems just and proper.

**DEMAND FOR A JURY TRIAL**

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

Respectfully submitted,

September 3, 2013

/s/Jeffrey S. Standley  
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