

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN**

TANGENT TECHNOLOGIES, LLC,)	Case No.
)	
)	
v.)	COMPLAINT FOR PATENT INFRINGEMENT
)	
RPI, INC.,)	JURY TRIAL DEMANDED
)	
)	
Defendant.)	
)	

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff Tangent Technologies, LLC (“Tangent”), by and through its undersigned counsel, files this Complaint for Patent Infringement against Defendant RPI, Inc. (“Defendant”) alleging as follows:

NATURE OF THE ACTION

1. This is a civil action for patent infringement arising under the patent laws of the United States, 35 U.S.C. § 1 *et seq.*, including 35 U.S.C. § 271, which gives rise to the remedies specified under 35 U.S.C. §§ 281 and 283-285.

PARTIES

2. Plaintiff Tangent is a corporation organized and existing under the laws of Illinois with its principal place of business at 1001 Sullivan Road, Aurora, Illinois 60506.

3. Based on information and belief, Defendant RPI, Inc. is a company organized and existing under the laws of the State of Wisconsin with its principal place of business located at 3110 Market Street, Green Bay, Wisconsin 54304 and does business throughout the United States.

JURISDICTION AND VENUE

4. This action arises under the Patent Laws of the United States, 35 U.S.C. § 1 *et seq.* This Court has subject matter jurisdiction over this action under 28 U.S.C. §§ 1331 and 1338(a).

5. Defendant is subject to personal jurisdiction in this Court because (i) Defendant is a Wisconsin corporation and thus resides in Wisconsin; (ii) Defendant has purposefully availed itself of the privileges of conducting business in the State of Wisconsin and in the Eastern District of Wisconsin; (iii) Defendant has sought protection and benefit from the laws of the State of Wisconsin and is incorporated there; (iv) Defendant regularly conducts business within the State of Wisconsin and within the Eastern District of Wisconsin; and (v) Plaintiff Tangent's causes of action arise directly from Defendant's business contacts and other activities in the State of Wisconsin and in the Eastern District of Wisconsin.

6. Venue is proper pursuant to 28 U.S.C. § 1400(b) because Defendant resides in the Eastern District of Wisconsin based on its formation under the laws of Wisconsin and its principal place of business located in the Eastern District of Wisconsin.

THE PATENTS-IN-SUIT

7. Tangent is a leading manufacturer and marketer of plastic building materials, specializing in plastic lumber.

8. Tangent has made significant investments in researching, developing, manufacturing, advertising, and selling its products.

9. To protect its intellectual property resulting from these significant investments, Tangent has obtained several patents directed to various inventions related to plastic lumber. For example, Tangent's plastic lumber patents include U.S. Patent Nos. 10,981,350, D819,234 and D819,235 (collectively, the "Patents-in-Suit").

10. U.S. Patent No. 10,981,350 (the “’350 Patent”), titled “WOOD-GRAINED POLYMER SUBSTRATE,” was duly and legally issued by the United States Patent and Trademark Office on April 20, 2021. Plaintiff Tangent is the assignee and owner of all right, title, and interest in the ’350 Patent, a copy of which is attached as Exhibit 1.

11. U.S. Patent No. D819,234 (the “’234 Patent”), titled “WOOD-GRAINED POLYMER BOARD,” was duly and legally issued by the United States Patent and Trademark Office on May 29, 2018. Plaintiff Tangent is the assignee and owner of all right, title, and interest in the ’234 Patent, a copy of which is attached as Exhibit 2.

12. U.S. Patent No. D819,235 (the “’235 Patent”), titled “WOOD-GRAINED POLYMER BOARD,” was duly and legally issued by the United States Patent and Trademark Office on May 29, 2018. Plaintiff Tangent is the assignee and owner of all right, title, and interest in the ’235 Patent, a copy of which is attached as Exhibit 3.

FACTUAL BACKGROUND

13. On information and belief, Defendant RPI, Inc. is in the business of offering for sale, selling and distributing plastic lumber products.

14. On information and belief, Defendant RPI, Inc. makes, uses, offers to sell, sells, and/or imports its Nature branded plastic lumber in a variety of color variants (*see* <https://rpilumber.com/colors/>) (collectively, the “Accused Products”). Exemplary images of the Nature plastic lumber are provided below.

Nature



15. Tangent sent Defendant a Cease and Desist letter on February 15, 2022 (the “February Letter”) informing Defendant about Tangent’s intellectual property, including the Patents-in-Suit. The February Letter included several claim charts clearly showing how Defendant was infringing Tangent’s intellectual property. The letter informed Defendant that Tangent would enforce its patent rights if Defendant did not cease its infringing activities. The letter provided Defendant an opportunity to respond and stated that Tangent wished to resolve the issue without litigation. Despite acknowledging receipt of the February Letter on March 8, 2022, Defendant has provided no substantive response and has not ceased its infringing activities.

GENERAL ALLEGATIONS

16. Defendant has directly infringed and continues to directly infringe each of the Patents-in-Suit by engaging in acts constituting infringement under 35 U.S.C. §§ 271(a), (b), and/or (c), including but not necessarily limited to one or more of making, using, selling, offering to sell, and inducing and contributing to infringement by others, in this District and elsewhere in the United States.

17. Defendant’s acts of infringement have caused damage to Plaintiff Tangent. Tangent is entitled to recover from Defendant the damages sustained by Tangent as a result of

Defendant's wrongful acts in an amount subject to proof at trial.

18. Defendant's infringement of the Patents-in-Suit has been and continues to be willful.

19. Defendant has committed and continues to commit acts of infringement despite a high likelihood that its actions constitute infringement, and Defendant knew or should have known that its actions constituted an unjustifiably high risk of infringement.

20. Defendant's infringement of the Patents-in-Suit is causing irreparable harm for which Tangent has no adequate remedy at law unless Defendant is enjoined by this Court. Under 35 U.S.C. § 283, Tangent is entitled to a permanent injunction against further infringement of the Patents-in-Suit.

21. Tangent has identified below at least one claim per patent to demonstrate infringement. However, the selection of claims should not be considered limiting, and additional claims of the Patents-in-Suit that are infringed by Defendant will be disclosed in compliance with the Court's rules and schedule.

COUNT I
INFRINGEMENT OF U.S. PATENT NO. 10,981,350

22. Tangent incorporates by reference the allegations set forth in the preceding paragraphs as though fully set forth herein.

23. On information and belief, Defendant has infringed and is infringing claims of the '350 Patent, including at least claim 1, in violation of 35 U.S.C. §§ 271(a), (b), and (c) by manufacturing, using, offering to sell, selling, and/or importing infringing products including, but not limited to, the Accused Products.

24. Claim 1 of the '350 Patent recites:

1. A simulated natural wood-grained polymer board having a first side and a second side spaced apart from the first side, the spacing between the first and second sides defining one of a width or a height of the board, the first and second sides extending along a length direction between a first end and a second end, the first and second ends defining a length of the board, the board comprising:

a first set of polymer layers extending along the length direction and containing a first colorant, a majority of the first set of polymer layers extending along the length of the entire board;

a second set of polymer layers extending along the length direction and containing a second colorant different than the first colorant, a majority of the second set of polymer layers extending along the length of the entire board; and

wherein a plurality of individual layers of the first and second sets of polymer layers alternate within the board and extend along a substantially uninterrupted curvilinear path originating proximate the first side of the board and terminating proximate the second side of the board.

25. On information and belief, Defendant's Nature plastic lumber is a simulated natural wood-grained polymer board having a first side and a second side spaced apart from the first side, where the spacing between the first and second sides defines a width of the board. The first and second sides extend along a length direction between a first end and a second end, where the first and second ends define a length of the board.

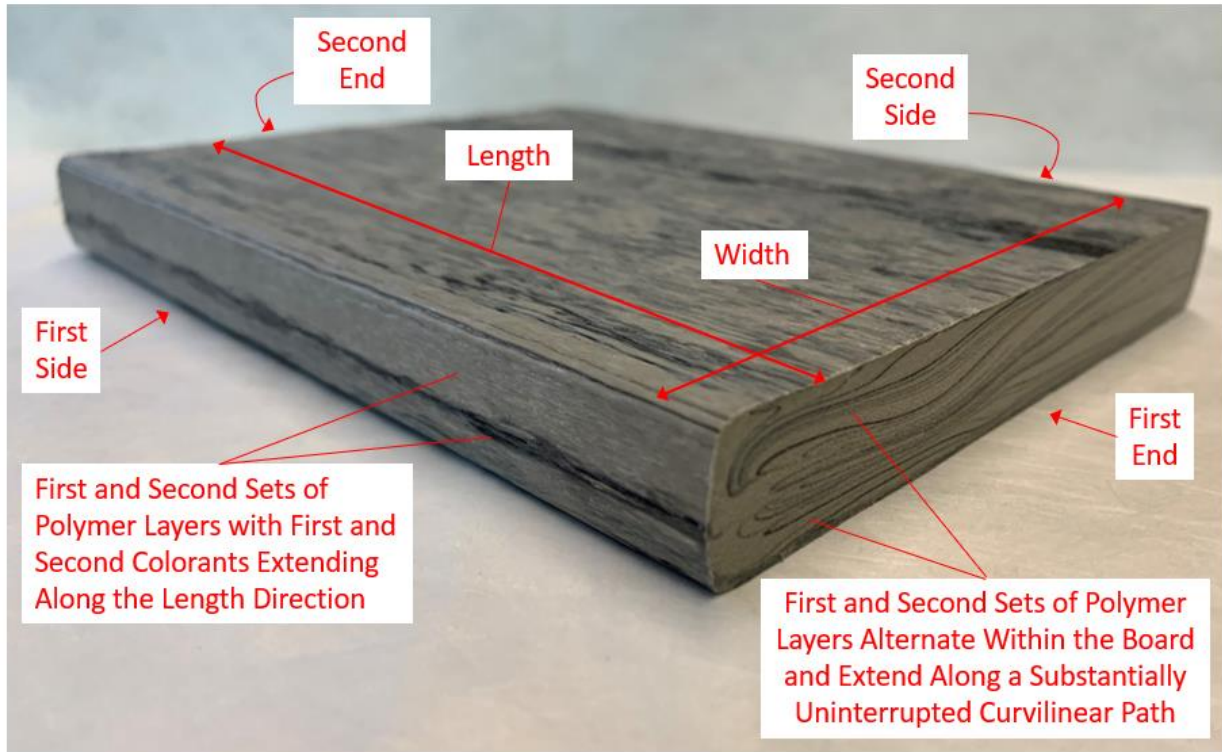
26. On information and belief, Defendant's Nature plastic lumber includes a first set of polymer layers extending along the length direction and contain a first colorant, with a majority of the first set of polymer layers extending along the length of the entire board. An inspection of the first end and second end of Defendant's Nature plastic lumber shows that a majority of the first set of polymer layers that begin on the first end extend to the second end.

27. On information and belief, Defendant's Nature plastic lumber includes a second set of polymer layers extending along the length direction and contain a second colorant different

than the first colorant, with a majority of the second set of polymer layers extending along the length of the entire board. An inspection of the first end and second end of Defendant's Nature plastic lumber shows that a majority of the second set of polymer layers that begin on the first end extend to the second end.

28. On information and belief, Defendant's Nature plastic lumber includes a plurality of individual layers of the first and second sets of polymer layers that alternate within the board and extend along a substantially uninterrupted curvilinear path originating proximate the first side of the board and terminating proximate the second side of the board. An inspection of either the first end and second end of Defendant's Nature plastic lumber shows that a plurality of the individual layers of both the first and second set of polymer layers alternate within the board and extend along a substantially uninterrupted curvilinear path that begins proximate the first side and ends proximate the second side of the board.

29. For example, the features of claim 1 of the '350 Patent are shown below in an annotated image of Defendant's Nature plastic lumber.



30. Defendant has been aware of and has had notice of the '350 Patent and its infringement of the '350 Patent at least as early as February 15, 2022, the date on which Tangent sent it the February Letter. Defendant acknowledged receipt of the February Letter, but provided no substantive response and has not stopped making or selling the Accused Products.

31. On information and belief, by continuing to make, use, sell, offer to sell, and/or import the Accused Products on or after Defendant first had notice of Tangent's allegations of infringement, Defendant directly infringes and continues to directly infringe at least claim 1 of the '350 Patent.

32. Upon information and belief, Defendant sells and offers for sale the Accused Products while being fully aware of the '350 Patent and knowing the Accused Products to be

specially made or adapted for infringing the '350 Patent and not to be a staple article or commodity of commerce suitable for substantial non-infringing use.

33. Upon information and belief, Defendant, with knowledge of the '350 Patent, actively induces infringement of the '350 Patent by at least encouraging and instructing its customers and end users to use and/or sell the Accused Products in a manner that infringes the '350 Patent, knowing that its actions would induce infringement of the '350 Patent, knowing that infringement of the '350 Patent would take place, intending that infringement take place and in substantial numbers, and resulting in direct infringement of the '350 Patent by its customers and end users of the Accused Products.

34. On information and belief, Tangent has suffered and continues to suffer damages as a result of Defendant's infringement of the '350 Patent in an amount to be determined at trial.

35. On information and belief, Defendant's infringement of the '350 Patent is also causing irreparable harm for which Tangent has no adequate remedy at law unless Defendant is enjoined by this Court. Under 35 U.S.C. § 283, Tangent is entitled to a permanent injunction against further infringement of the '350 Patent.

36. On information and belief, Defendant has continued with its infringement despite the objectively high likelihood that its actions constitute infringement and Defendant's subjective knowledge of this obvious risk. As Defendant has no good faith belief that it does not infringe the '350 Patent, at a minimum, Defendant's continued infringement of the '350 Patent is willful and deliberate, entitling Tangent to increased damages under 35 U.S.C. § 284 and to attorneys' fees and costs incurred in prosecuting this action under 35 U.S.C. § 285.

COUNT II
INFRINGEMENT OF U.S. PATENT NO. D819,234

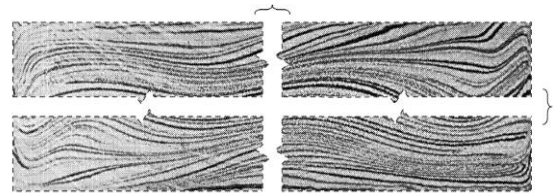
37. Tangent incorporates by reference the allegations set forth in the preceding paragraphs as though fully set forth herein.

38. On information and belief, Defendant has infringed and is infringing the '234 Patent in violation of 35 U.S.C. §§ 271(a), (b), and (c) by manufacturing, using, offering to sell, selling, and/or importing infringing products, including, but not limited to, the Accused Products.

39. The '234 Patent protects an ornamental design for a wood - grained polymer board. The exemplary depiction below is Defendant's Nature plastic lumber, as compared to the patented design in the '234 Patent.



RPI Nature Plastic Lumber



'234 Patent Fig. 2

40. Defendant infringes the '234 Patent because, *inter alia*, in the eye of an ordinary observer, giving such attention as a purchaser usually gives, the design of the '234 Patent and the designs of Defendant's Nature plastic lumber are substantially the same, the resemblance being such as to deceive such an ordinary observer, inducing them to purchase one supposing it to be the other.

41. Defendant has been aware of and has had notice of the '234 Patent and its infringement of the '234 Patent at least as early as February 15, 2022, the date on which Tangent sent it the February Letter. Defendant acknowledged receipt of the February Letter, but provided no substantive response and has not stopped making or selling the Accused Products.

42. On information and belief, by continuing to make, use, sell, offer to sell, and/or import the Accused Products on or after Defendant first had notice of Tangent's allegations of infringement, Defendant directly infringes and continues to directly infringe the '234 Patent.

43. Upon information and belief, Defendant sells and offers for sale the Accused Products while being fully aware of the '234 Patent and knowing the Accused Products to be specially made or adapted for infringing the '234 Patent and not to be a staple article or commodity of commerce suitable for substantial non-infringing use.

44. Upon information and belief, Defendant, with knowledge of the '234 Patent, actively induces infringement of the '234 Patent by at least encouraging and instructing its customers and end users to use and/or sell the Accused Products in a manner that infringes the '234 Patent, knowing that its actions would induce infringement of the '234 Patent, knowing that infringement of the '234 Patent would take place, intending that infringement take place and in substantial numbers, and resulting in direct infringement of the '234 Patent by its customers and end users of the Accused Products.

45. On information and belief, Tangent has suffered and continues to suffer damages as a result of Defendant's infringement of the '234 Patent in an amount to be determined at trial.

46. On information and belief, Defendant's infringement of the '234 Patent is also causing irreparable harm for which Tangent has no adequate remedy at law unless Defendant is enjoined by this Court. Under 35 U.S.C. § 283, Tangent is entitled to a permanent injunction against further infringement of the '234 Patent.

47. On information and belief, Defendant has continued with its infringement despite the objectively high likelihood that its actions constitute infringement and Defendant's subjective knowledge of this obvious risk. As Defendant has no good faith belief that it does not

infringe the '234 Patent, at a minimum, Defendant's continued infringement of the '234 Patent is willful and deliberate, entitling Tangent to increased damages under 35 U.S.C. § 284 and to attorneys' fees and costs incurred in prosecuting this action under 35 U.S.C. § 285.

**COUNT III
INFRINGEMENT OF U.S. PATENT NO. D819,235**

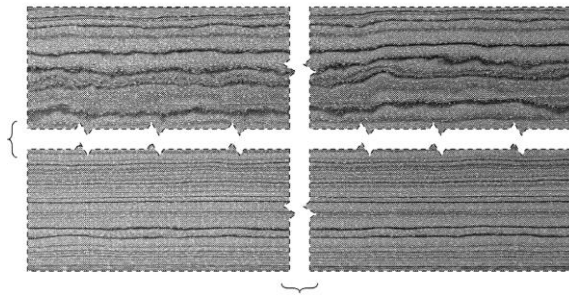
48. Tangent incorporates by reference the allegations set forth in the preceding paragraphs as though fully set forth herein.

49. On information and belief, Defendant has infringed and is infringing the '235 Patent in violation of 35 U.S.C. §§ 271(a), (b), and (c) by manufacturing, using, offering to sell, selling, and/or importing infringing products, including, but not limited to, the Accused Products.

50. The '235 Patent protects an ornamental design for a wood - grained polymer board. The exemplary depiction below is Defendant's Nature plastic lumber, as compared to the patented design in the '235 Patent.



RPI Nature Plastic Lumber



'235 Patent Fig. 2

51. Defendant infringes the '235 Patent because, *inter alia*, in the eye of an ordinary observer, giving such attention as a purchaser usually gives, the design of the '235 Patent and the designs of Defendant's Nature plastic lumber are substantially the same, the resemblance being such as to deceive such an ordinary observer, inducing them to purchase one supposing it to be the other.

52. Defendant has been aware of and has had notice of the '235 Patent and its infringement of the '235 Patent at least as early as February 15, 2022, the date on which Tangent sent it the February Letter. Defendant acknowledged receipt of the February Letter, but provided no substantive response and has not stopped making or selling the Accused Products.

53. On information and belief, by continuing to make, use, sell, offer to sell, and/or import the Accused Products on or after Defendant first had notice of Tangent's allegations of infringement, Defendant directly infringes and continues to directly infringe the '235 Patent.

54. Upon information and belief, Defendant sells and offers for sale the Accused Products while being fully aware of the '235 Patent and knowing the Accused Products to be specially made or adapted for infringing the '235 Patent and not to be a staple article or commodity of commerce suitable for substantial non-infringing use.

55. Upon information and belief, Defendant, with knowledge of the '235 Patent, actively induces infringement of the '235 Patent by at least encouraging and instructing its customers and end users to use and/or sell the Accused Products in a manner that infringes the '235 Patent, knowing that its actions would induce infringement of the '235 Patent, knowing that infringement of the '235 Patent would take place, intending that infringement take place and in substantial numbers, and resulting in direct infringement of the '235 Patent by its customers and end users of the Accused Products.

56. On information and belief, Tangent has suffered and continues to suffer damages as a result of Defendant's infringement of the '235 Patent in an amount to be determined at trial.

57. On information and belief, Defendant's infringement of the '235 Patent is also causing irreparable harm for which Tangent has no adequate remedy at law unless Defendant is enjoined by this Court. Under 35 U.S.C. § 283, Tangent is entitled to a permanent injunction

against further infringement of the '235 Patent.

58. On information and belief, Defendant has continued with its infringement despite the objectively high likelihood that its actions constitute infringement and Defendant's subjective knowledge of this obvious risk. As Defendant has no good faith belief that it does not infringe the '235 Patent, at a minimum, Defendant's continued infringement of the '235 Patent is willful and deliberate, entitling Tangent to increased damages under 35 U.S.C. § 284 and to attorneys' fees and costs incurred in prosecuting this action under 35 U.S.C. § 285.

JURY DEMAND

Tangent hereby demands a jury trial on all issues so triable.

PRAYER FOR RELIEF

Tangent requests the Court enter judgment in its favor and against Defendant RPI Inc. as follows:

- (a) A judgment that Defendant has infringed and is infringing the Patents-in-Suit;
- (b) A permanent injunction against Defendant and its affiliates, subsidiaries, assignees, employees, agents, or anyone acting in privity or concert with any of them, from infringing the Patents-in-Suit, including enjoining the making, offering to sell, selling, using, or importing into the United States products claimed in any of the claims of the Patents-in-Suit; inducing others to infringe any claim of the Patents-in-Suit; or contributing to others infringing any claim of the Patents-in-Suit, until the expiration of the Patents-in-Suit;
- (c) A judgment that Defendant's infringement of the Patents-in-Suit was willful and that Defendant's continued infringement of the Patents-in-Suit is willful;

- (d) An award of damages adequate to compensate Tangent for Defendant's patent infringement;
- (e) An accounting to adequately compensate Tangent for the infringement, including, but not limited to, lost profits and/or a reasonable royalty;
- (f) An award of pre-judgment and post-judgment interest at the maximum rate allowed by law;
- (g) An award of damages for willful infringement;
- (h) An order finding that this is an exceptional case and awarding Tangent its costs, expenses, disbursements, and reasonable attorneys' fees related to Defendant's patent infringement under 35 U.S.C. § 285 and all other applicable statutes, rules and common law; and
- (i) Such other and further relief, in law or equity, as this Court deems just and proper.

Dated: February 24, 2023

MCDERMOTT WILL & EMERY

/s/ James M. Oehler

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