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**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

Shenzhen Ouruiyu Technology Co., Ltd.,

Plaintiff,

v.

Performance Solutions, LLC,

Defendant.

**COMPLAINT FOR PATENT
INVALIDATION, DECLARATORY
JUDGMENT OF PATENT NON-
INFRINGEMENT, AND TORTIOUS
INTERFERENCE WITH CONTRACT

DEMAND FOR JURY TRIAL**

Case No.: [3:24-cv-03366](#)

Judge:

1. Plaintiff, Ouruiyu Technology Co., Ltd., by and through its undersigned counsel, brings this Complaint against Defendant, Performance Solutions, LLC, for invalidating Defendant's patent, a declaratory judgment of patent non-infringement, and a tortious interference with contract, and in support thereof, alleges as follows:

NATURE OF ACTION

2. This is a civil action based on the patent laws of the United States, including, without limitation, 35 U.S.C. § 1 *et seq*, the United States Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, and the common law.

3. This action arises because Defendant asserted an invalid patent claim, where a dependent claim's scope is wider than the independent claim it depends on, against Plaintiff's lawful activities, and tortiously interfered with Plaintiff's contractual relationship with Amazon, causing Plaintiff's products to be delisted from Amazon.

THE PARTIES

4. Plaintiff, Shenzhen Ouruiyu Technology Co., Ltd., a limited company organized and existing under the laws of China, with a principal place of business at NANWANJIEDAO, NANLINGCUNSHI, LINGNANWANKECHUANGYUAN XINGZHENGLOU, CDONG407, SHENZHEN, LONGGANG, GUANGDONG, 518000, China.

5. Defendant, Performance Solutions, LLC, is a Massachusetts limited liability company with its principal place of business at 5 COMMONWEALTH RD SUITE 2B, NATICK, MA 01760, USA.

JURISDICTION AND VENUE

6. This action arises under the United States Patent Act, 35 U.S.C. § 1, *et seq*. Plaintiff brings this civil action against Defendant under 28 U.S.C. §§ 2201 and 2202 to obtain a declaratory judgment of non-infringement with respect to United States Patent No. 9,656,112 ("the '112 Patent" or "the patent-in-suit"). Attached hereto as **Exhibit 1** is a true and correct copy of the '112 Patent. The patentee is the Defendant, and there was no assignment record found on Patentcenter as of 6/1/2014.

7. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1338(a), 2201, and 2202.

8. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 and/or 1400, and this Court may properly exercise personal jurisdiction over Defendants as it

directly targets Plaintiff's business activities in this district. See *Bancroft & Masters, Inc. v. August National Inc.*, 223 F.3d 1082 (9th Cir. 2000) held extra-judicial enforcement activities, even when routed through a third-party, satisfy purposeful direction." See also *SnapRays, LLC v. Lighting Def. Grp. LLC*, No. 2023-1184 (Fed. Cir. May 2, 2024), holding that using Amazon's patent enforcement process (APEX) to target an alleged infringer's listings can subject the patent owner to specific personal jurisdiction in the alleged infringer's home state.

9. Plaintiff's Amazon listing is not only available for sale in northern California but also Plaintiff consistently had actual sales in California. See **Exhibit 2** for a sales record. Thus, Defendant targeted this forum state by identifying listings for removal that, if removed, affect the marketing, sales, or other activities in this state. See *id.*

10. This court has supplemental jurisdiction over the tortious interference with contractual relationship claim pursuant to 28 U.S.C. § 1367.

FACTUAL BACKGROUND AND GENERAL ALLEGATIONS

11. Plaintiff and its sister company are engaged in the research and development of sports equipment, and one of Plaintiff's successful products is a 5-in-1 Foam Roller Set that was released on Amazon in 2021, which includes a hollow foam roller (33*14 cm), a yoga stick, a massage ball, a stretching band, and a storage bag, as depicted below.



12. The 5-in-1 foam roller set is made of safe, non-toxic, pressure-resistant, waterproof, and eco-friendly PVC and EVA materials. Because the large roller is hollow, it is lightweight, has good cushioning elasticity, and is durable. The large massage blocks on the roller can efficiently relieve pain all over the body.

13. The roller set is also easy to carry. The massage ball, yoga stick, and stretching band can fit inside the roller and then put in the storage bag.

14. The hollow foam roller includes an inner tube and an outer layer. The inner tube is made of PVC, and the size is 31.5 * 11 cm, thickness 0.3 cm. The outer layer is made of EVA foam, and the size is 33 * 14 cm, thickness 1.2 cm.

15. Defendant filed a provisional patent application on 7/18/2006 and followed it with a non-provisional utility patent application no. 11827361 on 7/11/2007. Patent no. 7918774 was issued therefrom on 4/15/2011, and a divisional patent no. 9539167 was issued on 1/10/2017.

16. Defendant filed a continuation in part application no. 13065850, claiming the priority of the above application. Patent no. 9345921 was issued therefrom on 5/4/2016, and a divisional patent no. 9656112 was issued on 5/23/2017.

17. On 2/10/2023, Plaintiff was informed by Amazon that the Defendant filed a patent infringement claim based on patent no. 9539167 (the '167 Patent) against Plaintiff's foam roller set described above (the "Accused Product").

18. The Claim 1 of the '167 Patent recites:

A two piece therapeutic, fitness, and sports enhancement device consisting of:

a first piece including an entirely cylindrically shaped core made of closed cell foam, plastic, or rubber material and having a diameter of about 3 inches to about 15 inches; and

a second piece including an overlay about the cylindrically shaped core, the overlay made of closed cell foam, plastic, or rubber material, including a plurality of shaped projections extending from the overlay, each of the plurality of shaped projections configured to extend into soft tissue of a user to enhance mobilization of soft tissue and optimize body core strength and balance training.

19. Multiple pieces of evidence within the patent, and evidence from the patent prosecution history, prove that the “entirely cylindrically shaped core” in claim 1 means a solid cylinder. A perspective view of the invention is shown below:

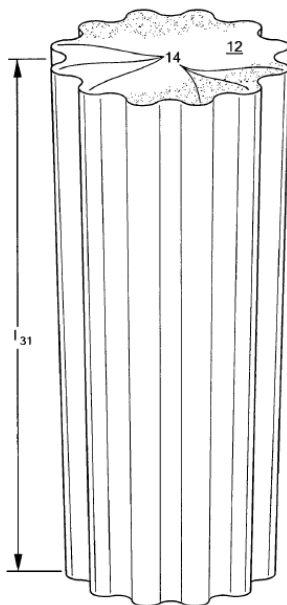


FIG. 3

20. Plaintiff responded through the Amazon Patent Evaluation Program. Because Plaintiff’s tube structure is different from the claim’s solid cylinder, the dispute ended in Plaintiff’s favor on 5/3/2023. The reason given was that “... Patent Owner is unlikely to be able to prove that the Accused Product listing infringes the asserted claim of U.S. Patent No. 9539167...” As a result, Defendant knew that

Plaintiff's products do not infringe Claim 1 of the '167 Patent. Because Claim 1 of the '112 Patent is very much the same, Defendant knew that Plaintiff's products do not infringe Claim 1 of the '112 Patent.

21. On 1/31/2024, Plaintiff again received a notice from Amazon that an infringement claim was filed against Plaintiff's Accused Products, ASIN B0B9GFVD8G, B09L8DVW27, B0B2R8RS8N, B0B9GCWLL3, based on patent no. 9656112 (the '112 Patent), and the Accused Product was delisted on the same day.

22. On 2/2/2024, additional Plaintiff's Accused Products, ASIN B0BRK9WF32, B0BRKBCVQ3, B0BMV75M9D, B0BMV9MNGB, were removed on Amazon due to complaints based on the '112 patent.

23. Plaintiff responded to Amazon on 2/19/2024, which was denied on 2/27/2024.

24. Plaintiff responded to Amazon again on 3/21/2024, including a non-infringement analysis signed by an attorney, but Amazon denied it again on 3/22/2024. Amazon did not provide a reason why it ruled against Plaintiff, but provided that Plaintiff needs to obtain an order from the court declaring non-infringement.

25. Claim 1 of the '112 Patent recites:

A two piece therapeutic, fitness, and sports enhancement device comprising:

a first piece including an entirely cylindrically shaped core made of closed cell foam, rubber or plastic and having a diameter of about 3 inches to about 15 inches and;

a second piece including an overlay completely surrounding the core, the overlay made of closed cell foam, rubber, or plastic and including a plurality of solid projections having a predetermined shape configured to extend into soft tissue of a user to enhance mobilization of soft tissue and optimize body core strength and balance training.

26. Claims 2-13 all depend from Claim 1 and appear to narrow Claim 1.

27. Claim 14 recites:

The device of claim 1 further including a lumen extending through the body.

COUNT I:
DECLARATORY JUDGMENT OF PATENT NON-INFRINGEMENT
(UNITED STATES PATENT NO. 9656112)

28. Plaintiff incorporates and realleges paragraphs 1 through 27 of this Complaint.

29. The Claim 1's of the '112 Patent and the '167 Patent are essentially the same. Therefore, the same factual evidence that proves the "entirely cylindrically shaped core" means a solid core in the '167 Patent should prove the same in the '112 Patent. Therefore, Claim 1 of the '112 Patent also claims that the first piece includes a solid entirely cylindrically shaped core.

30. All of the rest of the claims in the '112 Patent depend from Claim 1; therefore, all claims in the '112 Patent require a solid entirely cylindrically shaped core.

31. Applicant's products include a hollow tube, which is different from a solid cylinder. Therefore, Plaintiff has not been making, using, selling, offering to sell, or importing any product that contains each and every element and limitation of any claim of the '112 Patent.

32. Plaintiff has not infringed, directly or indirectly, any claim of the '112 Patent either literally or via the doctrine of equivalents.

33. Defendant's patent infringement allegations regarding the '112 Patent have caused and, unless restrained and enjoined, will continue to cause irreparable harm to Plaintiff that cannot be adequately quantified or compensated by monetary damages alone and for which there is no adequate remedy at law.

34. Plaintiff is entitled to declaratory judgment adjudicating that the patent-in-suit is not infringed by Plaintiff and enjoining Defendant from continuing its patent assertion campaign against Plaintiff in Utah and elsewhere.

35. An actual case or controversy exists between Plaintiff and Defendant based on Defendant's wrongful assertion of patent infringement against Plaintiff,

forming a justiciable controversy between the parties that is ripe for determination as to the '112 Patent.

36. Based on the patent dispute concluded in Plaintiff's favor last year based on the '167 Patent, Defendant knew Plaintiff's products do not infringe the '112 Patent. Therefore, Defendants renewed their Amazon complaint in bad faith with the purpose to harass Plaintiff and suppress competition illegally.

37. Therefore, Defendant's conduct as alleged herein constitutes an exceptional case under 35 U.S.C. § 285, entitling Plaintiff to the attorneys' fees and costs incurred in this action to vindicate its legal rights and to restore its ability to compete fairly.

COUNT II:
DECLARATORY JUDGMENT OF PATENT INVALIDITY
(UNITED STATES PATENT NO. 9656112 CLAIM 14)

38. Plaintiff incorporates and realleges paragraphs 1 through 37 of this Complaint.

39. 35 U.S.C. § 112(d) states that "a claim in dependent form shall contain a reference to a claim previously set forth and then specify a further limitation of the subject matter claimed. A claim in dependent form shall be construed to incorporate by reference all the limitations of the claim to which it refers." See *Monsanto v. Syngenta Seeds*, 503 F.3d 1352 (October 4, 2007), which clarified that a claim in dependent form referring to another claim is subject to Sec. 112(4)(d) only if it incorporates the limitations of the referenced claim and further limits that claim, such that it can be infringed only by infringing the referenced claim. See also *Pfizer, Inc. v. Ranbaxy Laboratories Ltd.* 457 F.3d 1284 (Fed. Cir. 2006) (August 2, 2006), which confirmed that a claim purporting to be in dependent form but not complying with Sec. 112(4)(d) is invalid.

40. Here, Claim 1 requires the first piece to include a solid cylindrically shaped core, which was proved in the patent prosecution history and again proved in

the Amazon mutual mediation of 2023. But Claim 14 makes the core hollow by requiring “a lumen extending through the body,” which contradicts Claim 1.

41. Because Claim 14 contradicts and widens the scope of Claim 1, Plaintiff’s hollow tube-shaped product allegedly infringes the dependent claim, but not the independent claim. This is not right according to the well-established law. Therefore, Claim 14 must be declared by this court to be invalid.

42. Even if Claim 14 is rewritten in independent form, it is still invalid because it would read on the references cited in the office action in the ‘167 Patent.

43. Even though Claim 14 is invalid based on well-known legal principles, Amazon’s patent dispute department lacks the authority to declare patent invalidity. Defendant used this loophole and asserted this invalid claim against Plaintiff and caused Plaintiff’s products to be delisted.

44. Therefore, Defendant’s conduct as alleged herein constitutes an exceptional case under 35 U.S.C. § 285, entitling Plaintiff to the attorneys’ fees and costs incurred in this action to invalidate Claim 14 of the ‘112 Patent.

**COUNT III: TORTIOUS INTERFERENCE
WITH CONTRACTUAL RELATIONSHIP**

45. Plaintiff incorporates and realleges paragraphs 1 through 44 of this Complaint.

46. Plaintiff has a valid existing contract with Amazon for Plaintiff to sell products on the Amazon platform.

47. As fellow sellers on the Amazon platform, the Defendants knew the contract existed at the time of the interference.

48. By asserting a claim that Defendants on notice was invalid against Plaintiff, and by asserting a patent that was already proved not infringed, Defendant intended to unjustifiably induce an interruption of the contract.

49. As a result of the Defendants’ unlawful claim against Plaintiff, Amazon delisted Plaintiff’s products, resulting in an interruption of the contract.

50. As a result of the interruption, Plaintiff lost sales and profit. Plaintiff additionally had to pay more fees to store the unsold goods.

51. Plaintiff is entitled to compensation for the lost profit and the additional storage costs.

52. Because Defendant's conduct was tortious and intentional, Plaintiff is entitled to punitive damages, the attorneys' fees, and costs incurred in this action.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against Defendants and entry of an Order directing as follows:

- a. A judgment that Claim 14 of the '112 Patent is invalid and unenforceable;
- b. A judgment that Defendant has not directly or indirectly infringed any claim of the '112 Patent;
- c. An Order and judgment temporarily restraining, preliminarily and permanently enjoining Defendant, its officers, directors, agents, servants, employees, affiliates, attorneys, all others acting in privity or in concert with them, and their parents, subsidiaries, divisions, successors and assigns from further acts of accusing Plaintiff of infringement of the '112 Patent and any related patents;
- d. A judgment finding Defendant's conduct to be willful and tortious;
- e. A judgment awarding Plaintiff all damages, including treble damages, caused by the interruption in sales of Plaintiff's Accused Products on Amazon, including all pre-judgment and post-judgment interest at the maximum interest rate permitted by law;
- f. Entering an Order directing Amazon to restore the sales of Plaintiff's Accused Products;
- g. A judgment that this is an exceptional case and an award to Plaintiff its costs and reasonable attorneys' fees incurred in this action, as provided by 35 U.S.C. § 285; and
- h. Any further relief this Court deems to be just and proper under the circumstances.

JURY DEMAND

53. Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiff hereby demands trial by jury on all issues raised by the Complaint.

Dated: June 4, 2024

By: /s/ YUE XU

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