

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK**

MICHELIN NORTH AMERICA, INC.,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 6:23-CV-1568 (AMN/TWD)
)	
TECHNO PNEU, INC.,)	
)	
Defendant.)	JURY TRIAL DEMANDED

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff Michelin North America, Inc. (Michelin) files this Complaint for Patent Infringement against Defendant Techno Pneu, Inc. (Defendant) alleging as follows:

NATURE OF THE ACTION

1. This is a patent infringement action to stop Defendant’s infringement of United States Design Patent No. D728,457, entitled “Tire Tread” (“the ‘457 patent” or “patent-in-suit”).
2. Michelin seeks legal and equitable remedies for infringement of the ‘457 patent resulting from the actions and conduct of Defendant as set forth herein.

PARTIES

3. Michelin is a New York corporation having a regular and established place of business in Greenville, South Carolina. Michelin also operates tire manufacturing facilities in various states of the United States.

4. Upon information and belief, Defendant Techno Pneu, Inc. is a Canadian corporation with offices located at 445 rue de L'Expansion, Rimouski, Quebec, Canada G5M 1B4.

5. Upon information and belief, Defendant utilizes multiple tire distributors in the United States, including a distributor in the State of New York located at 1938 NY-23, Morris, New York, 13808.

JURISDICTION AND VENUE

6. This action arises under the patent laws of the United States, 35 U.S.C. § 1 et seq., including 35 U.S.C. §§ 271, 281, 284-285, and 289 among others.

7. This Court has subject matter jurisdiction over all causes of action set forth herein under 28 U.S.C. §§ 1331, 1332, and 1338.

8. Venue is proper in this District pursuant to 28 U.S.C. § 1391 because, among other things, Defendant is not a resident of the United States, and thus may be sued in any judicial district, including the Northern District of New York, pursuant to 28 U.S.C. § 1391 (c)(3). *See also In re HTC Corporation*, 889 F.3d 1349, 1357 (Fed. Cir. 2018) (“The Court’s recent decision in *TC Heartland* does not alter” the alien-venue rule.).

9. Defendant is subject to this Court’s specific and general jurisdiction because of Defendant having committed acts of infringement in the Northern District of New York, and in the United States, including (i) committing at least some of the acts of patent infringement as alleged herein in this District and (ii) transacting business within this District or contracting to supply products, including the infringing products, in this District.

10. Upon information and belief, Defendant’s remolded and retreaded products, including the products accused of infringing here, are offered for sale by Defendant in the United States including in the Northern District of New York.

11. Upon information and belief, Defendant has sold its remolded and retreaded products, including the products accused of infringing herein, in the United States including in the Northern District of New York.

12. Defendant maintains a website at <https://www.technopneu.com> whereby Defendant advertises that its remolded and retreaded products, including the products accused of infringing herein, are for sale in the United States including in the Northern District of New York.

13. Defendant maintains distributors in the United States, including a distributor in Morris, New York, which is located within the Northern District of New York.

14. Defendant's website advertises that its remolded and retreaded products, including the products accused of infringing herein, are available through its distributors or partners in the United States, including its distributor located in the Northern District of New York.

15. At least through its advertising and distributors, Defendant has purposefully directed infringing activities at residents of the United States including residents of the Northern District of New York and this litigation results from those infringing activities.

16. Defendant is subject to specific and/or general personal jurisdiction in the Northern District of New York under the Due Process clause of the United States Constitution and the New York long-arm statute (N.Y. C.P.L.R. § 302).

THE PATENT-IN-SUIT

17. On May 5, 2015, United States Patent No. D728,457, entitled "Tire Tread," was duly and legally issued, naming Kevin Ray Reim and Fang Zhu as inventors.

18. A true and accurate copy of the '457 patent, as issued, is attached as Exhibit A.

19. The '457 patent relates to an ornamental design for a tire tread as shown and described in the patent.

20. Michelin is the sole and exclusive licensee of the '457 patent with all substantial rights to the '457 patent.

21. Michelin's rights as exclusive licensee of the '457 patent include the exclusive rights to develop, make, have made, offer for sale, sell, have sold, import, export, distribute, rent or lease products covered by the '457 patent.

22. Michelin's rights as exclusive licensee of the '457 patent include the sole right to bring this suit for infringement of the '457 patent, including for past infringement, and to bring such suit without naming the licensor. Michelin also has the right to recover all damages for past, present, and future infringement of the 457 patent and to seek injunctive relief as appropriate under the law.

23. A true and accurate copy of Michelin's license agreement is attached as Exhibit B.

24. Michelin has standing to bring this suit for patent infringement.

25. Defendant has had knowledge of the '457 patent at least since the filing of this Complaint.

INFRINGEMENT OF U.S. PATENT NO. D728,457

26. Michelin repeats and re-alleges the allegations of the proceeding paragraphs as though fully set forth here in their entirety.

27. Upon information and belief, Defendant is offering for sale, selling, and making tires that infringe the '457 patent, including the Explorer ATW tire ("the Accused Products").

28. Upon information and belief, Defendant has for a time and still is infringing the '457 patent by making, offering for sale, and selling the Accused Products, which embody the invention patented under the '457 patent, to customers in the United States, including customers in the Northern District of New York, through distributors or partners, and Defendant will continue to do so unless enjoined by this Court.

29. A comparison of all views of the ornamental design of the '457 patent with true and accurate photos of an example of the Accused Products is included as Exhibit C, which is incorporated here by reference. For example, to an ordinary observer, the ornamental design claimed by the '457 patent and the infringing design used on the Accused Products are substantially the same, and the resemblance between the two is such as would deceive the ordinary observer and induce such to purchase the Accused Product supposing it to include the ornamental design of the '457 patent. Additionally, differences – if any – between the ornamental design claimed by the '457 patent and the Accused Products are insignificant.

30. Defendant also has and continues to infringe the '457 patent by actively inducing its distributors to offer for sale and/or sell the Accused Products. The distributors' sales and offers for sale of the Accused Products constitutes a direct infringement of the '457 patent in violation of 35 U.S.C § 271(a) for the same reasons set forth above as to Defendant's making, sales, and offers of sale of the same products. At least since the filing of the Complaint, Defendant has had knowledge of the '457 patent and its infringement of the same. Despite this

knowledge, Defendant sold the Accused Products to the distributors with the intent that the distributors infringe the '457 patent by selling the Accused Products.

31. Michelin has not authorized or granted a license or any other rights to Defendant or its distributors to make, use, offer for sale, sell, or import the invention of the '457 patent.

32. Michelin has been damaged by the foregoing infringing acts of the Defendant in an amount to be determined at trial.

33. By reason of said infringing acts by Defendant, Michelin has been, and will continue to be, seriously damaged and irreparably injured unless Defendant is enjoined by this Court from the actions complained of herein, and thus, Michelin is without an adequate remedy at law.

34. Defendant has committed and continues to commit acts of infringement that Defendant actually knew, or should have known, constituted an unjustifiably high risk of infringement of the '457 patent.

35. Because Defendant's infringement of the '457 patent has been and continues to be willful, Michelin is entitled to an award of treble damages, reasonable attorney fees, and costs in bringing this action.

DEMAND FOR JURY TRIAL

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

PRAYER FOR RELIEF

WHEREFORE, Michelin respectfully requests the following relief:

a. Entry of judgment against Defendant, finding Defendant has directly infringed the '457 patent;

b. Entry of judgment against Defendant, finding Defendant has indirectly infringed the '457 patent by inducing its distributors or partners to directly infringe the '457 patent;

c. Entry of judgment against Defendant, finding Defendant's infringement of the '457 patent has been willful and deliberate;

d. An order requiring Defendant to pay all appropriate damages, including prejudgment and post-judgment interest, for its direct and indirect infringement of the '457 patent;

e. Awarding to Michelin, pursuant to 35 U.S.C. § 289, Defendant's gross profits derived from infringement of the '457 patent; and

f. An order pursuant to 35 U.S.C. § 283 permanently enjoining Defendant, its officers, agents, servants, employees, attorneys, and all persons in active concert or participation with them, from further acts of infringement of the '457 patent;

g. An order awarding Michelin treble damages under 35 U.S.C. § 284 as a result of Defendant's willful and deliberate infringement of the '457 patent;

h. Entry of judgment declaring that this case is exceptional and awarding Michelin its costs and reasonable attorney fees under 35 U.S.C. § 285; and

i. Such other and further relief as the Court deems just and proper.

JURY DEMAND

Plaintiff requests a trial by jury of any and all issues triable of right by a jury.

Respectfully submitted,

/s/ George S. Hodges

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