

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

MEDLINE INDUSTRIES, INC.,)	
)	Civil Action No.
Plaintiff,)	
)	Judge:
v.)	
)	Magistrate Judge:
PAUL HARTMANN AG,)	
)	JURY TRIAL DEMANDED
Defendant.)	

COMPLAINT FOR DECLARTORY RELIEF

Plaintiff, Medline Industries, Inc. (“Medline”), by counsel, files the following Complaint for Declaratory Relief and, in support thereof, alleges as set forth below:

THE PARTIES

1. Plaintiff Medline is a corporation organized under the laws of the State of Illinois, and having a principal place of business at One Medline Place, Mundelein, Illinois, 60060.
2. On information and belief, Defendant Paul Hartmann AG (“Hartmann”) is a corporation organized under the laws of Germany and maintaining its principal place of business at Paul-Hartmann-Str. 12, 89522 Heidenheim, Germany.

JURISDICTION AND VENUE

3. These claims arise under the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202.
4. Subject matter jurisdiction is proper in this Court under 28 U.S.C. §§ 1331 and 1338 because Medline’s claims for declaratory relief arise under the patent laws of the United States (Title 35 of the United States Code).

5. Upon information and belief, Defendant is subject to this Court's personal jurisdiction because it does and has done substantial business in this judicial district. Defendant is subject to the general jurisdiction of this Court because it has regular and systematic contacts with this forum such that the exercise of jurisdiction over it would not offend traditional notions of fair play and substantial justice.

6. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b)-(c) because Hartmann is subject to personal jurisdiction in this District.

GENERAL ALLEGATIONS

7. Plaintiff Medline is a provider of incontinence management products, including adult incontinence diapers.

8. Upon information and belief, Hartmann is the alleged owner of U.S. Patent No. 8,152,788 ("788 patent") titled "Absorbent Incontinence Article with Improved Closure System" granted on April 10, 2012. A true and accurate copy of the '788 patent is attached as Exhibit A.

9. On or about January 8, 2013, principals of Hartmann sent Medline a letter alleging that Medline's Fit Right brand diapers infringe the '788 patent. More specifically, principals for Hartmann alleged that "Medline's Fit Right brand diapers infringe at least claims 1, 2, 4, 5, 6, 10, 14, 16, 17, 18, and 19 of PAUL HARTMANN AG's US patent 8,151,788." A true and accurate copy of Hartmann's January 8, 2013 letter to Medline is attached as Exhibit B.

10. At Hartmann's request, principals from Medline and Hartmann met in New York on February 26, 2013 to discuss Hartmann's accusations of infringement. At the meeting Hartmann maintained its contentions that Medline's products infringe the '788 patent and indicated a willingness to bring suit to enforce the '788 patent.

11. In light of Hartmann's accusation of patent infringement against Medline, Medline has a reasonable apprehension of being sued for patent infringement by Hartmann.

12. As a result of the actions and statements of Hartmann, an immediate, concrete, actual, substantial and justiciable controversy now exists between Medline and Hartmann regarding allegations of infringement and validity of the '788 patent. This is a substantial controversy, between parties having adverse legal interests, of sufficient immediacy and reality to warrant the issuance of a declaratory judgment. Medline seeks a declaration from this Court resolving the present controversy.

COUNT I
DECLARATORY JUDGMENT OF NON-INFRINGEMENT OF THE '788 PATENT

13. Medline incorporates by reference the allegations set forth in paragraphs 1 through 12 of this Complaint as though set forth in full herein.

14. Hartmann has accused Medline of infringing the '788 patent by making and selling adult incontinence diapers.

15. Medline has not infringed and is not infringing, directly, indirectly, contributorily, by active inducement, or otherwise, any valid and enforceable claim of the '788 patent.

16. An actual and justiciable case or controversy exists between Medline Industries and Hartmann concerning alleged infringement of the '788 patent, which requires a declaration of rights by this Court.

17. Based on the acts, conduct, and statements of Hartmann, Medline has formed a reasonable apprehension and belief that Hartmann intends to and will sue Medline for alleged infringement of the '788 patent.

18. Hartmann's incorrect allegation that Medline infringes claims of the '788 patent has caused, and will continue to cause, damage to Medline.

19. Medline is entitled to a judicial determination and declaration that it does not infringe and has not infringed, directly, indirectly, contributorily, by active inducement or otherwise, any valid and enforceable claim of the '788 patent.

COUNT II
DECLARATORY JUDGMENT OF INVALIDITY OF THE '788 PATENT

20. Medline incorporates by reference the allegations set forth in paragraphs 1 through 19 of this Complaint as though set forth in full herein.

21. An actual and justiciable case or controversy exists between Medline and Hartmann concerning the invalidity of the '788 patent, which requires a declaration of rights by this Court.

22. Medline contends that one or more claims of each of the '788 patent are invalid for failing to satisfy the conditions and requirements for patentability as set forth in Title 35, United States Code, including, but not limited to, 35 U.S.C. §§ 102, 103, and/or 112.

23. On information and belief, Hartmann contends that each and every claim of the '788 patent is valid.

24. Hartmann's allegation that Medline infringes invalid claims of the '788 patent has caused, and will continue to cause, damage to Medline.

25. Medline is entitled to a judicial determination and declaration that one or more claims of each of the '788 patent are invalid.

PRAYER FOR RELIEF

WHEREFORE, Medline requests that the Court enter a judgment in its favor and against Hartmann as follows:

- A. Enter judgment for Medline and against Hartmann on all counts asserted in this complaint;
- B. Declare that Medline has not and does not infringe any valid and enforceable claim of the '788 patent;
- C. Declare that the claims of the '788 patent are invalid;
- D. Enjoin Hartmann, and its officers, directors, agents, counsel, servants, and employees and all person in active concert or participation with any of them, from attempting to enforce the '788 patent against Medline or any customer of Medline by reason of such customer's use of Medline's products;
- E. Find this case to be an exceptional case pursuant to 35 U.S.C. § 285 and award Medline its attorneys' fees and expenses;
- F. Grant Medline such other and further relief as the Court deems just and proper.

JURY DEMAND

Medline demands trial by jury of all issues triable of right by a jury.

Respectfully submitted,

Dated: March 1, 2013

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