

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

SUNRISE MEDICAL HHG, INC.)	
)	
Plaintiff,)	
)	
v.)	Case No. _____
)	
PERMOBIL INC.,)	
)	
Defendant.)	

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff Sunrise Medical HHG, Inc. (“Sunrise”), for its complaint against Permobil Inc. (“Permobil”), hereby alleges as follows:

NATURE OF THE ACTION

1. This is an action for patent infringement under the patent laws of the United States, Title 35 of the United States Code.

THE PARTIES

2. Sunrise is a California corporation having a place of business at 6899 Winchester Circle, Suite 200, Boulder, Colorado 80301.

3. Permobil is a Tennessee corporation, having a principal place of business at 300 Duke Drive, Lebanon, Tennessee 37090.

JURISDICTION AND VENUE

4. This Court has jurisdiction over the subject matter of this action under 28 U.S.C. §§ 1331 and 1338(a). Venue in this district is proper under 28 U.S.C. §§ 1391(b), 1391(c) and 1400(b).

THE PATENT

5. Sunrise owns full right, title and interest in and has the sole and exclusive right to enforce and has standing to sue and recover damages for infringement of U.S. Patent No. 8,210,556, entitled “Midwheel Drive Wheelchair With Independent Front and Rear Suspension” (the “556 patent”) (Exhibit A).

6. The 556 patent was duly and legally issued by the United States Patent and Trademark Office (“USPTO”) on July 3, 2012.

PATENT INFRINGEMENT

7. Permobil has infringed the 556 patent under 35 U.S.C. § 271(a) by making, using, selling and offering for sale M300 and M400 mid-wheel drive power wheelchairs in the United States, and/or by importing M300 and M400 mid-wheel drive power wheelchairs into the United States.

8. Permobil has actively induced third parties, including dealers and users of M300 and M400 mid-wheel drive power wheelchairs, to infringe the 556 patent under 35 U.S.C. § 271(b) by making, marketing, advertising, promoting, demonstrating, offering for sale, importing, distributing and/or selling M300 and M400 mid-wheel drive power wheelchairs. These actions have been done with at least willful blindness to the existence of the 556 patent and its application to M300 and M400 mid-wheel drive power wheelchairs.

9. Sunrise has complied with the requirements of 35 U.S.C. § 287(a).

10. Sunrise has been injured by Permobil’s acts of infringement and is entitled to damages adequate to compensate it for all of the infringement that has occurred. Moreover, Permobil’s acts of infringement will continue unless enjoined by this Court.

11. Permobil’s acts of infringement have been and continue to be willful.

12. The 556 patent is a continuation of U.S. Patent No. 7,896,394, entitled “Midwheel Drive Wheelchair With Independent Front and Rear Suspension” (the 394 patent”). That is, the 556 and the 394 patent share the same specification and drawings and priority date.

13. The 394 patent is the subject of a lawsuit – *Permobil Inc. v. Sunrise Medical HHG, Inc.*, Civil Action No. 3:11-cv-00503 (M.D. Tenn.) -- that is currently pending in this Court before Judge Kevin H. Sharp and Magistrate Judge E. Clifton Knowles. Permobil filed Civil Action No. 3:11-cv-00503 on May 27, 2011, seeking a declaratory judgment that the 394 patent is invalid and not infringed by the same M300 and M400 mid-wheel drive power wheelchair products that are accused of infringement in this action. Sunrise has denied Permobil’s allegations and is pursuing counterclaims alleging that Permobil’s M300 and M400 mid-wheel power wheelchairs infringe the 394 patent. Sunrise is seeking monetary damages and injunctive relief.

14. The deadline for the completion of all discovery in Civil Action No. 3:11-cv-00503 was June 29, 2012. A pretrial conference is set for December 12, 2012, and the case is set for trial on January 15, 2013. (Ex. B, Joint Initial Case Management Order, Dkt. No. 24, in Civil Action No. 3:11-cv-00503).

15. During prosecution of the application for the 556 patent, Sunrise provided the USPTO with all the prior art that Permobil identified as a basis for its allegations that the related 394 patent is invalid, as well as Permobil’s arguments about the prior art, and the USPTO issued the 556 patent over Permobil’s prior art and arguments.

16. Sunrise provided Permobil with a copy of the application for the 556 patent during discovery in Civil Action No. 3:11-cv-00503, and the prosecution history of the 556 patent has been publicly available through the USPTO website at www.uspto.gov. However,

Permobil has continued to make, use, offer for sale, sell and/or import M300 and M400 mid-wheel drive power wheelchairs in direct competition with Sunrise.

17. The application for the 556 patent was published on June 7, 2012, as U.S. Patent Application Publication No. 2012/0138376 A1. Accordingly, Sunrise is entitled to provisional rights under 35 U.S.C. § 154(d).

REQUESTED RELIEF

WHEREFORE, Sunrise requests that a judgment be entered as follows:

- A. Finding that Permobil has infringed the 556 patent;
- B. An injunction prohibiting Permobil and all those acting in concert or participation with Permobil from further acts of infringement of the 556 patent;
- C. An award to Sunrise of such damages as it can prove at trial against Permobil sufficient to fully and adequately compensate Sunrise for the acts of infringement that have occurred, said damages to be no less than a reasonable royalty;
- D. An award to Sunrise for any damages so determined that are found for willful infringement, pursuant to 35 U.S.C. § 284, together with prejudgment interest;
- E. Declaring that this case is exceptional pursuant to 35 U.S.C. § 285 and awarding to Sunrise reasonable attorneys' fees, expenses and costs incurred in this action; and
- F. Such other relief as this Court and the jury may determine to be proper and just.

JURY DEMAND

Sunrise hereby demands a trial by jury on all issues triable to a jury in this case.

Respectfully submitted,

s/Joel T. Galanter

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*Motion For Pro Hac Vice Admission
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