

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI**

SHINN FU COMPANY OF AMERICA, INC. a Missouri corporation; and)	
)	
)	
)	Case No. 13-6145
SHINN FU CORPORATION., a Taiwanese corporation;)	
)	JURY TRIAL DEMANDED
Plaintiffs,)	
)	
v.)	
)	
BETA UTENSILI, an Italian corporation; and)	
)	
PEERLESS HARDWARE MFG CO., a Pennsylvania corporation.)	
)	
Defendants.)	

COMPLAINT

COMES NOW, Plaintiffs Shinn Fu Company of America, Inc. and Shinn Fu Corporation (collectively, “Shinn Fu” or “Plaintiffs”) and for their complaint against Defendants Beta Utensili and Peerless Hardware Mfg Co. (“Defendants”) state as follows:

THE PARTIES

1. Plaintiff Shinn Fu Company of America, Inc. is a corporation organized and existing under the laws of the State of Missouri, with its principal place of business located at 10939 North Pomona Avenue, Kansas City, Missouri 64153.

2. Plaintiff Shinn Fu Corporation is a corporation organized and existing under the laws of Taiwan, with its offices located at 7F., NO.408 Ruei Guang Road Nei Hu District Taipei City 114 Taiwan R.O.C.

3. Upon information and belief, Defendant Beta Utensili is a for-profit corporation organized and existing under the laws of Italy. Upon further information and belief, Beta Utensili is in the business of selling a variety of products in interstate commerce to consumers in this District and throughout the State of Missouri through the utilization of an established network of numerous authorized importers and distributors.

4. Upon information and belief, Defendant Peerless Hardware MFG Company (“Peerless Hardware”) is a for-profit corporation organized and existing under the laws of the state of Pennsylvania, with its principal place of business located at 210 Chestnut Street, Columbia, Pennsylvania 17512. Upon further information and belief, Peerless Hardware is in the business of importing and selling a variety of products in interstate commerce to consumers in this District and throughout the State of Missouri.

JURISDICTION AND VENUE

5. This action arises under the patent laws of the United States, Title 35 of the United States Code. This Court may exercise subject matter jurisdiction over the claims set forth herein pursuant to 28 U.S.C. §§ 1331 and 1338.

6. Upon information and belief, Defendants are subject to this Court’s specific and/or general jurisdiction, pursuant to due process and the Missouri Long Arm Statute, on at least the following grounds: (a) Defendants have committed acts of patent infringement in this District and the State of Missouri; (b) Defendant Beta Utensili does business through the utilization of an established network of at least seven independent, authorized importers and distributors of the accused product(s), including Defendant Peerless Hardware, that directly target U.S. consumers, including residents of this District and the State of Missouri; (c) Defendant Beta Utensili has authorized its network of U.S. importers and distributors to use its

federally registered trademarks and product identification information on websites—*i.e.*, www.betatoolstore.com—for the express purpose of marketing and selling Defendant’s products, including the accused product(s), directly to U.S. consumers, including residents of this District and the State of Missouri; (d) Defendant Beta Utensili is also the owner of at least one interactive website—www.beta-tools.com—in which residents of this District and the State of Missouri can obtain detailed information about Defendant’s products, as well as make arrangement for the purchase of said products, including the accused product(s); (e) Defendant Peerless Hardware is an authorized U.S. importer and/or distributor of the accused product(s) that markets and sells the accused product(s) directly to residents of this District and the State of Missouri; (f) Defendant Peerless Hardware is the owner/operator of at least one interactive website—www.peerlesshardware.com—that utilizes Defendant Beta Utensili’s federally registered trademarks and product identification information for the express purpose of marketing and selling the accused product(s) directly to residents of this District and the State of Missouri; (g) Defendants induce infringement of the patents-in-suit by sellers and/or infringing users located in this District and the State of Missouri; and (h) Defendants regularly conduct and/or solicit business, engage in other persistent courses of conduct, and/or derive substantial revenue from the sale of goods and services to the persons and/or entities of this District and the State of Missouri.

7. For the same reasons as stated above, venue is proper in this district pursuant to 28 U.S.C. §§ 1391(b)-(c) and 1400(b).

BACKGROUND FACTS COMMON TO ALL COUNTS

8. Shinn Fu incorporates by reference all previous allegations made as if set forth herein.

9. The patents-in-suit, U.S. Patent No. Re. 35,732 (a reissue of U.S. Patent No. 5,451,068) and U.S. Patent No. 6,969,077, cover several of Shinn Fu's commercial products that are known collectively as "SFA Z Creepers"—*i.e.*, two-way caster benches that are convertible between a sitting configuration and a lying configuration so as to allow for easy access and movement under automobiles or other machinery.

10. These Shinn Fu products include the Pro-Lift Model C-2040, as depicted below in a true and accurate excerpt from a current Shinn Fu advertisement, the Pro-Lift Model C-2036, the Omega Model 91000, as well as other similar Shinn Fu products:



11. Shinn Fu has made substantial investments in the creation, development, testing, manufacturing and marketing of these products, as well as in the associated intellectual property rights in order to protect them against copying, infringement or the creation of "knock-off" products.

12. Defendants have been and are currently directly copying the patents-in-suit by making, using, selling, and/or importing certain products to Missouri, including its Beta Tools Creeper 3002 product. The following are true and accurate images showing side-by-side

comparisons of Shinn Fu's patented Pro-Lift Model C-2036 product with Defendants' Beta Tools Creeper 3002 product:





COUNT I
(Infringement of U.S. Patent No. Re.35,732)

13. Shinn Fu incorporates by reference all previous allegations made as if set forth herein.

14. On February 17, 1998, United States Letters Patent No. Re.35,732 (hereinafter, “the ‘732 Patent”), reissue of U.S. Patent No. 5,451,068, was duly and legally issued to Troy Shockley for the invention entitled “Transformable Mechanic’s Creeper.” A true and accurate copy of the ‘732 Patent is attached hereto as **Exhibit A**.

15. The ‘732 Patent is a pioneer patent on the transformable type of mechanic’s creeper at issue in this case.

16. The various claims of the ‘732 Patent cover, *inter alia*, a transformable device that can be utilized as a lie-down rolling creeper for easy access under automobiles or other machinery and can also be converted to an upright sitting position.

17. By express, written agreement, Shinn Fu is the present and exclusive licensee of the entire right, title and interest in and to the ‘732 Patent, including all rights to sue for past, present, and future infringement. Shinn Fu has paid substantial consideration for these rights. Accordingly, Shinn Fu has standing to bring this lawsuit for infringement of the ‘732 Patent.

18. Shinn Fu Corporation is the exclusive manufacturer of products for the U.S. under the ‘732 Patent.

19. Defendants have infringed and continue to infringe the ‘732 Patent by making, using, selling and/or importing products embodying the patented inventions, including its Beta Tools Creeper 3002 product.

20. Defendants have been and are currently indirectly infringing the ‘732 Patent by way of intentionally inducing others to make, use, sell, and/or import products embodying the ‘732 Patent, including by aiding or abetting re-sellers to sell and/or offer for sale infringing products and/or customers or users to use infringing products through a sophisticated network of U.S. importers, distributors, wholesalers, and retailers.

21. The infringement of the '732 Patent by Defendants is causing Shinn Fu monetary harm in an amount to be proven at trial.

22. The infringement of the '732 Patent by Defendants is causing Shinn Fu irreparable harm for which there is no adequate remedy at law.

23. Upon information and belief, Defendants have known of the '732 Patent and have knowingly and willfully infringed the '732 Patent in blatant disregard of Shinn Fu's intellectual property rights.

COUNT II
(Infringement of U.S. Patent No. 6,969,077)

24. Shinn Fu incorporates by reference all previous allegations made as if set forth herein.

25. Shinn Fu also owns U.S. Patent No. 6,969,077 (hereinafter, "the '077 Patent") for the invention entitled "Two-Way Caster Bench."

26. The '077 Patent is an improvement upon the '732 Patent and was granted by the United States Patent and Trademark Office with full knowledge of the earlier '732 Patent. A true and correct copy of the '077 Patent is attached hereto as **Exhibit B**.

27. Shinn Fu Corporation is also the exclusive manufacturer of products for the U.S. under the '077 Patents.

28. Defendants have infringed and continue to infringe the '077 Patent by making, using, selling, and/or importing products embodying the patented inventions, including its Beta Tools Creeper 3002 product.

29. Defendants have been and are currently indirectly infringing the '077 Patent by way of intentionally inducing others to make, use, sell, and/or import products embodying the '077 Patent, including by aiding or abetting re-sellers to sell and/or offer for sale infringing

products and/or customers or users to use infringing products through a sophisticated network of U.S. importers, distributors, wholesalers, and retailers.

30. The infringement of the '077 Patent by Defendants is causing Shinn Fu monetary harm in an amount to be proven at trial.

31. The infringement of the '077 Patent by Defendants is causing Shinn Fu irreparable harm for which there is no adequate remedy at law.

32. Upon information and belief, Defendants have known of the '077 Patent and have knowingly and willfully infringed the '077 Patent in blatant disregard of Shinn Fu's intellectual property rights.

PRAYER FOR RELIEF AS TO ALL CLAIMS

WHEREFORE, Plaintiffs Shinn Fu Company of America and Shinn Fu Corporation respectfully pray for a judgment against Defendants Beta Utensili and Peerless Hardware MFG Company as follows:

(a) A judgment that Defendants have infringed, directly and/or indirectly, the '732 and '077 Patents;

(b) An award equal to the damages suffered by Shinn Fu, including lost profits, resulting from Defendants' infringement and inducement of infringement by others and/or reasonable royalties for such infringement pursuant to 35 U.S.C. § 284;

(c) Enhanced damages in accordance with the provisions of 35 U.S.C. § 285 as a result of the knowing, willful, and wanton nature of Defendants' infringing conduct;

(d) An assessment of interest, both prejudgment and post judgment, on the damages awarded;

(e) A finding that this case is exceptional 35 U.S.C. § 285 and an award of all attorneys' fees incurred by Shinn Fu in this action;

(f) A preliminary and permanent injunction against Defendants, and its officers, directors, employees, agents, affiliates and all others acting in concert therewith from any continued infringement of the '732 and '077 Patents;

(g) An accounting of all goods in the possession, custody, or control of Defendants that infringe the '732 and/or '077 Patents and an Order directing that all such goods be delivered up and destroyed within thirty (30) days from the entry of judgment;

(h) An award of Shinn Fu's costs in bringing and prosecuting this action; and

(i) Any such other and further relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Pursuant to Fed. R. Civ. P. 38(b), Shinn Fu hereby demands a jury trial on all issues so triable by jury.

Date: December 23, 2013

Respectfully submitted,

/s/ David R. Barnard
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