

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
TEXARKANA DIVISION**

**TEX PAT, LLC,**  
*Relator,*

v.

**(1) OTTO BOCK HEALTHCARE GMBH,  
(2) OTTO BOCK HEALTHCARE LP,  
(3) OTTO BOCK HEALTHCARE U.S., INC.,  
(4) OTTO BOCK HEALTHCARE NORTH  
AMERICA, INC.,  
(5) OTTO BOCK SUISSE AG, and  
(6) OTTO BOCK ORTHOPADISCHE  
INDUSTRIE KG,**  
*Defendants.*

**Civil Action No. 5:10-CV-007**

**JURY TRIAL DEMANDED**

**ORIGINAL COMPLAINT FOR FALSE PATENT MARKING**

Relator Tex Pat, LLC (“Relator”) makes the following allegations against Otto Bock HealthCare GmbH, Otto Bock HealthCare LP, Otto Bock HealthCare U.S., Inc., Otto Bock HealthCare North America, Inc., Otto Bock Suisse AG, and Otto Bock Orthopadische Industrie KG (collectively, “Otto” or “Defendant”):

**NATURE OF THE ACTION**

1. This is a *qui tam* action for false patent marking under 35 U.S.C. § 292.

**PARTIES**

2. Relator is a Texas limited liability company having a principal place of business at 2300 Richmond Ave., Suite 345, Houston, TX 77098. Relator has appointed Philip D. Racusin, 2300 Richmond Ave., Suite 345, Houston, TX 77098, as its agent for service of process.

3. On information and belief, Otto Bock HealthCare GmbH is a German corporation having its principal place of business at Max-Näder Strasse 15, 37115 Duderstadt,

Germany. On information and belief, Otto Bock HealthCare GmbH may be served at Max-Näder Strasse 15, 37115 Duderstadt, Germany, via an officer, a managing or general agent, or any other agent authorized by appointment or law to receive service.

4. On information and belief, Otto Bock HealthCare LP is a subsidiary of Otto Bock HealthCare GmbH, and is a Minnesota limited partnership having a principal place of business at 2 Carlson Parkway North, Suite 100, Minneapolis, MN 55447. Otto Bock HealthCare LP has appointed Stephen A. Carr, 2 Carlson Parkway North, Suite 100, Minneapolis, MN 55447, as its agent for service of process

5. On information and belief, Otto Bock HealthCare U.S., Inc. is a subsidiary of Otto Bock HealthCare GmbH, and is a Minnesota corporation having a principal place of business at 2 Carlson Parkway North, Suite 100, Minneapolis, MN 55447. On information and belief, Otto Bock HealthCare U.S., Inc. has not appointed a registered agent for service of process or has failed to register an agent with the Minnesota Secretary of State, but may be served in Texas through National Corporate Research, Ltd., 800 Brazos, Suite 400, Austin, TX 78701.

6. On information and belief, Otto Bock HealthCare North America, Inc. is a subsidiary of Otto Bock HealthCare GmbH, and is a Minnesota corporation having a principal place of business at 2 Carlson Parkway North, Suite 100, Minneapolis, MN 55447. On information and belief, Otto Bock HealthCare North America, Inc. has not appointed a registered agent for service of process or has failed to register an agent with the Minnesota Secretary of State, but may be served at 2 Carlson Parkway North, Suite 100, Minneapolis, MN 55447, via an officer, a managing or general agent, or any other agent authorized by appointment or law to receive service.

7. On information and belief, Otto Bock Suisse AG is a subsidiary of Otto Bock Healthcare GmbH, and is a Swiss corporation having its principal place of business at Pilatusstrasse 2, Postfach 87, CH-6036, Dierikon, Switzerland. On information and belief, Otto Bock Suisse AG may be served at Pilatusstrasse 2, Postfach 87, CH-6036, Dierikon, Switzerland, via an officer, a managing or general agent, or any other agent authorized by appointment or law to receive service.

8. On information and belief, Otto Bock Orthopadische Industrie KG is a subsidiary of Otto Bock Healthcare GmbH, and is a German corporation having its principal place of business at D-3428 Duderstadt 1, Germany. On information and belief, Otto Bock Orthopadische Industrie KG may be served at D-3428 Duderstadt 1, Germany, via an officer, a managing or general agent, or any other agent authorized by appointment or law to receive service.

### **JURISDICTION AND VENUE**

9. This action arises under the patent laws of the United States, Title 35 of the United States Code. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a).

10. Defendant is subject to this Court's specific and general personal jurisdiction pursuant to due process and/or the Texas Long Arm Statute, due at least to its substantial business in this Forum, including: (i) at least a portion of the false marking, affixing, or advertising alleged herein; and/or (ii) regularly doing or soliciting business, engaging in other persistent courses of conduct, and/or deriving substantial revenue from goods and/or services provided to individuals in Texas and in this District.

11. Venue is proper in this district under 28 U.S.C. §§1391(b), 1391(c), and 1395(a). Defendant has and/or continues (and/or has and continues to cause others) to transact business in this District, and has and/or continues (and/or has and continues to cause others) to mark upon, affix to, and/or use in advertising, in this District, the product(s) subject to this Complaint, which Defendant has and/or continues (and/or has and continues to cause others) to make, use, offer for sale, or sell in, and/or import into, this District.

### **FACTS**

12. Otto has and/or continues (and/or has and continues to cause others) to mark upon, affix to, and/or use in advertising patents, including, by way of example only, U.S. Patent No. 4,377,305 (“the ’305 Patent”), a true and correct copy of which is attached as Exhibit A, in connection with Defendant’s products and/or related product packaging and advertisements, including, by way of example only, the MYOBOCK<sup>®</sup> System Electric Greifers, Digital Twin<sup>®</sup>, 6/7.2 Volt with Quick Disconnect Wrist, MYOBOCK<sup>®</sup> System Electric Greifers, Digital Twin<sup>®</sup>, 6/7.2 Volt with Lamination Ring, and MYOBOCK<sup>®</sup> System Electric Greifers, 6 Volt, with Quick Disconnect Wrist products, as illustrated in Exhibits B-C.

13. The ’305 Patent (Exhibit A), which is titled “Artificial Hand,” was filed in the United States on January 21, 1981, issued on March 22, 1983, and was assigned to defendant Otto Bock Orthopadische Industrie KG.

14. The ’305 Patent expired, at the very latest, on January 21, 2001.

15. When the ’305 Patent expired, all future rights in that patent ceased to exist.

16. Subsequent to expiration of the '305 Patent, Otto has and/or continues (and/or has and/or continues to cause others) to mark upon, affix to, and/or use in advertising the '305 Patent in combination with its MYOBOCK<sup>®</sup> System Electric Greifers, Digital Twin<sup>®</sup>, 6/7.2 Volt with Quick Disconnect Wrist, MYOBOCK<sup>®</sup> System Electric Greifers, Digital Twin<sup>®</sup>, 6/7.2 Volt with Lamination Ring, and MYOBOCK<sup>®</sup> System Electric Greifers, 6 Volt, with Quick Disconnect Wrist products. *See, e.g., Exhibit B* (containing, in part, Otto's 2007 product catalog, which was available on Otto's website at or near the time of filing of this original complaint,<sup>1</sup> having an electronic creation of March 31, 2009 at 1:18:04 A.M. and an electronic modification date of May 25, 2010 at 1:56:38 A.M., and marking, affixing, and/or advertising the '305 Patent in combination with the MYOBOCK<sup>®</sup> System Electric Greifers, Digital Twin<sup>®</sup>, 6/7.2 Volt with Quick Disconnect Wrist, MYOBOCK<sup>®</sup> System Electric Greifers, Digital Twin<sup>®</sup>, 6/7.2 Volt with Lamination Ring, and MYOBOCK<sup>®</sup> System Electric Greifers, 6 Volt, with Quick Disconnect Wrist products); *Exhibit C* (containing, in part, product literature, which was available on Otto's website at or near the time of filing of this original complaint,<sup>2</sup> having an electronic creation of May 25, 2010 at 1:42:49 A.M. and an electronic modification date of May 25, 2010 at 1:43:12 A.M., and marking, affixing, and/or advertising the '305 Patent in combination with the MYOBOCK<sup>®</sup> System Electric Greifers, Digital Twin<sup>®</sup>, 6/7.2 Volt with Quick Disconnect Wrist, MYOBOCK<sup>®</sup> System Electric Greifers, Digital Twin<sup>®</sup>, 6/7.2 Volt with Lamination Ring, and MYOBOCK<sup>®</sup> System Electric Greifers, 6 Volt, with Quick Disconnect Wrist products).

---

<sup>1</sup> Otto's website, [www.ottobock.se/cps/rde/xbcr/ob\\_se\\_sv/myobock\\_1\\_intro.pdf](http://www.ottobock.se/cps/rde/xbcr/ob_se_sv/myobock_1_intro.pdf) (last visited Jan. 11, 2011).

<sup>2</sup> Otto's website, [www.ottobock.se/cps/rde/xbcr/ob\\_se\\_sv/myobock\\_5\\_system\\_electric\\_greifers.pdf](http://www.ottobock.se/cps/rde/xbcr/ob_se_sv/myobock_5_system_electric_greifers.pdf) (last visited Jan. 11, 2011).

17. Otto is a large, sophisticated company. *See, e.g., Exhibit D* at pp. 7, 20 (containing, in part, parent Otto Bock HealthCare GmbH's 2009 Corporate Citizenship Report, which indicates that Otto has "more than 4,500 employees in 43 countries . . .").

18. Otto has, and routinely retains, sophisticated legal counsel.

19. Otto has decades of experience applying for, obtaining, licensing, and/or litigating patents. *See, e.g., Exhibit D* at p. 11 (touting "outstanding innovation and technology leadership"); p. 15 (indicating Otto files "[u]p to 100 patent registrations per year").

20. Otto knows, and at the very least reasonably should know, that the above expired patent does not cover any of the above Otto products, or any products whatsoever. *See, e.g., Exhibit D* at p. 11 (touting "outstanding innovation and technology leadership"); p. 15 (indicating Otto files "[u]p to 100 patent registrations per year").

21. As a result of its false marking, Otto has injured the United States Government, including its sovereign interest, and Defendant's existent and potential competitors, as well as the general public, including Relator—a member of the general public incurring the time and expense associated with enforcement. *See, e.g., Exhibit D* at p. 15 (declaring importance of "ground-breaking improvements" to the business of Defendant).

### **CLAIM**

22. Relator incorporates paragraphs 1–21, as if fully set forth herein. Otto has violated 35 U.S.C. § 292 by falsely marking, affixing, and/or advertising its products, including the MYOBOCK<sup>®</sup> System Electric Greifers, Digital Twin<sup>®</sup>, 6/7.2 Volt with Quick Disconnect Wrist, MYOBOCK<sup>®</sup> System Electric Greifers, Digital Twin<sup>®</sup>, 6/7.2 Volt with Lamination Ring, and MYOBOCK<sup>®</sup> System Electric Greifers, 6 Volt, with Quick Disconnect Wrist products, with intent to deceive the public.

**PRAYER FOR RELIEF**

WHEREFORE, Relator respectfully requests that this Court enter:

- (a). A judgment in favor of Relator that Defendant has falsely marked items in violation of 35 U.S.C. § 292;
- (b). A monetary award pursuant to 35 U.S.C. § 292 in the form of a civil fine of \$500 per falsely marked article, or an alternative amount, as set by the Court, one-half of any such award to be paid to the United States;
- (c). An accounting for any falsely marked articles not presented at trial and a monetary award set by the Court for such falsely marked articles;
- (d). An award of pre-judgment and post-judgment interests on any monetary award;
- (e). An injunction prohibiting Defendant, and its officers, directors, agents, servants, employees, attorneys, licensees, successors, and assigns, and those in active concert or participation with any of them, from violating 35 U.S.C. §292; and
- (f). Any and all other relief, at law or equity, to which Relator may show itself to be entitled.

**DEMAND FOR JURY TRIAL**

Relator, under Rule 38 of the Federal Rules of Civil Procedure, requests a trial by jury of any issues so triable by right.

Dated: January 11, 2011

Respectfully submitted,

By: /s/ Hao Ni

Hao Ni – LEAD COUNSEL  
State Bar No. 24047205  
Ni Law Firm PLLC  
3102 Maple Avenue, Suite 400  
Dallas, TX 75201  
(214) 800-2208  
[hni@nilawfirm.com](mailto:hni@nilawfirm.com) Tyler K. Brochstein  
State Bar No. 24059490  
Brochstein Law Firm, PLLC  
2820 McKinnon Street, Suite 4063  
Dallas, TX 75201  
(214) 444-3310  
[tyler@brochlaw.com](mailto:tyler@brochlaw.com)

Jack L. Siegel  
State Bar No. 24070621  
Jack L. Siegel PLLC  
3530 Travis Street, Suite 421  
Dallas, TX 75204  
(214) 699-1498  
[jack@jlsiegellaw.com](mailto:jack@jlsiegellaw.com)

**Attorneys for Relator  
TEX PAT, LLC**