

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION**

**ALPS SOUTH, LLC,  
a Florida limited liability company,**

**Plaintiff,**

v.

**Case No. 8:08-cv-1893-T-33MAP**

**THE OHIO WILLOW WOOD  
COMPANY, an Ohio corporation,**

**Defendant.**

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**ORDER**

THIS cause is before the Court on Defendant, The Ohio Willow Wood Company's ("OWW"), Motion to Dismiss for Lack of Standing (Dkt. 31). The Court reviewed both the Motion to Dismiss, as well as Alps South, LLC's ("Alps") Response (Dkt. 34), and heard oral argument regarding the same on February 3, 2010. Based thereon, the Court finds the following:

The Patent Act provides that a patentee shall have remedy by a civil action for infringement of its patent, and the Patent Act defines the term "patentee" to include not only the patentee to whom the patent was issued, but also the successors in title to the patentee. The title to a patent may be transferred, as provided by law, which states that a patentee may grant and convey an exclusive right under his application for patent, or patents, to the whole or any specific part of the United States. When a patentee transfers all substantial rights under a patent, the transferee may effectively be deemed the patentee under the statute with standing to bring an infringement action in its own name. Restorative Products, Inc. v. MMAR Med. Group, Inc., 1996 WL 221786, \*3 (April 29, 1996 M.D. Fla.); Applied Interact, LLC v. Vermont Teddy Bear Company, Inc., 2005 WL 1785115, \*3 (July 28, 2005 S.D. N.Y.).

The substantial rights to a patent include the right to exclude others from making, using, or selling the invention in the United States, the right to transfer, and the right to sue. An exclusive licensee that has not been assigned all substantial rights in a patent can only bring suit as a co-plaintiff with the patentee in order to have standing.

Alps and Applied Elastomerics, Inc. entered into a Patent Sale and License Agreement (“Agreement”) on August 31, 2008, under which Alps is named the exclusive licensee of the patents at issue in this case. The Agreement provides Alps with the substantial rights of excluding others and the rights to transfer and sue while Applied Elastomerics, Inc. retained or reserved some rights. The rights retained or reserved are not substantial enough under the language of the agreement or case law construing similar agreements to require that Applied Elastomerics, Inc. be joined as a co-plaintiff.

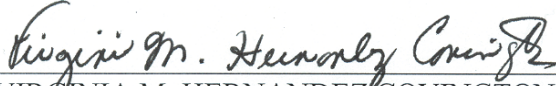
Alps and Applied Elastomerics, Inc. also entered into an Amended Agreement on January 28, 2010, with an effective date of August 31, 2008. Under the Amended Agreement, Alps clearly possesses the substantial rights to proceed without Applied Elastomerics in this case.

It is hereby

**ORDERED, ADJUDGED and DECREED** that:

1. Defendant The Ohio Willow Wood Company’s Motion to Dismiss for Lack of Standing (Dkt. 31) is **DENIED**.

**DONE and ORDERED** in Chambers, in Tampa, Florida, on the 11th day of February 2010.

  
VIRGINIA M. HERNANDEZ COVINGTON  
UNITED STATES DISTRICT JUDGE

Copies to:

Counsel of Record