

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

FILED
AUSTIN DIVISION
2003 MAY 27 PM 4:24
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NETAFIM IRRIGATION, INC.)
)
)
) Plaintiff,)
)
) v.)
)
) AMERICAN MANUFACTURING)
) COMPANY)
)
) Defendant.)

CIVIL ACTION NO.
A03 CA 337 JN

JURY TRIAL DEMANDED

**COMPLAINT FOR DECLARATORY JUDGMENT OF NONINFRINGEMENT,
INVALIDITY AND UNENFORCEABILITY**

Plaintiff Netafim Irrigation, Inc., by and through its attorneys, hereby states its Complaint against American Manufacturing Company and its demand for a trial by jury, alleging as follows:

PARTIES

1. Plaintiff Netafim Irrigation, Inc. ("Netafim"), is a corporation organized and existing under the laws of the State of New York, having its principal place of business at 5470 East Home Avenue, Fresno, CA 93727.

2. Defendant, American Manufacturing Company ("American"), is, upon information and belief, a corporation organized and existing under the laws of the Commonwealth of Virginia with a principal place of business at 5517 Wellington Road, Gainesville, Virginia 20155. Upon information and belief, American has no agent for service of process in Texas. Accordingly, Netafim has appointed the Texas Secretary of State as its agent for process who shall serve American with process in this action as required by Tex. Civ. Prac. &



Rem. Code §17.044 *et seq.* Once requested by Netafim, the Secretary of State shall mail a copy of the process (summons and complaint) to American, to the attention of its President, at its principal place of business: Mr. Robert B. Mayer, 5517 Wellington Road, Gainesville, Virginia 20155. Such documents shall be sent by registered or certified mail, return receipt requested.

JURISDICTION AND VENUE

3. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1338, 2201 and 2202.

4. This claim arises under the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, and the Patent Laws of the United States, Title 35 of the United States Code.

5. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b) and (c).

**COUNT ONE: ACTION FOR DECLARATORY JUDGMENT OF
NONINFRINGEMENT**

6. Netafim incorporates by reference the allegations of paragraphs 1-5.

7. On April 6, 1993, United States Patent No. 5,200,065 (the “‘065 patent”), entitled TERTIARY WASTE TREATMENT AND DISPOSAL SYSTEM, issued to John A. Sinclair and Thomas A. Sinclair. Upon information and belief, the ‘065 patent was assigned to Waste Water Systems, Inc. A copy of the ‘065 patent is attached hereto as Exhibit A.

8. Upon information and belief, on July, 26, 2000, Defendant obtained an exclusive worldwide license from Waste Water Systems, Inc. for all the rights associated with the ‘065 patent, including the right to enforce the ‘065 patent against alleged infringers.

9. The ‘065 patent is directed generally to a waste water treatment and disposal system.

10. Upon information and belief, American manufactures and sells a waste water treatment system purportedly covered by the '065 patent and markets the system under the name Perc-Rite®. (Exhibit B)

11. Upon information and belief, American sells waste water treatment components and systems in Texas, including its Perc-Rite® system. In particular, American offers to sell and sells its products, including the Perc-Rite® system, in this judicial district through its distributor Waste Water Technologies, Inc. (Exhibit C) Upon information and belief, American's sales in Texas account for at least one third of its total sales.

12. Netafim offers to sell and sells waste water treatment and disposal systems and products as part of its Bioline® design, including system controllers, filtration systems, valves, fittings, pressure regulators, clamps, dripperline tubing and other related equipment. Netafim offers to sell and sells its products to distributors, resellers and/or waste water treatment installers.

13. American has asserted and has threatened to assert the '065 patent against purchasers and users of Netafim products, including Lighthouse Treatment Systems, LLC ("Lighthouse") and its principal, James F. Prochaska, Pickney Bros. Inc. ("Pickney"), Hoot Aerobics Systems, Inc. ("Hoot"), Delta Environmental Products, Inc. ("Delta") etc. Of these purchasers, Lighthouse, which American has already sued in the Eastern District of Virginia, is a Texas corporation.

14. Defendant's infringement action against Lighthouse Treatment Systems, LLC and James F. Prochaska, its threats against Pickney, Hoot, Delta and others, and its interaction with Netafim has created on the part of the Netafim and its customers a reasonable apprehension that

Netafim and additional customers of Netafim will be faced with infringement suits if they continue to manufacture, sell, offer to sell or use Netafim's products.

15. On February 24, 2003, Netafim and Pickney filed a declaratory judgment action against American in the U.S. District Court for the Middle District of Tennessee for a declaration of noninfringement, invalidity and unenforceability of the '065 patent. American moved to dismiss that action for lack of subject matter and personal jurisdiction. On May 19, 2003, the court ruled that subject matter jurisdiction existed as an actual case or controversy exists with respect to both Netafim and Pickney. However, the court dismissed the action for a lack of personal jurisdiction over American, based, in large part, on the fact that American's sales to Tennessee customers account for less than one-tenth of its overall sales. A copy of the court's memorandum is attached hereto as Exhibit D.

16. Plaintiff Netafim and its customers have been damaged and will continue to be damaged as a result of Defendant American's actions.

17. As a result of Defendant's actions and statements, an actual justiciable case or controversy exists between Netafim and American as to American's right to threaten or maintain suit for infringement of the '065 patent and as to the validity, enforceability and scope thereof, and as to whether any of Netafim's products or installations containing Netafim's products infringe any claim thereof.

18. Netafim's products and those wastewater treatment installations containing Netafim's products do not infringe the claims of the '065 patent.

COUNT TWO: INVALIDITY AND UNENFORCEABILITY OF THE '065 PATENT

19. Netafim repeats and realleges each and every allegation contained in paragraphs 1-18 of this Complaint with the same force and effect as if fully set forth herein.

20. The '065 patent is invalid and/or void for failure to comply with all the statutory prerequisites of Title 35, United States Code, including, but not limited to, §§ 101, 102, 103, 111, 112, 116, 132, 135, 256 and/or 287.

21. The '065 patent is unenforceable due to Defendant and its predecessor-in-interest's, Waste Water Systems, Inc.'s, conduct.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Netafim respectfully requests that the Court grant the following relief:

- a. That the Court declare and decree that Netafim and its customers, by and through their manufacture, sale, offer for sale or use of Netafim's products, have not at any time or place infringed the '065 patent;
- b. That the Court declare and decree that the '065 patent is invalid and/or void;
- c. That the Court declare and decree that the '065 patent is unenforceable;
- d. That this Court enter preliminary and permanent injunctions restraining American, its officers, agents, servants, employees, attorneys, privities and those persons in active concert with American from asserting, or threatening to assert, the '065 patent against Netafim, its suppliers, or actual or potential customers of Netafim;
- e. That this Court award Plaintiff Netafim its attorneys' fees, costs, and expenses in this action; and
- f. That this Court grant such other and further relief as this Court may deem just and equitable.

DEMAND FOR JURY TRIAL

Plaintiff Netafim hereby demands a jury trial on all issues raised by this Complaint.

Respectfully submitted,

JACKSON WALKER L.L.P.

By: 

Lawrence A. Waks
State Bar No. 20670700
Sheri R. Hunter
State Bar No. 24002840
Mark L. Walters
State Bar No. 00788611

100 Congress, Suite 1100
Austin, TX 78701
(512) 236-2000
(512) 236-2002 – Fax

ATTORNEYS FOR PLAINTIFF
NETAFIM IRRIGATION, INC.

Of Counsel:

James H. Shalek
Baldassare Vinti
PROSKAUER ROSE LLP
1585 Broadway
New York, New York 10036-8299
Tel. (212) 969-3000
Fax. (212) 969-2900

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**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

**NOTICE OF DOCUMENT(S) NOT IMAGED
AND CONTAINED IN FOLDER**

Civil Case No. A-03-CA-337-JN

Netafim Irrigation, Inc.

VS.

American Manufacturing Company

Attachments to

Document #: 1

Description: Exhibits to Complaint

Filed By: Netafim Irrigation, Inc.

File Date: 05/27/03



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