

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

DR. JAMES SUNG,)	
)	
Plaintiff,)	
)	
v.)	Case No. 13-CV-1073
)	
EHWA DIAMOND INDUSTRIAL CO.,)	
and)	(Demand for Jury Trial)
GENERAL TOOL, INC. d/b/a)	
DIAMOND VANTAGE, INC.,)	
)	
Defendants.)	

COMPLAINT FOR PATENT INFRINGEMENT

COMES NOW Plaintiff Dr. James Sung and for his complaint against Defendants EHWA Diamond Industrial Co. (“EHWA Diamond”) and General Tool, Inc. d/b/a Diamond Vantage, Inc. (“General Tool”), hereby alleges as follows:

THE PARTIES

1. Plaintiff, Dr. James Sung, is a U.S. citizen who resides in No. 4, Lane 32, Chung-cheng Rd., Tansui, Taipei, Taiwan. Dr. Sung is the named inventor and owner of all rights, title, and interest in the patents-in-suit described in detail below.

2. Upon information and belief, EHWA Diamond is a South Korean corporation with its principal place of business at 520-2 Won-dong, Osan-si, Gyeonggi-do, South Korea, 447-804. Upon information and belief, EHWA Diamond may be served with process in South Korea pursuant to the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters. Upon information and belief, EHWA Diamond has transacted and regularly transacts business within this District, has purposefully availed itself of the privileges of transacting business in this District, and has sought protection and benefit from

the laws of the State of Missouri at least by directing and/or controlling the actions of its subsidiary, General Tool, and by importing infringing products into the United States and this District through at least its subsidiary, General Tool.

3. Upon information and belief, General Tool is a California corporation with its principal place of business at 2025 Alton Parkway, Irvine, CA 92606. Upon information and belief, General Tool is registered to transact business in the State of Missouri under the trade name Diamond Vantage, Inc., has transacted and regularly transacts business in this District, has purposefully availed itself of the privileges of transacting business in this District, and has sought protection and benefit from the laws of the State of Missouri. Upon information and belief, General Tool may be served with process by serving its registered agent, Lisa Lucas, at 5429 NE Holiday Drive, Lees Summit, MO 64064.

JURISDICTION AND VENUE

4. This action arises under the Patent Laws of the United States, 35 U.S.C. § 1 *et seq.* This Court has subject matter jurisdiction over this case for patent infringement under 28 U.S.C. §§ 1331 and 1338(a).

5. This Court has personal jurisdiction over EHWA Diamond. EHWA Diamond has established sufficient minimum contacts within this district such that the exercise of jurisdiction over it would not offend traditional notions of fair play and substantial justice. EHWA Diamond has continuous and systematic contacts with the State of Missouri through its control and domination of its subsidiary General Tool. EHWA Diamond has transacted and regularly transacts business in the United States, and more specifically in this District. EHWA Diamond, directly or through intermediaries (including distributors, retailers, and others), subsidiaries, alter egos, and/or agents, ships, distributes, offers for sale, and/or sells its infringing products in the

United States and this District. EHWA Diamond has purposefully availed itself of the privileges of conducting business in the United States, and more specifically this District, and has sought protection and benefit of the laws of the State of Missouri by purposefully and voluntarily placing infringing products into the stream of commerce through an established distribution channel with the expectation, knowledge, and/or intent that they will be purchased by consumers in this District. These infringing products have been and continue to be purchased by consumers in this District. Upon information and belief, EHWA Diamond has committed the tort of patent infringement in this District. Dr. Sung's causes of action arise directly from EHWA Diamond's business contacts and other activities in this District.

6. This Court has personal jurisdiction over General Tool. General Tool has established sufficient minimum contacts with this district such that the exercise of jurisdiction over it would not offend traditional notions of fair play and substantial justice. General Tool has continuous and systematic contacts with the State of Missouri and is registered to transact business in the State of Missouri. General Tool has transacted and regularly transacts business within the United States, and more specifically this District. General Tool, directly or through intermediaries (including distributors, retailers, and others), subsidiaries, alter egos, and/or agents, ships, distributes, offers for sale, and/or sells its infringing products in the United States and this District. General Tool has purposefully availed itself of the privileges of conducting business in the United States, and more specifically this District, and has sought protection and benefit of the laws of the State of Missouri by purposefully and voluntarily placing infringing products into the stream of commerce through an established distribution channel with the expectation, knowledge, and/or intent that they will be purchased by consumers in this District. These infringing products have been and continue to be purchased by consumers in this District.

Upon information and belief, General Tool has committed the tort of patent infringement in this District. Dr. Sung's causes of action arise directly from General Tool's business contacts and other activities in this District.

7. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391(b)-(d) and 28 U.S.C. § 1400(b) because the Defendants are subject to personal jurisdiction in this District and are thus deemed to reside in this District. In addition, Defendants have committed acts of patent infringement within this District giving rise to this action, and Defendants do business in this District, including but not limited to, making sales in this District, providing service and support to their respective customers in this District, and/or operating an interactive website that is available to persons in this District, which website advertises, markets, and/or offers for sale infringing products.

THE PATENTS-IN-SUIT

8. U.S. Patent No. 6,039,641, titled "Brazed Diamond Tools by Infiltration," (the "'641 patent'") was duly and legally issued by the United States Patent and Trademark Office ("USPTO") on March 21, 2000, after full and fair examination. A true and correct copy of the '641 patent is attached hereto as **Exhibit A**. Following a reexamination of the '641 patent, the USPTO issued an Ex Parte Reexamination Certificate, Number US 6,039,641 C1 (the "'641 C1 reexamined patent'"), on July 19, 2005. A true and correct copy of the '641 C1 reexamined patent is included with **Exhibit A**. Dr. Sung is the sole inventor listed on the '641 patent and the owner of all rights, title, and interest in the '641 patent.

9. U.S. Patent No. 6,286,498, titled "Metal Bond Diamond Tools that Contain Uniform or Patterned Distribution of Diamond Grits and Method of Manufacture Thereof," (the "'498 patent'") was duly and legally issued by the USPTO on June 15, 2004, after full and fair

examination. A true and correct copy of the '498 patent is attached as **Exhibit B**. Following a reexamination of the '498 patent, the USPTO issued an Ex Parte Reexamination Certificate, Number US 6,286,498 C1 (the "'498 C1 reexamined patent'"), on July 19, 2005. A true and correct copy of the '498 C1 reexamined patent is included with **Exhibit B**. Dr. Sung is the sole inventor listed on the '498 patent and the owner of all rights, title, and interest in the '498 patent.

10. U.S. Patent No. 6,679,243, titled "Brazed Diamond Tools and Methods for Making," (the "'243 patent'") was duly and legally issued by the USPTO on January 23, 2007, after full and fair examination. A true and correct copy of the '243 patent is attached as **Exhibit C**. Following a reexamination of the '243 patent, the USPTO issued an Ex Parte Reexamination Certification, Number US 6,679,243 C1 (the "'243 C1 reexamined patent'") on July 19, 2005. A true and correct copy of the '243 C1 reexamined patent is included with **Exhibit C**. Dr. Sung is the sole inventor listed on the '243 patent and the owner of all rights, title, and interest in the '243 patent.

11. U.S. Patent No. 6,193,770, titled "Brazed Diamond Tools by Infiltration," (the "'770 patent'") was duly and legally issued by the USPTO on February 27, 2001, after full and fair examination. A true and correct copy of the '770 patent is attached as **Exhibit D**. Dr. Sung is the sole inventor listed on the '770 patent and the owner of all rights, title, and interest in the '770 patent.

12. U.S. Patent No. 7,124,753, titled "Brazed Diamond Tools and Methods for Making the Same," (the "'753 patent'") was duly and legally issued by the USPTO on October 24, 2006, after full and fair examination. A true and correct copy of the '753 patent is attached as **Exhibit E**. Dr. Sung is the sole inventor listed on the '753 patent and the owner of all rights, title, and interest in the '753 patent.

DEFENDANTS' INFRINGING CONDUCT

13. Upon information and belief, Defendants collectively make, use, offer to sell, and/or sell within, and/or import into the United States diamond tools that utilize technologies covered by the patents-in-suit. Upon information and belief, the infringing products include, but are not limited to, diamond tools that have a patterned arrangement of diamond grit.

14. Upon information and belief, Defendants label some of their patterned diamond tools with the trademark "Zenesis," registered with the USPTO on January 30, 2007 as serial number 79023654 to EHWA Diamond. EHWA Diamond filed for the Zenesis trademark on November 24, 2005. EHWA Diamond also filed for a similar trademark, "Zenesis Technology" on July 5, 2005, and that trademark was registered on August 7, 2007 as serial number 79027588. Upon information and belief, Defendants intend for their customers to purchase, use, and/or sell their patterned diamond tools, including those bearing the Zenesis trademark, in the United States and this District.

COUNT I

PATENT INFRINGEMENT OF U.S. PATENT NO. 6,039,641

15. Dr. Sung repeats and incorporates by reference paragraphs 1-14 as if fully set forth herein.

16. The '641 patent is valid and enforceable.

17. Defendants have at no time, either expressly or impliedly, been licensed under the '641 patent.

18. Upon information and belief, to the extent any marking or notice was required by 35 U.S.C. § 287, Dr. Sung has complied with the requirements of that statute by providing actual or constructive notice to Defendants of their alleged infringement.

19. Upon information and belief, Defendants have been directly and literally infringing under 35 U.S.C. § 271(a), the '641 patent by making, using, offering to sell, and or selling to customers and/or distributors (directly and through intermediaries and/or subsidiaries) in this District and elsewhere within the United States and/or importing into the United States, without authority, patterned diamond tools bearing the Zenesis trademark that include all of the limitations of one or more claims of the '641 patent, including, but not limited to, the Zenesis Silent Core Blade S-1212LWZX4 and other similar products, such as patterned diamond tools with the Zenesis trademark, including: other Zenesis Silent Core Blades; Zenesis Floor Blades such as the ZF10, ZF20, ZF30, ZF45, ZF60, and ZF80; Zenesis Handheld Saw Blades such as ZH and ZA; Zenesis Wall Saw Blades such as ZW10, ZW20, and ZW30; Zenesis Core Bits; Zenesis Large Diameter Saw Blades such as ZLMG, ZLSG, SLSM, and ZGMM; Zenesis Trimming Saw Blades such as ZTG and ZTM; Zenesis Small Diameter Saw Blades such as ZSH, ZSM, and ZSA; and Zenesis High Speed Cut-Off Saw Blades such as ZHH, ZHM, ZHB, and ZHA (collectively "Zenesis Products").

20. Upon information and belief, Defendants have been directly and equivalently infringing under the doctrine of equivalents, the '641 patent by making, using, offering to sell, and/or selling to customers and/or distributors (directly or through intermediaries and/or subsidiaries) in this District and elsewhere within the United States and/or importing into the United States, without authority, diamond tools that include all of the limitations of one or more claims of the '641 patent, including, but not limited to, the Zenesis Silent Core Blade S-1212LWZX4 and other Zenesis Products. These patterned diamond tools perform substantially the same function as the inventions embodied in one or more claims of the '641 patent in substantially the same way to achieve the same result.

21. Upon information and belief, Defendants have known of the '641 patent since 2000. Despite this knowledge, Defendants have made, used, offered to sell, and/or sold to customers and/or distributors (directly or through intermediaries and/or subsidiaries) in this District and elsewhere within the United States and/or imported into the United States, without authority, patterned diamond tools that include all of the limitations of one or more claims of the '641 patent, including, but not limited to, the Zenesis Silent Core Blade S-1212LWZX4 and other Zenesis Products. Defendants have acted despite an objectively high likelihood that their actions constituted infringement of the '641 patent and Defendants either knew or should have known that their actions constituted infringement of the '641 patent. Defendants have thus willfully infringed and continue to willfully infringe the '641 patent.

22. As a direct and proximate result of these acts of patent infringement, Defendants have encroached on the exclusive rights of Dr. Sung and his licensees to practice the '641 patent, for which Dr. Sung is entitled to at least a reasonable royalty.

COUNT II

PATENT INFRINGEMENT OF U.S. PATENT NO. 6,286,498

23. Dr. Sung repeats and incorporates by reference paragraphs 1-22 as if fully set forth herein.

24. The '498 patent is valid and enforceable.

25. Defendants have at no time, either expressly or impliedly, been licensed under the '498 patent.

26. Upon information and belief, to the extent any marking or notice was required under 35 U.S.C. § 287, Dr. Sung has complied with the requirements of that statute by providing actual or constructive notice to Defendants of their alleged infringement.

27. Upon information and belief, Defendants have been directly and literally infringing under 35 U.S.C. § 271(a), the '498 patent by making, using, offering to sell, and/or selling to customers and/or distributors (directly or through intermediaries and/or subsidiaries) in this District and elsewhere within the United States and/or importing into the United States, without authority, patterned diamond tools that include all of the limitations of one or more claims of the '498 patent, including, but not limited to, the Zenesis Silent Core Blade S-1212LWZX4 and other Zenesis Products.

28. Upon information and belief, Defendants have been directly and equivalently infringing under the doctrine of equivalents, the '498 patent by making, using, offering to sell, and/or selling to customers and/or distributors (directly or through intermediaries and/or subsidiaries) in this District and elsewhere within the United States and/or importing into the United States, without authority, patterned diamond tools that include all of the limitations of one or more of the claims of the '498 patent, including, but not limited to, the Zenesis Silent Core Blade S-1212LWZX4 and other Zenesis Products. These patterned diamond tools perform substantially the same function as the inventions embodied in one or more claims of the '498 patent in substantially the same way to achieve the same result.

29. Upon information and belief, Defendants have known of the '498 patent since 2000. Despite this knowledge, Defendants have made, used, offered to sell, and/or sold to customers and/or distributors (directly or through intermediaries and/or subsidiaries) in this District and elsewhere within the United States and/or imported into the United States, without authority, patterned diamond tools that include all of the limitations of one or more claims of the '498 patent, including, but not limited to, the Zenesis Silent Core Blade S-1212LWZX4 and other Zenesis Products. Defendants have acted despite an objectively high likelihood that their

actions constituted infringement of the '498 patent and Defendants either knew or should have known that their actions constituted infringement of the '498 patent. Defendants have thus willfully infringed and continue to willfully infringe the '498 patent.

30. As a direct and proximate result of these acts of patent infringement, Defendants have encroached on the exclusive rights of Dr. Sung and his licensees to practice the '498 patent, for which Dr. Sung is entitled to at least a reasonable royalty.

COUNT III

PATENT INFRINGEMENT OF U.S. PATENT NO. 6,679,243

31. Dr. Sung repeats and incorporates by reference paragraphs 1-30 as if fully set forth herein.

32. The '243 patent is valid and enforceable.

33. Defendants have at no time, either expressly or impliedly, been licensed under the '243 patent.

34. Upon information and belief, to the extent any marking or notice was required by 35 U.S.C. § 287, Dr. Sung has complied with the requirements of that statute by providing actual or constructive notice to Defendants of their alleged infringement.

35. Upon information and belief, Defendants have been directly and literally infringing under 35 U.S.C. § 271(a), the '243 patent by making, using, offering to sell, and/or selling to customers and/or distributors (directly or through intermediaries and/or subsidiaries) in this District and elsewhere within the United States and/or importing into the United States, without authority, patterned diamond tools that include all of the limitations of one or more claims of the '243 patent, including, but not limited to, the Zenesis Silent Core Blade S-1212LWZX4 and other Zenesis Products.

36. Upon information and belief, Defendants have been directly and equivalently infringing under the doctrine of equivalents, the '243 patent by making, using, offering to sell, and/or selling to customers and/or distributors (directly or through intermediaries and/or subsidiaries) in this District and elsewhere within the United States and/or importing into the United States, without authority, patterned diamond tools that include all of the limitations of one or more of the claims of the '243 patent, including, but not limited to, the Zenesis Silent Core Blade S-1212LWZX4 and other Zenesis Products. These patterned diamond tools perform substantially the same function as the inventions embodied in one or more claims of the '243 patent in substantially the same way to achieve the same result.

37. Upon information and belief, Defendants have known of the '243 patent since 2000. Despite this knowledge, Defendants have made, used, offered to sell, and/or sold to customers and/or distributors (directly or through intermediaries and/or subsidiaries) in this District and elsewhere within the United States and/or imported into the United States, without authority, patterned diamond tools that include all of the limitations of one or more claims of the '243 patent, including, but not limited to, the Zenesis Silent Core Blade S-1212LWZX4 and other Zenesis Products. Defendants have acted despite an objectively high likelihood that their actions constituted infringement of the '243 patent and Defendants either knew or should have known that their actions constituted infringement of the '243 patent. Defendants have thus willfully infringed and continue to willfully infringe the '243 patent.

38. As a direct and proximate result of these acts of patent infringement, Defendants have encroached on the exclusive rights of Dr. Sung and his licensees to practice the '243 patent, for which Dr. Sung is entitled to at least a reasonable royalty.

COUNT IV

PATENT INFRINGEMENT OF U.S. PATENT NO. 6,193,770

39. Dr. Sung repeats and incorporates by reference paragraphs 1-38 as if fully set forth herein.

40. The '770 patent is valid and enforceable.

41. Defendants have at no time, either expressly or impliedly, been licensed under the '770 patent.

42. Upon information and belief, to the extent any marking or notice was required by 35 U.S.C. § 287, Dr. Sung has complied with the requirements of that statute by providing actual or constructive notice to Defendants of their alleged infringement.

43. Upon information and belief, Defendants have been directly and literally infringing under 35 U.S.C. § 271(a), the '770 patent by making, using, offering to sell, and/or selling to customers and/or distributors (directly or through intermediaries and/or subsidiaries) in this District and elsewhere within the United States and/or importing into the United States, without authority, patterned diamond tools that include all of the limitations of one or more claims of the '770 patent, including, but not limited to, the Zenesis Silent Core Blade S-1212LWZX4 and other Zenesis Products.

44. Upon information and belief, Defendants have been directly and equivalently infringing under the doctrine of equivalents, the '770 patent by making, using, offering to sell, and/or selling to customers and/or distributors (directly or through intermediaries and/or subsidiaries) in this District and elsewhere within the United States and/or importing into the United States, without authority, patterned diamond tools that include all of the limitations of one or more of the claims of the '770 patent, including, but not limited to, the Zenesis Silent Core

Blade S-1212LWZX4 and other Zenesis Products. These patterned diamond tools perform substantially the same function as the inventions embodied in one or more claims of the '770 patent in substantially the same way to achieve the same result.

45. Upon information and belief, Defendants have known of the '770 patent since 2000. Despite this knowledge, Defendants have made, used, offered to sell, and/or sold to customers and/or distributors (directly or through intermediaries and/or subsidiaries) in this District and elsewhere within the United States and/or imported into the United States, without authority, patterned diamond tools that include all of the limitations of one or more claims of the '770 patent, including, but not limited to, the Zenesis Silent Core Blade S-1212LWZX4 and other Zenesis Products. Defendants have acted despite an objectively high likelihood that their actions constituted infringement of the '770 patent and Defendants either knew or should have known that their actions constituted infringement of the '770 patent. Defendants have thus willfully infringed and continue to willfully infringe the '770 patent.

46. As a direct and proximate result of these acts of patent infringement, Defendants have encroached on the exclusive rights of Dr. Sung and his licensees to practice the '770 patent, for which Dr. Sung is entitled to at least a reasonable royalty.

COUNT V

PATENT INFRINGEMENT OF U.S. PATENT NO. 7,124,753

47. Dr. Sung repeats and incorporates by reference paragraphs 1-46 as if fully set forth herein.

48. The '753 patent is valid and enforceable.

49. Defendants have at no time, either expressly or impliedly, been licensed under the '753 patent.

50. Upon information and belief, to the extent any marking or notice was required by 35 U.S.C. § 287, Dr. Sung has complied with the requirements of that statute by providing actual or constructive notice to Defendants of their alleged infringement.

51. Upon information and belief, Defendants have been directly and literally infringing under 35 U.S.C. § 271(a), the '753 patent by making, using, offering to sell, and/or selling to customers and/or distributors (directly or through intermediaries and/or subsidiaries) in this District and elsewhere within the United States and/or importing into the United States, without authority, patterned diamond tools that include all of the limitations of one or more claims of the '753 patent, including, but not limited to, the Zenesis Silent Core Blade S-1212LWZX4 and other Zenesis Products.

52. Upon information and belief, Defendants have been directly and equivalently infringing under the doctrine of equivalents, the '753 patent by making, using, offering to sell, and/or selling to customers and/or distributors (directly or through intermediaries and/or subsidiaries) in this District and elsewhere within the United States and/or importing into the United States, without authority, patterned diamond tools that include all of the limitations of one or more of the claims of the '753 patent, including, but not limited to, the Zenesis Silent Core Blade S-1212LWZX4 and other Zenesis Products. These patterned diamond tools perform substantially the same function as the inventions embodied in one or more claims of the '753 patent in substantially the same way to achieve the same result.

53. Upon information and belief, Defendants have known of the '753 patent since 2000. Despite this knowledge, Defendants have made, used, offered to sell, and/or sold to customers and/or distributors (directly or through intermediaries and/or subsidiaries) in this District and elsewhere within the United States and/or imported into the United States, without

authority, patterned diamond tools that include all of the limitations of one or more claims of the '753 patent, including, but not limited to, the Zenesis Silent Core Blade S-1212LWZX4 and other Zenesis Products. Defendants have acted despite an objectively high likelihood that their actions constituted infringement of the '753 patent and Defendants either knew or should have known that their actions constituted infringement of the '753 patent. Defendants have thus willfully infringed and continue to willfully infringe the '753 patent.

54. As a direct and proximate result of these acts of patent infringement, Defendants have encroached on the exclusive rights of Dr. Sung and his licensees to practice the '753 patent, for which Dr. Sung is entitled to at least a reasonable royalty.

DAMAGES

55. Dr. Sung is entitled to recover from Defendants the damages he sustained as a result of Defendants' wrongful acts in an amount subject to proof at trial, which, by law, cannot be less than a reasonable royalty, together with interest and costs as fixed by this Court.

56. Dr. Sung has incurred and will incur attorneys' fees, costs, and expenses in the prosecution of this action. The circumstances of this dispute create an exceptional case within the meaning of 35 U.S.C. § 285, and Dr. Sung is entitled to recover his reasonable and necessary attorneys' fees, costs, and expenses.

DEMAND FOR JURY TRIAL

57. Dr. Sung hereby requests a trial by jury pursuant to Rule 38 of the Federal Rules of Civil Procedure.

PRAYER FOR RELIEF

58. Dr. Sung respectfully requests that the Court find in his favor and against Defendants, and that the Court grant Dr. Sung the following relief:

- A. A judgment that each of the Defendants has infringed the patents-in-suit as alleged herein under 35 U.S.C. § 271;
- B. A judgment for an accounting of all damages sustained by Dr. Sung as a result of the acts of infringement by each of the Defendants;
- C. A judgment and order requiring each of the Defendants to pay Dr. Sung damages under 35 U.S.C. § 284, and any royalties determined to be appropriate;
- D. A judgment and order requiring each of the Defendants to pay Dr. Sung pre-judgment and post-judgment interest on the damages awarded;
- E. Enter a preliminary, and thereafter, permanent injunction against Defendants.
- F. A judgment and order finding this to be an exceptional case and requiring each of the Defendants to pay the costs of this action (including all disbursements) and attorneys' fees as provided by 35 U.S.C. § 285; and
- G. Such other and further relief as the Court deems just and equitable.

Dated: November 1, 2013

MORRIS, LAING, EVANS, BROCK, &
KENNEDY, CHARTERED

s/Julia Gilmore Gaughan

Julia Gilmore Gaughan, MO #60724
Lucas C. Wohlford, KS # 25798
800 SW Jackson, Suite 1310
Topeka, KS 66612
Phone: (785) 232-2662 Fax: (785) 232-9983

Email: jgaughan@morrislaing.com
Email: lwohlford@morrislaing.com

Robert W. Coykendall, KS #10137
Will B. Wohlford, KS #21773
300 N. Mead, Suite 200
Wichita, KS 67202
Phone: (316) 262-2671 Fax: (316) 262-6226
Email: rcoykendall@morrislaing.com
Email: wwohlford@morrislaing.com