

JS 44 (Rev. 11/04)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS Andersen Manufacturing, Inc.	DEFENDANTS Diversi-Tech Corporation, Angela Budge, and Paul Budge
(b) County of Residence of First Listed Plaintiff <u>Bonneville</u> (EXCEPT IN U.S. PLAINTIFF CASES)	County of Residence of First Listed Defendant _____ (IN U.S. PLAINTIFF CASES ONLY) NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.
(c) Attorney's (Firm Name, Address, and Telephone Number) Todd E. Zenger, KIRTON & McCONKIE, 60 East South Temple, Suite 1800, Salt Lake City, UT 84111; 328-3600; fax: 321-4893	Attorneys (If Known) Alan L. Edward, KUNZLER & McKENZIE

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)	III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)																								
<input type="checkbox"/> 1 U.S. Government Plaintiff <input type="checkbox"/> 2 U.S. Government Defendant <input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party) <input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <th></th> <th>PTF</th> <th>DEF</th> <th></th> <th>PTF</th> <th>DEF</th> </tr> <tr> <td>Citizen of This State</td> <td><input type="checkbox"/> 1</td> <td><input type="checkbox"/> 1</td> <td>Incorporated or Principal Place of Business In This State</td> <td><input type="checkbox"/> 4</td> <td><input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td><input type="checkbox"/> 2</td> <td><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business In Another State</td> <td><input type="checkbox"/> 5</td> <td><input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td><input type="checkbox"/> 3</td> <td><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td><input type="checkbox"/> 6</td> <td><input type="checkbox"/> 6</td> </tr> </table>		PTF	DEF		PTF	DEF	Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
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Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6																				

IV. NATURE OF SUIT (Place an "X" in One Box Only)				
CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input checked="" type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		

V. ORIGIN (Place an "X" in One Box Only)							
<input type="checkbox"/> 1 Original Proceeding	<input type="checkbox"/> 2 Removed from State Court	<input type="checkbox"/> 3 Remanded from Appellate Court	<input type="checkbox"/> 4 Reinstated or Reopened	<input type="checkbox"/> 5 Transferred from another district (specify)	<input type="checkbox"/> 6 Multidistrict Litigation	<input type="checkbox"/> 7 Appeal to District Judge from Magistrate Judgment	

VI. CAUSE OF ACTION	Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): <u>35 U.S.C. § 1 et. seq.</u> Brief description of cause: <u>Patent Infringement</u>
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VII. REQUESTED IN COMPLAINT:	<input type="checkbox"/> CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23	DEMAND \$ _____ CHECK YES only if demanded in complaint: JURY DEMAND: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
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VIII. RELATED CASE(S) IF ANY	(See instructions): JUDGE _____	DOCKET NUMBER _____
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DATE _____ SIGNATURE OF ATTORNEY OF RECORD Todd E. Zenger

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

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Attorneys for Plaintiff

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH

ANDERSEN MANUFACTURING , INC., an Idaho Corporation Plaintiff, vs. DIVERSI-TECH, CORP., A Utah Corporation, ANGELA BUDGE, an Individual, and PAUL BUDGE, an Individual, Defendants.	Civil Action No. 2:07-CV-00088 Judge Ted Stewart COMPLAINT AND JURY DEMAND
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Plaintiff, Andersen Manufacturing, Inc., by and through their attorneys, complaining of Diversi-Tech Corp. and Paul and Angela Budge (collectively referred to as “Diversi-Tech”) seeks judgment and other relief and alleges:

JURISDICTION, VENUE

1. This action arises under the patent laws of the United States. 35 U.S.C. § 1 et. seq. Jurisdiction is conferred on this Court by 28 U.S.C. §§ 1331 and 1338. Venue is proper in this District under 28 U.S.C. §§ 1391 and 1400.

PARTIES

2. Plaintiff, Anderson Manufacturing, Inc. (“Andersen”), is an Idaho corporation organized and operating under the laws of the State of Idaho with a principal place of business at 3125 N. Yellowstone Highway, Idaho Falls, Idaho 83401. By assignment and agreement, Anderson has all necessary legal rights to bring this action.

3. Upon information and belief, Diversi-Tech, Diversi-Tech Corporation, a Utah corporation, has a principal place of business at 1187 W. Green Spring Heights North Drive, Washington, Utah (“Diversi-Tech”), and is doing business in Utah and in this judicial district.

4. Upon information and belief, Mr. Paul W. Budge is residing at 1187 W. Green Spring Heights North, Washington, Utah 84750.

5. Upon information and belief, Mrs. Angela Budge is an officer of Diversi-Tech Corp., and is residing at 1187 W. Green Spring Heights North, Washington, Utah 84750.

GENERAL ALLEGATIONS

6. This case relates to United States Patent No. 7,156,412 (“the ‘412 Patent’) for Systems and methods for providing an aluminum bar for towing and United States Patent No. 6,908,099 (“the ‘099 Patent’) for methods of manufacturing aluminum tow hitches.

7. Andersen designs, develops, produces, manufactures, markets, sells and distributes aluminum trailer hitch components.

8. Andersen's business is throughout the United States, including the state of Utah and this judicial District.

9. Upon information and belief Angela Budge makes all major decisions for Diversi-Tech as Diversi-Tech's only director, secretary, treasurer and registered agent.

10. Diversi-Tech-Tech and Angela Budge were alerted of the '412 Patent by certified mail on February 12, 2007, and to the '099 Patent at least as early as November, 2005.

11. Upon information and belief, Angela Budge deliberately used the corporate entity as an instrument to willfully infringe Andersen's patents when she authorized and oversaw Diversi-Tech's Corp.'s decisions to design and manufacture infringing products.

12. Upon information and belief, Paul Budge deliberately used the corporate entity as an instrument to willfully infringe Andersen's patents by authorizing the manufacture, use and/or sale of Diversi-Tech's infringing products with knowledge of Andersen's patents; by making made day to day decisions for Diversi-Tech including Diversi-Tech's product line, the methods used to manufacture the products, and by directing Diversi-Tech Corp. to continue its infringing conduct after receiving Andersen's demand to cease manufacture, use and/or sale of the accused devices.

13. Upon information and belief, Paul Budge had knowledge of the '412 and the '099 Patents by virtue of his employment at Diversi-Tech, his involvement in Diversi-Tech's day to day operations, and his involvement in Diversi-Tech's other co-pending litigation.

14. Upon information and belief, Paul Budge is a major stakeholder in Diversi-Tech.

15. Diversi-Tech, Angela Budge and/or Paul Budge manufactures and/or sells aluminum drop bar tow bars which are made of aluminum and configured with outside

dimensions which permit insertion of the end into the hitch adapter of a motorized vehicle for towing. An example of the infringing device is Diversi-Tech's DT-LBM8200 tow bar.

16. Upon information and belief, Angela Budge and/or Paul Budge have used Diversi-Tech Corp. to willfully infringe the claims of the '099 and '412 Patents with the intention of avoiding personal liability for its infringing activity.

17. Upon information and belief, Angela Budge and/or Paul Budge have treated the entity Diversi-Tech as an alter-ego by failing to observe at least one of the corporate formalities including undercapitalizing the entity, intermingling personal assets with corporate assets, and shuttling personal funds in and out of the corporation without regard to formality and to suit their immediate convenience.

18. Without authorization from Andersen, Diversi-Tech, Angela Budge and/or Paul Budge has used and/or is manufacturing tow bars and/or trailer hitch components which is protected by one or more of claims 1, 4-22 of the '412 Patent, and 1-4, 6-8 and 11-18 of the '099 Patent ("Asserted Claims") in the United States.

19. Without authorization from Andersen, Diversi-Tech, Angela Budge and/or Paul Budge has offered to sell and/or does offer to sell aluminum trailer hitch components protected by one or more of the Asserted Claims in the United States, including in this judicial district.

20. Without authorization from Andersen, Diversi-Tech Angela Budge and/or Paul Budge has sold and/or is selling aluminum trailer hitch components protected by one or more of the Asserted Claims in the United States, including in this judicial district.

21. Without authorization from Andersen, Diversi-Tech, Angela Budge and/or Paul Budge has actively induced and/or is actively inducing third parties to offer for sale, to sell

and/or to use aluminum hitch components protected by one or more of the Asserted Claims in the United States, including in this judicial district.

22. Diversi-Tech's, Angela Budge's and/or Paul Budge's conduct constitutes infringement of the '099 and '412 Patents.

23. The forgoing conduct of Diversi-Tech, Angela Budge and/or Paul Budge has caused and will continue to cause irreparable harm to Andersen. The conduct of Diversi-Tech is knowing and willful and will continue to be knowing and willful unless enjoined by this Court.

24. The forgoing conduct of Diversi-Tech, Angela Budge and/or Paul Budge has caused and will continue to cause damage, including irreparable harm to Andersen. The conduct of Diversi-Tech, Angela Budge and/or Paul Budge is knowing and willful and will continue to be knowing and willful unless remedied by this Court by causing Diversi-Tech to pay money damages, including increasing damages up to three times as permitted by law.

25. Because the conduct of Diversi-Tech, Angela Budge and/or Paul Budge is knowing and willful, this is a case in which Diversi-Tech should be required to pay Andersen's attorneys fees.

FIRST CLAIM FOR RELIEF

(Judgment of Direct Infringement of the '099 and '412 Patents)

26. Andersen incorporates by reference paragraphs 1 through 25 of this Complaint as though set forth here in full.

27. Pursuant to patent laws of the United States, the forgoing acts of Diversi-Tech constitute direct infringement of one or more claims of the '099 and '412 Patents.

28. Andersen requests the Court to find that the acts of Diversi-Tech constitute direct infringement of one or more of the claims of the '099 '412 Patents.

29. Andersen requests the Court to find the direct infringement of Diversi-Tech has been willful, in bad faith and/or in reckless disregard of the rights of Andersen.

SECOND CLAIM FOR RELIEF
(Judgment of Inducing Infringement of the '099 and '412 Patents)

30. Andersen incorporates by reference paragraphs 1 through 29 of this Complaint as though set forth here in full.

31. One Pursuant to patent laws of the United States, the forgoing acts of Diversi-Tech, Angela Budge and Paul Budge constitute inducing infringement of one or more claims of the '099 and '412 Patents.

32. Andersen requests the Court to find that the acts of Diversi-Tech, Angela Budge and/or Paul Budge constitute inducing infringement of one or more of the claims of the '099 and '412 Patents.

33. Andersen requests the Court to find that the induced infringement of Diversi-Tech, Angela Budge and Paul Budge has been willful, in bad faith and/or in reckless disregard of the rights of Andersen.

WHEREFORE, Plaintiff, Andersen, prays for judgment and relief as follows:

34. Judgment in favor of Andersen finding that Diversi-Tech, Angela Budge and/or Paul Budge are jointly and severally liable for direct infringement of the '099 and '412 Patents.

35. Judgment in favor of Andersen finding that Diversi-Tech, Angela Budge and/or Paul Budge are jointly and severally liable for inducing infringement of the '099 and '412 Patents.

36. Judgment in favor of Andersen finding that Diversi-Tech, Angela Budge and/or Paul Budge must pay Andersen money damages in an amount to be determined at trial.

37. Judgment in favor of Andersen that damages should be increased up to three times.

38. For temporary, preliminary and permanent injunctive relief ordering Diversi-Tech to refrain from further infringing any claims of the '099 and '412 Patents.

39. An accounting for and an award of any and all ascertainable damages, to be determined at trial, related to the unlawful acts of Diversi-Tech.

40. For reasonable attorney's fees.

41. For costs of suit incurred in his action.

42. For such further relief as the Court may deem proper.

JURY DEMAND

A demand is hereby made for trial by jury.

DATED this 14th day of February, 2007.

KIRTON & McCONKIE

By: s/ Todd E. Zenger
Todd E. Zenger
Dax D. Anderson

Attorney for Plaintiff
ANDERSEN MANUFACTURING, INC.