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8 UNITED STATES DISTRICT COURT  
 9 DISTRICT OF ARIZONA

10 Clim-A-Tech Industries, Inc.,  
 11 a Minnesota corporation  
 12  
 13 Plaintiff,  
 14  
 15 vs.  
 16 William A. Ebert, an individual, and  
 Sunwest Supply, Inc., an Arizona  
 corporation,  
 17 Defendants.

NO. CV-15-00873-PHX-GMS  
**FIRST AMENDED  
 DECLARATORY JUDGMENT  
 COMPLAINT (JURY TRIAL  
 DEMANDED)**

18 This is an action seeking Declaratory Judgment that United States Patent No.  
 19 6,746,581, which is believed to be owned by named inventor William A. Ebert (and  
 20 any undisclosed assignees or licensees), has not been infringed by Clim-A-Tech  
 21 Industries, Inc.; and/or is invalid and unenforceable under 35 U.S.C. §§ 102, 103, and/  
 22 or 112.<sup>1</sup>

23 The Parties

24 1. Clim-A-Tech Industries, Inc. (“Clim-A-Tech”) is a Minnesota corporation

25 <sup>1</sup> Clim-A-Tech filed its Complaint for Declaratory Judgment in U.S. District Court for  
 26 the District of Arizona on May 14, 2015. Defendants have not filed answers or other  
 27 responsive pleadings to the Complaint for Declaratory Judgment. On June 25, 2015,  
 28 Clim-A-Tech submitted its Notice of Voluntary Withdrawal (Without Prejudice) of Its  
 Third Cause of Action for unenforceability of Ebert’s patent. [Doc. #16.] The First  
 Amended Declaratory Judgment Complaint reflects the voluntary withdrawal (without  
 prejudice) of Clim-A-Tech’s cause of action for unenforceability.

1 with a principal place of business at 11117 Excelsior Boulevard, Hopkins, Minnesota  
2 55343. Clim-A-Tech’s primary place for the manufacture and sale of its U shaped  
3 cathode protector is Clim-A-Tech S.W. Division, 2801 E. Chambers Street, Phoenix,  
4 Arizona 85040.

5 2. William A. Ebert is a resident of the State of Arizona, and is the named  
6 inventor and owner of United States Patent No. 6,746,581 (“the ‘581 Patent”).

7 3. Ebert is also the Officer, Director and registered agent for Sunwest  
8 Supply, Inc. (“Sunwest”), an Arizona corporation with a principal place of business at  
9 P.O. Box 5091, Tucson, Arizona 85703.

10 Jurisdiction and Venue<sup>2</sup>

11 4. This Complaint arises under the Patent Laws of the United States, 35  
12 U.S.C. § 100, *et seq.*, and the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202.

13 5. This Court has jurisdiction over the subject matter of this action pursuant  
14 to 28 U.S.C. §§ 1331, 1332 and 1338(a), 2201 and 2202, and supplemental jurisdiction  
15 under 28 U.S.C. § 1367. The amount in controversy, exclusive of costs and interest,  
16 exceeds Seventy-Five Thousand Dollars (\$75,000.00).

17 6. Venue is proper in this judicial district under 28 U.S.C. § 1391(b).

18 General Allegations

19 7. Clim-A-Tech is a Minnesota-based worldwide supplier of plastic profile  
20 extrusions and die-cut flexible components to small and large window & door  
21 companies, appliance manufacturers, recreational industry, technology sector, refining/  
22 mining industry, medical industry, retail and other industrial/commercial markets.

23 8. Clim-A-Tech has been an industry leader since 1969 and after nearly 50  
24 years in custom manufacturing is now an employee-owned company, operated with the  
25 dedication and loyalty of a team of business owners.

26 \_\_\_\_\_  
27 <sup>2</sup> Clim-A-Tech originally filed a Complaint for Declaratory Judgment against Ebert  
28 and Sunwest on May 13, 2014 in U.S. District Court for the District of Minnesota,  
Case No. 0:14-cv-01496-MJD-SER. [Doc. #1.] On May 11, 2015, the District Court  
dismissed the case for lack of personal jurisdiction. [Doc. #30.]





Third Cause of Action

(Tortious Interference with Existing Business Contracts and Prospective Business Relations against Sunwest Supply, Inc.)

29. Clim-A-Tech realleges and incorporates by reference each of the preceding allegations of the Complaint as though expressly stated herein.

30. This Declaratory Judgment Action arises under the Patent Laws of the United States, 35 U.S.C. § 1, *et seq.*, and the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202.

31. An actual and justiciable controversy exists between the parties regarding the allegations of infringement of the '581 Patent.

32. Clim-A-Tech has valid business relationships with, and reasonable expectations of economic advantage or benefit from, existing and potential customers who purchase Clim-A-Tech's products.

33. Sunwest had knowledge of Clim-A-Tech's valid business relationships and its reasonable expectations of economic advantage and benefit.

34. Sunwest intentionally interfered with Clim-A-Tech's valid business relationships with, and its reasonable expectations of economic advantage or benefit from, those customers.

35. For instance, Sunwest intentionally interfered with Clim-A-Tech's valid business relationships with, and its reasonable expectations of economic advantage or benefit from, those customers by sending to Clim-A-Tech the April 30, 2014, letter purporting to enforce the '581 Patent and demanding that Clim-A-Tech cease and desist from all sales of the U-shaped cathode protector when it was subsequently represented on August 21, 2014, that Sunwest owns no interest in the '581 Patent and had no authority to enforce the '581 Patent.

36. For instance, Sunwest intentionally interfered with Clim-A-Tech's valid business relationships with, and its reasonable expectations of economic advantage or benefit from, those customers by making untrue, improper and inaccurate statements to Clim-A-Tech's customers and colleagues in the industry about the nature, scope and

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1 merit of the patent infringement allegations, and the procedural posture of this pending  
2 matter.

3 37. Sunwest’s interference with Clim-A-Tech’s valid business relationships  
4 and reasonable expectations of economic advantage or benefit has been and is wrongful  
5 and without justification for at least the reason that such interference has been motivated  
6 by an intent to encourage, solicit, induce or otherwise persuade Clim-A-Tech’s existing  
7 and potential customers to purchase Sunwest products instead of Clim-A-Tech’s  
8 products.

9 38. Clim-A-Tech has sustained damages as a result of Sunwest’s conduct,  
10 including but not limited to the attorneys’ fees required to clear the issue, resolve and  
11 settle rights.

12 39. Clim-A-Tech will continue to suffer irreparable injury, for which Clim-A-  
13 Tech has no adequate remedy at law, unless and until Sunwest is enjoined from  
14 interfering with Clim-A-Tech’s valid business relationships and reasonable expectations  
15 of economic advantage or benefit.

16 Demand for Jury Trial

17 Clim-A-Tech hereby demands a jury trial as to all matters so triable.

18 Prayer for Relief

19 WHEREFORE, Clim-A-Tech prays for judgment against Defendants:

- 20 A. Declaring that U.S. Patent 6,746,581 is not infringed by Clim-A-Tech;
- 21 B. Declaring that U.S. Patent 6,746,581 is invalid under 35 U.S.C. §§ 102, 103  
22 and 112;
- 23 C. Issuing a preliminary and permanent injunction enjoining Defendants and  
24 their agents, employees, officers, servants, representatives, successors and  
25 assigns, and others in active concert, privity with them from tortious  
interference with Clim-A-Tech’s existing or prospective business relations,  
including but limited to enforcing U.S. Patent 6,746,581 against any of  
Clim-A-Tech’s current or future customers;
- 26 D. Awarding Clim-A-Tech compensatory and/or exemplary damages;
- 27 E. Awarding Clim-A-Tech its attorneys’ fees, costs and expenses in this action  
28 under 35 U.S.C. § 285; and

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F. Awarding such other and further relief as this Court may deem just and equitable.

DATED: June 30, 2015.

LEWIS ROCA ROTHGERBER LLP

By: /s/ Kris J. Kostolansky  
Kris J. Kostolansky

Attorneys for Plaintiff Clim-A-Tech Industries, Inc.

**CERTIFICATE OF SERVICE**

I certify that on June 30, 2015, I served the foregoing via U.S. Mail and electronically to the following:

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