

FILED
2017 MAR 22 11:11 AM
CLERK OF DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TALLAHASSEE, FLORIDA

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA

AMIT AGARWAL,

Plaintiff,

v.

Eydent Insurance Services LLC

Defendant.

Civil Action No. 8:17-cv-669-T-35-TGW

COMPLAINT AND DEMAND FOR JURY TRIAL

Complaint for Patent Infringement

Amit Agarwal (“Amit”) sues Eydent Insurance Services LLC (“Eydent”) for indirect infringement of at least claim 1 of Pat. 6,418,004 (“’004”) and at least claim 1 of Pat. 6,853,531 (“’531”) (collectively “patents-in-suit”).

Parties

1. **Plaintiff:** Amit Agarwal (“Amit”) of 14420 Edinburgh Moor Dr., Wimauma, Florida 33598 is the owner and assignee of the patents-in-suit.

2. **Defendants:** Eydent Insurance Services LLC is an insurance underwriter out of 3700 East River Rd., Mt. Pleasant, MI 48858.

//

TPA042543

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Jurisdiction and Venue

3. **Subject Matter Jurisdiction:** This civil action arises under the United State Patent Act codified in 35 U.S.C. § 271(a)—an Act of Congress relating to patents. This Court has original jurisdiction to hear any civil action arising under an Act of Congress relating to patents such as the Patent Act. 28 U.S.C. § 1338(a). Thus, this Court has subject matter jurisdiction.

4. **Personal Jurisdiction:** This Court has personal jurisdiction over Eydent, which underwrites ArborMax insurance for tree care companies throughout the country, including in this District, and contracts with ArborOne Insurance out of 1408 N Westshore Blvd Ste 708, Tampa, FL 33607 to sell policies.

5. **Venue:** Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391(b) and (c) and § 1400(b) because Eydent is subject to personal jurisdiction in this judicial district.

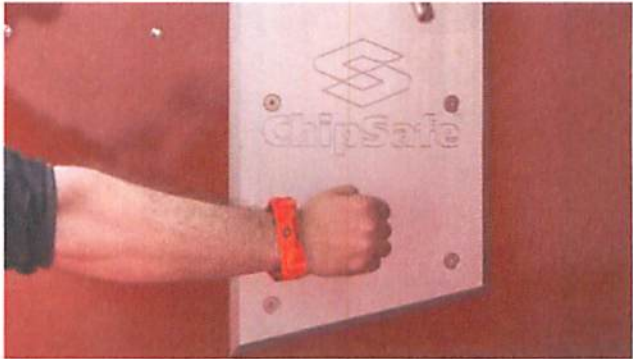
Factual Allegations

Predicate Direct Infringement

6. The predicate direct infringement for the indirect infringement action is the use of a safety device called ChipSafe for use with Morbark’s brush chippers.

Claim	Preliminary Infringement Contentions
A wood chipping machine comprising a safety system, said wood chipping machine including:	Morbark LLC’s Beaver M6R, M8D, M12D, M12RX, M12R, M15RX, M15R, M18RX and M18R brush chippers are wood chipping machines. Morbark’s ChipSafe Operator Safety Shield which is a safety system. Collectively, these machines are hereinafter referenced as “Accused Products.”
chipping blades that rotate to chip material delivered to the machine;	In Paragraph 11 of its Amended Answer in <i>Agarwal v. Morbark</i> , Case 8:17-cv-00133-CEH-AEP Document 13 (M.D. Fla. 03/02/17), Morbark admitted that in the Accused Products, the chipping blades rotate to chip material delivered to the machine.
a feed rollers that grip and feed the material to the chipping blades;	In Paragraph 12 of its Amended Answer in <i>Agarwal v. Morbark</i> , Case 8:17-cv-00133-CEH-AEP Document 13 (M.D. Fla. 03/02/17), Morbark admitted that the Accused Products include feed rollers that grip and feed the material to the chipping blades.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Claim	Preliminary Infringement Contentions
<p>a feed chute that guides material to the feed rollers, the feed chute having walls defining a passage, an open front end for receiving the material and an open rear end adjacent the feed rollers; and</p>	<p>In Paragraph 13 of its Amended Answer in <i>Agarwal v. Morbark</i>, Case 8:17-cv-00133-CEH-AEP Document 13 (M.D. Fla. 03/02/17), Morbark admitted that the Accused Products include a feed chute that guides material to the feed rollers, the feed chute having walls defining a passage, an open front end for receiving the material and an open rear end adjacent the feed rollers.</p>
<p>a motor that drives the feed rollers and the chipping blades;</p>	<p>In Paragraph 14 of its Amended Answer in <i>Agarwal v. Morbark</i>, Case 8:17-cv-00133-CEH-AEP Document 13 (M.D. Fla. 03/02/17), Morbark admitted that the Accused Products include a motor that drives the feed rollers and the chipping blades.</p>
<p>said safety system comprising: at least one passive sensor incorporated in a band worn by a user of the wood chipping machine;</p>	<p>The ChipSafe Operator Safety Shield System comprises at least one passive sensor incorporated in a band worn by a user of the wood chipping machine.</p> <p>Morbark states in the FAQ section of its website, the ChipSafe system uses magnets to create a magnetic field. These magnets creating a magnetic field are the passive sensors. http://www.morbark.com/equipment/chipsafe-operator-safety-shield/#1365620863249-5-4dbad-0b5e</p> <p>Furthermore, as depicted these magnets are incorporated in a band worn by a user of the wood chipping machine, as confirmed by the same website, which states, “When preparing to use a brush chipper equipped with the ChipSafe device, operators must wear ChipSafe straps on their wrists.” http://www.morbark.com/equipment/chipsafe-operator-safety-shield/#1364311717-2-50dbad-0b5e</p>  <p><i>Id.</i></p>
<p>at least one sensing coil mounted on one of the walls of the chute, the sensing coil generating a signal when the passive sensor is in the passage; and</p>	<p>In Paragraph 17 of its Amended Answer in <i>Agarwal v. Morbark</i>, Case 8:17-cv-00133-CEH-AEP Document 13 (M.D. Fla. 03/02/17), Morbark admitted that the Accused Products include at least one sensing coil mounted on one of the walls of the chute.</p>

Claim	Preliminary Infringement Contentions
	<p>Morbark’s site states, “If, while feeding the brush chipper, the operator’s ChipSafe wearable accessories enter the defined ChipSafe sensing zone, sensors in the plates send a signal to interrupt the chipper’s feeding mechanism, protecting the operator from possible injury.” http://www.morbark.com/equipment/chipsafe-operator-safety-shield/#1364311717-2-50dbad-0b5e</p> <p>Thus, the sensing coil generates a signal when the passive sensor is in the passage.</p>
<p>means for stopping the chipping blades and/or the feed rollers in response to the signal.</p>	<p>Morbark’s site states, “If, while feeding the brush chipper, the operator’s ChipSafe wearable accessories enter the defined ChipSafe sensing zone, sensors in the plates send a signal to interrupt the chipper’s feeding mechanism, protecting the operator from possible injury.” http://www.morbark.com/equipment/chipsafe-operator-safety-shield/#1364311717-2-50dbad-0b5e</p> <p>Consequently, the Accused Products contain means for stopping the chipping blades and/or the feed rollers in response to the signal.</p>

ChipSafe’s Magnets are “Passive Sensors”

7. Fig. 1 of the patents-in-suit depicts one example of a passive sensor with a coil 21.

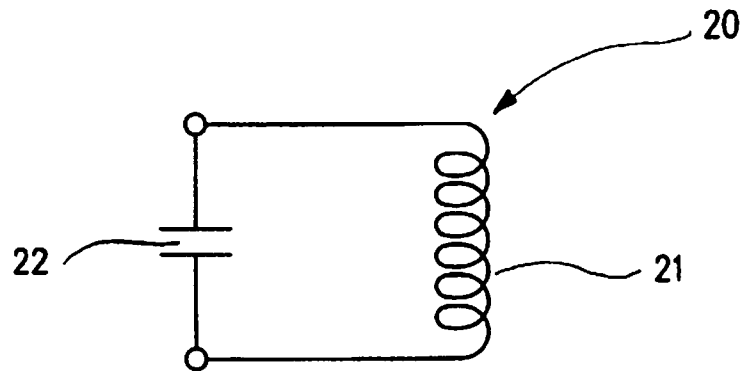


Fig. 1

8. The specification of the patents-in-suit states:

- “The **passive sensor** coils worn by the machine operator function to modify the electromagnetic field produced by coil whenever the passive sensor coils are close enough to the coil.” ’004 patent at 3:40-43 (describing function of coils in the preferred embodiment of the passive sensor).
- The use of **passive sensors** like that shown in FIG. 1 means that no power supply need be carried by the machine operator. As the passive sensors do not require power, their

1 function is not dependent on the presence of a power supply to them and thus give rise
2 to operational advantages. *Id.* at 4:28-33 (stating that the passive sensors do need
3 power supply).

4 9. On information and belief (in the laws of physics), a magnet, like that used in ChipSafe,
5 worn by the machine operator functions to modify the electromagnetic field produced by the coil
6 whenever the magnet is close enough to the coil.

7 10. On information and belief (in the laws of physics), a magnet, like that used in ChipSafe,
8 does not need power supply, and its function is not dependent on the presence of a power supply,
9 giving rise to operational advantages.

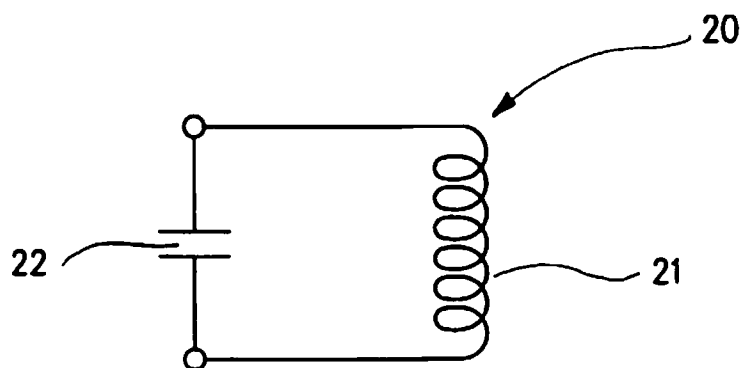
10 11. The file history provides guidance that metal-impregnated gloves as in Mooring (U.S. Pat.
11 5,667,152) and radiation emitters as in Simonton (U.S. Pat. 2,913,581) are *not* passive sensors.

12 12. The file history further confirms that Hildebrand (U.S. Pat. 5,227,798) discloses a passive
13 sensor which, the file history states, is “magnetically coupled” to the receiver. A magnet
14 qualifies as a passive sensor because a magnet, just like the coils (21) or the Hildebrand passive
15 sensor, can be magnetically coupled to the receiver.

16 13. Furthermore, like the LC circuit, a magnet would also not require a power source.

17 14. The intrinsic evidence, therefore, confirms that a magnet squarely falls within any
18 plausible construction of “passive sensor.”

19 15. A partial list of over a dozen pieces of extrinsic evidence (most are survey/introduction
20 books) provides further confirmation that the current-carrying coil 21 of Fig. 1 of the
21 specification shared by the patents-in-suit is, as a matter of physics, a bar magnet.

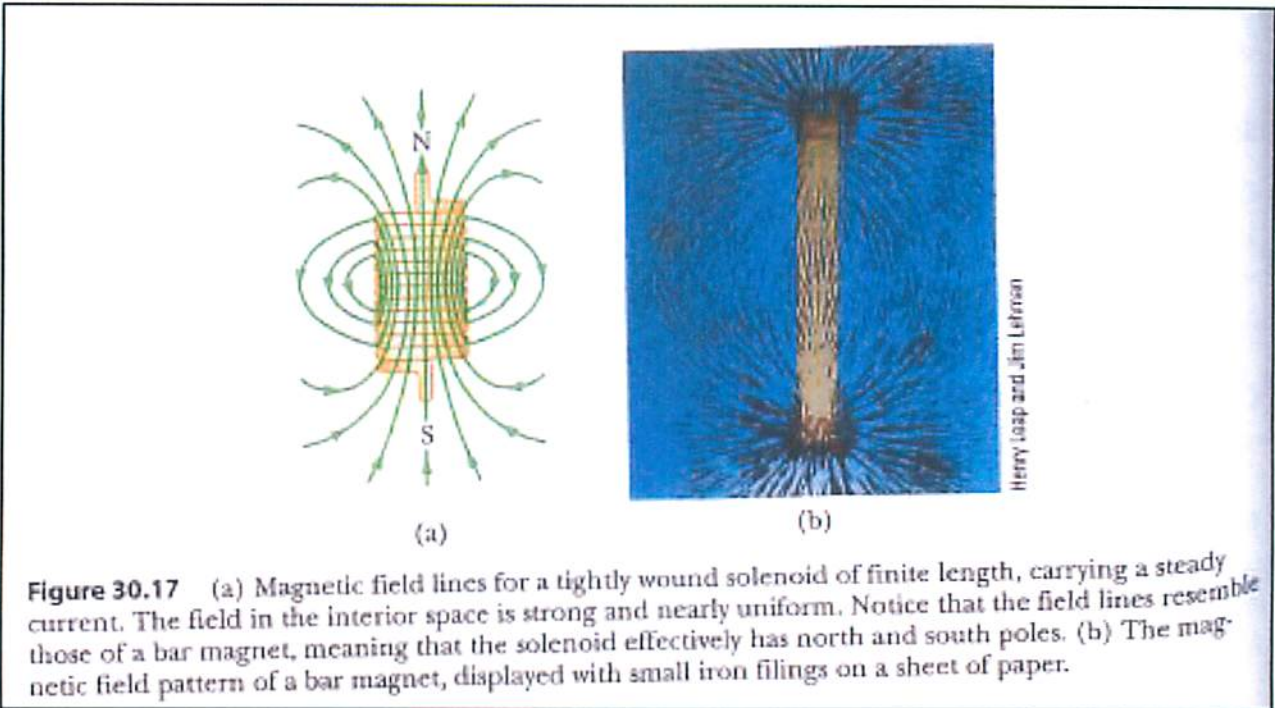


22
23
24
25
26
27
28
Fig. 1

1	Author	Title	Excerpt
2	Andreas Trügler	Optical Properties of Metallic Nanoparticles: Basic Principles and Simulation	We know from magnetostatics that a circulating ring current of a microscopic coil yields a certain magnetic dipole moment given by the product of current and area of the coil . . . Thus, a popular design for magnetic atoms is to mimic an ordinary LC-circuit , consisting of a plate capacitor with capacitance C and a magnet coil with inductance L. See page 177.
3	NYU	Electromagnetic Induction	An experiment of inducing EMF by a permanent magnet (i.e., Section 3) is repeated in Section 4 with a current carrying coil (RLC circuit) instead of the magnet. See pages 3-4. A coil with a current has a magnetic field similar to that of a bar magnet. See page 3, section 4. If the coil is moved with respect to another coil, the changing magnetic field will induce an EMF. Id. There is a great deal of similarity between moving a magnet and moving a coil with a current. The magnet also has currents, but the currents are not produced by conduction electrons but by electron orbits and spins in the magnetized material from which the magnet is made. See page 4.
4	R Nave (GSU)	Solenoid	A long straight coil of wire can be used to generate a nearly uniform magnetic field similar to that of a bar magnet. See top paragraph.
5	Owen Bishop	Electronics: A First Course	It can be shown that, when a current flows in a wire, a magnetic field is produced around the wire. If the wire is formed into a coil, the magnetic field resembles that of a bar magnet. See page 63.
6	KHJ Buschow	Handbook of Magnetic Materials, Volume 18	Magnetic biscuits are employed to monitor the digestion tract. These biscuits are swallowed and their movement is monitored by external magnetic sensors. They are based on the same technologies as magnetic trackers with passive marker, which may be a hard magnet , a magnetically soft magnetic material, Wiegand wire, an LC resonator , or an RF transponder. See page 411.
7	Dean C. Karnopp, Donald L. Margolis, Ronald C. Rosenberg	System Dynamics: Modeling, Simulation, and Control of Mechatronic Systems	Design of magnetic circuits to produce constant fields either with permanent magnets or with current carrying coils. See bottom of section 11.2 and references 4 and 5.
8	Purdue university lab 12	Faraday's effect and LC circuits	Lab assignment where students (i) use a magnet to induce and measure EMF and (ii) LC circuit to induce same. See page 1.
9	Robert Gardner	Electricity and Magnetism Science Fair Projects, Revised and Expanded	Once Oersted's discovery became known, scientists realized that magnets could be made by sending electronic currents through coils of wire. Andre Ampere, a French physicist, showed that the magnetic effects produced by electricity could be used to detect and measure electric current. You have already built a coil that can detect current. In this experiment, you will see that current-carrying coils really do behave like magnets. See page 111.

1	Author	Title	Excerpt
2	Ranjit Ghosh, 3 Ashit Kumar 4 Chakrabarty	Rudiments of Physics	The magnetic lines of force due to a current carrying solenoid will be exactly similar to those due to a bar magnet and hence it can be said that a current carrying solenoid behaves like a bar magnet. See page, 885.
5	John M. Charap	Covariant Electrodynamics: A Concise Guide	While setting up a demonstration for a lecture, Hans Christian Orsted (1777-1851) discovered that an electric current has an effect on a compass needle. Within weeks of learning of Orsted's discovery, Andre-Marie Ampere (1775-1836) followed this up with an extensive study of the magnetic phenonena associated with an electric current, showing that a solenoidal current-carrying coil behaves like a magnet. See page 1.
6			
7			
8	Jim Breithaupt	New Understanding Physics for Advanced Level	Imagine driving a corkscrew into a cork. Its rotation is in the same direction as the field lines of a wire carrying a current in the driving direction. . . A solenoid carrying a steady current produces a magnetic field like the field of a bar magnet. Because the field of a bar magnet is like that of a solenoid, we can say that a solenoid has poles like a bar magnet. See page 258
9			
10			
11			
12	Debora M. Katz	Physics for Scientists and Engineers: Foundations and Connections, Volume 2	. . . remember that a coil's magnetic field looks similar to that of a bar magnet. So, you can imagine the coil as a bar magnet . . . See page 1019
13			
14			
15	Mahendra Jain (Editor)	Competition Science Vision, Jan 2003	A current carrying solenoid or a coil or a current loop behaves like a bar magnet. . . When an electric current is passed through a solenoid, it behaves like a bar magnet. See page 1422
16			
17			
18	//		
19	//		
20	//		
21	//		
22	//		
23	//		
24	//		
25	//		
26	//		
27	//		
28			

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28



Serway & Jewett, *Physics for Scientists and Engineers With Modern Physics*, 7th ed. (2008)
 (“field lines resemble those of a bar magnet . . . solenoid effectively has north and south poles.”)

Inducement

- 16. Eydent specializes in providing commercial property and casualty alternative risk solutions for specialty niche programs nationwide.
- 17. Eydent administers the ArborMax Program through which it offers insurance for tree care companies.
- 18. On Feb. 7, 2017, in a magazine called Total Landscape Care, in an article¹ by David Roundtree entitled *Product roundup: Morbark’s ChipSafe, polymer-coated fertilizer*, Mr. Tunge, VP of Marketing at Eydent, stated, “We recognize that the ChipSafe Operator Safety device from Morbark offers operators an additional layer of protection when operating a brush chipper . . . We encourage all of our client companies to be safe by providing ongoing training, proper equipment, and now by exploring the benefits of having a ChipSafe device on all their brush chippers.” *Id.* (emphasis added).
- 19. ArborMax provides “special consideration” for tree care companies that are operating

¹ <http://www.totallandscapecare.com/green-industry-news/product-roundup-morbark-polyworx/>

1 brush chippers equipped with Morbark's ChipSafe Operator Safety Shield. *See Morbark ChipSafe*
2 *Users to Receive Special Consideration from ArborMAX Insurance*, Press Release (Feb. 2, 2017),
3 available at [http://www.morbark.com/press-releases/chipsafe-receives-arbormax-insurance-](http://www.morbark.com/press-releases/chipsafe-receives-arbormax-insurance-consideration/)
4 [consideration/](http://www.morbark.com/press-releases/chipsafe-receives-arbormax-insurance-consideration/)

5 20. The consideration is applicable to general liability and worker's compensation coverages.

6 21. John Foote, Morbark's senior vice president, stated, "We are proud that ArborMAX
7 Insurance has recognized the benefits of Morbark's ChipSafe Operator Safety Shield to help
8 protect tree care workers . . . We believe our ChipSafe device truly takes safety to the next level."

9 22. Users of ChipSafe devices on brush chippers directly infringe the patents-in-suit.

10 23. By offering special consideration for use of ChipSafe and actively encouraging arborists
11 to use ChipSafe in brush chippers by publicly offering "special consideration," Eydent actively
12 induces infringement of the patents-in-suit, resulting in indirect infringement liability.

13 **Knowledge of the Patents-in-Suit and that its Affirmative Acts Caused and are Causing**
14 **Direct Infringement**

15 24. On February 7, 2017, I emailed Mr. Brian Tunge (brian.tunge@eydent.com) about (i) the
16 existence of the patents-in-suit; (ii) Eydent's actions inducing its customers' direct infringement
17 of the patents-in-suit; (iii) specifically, Mr. Tunge's published statements encouraging the
18 purchase and use of ChipSafe; and (iv) a request to stop actively inducing direct infringement.

19 25. Two weeks later, on February 21, 2017, I emailed Mr. Tunge again seeking confirmation
20 that Eydent had discontinued encouraging its customers to directly infringe the patents-in-suit.

21 26. Mr. Tunge has not responded in over six weeks, necessitating this suit.

22 **First Claim for Relief for Patent Infringement**

23 **(U.S. Pat. 6,418,004)**

24 27. Amit incorporates by reference paragraphs 1-26 as if set forth here in full

25 28. Amit is the owner of the entire right, title, and interest in and to the '004 patent, entitled
26 "Safety system utilizing a passive sensor to detect the presence of a hand of a worker and provide
27 a signal to interrupt the operation of a machine" duly issued on July 9, 2002. A copy of the '004
28 patent is attached as Exhibit A.

1 29. Eydent is liable for induced infringement of at least claim 1 of the '004 patent under 35
2 U.S.C. § 271(b).

3 **Second Claim for Relief for Patent Infringement**

4 **(U.S. Pat. 6,853,531)**

5 30. Amit incorporates by reference paragraphs 1-29 as if set forth here in full.

6 31. Amit is the owner of the entire right, title, and interest in and to the '531 patent, entitled
7 "Material processing machine" duly issued on February 8, 2005. A copy of the '531 patent is
8 attached as Exhibit B.

9 32. Eydent is liable for induced infringement of at least claim 1 of the '531 patent under 35
10 U.S.C. § 271(b).

11 **Prayer for Relief**

12 Wherefore, Amit prays for judgment as follows:

- 13 a. That U.S. Pat. 6,418,004 is valid and enforceable;
- 14 b. That U.S. Pat. 6,853,531 is valid and enforceable;
- 15 c. That Eydent induced infringement and continues to induce infringement of the
16 patents-in-suit;
- 17 d. That Eydent be ordered to pay compensatory damages to Amit together with pre-
18 and post-judgment interest;
- 19 e. That Eydent be ordered to provide an accounting;
- 20 f. That Eydent be ordered to pay Amit's costs;
- 21 g. That the infringement by Eydent be adjudged willful;
- 22 h. That the damages be enhanced under 35 U.S.C. § 284 to three times the amount
23 found or measured;
- 24 i. That this be adjudged an exception case and that Amit be awarded costs and
25 expenses in this action; and
- 26 j. That Amit be awarded such other and further relief as the Court may deem
27 appropriate.

28 //

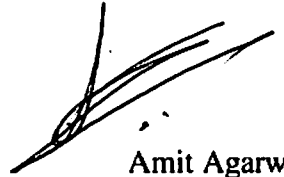
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Demand for Jury Trial

Amit hereby demands trial by jury on all issues.

Dated: March 22, 2017

Respectfully Submitted,



Amit Agarwal
Pro se Plaintiff
14420 Edinburgh Moor Dr.
Wimauma, FL 33598
310-351-6596
ama7386@gmail.com