

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN
MILWAUKEE DIVISION**

GLENN FAMILY, INC. d/b/a HEADWIND)	
CONSUMER PRODUCTS, a Nebraska)	Case No. 2:19-cv-156
corporation; ROBERT C. GESHWENDER,)	
an individual; and DONNA J. GESHWENDER,)	
an individual)	
)	
)	
Plaintiffs,)	
)	
vs.)	
)	
COMBEX, INC. d/b/a/ CHANEY)	
INSTRUMENT COMPANY, a Wisconsin)	
corporation)	
)	
)	
Defendant.)	

COMPLAINT AND DEMAND FOR JURY TRIAL

For their Complaint, Plaintiffs Glenn Family Inc. d/b/a Headwind Consumer Products, Robert C. Geshwender, and Donna C. Geshwender (collectively “Plaintiffs”) hereby assert the following claims for relief against Defendant Combex, Inc. d/b/a Chaney Instrument Company:

THE PARTIES

1. Plaintiff Glenn Family Inc. (“Headwind”) is a corporation organized and existing under the laws of the State of Nebraska, with its principal place of business at 71006 625th Avenue, Pawnee City, Nebraska 68420. Headwind does business as Headwind Consumer Products.
2. Plaintiff Robert C. Geshwender is an individual who resides in Lincoln, Nebraska.
3. Plaintiff Donna J. Geshwender is an individual who resides in Lincoln, Nebraska.

4. Upon information and belief, Defendant Combex, Inc. (“Chaney” or “Defendant”) is a corporation organized and existing under the laws of the State of Wisconsin, with a place of business at 965 S. Wells Street, Lake Geneva, Wisconsin, 53147, which resides and conducts business in this judicial district. Upon information and belief, Chaney does business as Chaney Instrument Company.

JURISDICTION AND VENUE

5. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 and 28 U.S.C. § 1338 in that this is an action for patent infringement arising under 35 U.S.C. § 101, *et seq.*

6. This Court has specific and general personal jurisdiction over Chaney because Chaney is a domestic corporation, has engaged in substantial and not isolated activities within this state, has committed acts directed at this judicial district giving rise to this action and has conducted business in this judicial district, including committing acts of infringement as alleged herein.

7. Venue is proper in this district pursuant to 28 U.S.C. § 1391 and § 1400(b) as a substantial part of the events or omissions giving rise to the claims occurred in this judicial district, Defendant has committed acts of infringement and has a regular and established place of business in this district, Defendant resides in this district, and Defendant is subject to personal jurisdiction in this district.

BACKGROUND

8. Robert C. Geschwender is the sole inventor of U.S. Patent No. 7,543,493 (the “’493 Patent”), which issued on June 9, 2009 from U.S. Patent App. No. 11/717,990, filed March 14, 2007. A true and correct copy of the ’493 Patent is attached to the Complaint as **Exhibit A** and incorporated herein by reference.

9. In November 2018, Robert C. Geshwender assigned the '493 Patent to himself and his wife, Donna J. Geshwender, as joint tenants with rights of survivorship.

10. Headwind is the exclusive licensee of the '493 Patent, pursuant to a License Agreement and assignment of rights, and has rights to enforce and sublicense the '493 Patent.

11. The '493 Patent covers a novel rain gauge.

12. Headwind sells rain gauges covered by the '493 Patent.

13. Headwind has consistently marked rain gauges covered by the '493 Patent according to 35 U.S.C. § 287.

14. Chaney is a direct competitor of Headwind with respect to rain gauges.

15. Chaney sells, offers for sale, and has sold a rain gauge under the brand name AcuRite known as the AcuRite 27.5-inch Big-Read Jumbo Rain Gauge (Model #: 00853HD, 00853HDSB, 00853HDSBA1, 00848SBDDI, 00848SBDDIA1, 00857W, and 00857W1), hereinafter referred to as the "AcuRite Gauge." A reproduction of Chaney's website (<https://www.acurite.com/big-read-5-jumbo-rain-gauge-00853hdsb.html>), as it existed on January 29, 2019, is attached as **Exhibit B** and incorporated herein by reference. Exhibit B shows the AcuRite Gauge, which Chaney offers for sale via its website, as well as through other retailers.

16. On information and belief, Chaney has offered for sale and sold the AcuRite Gauge at numerous trade shows, including but not limited to the Wheatbelt Trade Show in February 2016, the Wheatbelt Trade Show in February 2017, the True Value Trade Show in February 2016, the True Value Trade Show in September 2016, and the Orgill Trade Show of August of 2016.

17. On information and belief, Chaney sells, offers for sale, has offered for sale, and has sold the AcuRite Gauge to Walmart or through Walmart.

18. The AcuRite Gauge infringes one or more claims of the '493 Patent, including at least claim 24.

19. More specifically, claim 24 of '493 Patent claims a rain gauge having a front surface and a rear surface comprising:

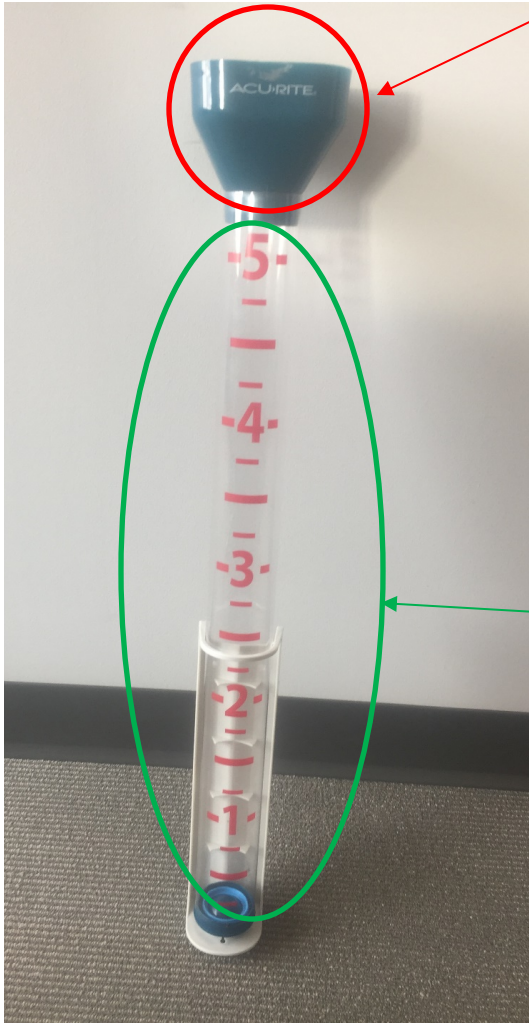
- a. a rain collector having an open top for receiving rain and cylindrical walls formed of light passing material;
- b. indications indicating the height of water in the rain collector, a rain interface with a rain collecting opening;
- c. said rain collecting opening being rectangular so as to reduce the volume in shipping.

20. The AcuRite Gauge infringes claim 24 of the '493 Patent in that, as depicted below, the AcuRite Gauge is a rain gauge having a front and rear surface comprising:

- a. a rain collector having an open top for receiving rain and cylindrical walls formed of light passing material;
- b. indications indicating the height of water in the rain collector, a rain interface with a rain collecting opening;
- c. said rain collecting opening being rectangular so as to reduce the volume in shipping.



open top for receiving rain/rain collecting opening of rectangular shape



cylindrical walls formed of light passing material with indications indicating the height of water

21. Upon information and belief, the AcuRite Gauge also infringes claim 26 of the '493 Patent.

22. Claim 26 of the '493 Patent claims a rain gauge having a rain collection section;
- a. said rain collection section being formed of a material having a modulus of creep and a modulus of relaxation that are at least 75 percent of the modulus of creep and modulus of relaxation of infrared resistant polycarbonate;
 - b. a plug sealing the bottom of cylindrical walls;
 - c. said plug having an interference fit.

23. The AcuRite Gauge has a rain collection section, which, upon information and belief, is formed of a material having a modulus of creep and a modulus of relaxation that are at least 75 percent of the modulus of creep and modulus of relaxation of infrared resistant polycarbonate.

24. The AcuRite Gauge has a plug sealing the bottom of cylindrical walls, as depicted below. Upon information and belief, said plug has an interference fit.



25. Upon information and belief, the AcuRite Gauge also infringes dependent claim 27 of the '493 Patent in that its plug has at least one circular rim extending outwardly whereby said rim stretches the cylindrical walls.

26. Upon information and belief, the AcuRite Gauge also infringes dependent claim 28 of the '493 Patent in that its cylindrical walls are made of infrared resistant polycarbonate.

27. Headwind specifically informed Chaney of the '493 Patent at least as early as February 10, 2017 and put Chaney on notice that the AcuRite Gauge infringed one or more claims of the '493 Patent.

COUNT I
INFRINGEMENT OF U.S. PATENT NO. 7,543,493

28. Plaintiffs reallege and incorporate by reference herein the allegations contained in paragraphs 1-27 above, as if fully set forth herein.

29. The United States Patent Office issued the '493 Patent on June 9, 2009.

30. The '493 Patent is valid, enforceable, and was duly issued in full compliance with Title 35 of the United States Code.

31. In violation of 35 U.S.C. § 271, Chaney has infringed one or more claims of the '493 Patent by making, using, offering for sale, or selling within the United States, or importing into the United States, rain gauges that practice one or more claims of the '493 Patent, including at least the AcuRite Gauge.

32. More specifically, the AcuRite Gauge infringes one or more claims of the '493 Patent, including at least claim 24 in that it is a rain gauge having a front and rear surface comprising a rain collector having an open top for receiving rain and cylindrical walls formed of light passing material, indications indicating the height of water in the rain collector, and a rain interface with a rain collecting opening said rain collecting opening being rectangular so as to reduce the volume in shipping. Upon information and belief, it also infringes claims 26-28.

33. Chaney's infringing conduct has caused damage to Plaintiffs, including but not limited to lost sales, lost customers, lost profits, lost royalties, and price erosion, and Chaney has directly profited from its sales of the infringing rain gauges.

34. Chaney is liable to Plaintiffs in an amount that adequately compensates them for the infringement, which, by law, can be no less than a reasonable royalty, together with interest and costs as fixed by this Court under 35 U.S.C. § 284.

35. Plaintiffs will continue to suffer damages in the future unless Chaney's infringing activities are enjoined by this Court.

36. Upon information and belief, Chaney's infringement of the '493 Patent is and has been willful and Plaintiffs are entitled to increased damages under 35 U.S.C. § 284 and to attorney fees and costs under 35 U.S.C. § 285.

37. Upon information and belief, Chaney had knowledge of the '493 Patent and knew, or should have known, that the AcuRite Gauge infringed one or more claims of the '493 Patent and yet intentionally and knowingly infringed the '493 Patent by making, using, offering for sale, or selling within the United States, or importing into the United States, the AcuRite Gauge.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for relief against Defendant as follows:

1. For a judgment in favor of Plaintiffs that Defendant has infringed the '493 Patent;
2. For a permanent injunction restraining and enjoining Defendant, and its agents, servants, employees, distributors, and all others in active concert or participation with Defendant, from infringing the '493 Patent;
3. For a judgment and order requiring Defendant to pay Plaintiff its damages, costs, expenses, and pre- and post-judgment interest for its infringement of the '493 Patent as provided under 35 U.S.C. § 284, and treble damages if any of the infringement is determined to be willful;

