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**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

13 PATTI DONNER RUBIN, a Florida  
14 resident,

15 Plaintiff,

16 vs.

17 THE SCOTTS COMPANY LLC, an Ohio  
18 limited liability corporation,

19 Defendant.

Case No. 2:09-cv-02419-GMN-RJJ

**AMENDED COMPLAINT**

**JURY DEMAND**

19 Plaintiff Patti Donner Rubin ("Plaintiff" or "Rubin"), by and through counsel alleges and  
20 complains against Defendant The Scotts Company LLC ("Defendant" or "Scotts") as follows:

**THE PARTIES**

22 1. Plaintiff Rubin is a co-inventor and sole owner of U.S. Patent No. 7,587,856 ("the  
23 '856 patent") that discloses and claims a unique and nonobvious "Compressed Growing Medium."  
24 A copy of the '856 patent is attached as Exhibit A. Plaintiff maintains a residence in this judicial  
25 district and operates her business commercializing products under the '856 Patent in this judicial  
26 district.

27 2. Upon information and belief, Defendant Scotts is an Ohio limited liability  
28 corporation having a place of business at 14111 Scottslawn Rd., Marysville, Ohio 43041. Upon

1 information and belief, Defendant, *inter alia*, makes, sells and distributes garden and lawn  
2 products throughout the United States, including, without limitation, in this judicial district for  
3 many years. Upon information and belief, Defendant has sold, offered for sale, promoted, and/or  
4 advertised a grass seed mix product named EZ SEED, a product that Plaintiff accuses of infringing  
5 the ‘856 Patent, throughout the United States, including this judicial district.

6 **JURISDICTION AND VENUE**

7 3. This action is for patent infringement under 35 U.S.C. § 271. This Court has  
8 subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1338.

9 4. This Court has personal jurisdiction over Scotts due to its continuous and  
10 systematic business dealings relating to its garden and lawn products in the State of Nevada,  
11 including, without limitation, the sale, offering for sale, and/or advertising in Nevada the product  
12 accused of infringing the ‘859 Patent, *i.e.*, the EZ SEED product.

13 5. Venue is proper in the District of Nevada pursuant to 28 U.S.C. § 1391.

14 **GENERAL ALLEGATIONS**

15 6. Plaintiff Rubin is the president and majority shareholder of The IPatt Group, Inc.  
16 (“Ipatt”), a Las Vegas-based, small start-up soil business with seven full time employees that  
17 manufactures, packages and sells products under the name “Wonder Soil” that are covered by the  
18 ‘856 Patent.

19 7. In May 2005, Plaintiff started her soil business using her patent pending (at the  
20 time) technology in Las Vegas, Nevada.

21 8. Prior to May 2005, Plaintiff, a resident of Florida, had investigated a number of  
22 possible sites for her business and ultimately decided that Las Vegas was the best choice because  
23 its dry climate is ideal for making soil-based products using Plaintiff’s patent pending (at the time)  
24 technology.

25 9. In May 2005, while continuing to maintain a residence in Florida, Plaintiff moved  
26 to Las Vegas and started Wonder Soil. As a result, since May 2005, Plaintiff has maintained two  
27 residences, one in Florida and one in Las Vegas. Since 2006, Ms. Rubin has maintained a  
28 residence on East Desert Inn Road in Las Vegas, and from 2005 to 2006, maintained a residence

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1 on Paradise Road in Las Vegas. Since 2005, Ms. Rubin has operated Wonder Soil at 3035 South  
2 Highland Drive, Las Vegas, Nevada.

3 10. The '856 patent issued September 15, 2009 from an application that was filed  
4 August 25, 2006 and that claims priority to a patent application filed on November 19, 2004.

5 11. On October 29, 2008, Scotts filed a patent application (application no. 12/260,605)  
6 relating to, upon information and belief, compressed soil technology used in the EZ SEED product.  
7 On September 29, 2009, the United States Patent and Trademark Office rejected all 33 claims in  
8 Scotts' patent application under 35 U.S.C. § 102 as being anticipated by Plaintiff's '856 Patent.

9 12. On March 29, 2010, Scotts filed a patent application no. 12/749,222 relating to,  
10 upon information and belief, compressed soil technology used in the EZ SEED product. On July  
11 22, 2010, the United States Patent and Trademark Office again rejected all 33 claims in Scotts'  
12 patent application under 35 U.S.C. § 102 as being anticipated by Plaintiff's '856 Patent.

13 13. Since at least as early as the fall of 2009, Scotts has been promoting and selling the  
14 EZ SEED product, and upon information and belief, is currently promoting and selling its EZ  
15 SEED product throughout the United States through various retailers such as Home Depot.

16 14. After learning of Scotts' infringing EZ SEED product, Plaintiff contacted Scotts to  
17 inform Scotts of the '856 Patent in September 2009.

18 **FIRST CAUSE OF ACTION**

19 ***(Patent Infringement Under 35 U.S.C. § 271)***

20 15. Plaintiff re-alleges and incorporates by this reference the preceding allegations of  
21 this Complaint.

22 16. Defendant's actions as described above, and specifically Defendant's unauthorized  
23 manufacture, use, offers for sale, and sales of its EZ SEED product constitute infringement of the  
24 '856 Patent under 35 U.S.C. § 271.

25 17. Defendant's continued actions of making, using, selling, offering for sale, and/or  
26 distributing its infringing EZ SEED product has injured, is injuring, and will cause irreparable  
27 injury to Plaintiff if not preliminarily and permanently enjoined.

28 18. Because Defendant has actual knowledge of the '856 Patent and its applicability to

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1 its own EZ SEED product, and particularly in view of the actions of the United States Patent and  
2 Trademark Office in rejecting Defendant's patent applications based on Plaintiff's '856 Patent,  
3 Defendant's continued manufacture, sales, offers for sale, uses, importing, and/or distribution of its  
4 EZ SEED product will demonstrate a deliberate and conscious decision to infringe the '856 Patent  
5 or, at the very least, a reckless disregard of Plaintiff's patent rights.

6 19. Plaintiff is entitled to an injunction prohibiting Defendant from further making,  
7 using, selling, or offering to sell the EZ SEED product or any similar compressed soil/seed product  
8 without permission or license from Plaintiffs under 35 U.S.C. § 283.

9 20. Plaintiff is entitled to recover all damages caused by Defendant's infringement  
10 under 35 U.S.C. § 284.

11 21. In light of the willful nature of Defendant's actions, Plaintiff is entitled to treble  
12 damages and attorneys' fees and costs incurred in this action, along with prejudgment interest  
13 under 35 U.S.C. §§ 284, 285.

14 **PRAYER FOR RELIEF**

15 WHEREFORE, Plaintiff prays that:

16 1. This Court preliminarily and permanently enjoin Defendant, its officers, directors,  
17 principals, agents, servants, employees, successors and assigns, and all others aiding, abetting, or  
18 acting in concert or active participation therewith, from making, using, selling, or offering to sell  
19 its EZ SEED product and any other similar compressed soil/seed product that infringes the '856  
20 Patent;

21 2. This Court enter judgment against Defendant for and infringement of the '856  
22 Patent under 35 U.S.C. § 271;

23 3. This Court order that Defendant account to Plaintiff for all sales, revenues, and  
24 profits derived from the unauthorized sale of the EZ Seed Product, and that Defendant pay to  
25 Plaintiff all compensatory damages to which Plaintiff is entitled by law, including without  
26 limitation lost profits, disgorgement of profits, reasonable royalties, price erosion damages, and/or  
27 unjust enrichment damages;

28 4. This Court award Plaintiff three times the damages found in accordance with

1 subparagraph (e) above pursuant to 35 U.S.C. § 284;

2 5. This Court award Plaintiff, against Defendant, the costs and reasonable attorneys'  
3 fees and expenses incurred in this action pursuant to 35 U.S.C. § 285 and the equity powers of the  
4 Court;

5 6. This Court award Plaintiff prejudgment interest against Defendant on all sums  
6 allowed by law;

7 7. This Court award Plaintiff such other and further relief as the Court may deem just  
8 and proper.

9 **JURY DEMAND**

10 Plaintiff hereby make demand that all claims or causes of action raised in this Complaint be  
11 tried by a jury to the fullest extent possible under the United States Constitution.

12 DATED this 15th day of September, 2010.

13 HOLLAND & HART LLP

14  
15 By \_\_\_\_\_ /s/ Patrick J. Reilly  
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