

**IN THE UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF IOWA  
DAVENPORT DIVISION**

<b>MARTIN INDUSTRIES, L.L.C.</b>	)	
<b>and HOWARD MARTIN</b>	)	
<b>Plaintiffs,</b>	)	<b>No. 04:08 CV-00259</b>
<b>vs.</b>	)	
<b>YETTER MANUFACTURING, INC.,</b>	)	<b>COMPLAINT</b>
<b>Defendant.</b>	)	<b>JURY TRIAL DEMANDED</b>
	)	

Martin Industries, L.L.C. and Howard Martin, Plaintiffs, for Complaint against  
Yetter Manufacturing, Inc., Defendant, state:

**NATURE OF THE ACTION**

1. By this action, Martin Industries, L.L.C. and Howard Martin, hereinafter collectively referred to as "Martin", bring suit against Yetter Manufacturing, Inc. (aka Yetter Farm Equipment) hereinafter referred to as "Yetter." Martin is seeking herein preliminary and permanent injunctive relief. By reason of Yetter's infringement of Martin's United States Patent No. 5,507,351, Martin is further seeking herein recovery of Yetter's wrongfully made profits, compensatory damages, and trebled damages. United States Patent No. 5,507,351 shall hereinafter be referred to as the "Patent-in-Suit."

2. The Patent-in-Suit covers an apparatus used to plant corn or soybeans with the use of a planter in no-till conditions which has a row cleaner attached for clearing residue in the path of the planter row units. The apparatus is to be attached to the row cleaner wheel of the row cleaner.

3. Yetter has offered to sell the cleaner for tined row cleaning wheel(s) which infringe the Patent-in-Suit and, on information and belief, continues to offer to sell and plans to make, use and deliver for sale the cleaner for tined row cleaning wheel(s) that infringe the Patent-in-Suit.

4. Yetter was notified of its infringing activity by those acting on behalf of Martin, but has continued to offer for sale the infringing cleaner for tined row cleaning wheels.

### **THE PARTIES**

5. Howard Martin, the inventor of the Patent-in-Suit, is a citizen of Kentucky, residing on a farm near Elkton, Kentucky.

6. Martin Industries, L.L.C. is a limited liability company organized and existing under the laws of the State of Kentucky with its principal place of business in Elkton, Kentucky.

7. Yetter is a corporation organized and existing under the laws of the State of Illinois, with its principal place of business located at 109 S. McDonough Colchester, Illinois 62326.

### **JURISDICTION and VENUE**

8. This action arises under the patent laws of the United States, Title 35 U.S.C. §271, *et. seq.*

9. As an action arising under the federal patent laws, this Court has jurisdiction pursuant to the provisions of Title 28 U.S.C. §1338(a).

10. Additionally, as this action arises under the laws of the United States, this Court has jurisdiction pursuant to the provisions of Title 28 U.S.C. §1331.

11. Yetter has offered the infringing cleaner for tined row cleaning wheel(s) for sale through its website as found at [www.yetterco.com](http://www.yetterco.com)<sup>1</sup> as a part of the residue management family of products including at least the “2967-037 TITAN RESIDUE MANAGER FOR JOHN DEERE COULTER”, the “2960 TITAN SERIES 2960 U.N.T. COULTER”, and the “2967-007 U.N.T. RESIDUE MANAGER”.

12. Yetter has a regular and on-going relationship for selling products to or otherwise doing business with or through a large number of dealers or distributors located in the state of Iowa.<sup>2</sup>

13. Yetter has a regular and on-going relationship for selling products to or otherwise doing business with or through the following companies located within the Davenport Division of this district:

- a. Vicker's Ag Services of Dewitt, Clinton County, Iowa;
- b. Beidlers Implement of Maquoketa, Clinton County, Iowa;
- c. Kunau Implement Co. of Preston, Clinton County, Iowa;
- d. Farmer's Implement of Washington, Washington County, Iowa; and,
- e. Elder Implement Company having stores located in Winfield, Henry County, Iowa and Muscatine, Muscatine County, Iowa.

14. Martin also has regular and on-going relationships for selling products to or otherwise doing business with or through a large number of dealers or distributors located in and through-out the state of Iowa. The products sold in the past have included a number of row cleaning wheels and furrow closing wheels.

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<sup>1</sup> See Internet URL [http://www.yetterco.com/help/manuals/2967-037\\_Titan.pdf](http://www.yetterco.com/help/manuals/2967-037_Titan.pdf)

<sup>2</sup> See Internet URL [http://www.yetterco.com/dealers/dealers\\_state.php?selstate=iowa](http://www.yetterco.com/dealers/dealers_state.php?selstate=iowa).

15. Martin currently sells and or has sold products in the past through a regular and on-going relationship for selling products to or otherwise doing business with the following entities located in the Davenport Division of this district:

- a. Vicker's Ag Services of Dewitt, Clinton County, Iowa;
- b. Beidlers Implement of Maquoketa, Clinton County, Iowa;
- c. Bennett Farm Equipment of Bennett, Clinton County, Iowa;
- d. Dague Equipment, Inc. of Maquoketa, Clinton County , Iowa;
- e. Farmer Supply Sales, Inc. of Kalona, Washington, County, Iowa;
- f. J.J. Nichting Co., Inc. of Pilot Grove, Lee County, Iowa;
- g. Morning Sun Farm Implement of Morning Sun, Louisa County, Iowa;
- h. Tri-County Implement of DeWitt, Clinton County, Iowa; and,
- i. Elder Implement Company having stores located in both Winfield, Henry County, Iowa and Muscatine, Muscatine County, Iowa.

17. Venue in this District is proper pursuant to the provisions of Title 28 U.S.C. §1391(c) due to Yetter's regular and on-going relationship for selling products to or otherwise doing business with or through the businesses located within the Davenport Division of this district, as listed at paragraph 13, above.

18. Venue in this District may also be proper pursuant to the provisions of Title 28 U.S.C. §1400(b) due to delivery of an infringing product by Yetter within the counties of Iowa comprising the Southern District, Davenport Division.

### **BACKGROUND**

19. Martin Industries, L.L.C. has for a number of years been engaged in the design, manufacture and sale of planter attachments that generally improve planting practices and assist with minimum tillage farming methods.

20. Traditionally, farmers have fully tilled the soil before planting their corn or soybean crops. In the last several decades, however, there has been growing interest in and use of minimum tillage planting practices. Minimum tillage planting practices generally assist in preventing soil loss due to wind and or water erosion. Many Federal government subsidy programs now require the use of minimum or zero tillage planting practices for program compliance.

21. Historically, farmers have relied upon conventional or “deep” tilling to prepare their fields for planting. In essence, a moldboard plow, chisel plow, or other cultivating implement is dragged over the fields after harvest of the prior crop to break up the soil to a substantial depth, to cut and bury the residue of the harvest (“residual mulch”), and to bring deep soil up to the surface.

22. Thereafter, the field must be secondarily tilled by discs or other implements to pulverize the soil, reduce large soil clumps, and level the field to facilitate planting operations. Subsequently, yet another change of implements and pass over the fields with planting apparatus is necessary to place the crop seed in the ground. This method of farming has several disadvantages, principally the susceptibility of cultivated fields to erosion by wind and water run-off and the time and fuel required for the multiple passage of the various implements over the fields.

23. The concept of conservation tillage (also known as “no-till” or “minimum-till” farming) has become commonplace over the last decade, whereby the fields are not plowed or cultivated to any substantial degree between crops. Instead, the planter used opens a furrow of predetermined depth in the soil, deposits seeds therein at a predetermined rate, and closes the furrow over the seeds, all in a single pass.

24. Conservation tillage farmers typically also leave residual mulch in place on the soil surface after harvest. The residual mulch serves the dual function of aiding in control of erosion and in fertilizing the soil through decomposition. The benefits of such a mulch cover, however, may be offset by its disadvantages. A residual mulch

cover over a soil surface retards evaporation from the soil such that soil moisture may remain at unacceptably high levels past optimum planting dates.

25. The residual mulch cover also causes significant depth control problems. Ideally, seeds should be planted at a uniform, optimum depth from the surface. Residual mulch cover, however, usually exhibits considerable variation in thickness from row-to-row and along each row. Thus, the planter must be adjusted to reach adequate depth through the thickest portion of the cover. At that adjustment, however, the seeds may be placed too deeply in areas of thin cover. In addition, the planter row units may “bounce” over clumps of mulch encountered by their furrow openers or depth gauging means, thereby leaving seeds on or too close to the surface.

27. Howard Martin previously invented and developed a rotary, ground driven, row cleaner for conservation tillage farming particularly useful in conjunction with row crop planter systems. More specifically, in that application, the invention relates to a pair of tined wheels mounted on a row planter unit ahead of and aligned with the opening mechanism of the planter to clear away the residual mulch found on the soil surface in front of the planter. Howard Martin was awarded a US Patent (#4,785,890) for the invention entitled “Ground-driven rotary row cleaner”.

28. To be effective in the removal or clearing of residual mulch, however, the tined wheels of the ground driven rotary row cleaner must be kept clean or clear of residual mulch, mud and rocks. The inventor perceived a need for a system to prevent “tine packing”, i.e., the accumulation of dirt and residue between the tines of the row cleaner wheel. When the space between the tines becomes packed, the tines are no longer effective at either moving residue or penetrating the soil to the depth desired.

29. Howard Martin perceived a need to reduce or mitigate packing of the tined row cleaner wheels and designed the device subject of the patent-in-suit to be used with rotating tined or toothed wheels of the ground driven rotary row cleaner in

soil to remove the accumulation of residue including soil between the teeth, the accumulation of soil preventing the wheels from penetrating the soil to a desired depth.

30. On or about January 25, 1994 an application for Letters Patent was submitted to the United States Patent and Trademark Office entitled "Cleaner for tined wheels."

31. On or about April 16, 1996, the Patent-in-Suit issued from the United States Patent and Trademark Office.

32. Howard Martin is the inventor of the Patent-in-Suit.

33. Martin Industries, L.L.C. is the exclusive licensee of the technology covered by the Patent-in-Suit.

34. Martin Industries, L.L.C. manufactures and distributes for sale "Cleaners for tined wheels" which for marketing purposes are referred to as "deflectors" that utilize the technology covered by the Patent-in-Suit. These "Cleaners for tined wheels" will hereinafter be referred to as "Martin Deflectors".

35. Yetter manufactures and distributes a cleaner for tined row cleaning wheel(s) that utilizes the technology covered by the Patent-in-Suit. These cleaners will hereinafter be referred to as "Infringing Cleaners for Tined Row Cleaning Wheel(s)."

36. Subsequent to the issuance of the Patent-in-Suit, Yetter received notice that the Infringing Cleaner for Tined Row Cleaning Wheel(s) utilized the technology as described in the Patent-in-Suit.

37. Yetter has not received any license from Howard Martin or Martin Industries, L.L.C., nor has Yetter received any other form of permission under the Patent-in-Suit to make, use or sell the Infringing Cleaner for Tined Row Cleaning Wheel(s).

38. Yetter continues to engage in advertising and promotion of its Infringing Cleaner for Tined Row Cleaning Wheel(s), and, on information and belief, continues to

manufacture, offer for sale, and sell Infringing Cleaner for Tined Row Cleaning Wheel(s) to the agricultural market within the United States.

### **PATENT INFRINGEMENT**

39. On April 16, 1996, the Patent-in-Suit was duly and lawfully issued to Howard Martin.

40. Howard Martin is the sole owner of the Patent-in-Suit.

41. Martin Industries, L.L.C. is the exclusive licensee of the Patent-in-Suit.

42. Howard Martin and Martin Industries, L.L.C., individually and collectively, have the right to prevent, protect against and recover for infringement of the Patent-in-Suit.

43. After the issuance of the Patent-in-Suit by the United States Patent and Trademark Office, Yetter has utilized technology disclosed in and protected by the Patent-in-Suit by making, using, inducing the use, offering for sale, selling or causing to be sold the Infringing Cleaner for Tined Row Cleaning Wheel(s). By this conduct, Yetter is in violation of the provisions of Title 35 U.S.C. §271.

44. On information and belief, such infringement by Yetter has been deliberate, willful, wanton, intentional and with full knowledge of the existence and validity of the rights of Martin.

45. Yetter had actual or constructive knowledge that the invention utilized in the construct of the Martin Deflectors was protected by the Patent-in-Suit.

46. Yetter has caused and will continue to cause Martin substantial damage and injury by virtue of its continuing infringement of the Patent-in-Suit.

47. As a result of the infringing conduct by Yetter, Martin is entitled to recover damages and other monetary relief of the following nature:



- (a) Pursuant to the provisions of Title 35 U.S.C. §284, entry of an award of damages sufficient to compensate Plaintiffs for Yetter's infringement;
- (b) Pursuant to the provisions of Title 35 U.S.C. §284, entry of an award of prejudgment interest in an amount based on the prevailing rate of interest in effect for the period from the date of each act of infringement of the Patent-in-Suit by Yetter until the date judgment is entered herein, and a further award of post-judgment interest at the prevailing rate thereafter until such judgment is paid,;
- (c) Pursuant to the provisions of Title 35 U.S.C. §284, entry of an award of increased damages in an amount not less than three times the damages found or assessed by this Court for Yetter's willful and wanton acts of infringement;
- (d) Pursuant to the provisions of Title 35 U.S.C. §285, entry of an award of reasonable attorneys' fees; and
- (e) Pursuant to the provisions of Title 35 U.S.C. §284, entry of an award of costs incurred in the prosecution of this suit.

48. Martin will further suffer irreparable damage and injury unless and until Yetter is enjoined by this Court from continuing such infringement.

**PRAYER FOR RELIEF**

WHEREFORE, Martin Industries, L.L.C. and Howard Martin, Plaintiffs, demand that Judgment be entered in favor of Plaintiffs and against Yetter, and that Plaintiff's be granted the following relief:

- (i) Issuance of a preliminary injunction and a permanent injunction restraining Yetter, its officers, agents, servants, attorneys and all persons in active concert or participation with Yetter from further acts of infringement of the Patent-in-Suit;
- (ii) Entry of an award of damages sufficient to compensate Plaintiffs for Yetter's infringement;
- (iii) Entry of an award of prejudgment interest in an amount based on the prevailing rate of interest in effect for the period from the date of each act of infringement of the Patent-in-Suit by Yetter until the date judgment is entered herein, and a further award of post-judgment interest at the prevailing rate thereafter until such judgment is paid,;
- (iv) Entry of an award of increased damages in an amount not less than three times the damages found or assessed by this Court for Yetter's willful and wanton acts of infringement;
- (v) Entry of an award of reasonable attorneys' fees;
- (vi) Entry of an award of costs incurred in the prosecution of this suit; and
- (vii) Such other and further relief as this Court shall deem appropriate.

**DEMAND FOR JURY**

Pursuant to the provisions of FRCP 38, Martin Industries, L.L.C. and Howard Martin, Plaintiffs, hereby demand trial by jury.

Respectfully submitted,

MARTIN INDUSTRIES, L.L.C. and  
HOWARD MARTIN



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