

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF MISSOURI

HELZBERG DIAMOND SHOPS, INC.  
(d/b/a HELZBERG DIAMONDS), a Missouri  
corporation,

Plaintiff,

v.

DIAMART, INC., a New York corporation,

Defendant.

Civil Action No. 4:08-cv-00888-GAF

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**COMPLAINT FOR DECLARATORY JUDGMENT**

Plaintiff Helzberg Diamond Shops, Inc. (d/b/a Helzberg Diamonds) (“Helzberg”), for its Complaint, hereby states as follows:

**Parties**

1. Helzberg Diamond Shops, Inc. is a Missouri corporation having its principle place of business at 1825 Swift Avenue, North Kansas City, Missouri 64116.
2. On information and belief, Diamart, Inc. (“Diamart”) is a New York corporation having its principle place of business at 55 West 47th Street, Room 790, New York, New York 10036.

**Jurisdiction and Venue**

3. This is an action for Declaratory Judgment under 28 U.S.C. §§ 2201 and 2202 seeking adjudication that U.S. Patent No. D565,454 (the “454 patent”) is not infringed, and is invalid and void.

4. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338 in that this action arises under the patent laws of the United States and an actual controversy exists between the parties.

5. Venue is proper in this judicial district and division pursuant to 28 U.S.C. § 1391(b) in that the acts complained of herein occurred in this judicial district.

### Count I

6. Helzberg incorporates by reference and re-alleges paragraphs 1-5 of its claim as if fully set forth herein.

7. On November 14, 2008, Diamart sent a letter (“November 14 letter”) from its counsel to the Chief Executive Officer of Helzberg in Kansas City, Missouri. The November 14 letter is attached hereto as Exhibit A. In the November 14 letter, Diamart alleges it was the owner of the ’454 patent. The ’454 patent is attached hereto as Exhibit B.

8. Diamart alleges in the November 14 letter that Helzberg is infringing on the ’454 patent by selling and/or offering for sale its Radiant Star® 145 facet round cut diamond. Diamart further enclosed a copy of an advertisement for the Radiant Star® diamond alleging that advertisement established infringement.

9. Diamart alleges in the November 14 letter that Helzberg’s sales were without its authorization, that it was entitled to damages, trebling of those damages, an injunction, and attorney’s fees. Diamart further stated that if it did not receive sufficient information to identify all round Radiant Star® diamonds sold by Helzberg, including an accounting of units and price per unit, that it was “prepared to take all necessary steps to enforce its legal rights, including the filing of a lawsuit against [Helzberg] for patent infringement.” Diamart further threatened that if it did not

receive a response to its demands from Helzberg by December 1, 2008, it would “take all steps necessary to enforce its rights without further notice.”

10. Helzberg denies that its Radiant Star® 145 facet round cut diamond infringes on the '454 patent.

11. There is a substantial, justiciable, and continuing controversy between Helzberg and Diamart as to Diamart's allegations of infringement of the '454 patent, including the scope of the claim of the '454 patent.

### Count II

12. Helzberg incorporates by reference and re-alleges paragraphs 1-11 of its claim as if fully set forth herein.

13. The claim of the '454 patent is invalid and void under 35 U.S.C. §§ 102 and/or 103.

14. Helzberg has not infringed any valid claim of the '454 patent.

15. Helzberg will be damaged in its business by the charges of infringement by Diamart, needs an adjudication to provide certainty with respect to this issue and its business plans, and will be irreparably harmed if the existing controversy between the parties is not promptly adjudicated.

16. As a result, Helzberg seeks a declaration that the '454 patent is invalid, void, and not infringed by Helzberg.

WHEREFOR, Helzberg prays for the following relief:

1. That the '454 patent be declared invalid and void;
2. That the '454 patent be declared not infringed by Helzberg;
3. That judgment be rendered for Helzberg, with costs of litigation awarded Helzberg;

4. That the Court find this case to be exceptional and award Helzberg its reasonable attorneys' fees and costs pursuant to 35 U.S.C. § 285; and

5. That the Court grant to Helzberg such other, further, and different relief as the Court may deem just and proper.

Respectfully submitted,

Dated: November 21, 2008

s/Scott R. Brown

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