

FILED  
JAMES BONINI  
CLERK

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION

07 NOV -6 AM 11:21

U.S. DISTRICT COURT  
SOUTHERN DIST. OHIO  
EAST. DIV. COLUMBUS

NEMOTO & CO., LTD., and	)
UNITED MINERAL & CHEMICAL	)
CORPORATION,	)
	)
Plaintiffs,	)
	)
v.	)
	)
VISIONGLOW PTY. LTD.,	)
TRIE TECHNOLOGIES, LLC,	)
TRIVONA INNOVATIONS, LLC,	)
VISIONGLOW OF NORTH AMERICA, LLC,	)
VISIONGLOW GLOBAL LIMITED,	)
and	)
DOES 1-10,	)
	)
Defendants.	)

Civil Action No **2 : 07 cv 1 1 4 4**

**DEMAND FOR JURY TRIAL**

**JUDGE WATSON**

MAGISTRATE JUDGE ABEL

**COMPLAINT**

**Demand for Jury Trial**

The Plaintiffs, Nemoto & Co., Ltd., and United Mineral & Chemical Corporation, demand a trial by jury and for their complaint allege as follows.

**The Parties**

1. The Plaintiff, NEMOTO & CO., LTD. ("Nemoto"), is a corporation organized and existing under the laws of Japan and having a principal place of business at 1-15-1 Kamiogi, Suginami-ku, Tokyo 167-0043, Japan. Nemoto owns U.S. Patent Number 5,424,006 (the '006 patent), which issued on June 13, 1995, and is entitled "Phosphorescent Phosphor." (Exhibit 1, U.S. Patent Number 5,424,006.)

2. The Plaintiff, UNITED MINERAL & CHEMICAL CORPORATION ("UMC"), is a corporation organized and existing under the laws of the State of New York and having a

principal place of business at 1100 Valley Brook Avenue, Lyndhurst, New Jersey 07071. UMC maintains an administrative office at 600 Madison Avenue, New York, New York 10022. UMC is a licensee of the '006 patent.

3. The Defendant, VISIONGLOW PTY. LTD., is a corporation organized under the laws of Australia with its principal place of business at 37-39 Albert Road, Suite 20, South Melbourne, Victoria 3205, Australia.

4. The Defendant, TRI E TECHNOLOGIES, LLC ("Tri E Technologies"), is a corporation organized under the laws of Ohio with its principal place of business at 96 Security Drive, Fairfield, Ohio 45014.

5. The Defendant, TRIVONA INNOVATIONS, LLC ("TriVona"), is a corporation organized under the laws of Delaware with its principal place of business at 96 Security Drive, Fairfield, Ohio 45014.

6. The Defendant, VISIONGLOW OF NORTH AMERICA, LLC ("Visionglow NA"), is a corporation organized under the laws of Florida with its principal place of business at 131 Commerce Way, Sanford, Florida 32771.

7. The Defendant, VISIONGLOW GLOBAL LIMITED, is a corporation organized under the laws of Australia with its principal place of business at 37-39 Albert Road, Suite 20, South Melbourne, Victoria 3205, Australia.

8. The Defendants DOES 1 through 5 are, upon information and belief, individuals who reside and/or conduct business within this Judicial District. Further, Does 1 through 5 are directly and personally contributing to, inducing, and engaging in the sale of infringing products as alleged herein as partners, business associates, collaborators, or suppliers to one or more of the named defendants. The Plaintiffs are presently unaware of the true names of Does 1

through 5. The Plaintiffs will amend this Complaint upon discovery of the identities of such defendants.

9. The Defendants DOES 6 through 10 are business entities which, upon information and belief, reside and/or conduct business within this Judicial District. Moreover, Does 6 through 10 are, upon information and belief, directly engaging in the sale of infringing products as alleged herein as partners, business associates, collaborators, or suppliers to one or more of the named defendants. The Plaintiffs are presently unaware of the true names of Does 6 through 10. The Plaintiffs will amend this Complaint upon discovery of the identities of such defendants.

10. Upon information and belief Doe No. 6 is VISIONGLOW PL IMPORTS, LLC, a corporation of Delaware. Its principal address is unknown. Upon information and belief, Visionglow PL Imports, LLC, imports infringing pigment into this jurisdiction.

11. Upon information and belief Doe No. 7 is BAYSHORE INDUSTRIAL, L.P., and/or a related company of 1300 McCabe Road, LaPorte, Texas 77571, and is a customer and user of the infringing pigments. Upon information and belief, Bayshore acquires the infringing pigments through channels of trade passing through or connected with this jurisdiction. Upon information and belief, Bayshore manufactures products containing the infringing pigments and sells those products.

12. Upon information and belief Doe No. 8 is NIGHTBRIGHT, S DE RL DE CV, and/or a related company of Mazatlan 36-701, Col. Condesa, 06140, Mexico, DF, Mexico, and sells the infringing pigments into the United States. Upon information and belief, NightBright acquires the infringing pigments either directly or indirectly through a related company and offers the infringing pigments for sale in this jurisdiction.

### **Jurisdiction and Venue**

13. The District Court for the Southern District of Ohio has jurisdiction over this Complaint pursuant to 28 U.S.C. §§ 1331, 1338(a) and (b), and 1367. This Court has jurisdiction for patent infringement under 35 U.S.C. §§ 271(a), (b), and (c) and 281, and remedies are available under 35 U.S.C. §§ 283, 284, and 285 for the patent causes of action.

14. This Court has supplemental jurisdiction over the Plaintiffs' state statutory and common-law claims under 28 U.S.C. § 1367(a) in that these claims are so related to the federal claims in the action that they form part of the same case or controversy. This Court possesses personal jurisdiction over the defendant foreign corporations pursuant to 28 U.S.C. §§ 1332 and 1338 for unfair competition and tortious interference with business relations and under the Ohio Long Arm Statute.

15. Venue is appropriate in this district pursuant to 28 U.S.C. §§ 1391(b), (c), and (d) and 1400 as the Defendants are doing business in this Judicial District, and two of the Defendants have their respective principal place of business in the State of Ohio. The balance of witnesses and evidence for this action are expected to be found within this Judicial District. Venue is also proper under Local Rule 82.1(e).

### **Nature of Action**

16. This matter is an action for patent infringement, common-law unfair competition, and tortious interference with prospective business relations. The Defendants, Visionglow Pty. Ltd. and Visionglow Global Limited, sell into the United States phosphorescent pigments that infringe the '006 patent. The Defendants, Tri E Technologies, TriVona, and Visionglow NA, import, use, offer to sell, and/or sell the infringing phosphorescent pigments in the United States in direct competition with the Plaintiffs.

### **Background**

17. The Plaintiff Nemoto is in the business of researching, developing, producing, and selling photoluminescent compositions. These compositions are known by the terms “phosphorescent phosphors,” “phosphorescent pigments,” “long afterglow phosphors/pigments,” and similar terms.

18. Nemoto invested significant time, money, and other resources into researching, developing, producing, advertising, and selling its unique and distinctive phosphorescent pigments. These pigments are known in the U.S. under the trademark LumiNova®.

19. U.S. Patent Number 5,424,006 issued on June 13, 1995, for “Phosphorescent Phosphor.” The U.S. patent claims priority to two Japanese patents, the earliest of which was filed on April 28, 1993. Corresponding patents were also issued in other countries.

20. The '006 patent is assigned to the Plaintiff, Nemoto & Co., Ltd. Nemoto has the right to bring this action in its own name as plaintiff and to receive damages for infringement of the '006 patent.

21. The Plaintiff, United Mineral and Chemical Corporation, is in the business of specialty chemical marketing and distribution. UMC is a U.S. licensee of the '006 patent and distributor for the LumiNova® brand pigments in the NAFTA region. UMC has the right to join this action in its own name as a co-plaintiff.

### **The Patented Product**

22. The LumiNova® brand product has been marketed worldwide since 1995. LumiNova® brand phosphorescent pigments possess distinctive qualities and attributes that the industry recognizes and associates with the Plaintiffs. The LumiNova® brand products are phosphorescent pigments based upon strontium aluminate. Strontium aluminate-based

phosphorescent pigments have a long, super-bright afterglow, which remains glowing long after the source of external light is removed.

23. LumiNova® brand phosphorescent pigments are sold in powder form by UMC to manufacturers of other products. These manufacturers typically make products that require a “glow-in-the-dark” substance to render the product visible in the dark or to convey a message in the dark. Such products include dial faces for instruments and clocks as well as safety signs and egress markings. The distinctive phosphorescent pigments developed by Nemoto have a bright, long afterglow and are recognized by the public and industry to be from Nemoto and UMC. These distinctive pigments are held by the industry as a standard for brightness and long afterglow characteristics.

#### **The Defendants**

24. The Defendants, Visionglow Pty. Ltd. and/or Visionglow Global Limited (jointly, “Visionglow”), purchase phosphorescent pigments and/or have phosphorescent pigments manufactured by non-U.S. sources. These non-U.S. sources are not licensed by Nemoto. Visionglow Pty. Ltd. is identified on bills of lading as a “shipper” to the United States of the accused pigments. Visionglow Global Limited applied for a trademark registration at the U.S. Patent and Trademark Office. Both defendants avail themselves to the benefits of commerce with the United States.

25. Tri E Technologies, Trivona Innovations, and/or Visionglow NA import the phosphorescent pigments from Visionglow into the United States and sell the pigments to users of such pigments.

26. Users of the Visionglow pigments, such as Bayshore, manufacture other items that contain the infringing pigments. Bayshore, for example, manufactures plastic concentrates containing phosphorescent pigments.

27. Tri E Technologies, Trivona Innovations, and Visionglow NA deceptively and maliciously offer the infringing Visionglow pigments for sale by associating these pigments with the existence of Chemical Abstracts (CAS) identification numbers and Australian patent applications. The deceptive and malicious association causes the public and customers to infer that the Visionglow pigments do not infringe the Nemoto '006 patent. These deceptive and malicious acts have taken prospective customers from UMC and have harmed Nemoto and UMC. The harm is irreparable to the damage to Nemoto's reputation and the reputation of its patent.

**General Allegations**

28. The Plaintiffs rely upon the assertions in paragraphs 1 through 27 for each of the following individual counts.

**Count 1  
Infringement of U.S. Patent Number 5,424,006**

29. Each Defendant infringed and is infringing U.S. Patent Number 5,424,006, either literally or under the doctrine of equivalents, by making, using, offering to sell, selling, and/or importing phosphorescent phosphors or "pigments" as claimed by the '006 patent. Specifically, each Defendant is engaged in the making, using, offering to sell, selling, and/or importing phosphorescent pigments or products containing such pigments claimed by the '006 patent within this jurisdiction and elsewhere without license of the '006 patent.



30. Each Defendant is also inducing others to infringe the '006 patent, either literally or under the doctrine of equivalents, to make, use, offer to sell, sell, and/or import infringing pigments and/or products.

31. The infringement by the Defendants of the '006 patent occurred and continues to occur with the full knowledge of the Defendants of the patent and is willful and deliberate, thereby making this case exceptional within the meaning of the U.S. patent laws. Absent injunctive relief pursuant to 35 U.S.C. § 283, the infringement will continue.

32. The Plaintiffs have been damaged by the infringement of the '006 patent by the Defendants and will be irreparably harmed unless the infringement is enjoined by this Court.

33. The Plaintiffs have no adequate remedy at law.

**Count 2**  
**Ohio Common-Law Unfair Competition**

34. At least the named Defendants has committed acts constituting unfair competition under the common law of the State of Ohio.

35. At least the named Defendants deceptively and maliciously represented to members of the industry and/or to customers, the existence of CAS numbers and Australian patent applications for the Visionglow phosphorescent pigments as evidence that phosphorescent pigments or products containing the pigments sold by each of these Defendants do not infringe the '006 patent. This misrepresentation enabled these Defendants to benefit by taking the skill, expenditures, and labors of the Plaintiffs.

36. At least the named Defendants, by engaging in commercial immorality, misappropriated for their individual commercial advantage a benefit or property right belonging to the Plaintiffs or their customers. At least the named Defendants misappropriated the results of



the Plaintiffs' efforts and expenditures of developing, promoting, and setting an industry standard for phosphorescent pigments.

37. At least the named Defendants' knowledge of the infringement of the '006 patent constitutes bad faith and improper conduct on the part of these Defendants.

38. At least the named Defendants' continued marketing of their products as being non-infringing of the '006 patent, by virtue of the existence of the CAS numbers and/or Australian patent applications, constitutes bad faith and improper conduct on the part of these Defendants.

39. By reason of the foregoing, the Plaintiffs have suffered and continue to suffer damages and irreparable harm.

### **Count 3**

#### **Tortious Interference with Business Relations and Prospective Business Relations**

40. At least Visionglow Pty. Ltd. and Visionglow Global Limited and possibly one or more of the other Defendants committed acts of tortious interference with current and prospective business relations of the Plaintiffs under the laws of the State of Ohio.

41. At least the named Defendants, by associating the existence of the CAS numbers and Australian patent applications with their phosphorescent pigments and products made with the pigments as being the basis for non-infringement of the '006 patent, interfered with an actual and/or prospective business relationship and/or contract that rightfully belonged to the Plaintiffs. By reason of this tortious interference, the Plaintiffs and/or the Plaintiffs' customers have suffered injuries to their business relationships with consumers, lost contracts for sales, and accrued resultant damages in excess of the amount of Seventy-Five Thousand Dollars (\$75,000).

### **Prayer for Relief**

WHEREFORE, the Plaintiffs pray for judgment jointly and severally against the Defendants as follows:

(A) Preliminarily, during the pendency of this action, and permanently after final hearing, that this Court enjoin the Defendants, their officers, agents, servants, employees, attorneys, and those persons in active concert or participation with the Defendants from making, using, offering for sale, selling, and/or importing the accused phosphorescent pigments and/or products made from these pigments;

(B) For an order holding that the Defendants' actions constitute willful patent infringement of a valid and enforceable U.S. patent;

(C) For judgment to be entered against the Defendants on all counts herein and for the Plaintiffs to be awarded compensatory damages, interest, attorney fees, costs, and such other and further relief as this Court deems just and appropriate;

(D) For an order (1) directing the Defendants to file with this Court and serve upon the Plaintiffs within 30 days of service of the injunction a report, in writing and under oath, setting forth in detail the manner in which the Defendants have complied with the injunction and the further orders of the Court, (2) directing the Defendants to account for all benefits and monies realized as a result of its wrongful conduct, and (3) upon production of such accounting, rendering judgment against the Defendants for the amount shown due and the cost of accounting;

(E) That a constructive trust be imposed on all proceeds, assets, and benefits accruing to the Defendants as a result of their wrongful conduct during this proceeding;

(F) That the Plaintiffs be awarded damages, including the Plaintiffs' lost profits, the Plaintiffs' attorney fees and costs pursuant to 35 U.S.C. §§ 284 and 285 and that this award be trebled pursuant to 28 U.S.C. § 284;

(G) For damages in connection with the Defendants' conduct, including punitive damages, in an amount not less than the lesser of (1) three times the gross sales resulting from the Defendants intentionally tortious conduct and/or unfair competition in this matter; or (2) the sum of \$5,000,000;

(H) That the Defendants and their agents, employees, representatives, and all others acting under their direction or control or in concert with them, be ordered to deliver up immediately for destruction all infringing materials in their possession or control or in the possession or control of the Defendants' agents, associates, or business partners;

(I) For an order prohibiting the Defendants from engaging in the improper trade practices asserted in Count 2 (unfair competition), and Count 3 (tortious interference with prospective business relations) under Ohio state law, which tend to compete unfairly with or injure the Plaintiffs' business interests and the goodwill attached thereto; and

(J) That the Plaintiffs receive any further relief as this Court may deem just and proper.

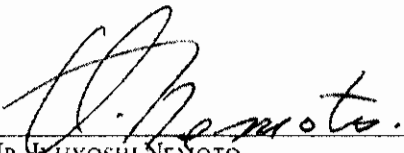
**Verification**

I declare that I am the President and Chief Executive Officer of Nemoto & Co., Ltd., and I am authorized to make this verification on behalf of the Plaintiffs. I read the foregoing Complaint and know its contents. The allegations are true and correct and are of my own personal knowledge, except for those matters stated to be upon information and belief, and as to those matters, I believe them to be true.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on:

Nov. 2, 2007  
Date

  
MR. KUYOSHI NEMOTO  
President and Chief Executive Officer

**Verification**

I declare that I am the President of United Mineral & Chemical Corporation and I am authorized to make this verification on behalf of the Plaintiffs. I read the foregoing Complaint and know its contents. The allegations are true and correct and are of my own personal knowledge, except for those matters stated to be upon information and belief, and as to those matters, I believe them to be true.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on:

November 02, 2007

Date

  
MR. A. NURHAN BECIDYAN  
President

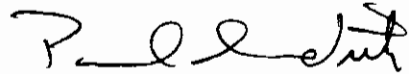
**Submission by Counsel**

Counsel for the Plaintiffs respectfully submits this Complaint to the Court.

Respectfully submitted,

5 November 2007

Date



---

Paul Grandinetti  
Ohio Bar No. 0008288  
LEVY & GRANDINETTI  
South Tower, Suite 750  
1120 Twentieth Street, N.W.  
Washington, D.C. 20036

Telephone (202) 429-4560  
Facsimile (202) 429-4564

**List of Exhibits**

Exhibit 1      U.S. Patent Number 5,424,006