

FILED

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO

CLERK U.S. DISTRICT COURT
NORTHERN DISTRICT OF OHIO
YOUNGSTOWN

CASE NO: 4:07 CV 03418

JUDGE JUDGE ECONOMUS

MAG. JUDGE GALLAS

DINESOL BUILDING PRODUCTS, LTD.
168 N. Meridian Road
Youngstown, Ohio 44509

Plaintiff

v.

BLUEGRASS PRODUCTS, L.L.C.
7930 Kentucky Drive
Florence, Kentucky 41042

Defendant

COMPLAINT FOR DECLARATORY
JUDGMENT OF PATENT NON-
INFRINGEMENT, INVALIDITY
AND UNENFORCEABILITY

Now comes Plaintiff Dinesol Building Products, Ltd. (hereinafter "Plaintiff"), by and through undersigned counsel and by way of Complaint against Defendant Bluegrass Products, L.L.C. ("hereinafter Defendant"), hereby states as follows:

JURISDICTION AND PARTIES

1. This is an action for a declaratory judgment pursuant to the United States Declaratory Judgments Act, 28 U.S.C. § 2201, *et seq.* The Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1338 because the coercive claims threatened by Defendant against Plaintiff which give rise to the existence of an actual controversy under 28 U.S.C. § 2201(a) arise under the United States Patent Act, 35 U.S.C. § 271.

2. This Court has personal jurisdiction over Defendant because it transacts business in the State of Ohio and in this Judicial District.

3. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391 and 1400 because the Northern District of Ohio is a judicial district in which a substantial part of the events, actions and/or omissions giving rise to the actual controversy occurred.

4. Plaintiff is a limited liability company duly organized and operating under the laws of the State of Ohio, with its principal place of business in Mahoning County, Ohio.

5. Upon information and belief, Defendant is a limited liability company with its principal place of business located at 7930 Kentucky Drive, Florence, Kentucky 41042.

CAUSE OF ACTION

6. Plaintiff restates the allegations contained in the foregoing paragraphs 1 through 5, as if fully rewritten herein.

7. Plaintiff designs, manufactures, and sells a variety of plastic building products for use in the construction industry, including utility mounting bases.

8. By letter of counsel dated October 22, 2007 (copy attached hereto and marked Exhibit A), Defendant claims that the Plaintiff's manufacture and sale of plastic utility mounting bases, as well as use by its customers, infringe U.S. Patent No. 6,825,414 (hereinafter referred to as "414 Patent"), to which Defendant claims it possesses valid ownership rights.

9. Plaintiff denies that its manufacture and sale of plastic utility mounting bases infringe the aforesaid patent. Plaintiff is also informed and believes, and on that basis alleges, that said patent is invalid and unenforceable. As a result, Plaintiff does not intend to cease the manufacture and sale of the product in question.

10. The aforesaid letter (Exhibit A) demands that Plaintiff cease all current activities that allegedly constitute infringement and account for past sales, commonly referred to in the

intellectual law practice as a "cease and desist letter." As a result of said letter, Plaintiff has a reasonable and imminent apprehension of being sued immediately for patent infringement under 35 U.S.C. § 271 and, therefore, there exist an actual and justiciable case and controversy over Plaintiff's rights to continue to manufacture and sell plastic utility mounting bases.

11. Plaintiff is entitled to a declaratory judgment that its plastic utility mounting bases do not infringe Defendant's patent and that Defendant's patent is invalid and unenforceable.

12. Unless enjoined, Defendant will continue to improperly and illegally threaten and harass Plaintiff and otherwise interfere with the legitimate operation of its business, for which Plaintiff has no adequate remedy at law.

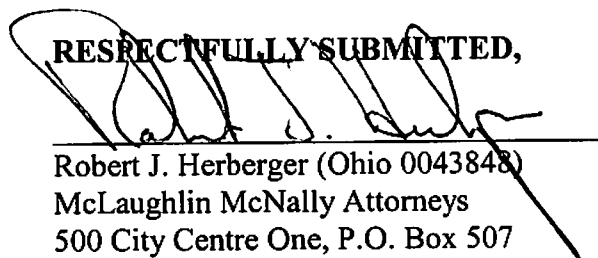
PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for a judgment as follows:

1. Declaring that Plaintiff's manufacture and sale of plastic utility mounting bases, and use by its customers, does not infringe Defendant's claimed rights in the '414 Patent;
2. Declare that the '414 Patent is invalid and unenforceable;
3. Enjoining Defendant from pursuing further any claims for infringement on the basis of Plaintiff's manufacture and sales, and/or use by its customers, of plastic utility mounting bases;
4. Awarding Plaintiff its attorneys fees and costs in this action; and
5. Granting Plaintiff such other and further relief as this Court may deem just and proper.

Dated: November 2, 2007

RESPECTFULLY SUBMITTED,



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Dinesol Building Products, Ltd.*

JURY DEMAND

A jury trial is hereby demanded in the foregoing action.



**ROBERT J. HERBERGER
COUNSEL FOR PLAINTIFF**