

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

ORIGINAL
FILED IN CLERK'S OFFICE
U.S.D.C. Atlanta

PRICE INDUSTRIES INCORPORATED)
and E.H. PRICE LIMITED)
)
Plaintiffs,)
)
v.)
)
ACUTHERM, L.P.)
)
Defendant.)

APR 07 2006

LUTHER D. THOMAS, Clerk
By: *[Signature]* Deputy Clerk

Civil Action No.

1:06-CV-0838

BBM

COMPLAINT FOR DECLARATORY JUDGMENT

COMES NOW Plaintiffs Price Industries, Inc. and E.H. Price Limited, and for their
Complaint against the Defendant Acutherm, L.P. alleges and avers as follows:

PARTIES

1. Plaintiff Price Industries, Inc. ("Price Industries") is a corporation organized and
existing under the laws of the State of Georgia with its principal place of business at 2975
Shawnee Ridge Court, Suwanee, Georgia 30024.

2. Plaintiff E.H. Price Limited ("Price Limited") is a corporation organized and
existing under the laws of Manitoba, Canada, with its principal place of business at 638 Raleigh
Street, Winnipeg, Manitoba R2K 3Z9, Canada.

3. Defendant Acutherm, L.P. "Acutherm" is a limited partnership organized and
existing under the laws of the State of California, and maintains a place of business at 1766
Sabre Street, Hayward, California, 94545.

JURISDICTION AND VENUE

4. This is an action for Declaratory Judgment under 28 U.S.C. §§ 2201 and 2202 adjudging that United States Patent No. 6,857,577 (“the ‘577 Patent”) and United States Patent No. 6,736,326 (“the ‘326 Patent”) are invalid and are not infringed by Plaintiffs.

5. This Court has subject matter jurisdiction over this civil 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.

6. Acutherm manufactures, distributes, sells, licenses, and/or offers for license or sale thermally powered air diffusers and control assemblies, and otherwise transacts business within the State of Georgia, including the Northern District of Georgia, within the meaning of O.C.G.A. § 9-10-91, and has continuous and systematic contacts with this District such that it is subject to personal jurisdiction in this District.

7. Venue is proper in this judicial district and division pursuant to 28 U.S.C. § 1391(b) and (c).

FACTS COMMON TO ALL COUNTS

8. Plaintiffs repeat and reallege the averments contained in Paragraphs 1 through 7 hereof as if fully set forth herein.

9. On February 22, 2005, the ‘577 Patent issued to Hunka on an alleged invention entitled “Thermally Powered VAV Diffuser and Control Assembly.” A true and correct copy of the ‘577 patent is attached as Exhibit A.

10. On May 18, 2004, the ‘326 Patent issued to Hunka on an alleged invention entitled “Thermally Powered VAV Diffuser and Control Assembly.” A true and correct copy of the ‘326 patent is attached as Exhibit B.

11. Upon information and belief, the current assignee of record of the '577 Patent and the '326 Patent in the United States Patent and Trademark Office is Acutherm.

12. Plaintiffs have offered to sell a thermally powered diffuser identified as the Varitherm ceiling diffuser in the United States.

13. Acutherm has alleged that Plaintiffs' Varitherm diffuser is covered by the claims of the '577 and '326 patents. Such allegations and conduct of Acutherm has created on the part of plaintiffs a reasonable apprehension that they will face an infringement suit for their manufacture, importation, use, offers to sell, and sales of the Varitherm ceiling diffuser.

14. An actual controversy exists between the parties hereto regarding infringement of the '577 Patent and the '326 Patent.

COUNT I

DECLARATORY JUDGMENT OF NON-INFRINGEMENT

OF THE '577 PATENT

15. Plaintiffs reallege and incorporate the allegations of paragraphs 1 through 14 as if fully set forth herein.

16. There is an actual and justiciable controversy between the parties concerning the validity and infringement of the '577 Patent arising under the Patent Act, 35 U.S.C. § 1, et seq.

17. Plaintiffs have not in the past infringed, and do not currently infringe, directly by inducement, or by contribution, any claim of the '577 Patent within the meaning of 35 U.S.C. § 271.

18. Plaintiffs are entitled to a declaration that they have not in the past infringed, and do not currently infringe, any claim of the '577 Patent.

COUNT II

DECLARATORY JUDGMENT OF NON-INFRINGEMENT

OF THE '326 PATENT

19. Plaintiffs reallege and incorporate the allegations of paragraphs 1 through 18 as if fully set forth herein.

20. There is an actual and justiciable controversy between the parties concerning the validity and infringement of the '326 Patent arising under the Patent Act, 35 U.S.C. § 1, et seq.

21. Plaintiffs have not in the past infringed, and do not currently infringe, directly by inducement, or by contribution, any claim of the '326 Patent within the meaning of 35 U.S.C. § 271.

22. Plaintiffs are entitled to a declaration that they have not in the past infringed, and do not currently infringe, any claim of the '326 Patent.

COUNT III

DECLARATORY JUDGMENT OF INVALIDITY OF THE '577 PATENT

23. Plaintiffs reallege and incorporate the allegations of paragraphs 1 through 22 as if fully set forth herein.

24. On information and belief, the invention claimed in the '577 Patent is not patentable pursuant to, *inter alia*, 35 U.S.C. §§ 102, 103, and 112.

25. Plaintiffs are entitled to a declaration and order that the claims of the '577 Patent are invalid as issued.

COUNT IV

DECLARATORY JUDGMENT OF INVALIDITY OF THE '326 PATENT

26. Plaintiffs reallege and incorporate the allegations of paragraphs 1 through 25 as if fully set forth herein.

27. On information and belief, the invention claimed in the '326 Patent is not patentable pursuant to, *inter alia*, 35 U.S.C. §§ 102, 103, and 112.

28. Plaintiffs are entitled to a declaration and order that the claims of the '326 Patent are invalid as issued.

WHEREFORE, Plaintiffs respectfully request that this Court enter judgment in their favor and against Defendant Acutherm as follows:

1. That the Court declare the claims of the '577 Patent invalid;
2. That the Court declare the claims of the '326 Patent invalid;
3. That the Court declare that Plaintiffs have not in the past infringed and do not currently directly infringe, induce infringement, or contribute to the infringement of any claim of the '577 Patent;
4. That the Court declare that Plaintiffs have not in the past infringed and do not currently directly infringe, induce infringement, or contribute to the infringement of any claim of the '326 Patent;
5. That the Court find this case to be an exceptional case pursuant to Section 285 of the Patent Act and award plaintiffs their reasonable attorney fees;
6. That all costs be taxed against Acutherm; and

7. That the Court award such other and further relief as the Court deems just and equitable.

This 7th day of April, 2006.

Respectfully submitted,

SMITH, GAMBRELL & RUSSELL, LLP

A handwritten signature in cursive script that reads "Dale Lischer". The signature is written in black ink and is positioned above a horizontal line.

Dale Lischer

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Elizabeth G. Borland

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