

IN THE UNITED STATES DISTRICT COURT  
FOR SOUTHERN DISTRICT OF TEXAS  
VICTORIA DIVISION

UNITED STATES COURTS  
SOUTHERN DISTRICT OF TEXAS  
FILED

OCT - 6 2006

Michael N. Milby, Clerk of Court

CECIL'S ON-SITE PRODUCTS, INC,  
a Texas corporation,

Plaintiff,

v.

MARK N. CHAFFIN,  
an Individual,

Defendant.

§  
§  
§  
§  
§  
§  
§  
§  
§  
§  
§

CIVIL ACTION NO.

**V - 06 - 98**

**COMPLAINT**

1. This is a complaint for a declaratory judgment that United States Patent No. 6, 932,912 is invalid and not infringed by Cecil's On-Site Products, Inc., either directly or as an inducing or contributory infringer.

**JURISDICTION AND VENUE**

2. This cause of action arises under the patent laws of the United States, Title 35 of the United States Code. Jurisdiction is based on 28 U.S.C. §§ 1338, 2201, and 2202. Venue in this district is proper under 28 U.S.C. § 1391.

**PARTIES**

3. Plaintiff Cecil's On-Site Products, Inc. (Cecil's) is a Texas corporation with its headquarters and principal place of business at 188 Arnold Road, Goliad, Texas 77963-3302.

4. On information and belief, Defendant Mark N. Chaffin (Chaffin) is an individual residing at 1514 Dodge Road, Wallis, Texas 77485.

## FACTS

5. United States Patent No. 6,932,912 (the '912 patent) (attached hereto as Exhibit A), entitled "Wastewater Treatment System for Residential Septic Systems," issued to Chaffin on August 23, 2005, and is based on an application filed February 18, 2003 that claimed the benefit of United States Provisional Application No. 60/358,112 filed February 19, 2002. Broadly, the '912 patent purports to claim a liquid recirculation system for mixing liquid chlorine with effluent using a venturi.
6. Prior to February 19, 2002 and continually until a few days ago, Cecil's has manufactured and sold a liquid chlorine dispensing unit, called the D.I.R. Liquid Chlorine Dispenser, that comprises a venturi, a chlorine tank, and a chlorine dispenser unit.
7. On May 18, 2006, counsel for Chaffin wrote to Cecil Yandell, President of Cecil's, indicating that "[i]n our opinion, the D.I.R. Liquid Chlorine Dispenser infringes the '912 Patent." *See* Exhibit B.
8. On September 26, 2006, counsel for Chaffin wrote to George Gray, counsel for Cecil's, again indicating that "Cecil's products . . . infringe numerous claims," and requesting that Cecil's immediate stop its allegedly infringing activity. The September 26th letter further stated that "Cecil's failure to immediately terminate such infringing activity will result in Mr. Chaffin seeking full compensatory and injunctive relief for all damages suffered, including, but not limited to, lost profits, price erosion damages, treble damages and attorney's fees." *See* Exhibit C.
9. As a result of the aforementioned letters, Cecil's has a reasonable fear and apprehension that patent infringement litigation will be brought against it as a direct, inducing or contributory infringer of the '912 patent. An actual and justiciable controversy therefore exists between the parties.

**COUNT I**

**DECLARATION OF INVALIDITY**

10. Cecil's repeats the allegations contained in paragraph 1 through paragraph 9 hereinabove.
11. The '912 patent is invalid for failure to comply with the requirements of Part II of Title 35 U.S.C.
12. Cecil's reduction to practice of its D.I.R. Liquid Chlorine Dispenser predates the effective filing date of the '912 patent.
13. The alleged invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the alleged invention thereof by the applicant for such patent.
14. The alleged invention was described in a patent granted on an application for patent by another filed in the United States before the alleged invention thereof by the application for such patent.
15. Before the applicant's alleged invention thereof, the invention was made in this country by another who had not abandoned, suppressed, or concealed it.
16. Any differences between the subject matter of the claims of such patent and the prior art are such that the subject matter as a whole would have been obvious at the time the alleged invention was made to a person having ordinary skill in the art to which the subject matter pertains.
17. Relevant prior art was overlooked, and other relevant prior art was improperly construed and applied, and therefore the Commissioner of Patents exceeded his authority in granting such patent.
18. The purported combination patent claims in suit are invalid in that they are merely an aggregation of old elements, well-known in the art to which such patent relates before the alleged invention and more than one year prior to the filing of the application for such patent.

19. The applicant for such patent did not invent a new and useful manufacture or improvement thereof.

20. Cecil's is therefore entitled to a declaratory judgment that the claims of the '912 patent are invalid.

## **COUNT II**

### **DECLARATION OF NON-INFRINGEMENT**

21. Cecil's repeats the allegations contained in paragraph 1 through paragraph 20 hereinabove.

22. Cecil's has not directly infringed, induced the infringement of, nor been a contributory infringer of the '912 patent.

23. Cecil's is therefore entitled to a declaratory judgment that it has not and is not infringing any valid claim of the '912 patent.

## **COUNT III**

### **DECLARATION OF UNENFORCEABILITY**

24. Cecil's repeats the allegations contained in paragraph 1 through paragraph 23 hereinabove.

25. On information and belief, Defendant failed in his duty to disclose to the United States Patent and Trademark Office information of which they were aware that was material to examination of the application that matured into such patent, and therefore, such patent is void and unenforceable.

26. Cecil's is therefore entitled to a declaratory judgment the '912 patent is void and unenforceable.

### **DEMAND FOR JURY TRIAL**

27. Cecil's demands a trial by jury in this case.

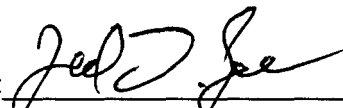
**PRAYER**

WHEREFORE, Plaintiff Cecil's prays that this Court enter judgment that:

- a. United States Patent No. 6,932,912 is invalid, unenforceable and/or not infringed by Cecil's;
- b. Defendant Chaffin and all agents, employees, representatives, and counsel of Defendant, and all persons in active concert or participation with any of them, directly or indirectly, be enjoined from charging infringement or instituting any action for infringement of United States Patent No. 6,932,912 against Cecil's and any of its customers;
- c. this is an exceptional case, pursuant to 35 U.S.C. § 285 and award to Cecil's its reasonable attorney fees, expenses and costs in this action; and
- d. Cecil's be granted such other and further relief as justice may require.

Respectfully submitted,

GUNN & LEE, P.C.  
700 N. St. Mary's St., Suite 1500  
San Antonio, Texas 78205  
210/886-9500  
210/886-9883 fax

By:   
\_\_\_\_\_  
Ted D. Lee  
State Bar No. 12137700

ATTORNEYS FOR PLAINTIFF