

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

THE SHERWIN-WILLIAMS COMPANY	)	
	)	
Plaintiff,	)	
	)	Case No. 1:06 CV 1010
v.	)	
	)	Judge John R. Adams
ARUN M. WYLIE	)	
	)	
Defendant.	)	

**AMENDED COMPLAINT**

Plaintiff The Sherwin-Williams Company (“Sherwin-Williams”), by and through the undersigned attorneys, files its Amended Complaint against Arun M. Wylie (“Wylie”) as follows:

**PARTIES**

1. Sherwin-Williams is an Ohio corporation having a principal place of business at 101 Prospect Avenue, N.W., Cleveland, Ohio 44115. Sherwin-Williams is in the business of manufacturing and selling paint, among other products.
2. On information and belief, Wylie is a citizen of California residing at 23024 Saddle Peak Rd., Topanga, CA 90290.

**NATURE OF THE ACTION**

3. This is an action for a declaratory judgment that Sherwin-Williams’ paint containers do not infringe upon any of Wylie’s intellectual property rights or that such intellectual property rights are invalid. This action arises from Wylie’s threats against the marketing of Sherwin-Williams’ paint containers.

### **JURISDICTION AND VENUE**

4. This is an action for declaratory judgment arising under the patent laws of the United States, Title 35 of the United States Code, and 28 U.S.C. § 2201 *et seq.* This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1338(a). Venue is proper in this judicial district under 28 U.S.C. § 1391(b).

5. This court has personal jurisdiction over Wylie. Defendant Wylie has transacted business in this district by entering into a contract with Plaintiff regarding rights to what became the Wylie patent.

### **BACKGROUND**

6. Upon information and belief, Wylie is the named inventor of United States Patent 7,032,756 (“the Wylie patent”) (Exhibit A), which issued on April 25, 2006. The Wylie patent covers stackable paint containers.

7. The application that matured into the Wylie patent was the 09/547,249 application.

8. On February 24, 2003, Sherwin-Williams and Wylie (along with Wylie’s agent) entered into a contract whereby Sherwin-Williams paid Wylie (and his agent) \$2,500.00 for the exclusive rights to negotiate with Wylie and his agent for a license to use, or to purchase outright, any patent that ultimately issued based on the 09/547,249 application.

9. After Sherwin-Williams decided not to proceed with licensing or purchasing any patents that ultimately issued from the 09/547,249 application, Wylie’s agents sent threatening letters to Sherwin-Williams to try to force Sherwin-Williams to purchase a license based on the 09/547,249 application.

10. On or about January 6, 2006, Wylie asked the USPTO to expedite the issuance of his patent based on “infringement considerations.”

11. On information and belief, Sherwin-Williams makes the paint container that is the subject of Wylie's asserted "infringement considerations."

**COUNT I**

***Non-Infringement of the Wylie patent***

12. Sherwin-Williams repeats the allegations of paragraph 1 through 11 as if fully set forth herein.

13. There is an actual case or controversy as to infringement of the Wylie patent. On information and belief, Sherwin-Williams' paint containers do not infringe the Wylie patent.

**COUNT II**

***Invalidity of the Wylie Patent***

14. Sherwin-Williams repeats the allegations of paragraphs 1 through 11 as if fully set forth herein.

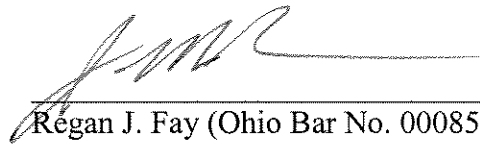
15. There is an actual case or controversy as to the validity of the Wylie patent. Upon information and belief, the Wylie patent, and each of the claims thereof, is invalid for failure to satisfy one or more of the requirements of 35 U.S.C. §§ 101 et seq.

**PRAYER FOR RELIEF**

WHEREFORE, Sherwin-Williams respectfully requests that the Court:

- (a) Adjudge that Sherwin-Williams does not infringe the Wylie patent;
- (b) Adjudge that the claims within the Wylie patent are invalid;
- (c) Award Sherwin-Williams its costs and expenses; and
- (d) Award such other and further relief as the Court deems just and proper.

Dated: August 14, 2006



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