

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

TIDEL TECHNOLOGIES, INC. and
TIDEL ENGINEERING, L.P.

Plaintiffs,

v.

CORPORATE SAFE SPECIALISTS, INC.

Defendant.

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CIVIL ACTION NO. 2-05CV-260

PLAINTIFFS' FIRST AMENDED COMPLAINT

Plaintiffs Tidel Technologies, Inc. and Tidel Engineering, L.P. ("Plaintiffs") file this First Amended Complaint and request a jury trial, alleging as follows:

PARTIES

1. Plaintiff Tidel Technologies, Inc. is a Delaware corporation with its principal place of business at 5847 San Felipe, Suite 900, Houston, Texas 77057.
2. Plaintiff Tidel Engineering, L.P. is a Delaware limited partnership with its principal place of business at 2310 McDaniel Drive, Carrollton, Texas 75006.
3. Defendant Corporate Safe Specialists, Inc. ("CSS") is an Illinois corporation with its principal place of business at 14800 McKinley, Posen, Illinois 60469.

JURISDICTION AND VENUE

4. This cause of action arises under the United States patent laws, Title 35 of the United States Code, and under Declaratory Judgment Statutes 28 U.S.C. §§ 2201-2202, by requesting that this Court adjudge U.S. Patent No. 6,885,281 and/or U.S. Patent No. 6,724,303 to be invalid, not infringed by the Plaintiffs, and/or unenforceable. This Court has original subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338 and has supplemental jurisdiction over the remaining claims pursuant to 28 U.S.C. § 1367.

5. This Court has personal jurisdiction over Defendant CSS because the Defendant does business within the State of Texas and in the Eastern District of Texas and has directed communications regarding this dispute into the forum.

6. Venue is proper in this District pursuant to 28 U.S.C. §1391(b)-(c) because the Defendant is subject to personal jurisdiction in the Eastern District of Texas.

FACTUAL BACKGROUND

7. Plaintiff Tidel Engineering, L.P. is a wholly-owned subsidiary of Tidel Technologies, Inc.

8. Tidel Engineering, L.P. is primarily engaged in the development, manufacturing, sale, and support of electronic cash security systems, including the Sentinel drop-safe product.

9. The Plaintiffs decided to sell the cash security system portion of their business and related products on or around January 1, 2005, and as part of that sale process, the Plaintiffs solicited bid proposals for the purchase of the business. Respondents to the request for bids were required to submit their bids for that portion of the Tidel business by June 10, 2005.

10. On June 10, 2005, CSS submitted a bid for the Plaintiffs' cash security business, including the Sentinel product line, but their bid was only 5-7% of the average for the other bid proposals submitted by other bidders for this business.

11. On June 9, 2005, CSS had filed a lawsuit in the United States District Court for the Northern District of Illinois, alleging that Plaintiffs' Sentinel product(s) infringed U.S. Patent No. 6,885,281, and on June 10, 2005, CSS notified Plaintiff about the lawsuit by letter. CSS has not served Plaintiffs with formal process of the lawsuit, and it is believed that CSS never intended to actually serve Plaintiffs with the lawsuit when it was filed.

12. Upon information and belief, CSS filed the complaint in the Northern District of Illinois with the knowledge and intent that Plaintiffs would have to notify the other bidders for Tidel's cash security business about this lawsuit. Upon notification of the lawsuit to the other potential bidders, CSS is believed to have anticipated and intended several negative effects to arise with respect to Tidel's bidding and sale process, including lowering prior bids for Plaintiffs' business to a range where CSS's bid could be considered competitive and reducing the total number of prior bidders through their departure from the bidding process resulting from the notification of the lawsuit.

13. When their complaint was filed, CSS should have known that the Sentinel product cannot infringe their patent because the Sentinel product line does not permit remote control of the open/closed state of the safe without the intervention of the safe user at the store location. This is a literal feature required by the CSS patent that is the subject of their lawsuit, and as such, CSS should have known that their claim of patent infringement will not succeed in light of the absence of this claimed function from the accused device.

14. Damages will result from the filing of the baseless CSS patent infringement lawsuit. These damages are associated with reduced bid proposals and reduced bidders in the bid process, which will undoubtedly result in a reduced sale price for the business. Damages will exceed the cash resources and asset value of CSS, which means that monetary damages will not suffice and injunctive relief is appropriate.

COUNT I

Declaratory Judgment of Patent Invalidity

15. Plaintiffs hereby repeat and reallege the allegations in paragraphs 1-14 of this First Amended Complaint as if fully set forth herein.

16. An actual controversy exists between Plaintiffs and CSS as to whether U.S. Patent No. 6,885,281 or U.S. Patent No. 6,724,303 (hereinafter “the CSS Asserted Patents”) is valid under the requirements of the United States Patent Act, 35 U.S.C. §100, *et seq.*

17. A judicial declaration that one or more of the CSS Asserted Patents are invalid for failure to comply with one or more of the requirements of Title 35 of the United States Code is necessary and appropriate at this time so that Plaintiffs can ascertain their rights and duties with respect to the manufacturing and marketing of the products that CSS accuses of infringing the CSS Asserted Patents. Plaintiffs are entitled to a declaration and judgment that one or more of the CSS Asserted Patents are invalid under the Patent Act, 35 U.S.C. §100, *et seq.*

COUNT II

Declaratory Judgment of Non-Infringement

18. Plaintiffs hereby repeat and reallege the allegations in paragraphs 1-17 of this First Amended Complaint as if fully set forth herein.

19. An actual controversy exists between Plaintiffs and CSS as to whether Plaintiffs' conduct constitutes infringement of any claim in any of the CSS Asserted Patents.

20. A judicial declaration that Plaintiffs do not infringe any claim in any of the CSS Asserted Patents is necessary and appropriate at this time so that Plaintiffs can ascertain their rights and duties with respect to the manufacturing and marketing of the products that CSS accuses of infringing the CSS Asserted Patents. Plaintiffs are entitled to a declaration and judgment that their acts do not constitute infringement of any claim in any of the CSS Asserted Patents.

COUNT III

Declaratory Judgment of Unenforceability

21. Plaintiffs hereby repeat and reallege the allegations in paragraphs 1-20 of this First Amended Complaint as if fully set forth herein.

22. An actual controversy exists between Plaintiffs and CSS as to whether either of the CSS Asserted Patents is enforceable under the requirements of the United States Patent Act, 35 U.S.C. §100, *et seq.* and/or applicable precedent relating to enforceability.

23. A judicial declaration that one or more of the CSS Asserted Patents are unenforceable is necessary and appropriate at this time so that Plaintiffs can ascertain their rights and duties with respect to the manufacturing and marketing of the products that CSS accuses of

infringing the CSS Asserted Patents. Plaintiffs are entitled to a declaration and judgment that one or more of the CSS Asserted Patents are unenforceable under the Patent Act, 35 U.S.C. §100, *et seq.* and/or applicable precedent relating to enforceability.

COUNT IV

Tortious Interference with a Prospective Business Relationship

24. Plaintiffs hereby repeat and reallege the allegations in paragraphs 1-23 of this First Amended Complaint as if fully set forth herein.

25. The bid process for the sale of the Tidel cash security business, which the Plaintiffs are presently engaged in with multiple bidders, establishes that there is a reasonable probability that Plaintiffs and another party will or would have entered into a mutually beneficial contractual relationship for the sale of the Plaintiffs' cash security business.

26. CSS's activities constitute an independently tortious or unlawful act that will prevent or has prevented an otherwise mutually beneficial contract from forming in the absence of its tortious activities.

27. CSS engaged in tortious activities with a conscious desire to disrupt the bid process and knew that its tortious conduct was certain, or substantially certain, to disrupt the bid process. CSS knew that because the bid process was in progress, Plaintiffs were legally required to disclose the existence of any pending patent infringement lawsuit to prospective bidders, which was substantially certain to have a chilling effect on the entire bid process and the market of potential bidders.

28. Plaintiffs have suffered or will suffer irreparable injury as a result of this tortious interference with a prospective business relationship because of the significantly negative effects

this tortious interference has on the sale of the business, which is beyond the cash resources of CSS.

29. As a result of the chilling effect the institution of this lawsuit has had or will have on the bid process, Plaintiffs are likely to sustain damages in the millions of dollars. Upon information and belief, CSS has insufficient assets to satisfy a multi-million dollar judgment and therefore, there is no adequate remedy available at law. As such, CSS should be enjoined from further tortiously interfering with the Plaintiffs' bid process in any manner.

COUNT V

Abuse of Process

30. Plaintiffs hereby repeat and reallege the allegations in paragraphs 1-29 of this First Amended Complaint as if fully set forth herein.

31. CSS filed a baseless patent infringement lawsuit in the Northern District of Illinois during the Plaintiffs' bidding process, and in so doing, it made an illegal, improper, or perverted use of the legal process.

32. CSS, by filing the baseless patent infringement lawsuit, had the ulterior motive or purpose of disrupting the sale of Plaintiffs' business, lowering the bid proposals to a level it could afford, and profiting from the circumstances incumbent with chilling the bidding process for the sale of a multi-million dollar company.

33. Plaintiffs have suffered or will suffer irreparable injury as a result of this abuse of process because of the significantly negative effects this abuse of process has had or will have on the sale of the business, which is beyond the cash resources of CSS.

34. As a result of the chilling effect the institution of this lawsuit has had or will have on the bid process, Plaintiffs are likely to sustain damages in the millions of dollars. Upon information and belief, CSS has insufficient assets to satisfy a multi-million dollar judgment and therefore, there is no adequate remedy available at law. As such, CSS should be enjoined from interfering with Tidel's bid or sale process through its abuse of process.

COUNT VI

Tortious Interference with Existing Contracts

35. Plaintiffs hereby repeat and reallege the allegations in paragraphs 1-34 of this First Amended Complaint as if fully set forth herein.

36. Plaintiffs have legally enforceable contracts in place with their customers that are subject to interference.

37. Plaintiffs have a legally enforceable contract with the bank that is overseeing the bid process currently in process, which is subject to interference.

38. CSS engaged in tortious activities that constituted a willful and intentional act of interference with the existing contracts between the bank and the Plaintiffs' existing customers.

39. CSS, by engaging in tortious activities, has or will proximately cause irreparable damage to Plaintiffs because Plaintiffs may be forced to undertake the process of hiring another bank to oversee the bid process and because the bid process may be unduly negatively affected if Plaintiffs' customers breach existing contracts with the Plaintiffs as a result of CSS's activities. Because of CSS's activities, the bid process will also be irreparably harmed as the fair market value of the business will be immediately and substantially depressed.

40. Plaintiffs have suffered or will suffer irreparable injury as a result of this tortious interference with these contracts due to the significantly negative effects this tortious interference has on the sale of the business, which is beyond the cash resources of CSS.

41. As a result of the chilling effect the institution of this lawsuit has had or will have on the bid process, Plaintiffs are likely to sustain damages in the millions of dollars. Upon information and belief, CSS has insufficient assets to satisfy a multi-million dollar judgment and therefore, there is no adequate remedy available at law. As such, CSS should be enjoined from further tortiously interfering with the existing contracts in place between the Plaintiffs and their bank and the Plaintiffs and their customers.

COUNT VII

Declaration of Exceptional Case

42. Plaintiffs hereby repeat and reallege the allegations in paragraphs 1-41 of Plaintiffs' First Amended Complaint as if fully set forth herein.

43. This case is exceptional under 35 U.S.C. § 285, and Plaintiffs are entitled to an award of its attorneys' fees, costs, and expenses related to the adjudication of this case.

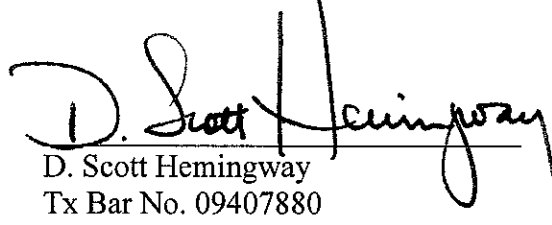
WHEREFORE, Plaintiffs pray that:

- (i) The Court find and enter a judgment declaring one or more of the CSS Asserted Patents to be invalid;
- (ii) The Court find and enter a judgment declaring that no claim from any of the CSS Asserted Patents has been infringed by Plaintiffs;

- (iii) The Court find and enter a judgment declaring the CSS Asserted Patents to be unenforceable;
- (iv) The Court enter a judgment or decree that Plaintiffs have the right to continue to manufacture and market all of their products without any threat or other interference whatsoever against Plaintiffs by CSS, based on or arising out of the ownership of the CSS Asserted Patents;
- (v) This Court enter an order preliminarily and permanently enjoining CSS from interfering with Plaintiffs' bidding and sale process for the Plaintiffs' business in any manner;
- (vi) The Court enter an order preliminarily and permanently enjoining CSS, its officers, agents, employees, and attorneys from prosecuting or bringing or threatening to bring any action against Plaintiffs or any buyers, sellers, or users of Plaintiffs' products for alleged infringement of the CSS Asserted Patents or any other patent held by CSS, or otherwise interfering with the bid process for the sale of the Plaintiffs' business;
- (vii) The Court declare this case exceptional under 35 U.S.C. § 285 against CSS;
- (viii) The Court award Plaintiffs attorneys' fees, expenses, and costs against CSS;
- (ix) The Court award pre-judgment and post-judgment interest on all damages, attorneys' fees, expenses, and costs awarded; and
- (x) The Court award Plaintiffs such other and further relief as it deems just and proper.

Respectfully submitted,

Dated: 6-17-05

A handwritten signature in black ink that reads "D. Scott Hemingway". The signature is written in a cursive style with a large, looped "H" and a long, sweeping tail.

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CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing document has been served on the following counsel of record in the manner indicated this 17th day of June, 2005.

Via Facsimile and First Class Mail

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J. Scott Hemingway / by
permissio
D. B.