

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF CONNECTICUT

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DAVID A. POTTS

Plaintiff,

v.

THE SEPTIC HEATER COMPANY  
Defendant.

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Case No.: 3:08-cv-1668

NOVEMBER , 2008

FILED  
2008 NOV - 3 P 12:53  
U.S. DISTRICT COURT  
NEW HAVEN, CT

**VERIFIED COMPLAINT**

**SUMMARY OF CLAIMS**

This is an action for infringement of United States Patent #6,814,866 ("the '866 Patent") in which damages and injunctive relief are sought.

**PARTIES**

1. David A. Potts is a Connecticut citizen residing at 385 Roast Meat Hill Road, Killingworth, Connecticut.
2. The Septic Heater Company ("Septic Heater") is a Minnesota business corporation with a principal place of business in Gully, Minnesota.

### JURISDICTION

3. The instant claims are predicated on infringement of a patent issued by the United States Patent Office. Accordingly, this Court has subject matter jurisdiction of the instant civil action pursuant to 28 U.S.C. §1338.

### FACTS

4. Mr. Potts filed a provisional patent application, serial number 60/262,310 on January 17, 2001. On January 17, 2002 Mr. Potts filed a non-provisional patent application which claimed priority to the provisional patent application, serial number 60/262,310, and which issued as the '866 patent on November 9, 2004 describing a device for heating a leach field ("the Device").
5. The '866 patent described the Device which generally included claims for heating the soil influence zone of a septic system to increase or restore its biological function in cold conditions.
6. Mr. Potts markets and installs the Device in multiple states through his business known as Geomatrix, LLC located in Killingworth, Connecticut and by which he makes his living.
7. During the term of the '866 Patent, Septic Heater has marketed, sold and distributed a device commercially known as the A-100 and T-100 which are used to heat an influence zone in soil adjacent to a septic system in order to make the output of the septic system more environmentally beneficial ("the Infringing Device").
8. The instructions for installation which Septic Heater provide to the installer and/or purchaser of the Infringing Device direct installation of the Infringing Device above or in the septic system tank, above a dropbox or cleanout or above a lift station.
9. In at least one or more of the installation positions, the Infringing Device would provide heat for "an influence zone in soil adjacent to the conduit, for receiving waste water from

the conduit, and for biochemically altering the waste water to make the waste water more environmentally benign” and thereby actively inducing the infringement of the ‘866 Patent in violation of 15 U.S.C. §271(b).

10. Upon information and belief, Septic Heater has installed the Infringing Device in the manner described in its instructions thereby directly infringing upon the ‘866 Patent in violation of 15 U.S.C. §271(b).
11. In addition, the Infringing Device itself includes a means for heating which infringes the means of heating provided in the ‘866 Patent which include a plate type heat exchanger, a resistance heater, a common fuel-fired tube, or by the introduction of intentional inefficiency of a blower creating heat from frictional losses all in violation of 15 U.S.C. §271(a).
12. Septic Heater has sold, installed or induced infringing installations in a number of different states, including Maine, New York, Delaware, Massachusetts and Mr. Potts’ home state of Connecticut.
13. Despite demand to purchase the rights to use the technology represented in the ‘866 Patent, Septic Heater has failed and refused to cease the infringing activities described above.

## COUNT I

### Patent Infringement: Injunctive Relief

5. Pursuant to 35 U.S.C. §283, Mr. Potts, upon the facts set forth in this Complaint, is entitled to injunctive relief prohibiting Septic Heater from further infringement of the ‘866 Patent and enjoining any operation of the Infringing Device or any manufacture, assignment or

installation of any other device which infringes the '866 Patent.

6. There is substantial likelihood that Mr. Potts will prevail upon the merits in the final adjudication of this civil action.
7. Infringement of the '866 Patent results in irreparable injury to David Potts for which there is no adequate remedy at law. Congress in recognition of this fact, has enacted 35 U.S.C. §283 expressly authorizing injunctive relief against patent infringement in order to preserve the federally mandated monopoly created by federal law for the benefit of the patent holder.
8. The hardship upon Mr. Potts which will ensue from not enjoining further infringement of the '866 Patent is that other competitors in the marketplace, upon seeing Septic Heater's marketing of its infringing use of the Patent, have already contacted Mr. Potts and inquired whether this indicates that they, too, may engage in similar infringing activities, thereby threatening to erode Mr. Potts's market for the technology protected by the Patent. Further, as Septic Heater's infringement has occurred in several states, the damage is becoming widespread and more difficult to counteract as time passes.
9. The issuance of the injunction will not disserve the public interest. To the contrary, granting the injunctive relief sought will serve the express national policy of protecting federally created patent rights.
10. For these reasons, Mr. Potts seeks a temporary restraining order, a preliminary injunction, and a permanent injunction.

## COUNT II

### Patent Infringement: Damages

11. The conduct of Septic Heater as alleged herein constitutes patent infringement entitling Mr. Potts to damages and all other remedies at law or in equity pursuant to 35 U.S.C.

§281.

12. Pursuant to 35 U.S.C. §284, Mr. Potts is entitled to an accounting by Septic Heater of all revenues received through the commercial production, sales and installation of the Infringing Device, to the imposition of a constructed trust for the benefit of Mr. Potts upon all such funds in the custody or control of Septic Heater, and to such other damages to which Mr. Potts may be determined to be entitled.

### COUNT III

#### Patent Infringement: Enhanced Damages and Attorneys' Fees

13. Septic Heater's infringement as alleged herein is willful and in bad faith. Accordingly, Mr. Potts is entitled to recover enhanced damages and attorneys' fees in addition to its actual damages.

### RELIEF REQUESTED

WHEREFORE, Mr. Potts respectfully requests the following relief:

- A. Upon Count I, issuance of a Temporary Restraining Order and preliminary and permanent injunctions prohibiting Septic Heater from operating, assigning, manufacturing, selling, or installing the Infringing Device and prohibiting all future infringement of the patent by Septic Heater;
- B. Upon Count II, a judgment of damages against Septic Heater for infringement of the Patent;
- C. Upon Count III, enhanced damages and attorneys' fees; and
- D. All such other relief of whatever nature as may be just and equitable and/or required or permitted by law.

Dated this \_\_\_\_\_ day of November, 2008.

RESPECTFULLY, DAVID A. POTTS

BY 

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VERIFICATION


STATE OF CONNECTICUT

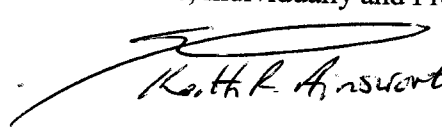
: New Haven

COUNTY OF NEW HAVEN

David Potts, personally appeared before the undersigned attesting Commissioner of the Superior Court authorized to administer oaths, who having first been duly sworn, deposes and says that he is President of Geomatrix, LLC, and that he has authority to verify the Complaint on behalf of Geomatrix, LLC; and that he has personally read the foregoing Verified Complaint and that its factual averments are true and accurate to the best of his knowledge and belief.

This 1<sup>ST</sup> day of November, 2008.

  
David Potts, Individually and President of Geomatrix, LLC Duly Authorized

  
Keith R. Ainsworth, Commissioner of the Superior Court of Connecticut