

regarding whether Magic Circle does or does not infringe any valid claim of the Patent in Suit. The Court is vested with jurisdiction pursuant to 28 U.S.C. § 1338, 28 U.S.C. § 2201 and Rule 57 of the Federal Rules of Civil Procedure to declare the rights and other legal relations between Magic Circle and Onyx.

7. Venue is proper in this Court based upon 28 U.S.C. § 1391.

FACTUAL BACKGROUND

8. On or about June 27, 2005, Onyx, through counsel, directed written correspondence to the President of Magic Circle in Coatesville, Indiana. In that correspondence, Onyx represented that it was the owner of the Patent in Suit. Onyx enclosed a copy of the Patent in Suit with its correspondence to Magic Circle and advised Magic Circle that it should review the Patent in Suit. Onyx also indicated that it believed that Magic Circle was a “suitable candidate” for a license under the Patent in Suit. It also asserted that it expects to enforce its rights under U.S. Patent Law.

9. On September 15, 2005, Onyx, again through counsel, forwarded written correspondence to the President of Magic Circle in Coatesville, Indiana. In this correspondence, Onyx identified a specific Magic Circle product that it believed related to the subject matter of the Patent in Suit. Following up on its prior claim that Magic Circle was a “suitable candidate” for a license under the Patent in Suit, Onyx warned that it was concerned that “its legal rights are not being respected.”

10. Shortly after September 15, counsel for Magic Circle, Mr. Paul Hunt, and counsel for Onyx, Mr. Art MacCord, conducted a telephone conference. During that conference, Mr. Hunt asked Mr. MacCord to specify, in writing, why Onyx believed that Magic Circle was infringing the Onyx patent.

11. On or about September 23, 2005, Onyx, through counsel, forwarded written correspondence to Mr. Hunt, in Indiana. Onyx provided another copy of the Patent in Suit with this letter, together with several pages describing a specific Magic Circle lawnmower. Onyx also stated that “the facts are that your client has announced that it is offering a propane mower and my client is of the belief that there is simply no way to do that without using the technology protected by my client's patent. Indeed, the attached Dixie Chopper/Generac literature details features of my client's patent claims.”

12. Onyx has clearly and directly sent letters to Magic Circle’s principal place of business in Indiana, which accuse Magic Circle of infringing one or more claims of the Patent in Suit.

13. Magic Circle has not infringed any valid claim of the Patent in Suit.

14. There is an actual case in controversy between the parties concerning the whether any claim of the Patent in Suit is infringed and, if so, whether such claim is valid.

**COUNT FOR
DECLARATORY JUDGMENT RELIEF**

15. The plaintiff hereby incorporates the allegations of paragraphs 1 through 14 above as though fully set forth herein.

16. Onyx has purported to be the owner of the Patent in Suit in correspondence directed to Magic Circle in Indiana.

17. Onyx has accused Magic Circle of infringing the Patent in Suit in correspondence directed to Magic Circle and its counsel in Indiana, where Magic Circle maintains its principal place of business and where the alleged acts of infringement occurred.

18. Magic Circle does not infringe any valid claim of the Patent in Suit.

19. If any claim of the Patent in Suit is construed such that Magic Circle is found to

infringe it, either literally or by equivalents, such claim is invalid.

20. An actual case and controversy exists between the parties concerning the allegations of infringement against Magic Circle, and whether or not the claims of the Patent in Suit are valid.

WHEREFORE, the plaintiff, Magic Circle, respectfully requests that the Court grant declaratory judgment in its favor and against Onyx that no claims of U.S. Patent 5,581,986 are valid, and/or that Magic Circle does not infringe any valid claim of U.S. Patent 5,581,986. Additionally, Magic Circle respectfully requests that this Court award it reasonable attorneys' fees, and costs, to the extent permitted by law in connection with this action, and all other just and appropriate relief.

JURY DEMAND

Magic Circle requests a trial by jury on all claims.

Respectfully submitted,



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