

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

TREND PRODUCTS, INC. : Civil Action No. **02-75094**
A Michigan Corporation :

Plaintiff :

v. :

TAFCO CORPORATION :
An Illinois Corporation :

and :

INTERNATIONAL PRODUCT
SUPPLY, an Illinois corporation :

Co-Defendants :

GEORGE CARAM STEEH

DEMAND FOR JURY TRIAL

MAGISTRATE JUDGE PEPE

COMPLAINT FOR DECLARATORY
JUDGMENT OF NON-INFRINGEMENT

U.S. DIST. COURT CLERK
EAST DIST. MICH
DETROIT

02 DEC 23 PM 2:51

FILED

I. NATURE OF THE ACTION

1. This is a declaratory judgment action for a declaration of non-infringement of U.S. Patent No. 5,435,251, issued August 20, 2002, entitled HOPPER VENT (hereinafter the '251 patent).

II. THE PARTIES

2. Plaintiff, Trend Products, Inc. (hereinafter referred to as "Trend") is a corporation organized and existing under the laws of the State of Michigan and having a principal place of business at 23444 Schoenherr Road, Warren, Michigan 48089. Trend manufactures hopper vents and sells the same within the Eastern District of Michigan, Southern Division.

3. Defendant, International Product Supply (hereinafter referred to as "I.P.S."), upon information and belief, is the parent company of, or is an affiliated company with Tafco Corporation and is the recorded, current owner of the '251 patent with the right to enforce said patent; and is a corporation organized and existing under the laws of the State of Illinois, having its principal place of business at P.O. Box 31190, Chicago, Illinois 60631, 5024 North Rose Street, Schiller Park, Illinois 50176.

4. Defendant, Tafco Corporation (hereinafter referred to as "Tafco"), upon information and belief, is an affiliated corporation of International Product Supply, the assignee of record of the '251 patent and is a corporation organized and existing under the laws of the State of Illinois; having its principal place of business at 400 East Elm Avenue, La Grange, Illinois 60525 and has the authority to enforce the '251 patent rights.

III. JURISDICTION AND VENUE

5. This Court has subject matter jurisdiction under 28 U.S.C. §§2201, 2202 and 1338(a) as a declaratory judgment action arising under the patent laws, Title 35 of the United States Code. This Court has personal jurisdiction over both Tafco and I.P.S. pursuant to Michigan's long arm statute M.C.L. §600.715, because Tafco and I.P.S. have substantial contacts in Michigan and within the Eastern District, Southern Division thereof. Namely, on information and belief, Tafco and I.P.S. jointly conduct and transact substantial business in the State of Michigan and within the Eastern District, Southern Division thereof and employ sales persons/distributors within this jurisdiction. In addition, Tafco and I.P.S., by joint letter from counsel representing both of them, to Trend's principal place of business set forth above, which is located within the aforesaid Eastern District, Southern Division of Michigan, accused Trend of infringing the aforesaid '251 patent by Trend's aforesaid manufacture, sale and offer for sale of

its vent windows from its aforesaid principal place of business. Venue is proper in this District under 28 U.S.C. §1391.

6. There is a substantial and continuing justiciable controversy between Trend and both Tafco and I.P.S. regarding Trend's right to continue to manufacture, use, sell and offer to sell its products without liability due to the accusations of patent infringement by Tafco and I.P.S.

IV. COUNT I - NON-INFRINGEMENT OF THE '251 PATENT

7. Trend alleges, on information and belief, that the '251 patent is not infringed for one or more reasons that:

- a) Trend has not infringed any claim of the '251 patent.
- b) By reason of the proceedings in the United States Patent and Trademark Office during the prosecution of the application which resulted in the '251 patent, as demonstrated by the file wrapper thereof, Tafco and I.P.S. are estopped from asserting for said patent a claim construction that would cause a claim of said patent to cover or include any glass block window manufactured, used, offered for sale, or sold by Trend.

WHEREFORE, Trend respectfully requests that the Court:

- a) Enter a Judgment that Tafco and I.P.S. are without right or authority to threaten or to maintain suit against Trend or its customers for alleged infringement of the '251 patent; that said patent is not infringed by Trend because of the making, offering for sale, selling or using of any apparatus made or sold or used by Trend.
- b) Enter a Preliminary Injunction enjoining Tafco and I.P.S., its officers, agents, servants, employees and attorneys, and those persons in active concert or participation with it who receive actual notice thereof, from initiating infringement litigation and from threatening

Trend or any of its customers, dealers, agents, servants, employees or any prospective or present sellers, dealers or users of Trend's devices or apparatus, with infringement litigation or charging any of them either verbally or in writing with infringement of the '251 patent because of the manufacture, use, offering for sale or selling of apparatus made by Trend, to be made permanent following trial.

PLAINTIFF, TREND PRODUCTS, INC., REQUESTS A TRIAL BY JURY IN DETROIT, MICHIGAN, ON ALL ISSUES SO TRIABLE.

DATED this 20th day of December, 2002.

Trend Products, Inc., Plaintiff

Dated: 12/20/02

By:

James E. Wynne
James E. Wynne, Esquire
Butzel Long
150 West Jefferson Street, Ste. 900
Detroit, Michigan 48226
(313) 225-7097

Geoffrey R. Myers, Esquire
Hall, Priddy, Myers & Vande Sande
10220 River Road, Ste. 200
Potomac, Maryland 20854
(301) 983-2500

Attorneys for Plaintiff