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JAMES BONINI  
CLERK

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION

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U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION

DAYTON SUPERIOR CORPORATION

Plaintiff,

v.

GENERAL TECHNOLOGIES, INC.

Defendant.

Case No. **1:06 CV 137**

Judge: **J. WATSON**

**L. HOGAN**

**COMPLAINT FOR DECLARATORY JUDGMENT AND JURY DEMAND**

Plaintiff, Dayton Superior Corporation ("Dayton Superior"), complains against the Defendant, General Technologies, Inc. ("General Technologies"), as follows:

**THE PARTIES**

1. Dayton Superior is an Ohio corporation having a principal place of business in Dayton, Ohio. Dayton Superior has and is doing business in the State of Ohio, including in the Southern District of Ohio and within the jurisdiction of the Western Division of the United States District Court for the Southern District of Ohio.

2. Dayton Superior is the successor in interest to Aztec Concrete Accessories, Inc. ("Aztec"), a former subsidiary of Dayton Superior.

3. General Technologies is a Texas corporation having a principal place of business in Stafford, Texas. Upon information and belief, General Technologies has and is doing business in the State of Ohio, including in the Southern District of Ohio and within the

jurisdiction of the Western Division of the United States District Court for the Southern District of Ohio.

### **JURISDICTION AND VENUE**

4. This action arises under the patent laws of the United States, Title 35, United States Code. Jurisdiction is invoked pursuant to 28 U.S.C. §§ 1331 and 1338(a), as well as 28 U.S.C. § 1367, and the Federal Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202 for a declaratory judgment of non-infringement of United States Letters Patent No. 5,791,095 titled “Chair For Use In Construction” (“the '095 patent”). A copy of the '095 patent is attached hereto as Exhibit 1.

5. This action is based upon an actual and continuing controversy between the parties with respect to the purported infringement of the '095 patent.

6. Based upon the continuous and systematic business activities of General Technologies in the State of Ohio, including the Southern District of Ohio and within the jurisdiction of the Western Division of the United States District Court for the Southern District of Ohio, this Court has personal jurisdiction over General Technologies.

7. Venue in this Court is based upon 28 U.S.C. §§ 1391 and 1400 (b).

### **BACKGROUND FACTS**

8. Both General Technologies and Dayton Superior design, manufacture, market and sell accessories for the construction industry, including chairs for supporting post-tension cables, rebar, and mesh above a surface prior to pouring concrete into a mold.

9. Both General Technologies and Dayton Superior have established over the years patent portfolios in the field of accessories for the construction industry.

10. In 2000, Felix L. Sorkin (“Sorkin”), a principal of General Technologies, filed a patent infringement lawsuit against Aztec, Dayton Superior’s former subsidiary. Specifically, Sorkin alleged that chairs Aztec offered for sale at that time infringed the '095 patent. The lawsuit was filed under Case Number 4:00-cv-2372 in the United States District Court for the Southern District of Texas (“Texas Action”).

11. The Texas Action was settled through the Settlement Agreement attached hereto as Exhibit 2.

12. Paragraph 3 of the Settlement Agreement that resolved the Texas Action states that Aztec agreed not to make, use, sell, offer to sell or import the chairs shown in Exhibit 1 of the Settlement Agreement.

13. Upon information and belief, Sorkin has represented to customers or potential customers of Dayton Superior that a chair currently offered for sale by Dayton Superior infringes the '095 patent and/or violates the Settlement Agreement that resolved the Texas Action.

14. On or about February 28, 2006, counsel for General Technologies sent to counsel for Dayton Superior the letter attached hereto as Exhibit 3. The letter refers to and attaches a copy of the Settlement Agreement. In addition, the letter indicates that it was the understanding of General Technologies that through the Settlement Agreement, Aztec and Dayton Superior agreed not to market chairs with feet. Further, the letter identifies chairs

currently marketed by Dayton Superior and requests that Dayton Superior cease and desist from the display, offer for sale, sale, or use of those chairs.

15. Based upon at least Sorkin's previous claim for alleged infringement of the '095 patent, the representations of Sorkin to customers or potential customers of Dayton Superior that a chair currently offered for sale by Dayton Superior infringes the '095 patent and/or violates the Settlement Agreement that resolved the Texas Action, and the February 28, 2006 cease and desist letter from counsel for General Technologies, General Technologies has demonstrated an intention and willingness to assert the patent rights it claims to have in technology of chairs, including chairs claimed in the '095 patent, against Dayton Superior.

16. Accordingly, Dayton Superior has an apprehension that General Technologies will file suit against it for infringement of the '095 patent.

**FIRST CAUSE OF ACTION  
DECLARATION OF NON-INFRINGEMENT OF  
UNITED STATES PATENT NO. 5,791,095**

17. Dayton Superior hereby incorporates paragraphs 1 through 16 above as if fully set out herein.

18. Neither Dayton Superior nor any of its customers infringe any valid claim of the '095 patent.

**SECOND CAUSE OF ACTION  
DECLARATION OF NON-VIOLATION OF  
THE SETTLEMENT AGREEMENT**

19. Dayton Superior hereby incorporates paragraphs 1 through 18 above as if fully set out herein.

20. Dayton Superior has not violated the Settlement Agreement, including by offering for sale and selling chairs.

WHEREFORE, Dayton Superior demands:

A. That judgment be entered that neither Dayton Superior nor any of its customers infringe U.S. Patent No. 5,791,095.

B. That judgment be entered that Dayton Superior has not violated the Settlement Agreement.

C. That Dayton Superior be awarded the costs of this action.

D. That this case be adjudged and decreed exceptional pursuant to 35 U.S.C. § 285 and that Dayton Superior be awarded its costs and attorney fees.

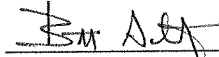
E. That Dayton Superior be awarded such other and further relief as the Court deems just and proper.

**JURY DEMAND**

Plaintiff Dayton Superior hereby demands and requests trial by jury of all issues that are triable by jury.

DAYTON SUPERIOR CORPORATION

Dated: March 13, 2006



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