

**UNITES STATES DISTRICT COURT  
FOR THE DISTRICT OF MAINE**

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HALLOWELL INTERNATIONAL

Plaintiff,

vs.

NYLE SPECIAL PRODUCTS, LLC

Defendant.

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Civil Action No.

**DECLARATORY JUDGMENT  
COMPLAINT**

**COMPLAINT**

Plaintiff, Hallowell International, LLC (“Hallowell”), for their Declaratory Judgment Complaint against Defendant Nyle Special Products, LLC (“Nyle”), alleges based on personal belief as to itself and on information and belief as to the conduct of Nyle Special Products, LLC, as follows:

**PARTIES**

1. Plaintiff, Hallowell, is a limited liability corporation organized and existing under the laws of the State of Maine, with its principal place of business at 110 Hildreth Street, Bangor, ME 04401.

2. On information and belief, Defendant Nyle is a limited liability corporation organized and existing under the laws of the State of Maine with a principal place of business at 242 Miller St, Bangor, ME 04401-5766.

3. Nyle purports to be the owner by assignment of U.S. Patent No. 7,266,959 (the “959 patent”), entitled “Cold Climate Air-Source Heat Pump,” a copy of which is attached as Exhibit 1.

#### **NATURE OF ACTION**

4. This is an action seeking a declaratory judgment that Hallowell does not infringe the ‘959 patent, that the ‘959 patent is invalid and/or unenforceable, and that Hallowell did not misappropriate any trade secrets of Nyle.

#### **JURISDICTION AND VENUE**

5. The Court has jurisdiction over this lawsuit under 28 U.S.C. § 1331 and 1338(a), as amended, whereas claims arise under the patent laws of the United States, 35 U.S.C. § 1 *et seq.*, and under the Declaratory Judgment Act, 28 U.S.C. § 2201(a).

6. Nyle is subject to the jurisdiction of this Court whereas Nyle resides and/or does business within this judicial district.

7. Venue is proper pursuant to 28 U.S.C. Sections 1391(b) because Nyle resides, and is subject to personal jurisdiction, in this district.

#### **ACTUAL CONTROVERSY**

8. Hallowell is a manufacturer of products used in heating, ventilation and air conditioning (“HVAC”) systems. One such product is the “All Climate Heat Pump,” which is a heat pump particularly designed to operate in cold weather environments.

9. In a letter to Hallowell dated September 27, 2007, Nyle, through its attorney and representative, Anthony Pellegrini, Esq., alleged that Hallowell directly infringed the ‘959 patent by certain of its activities related to the manufacturing, marketing, and/or selling of the “All Climate Heat Pump.” *See* Exhibit 2.

10. Nyle further alleged that “Hallowell is impermissibly using technology, methods, processes, and know-how regarding cold-climate heat pumps developed and owned by Nyle Special Products and protected by Nyle Special Products as trade secrets. ... In using Nyle Special Product’s trade secrets Hallowell International has infringed on Nyle Special Products’ legal rights.” *Id.*

11. Nyle demanded Hallowell “to immediately cease and desist all manufacture, marketing, and sale of the ‘All Climate Heat Pump’ and any and all other products infringing the ‘959 Patent, and to refrain from hereafter infringing in any way on Nyle Special Products’ intellectual property rights.” Nyle also demanded that Hallowell “disgorge to Nyle Special Products any and all profits obtained from the manufacture, marketing, and sale of the ‘All Climate Heat Pump.’” Nyle then threatened that “Failure to accede to these demands will result in Nyle Special Products taking all necessary actions provided by law to enforce its rights and interest in the ‘959 Patent and in its other intellectual property.” *Id.*

12. Hallowell responded to Nyle through letters from Hallowell’s attorney dated October 8, 2007 and October 23, 2007, asserting that Hallowell does not infringe the ‘959 patent, and that the ‘959 patent is invalid and unenforceable. *See* Exhibits 3 and 4.

13. Notwithstanding Hallowell’s letters, Nyle continues to assert that Hallowell is infringing the ‘959 patent, has misappropriated its trade secrets, and demands that Hallowell take action as outlined above and/or provide compensation to Hallowell. *See* Exhibit 5, January 11, 2008 letter from Attorney Pellegrini to Attorney Fishman. Nyle has threatened that “[s]hould these negotiations fail ... Nyle Special Products will take any and all action against Hallowell to prevent further infringement.” *Id.*

14. As a result of Nyle's allegations and general course of conduct, Hallowell has a reasonable apprehension that Nyle will file suit against Hallowell. An actual and justiciable controversy exists between Hallowell and Nyle as to whether Hallowell infringes any valid enforceable claim of Nyle's patent by manufacturing and/or selling its All Climate Heat Pump, and whether Hallowell has misappropriated any alleged trade secrets.

**COUNT I (Declaratory Judgment of Non-Infringement)**

15. Hallowell incorporates by reference, as if fully set forth herein, the allegations contained in paragraphs 1 through 14.

16. The manufacture, use, offer for sale and/or sale in the United States of Hallowell's All Climate Heat Pump does not directly infringe the '959 patent.

17. Hallowell does not contribute to the infringement of, or induce others to infringe, the '959 patent.

18. An actual controversy exists between Hallowell and Nyle with respect to the alleged infringement of the '959 patent.

19. Hallowell seeks, and is entitled to, a judicial declaration pursuant to 28 U.S.C. §§ 2201 *et seq.* that Hallowell does not infringe the '959 patent.

**COUNT II (Declaratory Judgment of Patent Invalidity)**

20. Hallowell incorporates by reference, as if fully set forth herein, the allegations contained in paragraphs 1 through 19.

21. Each claim of the '959 patent is invalid for failure to comply with one or more of the provisions of the Patent Act, Title 35, United States Code, including without limitation 35 U.S.C. §§ 101, 102, 103, 111, 112, 115, 116, 132, and/or 305.

22. An actual controversy exists between Hallowell and Nyle with respect to the alleged validity of the '959 patent.

23. Hallowell seeks, and is entitled to, a judicial declaration pursuant to 28 U.S.C. §§ 2201 *et seq.* that the '959 patent is invalid.

**COUNT III (Declaratory Judgment of Unenforceability)**

24. Hallowell incorporates by reference, as if fully set forth herein, the allegations contained in paragraphs 1 through 23.

25. The application which matured into the '959 patent was filed with the U.S.P.T.O. on February 3, 2005.

26. Nyle has manufactured and sold a product called the Cold Climate Heat Pump.

27. Nyle asserts that The Cold Climate Heat Pump is an embodiment of the invention claimed in the '959 patent.

28. Nyle sold, shipped, and/or caused to be installed one or more Cold Climate Heat Pumps prior to February 3, 2004. For example, one such unit was sold, shipped to, and/or installed at the residence of Catherine Luke, Cape Elizabeth, Maine, on or about November 13, 2003. As another example, a Cold Climate Heat Pump was sold and/or shipped to James White of Chelan County Public Utility District, located in the State of Washington, on or about January 29, 2004, and was then installed at Wenatchee Valley College in Wenatchee, WA.

29. The aforementioned activities involving the Cold Climate Heat Pump prior to February 3, 2004 constitute material prior art to the '959 patent.

30. The aforementioned prior art activities were not disclosed to the U.S.P.T.O. during prosecution of the application that issued as the '959 patent.

31. The alleged inventor of the '959 patent, Donald Lewis, is also the President of Nyle Special Products, LLC.

32. Upon information and belief, Mr. Lewis knew or should have known that the subject matter claimed in the patent was on sale, had been sold and/or was in public use more than one year prior to the filing date of the application, but knowingly and/or willfully withheld such information from the PTO during the '959 patent prosecution.

33. Additionally, to the extent that the '959 patent does claim a patentable invention, Mr. Lewis and Nyle were aware that Mr. Lewis was not the sole inventor of the '959 patent and were obligated under the Patent Act to identify any other inventors.

34. Based on the aforementioned activities, Mr. Lewis knowingly and willfully made numerous material fraudulent omissions and/or misrepresentations to the U.S.P.T.O., with clear intent to deceive the patent examiner, and which material omissions and/or misrepresentations were the efficient, inducing and proximate cause of the issuance of the '959 patent.

35. Each of the claims of the '959 patent is unenforceable due to inequitable conduct by the alleged inventor.

36. An actual controversy exists between Hallowell and Nyle with respect to the alleged enforceability of the '959 patent.

37. Hallowell seeks, and is entitled to, a judicial declaration pursuant to 28 U.S.C. §§ 2201 *et seq.* that the '959 patent is unenforceable.

**COUNT IV (Declaratory Judgment of Non-Misappropriation of Trade Secrets)**

38. Hallowell incorporates by reference, as if fully set forth herein, the allegations contained in paragraphs 1 through 37.

38. Hallowell denies that Nyle possess trade secrets and/or that it (Hallowell) has misappropriated any such alleged trade secrets pursuant to Maine Law under the Uniform Trade Secrets Act, 10 M.R.S.A. §§ 1541 *et seq.*

39. An actual controversy exists between Hallowell and Nyle with respect to the alleged misappropriation of trade secrets.

40. Hallowell seeks and is entitled to a judicial declaration that Nyle does not possess trade secrets and/or that Hallowell did not misappropriate any such trade secrets.

**PRAYER FOR RELIEF**

WHEREFORE, Hallowell respectfully requests:

- A. a Declaratory Judgment that Hallowell is not liable for directly infringing, or contributing to, or inducing the infringement of, any claim of the '959 patent;
- B. a Declaratory Judgment that each claim of the '959 patent is invalid;
- C. a Declaratory Judgment that each claim of the '959 patent is unenforceable;
- D. a Declaratory Judgment that Hallowell did not misappropriate any trade secrets belonging to Nyle;
- E. that the Court declare this to be an exceptional case under 35 U.S.C. § 285 and award Hallowell its reasonable attorneys fees, expenses, and prejudgment interest; and
- F. such other further relief as the Court may deem just and proper.

Dated: February 11, 2008

/s/ Melissa A. Hewey

Melissa A. Hewey

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**CERTIFICATE OF SERVICE**

I hereby certify that on February 11, 2008, I electronically filed Plaintiff's Declaratory Judgment Complaint with the Clerk of the Court at [newcases.bangor@med.uscourts.gov](mailto:newcases.bangor@med.uscourts.gov).

/s/ Melissa A. Hewey  
Melissa A. Hewey

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