

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

DIVERSI-PLAST PRODUCTS, INC.,
a Minnesota corporation,

Civil Action No. _____
(Trial by Jury Demanded)

Plaintiff,

v.

JACK HENDERSON,
a Pennsylvania resident, and

DCI PRODUCTS, INC.,
a Pennsylvania corporation,

Defendants.

**COMPLAINT FOR DECLARATORY JUDGMENT
OF PATENT NONINFRINGEMENT AND INVALIDITY**

Plaintiff Diversi-Plast Products, Inc. (“Diversi-Plast”), through counsel, brings this Complaint for Declaratory Judgment against Defendants Jack Henderson and DCI Products, Inc. (“DCI”) and respectfully states and alleges as follows:

PARTIES AND JURISDICTION

1. Plaintiff Diversi-Plast is a Minnesota corporation, having its principal place of business at 7425 Laurel Avenue, Golden Valley, MN 55426. Diversi-Plast’s business includes, among other things, the sale of roof and ridge vent products.
2. Upon information and belief, Defendant DCI is a Pennsylvania corporation with its principal place of business at 100 Mill Street, Clifton Heights, PA, 19019.
3. Upon information and belief, Defendant Jack Henderson is the president of DCI and resides at 335 Summit Road, Springfield, PA, 19064.

4. Upon information and belief, Defendant Jack Henderson is the inventor and owner of U.S. Patent Nos. 6,212,833 (Exhibit A), issued April 10, 2001 and 6,447,392 (Exhibit B), issued September 10, 2002 (collectively hereinafter referred to as “the Henderson Patents”).

5. This is an action for declaratory judgment. There is an actual controversy between the parties with regard to Diversi-Plast’s assertion of noninfringement and invalidity of the Henderson Patents. A reasonable apprehension of a suit for infringement of the Henderson Patents has been created by DCI and Jack Henderson, or those acting by or for DCI and Jack Henderson, with respect to Diversi-Plast’s ability to make, use, sell or offer to sell its roof and ridge vent products.

6. DCI’s and Jack Henderson’s position respecting alleged infringement of the Henderson Patents by Diversi-Plast is provided in a January 16, 2006 letter to Trimline Products, a reserved and assumed name, and product line of Diversi-Plast (Exhibit C).

7. Jack Henderson contacted legal counsel for Diversi-Plast after January 16, 2006 respecting alleged infringement of the Henderson Patents by Diversi-Plast.

8. Legal counsel for Jack Henderson and DCI contacted legal counsel for Diversi-Plast after January 16, 2006 respecting alleged infringement of the Henderson Patents by Diversi-Plast.

9. Upon information and belief, Jack Henderson contacted representatives of the LBM Expo ’06 trade show in an attempt to have Diversi-Plast excluded from the trade show based on allegations of infringement of the Henderson Patents by Diversi-Plast.

10. This Court has subject matter jurisdiction in accordance with 28 U.S.C. §§ 2201, 2202, and 1338.

11. Upon information and belief, DCI and Jack Henderson conduct business within this district and elsewhere. Further, DCI and Jack Henderson notified Diversi-Plast respecting their allegations of infringement through written and oral contacts with Diversi-Plast's representatives in Minnesota. Accordingly, personal jurisdiction and venue are proper under 28 U.S.C. §§ 1391(b) and (c), and Minn. Stat. § 543.19.

COUNT I

**DECLARATION OF INVALIDITY
UNITED STATES PATENT NO. 6,212,833**

12. U.S. Patent No. 6,212,833 is invalid for failure to meet the conditions of patentability specified in 35 U.S.C. §§ 101, 102, and/or 103, and/or failure to comply with the requirements of 35 U.S.C. § 112 and other applicable statutory sections.

COUNT II

**DECLARATION OF NONINFRINGEMENT
UNITED STATES PATENT NO. 6,212,833**

13. Diversi-Plast sells roof and ridge vent products. The full and half vent versions of its ridge vent products, including at least Rigid Roll and Rigid Vent products, do not infringe any valid claim of U.S. Patent No. 6,212,833.

14. Diversi-Plast has not directly infringed, willfully infringed, induced infringement, nor contributorily infringed any valid claim of U.S. Patent No. 6,212,833.

COUNT III

**DECLARATION OF INVALIDITY
UNITED STATES PATENT NO. 6,447,392**

15. U.S. Patent No. 6,447,392 is invalid for failure to meet the conditions of patentability specified in 35 U.S.C. §§ 101, 102, and/or 103, and/or failure to comply with the requirements of 35 U.S.C. § 112 and other applicable statutory sections.

COUNT IV

**DECLARATION OF NONINFRINGEMENT
UNITED STATES PATENT NO. 6,447,392**

16. Diversi-Plast sells roof and ridge vent products. Diversi-Plast's roof and ridge vent products, including at least the full and half vent versions of its Rigid Roll and Rigid Vent products do not infringe any valid claim of U.S. Patent No. 6,447,392.

17. Diversi-Plast has not directly infringed, willfully infringed, induced infringement, nor contributorily infringed any valid claim of U.S. Patent No. 6,447,392.

JURY DEMAND

18. Pursuant to Fed.R.Civ.P. 38(b), Diversi-Plast requests a trial by jury.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Diversi-Plast Products, Inc. prays for relief as follows:

A. Declaratory judgment stating that:

1. Plaintiff Diversi-Plast Products, Inc. has not directly infringed, willfully infringed, induced infringement, nor contributorily infringed any valid claim of U.S. Patent Nos. 6,212,833 and 6,447,392.

2. U.S. Patent Nos. 6,212,833 and 6,447,392 are invalid and unenforceable;
and

3. Defendants Jack Henderson and DCI, and those in active concert or participation with Defendants Jack Henderson and DCI who receive actual notice thereof, are permanently enjoined from initiating patent infringement litigation against Plaintiff Diversi-Plast Products, Inc., or threatening Plaintiff Diversi-Plast Products, Inc. or any of its customers, dealers, licensees, subsidiaries, parents, agents, servants, or employees, or any prospective or present sellers, dealers, licensees, distributors, customers, or users of

Plaintiff Diversi-Plast Products, Inc.'s products, with patent infringement litigation based on either or both of U.S. Patent Nos. 6,212,833 and 6,447,392, or charging any of them either verbally or in writing with infringement of either or both of U.S. Patent Nos. 6,212,833 and 6,447,392.

B. A judgment awarding damages to Plaintiff Diversi-Plast Products, Inc. for its costs, disbursements, and attorneys' fees incurred in prosecuting this action, with interest, including damages for an exceptional case, pursuant to 35 U.S.C. § 285, and otherwise according to law; and

C. Such other relief as the Court may deem just, equitable, and proper.

Respectfully submitted,

**PATTERSON, THUENTE,
SKAAR & CHRISTENSEN, P.A.**

Dated: February 8, 2006

By: 

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ATTORNEYS FOR DIVERSI-PLAST PRODUCTS, INC.