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AT SEATTLE
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WESTERN DISTRICT OF WASHINGTON
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07-CV-00982-CMP

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

FASCINATIONS TOYS & GIFTS, INC., a
Washington corporation,

Plaintiff,

v.

PLANT CELL TECHNOLOGY, INC., a
Delaware corporation,

Defendant.

Civil Action No.

CV7 0982

COMPLAINT FOR DECLARATORY
JUDGMENT

JURY DEMAND

SEA 10286 (Tills)

Plaintiff Fascinations Toys & Gifts, Inc. ("Fascinations") hereby alleges the following causes of action against Defendant Plant Cell Technology, Inc. ("PCT"):

I. PARTIES

1. Fascinations is a corporation organized and existing under the laws of the state of Washington, having its principal place of business at 19224 Des Moines Way South, Suite 100, Seattle, Washington 90401.

2. PCT is a Delaware corporation having its principal place of business at 1823 Jefferson Place NW, Washington, D.C. 20036.

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II. JURISDICTION AND VENUE


3. The Court has subject matter jurisdiction under 28 U.S.C. §§ 1331, 1338(a), 2201(a) and 2202.

4. The Court has personal jurisdiction over PCT in that a substantial part of the events or omissions giving rise to the claims occurred in the Western District of Washington. PCT has singled out Fascinations in the Western District of Washington by virtue of its intentional and systematic contacts with Fascinations and the State of Washington directly related to the claims at issues in this case, namely, alleged infringement of U.S. Patent No. 5,803,014 ("the '014 patent"). Despite earlier admissions that Fascinations in fact did not infringe the '014 patent, PCT has directed written accusations of infringement of the '014 patent to Fascinations in Washington. PCT has also recently begun a systematic campaign of sending threatening and letters to Fascinations' customers, accusing them of infringing of the '014 patent based on their distribution of Fascinations' products. Among the customers of Fascinations accused of infringing by PCT is InnovaToys and Gifts located in the Western District of Washington.

PCT has numerous contacts with Washington beyond its targeting of Fascinations and its customers with infringement allegations. Between May 2005 and early 2007, PCT engaged in more than a dozen direct contacts with Fascinations in an effort to consummate a consulting arrangement with Fascinations related to the technology subsumed in the '014 patent. In addition, since at least as early as 2004, PCT has offered for sale and sold into Washington a plant preservative mixture (PPM) product that PCT alleges to be the commercialization of the chemical agent claimed in the '014 patent. PCT has, since at least as early as April 2005, operated an Internet virtual store at which it advertises, promotes and interactively sells the PPM product. The Internet site is directed to and accessible by residents of this judicial district.

5. Venue in the United States District Court for the Western District of Washington is proper pursuant to 28 U.S.C. §§ 1391 and 1400(b).

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III. RELATIONSHIP BETWEEN THE PARTIES

6. Fascinations is in the business of selling various consumer products from its principal place of business in Washington State. Fascinations sells products it has developed as well as acts as a distributor of products developed by others.

7. One of the products developed, offered for sale and sold in the United States by Fascinations is an ant habitat marketed under the brand ANTWORKS®. This product includes a non-toxic, nutrient laden gel through which ants tunnel as they grow an ant colony within the habitat.


8. In or around spring 2004, during Fascinations' development of its ANTWORKS® product, Fascinations purchased from PCT a certain quantity of the PPM product to assess whether it may be used in the ant habitat product. Fascinations determined to go a different direction and proceeded to develop its product using other components. Fascinations subsequently finalized and began marketing and selling its ANTWORKS® ant habitat product.

9. In or around May 2005, PCT contacted Fascinations, accusing it of infringing the '014 patent titled "Habitat Media for Ants and Other Invertebrates." After careful analysis of the ANTWORKS® product in view of the '014 patent, Fascinations responded that its product did not infringe the patent. PCT subsequently acknowledged that the ANTWORKS® product did not infringe.

10. Between May 2005 and February 2007, PCT attempted to negotiate a consulting arrangement with Fascinations related to the technology subsumed in the '014 patent. Both verbally and in writing, PCT engaged in more than a dozen direct contacts with Fascinations regarding the proposed consulting arrangement. No consulting arrangement was ever finalized or agreed to by the parties.

11. On or about June 18, 2007, Fascinations learned that PCT had sent a letter to one of its ANTWORKS® product distributors accusing it of infringing the '014 patent. On June 19,

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1 2007, after learning that PCT has accused another of Fascinations' customers of infringement,
2 Fascinations contacted PCT in writing, reconfirming PCT's earlier acknowledgement that the
3 ANTWORKS® product did not infringe the '014 patent, and inquiring as to the reason behind
4 the recent inconsistent infringement allegations to Fascinations' customers. On or about June 20,
5 2007, Fascinations learned that PCT had accused yet another of Fascinations' customers of
6 accused of infringing the '014 patent, sending a cease-and-desist letter to InnovaToys and Gifts
7 located in ScaTac, Washington.

8 12. On June 21, 2007, PCT finally responded to Fascinations June 19, 2007
9 communication. PCT denied acknowledging that the ANTWORKS® product did not infringe the
10 '014 patent, specifically accused Fascinations of infringement and demanded that Fascinations
11 agree to an onerous royalty payment.

12 13. Fascinations does not believe that it infringes the '014 patent and intends to
13 continue to offer for sale and sell its ANTWORKS® ant habitat product in the United States.

14 14. Fascinations has a reasonable apprehension that it will face a patent infringement
15 lawsuit. PCT's actions, including its threatening contact with Fascinations' customers, have
16 created damaging cloud over Fascinations' business that it is entitled to have resolved.
17 Accordingly, an actual controversy exists as to Fascinations alleged infringement of the
18 '014 patent.

19 **IV. CAUSES OF ACTION**

20 **COUNT 1: DECLARATORY JUDGMENT THAT FASCINATIONS' ANTWORKS® PRODUCTS DO**
21 **NOT INFRINGE THE '014 PATENT**

22 15. Fascinations realleges and incorporates by reference the allegations set forth in
23 the preceding paragraphs.

24 16. PCT has alleged that Fascinations' ANTWORKS® product infringes the
25 '014 patent.

26 17. Fascinations' ANTWORKS® product does not infringe the '014 patent.

1 **COUNT 2: DECLARATORY JUDGMENT THAT THE '014 PATENT IS INVALID**

2 18. Fascinations realleges and incorporates by reference the allegations set forth in
3 the preceding paragraphs.

4 19. Upon information and belief, the '014 patent is invalid under 35 U.S.C. §§ 102,
5 103 and/or 112.

6 **COUNT 3: DECLARATORY JUDGMENT THAT THE '014 PATENT IS UNENFORCEABLE AGAINST**
7 **FASCINATIONS**

8 20. Fascinations realleges and incorporates by reference the allegations set forth in
9 the preceding paragraphs.

10 21. PCT specifically admitted that Fascinations' ANTWORKS® product does not
11 infringe the '014 patent. In continuing reliance on the PCT's admission, Fascinations has offered
12 for sale and sold its ANTWORKS® product in the United States. Accordingly, PCT is estopped
13 from now claiming that the ANTWORKS® product infringes the '014 patent because of its
14 earlier acquiescence to Fascinations' product.

15 22. PCT first became aware of Fascinations' ANTWORKS® product more than two
16 years ago, when it first accused the product of infringing the '014 patent. PCT waited more than
17 two years after initially threatening infringement to make any further allegations of infringement
18 against Fascinations and its customers. Given the substantial intervening time, PCT cannot now
19 assert that the ANTWORKS® product infringes the '014 patent, based on acquiescence and/or
20 laches.

21 **V. PRAYER FOR RELIEF**

22 Fascinations requests the following alternative and cumulative relief:

- 23 1. A declaration that Fascinations' ANTWORKS® ant habitat product does not
24 infringe the '014 patent;
25 2. A declaration that the '014 patent is invalid;
26 3. A declaration that the '014 patent is unenforceable;

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4. An award of reasonable attorneys' fees and costs pursuant to 35 U.S.C. § 285 and applicable law; and
5. Such other and further relief as the Court may deem just and proper.

RESPECTFULLY SUBMITTED this 25th day of June, 2007.

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