

ORIGINAL

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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

JAMES N. HATTEN, CLERK  
By: *J. White* Deputy Clerk

TENSAR INTERNATIONAL  
CORPORATION,

a Georgia corporation,

Plaintiff,

v.

ANCHOR WALL SYSTEMS, INC.,

a Minnesota corporation,

Defendant.

Civil Action No.

1 08 - CV - 1333 - JOF

**COMPLAINT**

Plaintiff Tensar International Corporation ("Tensar"), by its undersigned counsel, brings this action against Defendant Anchor Wall Systems, Inc. ("Anchor"), and complains and alleges as follows:

**NATURE OF THE CASE**

1. This is an action to declare U.S. Patents Nos. 6,142,713 ("the '713 patent") and 6,312,197 ("the '197 patent") not infringed, invalid, and unenforceable under the federal patent laws. Copies of the '713 and '197 patents including their reexamination certificates are attached as **Exhibit A** and **Exhibit B**, respectively.

### PARTIES

2. Tensar, formerly known as Tensar Earth Technologies, Inc., has its principal place of business at 5883 Glenridge Drive, Suite 200, Atlanta, Georgia 30328

3. Anchor has its principal place of business at 5959 Baker Road, Minnetonka, Minnesota 55345.

### JURISDICTION

4. Upon information and belief, Anchor is the owner of the entire right, title and interest in and to each of the '197 and '713 patents.

5. Jurisdiction of this Court arises under the Federal Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, and under the laws of the United States concerning actions relating to patents, 28 U.S.C. § 1338(a).

6. Anchor is regularly, substantially and continuously engaged in the marketing, distribution, licensing and sale of goods and services, including products that embody the claims of the patents in controversy herein, in Georgia and within this judicial District.

7. By letter dated March 10, 2008, Anchor accused one of Tensar's customers, Mid-Mo Block & Brick, Inc. of Jefferson City, Missouri ("Mid-Mo"),

of infringing Anchor's '713 and '197 patents by its manufacture and sale of retaining wall blocks. Attached to the letter are photographs of the retaining wall blocks that Anchor contends are infringing. The March 10, 2008, letter and attached photographs are attached hereto as **Exhibit C**.

8. The accused retaining wall blocks are products that originated with Tensar which Mid-Mo is licensed by Tensar to manufacture and sell. The accused block is identified by Tensar as the Mesa<sup>®</sup> Gardener<sup>™</sup> landscaping block (hereinafter, "Mesa<sup>®</sup> Block"). Tensar has numerous licensees throughout the United States who are authorized to manufacture and sell its Mesa<sup>®</sup> Block.

9. By reason of Anchor's allegation that Mid-Mo's sale of Mesa<sup>®</sup> Block constitutes an infringement of the '713 and '197 patents, and similar communications to other Tensar Mesa<sup>®</sup> Block licensees, an actual controversy exists between Tensar and Anchor as to whether the manufacture and/or sale of Mesa<sup>®</sup> Block does, in fact and law, constitute an infringement and whether Tensar's activities with Mid-Mo, as well as with other Tensar Mesa<sup>®</sup> Block licensees, constitute acts of infringement, including contributory infringement and/or inducement of infringement.

**DECLARATION OF PATENT INVALIDITY, NONINFRINGEMENT  
AND UNENFORCEABILITY**

10. Tensar does not make, use or sell any product which is covered by, or infringes, any claim of the '713 and/or '197 patents, and does not actively aid or abet or otherwise induce any person, including Mid-Mo and its other Mesa<sup>®</sup> Block licensees, to infringe the '713 and/or '197 patents.

11. Upon information and belief, the '713 and '197 patents, and each of them, are invalid, void and unenforceable for failure to comply with the conditions of Title 35 of the United States Code, including 35 U.S.C. §§ 101, 102, 103, and 112.

12. The Anchor allegation of infringement is barred in whole or in part by the doctrines of waiver, estoppel and/or laches. Specifically, the '713 and '197 patents are part of a family of patents, the first application of which was filed in September 1989. Among the patents within the patent family is U.S. Patent No. 5,827,015 ("the '015 patent") which issued on October 27, 1998. Beginning in 1998 and through 2000, Anchor had notified several Tensar Mesa<sup>®</sup> Block licensees that their making and selling Mesa<sup>®</sup> Block would infringe the '015 patent. In 1999 and again in 2000, Tensar's attorneys notified Anchor that there was no patent infringement and demanded that Anchor's further contact with Tensar's licensees cease and desist. Anchor did not respond to these notices and demands.

13. Soon thereafter, the '713 and '197 patents were issued by the U.S. Patent and Trademark Office and, as of the date of their issuance, Anchor knew of the activities of Tensar with respect to the accused Tensar Mesa<sup>®</sup> Block. Anchor has taken no action against Tensar or its licensees, nor provided any notice to Tensar or its licensees, of patent infringement until Tensar licensee Mid-Mo received the March 10, 2008, letter (**Exhibit C**). As a result of its delay in taking action of more than six (6) years, and having failed to respond to Tensar's earlier notices of noninfringement, Anchor is now equitably estopped to assert infringement and is precluded by laches from pursuing the same.

WHEREFORE, Plaintiff Tensar demands judgment in its favor and against Defendant Anchor as follows:

A. That the Court declare, adjudge, and decree that Tensar does not infringe, contributorily infringe, and/or induce infringement of the '713 and '197 patents;

B. That Mesa<sup>®</sup> Block designed by and originating from Tensar be found not to infringe the '713 and '197 patents;

C. That the Court declare, adjudge and decree that the '713 and '197 patents are invalid, void and unenforceable;

D. That the Court declare, adjudge and decree that Anchor is equitably estopped and precluded by laches from asserting infringement against Tensar and/or its licensees;

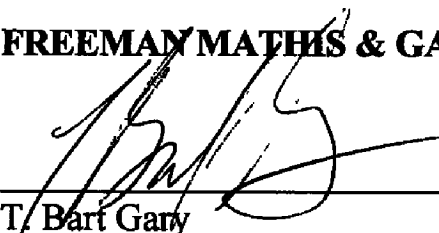
E. That the Court preliminarily and permanently enjoin Anchor from making further or other threats of patent infringement or taking action for patent infringement against Tensar, its licensees and/or any of their customers or potential customers;

F. That the Court award Tensar its costs and attorneys' fees and declaring this an exceptional case; and

G. That the Court grant such other and further relief as it shall deem just and proper.

Respectfully submitted this the 4<sup>th</sup> day of April, 2008

**FREEMAN MATHIS & GARY LLP**

  
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