

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF ALABAMA**

ELIZABETH ANN WILSON,
a resident of Alabama
Plaintiff,

v.

PLANT HAVEN, INC., a corporation
located in California; MONROVIA
NURSERY COMPANY, a corporation
located in California; RIVERBEND
NURSERY, INC., a corporation located
in Virginia; BIG DIPPER FARM, INC.,
a corporation located in Washington
State; and GREENLEAF NURSERY
COMPANY, a corporation located in
Oklahoma;
Defendants.

Case No. 12-420

Judge:

JURY TRIAL DEMANDED

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff, ELIZABETH ANN WILSON, for her Complaint against PLANT HAVEN, INC., MONROVIA NURSERY COMPANY, RIVERBEND NURSERY, INC., BIG DIPPER FARM, and GREENLEAF NURSERY COMPANY INC., alleges as follows:

THE PARTIES

1. Plaintiff, Elizabeth Ann Wilson (“Ann Wilson”), is an individual residing at 14849 Ridge Rd., Summerdale, Alabama. 36580.
2. Defendant, Plant Haven, Inc. (“Plant Haven”) is a corporation having its principal place of business at 121 West Pueblo Street, Santa Barbara, California 93105.
3. Defendant, Monrovia Nursery Company (“Monrovia”) is a corporation having its principal place of business at 817 E. Monrovia Place, Azusa, California 91702.

4. Defendant, Riverbend Nursery, Inc. (“Riverbend”) is a corporation having its principal place of business at 1295 Mt. Elbert Road N.W., Riner, Virginia 24149.

5. Defendant, Big Dipper Farm, Inc. (“Big Dipper”) is a corporation having its principal place of business at 26130 S.E. Green Valley Rd., Diamond, Washington 98010.

6. Defendant, Greenleaf Nursery Company (“Greenleaf”) is a corporation having its principal place of business at 28406 Oklahoma 82, Park Hill, Oklahoma 74451.

JURISIDCTION AND VENUE

7. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §1331 (federal question), §1332 (a) (diversity of citizenship), and §1338(a) (question related to patents).

8. Venue is proper in this judicial district pursuant to 28 U.S.C. §1391 and §1400.

FACTS COMMON TO ALL DEFENDANTS

9. Ann Wilson is the inventor and owner of United States Patent No. PP15,503 that covers a unique plant known as “Miss Anne Verbena” (“Ann Wilson’s Patent”).

10. In 1992, Ann Wilson discovered a new verbena plant that was different from all other verbenas because of the combination of *inter alia*, its perennial reliability, white flowers, its textured dark green lemon-scented foliage, and its ability to grow in a variety of soil and climate conditions.

11. Ann Wilson discovered this new verbena in an abandoned garden in Lincoln County, Mississippi, and for approximately ten years Ann Wilson grew this new plant in a variety of soil and light conditions.

12. Defendant Plant Haven promotes new plants by selling cuttings to national nurseries or growers, including the Defendants, Monrovia, Riverbend, Big Dipper, and Greenleaf, which sell to retail stores.

13. In approximately 2001 Ann Wilson sent cuttings of her new verbena to Plant Haven.

14. On August 10, 2001 Ann Wilson and Plant Haven entered into a Breeders Contract where Ann Wilson would send cuttings of her new verbena plant to locations directed by Plant Haven for further testing in various conditions.

15. In April-May 2003, after Ann Wilson's verbena was successfully grown at Plant Haven's directed locations, Plant Haven and Ann Wilson agreed that Plant Haven receive from the growers (Monrovia, Riverbend, Big Dipper, and Greenleaf) 10 cents for every Miss Anne Verbena sold anywhere in the world, and Plant Haven would pay Ann Wilson 6.7 cents.

16. Plant Haven also suggested to Ann Wilson that Plant Haven, with its expertise and experience in filing plant patent applications, file a patent application for her unique verbena, with Ann Wilson exclusively owning the resulting patent.

17. Plant Haven, filed the patent application along with a photograph of Ann Wilson's verbena, and named Ann Wilson's verbena "Miss Anne Verbena."

18. In accordance with 35 U.S.C. §261, the United States Patent Office issued Ann Wilson's Patent, having patent number PP15,503, along with the photograph of Miss Anne Verbena. (Ex. A)

19. Thereafter, Plant Haven unilaterally cancelled the Breeders Contract with Ann Wilson.

FACTS SPECIFIC TO DEFENDANT PLANT HAVEN

20. Plant Haven's website offers Ann Wilson's "Miss Anne Verbena" and it uses the same photograph of Miss Anne's Verbena that is in Ann Wilson's Patent, thereby infringing Ann Wilson's Patent.

21. Plant Haven's infringement of Ann Wilson's Patent has been willful.

FACTS SPECIFIC TO DEFENDANT MONROVIA

22. Defendant Monrovia offers for sale Ann Wilson's "Miss Anne" Verbena, thereby infringing Ann Wilson's Patent.

23. The photograph of the Miss Anne Verbena on the Monrovia website is the same photograph of Ann Wilson's verbena that is in Ann Wilson's Patent.

24. Monrovia's infringement of Ann Wilson's Patent has been willful.

FACTS SPECIFIC TO DEFENDANT RIVERBEND

25. Defendant Riverbend offers for sale Ann Wilson's "Miss Anne" Verbena, thereby infringing Ann Wilson's Patent.

26. The photograph of the Miss Anne Verbena on the Riverbend website is the same photograph of Ann Wilson's verbena that is in Ann Wilson's Patent.

27. Riverbend's infringement of Ann Wilson's Patent has been willful.

FACTS SPECIFIC TO DEFENDANT BIG DIPPER

28. Defendant Big Dipper offers for sale Ann Wilson's "Miss Anne" Verbena, thereby infringing Ann Wilson's Patent.

29. The photograph of the Miss Anne Verbena on the Big Dipper website is the same photograph of Ann Wilson's verbena that is in Ann Wilson's Patent.

30. Big Dipper's infringement of Ann Wilson's Patent has been willful.

FACTS SPECIFIC TO DEFENDANT GREENLEAF

31. Defendant Greenleaf offers for sale Ann Wilson's "Miss Anne" Verbena, thereby infringing Ann Wilson's Patent.

32. The photograph of the Miss Anne Verbena on the Greenleaf website is the same photograph of Ann Wilson's verbena that is in Ann Wilson's Patent.

33. Greenleaf's infringement of Ann Wilson's Patent has been willful.

WHEREFORE, Ann Wilson prays that a judgment be entered in her favor and against each Defendant as follows:

Plant Haven

- (a) Plant Haven infringes U.S. Patent PP15503 under 35 U.S.C. §271;
- (b) Plant Haven's infringement has been willful;
- (c) Ann Wilson be awarded damages pursuant to 35 U.S.C. §284;
- (d) Ann Wilson be awarded prejudgment interest;
- (e) Ann Wilson be awarded increased damages pursuant to 35 U.S.C. §284;
- (f) Ann Wilson be awarded its attorney fees pursuant to 35 U.S.C. §285; and
- (g) any further and just relief the Court deems equitable and appropriate.

Monrovia

- (a) Monrovia infringes U.S. Patent PP15503 under 35 U.S.C. §271;
- (b) Monrovia's infringement has been willful;
- (c) Ann Wilson be awarded damages pursuant to 35 U.S.C. §284;
- (d) Ann Wilson be awarded prejudgment interest;
- (e) Ann Wilson be awarded increased damages pursuant to 35 U.S.C. §284;
- (f) Ann Wilson be awarded its attorney fees pursuant to 35 U.S.C. §285; and
- (g) any further and just relief the Court deems equitable and appropriate.

Riverbend

- (a) Riverbend infringes U.S. Patent PP15503 under 35 U.S.C. §271;

- (b) Riverbend's infringement has been willful;
- (c) Ann Wilson be awarded damages pursuant to 35 U.S.C. §284;
- (d) Ann Wilson be awarded prejudgment interest;
- (e) Ann Wilson be awarded increased damages pursuant to 35 U.S.C. §284;
- (f) Ann Wilson be awarded its attorney fees pursuant to 35 U.S.C. §285; and
- (g) any further and just relief the Court deems equitable and appropriate.

Big Dipper

- (a) Big Dipper infringes U.S. Patent PP15503 under 35 U.S.C. §271;
- (b) Big Dipper's infringement has been willful;
- (c) Ann Wilson be awarded damages pursuant to 35 U.S.C. §284;
- (d) Ann Wilson be awarded prejudgment interest;
- (e) Ann Wilson be awarded increased damages pursuant to 35 U.S.C. §284;
- (f) Ann Wilson be awarded its attorney fees pursuant to 35 U.S.C. §285; and
- (g) any further and just relief the Court deems equitable and appropriate.

Greenleaf

- (a) Greenleaf infringes U.S. Patent PP15503 under 35 U.S.C. §271;
- (b) Greenleaf's infringement has been willful;
- (c) Ann Wilson be awarded damages pursuant to 35 U.S.C. §284;
- (d) Ann Wilson be awarded prejudgment interest;
- (e) Ann Wilson be awarded increased damages pursuant to 35 U.S.C. §284;
- (f) Ann Wilson be awarded its attorney fees pursuant to 35 U.S.C. §285; and
- (g) any further and just relief the Court deems equitable and appropriate.

Dated: June 26, 2012, 2012

**PLAINTIFF DEMANDS TRIAL
BY STRUCK JURY**

s/David P. Shepherd

DAVID P. SHEPHERD

Respectfully submitted,

s/David P. Shepherd

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