

USDC SCAN INDEX SHEET



GEP 4/20/05 14:05

3:05-CV-00828 MUSCARELLA V. BRIDGEWATER INC

1

CMP.

ORIGINAL

1 Daniel J. Kessler (CSB #157163)
Benjamin R. Seecof (CSB #157000)
2 KESSLER & SEECOF, LLP
2254 Moore Street, Suite 201
3 San Diego, CA 92110
Telephone: 619-325-0795
4
Attorneys for Plaintiff
5 Sal Muscarella d.b.a. Masterclean Products

FILED
05 APR 19 AM 11:24
DEPUTY

8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA

10 Sal Muscarella, an)
individual, d.b.a. Masterclean)
11 Products,)
12)
Plaintiff,)
13)
14 v.)
15 Bridgewater, Inc.,)
a Utah Corporation,)
16)
Defendant.)
17)

Case No.
'05 CV 0828 BEN (LSP)
COMPLAINT FOR DECLARATORY
JUDGMENT OF INVALIDITY AND
NON-INFRINGEMENT OF A PATENT
DEMAND FOR JURY TRIAL

18 COMPLAINT

19 Plaintiff, Sal Muscarella, d.b.a. MASTERCLEAN PRODUCTS, for
20 his Complaint against Bridgewater, Inc. alleges as follows:

21 I.

22 THE PARTIES

23 1. Plaintiff Sal Muscarella is an individual doing
24 business as MASTERCLEAN PRODUCTS (hereinafter, "Masterclean")
25 and has a principal place of business in Poway, San Diego County,
26 California.

27 2. On information and belief, defendant Bridgewater
28

CR

1 Inc. (hereinafter "Bridgewater") is a Utah corporation having a
2 business address at 542 West Confluence Avenue in Salt Lake City,
3 Utah. Upon information and belief, Masterclean alleges that
4 Bridgewater does business under the names Hydro-Force and
5 Bridgepoint Systems.

6 **II.**

7 **JURISDICTION AND VENUE**

8 3. Jurisdiction of this Court arises under the Federal
9 Declaratory Judgments Act, Title 28, United States Code, Sections
10 2201 and 2202, and under the laws of the United States concerning
11 actions relating to patents, Title 28, United States Code,
12 Section 1338(a).

13 4. Bridgewater is subject to personal jurisdiction in this
14 judicial district as it conducts business within this district.

15 5. Venue is proper in this United States District Court
16 for the Southern District of California pursuant to Title 28,
17 United States Code Section 1391(b).

18 **III.**

19 **CLAIM FOR RELIEF**

20 (DECLARATORY JUDGMENT OF INVALIDITY
21 AND NON-INFRINGEMENT OF A PATENT)

22 6. On information and belief, Masterclean alleges that
23 Bridgewater claims ownership by assignment of United States
24 Patent No. 6,182,911, issued on February 6, 2001 to Hanks, et
25 al., entitled "Injection Spray System With Adjustable Metering
26 Valve."

27 7. Masterclean manufactures, offers for sale, sells, and
28 intends to continue to manufacture, offer for sale, and sell a
handheld injection spray system that contains a metering valve.

1 8. On March 4, 2005, counsel for Bridgewater sent a letter
2 to Masterclean informing Masterclean that it is infringing on
3 Bridgewater's patent and threatening to sue for an injunction to
4 prohibit infringement of the patent and recover damages.

5 9. On information and belief, Masterclean alleges that
6 Bridgewater reduced to practice subject matter covered by at
7 least one claim of United States Patent No. 6,182,911 in this
8 country more than one year before the filing date of United
9 States Provisional Patent Application Serial No. 60/091,528,
10 filed July 2, 1998. Attached as Exhibit A are photographs of
11 metering valves, which, upon information and belief, are covered
12 by at least one claim of United States Patent No. 6,182,911, that
13 were reduced to practice more than one year before the filing
14 date of United States Provisional Patent Application Serial No.
15 60/091,528, filed July 2, 1998.

16 10. On information and belief, Masterclean alleges that
17 Bridgewater manufactured subject matter covered by at least one
18 claim of United States Patent No. 6,182,911 in this country more
19 than one year before the filing date of United States Provisional
20 Patent Application Serial No. 60/091,528, filed July 2, 1998.
21 Attached as Exhibit A are photographs of metering valves, which,
22 upon information and belief, are covered by at least one claim of
23 United States Patent No. 6,182,911, that were manufactured more
24 than one year before the filing date of United States Provisional
25 Patent Application Serial No. 60/091,528, filed July 2, 1998.

26 11. On information and belief, Masterclean alleges that
27 Bridgewater sold and offered for sale subject matter covered by
28 at least one claim of United States Patent No. 6,182,911 in this

1 country more than one year before the filing date of United
2 States Provisional Patent Application Serial No. 60/091,528,
3 filed July 2, 1998. Attached as Exhibit A are photographs of
4 metering valves, which, upon information and belief, are covered
5 by at least one claim of United States Patent No. 6,182,911, that
6 were sold and offered for sale more than one year before the
7 filing date of United States Provisional Patent Application
8 Serial No. 60/091,528, filed July 2, 1998.

9 12. On information and belief, Masterclean alleges that
10 Bridgewater distributed subject matter covered by at least one
11 claim of United States Patent No. 6,182,911 in this country more
12 than one year before the filing date of United States Provisional
13 Patent Application Serial No. 60/091,528, filed July 2, 1998.
14 Attached as Exhibit A are photographs of metering valves, which
15 upon information and belief, are covered by at least one claim of
16 United States Patent No. 6,182,911, that were distributed more
17 than one year before the filing date of United States Provisional
18 Patent Application Serial No. 60/091,528, filed July 2, 1998.

19 13. On information and belief, Masterclean alleges that
20 Bridgewater was aware of prior art material to the patentability
21 of at least one claim of United States Patent No. 6,182,911 that
22 was not cited to the United States Patent and Trademark Office
23 during the prosecution of the patent.

24 14. On information and belief, Masterclean alleges that the
25 metering valve used by Masterclean, which metering valve
26 Bridgewater claims infringes United States Patent No. 6,182,911,
27 has been manufactured by DEMA Engineering Company and widely sold
28 in the United States since prior to 1995.

1 15. There is a substantial and justiciable controversy
2 between Masterclean and Bridgewater as to Bridgewater's right to
3 threaten or maintain suit for infringement of said patent, and as
4 to the validity and scope thereof, and as to whether any of
5 Masterclean's device infringes any claim thereof.

6 16. Masterclean alleges on information and belief that said
7 patent is invalid, unenforceable, and void for one or more
8 reasons, including:

9 (a) Masterclean has not infringed on any claim of said
10 patent;

11 (b) The patentee did not invent the subject matter
12 patented, nor did it make any invention or discovery, either
13 novel, original, or otherwise, within the meaning of United
14 States Code, Title 35;

15 (c) The claims, and each of them, in said patent, are
16 not directed to patentable combinations, but are directed to mere
17 aggregations of parts or steps, means, or elements which were
18 matters of common knowledge in the art to which said patent
19 relates before the alleged invention and more than one year prior
20 to the date of the application for the patent;

21 (d) In light of the prior art at the time the alleged
22 invention was made, the subject matter claimed in the patent
23 would have been obvious to a person with ordinary skill in the
24 art to which the alleged invention relates and does not
25 constitute a patentable invention;

26 (e) The alleged invention or discovery was disclosed
27 in a United States patent issued to another person, the
28 application for which was filed before the alleged invention by

1 the patentee of the patent allegedly owned by Bridgewater;

2 (f) More than one year prior to the filing of the
3 provisional application which matured into the patent at issue,
4 the alleged invention was patented or described in printed
5 publications in this or in foreign countries, or was in public
6 use or on sale in this country;

7 (g) Before the alleged invention or discovery by the
8 patentee, the alleged invention was known or used by others than
9 the alleged inventor and was on sale in this country and/or was
10 patented or described in printed publications in this or in
11 foreign countries;

12 (h) If there be any invention in the subject matter of
13 the patent at issue, which is denied, the patent nevertheless was
14 not obtained in a manner consistent with the provisions of Title
15 35, United States Code;

16 (i) The claims of the patent at issue are functional,
17 indefinite, and are broader than the alleged invention as set
18 forth in the specification of the patent at issue.

19 (j) Each of the claims of the patent are excessively vague
20 and indefinite and do not distinctly point out and define the
21 invention.

22 (k) The structures and/or combinations and/or methods
23 disclosed in the patent are inoperative and incapable of
24 accomplishing the intended result, and are not useful within the
25 meaning and requirements of Title 35, United States Code.

26 (l) Bridgewater has so misused the patent in suit
27 so as to render it unenforceable.

28 \\

1 IV.

2 PRAYER FOR RELIEF

3 WHEREFORE, Masterclean prays for judgment in its favor and
4 against Bridgewater as follows:

5 a. Entry of judgment that Bridgewater is without
6 right or authority to threaten or maintain suit against
7 Masterclean, its suppliers, or its customers for alleged
8 infringement of United States Patent No. 6,182,911; that said
9 patent is invalid, unenforceable, and void in law; and that said
10 patent is not infringed by Masterclean because of the making,
11 selling, offering for sale, using, or distributing of any
12 apparatus made, sold, offered for sale, used, or distributed by
13 Masterclean.

14 b. Entry of a preliminary injunction enjoining
15 Bridgewater, its officers, agents, servants, employees, and
16 attorneys, and those persons in active concert or participation
17 with it who receive notice thereof, from initiating infringement
18 litigation and from threatening plaintiff or any of its
19 customers, dealers, agents, servants, or users of Masterclean's
20 devices or apparatus, with infringement litigation or charging
21 any of them either verbally or in writing with infringement of
22 United States Patent No. 6,182,911 because of the manufacture,
23 use, sale, offer for sale, or distribution of apparatus made by
24 Masterclean, to be made permanent after trial.

25 c. Entry of judgment for its costs and reasonable attorney
26 fees incurred by Masterclean herein.

27 d. Such other and further relief as the Court may deem
28 appropriate.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

v.

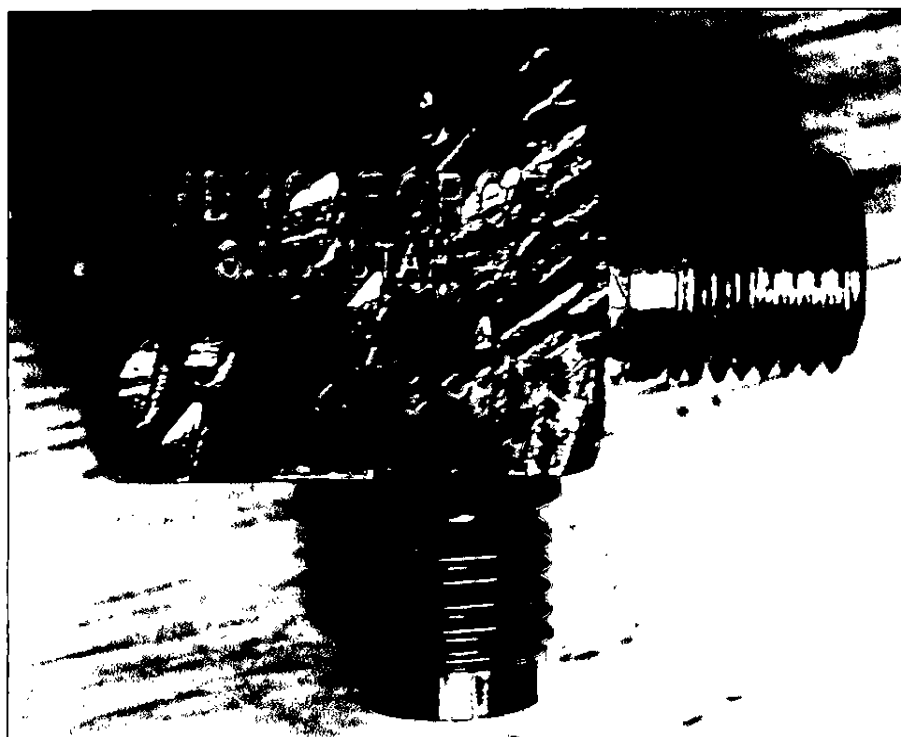
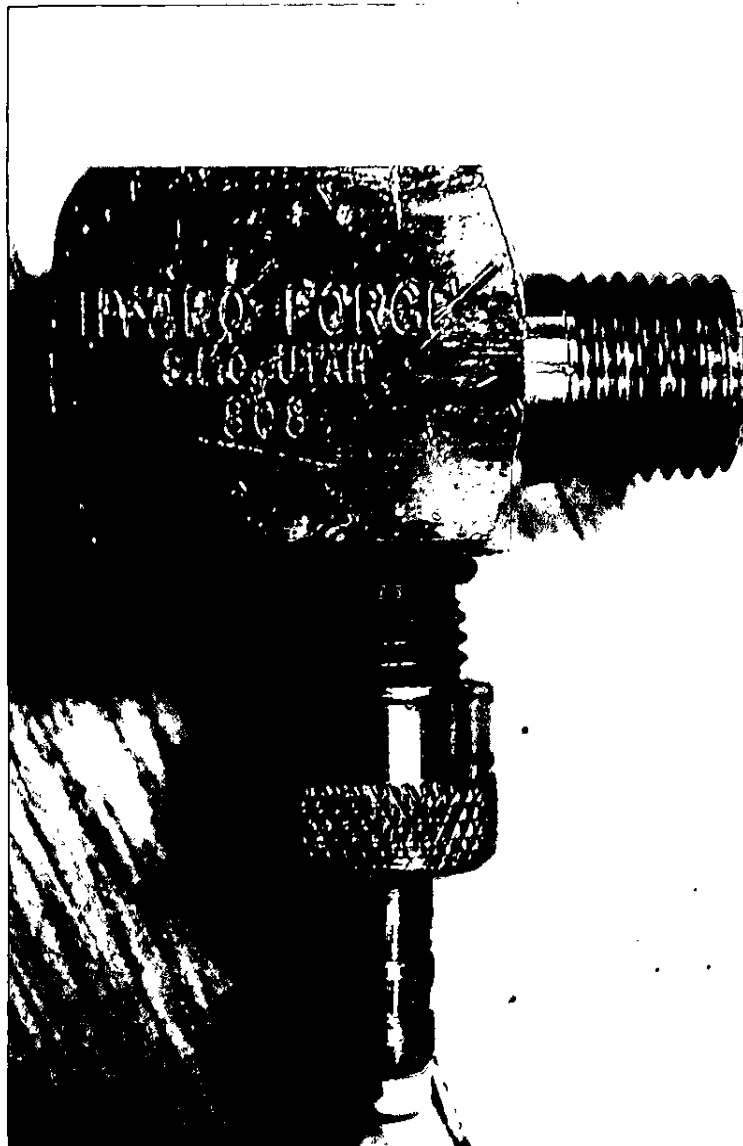
JURY DEMAND

Masterclean demands a jury trial for all issues so triable.

Dated: April 19, 2005



Benjamin R. Seecof, Esq.
KESSLER & SEECOF, LLP
Attorney for Plaintiff
Masterclean Products



AO 120 (Rev.3/04)

TO: Mail Stop 8 Director of the U.S. Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450	REPORT ON THE FILING OR DETERMINATION OF AN ACTION REGARDING A PATENT OR TRADEMARK
-----------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------

In Compliance with 35 U.S.C. § 290 and/or 15 U.S.C. § 1116 you are hereby advised
that a court action has been filed in the U.S. District Court San Diego on the following Patents or Trademarks:

DOCKET NO.	DATE FILED	U.S. DISTRICT COURT
05CV0828 BEN (LSP)	April 19, 2005	United States District Court, Southern District of California
PLAINTIFF Sal Muscarella		DEFENDANT Bridgewater, Inc.
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK
1 Please See Attached		
2		
3		
4		
5		

In the above-entitled case, the following patent(s)/trademark(s) have been included:

DATE INCLUDED	INCLUDED BY			
	<input type="checkbox"/> Amendment	<input type="checkbox"/> Answer	<input type="checkbox"/> Cross Bill	<input type="checkbox"/> Other Pleading
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK		
1				
2				
3				
4				
5				

In the above-entitled case, the following decision has been rendered or judgment issued:

DECISION/JUDGMENT			
<table style="width:100%; border-collapse: collapse;"> <tr> <td style="width:25%; border-right: 1px solid black; padding: 5px;">CLERK</td> <td style="width:45%; border-right: 1px solid black; padding: 5px;">(BY) DEPUTY CLERK</td> <td style="padding: 5px;">DATE</td> </tr> </table>	CLERK	(BY) DEPUTY CLERK	DATE
CLERK	(BY) DEPUTY CLERK	DATE	

Copy 1 - Upon initiation of action, mail this copy to Director

Copy 3 - Upon termination of action, mail this copy to Director

Copy 2 - Upon filing document adding patent(s), mail this copy to Director

Copy 4 - Case file copy

JS44

(Rev. 07/89)

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE SECOND PAGE OF THIS FORM.)

I (a) PLAINTIFFS

Sal Muscarella d.b.a. Masterclean Products

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF San Diego
(EXCEPT IN U.S. PLAINTIFF CASES)

DEFENDANTS

Bridgewater, Inc.

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT Salt Lake City
(IN U.S. PLAINTIFF CASES ONLY) y;

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED **DEPUTY**

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

Daniel J. Kessler, CSB 157163
Benjamin R. Seecof, CSB 157000
KESSLER & SEECOF, LLP, 2254 Moore St.
#201, San Diego, CA 92110, 619-325-0795

ATTORNEYS (IF KNOWN)

'05 CV 0828 BEN (LSP)

II. BASIS OF JURISDICTION (PLACE AN X IN ONE BOX ONLY)

- 1 U.S. Government Plaintiff
- 2 Federal Question (U.S. Government Not a Party)
- 3 2 U.S. Government Defendant
- 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN X IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT) (For Diversity Cases Only)

- | | | | | |
|----------------------------|----------------------------|---------------------------------------------------------------|----------------------------|----------------------------|
| PT | DEF | | PT | DEF |
| <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Citizen of This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Citizen of Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Citizen or Subject of a Foreign Country | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |
| | | Incorporated or Principal Place of Business in This State | | |
| | | Incorporated and Principal Place of Business in Another State | | |
| | | Foreign Nation | | |

IV. CAUSE OF ACTION (CITE THE US CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY). Declaratory relief in patent dispute.

28 U.S.C. sections 1338(a), 2201, 2202.

V. NATURE OF SUIT (PLACE AN X IN ONE BOX ONLY)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	PERSONAL INJURY	<input type="checkbox"/> 610 Agriculture	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 400 State Reappointment
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 620 Other Food & Drug	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	PROPERTY RIGHTS	<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 630 Liquor Laws	<input type="checkbox"/> 820 Copyrights	<input type="checkbox"/> 450 Commerce/ICC Rates/etc.
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 330 Federal Employers' Liability	<input type="checkbox"/> 640 RR & Truck	<input checked="" type="checkbox"/> 830 Patent	<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 650 Airline Regs	<input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 660 Occupational Safety/Health	SOCIAL SECURITY	<input type="checkbox"/> 810 Selective Service
<input type="checkbox"/> 153 Recovery of Overpayment of Veterans Benefits	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 690 Other	<input type="checkbox"/> 861 HIA (13958)	<input type="checkbox"/> 850 Securities/Commodities Exchange
<input type="checkbox"/> 160 Stockholders Suits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	LABOR	<input type="checkbox"/> 862 Black Lung (923)	<input type="checkbox"/> 875 Customer Challenge 12 USC
<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 710 Fair Labor Standards Act	<input type="checkbox"/> 863 DIWC/DIWW (405(g))	<input type="checkbox"/> 891 Agricultural Acts
<input type="checkbox"/> 195 Contract Product Liability	CIVIL RIGHTS	<input type="checkbox"/> 720 Labor/Mgmt. Relations	<input type="checkbox"/> 864 SSID Title XVI	<input type="checkbox"/> 892 Economic Stabilization Act
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act	<input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 893 Environmental Matters
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 740 Railway Labor Act	FEDERAL TAX SUITS	<input type="checkbox"/> 894 Energy Allocation Act
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 443 Housing/Accommodations	<input type="checkbox"/> 790 Other Labor Litigation	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)	<input type="checkbox"/> 895 Freedom of Information Act
<input type="checkbox"/> 240 Tort to Land	<input type="checkbox"/> 444 Welfare	<input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 440 Other Civil Rights			<input type="checkbox"/> 950 Constitutionality of State
<input type="checkbox"/> 290 All Other Real Property	PRISONER PETITIONS			<input type="checkbox"/> 890 Other Statutory Actions
	<input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus			
	<input type="checkbox"/> 530 General			
	<input type="checkbox"/> 535 Death Penalty			
	<input type="checkbox"/> 540 Mandamus & Other			
	<input type="checkbox"/> 550 Civil Rights			
	<input type="checkbox"/> 555 Prisoner Conditions			

VI. ORIGIN (PLACE AN X IN ONE BOX ONLY)

- 1 Original Proceeding
- 2 Removal from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from another district (specify)
- 6 Multidistrict Litigation
- 7 Appeal to District Judge from Magistrate Judgment

VII. REQUESTED IN COMPLAINT

CHECK IF THIS IS A CLASS ACTION UNDER f.r.e.p. 23

DEMAND \$ Declaratory judgment

Check YES only if demanded in complaint:

JURY DEMAND YES NO

VIII. RELATED CASE(S) (SEE INSTRUCTIONS): JUDGE

DATE April, 2005

SIGNATURE OF ATTORNEY OF RECORD

Docket Number

Benjamin Seecof, Esq.

#113009 MS 250-

ORIGINAL

05 APR 19 AM 11:24

CR