

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA**

**COLD SPRING GRANITE
COMPANY,**

Plaintiff,

v.

**MATTHEWS INTERNATIONAL
CORPORATION and MATTHEWS
RESOURCES, INC.,**

Defendants.

CIVIL ACTION NO.

0:10 cv 4272

JURY TRIAL DEMANDED

SECOND AMENDED COMPLAINT

Plaintiff, Cold Spring Granite Company, requests a jury trial on all issues so triable and states and alleges as follows:

Parties

1. Plaintiff, Cold Spring Granite Company, is a Minnesota corporation having its principal place of business at 17482 Granite West Road, Cold Spring, MN 56320.

2. Upon information and belief, Defendant, Matthews International Corporation, is a Pennsylvania corporation having a principal place of business at Two Northshore Center, Pittsburgh, Pennsylvania 15212-5851 and a registered Minnesota agent at 380 Jackson Street #700, St. Paul, Minnesota 55101.

3. Upon information and belief, Matthews Resources, Inc. is a Delaware corporation with an address at 204Weldin Building, 3411 Silverside Road, Wilmington,

Delaware 19810 and a registered agent at Corporation Services Co., 2711 Centerville Road, Ste. 400, Wilmington, DE 19808.

Jurisdiction and Venue

4. This is an action for a Declaratory Judgment under 28 U.S.C. §§ 2201 and 2202 relating to an actual controversy between the parties with regard to the invalidity, unenforceability and non-infringement of United States Patent No. 7,814,959. (Copy attached as Exhibit A.)

5. Upon information and belief, Defendant Matthews Resources, Inc. is the assignee of the U.S. Patent No. 7,814,959 to Karenbauer, entitled METHOD OF MAKING A CAST METAL PRODUCT INCLUDING A THREE-DIMENSIONAL IMAGE, AND A PRODUCT MADE BY SAID METHOD, that issued 10/19/2010 (hereinafter, the '959 patent).

6. Upon information and belief, Defendant Matthews International Corporation and Defendant Matthews Resources, Inc. act in concert with regard to the '959 patent.

7. Plaintiff makes, uses, and sells, among other things, cast bronze products.

8. Plaintiff converts photographic images to bronze castings that, through variations in relief, mimic the image in the photograph.

9. In a May 8, 2006 letter sent to Plaintiff in Minnesota (Granit-Bronz was a trade name formerly used by Plaintiff), Defendant Matthews International Corporation stated, "It has recently come to our attention that Cold Springs/Granite-Bronz is offering for sale cast memorial products that would appear to be covered by the pending Matthews patent application. Once the pending patent application issues into a United States

patent, Matthews intends to enforce that patent against anyone that it concludes is in violation of the patent rights granted to Matthews by the United States Patent and Trademark Office.” (Copies of correspondence from Matthews International Corporation are attached as Exhibit B and Exhibit C.)

10. Through these statements, among other things, Defendants, or those acting by or for Defendants, have created a reasonable apprehension of a suit for infringement of the ‘959 patent with respect to Plaintiff’s ability to make, use, or sell at least some of its products.

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

12. Defendant Matthews International Corporation maintains continuous and systematic contact with Minnesota by regularly conducting business in Minnesota and by having a registered Minnesota agent and is recognized by Minnesota as a foreign corporation doing business in Minnesota.

13. For purposes of venue and personal jurisdiction, Defendant Matthews International Corporation resides in Minnesota.

14. On information and belief, Matthews International Corporation is the apparent and de facto assignee of the ‘959 patent.

15. On information and belief, Matthews International Corporation and Matthews Resources, Inc. are alter egos.

16. On information and belief, Matthews International Corporation and Matthews Resources, Inc. are a joint enterprise.

17. On information and belief, Matthews International Corporation is an agent for Matthews Resources, Inc.

18. On information and belief, Matthews Resources, Inc. is an agent for Matthews International Corporation.

19. On information and belief, Matthews International Corporation is an apparent agent for Matthews Resources, Inc.

20. On information and belief, Matthews Resources, Inc. is an apparent agent for Matthews International Corporation.

21. The exercise of personal jurisdiction comports with Minn. Stat. § 543.19. Venue in this District is proper under 28 U.S.C. § 1391(b), (c) and § 1400(b).

Count I – Declaration of Invalidity

22. The allegations of the preceding paragraphs 1-21 are incorporated herein by reference.

23. The '959 patent is invalid and void for failure to comply with the statutory requirements of patentability under Title 35 of the United States Code, § 101 et seq.

24. A specific and nonexclusive example of the invalidity of the '959 patent under 35 U.S.C. § 103 is the combination of the ArtCAM Pro Tutorials, Issue: 7, dated March 24, 2004 with known prior art casting methods.

Count II – Declaration of Non-infringement

25. The allegations of the preceding paragraphs 1-24 are incorporated herein by reference.

26. Plaintiff has not infringed, is not now infringing, and has not contributorily infringed or induced infringement of any valid claims of the '959 patent.

Prayer for Relief

WHEREFORE, Plaintiff prays for judgment against Defendants as follows:

- A. A declaratory judgment that U.S. Patent No. 7,814,959 is invalid.
- B. A declaratory judgment that U.S. Patent No. 7,814,959 is not infringed, contributorily infringed, or infringed through inducement by Plaintiff.
- C. An order enjoining Defendants, and those in active concert or participation with Defendants who receive actual notice thereof, from in any way charging or threatening patent infringement against Plaintiff or any of Plaintiff's current or prospective customers, dealers, licensees, agents, servants, or employees based on the patent-in-suit.
- D. An order awarding Plaintiff its reasonable costs and attorneys' fees, in accordance with 35 U.S.C. § 285.

DATED: March 8, 2012.

Respectfully submitted,

s/Aaron M. Johnson

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