

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

MOULDTEC, INC,

Plaintiff,

v.

PAGTER & PARTNERS INTERNATIONAL  
B.V., and PAGTER INNOVATIONS, INC.,

Defendants.

Civil Action No. 12-cv-4249

Judge Virginia M. Kendall

JURY DEMANDED

**FIRST AMENDED COMPLAINT**

Plaintiff, Mouldtec, Inc. (“Mouldtec”) hereby alleges for its Complaint for Declaratory Judgment against Defendants Pagter & Partners International B.V. and Pagter Innovations, Inc., (collective referred to as “Pagter”), on knowledge as to their own actions and on information and belief as to the actions of others, as follows:

**NATURE OF THE ACTION**

1. This is an action for a declaratory judgment that Mouldtec does not infringe any valid claim of United States Patent Nos. 6,581,330 (“the ‘330 patent”), and for a declaratory judgment that the claims of the ‘330 patent are invalid.

2. A true and correct copy of the ‘330 patent is attached hereto as Exhibit A.

3. This action further seeks compensatory and punitive damages against Pagter for tortious interference with Mouldtec’s contracts and business relationships as well as with prospective economic advantage.

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**THE PARTIES**

4. Plaintiff Mouldtec, Inc. is an Illinois corporation with its principal place of business at 8015 Pyott Road, Crystal Lake, IL 60014.

5. On information and belief, Defendant Pagter & Partners International B.V. (“Pagter Netherlands”) is a corporation duly organized and existing under the laws of The Netherlands with its principal place of business at Vaartveld 14, 4704 SE Roosendaal, The Netherlands.

6. According to the online system of the U.S. Patent and Trademark Office (“USPTO”), Pagter Netherlands is the owner by assignment of the ‘330 patent, entitled “Packaging for cut flowers.”

7. The ‘330 patent was issued on June 24, 2003 to inventors Joannes Carolus Antonius Helsloot, and Janus Adriaan Willem De Pagter, and then subsequently assigned to Pagter Netherlands on November 10, 2000.

8. On information and belief, Pagter Innovations Inc. (“Pagter US”) is an Illinois corporation registered to transact business in this State.

9. Also, according to the records of the Secretary of State of Illinois, the agent for Pagter US is Steven S. Gilson at 223 W. Jackson Blvd., Ste. 750, Chicago, Illinois 60606.

10. On information and belief, Pagter also has a facility in Pennsylvania and is located at 914 Marcon Blvd, Hall & Suite 105, Allentown, Pennsylvania 18109.

11. On information and belief, Pagter US is an affiliate of Pagter Netherlands.

**JURISDICTION AND VENUE**

12. This action arises under the Patent Laws of the United States, Title 35, United States Code 35 U.S.C. § 1, *et seq.*, and under the Federal Declaratory Judgment Act, 28 U.S.C.

§§ 2201 and 2202. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1338(a), 2201 and 2202.

13. This action is filed to resolve an actual and justiciable controversy between the parties hereto. Pagter's conduct has put, and continues to put, Mouldtec under a reasonable and serious apprehension of imminent suit alleging that use of Mouldtec's products infringe the '330 patent. As set forth in paragraphs herein, there is a conflict of asserted rights among the parties and an actual controversy exists between Mouldtec and Pagter with respect to the infringement, validity and scope of the '330 patent.

14. Upon information and belief, this Court has personal jurisdiction over Pagter because both Pagter Netherlands and Pagter US regularly offer and transact business in and throughout the State of Illinois, including through the URL: [www.pagter.com](http://www.pagter.com).

15. Pagter Netherlands has further sought to assert the '330 patent against Mouldtec's business operations in this District by demanding Mouldtec cease sale of Mouldtec's allegedly infringing products. Pagter Netherlands also demanded for an accounting of all products sold by Mouldtec.

16. Pagter US, by and through its President and owner, Jan de Pagter, also contacted Mouldtec's customers and prospective customers in this District and asserted that Mouldtec's products infringe upon the patents presumably owned by Pagter US.

17. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391 and/or 1400 as Pagter seeks to restrict Mouldtec's business operations, which arises from Mouldtec's sale, offer of sale, use and promotion of Mouldtec's allegedly infringing products within this District.

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**RELEVANT FACTS**

18. Mouldtec realleges and incorporates herein by reference each and every allegation contained in paragraphs 1-17.

19. Through communications and conduct, Pagter has threatened assertion of the '330 patent against Mouldtec because of its products that are part of Mouldtec's Master Flower Storage System used for cut flowers.

20. On or about May 23, 2012, Pagter's counsel sent a letter to Mouldtec alleging that Mouldtec is infringing the '330 patent. The May 23, 2012 letter also demanded an accounting of all products that allegedly infringe the '330 patent.

21. Pagter US, by and through its President and owner, Jan de Pagter, also sent letters to Mouldtec's customers and prospective customers in this District and asserted that Mouldtec's products infringe upon the patents presumably owned by Pagter US.

22. On information and belief, Pagter US claims to be the owner of the '330 patent.

23. However, the online system of the USPTO does not reflect that the '330 patent was ever assigned to Pagter US, nor does it reflect that Pagter US was ever the assignee of any U.S. patents, including the '330 patent.

24. On information and belief, Pagter sent the frivolous, unprivileged, defamatory, prohibited letters to a number of customers and prospective customers of Mouldtec to intentionally intimidate them into discontinuing or refusing to initiate business relations with Mouldtec.

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**FIRST CLAIM FOR RELIEF**

**Declaratory Judgment of Non-infringement of the '330 Patent**

25. Mouldtec realleges and incorporates herein by reference each and every allegation contained in paragraphs 1-24.

26. Based on the above-stated conduct, Mouldtec is informed and believes, and on that basis avers, Pagter contends that Mouldtec's products infringe one or more claims of the '330 patent.

27. Accordingly, an actual controversy exists between Mouldtec and Pagter as to whether or not Mouldtec has infringed, or is infringing the '330 patent; has contributed to infringement, or is contributing to infringement of the '330 patent; and has induced infringement, or is inducing infringement of the '330 patent.

28. The controversy is such that, pursuant to Federal Rule of Civil Procedure 57 and 28 U.S.C. § 2201 *et seq.*, Mouldtec is entitled to a declaration, in the form of a judgment, that by its activities Mouldtec has not infringed and is not infringing any valid and enforceable claim of the '330 patent; has not contributed to infringement and is not contributing to infringement of the '330 patent; and/or has not induced infringement and is not inducing infringement of the '330 patent. Such a determination and declaration is necessary and appropriate at this time.

**SECOND CLAIM FOR RELIEF**

**Declaratory Judgment of Invalidity of the '330 Patent**

29. Mouldtec realleges and incorporates herein by reference each and every allegation contained in paragraphs 1-28.

30. Based on the above-stated conduct, Mouldtec is informed and believes, and on that basis avers, that Pagter contends that Mouldtec infringes one or more claims of the '330 patent.

31. Mouldtec denies that it infringes any valid and enforceable claim of the '330 patent, and avers that the assertions of infringement cannot be maintained consistently with statutory conditions of patentability and the statutory requirements for disclosure and claiming that must be satisfied for patent validity under at least one of 35 U.S.C. §§ 101, 102, 103, and 112.

32. Accordingly, an actual controversy exists between Mouldtec and Pagter as to the validity of the '330 patent. The controversy is such that, pursuant to Federal Rule of Civil Procedure 57 and 28 U.S.C. § 2201 *et seq.*, Mouldtec is entitled to a declaration, in the form of a judgment, that the '330 patent is invalid. Such a determination and declaration is necessary and appropriate at this time.

### **THIRD CLAIM FOR RELIEF**

#### **Tortious Interference**

33. Mouldtec realleges and incorporates herein by reference each and every allegation contained in paragraphs 1-32.

34. By engaging in the actions set forth above, including but not limited to wrongly stating that Mouldtec infringes the '330 patent, Pagter has intentionally interfered with Mouldtec's present and future business relations with one or more third parties.

35. Specifically, without limitation, (1) Pagter has intentionally engaged in wrongful conduct designed to interfere or disrupt Mouldtec's existing and prospective business relations; (2) Pagter acted purposely and with malice and intent to injure Mouldtec, and did, in fact, injure

Mouldtec; (3) the actions of Pagter induced a breach of contractual obligations and/or the failure of at least one of Mouldtec's customers to continue with its anticipated business with Mouldtec; and (4) such actions were proximately caused by Pagter. Specifically, without limitation, at least Pagter US has made statements to customers and prospective customers to the effect that Mouldtec's product infringes upon the '330 patent. However, Pagter US does not own the '330 patent; therefore, cannot assert infringement thereof.

36. The foregoing acts were conducted illegally, intentionally, and maliciously by Pagter, wherefore Pagter is liable for punitive damages.

#### **FOURTH CLAIM FOR RELIEF**

##### **Exceptional Case**

37. Mouldtec realleges and incorporates herein by reference each and every allegation contained in paragraphs 1-36.

38. This is an exceptional case, 37 U.S.C. § 285.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff Mouldtec prays for a judgment as follows:

A. For a declaration that assertions of infringement of the '330 patent cannot be maintained consistently with statutory conditions of patentability and the statutory requirements for disclosure and claiming that must be satisfied for patent validity under one or more of 35 U.S.C. §§ 101, 102, 103, and 112;

B. For a declaration that the claims of the '330 patent are invalid under one or more of 35 U.S.C. §§ 101, 102, 103, and 112;

C. For a declaration that Mouldtec's products do not infringe any valid claim of the '330 patent;

D. For a preliminary and permanent injunction enjoining and restraining Pagter and its respective officers, partners, employees, agents, parents, subsidiaries or anyone in privity with them, and all persons acting in concert with them and each of them:

- 1) from making any claims to any person or entity that any product of Mouldtec infringe the '330 patent;
- 2) from interfering with, or threatening to interfere with the use of any Mouldtec's products by Mouldtec, its customers, distributors, predecessors, successors or assigns; and
- 3) from instituting or prosecuting any lawsuit or proceeding, placing in issue the right of Mouldtec, its customers, distributors, predecessors, successors or assigns, to make, use or sell products which allegedly infringe the '330 patent.

E. For a declaration that Pagter has tortiously interfered with the business and contractual relationship of Mouldtec for which Mouldtec shall be awarded compensatory and punitive damages against them, jointly and severally;

F. For a declaration that this case is exceptional within the meaning of 35 U.S.C. § 285 and award Mouldtec its attorneys' fees, cost, and expenses in this action; and

G. For such other and further relief as the Court may deem proper.

**JURY DEMAND**

Plaintiff respectfully requests a trial by jury.

DATED: June 12, 2012

Respectfully Submitted,

/s/Edward L. Bishop

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*Attorneys for Plaintiff Mouldtec, Inc.*

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system June 12, 2012. Any other counsel of record will be served by electronic mail and/or first class mail to:

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s/Nicholas S. Lee/  
Nicholas S. Lee