

JURISDICTION AND VENUE

5. This is a complaint for Declaratory Judgment of patent invalidity and non-infringement, arising under the patent laws of the United States. Subject matter jurisdiction is proper in this Court under 28 U.S.C. §§ 1331, 1338, 1367, 2201, and 2202, as this action is predicated upon a federal question involving patents.

6. Upon information and belief, each of the defendants directly and/or indirectly regularly solicit and conduct business within this judicial district, or otherwise derive revenue from business transacted within this judicial district.

7. Venue is proper in the Northern District of Texas pursuant to 28 U.S.C. § 1391(b), (c) and/or § 1400(b)

FACTUAL BACKGROUND

8. Plaintiffs Norwex and Norwex USA are affiliated direct-sales companies that sells environmentally-friendly cleaning and personal care products under its own name. It does not sell its products through retail stores; rather, it sells through individual independent distributors. Among its various cleaning products, Norwex and Norwex USA market certain microfiber cloths and related cleaning products (the “Norwex Microfiber Products”) through their respective independent sales consultants in the United States. Both Norwex entities plan to continue marketing and selling the Norwex Microfiber Products, and there are currently thousands of dollars in outstanding orders for such products.

9. Sweports is the owner of United States Pat. No. 6, 258, 455 B1 entitled “Antimicrobial Ultra-Microfiber Cloth” issued July 10, 2001 (the “455 Patent”).

10. Upon information and belief, UMF Corporation is engaged in the research and development of high performance textiles for the commercial cleaning and infection control markets, and is the exclusive licensee of the '455 Patent.

11. On or about November 11, 2011, a cease and desist letter was delivered to the registered agent for plaintiff Norwex outlining defendant Sweport's ownership of the '455 Patent and that defendant UMF is the exclusive license to the '455 Patent, and that the Norwex Microfiber Products infringe the '455 Patent. This demand letter asserted "serious consequences" for Norwex, including but not limited to reserving their rights to proceed under 35 U.S.C. §271. On or about December 7, 2011, a follow up letter was forwarded to Norwex, asserting that Defendants Sweports and UMF would "take appropriate action" for failure to comply with their demands. A copy of these demand letters is attached as Exhibit A.

12. Accordingly a definite and concrete case or controversy exists between Plaintiffs Norwex and Norwex USA and Defendants Sweports and UMF as to whether the Norwex Microfiber Products infringe any valid claim of any of the '455 Patent.

COUNT FOR NON-INFRINGEMENT, INVALIDITY, AND
UNENFORCEABILITY
OF U.S. PATENT NO. 6,258,455

13. Paragraphs 1 through 12 of this Original Complaint are incorporated herein as if each were separately set forth below.

14. Upon information and belief, the Norwex Microfiber Cloths imported into the United States and sold by Norwex and Norwex USA do not infringe any valid claim of the '455 Patent under any section of 35 U.S.C. § 271.

15. Upon information and belief, the '455 Patent is invalid for failure to comply with 35 U.S.C. §§ 102, 103, or 112.

16. Upon information and belief, the '455 Patent is unenforceable because Defendant Sweport committed inequitable conduct before the United States Patent and Trademark Office ("USPTO") by intentionally, and with intent to deceive, failing to cite prior art known to Sweports to be material to the patent application leading to the '455 Patent.

COUNT FOR DECLARATORY RELIEF

17. Paragraphs 1 through 16 of this Original Complaint are incorporated herein as if each were separately set forth below.

18. Plaintiffs seek relief pursuant to the Declaratory Judgment Act, 28 U.S.C. §2201(a) that Plaintiffs' products to not infringe any valid claim of the '455 Patent, that the '455 Patent is invalid for failure to comply with 35 U.S.C. §§ 102, 103, or 112; and that the '455 Patent is unenforceable because Defendant Sweport committed inequitable conduct before the United States Patent and Trademark Office ("USPTO") by intentionally, and with intent to deceive, failing to cite prior art known to Sweports to be material to the patent application leading to the '455 Patent.

ATTORNEY'S FEES

19. Paragraphs 1 through 18 of this Original Complaint are incorporated herein as if each were separately set forth below.

20. In addition to the above relief, Plaintiffs seek recovery of their reasonable and necessary attorneys' fees in this cause. Plaintiffs seek recovery of its attorneys' fees for the prosecution of this action through trial, post trial, pre-appeal services, and appeals to the Fifth Circuit Court of Appeals or the United States Supreme Court.

DEMAND FOR JURY TRIAL

21. Norwex and Norwex USA demand a trial by jury of all triable issues alleged in this Complaint.

DEMAND FOR RELIEF

WHEREFORE, in view of the foregoing, Plaintiffs Norwex and Norwex USA that judgment be rendered in favor of Plaintiffs as follows:

- A) Plaintiffs do not infringe any claim of the '455 Patent;
- B) The '455 Patent is invalid;
- C) The '455 is unenforceable;
- D) This is an exceptional case within the meaning of 35 U.S.C. § 285; and
- E) Awarding Plaintiffs its costs and attorney's fees and other such relief, at law and in equity, to which Plaintiffs may show themselves to be entitled.

Respectfully Submitted,

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**ATTORNEYS FOR PLAINTIFFS
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