

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN**

**ACCESS BUSINESS GROUP LLC, ACCESS
BUSINESS GROUP INTERNATIONAL LLC,
ALTICOR INC., AND AMWAY CORP.,**

Plaintiffs,

v.

**TACK SMART FILTER TECHNOLOGY B.V.
AND DOCTRO A.V.V.,**

Defendants.

Case No.:

Judge:

COMPLAINT FOR DECLARATORY RELIEF

Plaintiffs Access Business Group LLC (“ABG”), Access Business Group International LLC (“ABGIL”), Alticor Inc. (“Alticor”), and Amway Corp. (“Amway”) (collectively, “Plaintiffs”), for their complaint against Tack Smart Filter Technology B.V. (“Tack Smart”) and Doctro A.V.V. (“Doctro”) (collectively, “Defendants”), allege as follows:

PARTIES

1. Plaintiff ABG is a limited liability company organized under the laws of the state of Michigan, with its principal place of business in Ada, Michigan.
2. Plaintiff ABGIL is a limited liability company organized under the laws of the state of Michigan, with its principal place of business in Ada, Michigan.
3. Plaintiff Amway is a corporation organized under the laws of the state of Virginia, with its principal place of business in Ada, Michigan.

4. Plaintiff Alticor is a corporation organized under the laws of the state of Michigan, with its principal place of business in Ada, Michigan. Alticor wholly or partly owns ABG, ABGIL, and Amway through indirect corporate relationships.

5. On information and belief, Defendant Tack Smart is a foreign company with a place of business at Winterkoning 5, 1722 CA Zuid-Scharwoude, the Netherlands.

6. On information and belief, Defendant Doctro is a foreign company with a place of business at Victor Hugostraat 10, P.O. Box 157, Oranjestad, Aruba.

7. Records at the U.S. Patent and Trademark Office (“USPTO”) indicated that Defendant Doctro is the assignee and owner of U.S. Patent No. RE39,361 (“’361 patent”). Defendant Tack Smart has represented that it is the exclusive worldwide licensee of the ’361 patent. A true and correct copy of the ’361 patent is attached hereto as Exhibit A.

JURISDICTION

8. This is an action under the Federal Declaratory Judgments Act, 28 U.S.C. §§ 2201 and 2202 for a declaration pursuant to the patent laws of the United States, 35 U.S.C. § 1 et seq. that Plaintiffs do not infringe the ’361 patent and that the ’361 is invalid.

9. This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 (federal question), 1332 (diversity of parties), and 1338(a) (action arising under an Act of Congress relating to patents).

10. On information and belief, the Court has personal jurisdiction over Defendant Tack Smart because Tack Smart has constitutionally sufficient contacts with Michigan so as to make personal jurisdiction proper in this Court. As alleged in detail below, Tack Smart has purposefully availed itself of the benefits of doing business in Michigan through various

activities, including initiating contact with Plaintiffs in Michigan to accuse them of patent infringement and to demand that Plaintiffs pay royalties for a license under Defendants' patents.

11. In addition to Tack Smart's specific contacts with Plaintiffs in Michigan, Tack Smart has purposefully availed itself of the benefits of doing business in Michigan by sublicensing the '361 patent to others who market, offer, and sell licensed products in Michigan. On information and belief, Tack Smart has sublicensed the '361 patent to Millipore Corporation ("Millipore"), which maintains a registered agent in this judicial district, at 601 Abbot Road, East Lansing, Michigan 48823.

12. On information and belief, Millipore offers filtration products allegedly covered by the '361 patent for sale throughout the United States and in the state of Michigan, including in this judicial district.

13. On information and belief, Millipore maintains numerous Applications Specialists dedicated to the state of Michigan for each of its product lines, including products allegedly covered by the '361 patent. On information and belief, Millipore has at least one Application Specialist located in the state of Michigan and in this judicial district.

14. On information and belief, Tack Smart and Doctro have benefitted from license revenues as a direct result of Millipore's sales and other activities related to licensed products in the State of Michigan.

15. On information and belief, Tack Smart acts as an agent of Doctro for purposes of licensing the '361 patent and therefore the Court has personal jurisdiction over Defendant Doctro based on the activities of its agent, Tack Smart.

VENUE

16. Venue is proper in this judicial district under 28 U.S.C. § 1391(b) and (c).

GENERAL ALLEGATIONS

17. Plaintiffs ABG, ABGIL, and Amway sell water purifiers under the “eSpring[®]” brand name. ABG, ABGIL, and Amway are wholly or partially owned by Alticor, a holding company that does not make or sell water purifiers.

18. Plaintiffs have invested significant resources in the development of eSpring[®] water purifiers. Launched in 2000, the eSpring[®] water purifiers are the latest in a series of residential water treatment systems that date back to 1984.

19. ABG manufactures and assembles eSpring[®] water purifiers in Ada, Michigan, and Amway sells them to customers throughout the United States. In addition, ABGIL exports eSpring[®] water purifiers for sale throughout the world.

20. As a result of their research and development efforts, Plaintiffs have obtained more than 200 patents in the United States and foreign nations for the advanced technology incorporated in the eSpring[®] water purifiers.

21. Defendant Tack Smart, acting on behalf of itself and as agent for Defendant Doctro, has alleged that the eSpring[®] water filtration systems infringe various United States and foreign patents, including the ’361 patent.

22. The ’361 patent is a reissue of an earlier-issued patent. In 1997, the USPTO issued U.S. Patent No. 5,674,381, entitled “Assembly of Filtering Apparatus and Replaceable Filter; and Filtering Apparatus and Filter for use Therein.” A true and correct copy of the ’381 patent is attached hereto as Exhibit B. The USPTO issued the ’381 patent only after Doctro made several concessions to narrow the scope of its patent claims. The ’381 patent has corresponding counterpart patents in Europe and Japan, including European Patent No. 0 700

313 B1 (“313 European patent”), all of which claim priority to a single Dutch patent application filed in 1993.

23. On October 6, 1999, Doctro filed an application for reissue of the ’381 patent. On information and belief, Doctro recognized at that time that the ’381 patent was defective and requested reissue to salvage what it could in an ex parte reissue proceeding before the USPTO. More than seven years later, on October 24, 2006, the USPTO issued the ’361 patent as a reissue of the ’381 patent.

24. For thirteen years of the patents’ seventeen-year term, Plaintiffs were not aware of the ’381 patent or the ’361 reissue patent. During this time, neither Doctro nor Tack Smart brought their patents to Plaintiffs’ attention, notwithstanding the worldwide sale of eSpring® water purifiers beginning in 2000.

25. Although Plaintiffs have filed scores of U.S. patent applications directed to their eSpring® water purifier technology, Plaintiffs are not aware of a single application in which the USPTO has cited the ’381 patent or the ’361 reissue patent as prior art. Indeed, the same examiner who had reviewed Doctro’s applications for the ’381 and ’361 patents also considered and allowed the claims in no less than twelve of Plaintiffs’ patents directed to water treatment systems; yet, this examiner never cited the ’381 patent or the ’361 patent as prior art in any of those applications. One of the Plaintiffs’ patents, U.S. Patent No. 5,698,091, entitled “Home Water Purification System with Filter End of Life Monitor,” lists 113 cited references on its face, but the ’381 and ’361 patents are not among them.

26. Plaintiffs did not learn of the ’381 patent or the ’361 reissue patent until 2010, when Tack Smart contacted Plaintiffs to suggest that Plaintiffs needed a license to Tack Smart’s

patents. Tack Smart is now demanding royalties for past sales of eSpring[®] water purifiers and threatening the continued production of these products.

27. On March 10, 2010, Tack Smart through its Chief Executive Officer, Eduard de Haan, wrote to the president of Alticor in Ada, Michigan, offering to license Defendants' portfolio of patents in connection with Plaintiffs' eSpring[®] water purifiers. Mr. de Haan stated that "[w]e are the exclusive licensee of European Patent 0 700 313 B1. Corresponding patents have been granted in other jurisdictions, including the US and Japan." The corresponding patent in the U.S. is the '361 patent. Mr. de Haan's letter further stated that he "look[ed] forward to discussing licensing opportunities with representatives of your company."

28. On April 20, 2010, Glenn Armstrong, Amway's Vice President for Business Innovations, responded to Mr. de Haan's March 10, 2010 letter, declining Tack Smart's offer.

29. On January 11, 2011, Tack Smart sent a letter to Amway in Ada, Michigan. This letter came from TackSmart's legal counsel, Jacobus C. Rasser. He explicitly accused the eSpring[®] water purifiers of infringing Defendants' patent rights. While the letter does not explicitly mention the '361 patent, the letter also does not disclaim a demand for Plaintiffs to take a license under it. Indeed, consistent with its earlier letter Tack Smart demands a license under all of its patents, which include the U.S. patent. As indicated in the letter, "Tack Smart . . . cannot afford to condone unlicensed use of its technology by Amway."

30. On behalf of Tack Smart, Mr. Rasser subsequently initiated telephone communications regarding Tack Smart's accusations with Plaintiffs' legal counsel in both Ada, Michigan, and Chicago, Illinois.

31. On February 11, 2011, Tack Smart sent another letter to Alticor in Ada, Michigan, again through its California counsel, Mr. Rasser. In this letter, Mr. Rasser provided

an “outline for a license under Tack Smart’s patent EP 0 700 313 B1 and its non-European equivalents.” The non-European equivalents include the ’361 patent. Mr. Rasser also suggested that the parties schedule a “face-to-face meeting in Michigan,” which would include Tack Smart’s CEO, Mr. de Haan.

32. Based on the written and oral communications between the parties, Plaintiffs clearly understood Tack Smart’s infringement accusations and license demands to include Defendants’ worldwide portfolio of “smart tag” patents, which includes the ’361 patent.

33. On February 25, 2011, representatives of Plaintiffs and Tack Smart met at the Chicago office of Plaintiffs’ outside counsel, but they were unable to reach a mutually agreeable resolution regarding Tack Smart’s infringement allegations and license demands.

34. Tack Smart continues to contend that Plaintiffs require a license to Defendants’ patents, including the ’361 patent. Plaintiffs continue to deny that any of the eSpring[®] water filtration products infringe any valid claim of Defendants’ patents, including the ’361 patent.

35. Accordingly, there exists a substantial controversy between Plaintiffs and Defendants that is of an immediate nature.

36. Plaintiffs have invested substantial resources in developing, manufacturing, marketing and selling eSpring[®] water purifiers. By asserting infringement of Defendants’ U.S., European, and Japanese patents, Tack Smart has placed a cloud of uncertainty over the continued manufacture and sale of eSpring[®] water purifiers.

37. An actual and justiciable controversy exists between the parties concerning whether Plaintiffs infringe any valid claim of Defendants’ ’361 patent. Plaintiffs now seek a declaratory judgment that they do not infringe any valid claim of the ’361 patent.

COUNT I
Declaratory Judgment of Non-Infringement of the '361 Patent

38. Plaintiffs incorporate by reference paragraphs 1 through 37 above as though fully set forth herein.

39. TackSmart has alleged that Plaintiffs are infringing the '361 patent.

40. Plaintiffs' eSpring[®] water purifiers do not infringe any claim of the '361 patent because they do not include each and every element of any valid claim of the '361 patent.

41. Plaintiffs seek a declaratory judgment from the Court under Fed. R. Civ. P. 57 and 28 U.S.C. § 2201 declaring that they have not infringed and are not infringing the '361 patent and granting Plaintiffs all other declaratory relief to which they may be entitled.

COUNT II
Declaratory Judgment of Invalidity of the '361 Patent

42. Plaintiffs incorporate by reference paragraphs 1 through 41 above as though fully set forth herein.

43. Plaintiffs seek a declaratory judgment from the Court under Fed. R. Civ. P. 57 and 28 U.S.C. § 2201 declaring that the claims of the '361 patent are invalid because they fail to comply with one or more requirements of the Patent Laws of the United States, 35 U.S.C. § 101 et seq., including but not limited to the reasons set forth below.

44. The claims of the '361 patent are invalid under §§ 102 and/or 103 because the claimed subject matter is anticipated by and/or obvious in view of one or more of the following prior art references:

- (1) U.S. Patent No. 3,841,484;
- (2) U.S. Patent No. 4,184,225;
- (3) U.S. Patent No. 4,498,495;

- (4) U.S. Patent No. 4,506,148;
- (5) U.S. Patent No. 4,654,140;
- (6) U.S. Patent No. 4,772,386;
- (7) U.S. Patent No. 4,885,081;
- (8) U.S. Patent No. 4,961,845;
- (9) U.S. Patent No. 5,049,898;
- (10) U.S. Patent No. 5,132,729;
- (11) U.S. Patent No. 5,142,128;
- (12) U.S. Patent No. 5,153,842;
- (13) U.S. Patent No. 5,179,281;
- (14) U.S. Patent No. 5,190,643;
- (15) U.S. Patent No. 5,192,424;
- (16) U.S. Patent No. 5,254,242;
- (17) U.S. Patent No. 5,328,597;
- (18) U.S. Patent No. 5,354,979;
- (19) U.S. Patent No. 5,468,968;
- (20) U.S. Patent No. 5,536,395;
- (21) Brazilian Patent Publication No. 9 200 258;
- (22) European Patent Publication No. 0 202 201;
- (23) German Patent Publication No. 2 335 276;
- (24) German Patent Publication No. 2 603 110;
- (25) German Patent Publication No. 3 126 850;
- (26) Japanese Patent Publication No. 2 131 732;

- (27) Japanese Patent Publication No. 3 144 396;
- (28) Japanese Patent Publication No. 4 284 807;
- (29) Japanese Patent Publication No. 5 038 491;
- (30) United Kingdom Patent Publication No. 1 531 485;
- (31) United Kingdom Patent Publication No. 2 252 514; and
- (32) *Proceedings: Conference on Point-of-Use Treatment of Drinking Water*,
U.S. Environmental Protection Agency, June 1988.

45. The claims of the '361 patent are invalid under § 112 because the '361 patent does not include written description sufficient to demonstrate that the alleged inventor had possession of the claimed invention at the time he applied for the '361 patent, nor does the '361 patent enable one of ordinary skill in the art to practice the claimed invention.

46. The claims of the '361 patent are invalid under § 252 because the reissue claims improperly recapture subject matter that Doctro surrendered by claim amendment to obtain allowance of the original '381 patent claims. In particular, Doctro amended the claims of the original '381 patent during prosecution to require specific features, including but not limited to an electronic label on a replaceable filter that is “adapted to count and store a number of actual operating hours of the replaceable filter.” To the extent any claims of the '361 reissue patent do not require this feature, such claims improperly recaptured surrendered subject matter and therefore are invalid under § 252.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for relief against Defendants as follows:

- A. Judgment declaring that Plaintiffs have not and are not infringing any valid claim of the '361 patent;
- B. Judgment declaring that the claims of the '361 patent are invalid under 35 U.S.C. § 101 et seq.;
- C. A declaration that this case is “exceptional” under 35 U.S.C. § 285;
- D. An award to Plaintiffs of their costs and expenses in this action, including reasonable attorneys’ fees;
- E. An award of further necessary and proper relief under 28 U.S.C. § 2202; and
- F. Such other relief as the Court may deem just and proper.

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James R. Sobieraj
Charles M. McMahon
BRINKS HOFER GILSON & LIONE
NBC Tower – Suite 3600
455 North Cityfront Plaza Drive
Chicago, Illinois 60611
Tel: 312-321-4200
Fax: 312-321-4299

Albertus Hultink (P29509)
ALTICOR INC.
7575 Fulton Street East
Ada, Michigan 49355
Tel: 616-787-7423
Fax: (616) 787-7699

/s/ James K. Cleland
James K. Cleland (P68507)
BRINKS HOFER GILSON & LIONE
524 S. Main Street, Suite 200
Ann Arbor, Michigan 48104
Tel: 734-302-6034
Fax: 734-994-6331

Attorneys for Plaintiffs