IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
MIDLAND/ODESSA DIVISION

MICHAEL L. RAMSEY, M.D. AND
BARRETT RAMSEY,

Plaintiffs

VS.

JEROLD STEPHEN GREER,

Defendant

MO-05-CV-042
NO. _____

COMPLAINT FOR DECLARATORY JUDGMENT AS TO INVALIDITY OF ALLEGED PATENTS AND INJUNCTION

Plaintiffs, Michael L. Ramsey, M.D. and Barrett Ramsey, bring this action against Defendant, Jerold Stephen Greer, seeking declaratory and injunctive relief, and in support thereof would show the following:

I.
PARTIES

1. Plaintiffs are individuals residing in Midland County, Texas.

2. On information and belief, Defendant is an individual residing at 1502 Washita Court, Midland, Midland County, Texas 79705. Defendant may be served with process at his place of residence at 1502 Washita Court, Midland, Midland County, Texas 79705.

II.
JURISDICTION AND VENUE

3. Jurisdiction of this Court arises under the Federal Declaratory Judgment Act, 28 U.S.C. §§ 2201-2202, and under the laws of the United States concerning actions relating to patents, 28 U.S.C. § 1338(a). Venue is based upon 28 U.S.C. § 1391(a) in that a substantial part of the events or omissions giving rise to the claim occurred in the Western District of Texas.

III.
FACTS

4. Despite the statutory exclusive jurisdiction afforded the United States District Courts on matters relating to patents and the infringement thereof (28 U.S.C. §1338(a)), Defendant, on August 18, 2004, initiated an Application for pre-suit discovery under Rule 202 of the Texas Rules of Civil Procedure, in the County Court at Law #2, Ector County Texas in which Defendant sought to conduct discovery related to an alleged infringement of an alleged patent. Defendant has already taken one deposition in this action, caused Plaintiffs' counsel, to appear at three hearings in the matter, and now threatens to take further discovery-related actions, including the compelling of document production by Plaintiffs and an additional deposition.

5. In addition to the above actions, Defendant has, on various occasions, made monetary demands of Plaintiffs of not less than $100,000.00, citing alleged obligations of Plaintiffs in relation to an alleged invention or patent as described in more detail hereafter.

6. Defendant claims to be the owner of a United States Patent related somehow to a medical device known as a pedicle screw. Defendant claims that his alleged patent is identified as "US Reg. No. USTPO #000034762". In fact, U.S. Patent No. 34,762 was issued on March 25, 1862 to J. P. Manny, and was not for a pedicle screw, but for a mower. Please see Exhibit A attached hereto.

7. Defendant alleges that Plaintiffs have unlawfully used, infringed upon rights related to, and/or copied in some way the medical device in which Defendant claims patent rights. Plaintiffs deny that any such patent exists, that any valid patent on such medical device can exist under currently known or understood circumstances, and further deny that they have infringed any patent rights, whether owned by Defendant, or otherwise.

8. To the extent that a patentable invention exists in any relation to the subject medical device, on information and belief, Plaintiff Michael L. Ramsey is at least a co-inventor thereof. If, therefore, Defendant has individually filed a patent application with the United States Patent & Trademark Office in relation to the medical device which, on information and belief, is the subject of Defendant's unfounded claims, such patent application is uncorrectably invalid as a result (among other bases as set forth elsewhere herein) of an intentional misrepresentation of inventorship (with deceptive intent) to the U.S. Patent & Trademark Office.

9. On information and belief, Defendant has individually neither conceived nor reduced to practice any patentable invention. On information and belief, the medical device as allegedly conceived and embodied in a prototype earlier shown to Plaintiff Michael Ramsey by Defendant, and which underlies Defendant's baseless claims against Plaintiffs, is not a patentable invention because: (a) it lacks utility as a result of its inherent inoperability (35 U.S.C. § 101); (2) it lacks novelty (35 U.S.C. §§ 102(a) and/or 102(b); (3) it was obvious, at the time of its invention, to persons of reasonable skill in the art to which the alleged invention pertains (35 U.S.C. § 103); and/or (4) Defendant presently lacks, and, on information and belief, is incapable of providing an enabling disclosure, at least as to its intended use (35 U.S.C. §112).

10. A justiciable controversy exists between Plaintiffs and Defendant with respect to the validity and infringement of the alleged patent.

11. A decree by this Court with respect to the issues of the patent validity and infringement, as between Plaintiffs and the Defendant, is reasonably calculated to prevent needless additional litigation in this and other jurisdictions between Defendant and Plaintiffs.

12. Defendant's actions in connection with the alleged, yet, on information and belief, non-existent patent, at least if perpetuated in the context of this action, shall render this case

exceptional within the meaning of 35 U.S.C. §285. Plaintiffs shall seek, and shall be reasonably entitled to an award of attorneys' fees pursuant thereto.

IV.
COUNTS

FIRST COUNT - DECLARATORY JUDGMENT OF DEFENDANT'S LACK OF PATENT RIGHTS

13. Plaintiffs here repeat and incorporate by reference the preceding Paragraphs 1 – 12 as if set forth here verbatim.

14. This count is for declaratory judgment that Defendant does not own any right in, or related to any United States Patent pertaining to a medical device.

15. Plaintiffs are entitled to, and hereby request, a declaratory judgment that Defendant has no patent or patent rights which he owns, or is licensed to him, and which pertains in any manner to a medical device generally, or to a pedicle screw specifically.

SECOND COUNT - DECLARATORY JUDGMENT OF PATENT NON-INFRINGEMENT

16. Plaintiffs here repeat and incorporate by reference the preceding Paragraphs 1 – 15 as if set forth here verbatim.

17. This count is for declaratory judgment that Plaintiffs, or either of them, are not infringing any claim of any patent that Defendant may own.

18. Plaintiffs are entitled to, and hereby request, a declaratory judgment that Plaintiffs, or either of them, have engaged in no act which, pursuant to 35 U.S.C. §271, or otherwise, infringes any patent claim of any patent which may be owned by, or may be licensed to Defendant.

THIRD COUNT - DECLARATORY JUDGMENT
OF PATENT INVALIDITY

19. Plaintiffs here repeat and incorporate by reference the preceding Paragraphs 1 – 18 as if set forth here verbatim.

20. This count is for declaratory judgment that any patent, or patent application respectively received or filed by Defendant and relating to any medical device which has been previously shown to Plaintiffs, or either of them, is invalid and inoperative.

21. Plaintiffs are entitled to, and hereby request, a declaratory judgment that Defendant's alleged patent related to a pedicle screw, in part, of Defendant's alleged design, if such patent exists, is invalid pursuant to one or all of 35 U.S.C. §§101, 102, 103 and 112.

WHEREFORE, Plaintiffs pray that:

1. A declaratory judgment be entered herein adjudging that Defendant neither possesses nor is licensed any patent rights which Plaintiffs have or could infringe;
2. A declaratory judgment be entered adjudging that Plaintiffs are not infringing the patent claims of the patent or patents, if any, which are owned by, or are licensed to Defendant;
3. A declaratory judgment be entered adjudging that all patent claims of the patent or patents, if any, which are owned by, or are licensed to Defendant are invalid and unenforceable;
4. A preliminary and permanent injunction be issued restraining the Defendant, its agents, servants, attorneys, and employees from filing or prosecuting any civil action or actions against Plaintiffs, or either of them, for the alleged infringement of any non-existent and/or, invalid patent.

5. Plaintiffs be awarded their cost and reasonable attorney's fees incurred in connection with the institution and prosecution of this civil action and such other and further relief as justice may require.

Respectfully submitted,

Jeffrey F. Thomason
SBB
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Trademark Office Reg. No. 32,735
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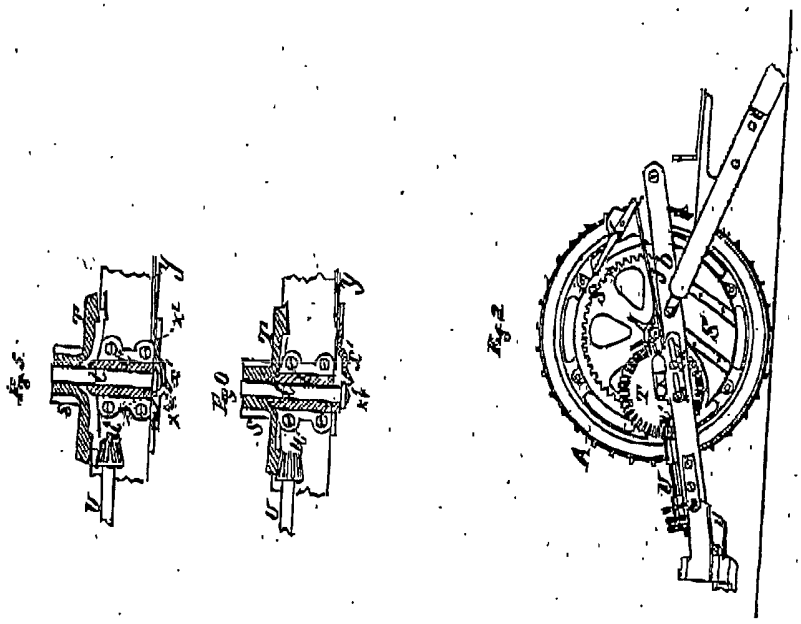
(254) 755-4100
(254) 754-6331 Fax

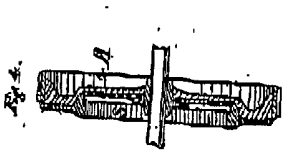
ATTORNEYS FOR PLAINTIFFS

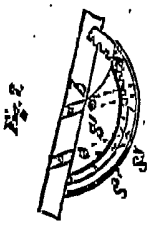
00008131.DOC

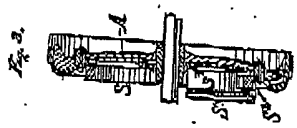
J. P. Manny,
Mower.

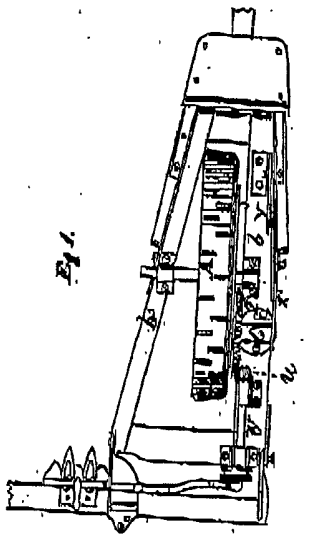
No. 34,762 Patented Mar. 25. 1862.











John P. Manny

J. Lawrence Bell
W. E. Baldwin } Witnesses.

MO-05-CV-042

JS 44 (Rev 11/04)

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 REVERSE OF THE FORM)

I. (a) PLAINTIFFS

Michael L. Ramsey, M.D. and Barrett Ramsey

(b) County of Residence of First Listed Plaintiff Midland
(EXCEPT IN U S PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Jeffrey F Thomason, Todd, Barron, Thomason & Hudman, P C , 3800 E 42nd, Suite 409, Odessa, TX 79762-5982 (432)367-5191
David G Henry, Naman, Howell, Smith & Lee, L L P , P O Box 1470, Waco, TX 79703-1470 (254)755-4100

DEFENDANTS

Jerold Stephen Greer

County of Residence of First Listed Defendant Midland
(IN U S PLAINTIFF CASES ONLY)
NOTE IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U S Government Plaintiff
- ☒ 3 Federal Question (U S. Government Not a Party)
- ☐ 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)

	PTF	DEF		PTF	DEF
Citizen of This State	☐ 1	☐ 1	Incorporated *or* Principal Place of Business In This State	☐ 4	☐ 4
Citizen of Another State	☐ 2	☐ 2	Incorporated *and* Principal Place of Business In Another State	☐ 5	☐ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT
- ☐ 110 Insurance
- ☐ 120 Marine
- ☐ 130 Miller Act
- ☐ 140 Negotiable Instrument
- ☐ 150 Recovery of Overpayment & Enforcement of Judgment
- ☐ 151 Medicare Act
- ☐ 152 Recovery of Defaulted Student Loans (Excl Veterans)
- ☐ 153 Recovery of Overpayment of Veteran's Benefits
- ☐ 160 Stockholders' Suits
- ☐ 190 Other Contract
- ☐ 195 Contract Product Liability
- ☐ 196 Franchise

REAL PROPERTY
- ☐ 210 Land Condemnation
- ☐ 220 Foreclosure
- ☐ 230 Rent Lease & Ejectment
- ☐ 240 Torts to Land
- ☐ 245 Tort Product Liability
- ☐ 290 All Other Real Property

TORTS

PERSONAL INJURY
- ☐ 310 Airplane
- ☐ 315 Airplane Product Liability
- ☐ 320 Assault, Libel & Slander
- ☐ 330 Federal Employers' Liability
- ☐ 340 Marine
- ☐ 345 Marine Product Liability
- ☐ 350 Motor Vehicle
- ☐ 355 Motor Vehicle Product Liability
- ☐ 360 Other Personal Injury

PERSONAL INJURY
- ☐ 362 Personal Injury - Med Malpractice
- ☐ 365 Personal Injury - Product Liability
- ☐ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- ☐ 370 Other Fraud
- ☐ 371 Truth in Lending
- ☐ 380 Other Personal Property Damage
- ☐ 385 Property Damage Product Liability

CIVIL RIGHTS
- ☐ 441 Voting
- ☐ 442 Employment
- ☐ 443 Housing/ Accommodations
- ☐ 444 Welfare
- ☐ 445 Amer. w/Disabilities - Employment
- ☐ 446 Amer w/Disabilities - Other
- ☐ 440 Other Civil Rights

PRISONER PETITIONS
- ☐ 510 Motions to Vacate Sentence

Habeas Corpus:
- ☐ 530 General
- ☐ 535 Death Penalty
- ☐ 540 Mandamus & Other
- ☐ 550 Civil Rights
- ☐ 555 Prison Condition

FORFEITURE/PENALTY
- ☐ 610 Agriculture
- ☐ 620 Other Food & Drug
- ☐ 625 Drug Related Seizure of Property 21 USC 881
- ☐ 630 Liquor Laws
- ☐ 640 R R & Truck
- ☐ 650 Airline Regs
- ☐ 660 Occupational Safety/Health
- ☐ 690 Other

LABOR
- ☐ 710 Fair Labor Standards Act
- ☐ 720 Labor/Mgmt. Relations
- ☐ 730 Labor/Mgmt Reporting & Disclosure Act
- ☐ 740 Railway Labor Act
- ☐ 790 Other Labor Litigation
- ☐ 791 Empl Ret Inc Security Act

BANKRUPTCY
- ☐ 422 Appeal 28 USC 158
- ☐ 423 Withdrawal 28 USC 157

PROPERTY RIGHTS
- ☐ 820 Copyrights
- ☒ 830 Patent
- ☐ 840 Trademark

SOCIAL SECURITY
- ☐ 861 HIA (1395ff)
- ☐ 862 Black Lung (923)
- ☐ 863 DIWC/DIWW (405(g))
- ☐ 864 SSID Title XVI
- ☐ 865 RSI (405(g))

FEDERAL TAX SUITS
- ☐ 870 Taxes (U S Plaintiff or Defendant)
- ☐ 871 IRS—Third Party 26 USC 7609

OTHER STATUTES
- ☐ 400 State Reapportionment
- ☐ 410 Antitrust
- ☐ 430 Banks and Banking
- ☐ 450 Commerce
- ☐ 460 Deportation
- ☐ 470 Racketeer Influenced and Corrupt Organizations
- ☐ 480 Consumer Credit
- ☐ 490 Cable/Sat TV
- ☐ 810 Selective Service
- ☐ 850 Securities/Commodities/ Exchange
- ☐ 875 Customer Challenge 12 USC 3410
- ☐ 890 Other Statutory Actions
- ☐ 891 Agricultural Acts
- ☐ 892 Economic Stabilization Act
- ☐ 893 Environmental Matters
- ☐ 894 Energy Allocation Act
- ☐ 895 Freedom of Information Act
- ☐ 900Appeal of Fee Determination Under Equal Access to Justice
- ☐ 950 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only)

☒ 1 Original Proceeding ☐ 2 Removed 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

VI. CAUSE OF ACTION

Cite the U S Civil Statute under which you are filing **(Do not cite jurisdictional statutes unless diversity)**
35 USCS § 271

Brief description of cause
Declaratory Judgment to Declare Alleged Patent Invalid

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F R C P 23

DEMAND $

CHECK YES only if demanded in complaint
JURY DEMAND: ☐ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions) JUDGE DOCKET NUMBER

DATE
March 22, 2005

SIGNATURE OF ATTORNEY OF RECORD
Jeffrey F. Thomason /SBB

FOR OFFICE USE ONLY

RECEIPT # 378032 AMOUNT 250.00 APPLYING IFP JUDGE MAG JUDGE