

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

INTERNATIONAL MULCH COMPANY,)	
INC.,)	
)	
Plaintiff,)	
)	Case No.
v.)	
)	
NOVEL IDEAS, INC.,)	
)	JURY TRIAL DEMANDED
Defendant.)	

COMPLAINT FOR DECLARATORY JUDGMENT

Plaintiff International Mulch Company, Inc. (“IMC”), for its Complaint against defendant Novel Ideas, Inc., (“Novel”), alleges as follows:

PARTIES

1. Plaintiff IMC is a Missouri corporation with its principal place of business in St. Louis County, at 182 Northwest Industrial Court, Bridgeton, Missouri 63044.
2. Upon information and belief, Novel is a Florida corporation with its principal place of business in Tampa, Florida.

JURISDICTION AND VENUE

3. This is a claim for declaratory judgment of patent non-infringement and invalidity of two design patents, U.S. Patent Nos. D649,268 (the “268 Patent”) and D654,191 (the “191 Patent”).
4. This Complaint for Declaratory Judgment arises under the Declaratory Judgment Act, 28 U.S.C. §§ 2201-02, and under the patent laws of the United States, Title 35 of the United

States Code. This Court has jurisdiction over the subject matter of this Complaint under 28 U.S.C. §§ 1338(a) and 2201.

5. Novel is subject to this Court's personal jurisdiction because, on information and belief, Novel does substantial business in this District and regularly solicits business from, does business with, and derives revenue from goods and services provided to, customers in this District.

6. Venue is proper in this District under 28 U.S.C. §§ 1391(c) and 1400(b) because Novel engages in significant business activities in this District as set forth above.

FACTUAL ALLEGATIONS

7. This declaratory judgment action relates to the 268 Patent and the 191 Patent, both entitled "FLEXIBLE LANDSCAPE EDGING," both issued to John S. Wink ("Wink") as the inventor, and both assigned to Novel. Copies of the 268 Patent and the 191 Patent are attached hereto as Exhibits A and B.

8. Upon information and belief, defendant Wink is an individual residing in Tampa, Florida. On information and belief, Wink is an owner of Novel, and he assigned all title and interest in the 268 Patent and the 191 Patent to Novel.

9. IMC has recently begun selling a lawn edging product to Lowe's.

10. Wink and Novel have taken the position that IMC's lawn edging product infringes the 268 Patent and/or the 191 Patent.

11. IMC has informed Wink and Novel that IMC's lawn edging product does not infringe. Specifically, the ornamental design of IMC's lawn edging product differs from the ornamental design claimed by the 268 Patent and the 191 Patent in several ways, including, but not necessarily limited to, the following:

- a. The ornamental texture of the IMC lawn edging product has the appearance of variable sized cobblestones, which is ornamentally different in appearance from that which is depicted in the 268 Patent and the 191 Patent.
- b. The IMC lawn edging product has a squared-off top, which is ornamentally different in appearance from the rounded top depicted in the 268 Patent and the 191 Patent.
- c. The IMC lawn edging product has three holes for stakes, which is ornamentally different in appearance from the four holes depicted in the 268 Patent.
- d. The IMC lawn edging product has a rounded inside corner, which is ornamentally different in appearance from the square inside corner depicted in the 268 Patent and the 191 Patent.

12. Despite being informed by IMC of the ornamental differences between IMC's lawn edging product and the ornamental design claimed by the 268 Patent and the 191 Patent, Novel and Wink have, on information and belief, communicated directly to Lowe's, taking the position that the IMC lawn edging product being sold by Lowe's infringes the 268 Patent and the 191 Patent.

13. Because Novel and Wink have taken the position that IMC's lawn edging product infringes the 268 Patent and the 191 Patent, and because Novel and Wink have communicated their position to IMC's customer, Lowe's, IMC is in apprehension that Novel will commence litigation against IMC and/or Lowe's.

**COUNT I: DECLARATION OF NON-INFRINGEMENT
OF U.S. PATENT NO. D649,268**

14. IMC incorporates by reference and realleges Paragraphs 1-13 as if fully set forth herein.

15. An actual and justiciable controversy exists between IMC and Novel as to the infringement of the 268 Patent.

16. IMC's manufacture, sale, and offers to sell its lawn edging product in the United States have not infringed, contributed to the infringement of, or induced infringement of any valid and enforceable claim of the 268 Patent.

17. The allegations of patent infringement by Wink and Novel have placed a cloud over IMC's business and are likely to cause IMC to lose revenues and business opportunities. Novel's actions and assertions, therefore, will likely cause irreparable injury to IMC.

18. IMC is entitled to a judgment declaring that the 268 Patent is not infringed by IMC's lawn edging product.

COUNT II: DECLARATION OF INVALIDITY OF U.S. PATENT NO. D649,268

19. IMC incorporates by reference and realleges Paragraphs 1-13 as if fully set forth herein.

20. An actual and justiciable controversy exists between IMC and Novel as to the validity of the 268 Patent.

21. The claims of the patents in suit are invalid for failure to meet one or more of the requirements of patentability set forth in 35 U.S.C. §§ 101 *et seq.*, including, but not limited to, §§ 101, 102, 103 and 112.

22. As asserted by Novel and Wink against IMC's lawn edging product, the 268 Patent is invalid due to functionality.

23. IMC is entitled to a judgment declaring that the 268 Patent is invalid.

**COUNT III: DECLARATION OF NON-INFRINGEMENT
OF U.S. PATENT NO. D654,191**

24. IMC incorporates by reference and realleges Paragraphs 1-13 as if fully set forth herein.

25. An actual and justiciable controversy exists between IMC and Novel as to the infringement of the 191 Patent.

26. IMC's manufacture, sale, and offers to sell its lawn edging product in the United States have not infringed, contributed to the infringement of, or induced infringement of any valid and enforceable claim of the 191 Patent.

27. The allegations of patent infringement by Novel and Wink have placed a cloud over IMC's business and are likely to cause IMC to lose revenues and business opportunities. Novel's actions and assertions, therefore, will likely cause irreparable injury to IMC.

28. IMC is entitled to a judgment declaring that the 191 Patent is not infringed by IMC's lawn edging product.

COUNT IV: DECLARATION OF INVALIDITY OF U.S. PATENT NO. D654,191

29. IMC incorporates by reference and realleges Paragraphs 1-13 as if fully set forth herein.

30. An actual and justiciable controversy exists between IMC and Novel as to the validity of the 191 Patent.

31. The claims of the patents in suit are invalid for failure to meet one or more of the requirements of patentability set forth in 35 U.S.C. §§ 101 *et seq.*, including, but not limited to, §§ 101, 102, 103 and 112.

32. As asserted by Novel and Wink against IMC's lawn edging product, the 191 Patent is invalid due to functionality.

33. IMC is entitled to a judgment declaring that the 191 Patent is invalid.

PRAYER FOR RELIEF

WHEREFORE, International Mulch Company, Inc. requests judgment against Novel and respectfully prays that this Court enter orders that:

1. Declare that IMC has not committed any act of direct and/or indirect infringement of the 268 Patent or the 191 Patent with respect to products that IMC makes, uses, offers for sale or sells, including specifically, but not necessarily limited to, IMC's lawn edging product;

2. Declare the claims of the 268 Patent and the 191 Patent invalid;

3. Enjoin Novel, its agents, servants, employees and attorneys, and all those in active participation or privity with any of them, from charging IMC or its agents, distributors, or customers with infringement of the 268 Patent or the 191 Patent, and from otherwise using the 268 Patent or the 191 Patent to interfere in any way with IMC's manufacture, use, offer for sale, or sale of IMC's lawn edging product;

4. Find this case exceptional pursuant to 35 U.S.C. § 285, and award IMC its reasonable attorney fees, expenses, and costs in this action; and

5. Grant IMC such other and further relief as the Court deems just and proper.

