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**UNITED STATES DISTRICT COURT**

**CENTRAL DISTRICT OF CALIFORNIA**

**EASTERN DIVISION**

| | |
|---|---|
| ATN HOLDING INC., a California corporation, and GREEN WORLD WINDOWS AND DOORS CORP., dba CR WINDOWS AND DOORS, a California corporation,<br><br>Plaintiffs,<br><br>v.<br><br>QUANEX IG SYSTEMS, INC, an Ohio corporation, and DOES 1-10, inclusive,<br><br>Defendants. | Case No.<br><br>**PLAINTIFFS ATN HOLDING INC., GREEN WORLD WINDOWS AND DOORS CORP. COMPLAINT FOR:**<br>**1) DECLARATORY RELIEF RE U.S. PATENT NO. 8,230,661; U.S. PATENT NO. 7,877,958; U.S. PATENT NO. 7,493,739; U.S. PATENT NO. 6,877,292; U.S. PATENT NO. 6,581,341;**<br>**2) JUDICIAL DECLARATION OF NON-INFRINGMENT OF INTELLECTUAL PROPERTY AND OTHER RIGHTS**<br>**[REQUEST FOR JURY TRIAL]** |

Plaintiffs ATN Holding Inc. and Green World Windows and Doors Corp., hereinafter referred to collectively as "Plaintiffs," through their attorneys Leech Tishman Fuscaldo & Lampl, LLP, allege as follows:

## PARTIES

1. Plaintiff ATN Holding Inc. (hereafter "ATN") is a corporation duly organized and existing under the laws of the State of California and having its principal place of business within the County of Riverside in the State of California.

2. Plaintiff Green World Windows and Doors Corp. ("Green World") is a corporation duly organized and existing under the laws of the State of California and having its principal place of business within the County of Riverside in the State of California.

3. Defendant Quanex IG Systems, Inc. (hereafter "Quanex") is, on information and belief, a corporation duly organized and existing under the laws of the State of Ohio and having its principle place of business in Ohio. Quanex claims to be the owner of U.S. Patent No. 8,230,661 (hereafter "the '661 Patent," attached hereto as Exhibit A), U.S. Patent No. 7,877,958 (hereafter "the '958 Patent," attached hereto as Exhibit B), U.S. Patent No.7,493,739 (hereafter "the '739 Patent," attached hereto as Exhibit C), U.S. Patent No. 6,877,292 (hereafter "the '292 Patent," attached hereto as Exhibit D), and U.S. Patent No. 6,581,341 (hereafter "the '314 Patent," attached hereto as Exhibit E) (collectively referred to hereafter as "the Quanex Patents.")

## JURISDICTION AND VENUE

4. The Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1338, 2201 and 2202 in that this is an action seeking a judicial declaration regarding the rights of Plaintiffs and the Defendants with respect to the

Quanex Patents which arises under the Patent Laws of the United States, that is joined with substantial and related claims under United States Trademark Laws, including 15 U.S.C.. This court has supplemental jurisdiction over Plaintiff's non-federal claims under 28 U.S.C. § 1367 in that those claims are so related to Plaintiff's federal claims that they form part of the same case or controversy.

5. The Court has personal jurisdiction over the Defendants because, upon information and belief, they are selling or causing to be sold in California products which Defendants claim are covered by the Quanex Patents, they are registered to do business in California, they conduct systematic and continuous business in this District, and have threatened Plaintiffs, who are in California, with a suit for patent infringement.

6. Venue in this district is proper under 28 U.S.C. §§ 1391(b) and (c) in that a substantial part of the events giving rise to the claims occurred here.

## BACKGROUND FACTS

7. Plaintiff ATN manufacturers and sells windows throughout the United States. Plaintiffs also sell insulated glass products containing spacers between the glass.

8. Quanex has sent a number of letters to Plaintiffs asserting infringement, for example, on March 17, 2014 and August 20, 2014, Quanex caused letters to be sent to ATN (hereafter "the March 17 Letter" and "the August 20 Letter") claiming that ATN was using or selling products containing spacers (hereafter the "Spacers") that infringed the Quanex Patents. A true and correct copy of the March 17 Letter is attached hereto as Exhibit F. A true and correct copy of the August 20 Letter is attached hereto as Exhibit G. On information and belief, the remaining defendants consented to and ratified the sending of the March 17 and August 20 Letters.

9. The March 17 and August 20 Letters also alleged that Plaintiffs

infringed Quanex's DURASEAL trademark.

10. ATN developed its own spacer, which it refers to as Super Sure Seal Spacer (hereafter "the 4S Spacer"). Plaintiffs are using the 4S Spacer in their products containing insulated glass.

11. Plaintiffs deny that the Spacers or the 4S Spacer infringes any claim of the '661 Patent, the '958 Patent, the '739 Patent, the '292 Patent, and the '341 Patent as they are asserted by Quanex.

## FIRST CLAIM

**(Against All Defendants for Judicial Declaration of Non-Infringement of Any Valid Claim)**

12. Plaintiffs incorporate by reference into this paragraph each and every allegation contained in paragraphs 1-11 above.

13. Plaintiff obtained an opinion of counsel stating that the 4S Spacer does not infringe the claims of the '661 Patent, the '958 Patent, the '739 Patent, the '292 Patent, or the '341 Patent. Attached hereto as Exhibit H is a copy of the opinion.

14. On information and belief, at the time Defendants caused the March 17 and August 20 Letters to be sent to Plaintiffs, Quanex and the remaining Defendants knew or should have known that Plaintiffs did not infringe any of the valid or enforceable claims of the Quanex Patents. Defendants have, however, in bad faith, and/or in reckless disregard of the facts, charged Plaintiffs with patent infringement, thereby making this case exceptional within the meaning of 35 U.S.C. § 285.

15. By reason of the foregoing, an actual controversy between the Plaintiffs and Defendants exists as to infringement of the Quanex Patents.

## SECOND CLAIM

**(Against All Defendants for Judicial Declaration of Non-Infringement of Intellectual Property and other Rights)**

16. Plaintiffs incorporate by reference into this paragraph each and every allegation contained in paragraphs 1-15 above.

17. Defendants allege damages "beyond typical patent and trademark damages" in Defendants' March 17, 2014 letter. Plaintiffs are informed and believe that Defendants contend that Plaintiffs infringed, injured and/or interfered with Defendants' rights regarding:

a. Plaintiffs' purported use of the catch phrase "Duraseal Premium Warm Edge Spacer" and/or variants of the catch phrase in Plaintiffs' advertising in violation of Defendants' purported rights to exclusive use of such catch phrase and/or variants arising from Defendants' use of such catch phrase and/or variants.

b. Plaintiffs' purported injury of Defendants' goodwill and profits through Plaintiffs' publications leading consumers to conclude that Defendants' spacers experience seal failures when Defendants contend its spacers do not experience seal failures but that Plaintiffs' spacers do experience seal failures.

c. Plaintiffs' purported infringement of Defendants trade dress rights through Plaintiffs internet advertising associated with windows generally and spacers specifically.

d. Plaintiffs' purported infringement of Defendants unregistered copyrights through Plaintiffs internet advertising associated with windows generally and spacers specifically.

e. Plaintiffs' purported infringement of Defendants rights under the Lanham Act, 15 U.S.C. 43.

18. Plaintiffs contend Defendants have no damages, including those "beyond typical patent and trademark damages" and that Plaintiffs have not

infringed, injured, and/or interfered with Defendants' rights as enumerated in paragraph 17 or otherwise.

19. By reason of the foregoing, an actual controversy exists between Plaintiffs and Defendants.

## PRAYER FOR RELIEF

WHEREFORE, ATN Holding Inc., and Green World Windows and Doors Corp., pray for judgment as follows:

1. For a judicial declaration that Plaintiffs have not infringed any valid enforceable claim of United States Patent numbers 8,230,661, 7,877,958, 7,493,739, 6,877,292, and 6,581,341;

2. That Defendants, its assigns and all those in privity with it be enjoined from asserting United States Patent numbers 8,230,661, 7,877,958, 7,493,739, 6,877,292, and 6,581,341 against Plaintiffs or any of its customers or suppliers;

3. For a judicial declaration of non-infringement of Defendant's DURASEAL trademark and other rights;

4. For a finding that this case is exceptional within the meaning of 35 U.S.C. § 285;

5. For an award of attorneys' fees and costs (including expert fees);

6. For such other and further relief as the Court deems just and proper.

Dated: September 5, 2014

LEECH TISHMAN FUSCALDO & LAMPL LLP

By: /s/ Laura M. Lloyd
Jeffrey G. Sheldon
Laura M. Lloyd
Danton K. Mak

Attorneys for Plaintiffs ATN HOLDING INC., and GREEN WINDOWS AND DOORS CORP

## REQUEST FOR JURY TRIAL

Pursuant to Rule 38(a) and (b) of the Federal Rules of Civil Procedure, Plaintiffs ATN Holding Inc. and Green World Windows and Doors Corp request a trial by jury for all issues so triable.

Dated: September 5, 2014

Respectfully submitted,

LEECH TISHMAN FUSCALDO & LAMPL LLP

By: /s/ Laura M. Lloyd
Jeffrey G. Sheldon
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Attorneys for Plaintiffs ATN HOLDING INC., and GREEN WINDOWS AND DOORS CORP