

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

GIBRALTAR PERIMETER SECURITY, LP,)	
)	
Plaintiff,)	
)	C.A. No. _____
v.)	
)	JURY TRIAL DEMANDED
RSA PROTECTIVE TECHNOLOGIES, LLC,)	
)	
Defendant.)	

COMPLAINT FOR DECLARATORY JUDGMENT

Plaintiff Gibraltar Perimeter Security, LP (“Plaintiff” or “GPS”), brings this action against Defendant RSA Protective Technologies, LLC (“Defendant” or “RSA”), and hereby alleges, as follows:

NATURE OF THE ACTION

1. GPS seeks a declaratory judgment by this Court that GPS’s products, specifically its shallow mount bollards, do not infringe any claim of U.S. Patent No. 8,215,865 (the “‘865 Patent”).
2. GPS seeks this relief because RSA has sued an ultimate customer of GPS, Clark County, Nevada, having filed a patent infringement complaint (“RSA Complaint”) in the United States District Court for the District of Nevada. In the RSA Complaint, RSA alleges that “Clark County owns, rents, or controls land on which shallow mount security bollards have been installed, and currently uses such shallow mount bollards . . . designed and/or manufactured by” GPS (RSA Complaint ¶ 7), and alleges that GPS’s “shallow bollards practice and infringe the ‘865 patent” (*id.* ¶ 18). RSA’s lawsuit has placed a cloud over GPS and the shallow mount bollards manufactured, designed and/or sold by GPS, has injured and is injuring GPS’s business

and business relationships, and has caused GPS's customers to seek indemnification and defense thereby creating a concrete, actual, substantial, and immediate justiciable controversy between GPS and RSA. Accordingly, GPS brings this case to clear its name and that of its shallow mount bollard products, and to protect Clark County and other GPS customers against claims of infringement that lack merit.

PARTIES

3. Plaintiff GPS is a limited partnership organized and existing under the laws of the State of Texas, having a principal place of business at 4303 Innovation Loop, Marble Falls, Texas 78654.

4. On information and belief, Defendant RSA is a limited liability company organized and existing under the laws of the State of Delaware, having a principal place of business at 223 Independence Drive, Claremont, California 91711. Service of process can be effected on its officer or appointed agent at Corporation Trust Center, 1209 Orange Street, Wilmington, Delaware, 19801.

JURISDICTION AND VENUE

5. This action arises under the patent laws of the United States, 35 U.S.C. § 100, *et seq.* This Court has subject matter jurisdiction over this action under 28 U.S.C. §§ 1331, 1338, and 2201 based on a definite and concrete, real and substantial, justiciable controversy between Plaintiff and Defendant, for declaratory judgment of patent non-infringement under 28 U.S.C. §§ 1331, 1338, 2201 and 2202.

6. This Court has personal jurisdiction over Defendant RSA by virtue of its organization under the laws of the state of Delaware.

7. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391 (b) and (c) and 1400 (b) because RSA is a limited liability company and is a resident of this district.

FACTUAL BACKGROUND

8. RSA purports to be the owner by assignment of the '865 Patent entitled "Anti-RAM System and Method of Installation" which states that it issued on July 10, 2012. The '865 Patent identifies Richard S. Adler and John Crawford as inventors. A copy of the '865 Patent is attached as **Exhibit A**.

9. The '865 Patent issued with 35 claims, of which claims 1, 16, and 33 are independent claims and the remaining claims are dependent. Independent claims 1, 16, and 33 are reproduced below:

1. A bollard structure comprising:

at least one bollard; and

a base comprising opposed ends and a plurality of structural members which intersect and are tied together, for each bollard of the bollard structure at least one first structural member extending from a first of the opposed ends of the base to a second of the opposed ends of the base in a first direction intersecting with the opposed ends, and at least one structural member extending to intersect with the at least one first structural member;

each bollard being secured to at least one of the at least one first structural member and the at least one structural member of the base for the respective bollard and extending upwardly from the base so as to transmit forces applied to the at least one bollard to the base;

wherein the base is configured to be mounted in a shallow excavation with the at least one bollard extending above grade; and

wherein the at least one first structural member or the at least one structural member or both are configured or tied together to retain within the base supporting media introduced into the base when the base is mounted in the excavation such that the rotation is resisted of a bollard or bollards and the base from an impact against the bollard or bollards.

16. A bollard structure comprising:

a plurality of bollards; and

a base comprising opposed ends and a plurality of structural members which intersect and are tied together, for each bollard of the bollard structure at least one first structural member extending from a first of the opposed ends of the base to a second of the opposed ends of the base in a first direction intersecting with the opposed ends, and at least one structural member extending to intersect with the at least one first structural member;

each of the plurality of bollards being secured to at least one of the at least one first structural member and the at least one structural member of the base for the respective bollard and extending upwardly from the base so as to transmit forces applied to the at least one bollard to the base;

wherein the base is configured to be mounted in a shallow excavation with the plurality of bollards extending above grade of the excavation; and

wherein the at least one first structural member or the at least one structural member or both are configured or tied together to retain within the base supporting media introduced into the base when the base is mounted in the excavation such that the rotation is resisted of a bollard or bollards and the base from an impact against the bollard or bollards.

33. A bollard structure comprising:

a plurality of bollards; and

a base comprising opposed ends and a plurality of members which intersect and are tied together, for each bollard of the bollard structure at least one first structural member extending from a first of the opposed ends of the base to a second of the opposed ends of the base in a first direction intersecting with the opposed ends, and at least one structural member extending to intersect with the at least one first structural member;

each of the plurality of bollards being secured to at least one of the at least one first structural member and the at least one structural member of the base for the respective bollard and extending upwardly from the base so as to transmit forces applied to the at least one bollard to the base;

at least one of the plurality of members that extend parallel to the ends of the base extending between a structural member to which a first bollard is secured and a structural member to which a second bollard adjacent to the first bollard is secured;

wherein the base is configured to be mounted in a shallow excavation with the plurality of bollards extending above grade of the excavation; and

wherein the at least one first structural member or the at least one structural member or both are configured or tied together to retain within the base supporting media introduced into the base when the base is mounted in the excavation such that the rotation is resisted of a bollard or bollards and the base from an impact against the bollard or bollards.

10. GPS designs, manufactures, and sells to customers shallow mount bollards which protect spaces, buildings, or sensitive locations, and the people in or on them, from accidental and intentional vehicle collisions. GPS's shallow mount bollards can be installed in a variety of locations, including around buildings, around and on sidewalks, and on roadways to prevent people, including terrorists, from driving vehicles into sensitive buildings or onto sidewalks and roadways where people may be present.

11. RSA alleges that it owns "all right title, and interest in the '865 Patent, including the right to use and enforce the '865 Patent." (RSA Complaint ¶13.)

12. The '865 Patent states in the "Field of the Invention" section that it "relates to the assembly and installation of bollard systems for use in protecting building and other structures from being rammed by vehicles."

13. On January 21, 2020, RSA sued GPS's ultimate customer, Clark County, Nevada, in the United States District Court for the District of Nevada (*RSA Protective Technologies, LLC v. Clark County*, No. 2:20-cv-00143-RFB-EJY), alleging infringement of the '865 Patent.

14. RSA's Complaint alleges that Clark County, Nevada, infringes the '865 Patent because "Clark County owns, rents, or controls land on which shallow mount security bollards have been installed, and currently uses such shallow mount bollards, on properties including but not limited to Las Vegas Boulevard. These security bollards have been designed and/or

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