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## *DMC: A Long History of Silly, Fruitless Litigation*

In a David vs. Goliath-like battle, everyone roots for the underdog. In any case where the validity and enforceability of the Wicker Patents is concerned (AMEX: DMC, \$8.65) this has proven to be a losing bet. The Wicker Patents are the patents that comprise the portfolio of patented technology that DMC claims to own and were developed by Ralph Wicker. The past unsuccessful legal history of the Wicker Patents should be of great concern to DMC as they are currently embroiled in a patent infringement lawsuit with the European Central Bank ("ECB"), which in turn sued DMC claiming its patents are invalid.

In a case filed by the Wickers, claiming that two of The Standard Register Company's ("Standard") patents were invalid due to obviousness and incorrect inventorship, the Wickers were not just unsuccessful, but the Court found them to have engaged in "willful infringement" of Standard's patents and fined them \$50,000. On December 02, 1994 Ralph Wicker d/b/a the Wicker Group filed suit against Standard in the United States District for the Eastern Circuit of Virginia alleging that Standard's Patents Number 4,227,720 ("720") and 4,310,180 ("180") were invalid due to obviousness and incorrect inventorship.

Standard's counterclaims alleged "willful infringement" of the 720 and 180 patents by the Wicker Group. In a decision that was affirmed by the Court of Appeals the jury found the Patents were not to be invalidated due to obviousness or incorrect inventorship and the Wicker Group was in fact willfully infringing upon the Standard Patents and Standard was awarded \$50,000 dollars in damages.

Ironically, in a case brought by the Wickers against the United States of America in 1995 for infringement of two of the Wicker Patents the Court ruled that upon further review claims of these Wicker Patents were in fact "obvious in light of prior art" and ordered those claims invalidated. In 1995 Ralph Wicker, Thomas Wicker, and SMW Patent Corporation filed a lawsuit alleging that the United States Treasury Department had infringed upon Ralph Wicker's United States Patent Numbers 5,018,767 ("767") and 5,193,853 ("853") by manufacturing and distributing the \$100 bill unveiled in 1995.

On March 13, 2000 the United States Court of Appeals for the Federal Circuit affirmed a decision by the Court of Federal Claims. According to the decision authored by Circuit Judge Gajarsa "The Court of Federal Claims found that the United States in fact was infringing the patents. However, the trial court also determined that the claims of both patents were invalid as obvious over the prior art, i.e., British Patent No. 1,138,011 and [\*2] German Patent DE 3,602,563 C1 in particular, under 35 U.S.C. § 103 (1994)."

Both the 853 and 767 Patent were allowed to expire "due to failure to pay maintenance fees," with only the 767 Patent being reinstated in March 2004 after expiring in May 2003.

The Wicker's legal history further became a losing cause when an injunction was granted to stop the Wickers from licensing technology that had already been exclusively licensed. On July 12, 1996 the New York Supreme Court issued a preliminary injunction enjoining and restraining Ralph, Thomas, David, Christine and Mary Wicker ("Wicker

Group”) from violating, breaching and or repudiating the terms of its Management Agreement and Licensing Agreement with Secured Document Systems, Inc. (“SDS”). The technology had been licensed in a June 9, 1994 Management Agreement in which the Wicker Group named SDS the sole Licensing Agent for its patents and trade secrets.

In October 1996, only three months later, Thomas Wicker again willfully violated the SDS Management and Licensing Agreements as well as the recently ordered Court injunction. Continuous Forms and Checks, Inc., Wolf International, Inc., Thomas W. Wicker Enterprises, Inc, (“TWE”) Robert L. Lenox, Casey Campbell and Latitude 49 Business and Security Systems, L.L.C. together formed Optical Deterrent Systems L.L.C. (“ODS”).

On October 28, 1996 ODS executed a Technology License Agreement in which Thomas M. Wicker represented that he had assigned his rights in technology covered by the Court injunction to TWE which then granted to ODS an exclusive, perpetual and irrevocable license to utilize the technology.

The ODS Licensing Agreement was executed when Thomas Wicker was under the restraint of an injunction which specifically barred him from assigning the technology in the ODS Agreement and therefore voided the agreement.

On August 1, 2005, in its latest David vs. Goliath adventure DMC filed a lawsuit against the ECB in the European Court of First Instance alleging that Euro banknotes infringe upon DMC’s European Patent No 044750B1 (“EP 750”). As of April 27, 2006 the ECB has filed counter claims in eight countries arguing that DMC's EP '750 should be invalidated. The countries in which counterclaims have been filed are: Austria, Belgium, France, Germany, Italy, Luxembourg, the Netherlands, and the United Kingdom, with an imminent filing by Spain anticipated.

This does not bode well for DMC as the nullification of patents by a governing body is not a new theme to DMC. In the lawsuit against the United States, the Court reversed the opinion of the United States Patent and Trade Office and invalidated claims of the DMC patents in question. The nuances here should not be lost on DMC shareholders. A branch of the governing body that had initially issued DMC its patent has now sued DMC for invalidity of the same patent.

In the original story, David took down Goliath with a sling-shot. DMC shareholders are now holding on to the slender sliver of hope that the large stones that the Company’s management are now swinging are more potent than they have proven to be in the past.