

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

AMERISTAR PERIMETER SECURITY USA  
INC.,

Plaintiff,

v.

RSA PROTECTIVE TECHNOLOGIES, LLC,

Defendant.

Civil Action No.: \_\_\_\_\_

**JURY TRIAL DEMANDED**

**COMPLAINT FOR DECLARATORY JUDGMENT**

Plaintiff Ameristar Perimeter Security USA Inc. (“Ameristar” or “Plaintiff”) hereby pleads the following claims for declaratory judgment against Defendant RSA Protective Technologies, LLC (“Defendant” or “RSA”), and alleges as follows:

**NATURE OF THE ACTION**

1. This is an action for declaratory judgment of non-infringement of United States Patent No. 8,215,865 (“the ’865 Patent”) under 28 U.S.C. §§ 2201 and 2202 and the Patent Laws of the United States, 35 U.S.C. §§ 1 *et seq.*

2. Ameristar seeks this relief because RSA has sued an ultimate customer of Ameristar, Los Angeles International Airport (“LAX”), filing a patent infringement complaint (“RSA Complaint”) in the United States District Court for the Central District of California. In the RSA Complaint, RSA alleges that LAX has infringed the ’865 Patent by using and installing Ameristar’s “shallow mount bollards” (RSA Complaint ¶ 16), and alleges that “the Ameristar Accused Products” are “at least the Ameristar shallow mount bollards in the Ultra Shallow Mount Bollard series” (*id.* ¶¶ 21 and 22). RSA’s lawsuit has placed a cloud over Ameristar and the shallow mount bollards sold by Ameristar, has injured and is injuring Ameristar’s business and

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

### **PARTIES**

3. Plaintiff Ameristar is a Delaware corporation with its principal place of business at 1555 N. Mingo Road, Tulsa, Oklahoma 74116.

4. On information and belief, Defendant RSA is a limited liability Delaware corporation with its principal place of business at 223 Independence Drive, Claremont, California 91711.

### **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, on the one hand, and Defendant, on the other hand, 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 district pursuant to 28 U.S.C. §§ 1391 (b) and (c) and 1400(b) because RSA is a Delaware limited liability company and is a resident of this district.

## FACTUAL BACKGROUND

8. The '865 Patent states that it issued on July 10, 2012, and lists "RSA Protective Technologies, LLC" as the assignee. 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. Ameristar 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. Ameristar'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.

12. The '865 Patent is titled "Anti-Ram System and Method of Installation," and in the "field of the invention" section, states 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 December 6, 2019, RSA sued Ameristar's ultimate customer LAX in the Central District of California (Civil Action No. 2:19-CV-10371), alleging infringement of the '865 Patent.

14. RSA's Complaint alleges that LAX infringes the '865 Patent because "LAX is using infringing shallow mount bollards made by" Ameristar.

15. LAX has sought indemnity and defense from Ameristar’s direct customer, which has in turn sought indemnity and defense from Ameristar. Ameristar will defend and indemnify LAX for RSA’s patent infringement claims based upon LAX’s use of Ameristar’s shallow mount bollards.

16. Ameristar has a reasonable apprehension, and there exists a reasonable potential, that RSA could file an action against Ameristar and allege that Ameristar has directly and/or indirectly infringed the ’865 Patent by making, using, importing, selling, and/or offering for sale shallow mount bollard products, including the “Ultra Shallow Mount Bollard series.”

17. Ameristar and its shallow mount bollards do not infringe and have not infringed, either directly or indirectly, any claim of the ’865 Patent. In view of RSA’s allegations that Ameristar’s shallow mount bollards infringe the ’865 Patent, and its patent infringement claim against at least one of Ameristar’s customers based upon purchase and use of Ameristar’s shallow mount bollards, a substantial controversy exists between the parties which is of sufficient immediacy and reality to warrant declaratory relief.

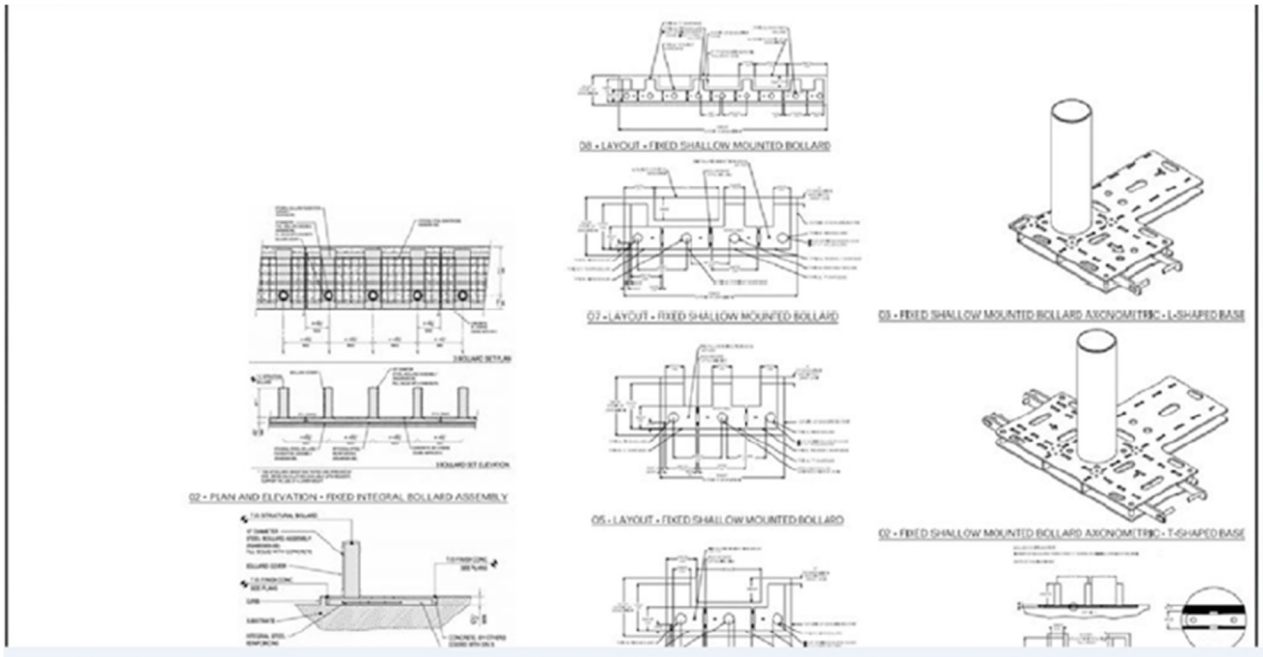
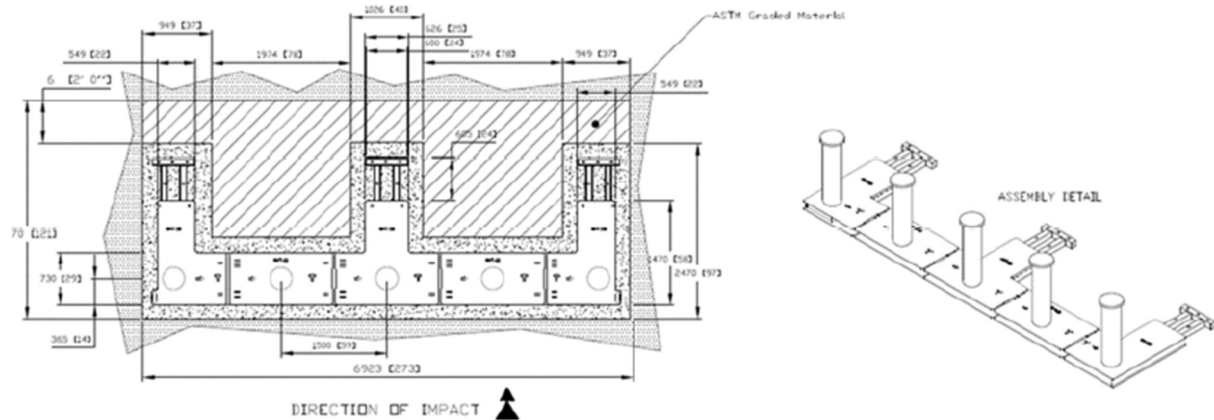
### **COUNT I**

#### **(Declaratory Judgment of Non-Infringement of the ’865 Patent)**

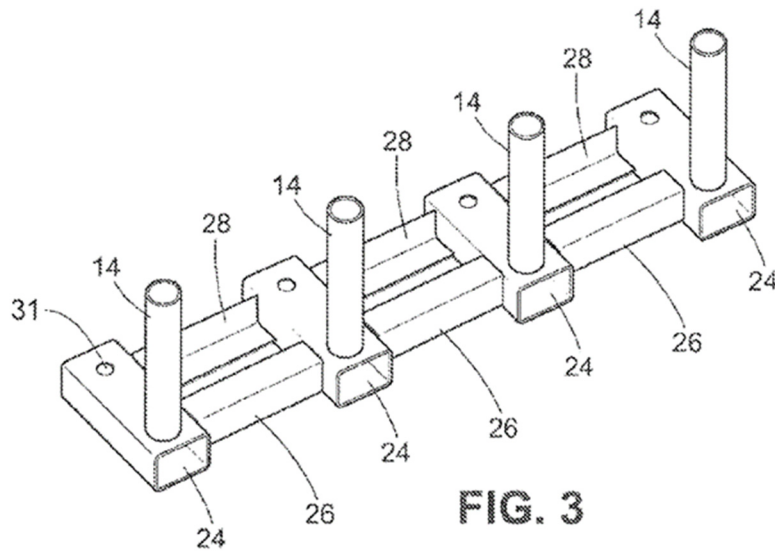
18. Paragraphs 1 through 17 are incorporated herein as set forth above.

19. In the RSA Complaint against LAX, RSA has accused Ameristar’s “shallow mount bollards” of infringing the ’865 Patent, including alleging that “at least the Ameristar shallow mount bollards in the Ultra Shallow Mount Bollard series infringe the ’865 patent.” (RSA Complaint ¶ 22.) RSA alleges that Ameristar products infringe claims 1–35 the ’865 Patent. (*Id.* ¶¶ 58–86.) RSA has included a number of images in the RSA Complaint in an attempt to support its allegation that Ameristar products as used by LAX infringe the ’865 Patent, although the RSA

Complaint includes images from different models of Ameristar bollards, some of which do not depict products in the “Ultra Shallow Mount Bollard series.” Some of those images from the RSA Complaint are reproduced below. (*Id.* ¶ 21.)



20. Figure 3 of the '865 Patent, which the patent states is “an embodiment of this invention,” is shown on the face of the patent and is reproduced below.



21. Ameristar’s shallow mount bollards, including the “Ultra Shallow Mount Bollard series,” do not meet each and every limitation of independent claims 1, 16, and 33 of ’865 Patent, including at least one or more of the following limitations: “a base comprising opposed ends and a plurality of structural members which intersect and are tied together, for each bollard ... 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”; and “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 “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 in the base when the base is mounted in the excavation such that rotation is resisted of a bollard or bollards and the base from an impact against the bollard or bollards.”

22. Because Ameristar’s shallow mount bollards, including the “Ultra Shallow Mount Bollard series,” do not meet each and every limitation of independent claims 1, 16, and 33 of the



'865 Patent, Ameristar's shallow mount bollards do not meet each and every limitation of dependent claims 2-15, 17-32, and 34-35 of the '865 Patent.

23. Ameristar's shallow mount bollards, including the "Ultra Shallow Mount Bollard series," do not infringe, directly or indirectly, any claim of the '865 Patent, either literally or under the doctrine of equivalents.

24. LAX's use of Ameristar's products do not infringe, directly or indirectly, any claim of the '865 Patent, either literally or under the doctrine of equivalents.

25. Ameristar seeks and is entitled to a declaratory judgment that Ameristar's shallow mount bollards, and its customers' use of Ameristar shallow mount bollards, including the "Ultra Shallow Mount Bollard series," do not infringe under 35 U.S.C. § 271 (or any sub-section thereof) any claim of the '865 Patent. Such a determination and declaration are necessary and appropriate at this time to resolve the parties dispute regarding alleged infringement of the '865 Patent.

#### **JURY TRIAL DEMAND**

Ameristar hereby requests a trial by jury for all issues so triable.

#### **PRAYER FOR RELIEF**

WHEREFORE, Ameristar respectfully requests that this Court enter the following relief pursuant to 28 U.S.C. §§ 2201 and 2202:

a. That a declaration be issued under 28 U.S.C. § 2201 declaring that Ameristar's shallow mount bollards, including the "Ultra Shallow Mount Bollard series," do not infringe and have not infringed under 35 U.S.C. § 271 (or any sub-section thereof) the '865 Patent.

b. That a declaration be issued under 28 U.S.C. § 2201 declaring that Ameristar's customers do not infringe and have not infringed the '865 Patent by using Ameristar's shallow mount bollards, including the "Ultra Shallow Mount Bollard series."

c. That an injunction be issued against RSA, barring it from alleging infringement against Ameristar and any of Ameristar's customers based on their use of Ameristar's shallow mount bollards, including the "Ultra Shallow Mount Bollard series," taking any action to suggest that Ameristar or its customers require a license from RSA for the '865 Patent, or pursuing or continuing to pursue infringement actions against Ameristar's customers on the basis of those customers' use of Ameristar's products.

d. That this case be adjudged an exceptional case under 35 U.S.C. § 285, awarding Ameristar its attorneys' fees and costs.

e. That the Court award all other and further relief as it deems just and proper.

Dated: March 6, 2020

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