

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. _____

OTTER PRODUCTS, LLC, a Colorado
Limited Liability Company,

Plaintiff,

v.

TREEFROG DEVELOPMENTS INC.
d/b/a LIFEPROOF, a Delaware
Corporation,

Defendant.

COMPLAINT AND JURY DEMAND

Plaintiff Otter Products, LLC (“OtterBox”), by and through its undersigned attorneys, for its Complaint against Treefrog Developments Inc. d/b/a LifeProof (“LifeProof”) states as follows:

PARTIES

1. Plaintiff OtterBox is a Colorado limited liability company with its principal place of business at 209 S. Meldrum Street, Fort Collins, Colorado 80521.

2. Upon information and belief, Defendant LifeProof is a Delaware Corporation with a principle place of business at 15110 Avenue of Science, San Diego, California 92128.

JURISDICTION AND VENUE

3. This is a civil action for patent infringement arising under the patent laws of the United States, 35 U.S.C. § 101, *et seq.*

4. This court has jurisdiction over the subject matter of this action under 28 U.S.C. §§ 1338, 1367.

5. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391 and 28 U.S.C. § 1400 because LifeProof is engaged in the regular, continuous, and systematic transaction of business in this judicial district, including the distribution, sale, and/or offer for sale of the Infringing Products through its website. This Court also has specific jurisdiction over LifeProof as LifeProof has sold infringing products in this judicial district.

OTTERBOX & THE TECHNOLOGY AT-ISSUE

6. OtterBox was founded by its former CEO, Curtis (“Curt”) Richardson, in his garage in Fort Collins, Colorado. In that garage, Mr. Richardson created a first-of-its-kind prototype of a waterproof case. The OtterBox waterproof product line was a rapid success, and soon OtterBox was creating waterproof cases as well as specially designed cases for electronic

products that allow users to protect their devices without sacrificing access to the device's controls or hampering the use of the device.

7. OtterBox was then and is now known as a leading innovator in device protection and interaction. In 2010, OtterBox won National Geographic's "Gear of the Year Award," the United States Postal Service's "Creative Business Solutions Award" and TESSCO Technology's "Innovator Award." In 2011, OtterBox won the About.com 2011 Readers' Choice Award for "Best Mobile Case Brand" and was named a Stereowise Plus Editor's Choice Award Winner.

8. OtterBox is also renowned for its dynamism, high ethics and community involvement. OtterBox was honored in 2010 with the Better Business Bureau's "Torch Award for Business Ethics." In 2011, founder and former CEO Curt Richardson was honored by Ernst & Young as an Entrepreneur of the Year. The National Philanthropy Day Colorado named OtterBox the 2011 recipient of its Outstanding Small Business Award for OtterBox's commitment to supporting the community through the OtterCares Foundation. In the same year, the Colorado Ethics in Business Alliance honored OtterBox with its Bill Daniels Business Ethics Award. In 2012, OtterBox was recognized by the Inc. 500 Awards as one of the fastest growing private companies in America (as it had been since 2010), and by TEAM Fort Collins with its Lamplighter Award for enriching the lives of local youth and the community.

9. The OtterBox patents at issue in this suit pertain to innovations tracing back to OtterBox's roots: waterproof protective devices. OtterBox products based

on and stemming from the waterproof patent family have won many awards, including “Best of WES” (Wireless Exposition Symposium) (2006) and “Editor’s Choice” from Best of PC Magazine (2006).

10. The asserted OtterBox patents claim groundbreaking innovations that teach the design, manufacture, and use of protective cases for electronic devices that are water-resistant and impact-resistant but still allow full sensory interaction with and use of the enclosed device. OtterBox’s innovations solved long-standing problems and its products were and are incredibly well-received in the market place and copied with an astonishing regularity.

OTTERBOX’S INTELLECTUAL PROPERTY

11. On February 7, 2006 United States Patent No. 6,995,976 (“the ’976 Patent”), entitled “Protective Membrane For Touch Screen Device,” was duly and legally issued to Curtis R. Richardson and Douglas Kempel. A true and correct copy of the ’976 Patent is attached as **Exhibit A**.

12. The ’976 Patent is enforceable and, pursuant to 35 U.S.C. § 282, carries a statutory presumption of validity.

13. By assignment, OtterBox owns all rights, title, and interests in the ’976 Patent, including, without limitation, the right to enforce this patent and collect damages for its infringement.

14. On October 27, 2009, United States Patent No. 7,609,512 (“the ’512 Patent”), entitled “Protective Enclosure For Electronic Device,” was duly and

legally issued to Curtis R. Richardson and Alan Morine. A true and correct copy of the '512 Patent is attached as **Exhibit B**.

15. The '512 Patent is enforceable and, pursuant to 35 U.S.C. § 282, carries a statutory presumption of validity.

16. By assignment, OtterBox owns all rights, title, and interests in the '512 Patent, including, without limitation, the right to enforce this patent and collect damages for its infringement.

17. On January 2, 2007, United States Patent No. 7,158,376 (“the '376 Patent”), entitled “Protective Enclosure For An Interactive Flat-Panel Controlled Device,” was duly and legally issued to Curtis R. Richardson *et al.* A true and correct copy of the '984 Patent is attached as **Exhibit C**.

18. The '376 Patent is enforceable and, pursuant to 35 U.S.C. § 282, carries a statutory presumption of validity.

19. By assignment, OtterBox owns all rights, title, and interests in the '376 Patent, including, without limitation, the right to enforce this patent and collect damages for its infringement.

LIFEPROOF'S KNOWING AND WILLFUL INFRINGEMENT

20. LifeProof was founded in 2010 to manufacture and sell cases for electronic items, specifically the iPhone and iPad from Apple.

21. In 2011, LifeProof launched an iPhone 4 case that competed (and continue to compete) directly with OtterBox's products. Hence, on August 21,

2011, OtterBox sued LifeProof for infringement of the '976, '376 and '512 patents in this District. *See* Civil Action No. 1:11-cv-02180-WJM-KMT (“LifeProof I”). LifeProof I is presently pending in this District.

22. While designing the LifeProof iPhone 4 Case in 2009, LifeProof’s founder, Gary Rayner, was aware of OtterBox’s products and of the fact that OtterBox had patents on protective, waterproof cases. In fact, Mr. Rayner used the competing OtterBox case as a reference when designing the LifeProof iPhone 4 case.

23. LifeProof has also known about the '976, '376 and '512 patents since at least 2010. Upon information and belief, LifeProof’s in-house counsel, James Nolan, analyzed one or more of these patents on LifeProof’s behalf in 2010.

24. LifeProof has unquestionably known about the '976, '376 and '512 patents since August 2011, when OtterBox filed the LifeProof I lawsuit in this District, accusing LifeProof of infringing those patents by making, selling, importing and offering to sell the LifeProof iPhone 4 Case.

25. LifeProof has been fully aware of the scope of the claims of the patents-in-suit since at least September 27, 2012, when the Court issued its claim construction ruling. LifeProof had proposed many constructions that, if adopted, might have exonerated its iPhone 4 case from infringing the patents-in-suit. However, almost every such proposed construction was rejected in favor of those constructions proposed by OtterBox.

26. Because their proposed constructions were rejected, LifeProof was fully aware that it was far more likely that its accused iPhone 4 case was going to be found to infringe the three patents asserted by OtterBox.

27. Despite its full knowledge of the patents-in-suit and the adjudicated scope of their claims, in October 2012, LifeProof introduced yet another infringing phone case, this time for the iPhone 5. LifeProof calls this product “Frë.” With regard to the claims of the patents-in-suit, the Frë infringes in the same way and for the same reasons as the LifeProof iPhone 4 case does.

28. LifeProof also began selling in the United States an infringing case for the iPod, called the iPod Gen 4 Case (“the LifeProof iPod Case”), on or about September 11, 2012.

29. The LifeProof iPod Case and the LifeProof Frë Case infringe the patents-in-suit for the same reasons and in the same manner that the iPhone 4 LifeProof Case does.

30. LifeProof makes, imports, offers for sale and sells in the United States the LifeProof iPod Case and the LifeProof Frë Case with full knowledge of the patents-in-suit, the scope of the claims of the patents-in-suit, and how OtterBox has contended that LifeProof’s earlier and—for all relevant purposes—identical iPhone 4 Case infringes those claims.

31. Despite this knowledge, LifeProof has introduced the LifeProof iPod Case and the Frë Case in reckless disregard for OtterBox’s intellectual property claimed in the patents-in-suit.

FIRST CLAIM FOR RELIEF

Infringement of U.S. Patent No. 6,995,976 by the LifeProof Frë Case

32. OtterBox incorporates by reference paragraphs 1 through 31 as if set forth in their entirety.

33. LifeProof is making, using, selling, and/or offering to sell in the United States and/or importing into the United States the LifeProof Frë Case for use with the iPhone 5.

34. LifeProof's activities in making, using, selling, and/or offering to sell in the United States and/or importing into the United States the LifeProof Frë Case constitutes direct infringement of the '976 Patent, in violation of 35 U.S.C. § 271(a).

35. LifeProof's infringement of the '976 Patent with the LifeProof Frë Case is undertaken with knowledge and in reckless disregard of OtterBox's patent rights and is thus willful.

36. LifeProof's infringement of the '976 Patent has caused and will continue to cause damage to OtterBox in an amount to be determined at trial.

37. LifeProof's infringement of the '976 Patent has caused and will continue to cause irreparable injury to OtterBox as to which there exists no adequate remedy at law. Defendant's infringement will continue unless enjoined by this Court.

SECOND CLAIM FOR RELIEF

Infringement of U.S. Patent No. 6,995,976 by the LifeProof iPod Case

38. OtterBox incorporates by reference paragraphs 1 through 37 as if set forth in their entirety.

39. LifeProof is making, using, selling, and/or offering to sell in the United States and/or importing into the United States the “LifeProof iPod Gen 4 Case” (“the LifeProof iPod Case”).

40. LifeProof’s activities in making, using, selling, and/or offering to sell in the United States and/or importing into the United States the LifeProof iPod Case constitutes direct infringement of the ’976 Patent, in violation of 35 U.S.C. § 271(a).

41. LifeProof’s infringement of the ’976 Patent with the LifeProof iPod Case is undertaken with knowledge and in reckless disregard of OtterBox’s patent rights and is thus willful.

42. LifeProof’s infringement of the ’976 Patent has caused and will continue to cause damage to OtterBox in an amount to be determined at trial.

43. LifeProof’s infringement of the ’976 Patent has caused and will continue to cause irreparable injury to OtterBox as to which there exists no adequate remedy at law. LifeProof’s infringement will continue unless enjoined by this Court.

THIRD CLAIM FOR RELIEF

Infringement of U.S. Patent No. 7,609,512 by the LifeProof Frë Case

44. OtterBox incorporates by reference paragraphs 1 through 43 as if set forth in their entirety.

45. LifeProof is making, using, selling, and/or offering to sell in the United States and/or importing into the United States the LifeProof Frë Case for use with the iPhone 5.

46. LifeProof's activities in making, using, selling, and/or offering to sell in the United States and/or importing into the United States the LifeProof Frë Case constitutes direct infringement of the '512 Patent, in violation of 35 U.S.C. § 271(a).

47. LifeProof's infringement of the '512 Patent with the LifeProof Frë Case is undertaken with knowledge and in reckless disregard of OtterBox's patent rights and is thus willful.

48. LifeProof's infringement of the '512 Patent has caused and will continue to cause damage to OtterBox in an amount to be determined at trial.

49. LifeProof's infringement of the '512 Patent has caused and will continue to cause irreparable injury to OtterBox as to which there exists no adequate remedy at law. Defendant's infringement will continue unless enjoined by this Court.

FOURTH CLAIM FOR RELIEF

Infringement of U.S. Patent No. 7,609,512 by the LifeProof iPod Case

50. OtterBox incorporates by reference paragraphs 1 through 49 as if set forth in their entirety.

51. LifeProof is making, using, selling, and/or offering to sell in the United States and/or importing into the United States the LifeProof iPod Case.

52. LifeProof's activities in making, using, selling, and/or offering to sell in the United States and/or importing into the United States the LifeProof iPod Case constitutes direct infringement of the '512 Patent, in violation of 35 U.S.C. § 271(a).

53. LifeProof's infringement of the '512 Patent with the LifeProof iPod Case is undertaken with knowledge and in reckless disregard of OtterBox's patent rights and is thus willful.

54. LifeProof's infringement of the '512 Patent has caused and will continue to cause damage to OtterBox in an amount to be determined at trial.

55. LifeProof's infringement of the '512 Patent has caused and will continue to cause irreparable injury to OtterBox as to which there exists no adequate remedy at law. Defendant's infringement will continue unless enjoined by this Court.

FIFTH CLAIM FOR RELIEF

Infringement of U.S. Patent No. 7,158,376 by the LifeProof Frë Case

56. OtterBox incorporates by reference paragraphs 1 through 55 as if set forth in their entirety.

57. LifeProof is making, using, selling, and/or offering to sell in the United States and/or importing into the United States the LifeProof Frë Case for use with the iPhone 5.

58. LifeProof's activities in making, using, selling, and/or offering to sell in the United States and/or importing into the United States the LifeProof Frë Case constitutes direct infringement of the '376 Patent, in violation of 35 U.S.C. § 271(a).

59. LifeProof's infringement of the '376 Patent with the LifeProof Frë Case is undertaken with knowledge and in reckless disregard of OtterBox's patent rights and is thus willful.

60. LifeProof's infringement of the '376 Patent has caused and will continue to cause damage to OtterBox in an amount to be determined at trial.

61. LifeProof's infringement of the '376 Patent has caused and will continue to cause irreparable injury to OtterBox as to which there exists no adequate remedy at law. Defendant's infringement will continue unless enjoined by this Court.

SIXTH CLAIM FOR RELIEF

Infringement of U.S. Patent No. 7,158,376 by the LifeProof iPod Case

62. OtterBox incorporates by reference paragraphs 1 through 61 as if set forth in their entirety.

63. LifeProof is making, using, selling, and/or offering to sell in the United States and/or importing into the United States the LifeProof iPod Case.

64. LifeProof's activities in making, using, selling, and/or offering to sell in the United States and/or importing into the United States the LifeProof iPod Case constitutes direct infringement of the '376 Patent, in violation of 35 U.S.C. § 271(a).

65. LifeProof's infringement of the '376 Patent with the LifeProof iPod Case is undertaken with knowledge and in reckless disregard of OtterBox's patent rights and is thus willful.

66. LifeProof's infringement of the '376 Patent has caused and will continue to cause damage to OtterBox in an amount to be determined at trial.

67. LifeProof's infringement of the '376 Patent has caused and will continue to cause irreparable injury to OtterBox as to which there exists no adequate remedy at law. Defendant's infringement will continue unless enjoined by this Court.

DEMAND FOR JURY TRIAL

68. OtterBox hereby requests a trial by jury.

PRAYER FOR RELIEF

WHEREFORE, OtterBox prays as follows on all claims:

- A. For a permanent injunction enjoining and restraining LifeProof, and all related entities or persons acting in concert with them, from manufacturing, selling, or offering for sale the LifeProof Frë Case;

- B. For a permanent injunction enjoining and restraining LifeProof, and all related entities or persons acting in concert with them, from manufacturing, selling, or offering for sale the LifeProof iPod Case;
- C. For an award of OtterBox's damages as appropriate under the patent laws of the United States, comprising:
 - (i) Lost profits, in an amount to be ascertained at trial;
 - (ii) A reasonably royalty, in an amount to be ascertained at trial;
 - (iii) Treble damages;
- D. For its reasonable attorneys' fees and costs; and
- E. For such other and further relief as the Court deems just and proper.

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TURNER BOYD LLP

/s/ Julie S. Turner

Julie S. Turner
Zhuanjia Gu
James W. Beard
turner@turnerboyd.com
beard@turnerboyd.com
gu@turnerboyd.com

2570 W. El Camino Real, Suite 380
Mountain View, CA 94040
Telephone: (650) 521-5930
Facsimile: (650) 521-5931

*Attorneys for Otter Products, LLC,
d/b/a OtterBox*

Plaintiff's address:
Otter Products, LLC
209 S. Meldrum Street
Fort Collins, CO 80521