

**IN THE UNITED STATES DISTRICT COURT  
FOR DISTRICT OF NEW JERSEY**

SIMON NICHOLAS RICHMOND,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No.
	)	3:13-cv-01953-
JIAWEI NORTH AMERICA INC.,	)	MLC-DEA
JIAWEI TECHNOLOGY (HK) LTD.,	)	
JIAWEI TECHNOLOGY (USA) LTD.,	)	
SHENZHEN JIAWEI INDUSTRIES	)	
COMPANY LIMITED,	)	
SHENZHEN JIAWEI PHOTOVOLTAIC LIGHTING	)	
CO., LTD.,	)	
TRUE VALUE RETAIL INC.,	)	
TRUE VALUE COMPANY,	)	
ACE HARDWARE CORPORATION,	)	
ORGILL, INC.,	)	
BIG LOTS, INC., and	)	
BIG LOTS STORES, INC.,	)	
	)	
Defendants.	)	
	)	

**FIRST AMENDED COMPLAINT AND JURY DEMAND**

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*Attorneys for Plaintiff Simon Nicholas Richmond*

**FIRST AMENDED COMPLAINT AND JURY DEMAND**

Plaintiff Simon Nicholas Richmond (“Richmond” or “Plaintiff”), for his claims against Defendants Jiawei North America Inc., Jiawei Technology (HK) Ltd., Jiawei Technology (USA) Ltd., Shenzhen Jiawei Industries Company Limited, Shenzhen Jiawei Photovoltaic Lighting Co., Ltd., True Value Retail Inc., True Value Company, Ace Hardware Corporation, Orgill, Inc., Big Lots, Inc. and Big Lots Stores, Inc., (collectively, “Defendants”), makes and files this Complaint and alleges as follows:

**1. THE PARTIES**

**A. Plaintiff Richmond.**

1. Plaintiff Richmond is an individual and resident of New Jersey.

**B. Defendants.**

2. Jiawei North America Inc. (Jiawei North America) is a corporation organized and existing under the laws of the State of Canada, having a principal place of business at 550 Alden Rd, Unit 108, Markham, Ontario, Canada L3R 6A8. Jiawei North America may be served pursuant to the Hague Convention.

3. Jiawei Technology (USA) Ltd. (Jiawei USA) is a corporation organized and existing under the laws of the State of Delaware, having a principal place of business at 2373 Lincoln Ave., Hayward, California 94545. Jiawei USA may be served through its agent for service of process, The Corporation Trust

Company, Corporation Trust Center, 1029 Orange St., Wilmington, DE 19801.

4. Jiawei Technology (HK) Ltd. (Jiawei Hong Kong) is a corporation organized and existing under the laws of China, having a principal place of business at Unit 1816, 18/F., Star House, No. 3 Salisbury Road, Tsimshatsui, Kowloon, Hong Kong, China. Jiawei Hong Kong may be served pursuant to the Hague Convention.

5. Shenzhen Jiawei Industries Company Limited (Jiawei Industries) is a corporation organized and existing under the laws of China, having a principal place of business at Xinfu Industrial Area, Fuping Road, Longgang, Shenzhen, China. Jiawei Industries may be served pursuant to the Hague Convention.

6. Jiawei Photovoltaic Lighting Col., Ltd (Jiawei Photovoltaic) is a corporation organized and existing under the laws of China, having a principal place of business at Xinfu Industrial Area, Fuping Road, Pingdi Street, Longgang District, Shenzhen, China. Jiawei Photovoltaic may be served pursuant to the Hague Convention.

7. Upon information and belief, Jiawei North America, Jiawei USA, Jiawei Hong Kong, Jiawei Industries, and Jiawei Photovoltaic are alter egos of each other and/or are so closely related to one another that they are jointly and severally liable and may be considered the same company for purposes of this Complaint.

8. For purposes of this Complaint, Jiawei North America, Jiawei USA,

Jiawei Hong Kong, Jiawei Industries, and Jiawei Photovoltaic shall be collectively referred to as “Jiawei.”

9. True Value Retail Inc. (True Value) is a corporation organized and existing under the laws of the State of Delaware, having a principal place of business at 8600 W. Bryn Mawr Avenue, Chicago, IL 60631-3505. True Value may be served through its agent for service of process, The Corporation Trust Company, Corporation Trust Center, 1029 Orange St., Wilmington, DE 19801.

10. True Value Company is a corporation organized and existing under the laws of the State of Delaware, having a principal place of business at 8600 W. Bryn Mawr Avenue, Chicago, IL 60631-3505. True Value Company may be served through its agent for service of process, The Corporation Trust Company, Corporation Trust Center, 1029 Orange St., Wilmington, DE 19801.

11. Upon information and belief, True Value Retail Inc. and True Value Company are alter egos of each other and/or are so closely related to one another that they are jointly and severally liable and may be considered the same company for purposes of this Complaint.

12. For purposes of this Complaint, True Value Retail Inc. and True Value Company shall be collectively referred to as “True Value.”

13. Ace Hardware Corporation (Ace) is a corporation organized and existing under the laws of the State of Delaware, having a principal place of

business at 2200 Kensington Court, Oak Brook, IL 60523. Ace Hardware may be served through its agent for service of process, Corporation Service Company, 2711 Centerville Rd. Suite 400, Wilmington, DE 19808.

14. Orgill, Inc. (Orgill) is a corporation organized and existing under the laws of the State of Tennessee, having a principal place of business at 3742 Tyndale Drive, Memphis, TN 38125. Orgill may be served through its agent for service of process, The Corporation Trust Company, Corporation Trust Center, 1029 Orange St., Wilmington, DE 19801.

15. Big Lots Stores, Inc. (Big Lots Stores) is a corporation organized and existing under the laws of the State of Ohio, having a principal place of business at 300 Phillipi Road, Columbus, OH 43228. Big Lots Stores may be served through its agent for service of process, CSC-Lawyers Incorporating Service (Corporation Service Company), 50 W. Broad Street, Suite 1800, Columbus, OH 43215.

16. Big Lots, Inc. (Big Lots, Inc.) is a corporation organized and existing under the laws of the State of Ohio, having a principal place of business at 300 Phillipi Road, Columbus, OH 43228. Big Lots may be served through its agent for service of process, CSC-Lawyers Incorporating Service (Corporation Service Company), 50 W. Broad Street, Suite 1800, Columbus, OH 43215.

17. Upon information and belief, Big Lots Stores and Big Lots, Inc. are alter egos of each other and/or are so closely related to one another that they are

jointly and severally liable and may be considered the same company for purposes of this Complaint.

18. For purposes of this Complaint, Big Lots Stores and Big Lots, Inc. shall be collectively referred to as “Big Lots.”

## **2. SUBJECT MATTER JURISDICTION**

19. This is an action for patent infringement arising under the patent laws of the United States, Title 35, United States Code, including 35 U.S.C. §§ 271 and 281-285. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a).

## **3. PERSONAL JURISDICTION AND VENUE**

### **A. General.**

20. Personal jurisdiction over each of the Defendants is proper pursuant to New Jersey Long-Arm Statute, N.J. CT. R. 4:4-4 and principles of due process.

21. The United States Defendants all have sufficient minimum contacts with New Jersey and this district and the maintenance of this suit does not offend traditional notions of fair play and substantial justice.

22. The foreign Defendants have sufficient minimum contacts with the United States and the maintenance of this suit does not offend traditional notions of fair play and substantial justice.

### **B. Specific Jurisdiction.**

**1. United States Defendants.**

23. Personal jurisdiction over all United States Defendants is proper under principles of specific jurisdiction. Upon information and belief, all United States Defendants have transacted and solicited business in New Jersey and in this district related to the subject matter of the claims alleged herein and, upon information and belief, have committed infringement in this state and district by importing, offering to sell and/or selling goods infringing one or more of the Patents-in-Suit, to one or more customers in this state and district, and/or by exposing for sale, offering for sale and/or selling such infringing goods to New Jersey residents, including by means of a commercially interactive website targeting New Jersey. Further, each Defendant's infringement that is the subject of the claims alleged has caused Plaintiff to suffer damages and other losses in New Jersey and this district, a result that was reasonably foreseeable to each United States Defendant at the time each committed its misconduct.

**2. Foreign Defendants.**

24. Personal jurisdiction over all foreign Defendants is proper under principles of specific jurisdiction. Upon information and belief, each foreign Defendant has transacted and solicited business in the United States related to the subject matter of the claims alleged herein and, upon information and belief, has committed acts of direct infringement in the United States and/or has knowingly

induced others to do so. Upon information and belief, all foreign Defendants have knowingly induced infringement in the United States by offering to sell and/or selling goods infringing one or more of the patents in suit to its or his customers, with knowledge of one or more of Plaintiff's patents and that the foreign Defendant's goods infringe one or more of Plaintiff's patents, and with knowledge and/or willful blindness to the fact that their products will be imported into and offered for sale, sold and/or used in the United States by others. Further, each foreign Defendant's infringement that is the subject of the claims alleged has caused Plaintiff to suffer damages and other losses in the United States, a result that was reasonably foreseeable to each foreign Defendant at the time each committed its misconduct.

**C. General Jurisdiction.**

25. Personal jurisdiction is also proper over the United States Defendants under principles of general jurisdiction in that these Defendants either reside in this state and district and/or have regularly and purposefully conducted business in New Jersey and this district.

26. Personal jurisdiction over the foreign Defendants is also proper under principles of general jurisdiction in that, on information and belief, they have regularly and purposefully conducted business in the United States.

27. Pursuant to 28 U.S.C. § 1391 (c) (3), an alien may be sued in any



judicial district and the joinder of such a Defendant shall be disregarded in determining whether the action may be brought with respect to the other Defendants.

**D. Venue.**

28. Venue also properly lies in this district pursuant to 28 U.S.C. § 1400(b) because each Defendant either resides in this district and/or has committed acts of infringement in this district.

29. Venue also properly lies in this district under 28 U.S.C. § 1391(b) (2) and/or (3) because either a substantial part of the events or omissions giving rise to the claims recited below occurred in this district, or a substantial part of the property that is the subject of the action is in this district, or because there is no district in which the action may otherwise be brought as provided in 28 U.S.C. § 1391, and this court has personal jurisdiction over at least one Defendant.

30. Venue is proper in this district over the foreign pursuant to 28 U.S.C. § 1391 (c) (3) in that an alien may be sued in any judicial district and the joinder of such a Defendant shall be disregarded in determining whether the action may be brought with respect to the other Defendants.

**4. JOINDER PURSUANT TO 35 U.S.C. § 299**

31. Joinder is proper under 35 U.S.C. § 299.

32. Joinder is proper and in accordance with 35 U.S.C. § 299(a) because (1) Plaintiff is asserting his right to relief from the Defendants' unlawful patent infringement against the Defendants jointly, severally, or in the alternative with respect to or arising out of the same series of transactions or occurrences relating to the using, importing into the United States, offering for sale, or selling the same solar-powered garden light that infringes one or more of the patents in suit and (2) questions of fact related to Defendants' unlawful patent infringement and common to all Defendants will arise in this action.

33. Upon information and belief, the aforementioned solar-powered garden light is the same between and among the Defendants because, regardless of brand name or model numbers, the solar-powered garden lights of each Defendant is being repeatedly produced by a common Chinese-located manufacturer.

34. Upon information and belief, the aforementioned same solar-powered garden lights are also the same between and among the Defendants because, regardless of brand name or model numbers, the solar-powered garden lights of each Defendants are the same in all respects pertinent to at least the '477, '827 and '700 Color-Changing Patents and the facts underlying the claim of infringement asserted against each Defendant share an aggregate of operative facts that give rise to each cause of action, such that the same proof of infringement as to any one Defendant's solar-powered garden light will also prove infringement of the other

Defendants' solar-powered garden lights. In particular, upon information and belief, the acts of infringement occurred during the same time period, the Defendants are related as at least supplier-customer, the Defendants use identically sourced components, there is an overlap of the products' development and manufacture in that the Defendants copied one another's products, and that this case involves a claim for lost profits.

35. As to the foreign Defendants, joinder is also proper in that, pursuant to 28 U.S.C. § 1391 (c) (3), an alien may be sued in any judicial district and the joinder of such a Defendant shall be disregarded in determining where the action may be brought with respect to the other Defendants.

## **5. FACTUAL BACKGROUND – PATENTS IN SUIT**

36. For many years, Richmond has engaged in the development, manufacture, and sale of solar-powered garden lighting. Richmond has taken steps to protect his innovative inventions and designs. In particular, Richmond owns United States utility and design patents relating to his solar garden lights.

37. Richmond is the inventor and owner of all right, title, and interest to right, title, and interest to the United States patent number 7,196,477 A1, entitled "Solar Powered Light Assembly to Produce Light of Varying Colours," ("the '477 Color-Changing Patent"), which duly and legally issued to Richmond on March 27, 2007.

38. Richmond is the inventor and owner of all right, title, and interest to the United States patent number 7,429,827 A1, entitled “Solar Powered Light Assembly to Produce Light of Varying Colours,” (“the ’827 Color-Changing Patent”), which duly and legally issued to Richmond on September 30, 2008.

36. Richmond is the inventor and owner of all right, title, and interest to the United States patent number 8,362,700 A1, entitled “Solar Powered Light Assembly to Produce Light of Varying Colors,” (“the ’700 Color-Changing Patent”), which duly and legally issued to Richmond on January 29, 2013.

39. Richmond is the inventor and owner of all right, title, and interest to the United States patent number 7,336,157 A1, entitled “Illuminated Wind Indicator,” (“the ’157 Wind Chime Patent”), which duly and legally issued to Richmond on February 26, 2008.

40. Richmond is the inventor and owner of all right, title, and interest to the United States patent number 8,077,052 A1, entitled “Illuminated Wind Indicator,” (“the ’052 Wind Chime Patent”), which duly and legally issued to Richmond on December 13, 2011.

41. Richmond is the inventor and owner of all right, title, and interest to the United States patent number 8,089,370 A1, entitled “Illuminated Wind Indicator,” (“the ’370 Framed Patent”), which duly and legally issued to Richmond on January 3, 2012.

42. Richmond is the inventor and owner of all right, title, and interest to the United States patent number 7,967,465 A1, entitled “Light Device,” (“the ‘465 Try Me Patent”), which duly and legally issued to Richmond on June 28, 2011.

43. Richmond is the inventor and owner of all right, title, and interest to the United States patent number 8,104,914 A1, entitled “Light Device,” (“the ‘914 Try Me Patent”), which duly and legally issued to Richmond on January 31, 2012.

44. On November 3, 2011, United States Patent Publication No. US 2011/0266953 A1 (the “‘953 Published Application”) was published. A copy of the ‘953 Published Application may be obtained for free from the official United States Patent and Trademark website, uspto.gov and is attached hereto as Exhibit 1. The invention as claimed in the ‘700 Patent is substantially identical to the invention as claimed in the ‘953 Published Application.

45. On November 3, 2009, United States Patent Publication No. US 2009/0322495 A1 (the “‘495 Published Framed Application”) was published. A copy of the ‘495 Published Framed Application may be obtained for free from the official United States Patent and Trademark website, uspto.gov and is attached hereto as Exhibit 4. The invention as claimed in the ‘370 Patent is substantially identical to the invention as claimed in the ‘495 Published Application.

46. Richmond continues to engage in the development and sale of solar-powered garden lighting and continues to take steps to protect his innovative

inventions and designs and in this regard has applied for additional patent protection for his inventions. For example, on March 29, 2012, United States Patent Publication No. US 2012/0075104 A1 (the “‘104 Published Application”) was published and on April 5, 2012, United States Patent Publication No. US 2012/0081888 A1 (the “‘888 Published Application”) was published. Copies of the ‘104 Published Application and the ‘888 Published Application may be obtained for free from the official United States Patent and Trademark website, uspto.gov and are attached hereto as Exhibits 2 and 3, respectively.

47. At all times relevant to this action, Richmond has complied with any notice provisions of 35 U.S.C. § 287 as they may relate to the Patents in Suit.

## **6. COUNT NO. 1 – INFRINGEMENT OF PLAINTIFF’S PATENTS**

### **A. Same Accused Product Infringement by All Defendants.**

48. Upon information and belief, each defendant infringes and/or has infringed one or more claims of Plaintiff’s ‘477, ‘827 and/or ‘700 Color-Changing Patents by making, using, selling, offering to sell, and/or importing, the same solar-powered garden light generally described as a Color-Changing Ball Solar Stake Path Light and/or by knowingly inducing others to do so.

49. Upon information and belief, Jiawei sells and/or has sold the Color-Changing Ball Solar Stake Path Light under the designation CS1, which infringes one or more claims of Plaintiff’s ‘477, ‘827 and ‘700 Color-Changing Patents.

50. Upon information and belief, True Value sells and/or has sold the Color-Changing Ball Solar Stake Path Light under the designation 110615 Four Seasons Courtyard Solar Crackle Sphere with Color Changing & White LED CS1-N1-SS-1, which infringes one or more claims of Plaintiff's '477, '827 and '700 Color-Changing Patents.

51. Upon information and belief, Ace sells and/or has sold the Color-Changing Ball Solar Stake Path Light under the designations 3269255 Solar Light Crackle with Color Changing & White LED and/or Yards & Beyond Color Changing Crackle Glass Sphere Solar Light (CS3-RS1-CB-T9), which infringe one or more claims of Plaintiff's '477, '827 and '700 Color-Changing Patents.

52. Upon information and belief, Orgill sells and/or has sold the Color-Changing Ball Solar Stake Path Light under the designation Boston Harbor 129-7605 Crackle Ball Mini Stake with Color Changing & White LED, which infringes one or more claims of Plaintiff's '477, '827 and '700 Color-Changing Patents.

53. Upon information and belief, Big Lots has sold the Color-Changing Ball Solar Stake Path Light under the designation 250007630/250007958 Village Green Solar Sphere Accent Light with Color Changing & White LED, which infringes one or more claims of Plaintiff's '477 and '827 Color Changing Patents and, for those sold on or after January 29, 2013, the '700 Color-Changing Patents.

**B. Additional Infringements by Defendants.**

54. Upon information and belief, Jiawei also sells and/or has sold one or more other models of solar-powered garden lights which infringe one or more claims of Plaintiff's '477 and '827 Color Changing Patents and, and, for those sold on or after January 29, 2013, Plaintiff's '700 Color-Changing Patent, and also sells and/or has sold one or more models which infringe Plaintiff's '370 Framed Patent, including, but not limited to, its model Jiawei Solar MPO001-R1A-AA-1 Solar Decorative Light Stake.

55. Upon information and belief, True Value also sells and/or has sold one or more other models of solar-powered garden lights which infringe one or more claims of Plaintiff's '477, '827 and '700 Color-Changing Patents, and Plaintiff's '370 Framed Patent, including, but not limited to, its model Moonrays 92338 Solar Powered Color-Changing LED Doves with Crackle Globe Light.

56. Upon information and belief, True Value also sells and/or has sold one or more other models of solar-powered garden lights which infringe one or more claims of Plaintiff's '827 and '700 Color-Changing Patents, including, but not limited to, its model Four Seasons Courtyard Daisy Solar Light, Color-Changing, 32-In.

57. Upon information and belief, True Value also sells and/or has sold one or more other models of solar-powered garden lights which infringe one or more claims of Plaintiff's '477 Color-Changing Patent, including, but not limited to, its



model Four Seasons Courtyard Dragonfly Solar LED Light, Color-Changing, 32-In.

58. Upon information and belief, Ace also sells and/or has sold one or more other models of solar-powered garden lights which infringe one or more claims of Plaintiff's '477 and/or '827 Color-Changing Patents, and/or, for those products sold after January 29, 2013, Plaintiff's '700 Color-Changing Patent, including, but not limited to, its models 8332611 Hanging Teardrop Color Changing Solar LED Light 2/Pk, model 50403837 Ace Trading Solar Cracked Glass Stake Lamp, and/or Yards and Beyond Solar Color Changing Garden Stake - Set of 16 Assorted Colors and Styles, Ace No. 3269495..

59. Upon information and belief, True Value also sells and/or has sold one or more other models of solar-powered garden lights which infringe one or more claims of Plaintiff's '477, '827 and '700 Color-Changing Patents, including, but not limited to, its model # S120901314-G Four Seasons Courtyard LED Solar Stake Light, Mint Green Mosaic Sphere, 30-In.

60. Upon information and belief, True Value also sells and/or has sold one or more other models of solar-powered garden lights which infringe one or more claims of Plaintiff's '477 and '827 Color-Changing Patents, and, for those products sold after January 29, 2013, Plaintiff's '700 Color-Changing Patent, and Plaintiff's '370 Framed Patent, including, but not limited to, its model Four Seasons Courtyard

LED Solar Light With Rain Gauge, Color-Changing Glass Ball.

61. Upon information and belief, Ace also sells and/or has sold one or more other models of solar-powered garden lights which infringe one or more claims of Plaintiff's '370 Framed Patent, including, but not limited to, its Item no: 8351678 Sunergy Welcome Solar Stake Light Assortment (50400555) - 18 Pack.

62. Upon information and belief, Ace also sells and/or has sold one or more other models of solar-powered garden lights which infringe one or more claims of Plaintiff's '157 and '052 Wind Chime Patents and Plaintiff's '370 Framed Patent, including, but not limited to, its model Sunergy® Windlights Solar Lighted Wind Chime (50403337).

63. Upon information and belief, Orgill also sells and/or has sold one or more other models of solar-powered garden lights which infringe one or more claims of Plaintiff's '370 Framed Patent, including, but not limited to, its model SKU 629-4102 Blue Crackle Glass / Metal Butterfly.

64. Upon information and belief, Orgill also sells and/or has sold one or more other models of solar-powered garden lights which infringe one or more claims of Plaintiff's '827 Color-Changing Patents, including, but not limited to, its model SKU # 239-9764 Tiger Lily / Hummingbird Stake Light.

65. Upon information and belief, Orgill also sells and/or has sold one or more other models of solar-powered garden lights which infringe one or more

claims of Plaintiff's '157 Wind Chime Patent, including, but not limited to, its model Boston Harbor Ball Wind Chime (2010).

66. Upon information and belief, Big Lots also sells and/or has sold one or more other models of solar-powered garden lights which infringe one or more claims of Plaintiff's '477 and '827 Color-Changing Patents, including, but not limited to, its model Village Green Solar Accent Light, Article: 810055666 Item: ESL-65-1P.

67. Upon information and belief, Big Lots also sells and/or has sold one or more other models of solar-powered garden lights which infringe one or more claims of Plaintiff's '827 and '700 Color-Changing Patents, including, but not limited to, its model Village Green Metal Solar Pathway Light, Article 810055686 Item: ESL-102C.

68. Upon information and belief, Big Lots also sells and/or has sold one or more other models of solar-powered garden lights which infringe one or more claims of Plaintiff's '700 Color-Changing Patent, including, but not limited to, its model Village Green Solar Gazing Ball, Article 810045275, and its model Solar Wind Chime Article 810044662.

69. Upon information and belief, Big Lots also sells and/or has sold one or more other models of solar-powered garden lights which infringe one or more claims of Plaintiff's '465 and '914 Try-me Patents, including, but not limited to, its

model Village Green Solar Gazing Ball, Article 810045275. Upon information and belief, Big Lots also sells and/or has sold one or more other models of solar-powered garden lights which infringe one or more claims of Plaintiff's '477 and '827 Color Changing Patents and, for those sold on or after January 29, 2013, Plaintiff's '700 Color-Changing Patent, including, but not limited to, its model Village Green Solar Accent Light, Article 810055666, Item# ESL-65-1P, and one or more models which infringe Plaintiff's '370 Framed Patent, Solar Accent Light, Article 810055341, Item #960-5LSM.

70. Plaintiff has been damaged as a result of Defendants' infringing activities and will continue to be damaged unless such activities are enjoined by this Court. Pursuant to 35 U.S.C. § 284, Plaintiff is entitled to damages adequate to compensate for the infringement of Plaintiff's Patents, including, inter alia, lost profits and/or a reasonable royalty.

71. Plaintiff will be irreparably harmed if Defendants' patent infringement continues. Plaintiff relies upon his patents for protection of his business' intellectual property and the rampant infringement of his patents by Defendants robs Plaintiff's business of its intellectual assets and denies Plaintiff the exclusivity in the marketplace for offering and selling his products to which he is entitled under the Patent Laws. This seriously damages Plaintiff in a manner that cannot be adequately compensated by money alone. Plaintiff is entitled to a permanent

injunction prohibiting Defendants, their directors, officers, employees, agents, parents, subsidiaries, affiliates, and anyone else in active concert or participation with them, from taking any other actions that would infringe Plaintiff's Patents.

## **7. INFRINGEMENT OF PROVISIONAL RIGHTS IN THE '700 PATENT**

72. On information and belief, Jiawei had actual notice of the '953 Published Application, including its specification and claims.

73. On information and belief, pursuant to 35 U.S.C. § 154(d), since having actual notice of the '953 Published Application, Jiawei has made, used, offered for sale, sold and/or imported into the United States the invention as claimed in one or more claims of the '953 Published Application, by making, using, offering for sale, selling and/or importing into the United States one or more models of solar-powered garden lights, including, but not limited to, its Color-Changing Ball Solar Stake Path Light under the designation CS1.

74. On information and belief, Orgill had actual notice of the '953 Published Application, including its specification and claims.

75. On information and belief, pursuant to 35 U.S.C. § 154(d), since having actual notice of the '953 Published Application, Orgill has made, used, offered for sale, sold and/or imported into the United States the invention as claimed in one or more claims of the '953 Published Application, by making, using, offering for sale, selling and/or importing into the United States one or more

models of solar-powered garden lights, including, but not limited to, the Boston Harbor 129-7605 Crackle Ball Mini Stake with Color Changing & White LED.

76. As a result of infringement of Plaintiff's provisional rights in the '953 Published Application by Jiawei and Orgill, Plaintiff is entitled to recover a reasonable royalty pursuant to 35 U.S.C. § 154(d)(1), in addition to Plaintiff's other rights provided by the Patent Statute.

## **8. INFRINGEMENT OF PROVISIONAL RIGHTS IN THE '370 PATENT**

77. On information and belief, Jiawei had actual notice of the '495 Published Framed Application, including its specification and claims.

78. On information and belief, pursuant to 35 U.S.C. § 154(d), since having actual notice of the '495 Published Framed Application, Jiawei has made, used, offered for sale, sold and/or imported into the United States the invention as claimed in one or more claims of the '495 Published Framed Application, by making, using, offering for sale, selling and/or importing into the United States one or more models of solar-powered garden lights, including, but not limited to, its Jiawei Solar MPO001-R1A-AA-1 Solar Decorative Light Stake.

79. As a result of infringement of Plaintiff's provisional rights in the '495 Published Framed Application by Jiawei, Plaintiff is entitled to recover a reasonable royalty pursuant to 35 U.S.C. § 154(d)(1), in addition to Plaintiff's other rights provided by the Patent Statute.

**9. WILLFULNESS OF THE INFRINGEMENT**

80. As a result of Richmond's activities, Defendant Jiawei is long believed to have long had knowledge of at least Plaintiff's '477 and '827 Color Changing Patents and that one or more of their products infringe one or more claims of those patents. As such, its infringement of Plaintiff's '477 and '827 Color Changing Patents is deliberate and willful. The allegations and factual contentions set forth in this paragraph are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery. See Fed. R. Civ. P. 11(b)(3).

**10. JURY DEMAND**

81. Plaintiff hereby demands a trial by jury, pursuant to Fed. R. Civ. Proc. 38(b), for all issues so triable.

**11. PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays that the court enter judgment granting Plaintiff the following relief:

a. For the utility Patents-in-Suit, awarding Plaintiff his damages adequate to compensate for Defendants' infringement of Plaintiff's Patents, including, inter alia, lost profits and/or a reasonable royalty;

b. Awarding treble of the damages and/or reasonable royalty, and that those damages be trebled on account of the willful nature of the infringement, pursuant to 35 U.S.C. § 284, for those Defendants against whom willfulness is

alleged;

c. Awarding a reasonable royalty pursuant to 35 U.S.C. § 154(d)(1) for those Defendants against whom infringement of provisional rights in the '953 Published Application is alleged;

d. Awarding a reasonable royalty pursuant to 35 U.S.C. § 154(d)(1) for those Defendants against whom infringement of provisional rights in the '495 Published Framed Application is alleged;

e. Declaring this case to be exceptional under 35 U.S.C. §285 and awarding Plaintiff his attorneys' fees, costs and expenses related to bringing this action;

f. Enjoining Defendants from infringing Plaintiff's Patents; and

g. Awarding Plaintiff such further and other relief as the Court deems just and equitable.

Respectfully submitted,

/s/ Lawrence C. Hersh

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