

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

EIC SOLUTIONS, INC.,
700 Veterans Way
Suite 200
Warminster, PA 19874

Plaintiff,

v.

BRUCE BLACKWAY
21 Goldeneye Ct.
Berlin, MD 21811,

CP CASES LTD.
2A Zodiac House
Calleva Park, Aldermaston
Berkshire RG7 8HN
United Kingdom, and

COOL PORTABLE AIR CONDITIONING
LTD.
2A Zodiac House
Calleva Park, Aldermaston
Berkshire RG7 8HN
United Kingdom

Defendants.

Civil Action No. _____

**COMPLAINT AND DEMAND
FOR JURY TRIAL**

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff EIC Solutions, Inc. (“EIC” or “Plaintiff”), by and through its undersigned attorneys, for its Complaint against Defendants Bruce Blackway (“Blackway”), CP Cases Ltd. (“CP”), and Cool Portable Air Conditioning Ltd. (“Cool”), (collectively referred to herein as “Defendants”) hereby alleges as follows:

THE PARTIES

1. Plaintiff EIC Solutions, Inc. is a corporation organized under the laws of Pennsylvania and has offices at 700 Veterans Way, Suite 200, Warminster, PA 19874.

2. EIC designs and manufactures thermoelectric air conditioners (AC)/cooling systems, enclosures, and transit cases used to house and protect electronics used in industry and by the military. EIC was founded in 1972 by Al Gillen (“Mr. Gillen”). In 1996, Mr. Gillen developed and sold EIC’s first thermoelectric AC unit. In 2000, EIC was acquired by the current owners, by which time EIC had multiple AC models and a line of enclosures in its product catalog. Between 2001 and 2005 EIC introduced a new line of air conditioned enclosures and continued to develop new AC units. In 2005, EIC developed and began selling air conditioned transit cases to military and other industrial buyers. In 2008, EIC began working with Defendant CP as a supplier of some of the transit cases used in these air conditioned transit cases.

3. EIC owns all right, title, and interest in, and has standing to sue for infringement of, United States Patent No. 6,345,507 (“the ’507 Patent”), entitled “Compact Thermoelectric Cooling System,” issued February 12, 2002, United States Patent No. 6,499,306 (“the ’306 Patent”), entitled “Compact Thermoelectric Cooling System,” issued Dec. 31, 2002, and United States Patent No. 8,490,413 (“the ’413 Patent”) entitled “Thermoelectrically Air Conditioned Transit Case,” issued July 23, 2013.

4. On information and belief, Defendant CP is a corporation organized and existing under the laws of the United Kingdom that maintains a registered address at 2A Zodiac House Calleva Park Aldermaston, Berkshire RG7 8HN, U.K. and a trading address at Unit 11 Worton Hall Industrial Estate

Worton Road Isleworth, Middlesex TW7 6ER, U.K. CP manufactures aluminum, roto-molded (plastic), and fiberglass rack mount transit cases.

5. On information and belief, Defendant Cool is a corporation organized and existing under the laws of the United Kingdom that maintains a registered address at 2A Zodiac House Calleva Park Aldermaston, Berkshire RG7 8HN, U.K. and a trading address at Unit 11 Worton Hall Industrial Estate Worton Road Isleworth, Middlesex TW7 6ER, U.K. Cool maintains a US Office at 11941 Industrial Park Road, Suite 2, Bishopville, MD 21813.

6. Cool and CP are subsidiaries of CP Global Ltd., a corporation organized and existing under the laws of the United Kingdom that maintains a registered address at 2A Zodiac House Calleva Park Aldermaston, Berkshire RG7 8HN, U.K., which is the same registered address as Cool and CP. On information and belief, Cool was recently founded by CP Global Ltd. to provide thermoelectric air conditioners for use with CP's transit cases.

7. On information and belief, Defendant Bruce Blackway resides at 21 Goldeneye Ct., Berlin, MD 21811. From 2000-2011, Blackway was President and General Manager of Plaintiff EIC. Blackway recently informed EIC that he has been working for the last "few months" with Defendant Cool. Because of Blackway's executive experience with EIC, EIC believes Blackway's role has been in a command and control capacity with Cool, providing critical input to Cool's business and product development decisions.

JURISDICTION AND VENUE

8. This is an action for patent infringement arising under the acts of Congress relating to patents, namely the Patent Laws of the United States, 35 U.S.C. §§ 1 et seq. This Court has subject matter jurisdiction of this matter pursuant to 28 U.S.C. §§ 1331 and 1338(a).

9. On information and belief, Defendants CP and Cool jointly and separately solicit business from this district and throughout the State of Maryland, transact business and have offered to sell and/or have sold products in this judicial district and throughout the State of Maryland, products and services that infringe claims of the '413, '306, and '507 Patents. On information and belief, Defendants CP and Cool jointly and separately have committed and continue to commit acts of patent infringement in this district, and throughout the State of Maryland. On information and belief, Defendant Cool maintains an operating office in the State of Maryland at 11941 Industrial Park Road, Suite 2 Bishopville, MD 21813. On information and belief, Defendant CP sources infringing thermoelectric components made, sold, or facilitated by Cool's personnel at this Maryland location. This Court has personal jurisdiction over both Defendants CP and Cool.

10. Defendant Blackway is a Maryland citizen, residing at 21 Goldeneye Ct., Berlin, MD 21811. On information and belief, he has been actively involved in Defendant Cool's business activities, which he has characterized as "headquartered" in Maryland. This Court has personal jurisdiction over Blackway.

11. Venue is proper in this district under 28 U.S.C. §§ 1391(b) and (c) and 1400(b).

BACKGROUND AND HISTORY OF THE PARTIES

12. Since at least 2008, EIC has had an ongoing business relationship with CP, whereby EIC would buy transit cases from CP to install EIC thermoelectric coolers in these cases to be sold as thermoelectrically cooled transit cases. In or around 2009, CP began selling their own thermoelectrically cooled transit cases and thermoelectrically cooled collars for use with transit cases. EIC permitted this

activity because CP's thermoelectrically cooled transit cases and thermoelectrically cooled collars incorporated thermoelectric AC units purchased from EIC.

13. Until recently, EIC and CP have had a good business relationship. EIC personnel have worked closely with CP personnel on a number of successful projects. EIC has provided CP with marketing materials covering EIC thermoelectric AC units and encouraged CP to promote EIC's products in CP marketing collateral and on CP's website. CP has numerous examples of EIC thermoelectric ACs in CP cases on its website and has exhibited EIC's product in CP's transit cases at trade shows. EIC has acted similarly with respect to CP's transit cases as components of EIC products. To date CP has purchased over 100 thermoelectric air conditioning units from EIC.

14. Thermoelectrically cooled transit cases made and sold by EIC and the thermoelectrically cooled transit cases made and sold by CP that include an EIC thermoelectric cooler are patented and have been covered by at least one claim of the '413 Patent, since the issuance of the '413 Patent. Similarly, many or all of the thermoelectric air conditioners in these transit cases are patented and have, at all times, been covered by at least one claim of the '306 and/or '507 Patents, since EIC, and later CP, began selling these thermoelectrically cooled transit cases.

15. At no time has EIC, or any predecessors in interest, granted CP or Cool a license under any of the '413, '306, or '507 Patents to sell thermoelectrically cooled transit cases that incorporate a thermoelectric air conditioner not obtained from EIC.

16. In 2000, Blackway was hired by EIC as the President and General Manager. In March 2011, Blackway resigned from EIC and executed a non-competition and confidentiality agreement for which he received substantial monetary compensation. According to that agreement, Blackway agreed to protect confidential information he gained access to during his tenure with EIC and agreed not to

compete with EIC for two years. During his tenure, Blackway co-invented the invention of the '413 Patent. He assigned his rights in the '413 Patent to EIC on June 25, 2008. A copy of that assignment is available from the U.S. Patent and Trademark Office ("USPTO") as part of the file history of the '413 Patent.

17. In the Spring of 2013, EIC contacted Blackway in connection with a continuation patent application relating to the '413 Patent. Blackway did not respond until September 20, 2013, when he informed EIC in a letter ("the Blackway Letter") that he was now working with Cool. This was the first time EIC became aware of Cool or its products. (A copy of this letter is attached as Exhibit "A").

18. On information and belief, and according to the Blackway Letter, Cool was founded to directly compete with EIC and to replace EIC as a supplier of thermoelectric air conditioning units to Cool's sister company, CP. On information and belief, Cool has developed, with the assistance of Blackway, thermoelectric air conditioning units specifically for use with transit cases, and has begun manufacturing, promoting, and selling these units. Exemplary thermoelectric air conditioning units can be found at <http://www.coolportableairconditioning.-com> and <http://www.coolportableairconditioning.com/downloads/COOLPAC-Flyer-Sept-13.pdf>.

19. On information and belief, CP and Cool have begun jointly developing, marketing, offering to sell, and selling transit cases that include thermoelectric air conditioning units, either integrally or via an accessory collar, manufactured by or for Cool, without license or authorization from EIC. For example, inquiries from Cool's website direct customers to "contact CP Cases." Cool promotes "CP Cases' range of COOL Portable Air Conditioning units" on Cool's homepage, <http://www.coolportableairconditioning.com>.

20. Upon learning of CP and Cool's new thermoelectric air conditioning units and thermoelectrically cooled transit cases and accessories, EIC contacted CP and stated that these products, which do not utilize EIC thermoelectric air conditioning units, would infringe EIC's patents. To date, neither CP nor Cool have agreed to stop using, selling, or offering these products for sale. Defendants have also thus far refused to produce the alleged prior art to the '413 Patent.

COUNT I:
INFRINGEMENT OF U.S. PATENT NO. 8,490,413

21. Plaintiff EIC incorporates paragraphs 1 -20 as if set forth fully here.

22. Plaintiff EIC is the owner of the '413 Patent. (A true and correct copy of the '413 Patent is attached as Exhibit "B").

23. On information and belief, Defendant CP has and continues to infringe the '413 Patent by making, using, selling, offering for sale and/or importing thermoelectrically cooled transit cases that include all elements of at least one claim of the '413 Patent, in violation of 35 U.S.C. § 271(a). These infringing transit cases include, but are not limited to, CP's Amazon and Erack transit cases equipped with thermoelectric air conditioning units not obtained from EIC.

24. On information and belief, Defendant CP has and continues to infringe the '413 Patent by making, using, selling, offering for sale and/or importing thermoelectrically cooled transit case accessories that, when combined with transit cases sold by CP include all elements of at least one claim of the '413 Patent, in violation of 35 U.S.C. § 271(a). These infringing transit case accessories include, but are not limited to, CP's Cool-Collar mountable cooling units and any other mountable units equipped with thermoelectric air conditioning units not obtained from EIC.

25. On information and belief, Defendant Cool has and continues to infringe the '413 Patent by making, using, selling, offering for sale and/or importing thermoelectrically cooled transit cases and

collars that include all elements of at least one claim of the '413 Patent, in violation of 35 U.S.C. § 271(a). These infringing transit cases include, but are not limited to, transit cases and collars that include COOL TEU thermoelectric air conditioners.

26. On information and belief, Defendants CP and Cool, as sister companies that supply components for thermoelectrically cooled transit cases and collars, jointly infringe the '413 Patent by jointly making, using, selling, offering for sale and/or importing thermoelectrically cooled transit case accessories that include all elements of at least one claim of the '413 Patent, in violation of 35 U.S.C. § 271(a). On information and belief, Defendants CP and Cool, provide thermoelectrically cooled transit cases and collar components (including, but not limited to cases from CP and thermoelectric air conditioners from Cool) to one another for the explicit purpose of making, using, selling, offering for sale and/or importing thermoelectrically cooled transit cases and collars that include all elements of at least one claim of the '413 Patent.

27. CP has actual and constructive notice of EIC's '413 Patent by virtue of the long standing relationship between CP and EIC, and recent discussions about ceasing CP's newly infringing activities. Cool has actual and constructive notice of EIC's '413 Patent by virtue of hiring Blackway, a former employee and co-inventor of the '413 Patent and recent discussions about ceasing Cool's newly infringing activities. Blackway has actual and constructive notice of EIC's '413 Patent by virtue being an inventor on the patent.

28. On information and belief, Defendants CP and Cool make, use, sell and/or offer for sale thermoelectric air conditioning units, that do not include EIC thermoelectric air conditioning components, designed for the purpose of installing these units in transit cases to create thermoelectrically cooled transit cases that include all elements of at least one claim of the '413 Patent.

These thermoelectric air conditioning units include, but are not limited to, CP's Cool-Collar and Cool's COOL TEU products. On information and belief, these products have no substantial non-infringing uses.

29. On information and belief, customers of Defendants CP and Cool purchase these thermoelectric air conditioning units and combine them with transit cases to create thermoelectrically cooled transit cases that include all elements of at least one claim of the '413 Patent. Accordingly, Defendants CP and Cool each contribute to the infringement of the '413 Patent by their customers who purchase thermoelectric air conditioning units, in violation of 35 U.S.C. § 271(c).

30. On information and belief, Defendants CP and Cool have and continue to induce their customers to infringe the '413 Patent by making, using, selling, offering for sale and/or importing thermoelectrically cooled transit case components that, when combined in accordance with CP and/or Cool's guidance, create thermoelectrically cooled transit cases that include all elements of at least one claim of the '413 Patent. These components include, but are not limited to transit cases, collars, and thermoelectric air conditioning units. Accordingly, Defendants CP and Cool each induce their customers who purchase thermoelectrically cooled transit case components and combine them to create thermoelectrically cooled transit cases that include all elements of at least one claim of the '413 Patent, in violation of 35 U.S.C. § 271(b).

31. As an inventor of the '413 Patent and former President and General Manager for over ten years, Blackway was very familiar with scope of EIC's patent protection and was familiar with what product designs would infringe these patents. In the Blackway Letter, Blackway noted the strong likelihood that EIC would assert its legal rights upon finding out about his infringing activities in collaboration with Cool, stating, "[EIC's current President] may eventually want to have talks with the

board about some sort of legal activity related to COOL and/or CP.” (*See*, Exh. “A”). Accordingly, Blackway was fully aware of his wrongdoing in assisting Cool and CP develop products that infringe EIC’s patents.

32. Despite proclaiming that asserting EIC’s legal rights “would be exceptionally foolish,” Blackway has to date provided no legal basis for this assertion. (*See*, Exh. “A”). Instead, Blackway’s reasoning has amounted to little more than attempted extortion, stating, “it is ill-advised to bring action against one of your best suppliers,” and “legal action against CP would likely eliminate EIC’s ability to obtain additional cases.” *Id.* Blackway’s other reasoning is no more legally proper to excuse the willful infringement that he and the other Defendants conspired to create. He noted the expense of litigation, and an erroneous claim that EIC had allowed and encouraged past infringement (failing to acknowledge that all past products included components sold by EIC to CP). *Id.* Blackway also noted that CP’s lawyers had “uncovered a few examples of ‘prior-art’ that pre-dates EIC’s 2005 patent application [that resulted in the ’413 Patent].” *Id.* However, all requests by EIC to see this prior-art have been denied by CP. Furthermore, Blackway does not allege any basis for any belief that he or the other Defendants had any justification infringing the ’507 and ’306 Patents, which were filed prior to 2005.

33. Blackway, and the other Defendants, Cool and CP, through their relationship with Blackway, their past business involvement, and through their own alleged legal investigations, are fully aware that their actions constitute an infringement of the ’413 Patent. The Defendants have blatantly disregarded EIC’s IP rights and have attempted to dissuade EIC from filing suit via the hollow threats in the Blackway Letter. Defendants’ silence to date regarding the existence of any prior-art to the ’507 and ’306 Patents and their refusal to produce alleged prior-art to the ’413 Patent demonstrates that

Defendants lack any reasonable belief that their behaviour does not infringe these patents. Accordingly, Defendants' infringement is willful.

34. Defendant Blackway assigned his rights in the '413 Patent to EIC on June 25, 2008. Blackway also submitted a declaration to the USPTO during the prosecution of the '413 Patent, stating:

"I believe the inventor(s) named below to be the original and first inventor(s) of the subject matter which is claimed and for which a patent is sought on the above-captioned application.

"I have reviewed and understand the contents of the above-identified application, including the claims, as amended by any amendment referred to above;

"I acknowledge the duty to disclose to the United States Patent and Trademark Office all information known to me/us to be material to patentability as defined in 37 CFR 1.56, including for continuation-in-part applications, material information which became available between the filing date of the prior application and the national or PCT International filing date of the continuation-in-part application."

A copy of this declaration is attached as Exhibit E.

35. Accordingly, Blackway is estopped under the doctrines of assignor estoppel and common law estoppel from now claiming that the '413 Patent is invalid. Because he had already declared that the invention of the '413 Patent was valid and he was the "the original and first inventor," Blackway could not have a reasonable belief that he, Cool, and CP have a right to infringe the '413 Patent. Furthermore, Blackway's refusal to produce the alleged prior art violates his "duty to disclose to the United States Patent and Trademark Office all information known to me/us to be material to patentability." Accordingly, by encouraging Cool and CP to make, use, sell, and offer for sale products that infringe the '413 Patent, Blackway is personally liable for induced infringement under 35 U.S.C. § 271(b).

36. On information and belief, Blackway has induced Defendants CP and Cool to infringe the '413, '507, and '306 Patents as part of a petty strategy to harm EIC in retaliation for past disagreements with EIC, which resulted in him leaving EIC in 2011. As is clear from the tone of the Blackway Letter and his refusal to sign documents to further the prosecution of the patent application he assigned to EIC, Blackway is hostile to EIC and hopes to cause EIC financial harm. Blackway has attempted to bully EIC into ignoring the infringing activities, hollowly threatening to damage EIC's ability to fulfil government contracts if EIC pursues its legal rights.

37. On information and belief, Blackway has taken a leadership role with respect to the development and marketing of infringing products at Cool. Such a role is commensurate with Blackway's past involvement at EIC.

38. Blackway has access to EIC's trade secret information learned during his tenure at EIC, has expertise in the design of products that would infringe EIC's patents, as demonstrated by Blackway's past role as an inventor of the '413 Patent, and has knowledge of EIC's customers, gained by his role as the chief marketer during his years at EIC. Blackway is uniquely situated to encourage and assist Defendants CP and Cool in infringing EIC's patents in a manner intended to do the most economic harm to EIC. Accordingly, on information and belief, Blackway has been actively inducing Cool and CP to infringe EIC's patents.

39. On information and belief, Defendants have and continue to promote, advertise, and instruct customers and potential customers about their products and how to use their products, including infringing uses, including but not limited to combining transit cases with thermoelectric air conditioners.

40. On information and belief, Defendants' products are not staple articles or commodities of commerce suitable for substantial non-infringing use.

41. On information and belief, Defendants' actions have and continue to constitute active inducement of and contributory infringement of the '413 Patent in violation of 35 U.S.C. § 271(b) and (c).

42. On information and belief, Defendants' infringement of the '413 Patent has been and continues to be willful and deliberate as evidenced by their knowledge of the '413 Patent and their refusal to stop infringing activities.

43. The market for thermoelectrically cooled transit cases is a limited market with a limited number of buyers, such as the US military. EIC is unaware of any thermoelectrically cooled transit cases in that market, prior to Defendant's infringing activities, that did not include an EIC labeled air conditioner, as these products have enjoyed the protection of at least one of EIC's '413, '507, and '306 Patents. Defendants' infringement of the '413 Patent introduces new unauthorized competition to this market which will inevitably erode prices, confuse buyers, and damage the good will of EIC in the marketplace. Defendants' infringement of the '413 Patent has caused or will inevitably cause irreparable harm to Plaintiff EIC and will continue to do so unless enjoined.

COUNT II:
INFRINGEMENT OF U.S. PATENT NO. 6,345,507

44. Plaintiff EIC incorporates paragraphs 1-43 as if set forth fully here.

45. Plaintiff EIC is the owner of the '507 Patent. (A true and correct copy of the '507 Patent is attached as Exhibit "C").

46. On information and belief, Defendant CP has and continues to infringe the '507 Patent by making, using, selling, offering for sale and/or importing thermoelectrically cooled transit cases and accessories that include thermoelectric air conditioning units that include all elements of at least one

claim of the '507 Patent, in violation of 35 U.S.C. § 271(a). These infringing transit cases include, but are not limited to, CP's Amazon and Erack transit cases. Other infringing products include Cool Collars equipped with thermoelectric air conditioning units not obtained from EIC and any other products that include a thermoelectric air conditioning units not obtained from EIC.

47. On information and belief, Defendant Cool has and continues to infringe the '507 Patent by making, using, selling, offering for sale and/or importing thermoelectrically cooled transit cases and accessories that include all elements of at least one claim of the '507 Patent, in violation of 35 U.S.C. § 271(a). These infringing transit cases include, but are not limited to, transit cases and collars that include a COOL TEU thermoelectric air conditioner, and any other product that includes a thermoelectric air conditioner.

48. On information and belief, Defendants CP and Cool, as sister companies that supply components for thermoelectrically cooled transit cases and collars, jointly infringe the '507 Patent by jointly making, using, selling, offering for sale and/or importing thermoelectric air conditioners that include all elements of at least one claim of the '507 Patent, in violation of 35 U.S.C. § 271(a). On information and belief, Defendants CP and Cool, provide thermoelectrically cooled transit cases and collar components (including, but not limited to cases from CP and thermoelectric air conditioners from Cool) to one another for the explicit purpose of making, using, selling and/or offering for sale thermoelectrically cooled transit cases and collars that include thermoelectric air conditioners having all elements of at least one claim of the '507 Patent.

49. CP has actual and constructive notice of EIC's '507 Patent by virtue of the long standing relationship between CP and EIC, and recent discussions about ceasing CP's newly infringing activities. Cool has actual and constructive notice of EIC's '507 Patent by virtue of hiring Blackway, the former

President and General Manager of EIC and recent discussions about ceasing Cool's newly infringing activities. The '507 Patent issued to EIC while Blackway was in the role of President and General Manager of EIC and received correspondence from patent counsel on such matters.

50. On information and belief, Defendants CP and Cool make, use, sell, offer for sale and/or import thermoelectric air conditioning units, that do not include EIC thermoelectric air conditioning components, designed for the purpose of installing these units in transit cases to create thermoelectrically cooled transit cases that include all elements of at least one claim of the '507 Patent. These thermoelectric air conditioning units include, but are not limited to, CP's Cool-Collar and Cool's COOL TEU products. On information and belief, these products have no substantial non-infringing uses.

51. On information and belief, customers of Defendants CP and Cool purchase these thermoelectric air conditioning units and combine them with transit cases to create thermoelectrically cooled transit cases that include all elements of at least one claim of the '507 Patent. Accordingly, Defendants CP and Cool each contribute to the infringement of the '507 Patent by their customers who purchase thermoelectric air conditioning units, in violation of 35 U.S.C. § 271(c).

52. On information and belief, Defendants CP and Cool have and continue to induce their customers to infringe the '507 Patent by making, using, selling, offering for sale and/or importing thermoelectrically cooled transit case components that include thermoelectric air conditioning units that include all elements of at least one claim of the '507 Patent. These components include, but are not limited to transit cases, collars, and thermoelectric air conditioning units. Accordingly, Defendants CP and Cool each induce their customers to use thermoelectric air conditioning units that include all elements of at least one claim of the '507 Patent, in violation of 35 U.S.C. § 271(b).

53. As an inventor of the '413 Patent and former President and General Manager for over ten years, Blackway was very familiar with the scope of EIC's patent protection and was familiar with what product designs would infringe these patents. In the Blackway Letter, Blackway noted the strong likelihood that EIC would assert its legal rights upon finding out about his infringing activities in collaboration with Cool, stating, "[EIC's current President] may eventually want to have talks with the board about some sort of legal activity related to COOL and/or CP." (*See*, Exh. "A"). Accordingly, Blackway was fully aware of his wrongdoing in assisting Cool and CP develop products that infringe EIC's patents.

54. Despite proclaiming that asserting EIC's legal rights "would be exceptionally foolish," Blackway has to date provided no legal basis for this assertion. (*See*, Exh. "A"). Instead, Blackway's reasoning has amounted to little more than attempted extortion, stating, "it is ill-advised to bring action against one of your best suppliers," and "legal action against CP would likely eliminate EIC's ability to obtain additional cases." *Id.* Blackway's other reasoning is no more legally proper to excuse the willful infringement that he and the other Defendants conspired to create. He noted the expense of litigation, and an erroneous claim that EIC had allowed and encouraged past infringement (failing to acknowledge that all past products included components sold by EIC to CP). *Id.* Blackway also noted that CP's lawyers had "uncovered a few examples of 'prior-art' that pre-dates EIC's 2005 patent application [which resulted in the '413 Patent]." *Id.* However, all requests by EIC to see this prior-art have been denied by CP. Furthermore, Blackway does not allege any basis for any belief that he or the other Defendants had any justification infringing the '507 and '306 Patents, which were filed prior to 2005.

55. Blackway, and the other Defendants, Cool and CP, through their relationship with Blackway, their past business involvement, and through their own alleged legal investigations, are fully

aware that their actions constitute an infringement of the '507 Patent. The Defendants have blatantly disregarded EIC's IP rights and have attempted to dissuade EIC from filing suit via the hollow threats in the Blackway Letter. Defendants' silence to date regarding the existence of any prior-art to the '507 and '306 Patents and their refusal to produce alleged prior-art to the '413 Patent demonstrates that Defendants lack any reasonable belief that their behaviour does not infringe these patents. Accordingly, Defendants' infringement is willful.

56. On information and belief, Blackway has induced Defendants CP and Cool to infringe the '413, '507, and '306 Patents as part of a petty strategy to harm EIC in retaliation for past disagreements with EIC, which resulted in him leaving EIC in 2011. As is clear from the tone of the Blackway Letter and his refusal to sign documents to further the prosecution of the patent application he assigned to EIC, Blackway is hostile to EIC and hopes to cause EIC financial harm. Blackway has attempted to bully EIC into ignoring the infringing activities, hollowly threatening to damage EIC's ability to fulfil government contracts if EIC pursues its legal rights.

57. On information and belief, Blackway has taken a leadership role with respect to the development and marketing of infringing products at Cool. Such a role is commensurate with Blackway's past involvement at EIC.

58. Blackway has access to EIC's trade secret information, learned during his tenure at EIC, has expertise in the design of products that would infringe EIC's patents, as demonstrated by Blackway's past role as an inventor of the '413 Patent, and has knowledge of EIC's customers, gained by his role as the chief marketer during his years at EIC. Blackway is uniquely situated to encourage and assist Defendants CP and Cool in infringing EIC's patents in a manner intended to do the most

economic harm to EIC. Accordingly, on information and belief, Blackway has been actively inducing Cool and CP to infringe EIC's patents.

59. On information and belief, Defendants have and continue to promote, advertise, and instruct customers and potential customers about their products and how to use their products, including infringing uses, including but not limited to combining transit cases with thermoelectric air conditioners.

60. On information and belief, Defendants' products are not staple articles or commodities of commerce suitable for substantial non-infringing use.

61. On information and belief, Defendants' actions have and continue to constitute active inducement of and contributory infringement of the '507 Patent in violation of 35 U.S.C. § 271(b) and (c).

62. On information and belief, Defendants' infringement of the '507 Patent has been and continues to be willful and deliberate as evidenced by their knowledge of the '507 Patent and their refusal to stop infringing activity.

63. The market for thermoelectrically cooled transit cases is a limited market with a limited number of buyers, such as the US military. EIC is unaware of any thermoelectrically cooled transit cases in that market, prior to Defendant's infringing activities, that did not include an EIC labeled air conditioner, as these products have enjoyed the protection of at least one of EIC's '413, '507, and '306 Patents. Defendants' infringement of the '507 Patent introduces new unauthorized competition to this market which will inevitably erode prices, confuse buyers, and damage the good will of EIC in the marketplace. Defendants' infringement of the '507 Patent has caused or will inevitably cause irreparable harm to Plaintiff EIC and will continue to do so unless enjoined.

COUNT III:
INFRINGEMENT OF U.S. PATENT NO. 6,499,306

64. Plaintiff EIC incorporates paragraphs 1-63 as if set forth fully here.

65. Plaintiff EIC is the owner of the '306 Patent. (A true and correct copy of the '306 Patent is attached as Exhibit "D").

66. On information and belief, Defendant CP has and continues to infringe the '306 Patent by making, using, selling, offering for sale and/or importing thermoelectrically cooled transit cases and accessories that include thermoelectric air conditioning units that include all elements of at least one claim of the '306 Patent, in violation of 35 U.S.C. § 271(a). These infringing transit cases include, but are not limited to, CP's Amazon and Erack transit cases. Other infringing products include Cool Collars equipped with thermoelectric air conditioning units not obtained from EIC and any other products that include a thermoelectric air conditioning units not obtained from EIC.

67. On information and belief, Defendant Cool has and continues to infringe the '306 Patent by making, using, selling, offering for sale and/or importing thermoelectrically cooled transit cases and accessories that include all elements of at least one claim of the '306 Patent, in violation of 35 U.S.C. § 271(a). These infringing transit cases include, but are not limited to, transit cases and collars that include a COOL TEU thermoelectric air conditioner, and any other product that includes a thermoelectric air conditioner.

68. On information and belief, Defendants CP and Cool, as sister companies that supply components for thermoelectrically cooled transit cases and collars, jointly infringe the '306 Patent by jointly making, using, selling, offering for sale and/or importing thermoelectric air conditioners that include all elements of at least one claim of the '306 Patent, in violation of 35 U.S.C. § 271(a). On information and belief, Defendants CP and Cool, provide thermoelectrically cooled transit cases and

collar components (including, but not limited to cases from CP and thermoelectric air conditioners from Cool) to one another for the explicit purpose of making, using, selling and/or offering for sale thermoelectrically cooled transit cases and collars that include thermoelectric air conditioners having all elements of at least one claim of the '306 Patent.

69. CP has actual and constructive notice of EIC's '306 Patent by virtue of the long standing relationship between CP and EIC, and recent discussions about ceasing CP's newly infringing activities. Cool has actual and constructive notice of EIC's '306 Patent by virtue of hiring Blackway, the former President and General Manager of EIC and recent discussions about ceasing Cool's newly infringing activities. The '306 Patent issued to EIC while Blackway was in the role of President and General Manager of EIC and received correspondence from patent counsel on such matters.

70. On information and belief, Defendants CP and Cool make, use, sell, offer for sale and/or import thermoelectric air conditioning units, that do not include EIC thermoelectric air conditioning components, designed for the purpose of installing these units in transit cases to create thermoelectrically cooled transit cases that include all elements of at least one claim of the '306 Patent. These thermoelectric air conditioning units include, but are not limited to, CP's Cool-Collar and Cool's COOL TEU products. On information and belief, these products have no substantial non-infringing uses.

71. On information and belief, customers of Defendants CP and Cool purchase these thermoelectric air conditioning units and combine them with transit cases to create thermoelectrically cooled transit cases that include all elements of at least one claim of the '306 Patent. Accordingly, Defendants CP and Cool each contribute to the infringement of the '306 Patent by their customers who purchase thermoelectric air conditioning units, in violation of 35 U.S.C. § 271(c).

72. On information and belief, Defendants CP and Cool have and continue to induce their customers to infringe the '306 Patent by making, using, selling, offering for sale and/or importing thermoelectrically cooled transit case components that include thermoelectric air conditioning units that include all elements of at least one claim of the '306 Patent. These components include, but are not limited to transit cases, collars, and thermoelectric air conditioning units. Accordingly, Defendants CP and Cool each induce their customers to use thermoelectric air conditioning units that include all elements of at least one claim of the '306 Patent, in violation of 35 U.S.C. § 271(b).

73. As an inventor of the '413 Patent and former President and General Manager for over ten years, Blackway was very familiar with scope of EIC's patent protection and was familiar with what product designs would infringe these patents. In the Blackway Letter, Blackway noted the strong likelihood that EIC would assert its legal rights upon finding out about his infringing activities in collaboration with Cool, stating, "[EIC's current President] may eventually want to have talks with the board about some sort of legal activity related to COOL and/or CP." (*See*, Exh. "A"). Accordingly, Blackway was fully aware of his wrongdoing in assisting Cool and CP develop products that infringe EIC's patents.

74. Despite proclaiming that asserting EIC's legal rights "would be exceptionally foolish," Blackway has to date provided no legal basis for this assertion (*See*, Exh. "A"). Instead, Blackway's reasoning has amounted to little more than attempted extortion, stating, "it is ill-advised to bring action against one of your best suppliers," and "legal action against CP would likely eliminate EIC's ability to obtain additional cases." *Id.* Blackway's other reasoning is no more legally proper to excuse the willful infringement that he and the other Defendants conspired to create. He noted the expense of litigation, and an erroneous claim that EIC had allowed and encouraged past infringement (failing to acknowledge

that all past products included components sold by EIC to CP). *Id.* Blackway also noted that CP's lawyers had "uncovered a few examples of 'prior-art' that pre-dates EIC's 2005 patent application [which resulted in the '413 Patent]." *Id.* However, all requests by EIC to see this prior-art have been denied by CP. Furthermore, Blackway does not allege any basis for any belief that he or the other Defendants had any justification infringing the '507 and '306 Patents, which were filed prior to 2005.

75. Blackway, and the other Defendants, Cool and CP, through their relationship with Blackway, their past business involvement, and through their own alleged legal investigations, are fully aware that their actions constitute an infringement of the '306 Patent. The Defendants have blatantly disregarded EIC's IP rights and have attempted to dissuade EIC from filing suit via the hollow threats in the Blackway Letter. Defendants' silence to date regarding the existence of any prior-art to the '507 and '306 Patents and their refusal to produce alleged prior-art to the '413 Patent demonstrates that Defendants lack any reasonable belief that their behaviour does not infringe these patents. Accordingly, Defendants' infringement is willful.

76. On information and belief, Blackway has induced Defendants CP and Cool to infringe the '413, '507, and '306 Patents as part of a petty strategy to harm EIC in retaliation for past disagreements with EIC, which resulted in him leaving EIC in 2011. As is clear from the tone of the Blackway Letter and his refusal to sign documents to further the prosecution of the patent application he assigned to EIC, Blackway is hostile to EIC and hopes to cause EIC financial harm. Blackway has attempted to bully EIC into ignoring the infringing activities, hollowly threatening to damage EIC's ability to fulfil government contracts if EIC pursues its legal rights.

77. On information and belief, Blackway has taken a leadership role with respect to the development and marketing of infringing products at Cool. Such a role is commensurate with Blackway's past involvement at EIC.

78. Blackway has access to EIC's trade secret information, learned during his tenure at EIC, has expertise in the design of products that would infringe EIC's patents, as demonstrated by Blackway's past role as an inventor of the '413 Patent, and has knowledge of EIC's customers, gained by his role as the chief marketer during his years at EIC. Blackway is uniquely situated to encourage and assist Defendants CP and Cool in infringing EIC's patents in a manner intended to do the most economic harm to EIC. Accordingly, on information and belief, Blackway has been actively inducing Cool and CP to infringe EIC's patents.

79. On information and belief, Defendants have and continue to promote, advertise, and instruct customers and potential customers about their products and how to use their products, including infringing uses, including but not limited to combining transit cases with thermoelectric air conditioners.

80. On information and belief, Defendants' products are not staple articles or commodities of commerce suitable for substantial non-infringing use.

81. On information and belief, Defendants' actions have and continue to constitute active inducement of and contributory infringement of the '306 Patent in violation of 35 U.S.C. § 271(b) and (c).

82. On information and belief, Defendants' infringement of the '306 Patent has been and continues to be willful and deliberate as evidenced by their knowledge of the '306 Patent and their refusal to stop infringing activity.

83. The market for thermoelectrically cooled transit cases is a limited market with a limited number of buyers, such as the US military. EIC is unaware of any thermoelectrically cooled transit cases in that market, prior to Defendant's infringing activities, that did not include an EIC labeled air conditioner, as these products have enjoyed the protection of at least one of EIC's '413, '507, and '306 Patents. Defendants' infringement of the '306 Patent introduces new unauthorized competition to this market which will inevitably erode prices, confuse buyers, and damage the good will of EIC in the marketplace. Defendants' infringement of the '306 Patent has caused or will inevitably cause irreparable harm to Plaintiff EIC and will continue to do so unless enjoined.

DEMAND FOR JURY TRIAL

84. Plaintiff EIC demands trial by jury on all issues so triable.

PRAYER FOR RELIEF

THEREFORE, Plaintiff EIC prays for judgment and relief including:

(A) Judgment that each Defendant has been and is infringing one or more of the claims of the '413, '507, and '306 Patents pursuant to 35 U.S.C. §§ 271(a), (b) and/or (c);

(B) A preliminary and permanent injunction enjoining each Defendant and its officers, agents, servants, employees, attorneys, related business entities and those in active concert or participation with them from infringing the '413, '507, and '306 Patents;

(C) An award of damages incurred by Plaintiff EIC as a result of each Defendants' infringement of the '413, '507, and '306 Patents;

(D) An award trebling the damages incurred by Plaintiff EIC, pursuant to 35 U.S.C. § 284, as a result of each Defendants' willful infringement of the '413, '507, and '306 Patents;

(E) An assessment of costs, including reasonable attorney fees pursuant to 35 U.S.C. § 285, and prejudgment and post-judgment interest against each Defendant on all monetary sums; and

(F) Such other and further relief as this Court may deem just, equitable, and proper.

Respectfully submitted,

Date: November 27, 2013

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