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Attorneys for Plaintiff Simon Nicholas Richmond

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

_____)	
SIMON NICHOLAS RICHMOND,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No.
)	
MENARD, INC.)	_____
)	MLC-DEA
)	
Defendant.)	
_____)	

SEVERED FIRST AMENDED COMPLAINT AND JURY DEMAND

SEVERED FIRST AMENDED COMPLAINT AND JURY DEMAND

Plaintiff Simon Nicholas Richmond (“Richmond” or “Plaintiff”), for his claims against Defendant Menard, Inc., (“Menard” or “Defendant”) makes and files this Complaint and alleges as follows:

1. STATEMENT OF RELATED CASES AND PRIOR PROCEEDINGS

This case is related to *Simon Nicholas Richmond v. Winchance Solar Fujian Technology Co. Ltd., et al.*, 13-cv-1951 (MLC-DEA), and alleges infringement of the same United States Patents that are at issue in the aforementioned case, i.e., United States Patent Nos. 7,196,477; 7,429,827; 8,362,700; and, 8,089,370. This case is further related to case docket nos. 13-cv-1944 (MLC-DEA), 13-cv-1949 (MLC-DEA), 13-cv-1950 (MLC-DEA), 13-cv-1951 (MLC-DEA), 13-cv-1952 (MLC-DEA), 13-cv-1953 (MLC-DEA), 13-cv-1954 (MLC-DEA), 13-cv-1957 (MLC-DEA), 13-cv-1959 (MLC-DEA), 13-cv-1960 (MLC-DEA), 13-cv-2916 (MLC-DEA), all of which have been consolidated with *Simon Nicholas Richmond v. Lumisol, et al.*, 13-cv-1944 (MLC-DEA).

The allegations contained in this Complaint against Defendant were originally filed in *Simon Nicholas Richmond v. Winchance Solar Fujian Technology Co. Ltd., et al.*, 13-cv-1951 (MLC-DEA). In an Order dated July 3,

2014, the claims against Defendant Menard were severed, and Plaintiff was ordered to file a severed complaint against each individual defendant in Case No. 13-cv-1951 (MLC-DEA) by August 1, 2014. (Case No. 13-cv-1944, Dkt. 122, p.10).

2. THE PARTIES

A. Plaintiff Richmond.

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

B. Defendant.

2. Menard, Inc. (Menard) is a corporation organized and existing under the laws of the State of Wisconsin, having a principal place of business at 5106 Old Mill Center, Eau Claire, WI 54703. Menard may be served through its agent for service of process at John R. Menard, Jr., 5106 Old Mill Center, Eau Claire, WI 54703.

3. Service of the prior Original and First Amended Complaints in 13-cv-1951 (MLC-DEA) was previously properly effectuated on Defendant.

3. SUBJECT MATTER JURISDICTION

4. 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).

4. PERSONAL JURISDICTION AND VENUE

A. General.

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

6. Menard has 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.

B. Specific Jurisdiction.

7. Personal jurisdiction over Defendant is proper under principles of specific jurisdiction.

8. Upon information and belief, Defendant has 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, has committed direct 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 customer(s) in this state.

9. The infringement by Defendant 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 Defendant at the time Defendant committed its misconduct.

C. General Jurisdiction.

10. Personal jurisdiction over Defendant is also proper under principles of general jurisdiction in that each United States Defendant either resides in this state and district and/or has regularly and purposefully conducted business in New Jersey and this district.

D. Venue.

11. Venue also properly lies in this district pursuant to 28 U.S.C. § 1400(b) because Defendant has committed acts of infringement in this district.

12. Venue also properly lies in this district under 28 U.S.C. § 1391(b)(2) and/or (3) because, upon information and belief, 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 Defendant.

5. FACTUAL BACKGROUND

A. Plaintiff's Patents-in-Suit

13. 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-powered garden lights.

14. Richmond is the inventor and owner of all right, title, and interest to the United States patent number 7,196,477 A1, entitled "Solar Powered Light Assembly to Produce Light of Varying Colors," ("477 Color-Changing Patent"), which duly and legally issued to Richmond on 3/27/2007.

15. 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 Colors," ("827 Color-Changing Patent"), which duly and legally issued to Richmond on 9/30/2008.

16. 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," ("700 Color-Changing Patent"), which duly and legally issued to Richmond on 1/29/2013.

17. 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,” (“‘370 Framed Patent”), which duly and legally issued to Richmond on 1/3/2012.

18. Plaintiff’s ‘477 Patent is valid and enforceable.

19. Plaintiff’s ‘827 Patent is valid and enforceable.

20. Plaintiff’s ‘700 Patent is valid and enforceable.

21. Plaintiff’s ‘370 Patent is valid and enforceable.

22. 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. The invention as claimed in the ‘700 Patent is substantially identical to the invention as claimed in the ‘953 Published Application.

23. 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. The invention as

claimed in the '370 Patent is substantially identical to the invention as claimed in the '495 Published Application.

24. On March 26, 2009, United States Patent Publication No. US 2009/0078604 A1 (the "'604 Published Application") was published. A copy of the '604 Published Application may be obtained for free from the official United States Patent and Trademark website, uspto.gov. The invention as claimed in the '914 Try-Me Patent is substantially identical to the invention as claimed in the '604 Published Application.

25. 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 and '888 Published Applications may be obtained for free from the official United States Patent and Trademark website, uspto.gov.

26. 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.

B. Facts relevant to Defendant

27. Menard conducts competitive bidding by vendors, which it calls “shoot outs.” In such “shoot outs,” Menard provides samples or specifications to vendors for accused products and solicits their bids for providing i accused products to Menard’s specifications.

28. Menard sells accused products under its own brand names. Defendant has imported, sold, exposed for sale or offered for sale accused solar lighting products supplied by vendors other than the named defendants in the cases consolidated under Case No. 13-cv-1944 (D.N.J.).

29. Since issuance of one or more of the foregoing Richmond patents, Defendant has or has been importing, exposing for sale, offering for sale, or selling the following products:

**a) Model 508-0007 Pine Top brand - Solar Moon On Stick
light**

30. In addition to the products identified in the preceding paragraph, Defendant has or has been importing, exposing for sale, offering for sale, and selling the solar lighting products identified in Exhibit A.

6. INFRINGEMENT OF PLAINTIFF'S PATENTS

Count 1 – Menard's Direct Infringement of '477 Patent

31. The allegations of Paragraphs 1-30 are incorporated by reference as if fully set forth again herein.

32. Menard has notice of Plaintiff's rights in the '477 Patent.

33. Upon information and belief, Menard directly infringes, and has infringed, Plaintiff's '477 Color-Changing Patent by, at-least, exposing for sale, offering to sell, and selling one or more solar-powered garden light products that infringe '477 Patent. Upon information and belief, those solar-powered garden lights include, at least, the following products:

a) Model 508-0007 Pine Top brand - Solar Moon On Stick light.

34. The attached "Preliminary Product List - Menard, attached as Exhibit A, contains a non-comprehensive list of products that, upon information and belief, are believed to constitute infringement of Richmond's patents, where a "Y" under the column labeled '477 Patent indicates that the product identified in the corresponding row is believed to be an infringement of Plaintiff's '477 Color-Changing Patent.

35. Upon information and belief, Menard has and is exposing for sale,

offering to sell, and selling other solar-powered garden light products which infringe Plaintiff's '477 Color-Changing Patent and will continue to do so unless restrained by this Court.

Count 2 – Menard's Direct Infringement of '827 Patent

36. The allegations of Paragraphs 1-35 are incorporated by reference as if fully set forth again herein.

37. Menard has notice of Plaintiff's rights in the '827 Patent.

38. Upon information and belief, Menard directly infringes, and has infringed, Plaintiff's '827 Color-Changing Patent by, at-least, exposing for sale, offering to sell, and selling one or more solar-powered garden light products that infringe the '827 Patent. Upon information and belief, those solar-powered garden lights include, at least, the following products:

a) Model 508-0007 Pine Top brand - Solar Moon On Stick light.

39. The attached "Preliminary Product List - Menard, attached as Exhibit A, contains a non-comprehensive list of products that, upon information and belief, are believed to constitute infringement of Richmond's patents, where a "Y" under the column labeled '827 Patent indicates that the product identified in the corresponding row is believed to be an infringement of Plaintiff's '827 Color-

Changing Patent.

40. Upon information and belief, Menard has and is exposing for sale, offering to sell, and selling other solar-powered garden light products which infringe Plaintiff's '827 Color-Changing Patent and will continue to do so unless restrained by this Court.

Count 3 – Menard's Direct Infringement of '700 Patent

41. The allegations of Paragraphs 1-40 are incorporated by reference as if fully set forth again herein.

42. Menard has notice of Plaintiff's rights in the '700 Patent.

43. Upon information and belief, Menard directly infringes, and has infringed, Plaintiff's '700 Color-Changing Patent by, at-least, exposing for sale, offering to sell, and selling one or more solar-powered garden light products that infringe the '700 Patent. Upon information and belief, those solar-powered garden lights include, at least, the following products:

a) Model 508-0007 Pine Top brand - Solar Moon On Stick light.

44. The attached "Preliminary Product List - Menard, attached as Exhibit A, contains a non-comprehensive list of products that, upon information and belief, are believed to constitute infringement of Richmond's patents, where a "Y" under

the column labeled ‘ indicates that the product identified in the corresponding row is believed to be an infringement of Plaintiff’s ’700 Color-Changing Patent.

45. Upon information and belief, Menard has and is exposing for sale, offering to sell, and selling other solar-powered garden light products which infringe Plaintiff’s ’700 Color-Changing Patent and will continue to do so unless restrained by this Court.

Count 4 – Menard’s Direct Infringement of ‘370 Patent

46. The allegations of Paragraphs 1-45 are incorporated by reference as if fully set forth again herein.

47. Menard has notice of Plaintiff’s rights in the ‘370 Patent.

48. Upon information and belief, Menard directly infringes, and has infringed, Plaintiff’s ’370 Framed Patent by, at-least, exposing for sale, offering to sell, and selling one or more solar-powered garden light products that infringe the ‘370 Patent. Upon information and belief, those solar-powered garden lights include, at least, the following products:

a) Model 508-0007 Pine Top brand - Solar Moon On Stick light.

49. The attached “Preliminary Product List - Menard, attached as Exhibit A, contains a non-comprehensive list of products that, upon information and belief,

are believed to constitute infringement of Richmond's patents, where a "Y" under the column labeled '370 Patent indicates that the product identified in the corresponding row is believed to be an infringement of Plaintiff's '370 Framed Patent.

50. Upon information and belief, Menard has and is exposing for sale, offering to sell, and selling other solar-powered garden light products which infringe Plaintiff's '370 Framed Patent and will continue to do so unless restrained by this Court.

7. PLAINTIFF'S DAMAGES AND IRREPARABLE HARM

51. Plaintiff has been damaged as a result of Defendant's 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.

52. Plaintiff will be irreparably harmed if Defendant's patent infringement continues. Plaintiff relies upon his patents for protection of his business' intellectual property and the rampant infringement of his patents by Defendant 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 Defendant, its 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.

8. RIGHT TO ROYALTIES FOR VIOLATION OF PROVISIONAL RIGHTS IN THE '700 Patent

53. On information and belief, Defendant Menard had actual notice of the '953 Published Application, which matured into the '700 Patent, including its specification and claims.

54. On information and belief, pursuant to 35 U.S.C. § 154(d), since having actual notice of the '953 Published Application, Defendant at least used the invention as claimed in one or more claims of the '953 Published Application and the later issued '700 Patent, by making, using, offering for sale, selling and/or importing into the United States one or more models of solar-powered garden lights, including the models identified in Exhibit A as infringing the '700 Patent.

55. As a result of violation of Plaintiff's provisional rights in the '953

Published Application by Defendant Menard, 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. JURY DEMAND

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

10. PRAYER FOR RELIEF

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

- a. Awarding Plaintiff his damages adequate to compensate for Defendant's infringement of Plaintiff's Patents, including, inter alia, lost profits and/or a reasonable royalty;
- b. 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;
- c. Enjoining Defendant from infringing Plaintiff's Patents; and
- d. Awarding Plaintiff such further and other relief as the Court deems just and equitable.

Respectfully submitted,

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