

SEVERED FIRST AMENDED COMPLAINT AND JURY DEMAND

Plaintiff Simon Nicholas Richmond (“Richmond” or “Plaintiff”), for his claims against Defendant **Central Purchasing, LLC**, (“**Central Purchasing**” 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, 7,377,667**. 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 **Central Purchasing** 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. **Central Purchasing, LLC (Central Purchasing)** is a corporation organized and existing under the laws of the State of **California**, having a principal place of business at **3491 Mission Oaks Boulevard, Camarillo, CA 93012**.

Central Purchasing may be served through its agent for service of process at **The Corporation Trust Company, 1209 Orange Street, Wilmington, Delaware 19801**.

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. **Central Purchasing** 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. Upon information and belief, Defendant has knowingly induced infringement in New Jersey by its customer(s) by offering to sell and/or selling goods that infringe one or more of the Patents-in-Suit (as detailed in the Counts below) to customer(s) in New Jersey, with specific knowledge of Plaintiff's applicable patent(s), and with a specific intent and/or willful blindness to the fact that their infringing products will be imported into and offered for sale, sold and/or used in New Jersey by Defendant's customers.

10. 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.

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

D. Venue.

12. 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.

13. 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

14. 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.

15. 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.

16. 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.

17. 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.

18. Richmond is the inventor and owner of all right, title, and interest to the United States patent number 7,377,667 B2, entitled “Light Device” (“667 Candle Patent”), which duly and legally issued to Richmond on 5/27/2008.

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

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

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

22. Plaintiff’s ‘667 Patent is valid and enforceable.

23. 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.

24. 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.

25. 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

26. Central Purchasing and its employees possess knowledge and information regarding the design, manufacture, and technology embodied in solar lights covered by one or more of the patents-in-suit.

27. Between 2007 to present, Central Purchasing has operated a

purchasing office in China. Central Purchasing or its agent undertakes detailed technical testing of products prior to importation and provides feedback and requests changes as to the various des

28. Central Purchasing is substantially involved in determining the relevant features of the solar lights it sells. Central Purchasing periodically changes vendors for the products it sells under its own brand.

29. Central Purchasing specifies the features of, imports, and direct ships solar lights, including one or more models of products accused of infringement, directly from China.

30. 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.).

31. 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) Gardens brand, 3 Piece Decorative Solar LED lights, Dragonfly Hummingbird Butterfly - Model 95588 and/or 69462
- b) model 96740 Table Top Solar Lantern with Stand

32. 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 – Central Purchasing's Direct Infringement of '477 Patent

33. The allegations of Paragraphs 1-32 are incorporated by reference as if fully set forth again herein.

34. Central Purchasing has notice of Plaintiff's rights in the '477 Patent.

35. Upon information and belief, Central Purchasing directly infringes, and has infringed, Plaintiff's '477 Color-Changing Patent by, at-least, importing, 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) Gardens brand, 3 Piece Decorative Solar LED lights, Dragonfly Hummingbird Butterfly - Model 95588 and/or 69462.

36. The attached "Preliminary Product List - Central Purchasing, 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.

37. Upon information and belief, Central Purchasing has and is importing, 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 – Central Purchasing’s Direct Infringement of ‘827 Patent

38. The allegations of Paragraphs 1-37 are incorporated by reference as if fully set forth again herein.

39. Central Purchasing has notice of Plaintiff’s rights in the ‘827 Patent.

40. Upon information and belief, Central Purchasing directly infringes, and has infringed, Plaintiff’s ’827 Color-Changing Patent by, at-least, importing, 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) Gardens brand, 3 Piece Decorative Solar LED lights, Dragonfly Hummingbird Butterfly - Model 95588 and/or 69462.

41. The attached “Preliminary Product List - Central Purchasing, 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.

42. Upon information and belief, Central Purchasing has and is importing, 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 – Central Purchasing’s Direct Infringement of ‘700 Patent

43. The allegations of Paragraphs 1-42 are incorporated by reference as if fully set forth again herein.

44. Central Purchasing has notice of Plaintiff’s rights in the ‘700 Patent.

45. Upon information and belief, Central Purchasing directly infringes, and has infringed, Plaintiff’s ’700 Color-Changing Patent by, at-least, importing, 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) Gardens brand, 3 Piece Decorative Solar LED lights, Dragonfly Hummingbird Butterfly - Model 95588 and/or 69462.

46. The attached “Preliminary Product List - Central Purchasing, 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.

47. Upon information and belief, Central Purchasing has and is importing, 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 – Central Purchasing’s Direct Infringement of ‘667 Patent

48. The allegations of Paragraphs 1-47 are incorporated by reference as if fully set forth again herein.

49. Central Purchasing has notice of Plaintiff’s rights in the ‘667 Patent.

50. Upon information and belief, Central Purchasing directly infringes,

and has infringed, Plaintiff's '667 Candle Patent by, at-least, importing, exposing for sale, offering to sell, and selling one or more solar-powered garden light products that infringe the '667 Patent. Upon information and belief, those solar-powered garden lights include, at least, the following products:

a) model 96740 Table Top Solar Lantern with Stand.

51. The attached "Preliminary Product List - Central Purchasing, 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 '667 Patent indicates that the product identified in the corresponding row is believed to be an infringement of Plaintiff's '667 Candle Patent.

52. Upon information and belief, Central Purchasing has and is importing, exposing for sale, offering to sell, and selling other solar-powered garden light products which infringe Plaintiff's '667 Candle Patent and will continue to do so unless restrained by this Court.

Count 5 – Central Purchasing's Inducement of Harbor Freight Tools USA, Inc.'s Infringement

53. The allegations of Paragraphs 1-52 are incorporated by reference as if

fully set forth again herein.

54. Upon information and belief, Central Purchasing has had actual knowledge of Plaintiff's 7,196,477; 7,429,827; 8,362,700; and, 7,377,667 Patents, and knowledge that its solar-powered garden lights as accused of infringement earlier in this Complaint ("Accused Infringing Products") would infringe Plaintiff's 7,196,477; 7,429,827; 8,362,700; and, 7,377,667 Patents if imported into, offered for sale or sold in the United States. Central Purchasing has had such knowledge of Plaintiff's Patents, as alleged in this Complaint and no later than on or about 6/13/2013, by means of service of the First Amended Complaint on Central Purchasing.

55. Central Purchasing has an ongoing, intentional relationship with its customers, including at least Harbor Freight Tools USA, Inc., with the clear aim of inducing their nationwide distribution and sale in the United States. Upon information and belief, the quantity of purchase would indicate to Central Purchasing that its products would be shipped to all of its customers' retail stores, including Harbor Freight Tools USA, Inc.'s New Jersey stores, in accordance with Harbor Freight Tools USA, Inc.'s customary practice, something that is well known to Central Purchasing. Upon information and belief, Central Purchasing

follows a similar practice with its other customers having retail stores in the United States. As such, Central Purchasing knew and intended, or was willfully blind to the fact that its Accused Infringing Products would be imported into the United States, and then offered for sale and sold by its customers in the United States, including in New Jersey.

56. Based upon the foregoing facts, and reasonable inferences therefrom, upon information and belief, Central Purchasing has, with knowledge of Plaintiff's 7,196,477; 7,429,827; 8,362,700; and, 7,377,667 Patents and specific intent to infringe, and/or willful blindness to the infringement, actively induced and is inducing infringement of Plaintiff's 7,196,477; 7,429,827; 8,362,700; and, 7,377,667 Patents by the direct infringement of its customers in the United States, including but not limited to, Harbor Freight Tools USA, Inc., and will continue to do so unless restrained by this Court.

Count 9 – Willfulness of Central Purchasing's Infringement

57. The allegations of Paragraphs 1-56 are incorporated by reference as if fully set forth again herein.

58. Upon information and belief, Central Purchasing has had actual knowledge of Plaintiff's '477, '827 and '667 Patents, and knowledge that its solar-

powered garden lights as accused of infringement of these patents earlier in this Complaint (“Accused Infringing Products”) would infringe Plaintiff’s ‘477, ‘827 and ‘667 Patents if imported into, offered for sale or sold in the United States.

Central Purchasing is believed to have had such knowledge long prior to the filing of Plaintiff’s Original Complaint against Central Purchasing in Case No. 13-cv-1951 (D.N.J.).

59. As a result of Richmond’s activities, Defendant is believed to have long had knowledge of Plaintiff’s ‘477, ‘827, and ‘667 Patents and knowledge that one or more of Defendant’s previously identified products infringe Richmond’s aforementioned patents. As such, Defendant’s infringement of these patents is willful.

60. The allegations and factual contentions set forth in this Count are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery. See Fed. R. Civ. P. 11(b)(3).

7. PLAINTIFF’S DAMAGES AND IRREPARABLE HARM

61. 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.

62. 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. JURY DEMAND

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

9. 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. Awarding treble of the damages and/or reasonable royalty on account of the willful nature of the infringement, pursuant to 35 U.S.C. § 284;
- c. 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;
- d. Enjoining Defendant from infringing Plaintiff's Patents; and
- e. Awarding Plaintiff such further and other relief as the Court deems just and equitable.

Respectfully submitted,

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