

Lawrence C. Hersh
Attorney at Law
17 Sylvan Street
Suite 102B
Rutherford, New Jersey 07070
Tel: (201) 507-6300
Fax: (201) 507-6311
lh@hershlegal.com

Of Counsel
Theodore F. Shiells
Texas State Bar No. 00796087
Shiells Law Firm P.C.
1201 Main Street – Suite 2470
Dallas, Texas 75202
Tel: (214) 979-7312
Fax: (214) 979-7301
tfshiells@shiellslaw.com

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.
)	_____
ROBERT KANG,)	MLC-DEA
)	
Defendant.)	
_____)	

SEVERED SECOND AMENDED COMPLAINT AND JURY DEMAND

SEVERED SECOND AMENDED COMPLAINT AND JURY DEMAND

Plaintiff Simon Nicholas Richmond (“Richmond” or “Plaintiff”), for his claims against Defendant Robert Kang (“Kang”, or “Defendant”) 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. Robert Kang (Kang) is an individual having an address of c/o Ningbo Hangshun Electrical Co. Ltd, Xiao Lu Xia, Simen Town, Yuyao City, Zengjiang, 315472, China. Kang may be served pursuant to the Hague Convention.

2. SUBJECT MATTER JURISDICTION

3. 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.

4. Personal jurisdiction over Kang is proper pursuant to New Jersey

Long-Arm Statute, N.J. CT. R. 4:4-4 and principles of due process.

5. Kang and/or his alter ego entities have sufficient minimum contacts with New Jersey and the maintenance of this suit does not offend traditional notions of fair play and substantial justice.

B. Specific Jurisdiction.

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

7. Upon information and belief, Kang and his alter ego entities have transacted and solicited business in New Jersey related to the subject matter of the claims alleged herein and, upon information and belief, has knowingly acted with an intent to induce infringement by others in the United States, as detailed below.

8. Upon information and belief, Kang has knowingly induced infringement in the United States of the Companies controlled by him, as identified below in Counts **1-X**, by causing them of import, expose for sale, offer to sell, and sell goods in New Jersey that infringe one or more of the Patents-in-Suit (as detailed below), with Kang's specific knowledge of Plaintiff's applicable patent(s), and with a specific intent and/or willful blindness to the fact that his companies' infringing products will be imported into, exposed for sale, offered for sale, sold and/or used in the United States by their customers.

9. Kang'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.

10. Personal jurisdiction over Defendant Kang is also proper under principles of general jurisdiction in that, upon information and belief, Defendant and his alter egos have regularly and purposefully conducted business in the United States, and pursuant to 28 U.S.C. § 1391 (c)(3), an alien may be sued in any judicial 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 (or his alter ego).

13. Venue is proper in this district over each of the foreign corporations and the individual Kang 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. 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," ("the '477 Color-Changing Patent"), which duly and legally issued to Richmond on March 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," ("the '827 Color-Changing

Patent”), which duly and legally issued to Richmond on September 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,” (“the ’700 Color-Changing Patent”), which duly and legally issued to Richmond on January 29, 2013.

18. 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.

19. 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.

20. 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 and is now patented as U.S. 8,514,094. Copies of the ’104 and ’888 Published Applications may be obtained for free from the official United States Patent and Trademark website, uspto.gov.

21. Plaintiff’s ’477 Color Changing Patent is valid and enforceable.
22. Plaintiff’s ’827 Color Changing Patent is valid and enforceable.
23. Plaintiff’s ’700 Color Changing Patent is valid and enforceable.
24. Plaintiff’s ’370 Framed Patent is valid and enforceable.
25. At all times relevant to this action, Richmond has complied with the notice provisions of 35 U.S.C. § 287 as they may relate to the Patents-in-Suit.

B. Defendants’ knowledge as to the Patents-in-Suit.

26. Plaintiff informed Kang about his Color Changing and Frame Patents within days to months of them being issued and/or while their respective patent applications were pending.
27. Upon information and belief, at a point not later than April 11, 2007, Kang became aware of Plaintiff’s ’477 Color Changing Patent.
28. Upon information and belief, as early as April 1, 2007, Kang

understood Plaintiff's '477 Color Changing Patent to encompass all the solar light fixtures with 2 or more color LEDs that light up in a sequence are covered under Plaintiff's '477 patent.

29. Upon information and belief, at a point not later than September 30, 2008, Kang became aware of Plaintiff's '827 Color Changing Patent.

30. Upon information and belief, at a point not later than January 29, 2012, Kang became aware of Plaintiff's pending patent application that resulted in the issuance of '700 Color Changing Patent.

31. Upon information and belief, at a point not later than January 30, 2012, Kang became aware of Plaintiff's '370 Patent.

32. Kang was served a copy of Plaintiff's Original and Amended Complaints in this lawsuit on May 7, 2013, which included information about Plaintiff's '477, '827, and '700 Color Changing Patents and Plaintiff's '370 Frame Patent.

33. Upon information and belief, at a point no later than April 2007, Kang knew that certain Ethan Group Ltd. and/or Lumisol Color Changing solar light products infringed Plaintiff's '477 patent.

34. Upon information and belief, in or around March 2012, Plaintiff explained that Defendant's professed theory of non-infringement (i.e., a single LED

light source with varying colors) as to the Lumisol products was impossible, given the actual products.

35. At a point not later than May 7, 2013, Kang learned the Color-Changing Sun and Moon Solar Stake Path Light under the Ethan designation MT-1025 Solar Moon On Stick Light, under the Ningbo Hangshun designation HSA121-9 Solar Moon On Stick Light, the Lumisol designation Celestial Series Sun and Moon Light, the Ethan designation MT-1025 Solar Moon On Stick Light, and the Ningbo Hangshun designation under the designation HSA121-9 Solar Moon On Stick Light, infringed Plaintiff's '477, '827, '700 Color Changing Patents and the '370 Framed Patent. Upon information and belief, Kang, as their alter ego, has continued sales of these products, and products having the same construction in respects material to these patents, since receiving such notice.

36. Upon information and belief, Kang encouraged, at least, Ethan Group, Ltd. ("Ethan China"), LumiSol Electrical Ltd. ("Lumisol"), and Ningbo Hangshun Electrical Co., Ltd. ("Ningbo Hangshun") to import, offer to sell, and/or sell in the United States and in this District color changing solar lights that Kang knew infringed Plaintiff's patents, including but not limited to the specific models tabulated in Exhibit A.

C. Ethan China's Direct Infringement Activities in the United States.

37. Ethan China identifies its “North America Warehouse” as being located at 263 Utah Ave., South San Francisco, CA 94080, USA, Tel. 650-259-9622, Fax 650-259-0713.

38. Upon information and belief, Ethan Group Ltd. has been substantially directly and knowingly involved in importation of solar lights from China into the United States, including directly making at least thirty five times separate shipments since July 2007. Such shipments include eleven separate shipments from China to Pine Top. At least one such shipment from Ethan Group Ltd. was to United States retailer, Boscovs Department Stores, and said shipment included a “Solar Moon On Stick Light” and a “Solar Sun On Stick Light.”

39. Ethan China has identified itself on its website, ethan-group.com, as being comprised of six factories, including, among others, Ningbo Hangshun. In addition, Ethan China identifies Lumisol as its subsidiary.

40. Upon information and belief, Ningbo Hangshun is one of Ethan China’s six factories. Upon information and belief, Ningbo Hangshun produces solar lights, including at least some of the solar lights accused of infringement in this case.

41. Upon information and belief, Kang knowingly directs and has directed

the importation of solar lights from Defendant Ningbo Hangshun into the United States.

42. According to Ethan China's website, Lumisol is the off shore company of Ethan China used by it for its direct off shore retail business, including in the United States, and was set up by Ethan China to service retailers in North America and Europe, including in the United States.

43. According to the website, Lumisol "specializes in designing and merchandising a wide variety of garden lighting, surge protectors, and other electrical accessory items for consumers."

44. Upon information and belief, Kang directs the operational activities at Lumisol. For example, Ethan China uses the Lumisol logo on its contact page, uses an email name lumisol@188.com, uses a toll free # 877-767-8232 and lists its "International Sales Office" address and telephone numbers as 13 Holland Dr., Unit 10B, Bolton, Ontario, Canada L7E1G4, Tel. 905-857-8232, fax: 905-857-2092. (Exhibit 7).

45. Upon information and belief, under Kang's direction and control, Lumisol ships at least the same Chinese manufactured solar lights (under the designation Celestial Series products, Model No. MT-1035) as Ethan China, from the same 140 Mei Zhi Guo Garden, Zuzhou, China, address and into the United

States, including to Costco.

46. Kang is the Founder and President of Lumisol (Doc. 52-3, Par.1-2). Upon information and belief, In 2011 Kang signed a contract with Plaintiff, wherein Kang represented himself as the president of Ethan Group. In business documents relating to solar lights, Kang represents himself as both the president and contact person for Ningbo Hangshun. Kang has identified his address as 140 Mei Zhi Guo Garden, Zuzhou, China, the same address used by Lumisol and Ethan China.

47. Upon information and belief, Kang personally knowingly directed activities at, at least, Lumisol that resulted in, at least, approximately \$400,000 in sales for color changing LED products.

48. By reason of the foregoing facts and reasonable inferences therefrom, Kang is the active, conscious moving force behind the infringement of Lumisol, Ethan China, and Ningbo Hangshun.

49. By reason of the foregoing facts and reasonable inferences therefrom, upon information and belief, Kang knowingly directs and has directed and used Lumisol, Ethan China, and Ningbo Hangshun to produce and sell Lumisol branded products accused of infringement in this case into the United States, without regard to corporate separateness between these entities.

50. Upon information and belief, Kang has stated in words or substance in the context of a prior infringement litigation involving a non-party to the present case, that if the litigation did not proceed in a manner acceptable to him, that he would have the companies “either declare bankruptcy or just drop the whole thing and open as a new entity.” *See* Hearing transcript repeating statement, Case No. 2:09-cv-12635 (Doc. 32, 10/9/2009), Eastern District of Michigan. Upon information and belief, this is Kang’s corporate strategy for his alter egos Ethan China, Lumisol, and Ningbo Hangshun.

51. Since the start of the litigation in this lawsuit, Ethan China’s website has ceased functioning. Upon information and belief, this activity has been directed by Kang. As such, upon information and belief, Kang has commenced steps to “either declare bankruptcy or just drop the whole thing and open as a new entity,” if the present litigation does not proceed in a manner acceptable to him.

52. As a result of the foregoing facts and reasonable inferences drawn therefrom, upon information and belief, Kang manages and operates Ethan China, Lumisol, and Ningbo Hangshun in a manner so that he is free to “either declare bankruptcy or just drop the whole thing and open as a new entity” if a litigation does not proceed in a manner acceptable to him, such that adherence to the fiction of separate corporate existence would sanction a fraud or promote injustice.

53. As a result of the foregoing facts, and reasonable inferences therefrom, upon information and belief, Ethan China, Lumisol, and Ningbo Hangshun are each the alter egos of Kang. As such, Kang is jointly and severally liable for the infringing activities of each of these entities. 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).

54. In the alternative, Kang is jointly and severally liable for the infringing activities of each of Ethan China, Lumisol, and Ningbo Hangshun as the active, conscious moving force behind their infringing acts and thereby knowingly and intentionally inducing their infringing acts. 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).

5. KANG'S INFRINGEMENT BY INDUCEMENT

Count 1 - Kang's Inducement of Ethan China, Lumisol, and Ningbo Hangshun's Infringement.

55. The allegations of Paragraphs 1-54 are incorporated by reference as if fully set forth again herein.

56. Upon information and belief, Kang, directly or through his alter egos,

has long had actual knowledge of Plaintiff's '477, '827 and '700 Color Changing Patents and '370 Framed Patent, and knowledge that his solar-powered garden lights as accused of infringement herein ("Accused Infringing Products") would infringe Plaintiff's '477, '827 and '700 Color Changing Patents and '370 Framed Patent if imported into, offered for sale or sold in the United States, since at least the dates Kang acquired such knowledge, as alleged in this Complaint by Richmond's activities and prior communications to Kang, all of which occurred long before the filing of the Original Complaint against Kang in 13-cv-1944.

57. Kang has an ongoing and intimate relationship with Lumisol, Ethan China, and Ningbo Hangshun, a relationship that Kang has exploited for his clear aim of inducing their importation, exposure for sale, offer of sale, and sale of known infringing solar powered garden lights in the United States. Upon information and belief, Kang knowingly and with deliberate indifference directed the infringing activity of his alter ego entities to cause sale of infringing goods and importation of such infringing goods into the United States, to including large national retailers like Costco Wholesale Corp ("Costco").

58. Upon information and belief, Kang and his alter ego entities worked with United States based retailers to produce and import solar garden lights that infringe Plaintiff's '477, '827 and '700 Color Changing Patents and '370 Framed

Patent. As an example of this, the Color-Changing Sun and Moon Solar Stake Path bearing the Lumisol name and the ITEM /ART. 526088 includes Costco's name, provided by either Lumisol, Ningbo Hangshun, or, Ethan China, which would have been applied by or at the direction of the factory in China, as directed by Kang.

59. Further, the quantity of purchase by Costco would indicate to Kang that his products would be shipped to all of his customers' retail stores, including Costco's New Jersey stores, in accordance with Costco customary practice, well known to Kang. Upon information and belief, Kang follows a similar practice with his other customers having retail stores in the United States. As such, Kang knew and intended, or was willfully blind to the fact that his Accused Infringing Products would be imported into the United States, and then sold and offered for sale by his customers in the United States, including in New Jersey.

60. Based upon the foregoing facts, and reasonable inferences therefrom, upon information and belief, Kang has, with knowledge of Plaintiff's '477, '827 and '700 Color Changing Patents and '370 Framed Patent and specific intent to infringe, and/or willful blindness to the infringement, actively induced and is inducing direct infringement of Plaintiff's '477, '827 and '700 Color Changing Patents and '370 Framed Patent by the entities that are controlled and directed by him, including but not limited to, Lumisol, Ethan China, and Ningbo Hangshun,

and will continue to do so unless restrained by this Court.

Count 2 – Willfulness of the Infringement by Defendants

61. The allegations of Paragraphs 1-60 are incorporated by reference as if fully set forth again herein.

62. As a result of Richmond’s activities, Defendant is 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.

63. Defendant acted despite knowledge of an objectively high likelihood that its actions infringed the ‘477 and ‘827 Color Changing Patents. As such, their infringement of Plaintiff’s ‘477 and ‘827 Color Changing Patents is deliberate and willful.

64. 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).

6. PLAINTIFF’S DAMAGES AND IRREPARABLE HARM

65. 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.

66. 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.

7. RIGHT TO ROYALTIES FOR VIOLATION OF PROVISIONAL RIGHTS IN THE '700 PATENT

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

68. 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.

69. As a result of violation of Plaintiff's provisional rights in the '953 Published Application by Defendant Kang, 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. JURY DEMAND

70. 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,

/s/ Lawrence C. Hersh
Lawrence C. Hersh
Attorney at Law
17 Sylvan Street
Suite 102B
Rutherford, New Jersey 07070
Tel: (201) 507-6300
Fax: (201) 507-6311
lh@hershlegal.com
Attorneys for Plaintiff
Simon Nicholas Richmond

Of Counsel

Theodore F. Shiells
Texas State Bar No. 00796087
Shiells Law Firm P.C.
1201 Main Street – Suite 2470
Dallas, Texas 75202
Tel: (214) 979-7312
Fax: (214) 979-7301
tfshiells@shiellslaw.com