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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.
)	
JIAWEI TECHNOLOGY (USA), LTD.)	_____
)	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 Jiawei Technology (USA), Ltd., (“Jiawei USA” 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. Jiawei North America Inc., et al.*, 13-cv-1952 and 1953 (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. Jiawei North America Inc., et al.*, 13-cv-1952 and 1953 (MLC-DEA). In an Order dated July 3, 2014, the claims

against Defendant Jiawei USA were severed, and Plaintiff was ordered to file a severed complaint against each individual defendant in Case No. 13-cv-1952 and **1953** (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. Jiawei Technology (USA), Ltd. (“Jiawei USA”) is a corporation organized and existing under the laws of the State of Delaware, having a principal place of business at 2373 Lincoln Ave., Hayward, California 94545. Jiawei USA may be served through its agent for service of process at The Corporation Trust Company, Corporation Trust Center, 1029 Orange St., Wilmington, DE 19801.

3. Service of the prior Original and First Amended Complaints in 13-cv-1952 and 1953 (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. Jiawei USA 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 8,089,370 A1, entitled “Illuminated Wind Indicator,” (“’370 Framed Patent”), which duly and legally issued to Richmond on 1/3/2012.

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 ‘370 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. 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.

25. 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.

26. 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.

27. 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

28. 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) C52-S1A-CB-T6 Color changing solar crackle glass sphere
- b) CS1
- c) Hanging Teardrop Color Changing Solar LED Light 2/Pk
- d) Jiawei Solar MPO001-R1A-AA-1 Solar Decorative Light Stake
- e) Portfolio Solar Hummingbird Yard Light Item # 0278602 –

Model # LW042001-052012, Ace No. 8332611

f) Yards and Beyond Model OA1Pa-S1-BK-2

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 – Jiawei USA'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. Jiawei USA has notice of Plaintiff's rights in the '477 Patent.

33. Upon information and belief, Jiawei USA 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.

34. The attached "Preliminary Product List - Jiawei USA, 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, Jiawei USA 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 – Jiawei USA'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. Jiawei USA has notice of Plaintiff's rights in the '827 Patent.

38. Upon information and belief, Jiawei USA 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) Yards and Beyond Model OA1Pa-S1-BK-2
- b) Hanging Teardrop Color Changing Solar LED Light 2/Pk
- c) Portfolio Solar Hummingbird Yard Light Item # 0278602 –

Model # LW042001-052012, Ace No. 8332611

d) C52-S1A-CB-T6 Color changing solar crackle glass sphere.

39. The attached “Preliminary Product List - Jiawei USA, 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, Jiawei USA 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 – Jiawei USA’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. Jiawei USA has notice of Plaintiff’s rights in the ‘700 Patent.

43. Upon information and belief, Jiawei USA 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) Jiawei Solar MPO001-R1A-AA-1 Solar Decorative Light Stake
- b) CS1
- c) Yards and Beyond Model OA1Pa-S1-BK-2
- d) Hanging Teardrop Color Changing Solar LED Light 2/Pk
- e) Portfolio Solar Hummingbird Yard Light Item # 0278602 – Model # LW042001-052012, Ace No. 8332611
- f) C52-S1A-CB-T6 Color changing solar crackle glass sphere.

44. The attached "Preliminary Product List - Jiawei USA, 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, Jiawei USA 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 – Jiawei USA'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. Jiawei USA has notice of Plaintiff's rights in the '370 Patent.

48. Upon information and belief, Jiawei USA directly infringes, and has infringed, Plaintiff's '370 Framed Patent by, at-least, importing, 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) Jiawei Solar MPO001-R1A-AA-1 Solar Decorative Light Stake
- b) CS1
- c) Jiawei Solar MPO001-R1A-AA-1 Solar Decorative Light Stake.

49. The attached "Preliminary Product List - Jiawei USA, 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, Jiawei USA has and is importing, 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.

Count 5 – Jiawei USA’s Inducement of CVS Pharmacy, Inc., ACE Hardware Corp., Home Depot USA, Inc., and, Lowes Home Center, Inc.’s Infringement

51. The allegations of Paragraphs 1-50 are incorporated by reference as if fully set forth again herein.

52. Upon information and belief, Jiawei USA has had actual knowledge of Plaintiff’s 7,196,477; 7,429,827; 8,362,700; and, 8,089,370 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, 8,089,370 Patents if imported into, offered for sale or sold in the United States. Jiawei USA has had such knowledge of Plaintiff’s Patents, as alleged in this Complaint and no later than on or about , by

means of service of the First Amended Complaint on Jiawei USA.

53. Jiawei USA has an ongoing, intentional relationship with its customers, including at least CVS Pharmacy, Inc., ACE Hardware Corp., Home Depot USA, Inc., and, Lowes Home Center, 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 Jiawei USA that its products would be shipped to all of its customers' retail stores, including CVS Pharmacy, Inc., ACE Hardware Corp., Home Depot USA, Inc., and, Lowes Home Center, Inc.'s New Jersey stores, in accordance with CVS Pharmacy, Inc., ACE Hardware Corp., Home Depot USA, Inc., and, Lowes Home Center, Inc.'s customary practice, something that is well known to Jiawei USA. Upon information and belief, Jiawei USA follows a similar practice with its other customers having retail stores in the United States. As such, Jiawei USA 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.

54. Based upon the foregoing facts, and reasonable inferences therefrom, upon information and belief, Jiawei USA has, with knowledge of Plaintiff's

7,196,477; 7,429,827; 8,362,700; and, 8,089,370 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, 8,089,370 Patents by the direct infringement of its customers in the United States, including but not limited to, CVS Pharmacy, Inc., ACE Hardware Corp., Home Depot USA, Inc., and, Lowes Home Center, Inc., and will continue to do so unless restrained by this Court.

Count 9 – Willfulness of Jiawei USA'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, Jiawei USA has had actual knowledge of Plaintiff's '477 and '827 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 and '827 Patents if imported into, offered for sale or sold in the United States. Jiawei USA is believed to have had such knowledge long prior to the filing of Plaintiff's Original Complaint against Jiawei USA in Case No. 13-cv-1952 and 1953 (D.N.J.).

57. As a result of Richmond's activities, Defendant is long believed to

have knowledge of Plaintiff's '477 and '827 Patents and knowledge that one or more of Defendant's previously identified products infringe Richmond's aforementioned patents. As a result, Defendant's infringement of Plaintiff's Patent is willful.

58. 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

59. 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.

60. 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

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

62. 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.

63. As a result of violation of Plaintiff's provisional rights in the '953 Published Application by Defendant Jiawei USA, 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. RIGHT TO ROYALTIES FOR VIOLATION OF PROVISIONAL RIGHTS IN THE '370 Patent

64. On information and belief, Defendant Jiawei USA had actual notice of the '495 Published Application, which matured into the '370 Patent, including its specification and claims.

65. On information and belief, pursuant to 35 U.S.C. § 154(d), since having actual notice of the the '495 Published Application, Defendant at least used the invention as claimed in one or more claims of the '495 Published Application and the later issued '370 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 '370 Patent.

66. As a result of violation of Plaintiff's provisional rights in the '495 Published Application by Defendant Jiawei USA, 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.

10. JURY DEMAND

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

11. PRAYER FOR RELIEF

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

- a. 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

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