

HON. ROBERT S. LASNIK

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON

EKO BRANDS, LLC.,

Plaintiff,

v.

ADRIAN RIVERA MAYNEZ ENTERPRISES,  
INC., and ADRIAN RIVERA,

Defendants.

Cause No. 2:15-cv-522

FIRST AMENDED COMPLAINT  
FOR DECLARATORY  
JUDGMENT OF PATENT  
INVALIDITY AND FOR PATENT  
INFRINGEMENT

DEMAND FOR JURY TRIAL

Plaintiffs Eko Brands, LLC. complains of Defendants as follows:

**NATURE OF LAWSUIT**

1. This is a claim for declaratory judgment of patent invalidity arising under the Federal Declaratory Judgment Act, 28 U.S.C. §2201, *et seq.*, and under the Patent Laws of the United States, 35 U.S.C. §1, *et seq.* In particular, Plaintiff seeks a declaratory judgment that claims 5, 6, 8, 10, 18, 19 and 20 of Defendant's United States Patent No. 8,720,320 are invalid under 35 U.S.C. § 103.



1 to customers in this judicial district and throughout the State of Washington reusable, single-  
 2 serve beverage brewing devices, such as those typically containing ground coffee.

### 4 JURISDICTION AND VENUE

5 7. This is an action for a Declaratory Judgment that United States Patent Number  
 6 8,720,320 is invalid, unenforceable, and/or not infringed by Eko Brands. This action arises  
 7 under the Patent Laws of the United States. Jurisdiction is based upon 28 U.S.C. §§ 1338(a),  
 8 2201 and 2202. As set forth below, an actual justiciable controversy exists between the  
 9 parties.

10 8. Venue is proper under 28 U.S.C. § 1391. Defendants have purposefully availed  
 11 themselves of the privilege of transacting extensive business in the State of Washington. This  
 12 Court has exclusive jurisdiction over the subject matter of the Complaint under 28 U.S.C. §§  
 13 1338(a).

14 9. Personal Jurisdiction over the defendants is proper in this Court. Venue in this  
 15 judicial district is proper under 28 U.S.C. §§ 1391(b), (c) and/or 1400(b).

### 17 BACKGROUND OF THE CONTROVERSY

18 10. Upon information and belief, ARM Enterprises is the owner of record of  
 19 United States Patent Number 8,720,320 (“the ‘320 patent”) which issued on May 13, 2014. A  
 20 copy of the ‘320 patent is attached hereto as **Exhibit A**. The ‘320 patent generally discloses  
 21 a pod adapter system for single service beverage brewers.

22 11. On August 4, 2014, Mr. Rivera and ARM Enterprises filed a Complaint under  
 23 Section 337 Of The Tariff Act Of 1930, as amended, in the United States International Trade  
 24 Commission (“ITC”). In their Complaint, Mr. Rivera and ARM Enterprises alleged, *inter alia*  
 25 that certain beverage brewing products sold by Eko Brands infringe Claims 5, 6, 8, 10, 18, 19  
 26 and 20 of ARM Enterprises' '320 Patent. A copy of the Complaint filed by Mr. Rivera and  
 27 ARM Enterprises in the ITC is attached as **Exhibit B**.

1           12.     Upon information and belief, on or about February 24, 2015, Mr. Rivera  
2 and/or ARM Enterprises or attorneys acting on their behalf, contacted online retailer  
3 Amazon.com, Inc. through a written "Takedown Notice" and alleged (1) that certain beverage  
4 brewing products produced by Eko Brands and sold through Amazon.com, namely Eko  
5 Brands' "Ekobrew" and "Ekobrew Elite" products, infringed one or more claims of ARM  
6 Enterprises' '320 patent; and (2) that a number of other online retailers accordingly infringe  
7 ARM's '320 Patent. These allegations by Mr. Rivera and/or ARM Enterprises are false and  
8 misleading in that the asserted claims of ARM Enterprises' '320 patent are invalid, not  
9 infringed, or both.

10           13.     On March 25, 2015, Mr. Rivera and ARM Enterprises filed a Motion for Entry  
11 of an Initial Finding Of Default as to Eko Brands and others. A copy of the Motion filed by  
12 Mr. Rivera and ARM Enterprises in the ITC is attached as Change to **Exhibit D**.

13           14.     As a result of these statements made by Mr. Rivera and/or ARM Enterprises or  
14 attorneys acting on their behalf, Amazon.com removed the listings for Eko Brands' beverage  
15 brewing products, thereby depriving Eko Brands of sales it would otherwise have made, and  
16 damaging the goodwill, market share, and reputation of Eko Brands.

17           15.     As a result of the aforementioned filings with the ITC and communications  
18 made to Amazon.com, Eko Brands has a reasonable fear and apprehension that patent  
19 infringement litigation will be brought against it. An actual justiciable controversy therefore  
20 exists among the parties.

**COUNT I**

**Declaratory Judgment of Invalidity of Claims 5, 6, 8, 10, 18, 19 and 20**  
**of United States Patent No. 8,720,320**

16. Eko Brands hereby repeats and incorporates by reference Paragraphs 1-15 above as if fully set forth herein.

17. The ARM Enterprises '320 Patent issued on an application filed with the United States Patent and Trademark Office on July 13, 2007. Accordingly, the effective filing date of the '320 patent is July 13, 2007.

18. On August 29, 2003, the United States Patent and Trademark Office issued U.S. Patent No. 6,606,938 to Keurig, Incorporated entitled, "Two Step Puncturing and Venting Of Single Serve Filter Cartridge In A Beverage Brewer" ("the Keurig '938 Patent"). The Keurig '938 Patent issued more than one year before the effective filing date of the ARM Enterprises '320 Patent and, therefore, constitutes prior art as to the '320 Patent.

19. On April 22, 1975, the United States Patent and Trademark Office issued U.S. Patent No. 3,878,772 to Nordskog Company, Inc. entitled, "Reusable Coffee Maker Container" ("the Nordskog '772 Patent"). The Nordskog '772 Patent issued more than one year before the effective filing date of the ARM Enterprises '320 Patent and, therefore, constitutes prior art as to the '320 Patent. The Nordskog '772 Patent was not considered by the Examiner during prosecution of the '320 Patent.

20. On October 6, 2005, PCT International Publication No. WO 2005/092160 entitled, "Integrated Cartridge For Extracting A Beverage From A Particulate Substance" was published to Illy-Caffe' S.p.A. ("the Illy-Caffe' PCT publication"). The Illy-Caffe' PCT publication was published more than one year before the effective filing date of the ARM Enterprises '320 Patent and, therefore, constitutes prior art as to the '320 Patent.

21. On December 9, 2003, the United States Patent and Trademark Office issued U.S. Patent No. 6,658,989 to Keurig, Incorporated entitled, "RE-Usable Beverage Filter

1 Cartridge” (“the Keurig '989 Patent”). The Keurig '990 Patent issued more than one year  
 2 before the effective filing date of the ARM Enterprises '320 Patent and, therefore, constitutes  
 3 prior art as to the '320 Patent.

4 22. The the Keurig '938 Patent, Nordskog '772 Patent, Illy-Caffe' PCT  
 5 publication and Keurig '990 Patent all relate to single serve beverage brewing products of the  
 6 type disclosed and claimed in the '320 patent and render obvious the subject matter claimed in  
 7 Claims 5, 6, 8, 10, 18, 19 and 20 of the '320 Patent under 35 U.S.C. §103. Accordingly,  
 8 Claims 5, 6, 8, 10, 18, 19 and 20 of the '320 Patent are invalid under 35 U.S.C. §103.

## 9 COUNT II

### 10 False or Misleading Representation of Fact Under 15 U.S.C. § 1125(a)

11 23. Eko Brands hereby repeats and incorporates by reference Paragraphs 1-22  
 12 above as if fully set forth herein.

13 24. By falsely representing to Amazon.com (1) that certain beverage brewing  
 14 products offered for sale by Eko Brands and others through Amazon.com infringed one or  
 15 more claims of ARM Enterprises' '320 patent; and (2) that Eko Brands was subjected to a  
 16 default judgment before the ITC, Mr. Rivera and/or ARM Enterprises knowingly and willfully  
 17 made false and/or misleading representations of fact regarding the nature of Eko Brands'  
 18 products, which false and/or misleading representations had the effect of removing such  
 19 products' listing at Amazon.com, causing loss of sales and other harm to Eko Brands. Such  
 20 willful actions on the part of Mr. Rivera and/or ARM Enterprises are in violation of 15 U.S.C.  
 21 § 1125(a).

## 22 COUNT III

### 23 Patent Infringement Under 35 U.S.C. § 271(a)

24 25. Eko Brands hereby repeats and incorporates by reference Paragraphs 1-24  
 25 above as if fully set forth herein.

26 26. Eko Brands is the owner by assignment of U.S. Patent No. 8,707,855 issued  
 27 April 29, 2014 and entitled, “Beverage Brewing Device” (“the '855 Patent”). A copy of the

1 '855 Patent is attached as **Exhibit D**. The '855 Patent includes seventeen claims directed to  
2 various improvements in beverage brewing devices for use with single serve beverage  
3 brewers.

4 27. Defendants Mr. Rivera and ARM Enterprises have been and are directly  
5 infringing at least Claims 8, 9, 12, 13, 14, and 15 of the '855 Patent under 35 U.S.C. §271(a)  
6 by providing to customers, including customers in this judicial district, products that are  
7 encompassed by these claims. In particular, the “ECO-FIL Deluxe 2.0 Single Serve Coffee  
8 Filter” products made, sold, offered for sale, and used by Mr. Rivera and ARM Enterprises  
9 incorporate and include the improvements claimed at least in Claims 8, 9, 12, 13, 14, and 15  
10 of the '855 Patent. By making, offering for sale, selling and using such “ECO-FIL 2.0 Single  
11 Serve Coffee Filter” products, Defendants are directly infringing at least Claims 8, 9, 12, 13,  
12 14, and 15 of the '855 Patent in violation of 35 U.S.C. §271(a). A representative example of  
13 the ECO-FIL 2.0 product is attached as **Exhibit E**.

14 28. A representative claim chart indicating how at least Claims 8, 9, 12, 13, 14,  
15 and 15 of the '855 Patent “read on” the ECO-FIL 2.0 product is attached as **Exhibit F**.

16 29. Defendants Mr. Rivera and ARM Enterprises have been and are directly  
17 infringing at least Claims 8, 12, 13, 14, and 15 of the '855 Patent under 35 U.S.C. §271(a) by  
18 providing to customers, including customers in this judicial district, products that are  
19 encompassed by these claims. In particular, the “ECO-FIL MAX” products made, sold,  
20 offered for sale, and used by Mr. Rivera and ARM Enterprises incorporate and include the  
21 improvements claimed in at least Claims 8, 12, 13, 14, and 15 of the '855 Patent. By making,  
22 offering for sale, selling and using such ECO-FIL MAX products, Defendants are directly  
23 infringing at least Claims 8, 12, 13, 14, and 15 of the '855 Patent in violation of 35 U.S.C.  
24 §271(a). A representative example of the ECO-FIL MAX product is attached as **Exhibit G**.

25 30. A representative claim chart indicating how at least Claims 8, 12, 13, 14, and  
26 15 of the '855 Patent “read on” the ECO-FIL MAX product is attached as **Exhibit H**.

31. Defendants' infringement of the '855 Patent has injured and will continue to injure Eko Brands unless and until the Court enters an injunction prohibiting further infringement and, specifically, enjoining further sale, use or offer for sale of products that fall within the scope of the '855 Patent.

32. Upon information and belief, Defendants' infringement of the '855 Patent is believed to be willful in that Mr. Rivera and ARM Enterprises were placed on actual notice of the '855 Patent at least as early as January 16, 2015 but have taken no action to avoid continued infringement of the '855 Patent.

#### **PRAYER FOR RELIEF**

WHEREFORE, Eko Brands asks this Court to enter judgment against Defendants Mr. Rivera and ARM Enterprises and against their subsidiaries, affiliates, agents, servants, employees and all persons in active concert or participation with them, granting the following relief:

A. A declaration that claims 5, 6, 8, 10, 18, 19 and 20 of Defendant's United States Patent No. 8,720,320 are invalid under 35 U.S.C. § 103.

B. An award of damages adequate to compensate Eko Brands for damages suffered as a result of Defendants' false or misleading representations of fact regarding the nature of Eko Brands' products.

C. An award of damages adequate to compensate Eko Brands for the infringement that has occurred, together with prejudgment interest from the date infringement of the '855 Patent began;

D. Increased damages as permitted under 35 U.S.C. § 284;

E. A finding that this case is exceptional and an award to Eko Brands of their attorneys' fees and costs as provided by 35 U.S.C. § 284;

F. A permanent injunction prohibiting further infringement of the '855 Patent; and,




1 G. Such other and further relief as this Court or a jury may deem proper  
2 and just.

3 **JURY DEMAND**

4 Eko Brands demands a trial by jury on all issues presented in this Complaint.

5  
6 Dated this 7th day of May, 2015.

7 Respectfully submitted,

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11   
12 /s/ Philip P. Mann

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