

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS

STANDARD INNOVATION CORP.,

Plaintiff,

v.

LELOI AB, LELO INC., LELO
(SHANGHAI) TRADING CO., LTD.,
SUZHOU ARMOCON
TECHNOLOGY CO., LTD., SLS
SPECIALTY LLC, and 1960
NOVELTIES, INC. D/B/A CINDIE’S

Defendants.

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CIVIL ACTION NO. 4:11-cv-4172(SL)

Jury Trial Demanded

FIRST AMENDED COMPLAINT FOR PATENT INFRINGEMENT

Standard Innovation Corporation makes the following allegations for its Complaint against the defendants, LELOi AB, LELO Inc., LELO (Shanghai) Trading Co., Ltd., and Suzhou Armocon Technology Co., Ltd., (collectively referred to as “LELO Defendants”), SLS Specialty LLC, and 1960 Novelties, Inc. d/b/a Cindie’s (all defendants are collectively referred to as “Defendants”).

Parties

1. Plaintiff Standard Innovation Corporation (“Standard Innovation”) is a corporation organized under the laws of Canada, having its principal place of business at 330-1130 Morrison Dr, Ottawa, Ontario K2H 9N6, CANADA.

2. Defendant LELOi AB (“LELO Sweden”) is a corporation organized under the laws of Sweden, having its principal place of business at Brunnsgatan 8, 111 38 Stockholm, Sweden. LELO Sweden was co-founded by Filip Sedic, Eric Kalen, and Carl Magnusson. LELO Sweden is the Swedish company behind the LELO group of companies, which includes LELO, Inc., LELO (Shanghai) Trading Co., Ltd., and Suzhou Armocon Technology Col., Ltd. (together with LELO Sweden referred to as “LELO” or the “LELO Defendants”). Leloi AB has entered an appearance in this suit and has consented to service via ECF.

3. Defendant LELO Inc. (“LELO USA”) is a California corporation and maintains its principal place of business at 4320 Stevens Creek Blvd., Suite 205, San Jose, California 95129. On information and belief, LELO Inc. is owned, directly or indirectly, by LELO Sweden. On information and belief, among the LELO Defendants, LELO Inc. is responsible for receiving purchasing orders from North American retailers and distributors, inputting such orders into the LELO ordering system, specifying terms and conditions of sale, approving such orders, invoicing the retailers/distributors, and receiving payment from such retailers/distributors. On further information and belief, the officers of LELO Inc. are Pavle Sedic (who, on information and belief, is Filip Sedic’s brother) and Elizabeth Sedic (who, on information and belief, is Pavle Sedic’s wife). LELO USA has entered an appearance in this suit and has consented to service via ECF.

4. Defendant LELO (Shanghai) Trading Co., Ltd. [莱珞(上海)贸易有限公司] (“LELO Shanghai”) is a corporation organized under the laws of China, having its principal place of business at Rooms 101-102, and Rooms 702, 703, 704 and 705, No. 10, Alley 396, Wulumuqi South Road, Xuhui District, Shanghai 200031, People’s Republic of China. On information and belief, LELO Shanghai is owned, directly or indirectly, by LELO Sweden. On information and belief, among the LELO Defendants, LELO Shanghai is responsible for writing and designing the manuals, labels, and packaging, for providing a warranty for the LELO’s Tiani[™], the Tiani[™] 2, the Tiani[™] 3, the Noa[™], the “Bridal Pleasure Set” (including the Noa[™]), the “Indulge Me Pleasure Set” (also including the Noa[™]), and the Mahana[™] couples massagers, for arranging for shipment of these couples massagers to North America, and for dealing with returns under warranty. On information and belief, LELO Shanghai is also generally responsible for marketing the Tiani[™], Tiani 2[™], Mahana[™], and Noa[™] couples massagers, for operating the <http://www.lelo.com> website, and for selling LELO couples massagers online. Under Fed. R. Civ. P. 4(f)(1) and the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents, LELO (Shanghai) Trading Co., Ltd. may be served by forwarding a summons, complaint, and formal request to the Chinese Central Authority at Ministry of Justice, International Legal Cooperation Center

(ILCC), 6, Chaoyangmen Nandajie, Chaoyang District, Beijing, P.C. 100020, People's Republic of China.

5. Defendant Suzhou Armocon Technology Co., Ltd. [苏州翰墨科技有限公司] (“Armocon”) is a corporation organized under the laws of China, having its principal place of business at 3/F-5/F, No. 77 Suhong Middle Road, Suzhou Industrial Park, Suzhou, 215021, Jiangsu Province, China. Armocon is owned by LELO Sweden. On information and belief, the current CEO of Armocon is Filip Sedic. On further information and belief, among the LELO Defendants, Armocon is responsible for designing, manufacturing, testing, and arranging for packaging of all of the LELO's TianiTM, the TianiTM 2, the TianiTM 3, the NoaTM, the “Bridal Pleasure Set” (including the NoaTM), the “Indulge Me Pleasure Set” (also including the NoaTM), and the MahanaTM couples massagers. Under Fed. R. Civ. P. 4(f)(1) and the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents, Suzhou Armocon Technology Co., Ltd. may be served by forwarding a summons, complaint, and formal request to the Chinese Central Authority at Ministry of Justice, International Legal Cooperation Center (ILCC), 6, Chaoyangmen Nandajie, Chaoyang District, Beijing, P.C. 100020, People's Republic of China.

6. On information and belief, LELO Sweden, LELO Inc., LELO Shanghai, and Armocon are all affiliated companies in a coordinated enterprise

engaged together, among other businesses, in the design, manufacture, importation, distribution, and sale of intimate lifestyle products. Collectively, the LELO Defendants act in concert to design, manufacture, distribute, import into the United States, and sell electro-mechanical devices for sexual stimulation, including couples massagers which may be worn by women during sexual intercourse. On information and belief, the LELO Defendants operate the websites <http://www.lelo.com>, <http://www.picobong.com>, and <http://www.intimina.com>.

7. The personal massagers designed and made by the LELO Defendants and sold in the United States, including in this District, include the LELO's Tiani[™], the Tiani[™] 2, the Tiani[™] 3, the Noa[™], the "Bridal Pleasure Set" (including the Noa[™]), the "Indulge Me Pleasure Set" (also including the Noa[™]), and the Mahana[™] couples massagers. These couples massagers are also distributed and sold in this District by the other Defendants, namely SLS Specialty LLC and 1960 Novelties, Inc. d/b/a Cindie's

8. Defendant SLS Specialty LLC is incorporated under the laws of Texas and operates business under the name "SLS Specialty." Its head office is located at 6550 Long Point Drive, Suite 203, Houston, Texas 77055 and its registered agent, Shane Nelson, is located at 4817 Milam Street, Houston, TX 77006, in this District. SLS describes itself as a boutique distributor that focuses on marketing and promoting full-line brands of adult products, including sex toys, apparel,

carrying a wide variety of adult products from the most in-demand names in the industry. On information and belief, SLS Specialty operates the website <http://www.slsspecialty.com>, from which it sells LELO's Noa™ couples massager to customers in this District

9. Defendant 1960 Novelties, Inc. d/b/a Cindie's ("Cindie's"), is a store that operates in this District, located at 20801 Gulf Freeway, Suite 50, Webster, TX 77598, and its registered agent, Robert Sims, is located at 6811 Redding Rd., Houston, TX 77036-4728. Cindie's describes itself on the website <http://www.cindies.com> as an adult novelty store that provides a "comfortable shopping environment for sexy clothing, lingerie, gifts, and adult novelties." On information and belief, Cindie's sells LELO's Tiani 3™ couples massager to customers in this District.

Jurisdiction and Venue

10. This Court has subject matter jurisdiction over the claims set forth below based on applicable statutory provisions, including 28 U.S.C. §§ 1331 and 1338(a), because this action arises under the patent laws of the United States, 35 U.S.C. §§ 1 *et seq.*

11. This Court has personal jurisdiction over each of the defendants based on its business activities directed to this District and the acts which are complained of in this Complaint. Upon information and belief, each of the defendants has

transacted business in this District directly or indirectly, continues to transact business in this District, has committed and/or induced acts of infringement in this District, and continues to commit and/or induce acts of infringement in this District, including but not limited to the sale or offer for sale of infringing products in this District.

12. Venue is proper in this Court under 35 U.S.C. §§ 1391(b), 1391(c), and 1400(b) because a substantial part of the events or omissions giving rise to the claims occurred in this District. Upon information and belief, each of the defendants has transacted business in this District directly or indirectly, continues to transact business in this District, has committed and/or induced acts of infringement in this District, and continues to commit and/or induce acts of infringement in this District, including but not limited to the sale or offer for sale of infringing products in this District.

Background Facts

13. On April 26, 2011, the United States Patent & Trademark Office (“USPTO”) issued U.S. Patent No. 7,931,605 (“the ’605 Patent”), entitled “Electro-Mechanical Sexual Stimulation Device to be Worn During Intercourse.” Standard Innovation is the owner by assignment of all right, title, and interest in the ’605 Patent, including the right to recover damages for past, present, and future infringement of the patent and the right to seek injunctive relief against

infringement of the patent. A true and correct copy of the '605 Patent is attached as **Exhibit 1**.

14. LELO Sweden is the Swedish company behind the LELO group of companies, which includes the other LELO Defendants. LELO manufactures all its products in-house (including LELO Shanghai) and currently sells in over 35 international markets, with LELO offices extending from Stockholm to San Jose and from Sydney to Shanghai.

15. Upon information and belief, LELO is in the business of, among other things, making, using, offering for sale, and selling intimate lifestyle products and bedroom accessories such as personal massagers, massage oils, candles, and intimate apparel. Included in these products are a line of personal massagers (which LELO refers to as "Pleasure Objects"), including couples massagers which may be worn by women during intercourse. These massagers include LELO's Tiani[™], the Tiani 2[™], the Tiani 3[™], the Noa[™], the "Bridal Pleasure Set" (including the Noa[™]), the "Indulge Me Pleasure Set" (also including the Noa[™]), and the Mahana[™] couples massagers.

Prior Related ITC Proceedings

16. On December 2, 2011, Standard Innovation filed a complaint with the International Trade Commission ("ITC") alleging infringement of Standard Innovation's U.S. Patent No. 7,931,605 (the "'605 Patent") and violation of

Section 337. (A true and correct copy of the ITC complaint is attached as **Exhibit 2.**)

17. The ITC Complaint named LELO Sweden and LELO USA, as well as several other respondents who were importing infringing products into the United States. The Commission instituted an investigation based on the complaint on January 5, 2012, and, in August 2012, Administrative Law Judge Pender held a three and a half day evidentiary hearing on the issues of infringement, validity, and domestic industry.

18. At the outset it was clear that the evidence was overwhelmingly in Standard Innovation's favor. As Judge Pender put it during opening remarks at the hearing,

*“I don't think it's an understatement to say **this is one of the strongest infringement cases I've ever seen; one of the weakest invalidity cases I've ever seen, if not the weakest invalidity case I've ever seen....**”*

(emphasis added) ITC Hearing Tr. (Aug. 21, 2012), 24:9-14. (A true and correct copy of the trial transcript is attached as **Exhibit 3.**)

19. Because in ITC hearings all evidence is submitted prior to the actual hearing date, Judge Pender's observations were made having already been provided with the bulk of the evidence prior to the hearing, including extensive expert witness statements and 275-page pre-hearing statements.

20. On January 8, 2013, Administrative Law Judge Pender issued an 81-page initial determination, of which a substantial portion was dedicated to his analysis of infringement and validity of the '605 Patent based on LELO's Tiani™, Tiani 2™, and Mahana™ couples massagers. A true and correct copy of the Initial Determination is attached as **Exhibit 4**. Despite effortless findings of infringement and validity, Judge Pender concluded there was no violation of Section 337, finding that Standard Innovation had failed to demonstrate that the economic prong of the ITC's domestic industry requirement had been satisfied.

21. Following the initial determination, Standard Innovation petitioned the Commission to review the findings regarding the economic prong of the domestic industry requirement, and the LELO Defendants petitioned for review of questions of infringement, validity, and domestic industry/technical prong.

22. On June 17, 2013, the International Trade Commission issued its final determination, which, among other things, confirmed Judge Pender's finding of infringement of over 60 claims of the '605 patent, with some modification, confirmed Judge Pender's finding of validity of the '605 Patent, and reversed Judge Pender's finding that the economic prong of the domestic industry requirement had not been satisfied. (A true and correct copy of the Final Determination is attached as **Exhibit 5**). The Commission issued a General Exclusion Order prohibiting anyone from importing, selling, or selling after

importation infringing articles, and Cease and Desist Orders directed at the Respondents. The Presidential Review Period ended on August 17, 2013, and the Commission's orders went into effect as of that date.

23. Throughout the investigation, LELO continued to release new versions of the infringement products that essentially were modified and repackaged versions of their predecessors. For example, immediately following the exchange of expert reports, LELO released the Tiani 2™. (A true and correct copy of the LELO Press Release announcing the launch of the Tiani 2™ dated June 4, 2012 is attached as **Exhibit 6.**)

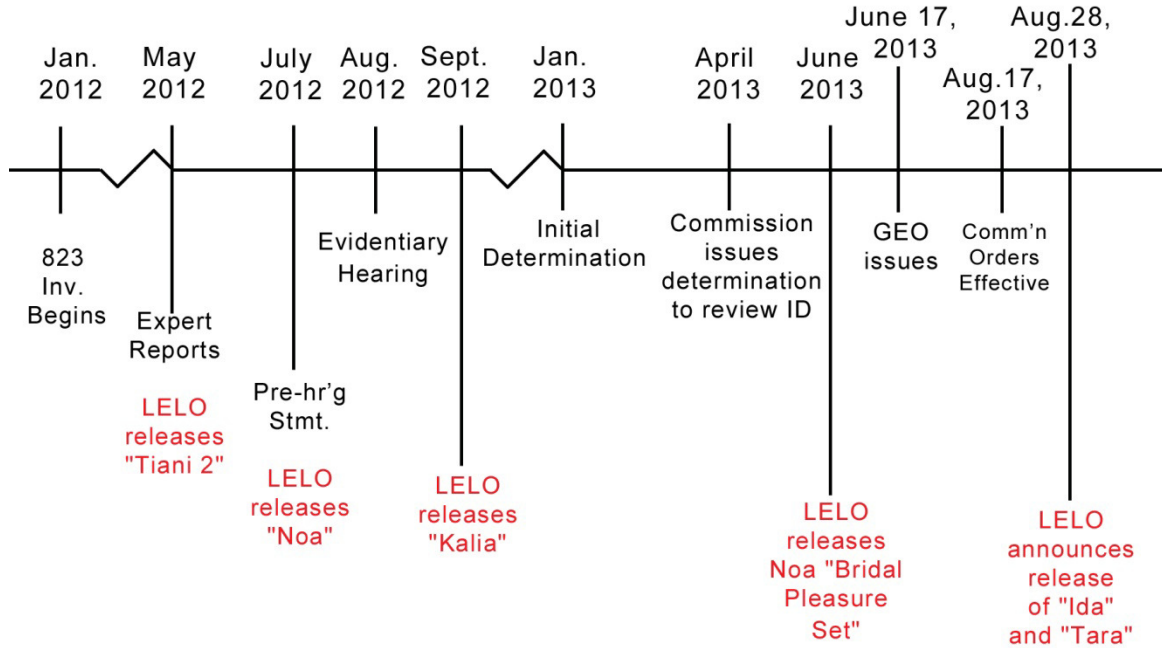
24. Immediately after the exchange of supplemental expert reports addressing the Tiani 2™ and before the filing of pre-trial statements in late July 2012, LELO released the Noa™, which was a repackaged version of the Tiani 2™ sold without the remote control. (A true and correct copy of the LELO Press Release announcing the launch of the Noa™ dated July 19, 2012 is attached as **Exhibit 7.**)

25. Immediately after trial, in September 2012, LELO released the Kalia™, a repackaged version of the Noa™ with slightly differently shaped outer arm, through Intimina, Inc., a company owned by Filip Sedic's wife. (A true and correct copy of the LELO Press Release announcing the launch of the Kalia™ dated September 4, 2012 is attached as **Exhibit 8.**)

26. In June 2013, on the eve of the original target date for the Commission's final determination, LELO announced a promotion for a "Bridal Pleasure Set," featuring a newly released white "Noa™" in bridal themed packaging. The following month, after the Commission issued the General Exclusion Order, LELO extended the duration of the Noa™ "Bridal Pleasure Set" promotion. (True and correct copies of the LELO Press Release announcing the launch and extension of the "Bridal Pleasure Set" promotion dated June 18, 2013 and July 2013, respectively, are attached as **Exhibits 9 and 10.**)

27. In August 2013, immediately following the effective date of the Commission's General Exclusion Order, LELO announced the release of "Ida™" and "Tara™", yet another version of a couples device based on the same structural and functional principles as all the other infringing devices. (A true and correct copy of the LELO Press Release announcing the launch of the Ida/Tara dated August 29, 2015 is attached as **Exhibit 11.**)

28. The following timeline is illustrative:



29. On August 21, 2013, LELO filed a petition for review of the Commission's Orders with the Court of Appeals for the Federal Circuit. On appeal, LELO challenged the ITC's final determination on domestic industry, claim construction, and indefiniteness, but did not challenge the findings on infringement or prior art-based invalidity.

Prior Related *Ex Parte* Reexamination Proceedings

30. On October 21, 2013, LELO filed a request for *ex parte* reexamination of the '605 Patent in the United States Patent and Trademark Office ("USPTO"). In that request, LELO challenged the validity of claims 1-21, 23-26, 33-54, 56-59, 66-87, and 89-92 of the '605 Patent, asserting several prior art references that LELO had presented in the ITC proceedings as well as additional

prior art references that had not been previously considered. The USPTO granted the request on November 22, 2013 and conducted a thorough reexamination of the '605 Patent considering all of the prior art asserted by LELO in the reexamination proceeding.

31. On August 25, 2014, the USPTO issued an *ex parte* reexamination certificate confirming the patentability of all challenged claims without requiring any amendments to the claims. (A true and correct copy of the Reexamination Certificate is attached as **Exhibit 12.**)

Federal Circuit Court of Appeal's Reversal of ITC Final Determination

32. On May 11, 2015, the Federal Circuit issued its opinion reversing the ITC's findings on domestic industry. The Federal Circuit's opinion did not reach the issues of claim construction or indefiniteness. The Federal Circuit's opinion also did not address the issues of infringement or invalidity because LELO chose not to raise these issues in its appeal. (A true and correct copy of the Federal Circuit Opinion is attached as **Exhibit 13.**)

33. On July 21, 2015, the ITC issued an order rescinding the general exclusion order and cease and desist orders pursuant to the Federal Circuit's reversal. (A true and correct copy of the Order of Rescission is attached as **Exhibit 14.**)

LELO's Reentry into the Market with Infringing Products

34. Undeterred by the International Trade Commission's earlier findings of infringement and patent validity, on July 30, 2015, LELO announced that it had "recommenced U.S. shipments of its bestselling Tiani™ couples massager, with Tiani 2™, Tiani 3™, Noa™, the Indulge Me Pleasure Set and Bridal Pleasure Set all available to order from this week onwards." (A true and correct copy of a press release dated July 30, 2015 is attached as **Exhibit 15**, and true and correct copies of web screen shots showing LELO's release of various products are attached as **Exhibits 16-20**.)

35. Meanwhile, apparently also undeterred by the infringement and validity findings, SLS Specialty continued to sell or offer for sale infringing products as evidenced by price lists that included infringing products in 2014, during the time period when the general exclusion order was in effect, prior to the Federal Circuit's reversal of the International Trade Commission's final determination. (A true and correct copy of a price list dated February 3, 2014, is attached as **Exhibit 21**.) SLS Specialty also currently sells at least the Noa™ in this District. **Exhibit 17**.

36. LELO's reentry into the market has also been felt in this District by the release of LELO's Tiani 3™, yet another variation on Tiani™, Tiani 2™, and Noa™, currently sold by at least Cindie's. (A true and correct copy of a receipt for

sale of the Tiani 3TM purchased at Cindie's is attached as Exhibit 22.) The Tiani 3TM was released in Europe while the ITC's general exclusion order was in effect and became available in the United States immediately following the dissolution of that order.

Count I – Infringement of the '605 Patent

37. Standard Innovation incorporates the allegations contained in paragraphs 1-36 above as if set forth verbatim herein.

38. On information and belief, each of the LELO Defendants, SLS Specialty, and Cindie's has committed, and will continue to commit, acts of infringement of the '605 Patent by making, using, importing, offering to sell, and selling the Accused Products, which include LELO's TianiTM, the TianiTM 2, the TianiTM 3, the NoaTM, the "Bridal Pleasure Set" (including the NoaTM), the "Indulge Me Pleasure Set" (also including the NoaTM), and the MahanaTM couples massagers, each of which infringes the '605 Patent.

39. On information and belief, each of the LELO Defendants, SLS Specialty, and Cindie's has induced, and will continue to induce, acts of infringement of the '605 Patent by making, using, importing, offering to sell, and selling products that infringe the '605 Patent.

40. On information and belief, each of the LELO Defendants, SLS Specialty, and Cindie's has committed, and will continue to commit, acts of

contributory infringement of the '605 Patent by making, using, importing, offering to sell, and selling products that infringe the '605 Patent.

41. On information and belief, each of the LELO Defendants, SLS Specialty, and Cindie's past and future acts of infringement of the '605 Patent have caused and will cause damages to Standard Innovation, entitling Standard Innovation to recover damages from LELO in an amount subject to proof at trial, but in no event less than a reasonable royalty extending through the life of the '605 Patent.

42. On information and belief, each of the LELO Defendants, SLS Specialty, and Cindie's continuing infringement of the '605 Patent will continue to damage Standard Innovation, causing irreparable harm for which there is no adequate remedy at law, unless LELO is enjoined by this Court from further acts of infringement.

43. On information and belief, each of the LELO Defendants has known, since at least July of 2011, of the '605 Patent. None of the defendants has obtained a license under the '605 Patent and none has a sound or good faith basis to believe that it had the right to make, use, import, offer to sell, and/or sell products which otherwise infringe the '605 Patent. The LELO Defendants have tried twice, in reexamination and ITC proceedings, to invalidate the patent without any success at all. Nonetheless they continue to deliberately and flagrantly infringe in the face of

infringement and validity findings. Thus, on information and belief, each of the LELO Defendants has infringed and continues to infringe the '605 Patent with full knowledge of the '605 Patent and therefore such infringement has been deliberate and willful.

Remedies

44. Standard Innovation incorporates the allegations contained in paragraphs 1-43 above as if set forth verbatim herein.

45. As a result the past and continuing infringement of the '605 Patent by each of the LELO Defendants, SLS Specialty, and Cindie's, Standard Innovation has suffered and will continue to suffer irreparable injury, for which there is no adequate remedy at law. Unless enjoined by this Court, the defendants will continue to infringe and induce infringement of the '605 Patent.

46. In addition to monetary damages, Standard Innovation also seeks a permanent injunction pursuant to 25 U.S.C. § 283 to prevent continued infringement of the '605 Patent by each of the LELO Defendants, SLS Specialty, and Cindie's.

47. In view of the deliberate and willful infringement of the '605 Patent by each of the LELO Defendants and SLS Specialty, Standard Innovation seeks that its damages be trebled or otherwise enhanced pursuant to 35 U.S.C. § 284.

48. As a result of the actions of each of the LELO Defendants, SLS Specialty, and Cindie's, Standard Innovation has been forced to retain counsel to enforce its rights in the '605 Patent.

49. The willful infringement by each of the LELO Defendants and SLS Specialty's willful infringement makes this case exceptional pursuant to 35 U.S.C. § 285.

50. Pursuant to 35 U.S.C. § 285, and to the maximum extent permitted by law, Standard Innovation seeks to recover its reasonable attorneys' fees incurred in prosecuting this action.

Prayer for Relief

WHEREFORE, Standard Innovation prays for entry of judgment that:

A. The defendants have infringed and continue to infringe one or more claims of the '605 Patent;

B. The defendants account for and pay to Standard Innovation all damages allowed by law for infringement of the '605 Patent, including trebling or other enhancement of the damages pursuant to 35 U.S.C. § 284;

C. The defendants, and their officers, agents, servants, employees, and those persons in active concert or participation with any of them, be preliminarily and permanently enjoined from any further infringement of the '605 Patent pursuant to 35 U.S.C. § 283;

D. The defendants and their officers, agents, servants, employees, and those persons in active concert or participation with any of them, be ordered to deliver to Standard Innovation, for destruction at Standard Innovation's option, all products in the United States that infringe the '605 Patent and were made, sold, or offered for sale by any of the defendants.

E. The defendants pay to Standard Innovation pre-judgment and post-judgment interest at the rate allowed by law on all damages awarded based on their patent infringement;

F. The defendants pay to Standard Innovation all costs it incurs in connection with this action;

G. This case be declared exceptional pursuant to 35 U.S.C. § 285 and that the defendants therefore pay Standard Innovation all attorneys' fees and other monetary compensation deemed appropriate;

H. Standard Innovation be granted such further and additional relief as the Court may deem just and proper under the circumstances.

Demand For Jury Trial

Standard Innovation demands trial by jury on all claims and issues so triable.

Respectfully submitted,

Date: August 26, 2015

/s/Alan D. Rosenthal

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Counsel for Plaintiff,

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CERTIFICATE OF SERVICE

I certify that on August 26, 2015 the foregoing document was served on all counsel of record by filing the document with the Clerk of the Court using the CM/ECF system, which provides electronic notification to all counsel of record in this case.

/s/ Alan D. Rosenthal