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 INCASE DESIGNS CORP.

9
 10 UNITED STATES DISTRICT COURT
 11 FOR THE CENTRAL DISTRICT OF CALIFORNIA
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 14 INCASE DESIGNS CORP.,

15 Plaintiff,

16 v.

17 CYGNETT USA INC.;
 18 CYGNETT PTY LTD,

19 Defendants.

Case No.: 15-cv-01138-AG-SS

**FIRST AMENDED COMPLAINT FOR
 PATENT INFRINGEMENT AND BREACH
 OF CONTRACT**

DEMAND FOR JURY TRIAL

1 Pursuant to Fed. R. Civ. P. 15(a)(1)(B), Plaintiff Incase Designs Corp.
2 (“Plaintiff” or “Incase”) hereby amends its Complaint and complains as follows:

3 **NATURE OF ACTION**

4 1. This action arises under the Patent Laws of the United States, 35 U.S.C.
5 §§ 100, *et seq.* and under the doctrine of pendent jurisdiction.

6 **JURISDICTION AND VENUE**

7 2. The Court has subject matter jurisdiction of this action under 28 U.S.C.
8 § 1331 and § 1338(a) in that it arises under the United States Patent Laws.

9 3. This Court also has supplemental jurisdiction over Incase’s breach of
10 contract claim pursuant to 28 U.S.C. § 1367.

11 4. Cygnett USA Inc. and Cygnett Pty Ltd. (collectively “Defendant” or
12 “Cygnett”) is subject to this Court’s specific and general personal jurisdiction
13 because Defendant conducts extensive business in this Judicial District, has
14 committed the acts complained of in this Judicial District, and has caused injury to
15 Plaintiff within this Judicial District by virtue of the acts of patent infringement and
16 breach of contract that are described herein.

17 5. Venue is proper in this Judicial District pursuant to 28 U.S.C.
18 §1391(b), (c), and 1400(b). Defendant is transacting, doing and/or soliciting
19 business, and committing acts of patent infringement in this Judicial District and
20 elsewhere in the United States.

21 **THE PARTIES**

22 6. Incase is a global leader in the design, development, manufacture, and
23 sale of carrying cases, bags, and covers for consumer electronics.

24 7. Upon information and belief, Cygnett USA, Inc. is a California
25 corporation with a place of business at 25500 Hawthorne Blvd., Suite 2120,
26 Torrance, California 90505 and Cygnett Pty. Ltd. is an Australian company with a
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1 place of business at Building 4, 650 Church Street, Richmond, Victoria 3121,
2 Australia.

3 8. Cygnett has been selling and offering to sell infringing tablet covers
4 within the United States, and within this District, all without consent from Plaintiff.

5 9. Defendant's infringing products include, but are not necessarily limited
6 to, the Slim, Archive Folio, Cache Folio, Urban Wallet, Glam, and Lavish product
7 lines (collectively "Book Jacket Accused Products").

8 **PATENTS-IN-SUIT**

9 10. On November 20, 2012, U.S. Patent No. 8,312,991 B2 (the '991
10 Patent), entitled Case for Electronic Tablet, was issued for the invention of a novel
11 case for consumer electronics and the methods for the manufacture of same.

12 11. On December 11, 2012, U.S. Patent No. 8,328,008 (the '008 Patent),
13 entitled Case for Electronic Tablet, was issued for the invention of a novel case for
14 consumer electronics and the methods for the manufacture of same.

15 12. Plaintiff has owned the '991 and '008 Patents (collectively the "Book
16 Jacket Patents") throughout the period of Cygnett's infringing acts and still owns
17 these patents.

18 **FIRST CLAIM FOR RELIEF**

19 **(Infringement of the '991 Patent)**

20 13. Plaintiff incorporates by reference and realleges each of the allegations
21 set forth above.

22 14. On February 12, 2013, Plaintiff filed Civil Action No. 3:13-cv-00603
23 (the "Prior Litigation"), a suit Incase initiated against Defendant in U.S. District
24 Court for the Northern District of California for the same patents-in-suit asserted in
25 this Amended Complaint—the '991 and '008 Patents.

26 15. The complaint in the Prior Litigation accused Defendant's Lavish and
27 Glam Case product lines, among other products, of infringing the '991 Patent.

1 16. On February 15, 2013, Plaintiff provided Defendant with actual notice
2 of the ‘991 Patent and its infringement of same.

3 17. Defendant is aware of the ‘991 Patent, yet it knowingly and actively
4 induces consumers to use its infringing Book Jacket Accused Products within the
5 United States. Thus, Defendant actively induces infringement of the ‘991 Patent in
6 violation of 35 U.S.C. § 271(b).

7 18. Since February 15, 2013, if not earlier, Defendant’s patent infringement
8 has been committed willfully with full knowledge of the ‘991 Patent.

9 19. Defendant has infringed and is still infringing the ‘991 Patent by
10 making, importing, selling, offering for sale, and using the Book Jacket Accused
11 Products that embody the patented invention, and Defendant will continue to do so
12 unless enjoined by this Court.

13 **SECOND CLAIM FOR RELIEF**

14 **(Infringement of the ‘008 Patent)**

15 20. Plaintiff incorporates by reference and realleges each of the allegations
16 set forth above.

17 21. On February 12, 2013, Plaintiff filed the Prior Litigation, a suit Incase
18 initiated against Defendant for the same patents-in-suit asserted in this Amended
19 Complaint—the ‘991 and ‘008 Patents.

20 22. The complaint in the Prior Litigation accused Defendant’s Lavish and
21 Glam Case product lines, among other products, of infringing the ‘008 Patent.

22 23. On February 15, 2013, Plaintiff provided Defendant with actual notice
23 of the ‘008 Patent and its infringement of same.

24 24. Defendant is aware of the ‘008 Patent, yet it knowingly and actively
25 induces consumers to use its infringing Book Jacket Accused Products within the
26 United States. Thus, Defendant actively induces infringement of the ‘008 Patent in
27 violation of 35 U.S.C. § 271(b).

1 25. Since February 15, 2013, if not earlier, Defendant’s patent infringement
2 has been committed willfully with full knowledge of the ‘008 Patent.

3 26. Defendant has infringed and is still infringing the ‘008 Patent by
4 making, importing, selling, offering for sale, and using the Book Jacket Accused
5 Products that embody the patented invention, and Defendant will continue to do so
6 unless enjoined by this Court.

7 **THIRD CLAIM FOR RELIEF**

8 **(Breach of Contract)**

9 27. Plaintiff incorporates by reference and realleges each of the allegations
10 set forth above.

11 28. On April 17, 2013 Incase and Defendant entered into a Settlement
12 Agreement that resolved the Prior Litigation.

13 29. Defendant has breached that Settlement Agreement.

14 30. The Settlement Agreement granted a limited royalty-bearing license for
15 the sale of 9,300 units between February 12, 2013 and April 17, 2013 and for the
16 sale of additional units, then in inventory, within 60 days of April 17, 2013 (the
17 “License Term”).

18 31. In exchange for the limited royalty-bearing license and dismissal of the
19 Prior Litigation, Defendant agreed, among other things, to stop making, using,
20 selling, or offering to sell the Lavish and Glam Case tablet covers.

21 32. Nevertheless, Defendant resumed offering to sell and selling the Lavish
22 tablet covers via its website.

23 33. Defendant’s offers to sell and sales of Lavish tablet covers after the
24 License Term ended constitutes a breach of the Settlement Agreement.

25 34. Sometime between the end of the License Term and August 17, 2014,
26 Defendant resumed offering to sell and selling the Glam Case tablet covers via its
27 website.

1 35. Defendant's offers to sell and sales of the Glam Case tablet covers after
2 the License Term ended constitutes a breach of the Settlement Agreement.

3 36. Plaintiff has suffered irreparable harm arising from Defendant's breach.

4 37. Defendant has breached the Settlement Agreement and Defendant may
5 resume breaching the Settlement Agreement unless enjoined by this Court.

6 **PRAYER FOR RELIEF**

7 Therefore, Plaintiff prays for judgment:

8 1. That Defendant has infringed the '991 and '008 Patents;

9 2. That Plaintiff be awarded damages from patent infringement according
10 to proof and ordering that such damages be multiplied up to treble their amount;

11 3. Preliminarily and permanently enjoining Defendant and all others
12 acting in concert with Defendant from making, using, selling, offering to sell or
13 importing the infringing cases or any other product that infringes the '991 and '008
14 Patents without permission or license from Plaintiff;

15 4. That Defendant be ordered to deliver up to Plaintiff all products
16 infringing the '991 and '008 Patents within its ownership, possession, or control for
17 destruction by Plaintiff or, in the alternative, that the Court award a compulsory
18 royalty for the current and future sale of such goods;

19 5. That the Court declare this to be an exceptional case pursuant to 35
20 U.S.C. § 285, and award reasonable attorney's fees;

21 6. That Defendant has breached the April 17, 2013 Settlement Agreement;

22 7. That the Court award attorney's fees and costs as per the Settlement
23 Agreement § 11.2.

24 8. That the Court increase damages up to three times the amount found or
25 assessed by the Court in Plaintiff's favor and against Defendant for its willful and
26 deliberate infringement of the '991 and '008 Patents.

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9. That Plaintiff be awarded its costs of suit, attorneys' fees, and pre- and post-judgment interest on any money judgment;

10. For such other relief as the Court deems proper.

Dated: October 1, 2015

Respectfully submitted,

/s/ Brian E. Mitchell

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JURY DEMAND

Plaintiff demands a jury trial on all claims as to which it has a right to a jury.

Dated: October 1, 2015

Respectfully submitted,

/s/ Brian E. Mitchell

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