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2. A true and correct copy of the '324 Patent is attached hereto as **Exhibit A**.

PARTIES

- 3. Plaintiff Razer is a state of California corporation with a principal place of business at 1042 N. Mountain Ave STE B764, Upland, CA 91786; and a warehouse physical address located at 1951 S. Parco Ave., Suite B, Ontario, CA 91761. Both Razer locations are within San Bernardino County, CA; as well as within the Central District of California.
- 4. Defendant Omix is a state of Georgia corporation, with a Georgia Secretary of State Control Number of K222936, and reported principal office address of 460 Horizon Drive, Suite 400, Suwanee, GA 30024 and a registered agent address of 3184 St. Ives Country Club Pkwy, Gwinnett, Duluth, GA 30097.
- 5. An address of 460 Horizon Drive, Suwanee, GA 30024 for Omix was admitted to by Omix on a SEMA Tradeshow Complaint Form dated November 11, 2015, by an Alain Eboli, an employee of Omix. This SEMA Tradeshow Complaint Form is attached as **Exhibit B**. Note, "SEMA" is an acronym for the "Specialty Equipment Market Association." Both parties attended this SEMA Tradeshow in November, 2015, in Las Vegas, NV. Note, this 460 Horizon Drive, Suwanee, GA 30024, address for Omix as reported by Omix in **Exhibit B** only differs from the reported principal office address, in that the principal office address also includes a suite number of 400.
- 6. Based on information and belief, Omix uses a business phone number of 770-614-6101; wherein the area code of "770" is an area code serving at least portions of Atlanta, GA; which agrees with Omix having a domicile in Georgia. This phone number is displayed upon a website of www.omix-ada.com, and this website was reported as the website for Omix by Omix as their website in the SEMA Tradeshow Complaint Form as depicted in **Exhibit B**.

JURISDICTION AND VENUE

- 7. This action arise under the laws of the United States ("U.S."), including the U.S. patent laws as codified in Title 35 of the United States Code ("U.S.C.") §§ 1 *et seq.*; and with specific remedies sought under the Federal Declaratory Judgment Act, Title 28 U.S.C. §§ 2201 and 2202. An actual, substantial, and continuing justiciable controversy exists between Razer and Omix that requires a declaration of rights by this Court.
- 8. This Court has subject matter jurisdiction over this action pursuant to Title 28 U.S.C. § 1331 and pursuant to Title 28 U.S.C. § 1338(a).
- 9. This Court has personal jurisdiction over Omix by virtue of Omix's purposeful and presently ongoing contacts with the State of California, including but not limited to, selling and offering to sell to California residents various Omix products, including products, such as fender flares, for use on various makes and models of Jeeps.
- 10. This Court has personal jurisdiction over Omix by virtue of Omix's purposeful and presently ongoing contacts with the State of California, including but not limited to, Omix supporting numerous dealers of Omix products, wherein such numerous dealers have retail physical addresses within California. For example, Omix's website www.omix-ada.com includes a "Find A Dealer" function, wherein that function returns the following dealers located in the Central District of California: a 4Wheel Parts located in Redondo Beach, CA; a 4Wheel Parts located in Compton, CA; a Jeep Solutions, Inc. located in Long Beach, CA; a 4Wheels Parts located in Van Nuys, CA; a 4Wheel Parts located in Thousand Oaks, CA; a 4Wheel Parts located in Azusa, CA; a Rack N Road located in Costa Mesa, CA; a 4Wheel Parts located in Santa Ana, CA; and a Brothers 4X4 located in Montclair, CA.

Thus, Omix is specifically servicing consumer retail locations within the Central District of California, as well as California in general.

- 11. This Court has personal jurisdiction over Omix, at least with respect to the specific subject matter of this action, by virtue of Omix's purposeful contacts with the Central District of California, including, without limitation, Omix's Cease and Desist Letter, dated, February 4, 2016, directed into the Central District of California, at Razer, as exemplified in **Exhibit C**, such that Omix should and could reasonably be expected to be haled into Court in the Central District of California.
- 12. Venue is proper in this judicial district pursuant to Title 28 U.S.C. §§ 1391 and 1400(b) because substantial parts of events giving rise to the claims presented in this Complaint occurred in the Central District of California, including, without limitation, Omix's attempts to enforce the '324 Patent against Razer, wherein Razer resides in the Central District of California, *see e.g.*, **Exhibit C**. Further, substantial parts of events giving rise to the claims presented in this Complaint occur in the Central District of California, including, without limitation, Razer's warehousing of inventory of products in Ontario, CA, that Omix alleges infringes the '324 Patent; as well as Razer selling and offering to sell such products from Ontario, CA; wherein Ontario, CA, is in the Central District of California.

 Note, Upland, CA, the city of Razer's principal place of business, where some sales and marketing efforts are directed from is also within the Central District of California. Further, substantially all of the property that is the subject of this action is situated in the Central District of California, in that Razer carries inventory of the alleged infringing products at Razer's Ontario, CA, warehouse location.

13. Venue is further proper because Omix is subject to personal jurisdiction in the Central District of California and Razer's principal place of business is located within the Central District of California, then Omix is deemed to reside in the Central District of California pursuant to Title 28 U.S.C. § 1391(c)(2).

FACTUAL BACKGROUND

- 14. Razer within U.S. markets, offers to sell, has sold, and continues to sell a product that Omix alleges infringes the '324 Patent, hereinafter, Razer's "stubby fender flares." This alleged product of Razer, these stubby fender flares, are described as a pocket style or stubby style of fender flare for attachment to a Jeep Wrangler vehicle, replacing existing fender flares on the Jeep Wrangler. These stubby fender flares are generally sold as a kit of four stubby fender flares, with two stubby fender flares for the front wheel wells of the Jeep Wrangler and the remaining two stubby fender flares for the rear wheel wells of the Jeep Wrangler; and the kits are sold with ornamental rivets.
- 15. Since April 13, 2015, Razer has offered these stubby fender flares for sale in the U.S.
 - 16. Since April 29, 2015, Razer has sold these stubby fender flares in the U.S.
- 17. Razer sells their stubby fender flares in the U.S. via Amazon, the well known online retailer.
- 18. Omix owns the '324 Patent; wherein the '324 Patent issued on September 2, 2014. See Exhibit A and Exhibit C.
- 19. Since "at least as early as 2013, Omix developed and introduced a [allegedly] new, original, and ornamental design for fender flares for vehicles." *See* Exhibit C

(annotation of "allegedly" added). These introduced Omix fender flares products embodies the designs of the '624 Patent.

- 20. Omix has sold, offers to sell, and currently sells fender flare products in the U.S. Omix and Razer are direct competitors in that both companies sell particular types of fender flare products for attachment to some Jeep vehicles. Omix and Razer have adverse interests.
- 21. Omix's Cease and Desist Letter, as shown in **Exhibit C**, alleges that "Razer's marketing of its fender flares constitutes infringement of the '324 Patent." Further, in this Cease and Desist Letter, Omix demands that Razer cease manufacturing, using, selling, offering to sell, and/or importing into the U.S. Razer's stubby fender flares. Omix in this Cease and Desist Letter also demands that Razer destroy all existing inventory of the stubby fender flares. And Omix further demands in this Cease and Desist Letter that Razer provide stubby fender flares sales information for a purpose of ascertaining money damages. *See generally*, **Exhibit C**.
- 22. Additionally, on Friday, December 11, 2015, Razer received an email from Amazon's counsel, that a "Rugged Ridge" had filed a complaint with Amazon, which stated, "[w]e have received notice alleging that one or more products sold by you on Amazon.com infringe patents purportedly owned by Rugged Ridge." RUGGED RIDGE is a trademark owned by Omix. Omix offers some of their products for sale on Amazon under the trademark of RUGGED RIDGE. Omix has initiated steps with Amazon to prevent or hamper Razer's ability to market and sell Razer's stubby fender flares via Amazon.
- 23. However, Razer contends that is has not infringed and is not infringing any properly construed, valid, and enforceable claim of the '324 Patent.

- 24. Razer further contends that the properly construed claim of the '324 Patent is invalid for failure to comply with the requirements for patentability of, *inter alia*, Title 35 U.S.C. §§ 101, 102, 103, and/or 112. Razer further contends that the properly construed claim of the '324 Patent is unenforceable for inequitable conduct of Omix.
- 25. A U.S. design patent application that issued into the '324 Patent was filed on August 7, 2013, with the United States Patent and Trademark Office ("USPTO"). Both before filing this U.S. design patent application, including more than a year before the filing of this U.S. design patent application, as well as while this U.S. design patent application was pending before the USPTO, Omix was aware of or should have been aware of various fender flare products available in at least U.S. markets, including Omix supplied fender flare products and competitor supplied fender flare products. Omix should have been aware of various fender flare products, particularly those for Jeeps, because Omix has been incorporated since 1992 and asserts that they are the "World's Largest Jeep Parts & Accessories Manufacturer!" per their www.omix-ada.com website. With respect to Omix's website of www.omix-ada.com, Razer last visited this website on February 18, 2016. Yet Omix failed to notify the USPTO, as required to do so under Title 37 Code of Federal Regulations ("CFR") § 1.56 of such information that is material to patentability. For example, based on information and belief, Omix was providing fender flare products for Jeeps under the "Rugged Ridge" brand at least as early as February 2011.
- 26. By virtue of Omix's actions and statements directed at or against Razer, including, without limitation, the SEMA Tradeshow Complaint Form attached as **Exhibit B** and the Cease and Desist Letter attached as **Exhibit C**, as well as the email notice from

Amazon, there is an actual and substantial controversy between Razer and Omix regarding Razer's liability for patent infringement, validity, and enforceability of the '324 Patent.

FIRST CAUSE OF ACTION

(Declaratory Judgment of Non-Infringement of U.S. Design Patent D712,324)

- 27. Razer restates and incorporates by reference as if fully set forth herein the allegations of the foregoing Paragraphs 1-26.
- 28. Omix has asserted and continues to assert that "Razer's marketing of its fender flares constitutes infringement of the '324 Patent"; that Razer must cease manufacturing, using, selling, offering to sell, and/or importing into the U.S. Razer's stubby fender flares; that Razer must destroy all existing inventory of the stubby fender flares; and that Razer provide stubby fender flares sales information to Omix for a purpose of ascertaining money damages. *See generally*, **Exhibit C**.
- 29. Razer disputes that Razer has infringed any properly construed, valid, and enforceable claim of the '324 Patent.
- 30. An ordinary observer would not consider the design of Razer's Stubby fender flares and the designs embodied in the '624 Patent to be substantially similar. In fact, there are numerous differences between Razer's Stubby fender flares and the claimed designs in the '624 Patent.
- 31. An actual and substantial controversy exists between Razer and Omix, the parties having adverse interests, of sufficient immediacy and reality to warrant the issuance of a declaratory judgment that Razer has not infringed and does not infringe any properly construed, valid, and enforceable claim of the '624 Patent.

- 32. Razer accordingly requests a judicial determination of Razer's rights, duties, and obligations with respect to the '624 Patent.
- 33. A judicial declaration is necessary and appropriate so that Razer may ascertain its rights relative to the '624 Patent; otherwise, Razer has no practical recourse but to meet Omix's demands, such as paying Omix's demand for money damages, destroying valuable inventory, and ceasing sales and marketing activities of the Stubby fender flares.

SECOND CAUSE OF ACTION

(Declaratory Judgment of Invalidity of U.S. Design Patent D712,324)

- 34. Razer restates and incorporates by reference as if fully set forth herein the allegations of the foregoing Paragraphs 1 33.
- 35. Omix has asserted and continues to assert that "Razer's marketing of its fender flares constitutes infringement of the '324 Patent"; that Razer must cease manufacturing, using, selling, offering to sell, and/or importing into the U.S. Razer's stubby fender flares; that Razer must destroy all existing inventory of the stubby fender flares; and that Razer provide stubby fender flares sales information to Omix for a purpose of ascertaining money damages. *See generally*, **Exhibit C**.
- 36. Razer disputes that Razer has infringed any properly construed, valid, and enforceable claim of the '324 Patent; and Razer affirmatively alleges that the claim of the '324 Patent is invalid for failure to meet one or more requirements for patentability under, *inter alia*, Title 35 U.S.C. §§ 101, 102, 103, and/or 112. Razer further affirmatively alleges that the properly construed claim of the '324 Patent is unenforceable for inequitable conduct of Omix.

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- Omix, with such parties having adverse legal interests, of sufficient immediacy and reality to warrant the issuance of a declaratory judgment that the properly construed claim of the '624 Patent is invalid for failure to meet one or more of the requirements for patentability under, *inter alia*, Title 35 U.S.C. §§ 101, 102, 103, and/or 112; or that the properly construed claim of the '624 Patent is unenforceable for inequitable conduct of Omix.
- 38. Accordingly, Razer requests a judicial determination of Razer's rights, duties, and obligations with respect to the '324 Patent.
- 39. A judicial declaration is necessary and appropriate so that Razer may ascertain Razer's rights relative to the '324 Patent.

PRAYER FOR RELIEF

WHEREFORE, Razer respectfully requests the Court to enter judgment in Razer's favor as to all claims asserted in this Complaint and, specifically, to enter judgment as follows:

- A. Declaring that Razer is not liable for any infringement of any properly construed, valid, and enforceable claim of the '324 Patent;
 - B. Declaring that the '324 Patent is invalid;
 - C. Declaring that the '324 Patent is unenforceable;
- D. Finding that this case is exceptional pursuant to Title 35 U.S.C. § 285, entitling Razer to an award against Omix of Razer's reasonable attorney's fees;
 - E. Awarding to Razer its costs and disbursements of this action; and
- F. Awarding to Razer such other and further relief as this Court deems just and proper.

1	DEMAND FOR JURY TRIAL
2	Pursuant to Fed. R. Civ. P. 38(b) and L.R. 38-1, Razer hereby demands a trial by jury
3	on all issues so triable.
4	
5	Dated: February 19, 2016
6	Respectfully submitted,
7	/s/ Eric Kelly
8	Eric A. Kelly (California SBN 292241) eric.kelly@kellytechlaw.com
9	eric.kelly@kellytechlaw.com 5535 Westlawn Ave., No. 180 Los Angeles, CA 90066
10 11	310-486-2698 phone or text msg 310-943-1432 fax Attorney for Plaintiff, Razer Auto, Inc.
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VERIFICATION I, Samuel Chi, declare as follows: I am a citizen of the United States of America and I am over the age of 1. eighteen. I currently hold the position of Chief Executive Office of Plaintiff Razer Auto, 2. Inc. and I have held that position at all pertinent times herein. I have read the foregoing Complaint and I declare that the facts alleged therein 3. are true and correct to best of my knowledge and belief. I understand that a false statement in this Verification will subject me to penalties of perjury. I declare under penalty of perjury under the law of the United States of America that the foregoing is true and correct. Executed on: February 19, 2016 Samuel Chi