

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

CREATIVE SPARK, LLC,

Plaintiff,

v.

THE CLOROX COMPANY,
THE CLOROX SALES COMPANY, THE
KINGSFORD PRODUCTS COMPANY,
LLC, and KINGSFORD MANUFACTURING
COMPANY,

Defendants.

Civil Action No. 16-432-GMS

JURY TRIAL DEMANDED

FIRST AMENDED COMPLAINT FOR PATENT INFRINGEMENT

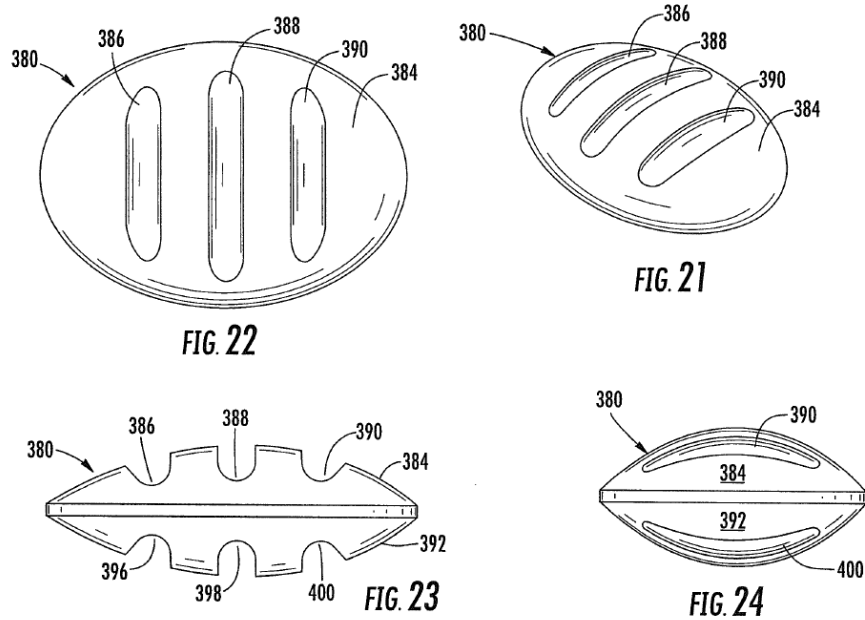
Plaintiff Creative Spark, LLC (“Creative Spark”), for its Complaint for Patent Infringement against Defendants The Clorox Company, The Clorox Sales Company, The Kingsford Products Company, LLC, and Kingsford Manufacturing Company (collectively, “Clorox”) alleges as follows:

INTRODUCTION

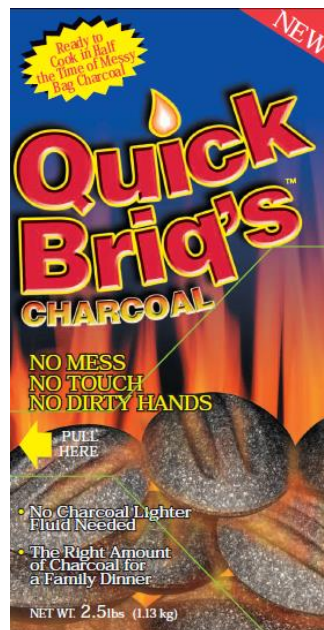
1. Creative Spark is a limited liability company organized under the laws of Ohio and based in Cleveland, Ohio. The company was formed in 2003 to develop and market charcoal-based products, including charcoal-briquet products for grilling.

2. While the use of charcoal briquets for grilling has occurred for decades, Creative Spark foresaw the need to improve the product for consumer use. Accordingly, Creative Spark invested time and effort researching, developing, and implementing solutions for the charcoal briquet itself and the packaging for charcoal briquets. Creative Spark worked to develop numerous inventions relating to charcoal briquets, including the particular grooved charcoal

briquets claimed in United States Patent No. 9,131,803 (the “’803 Patent”). For example, the ’803 Patent includes figures with examples of the inventive grooved briquets as shown below:



3. After years of development work, Creative Spark began testing and selling one of its charcoal-briquet products under the brand name Quick Briq’s Charcoal. As seen below, Quick Briq’s Charcoal looks similar to the figures of the ’803 Patent.



4. Major mass merchandising customers and retailers, including, for example, Home Depot (United States) and LoBlaws (Canada), were introduced to the Creative Spark Quick Briq's Charcoal product, and sales began in 2005.

5. Clorox, on the other hand, has been selling charcoal briquet products for decades. Before 2006 and Creative Spark's sales of the Quick Briq's Charcoal product, Clorox had never sold a charcoal-briquet product with grooves. Instead, Clorox sold pillow-shaped briquets with relatively smooth surfaces.

6. Clorox's pillow-shaped briquets with relatively smooth surfaces encountered the same challenges Creative Spark was trying to solve. Namely, Clorox's non-grooved charcoal-briquet products took a long time to heat up – wasting energy that could otherwise be used for cooking.

7. Rather than developing unique solutions to these challenges, Clorox built its business on the use of Creative Spark's patented technology. For instance, Clorox converted its non-grooved charcoal-briquet product line and incorporated Creative Spark's technology into its briquets – which directly competed with Creative Spark's charcoal-briquet product.

8. Clorox has long been aware of Creative Spark's inventions. But Clorox refused to either develop its own alternative technologies or compensate Creative Spark for using Creative Spark's technology, instead choosing to willfully infringe Creative Spark's patent by making, using, selling, and offering to sell its charcoal-briquet product with grooves, including but not limited to products with Sure Fire Grooves, such as its Kingsford® Original Charcoal, Kingsford® Match Light® Charcoal, Kingsford Professional Briquets, Kingsford® Charcoal with Hickory, Kingsford® Charcoal with Mesquite, Kingsford® Charcoal with Applewood, Kingsford® Easy Light Bag, Kingsford® BBQ Bag, Kingsford® Match Light® Charcoal with

Mesquite, and Kingsford[®] 100% Natural Lump Briquets.

9. This lawsuit seeks to stop Clorox's widespread unauthorized use of Creative Spark's patented inventions.

NATURE OF THE CASE

10. This is a civil action arising under the Patent Laws of the United States, 35 U.S.C. § 1 *et seq.*, for Clorox's infringement of Creative Spark's United States Patent No. 9,131,803.

THE PARTIES

11. Plaintiff Creative Spark, is an Ohio limited liability company with its principal place of business in Cleveland, Ohio. Creative Spark, the assignee of the '803 Patent, competed with Clorox in the charcoal-briquet market.

12. Creative Spark sourced, distributed, and sold charcoal-briquet products under the brand name Quick Briq's Charcoal.

13. Defendant The Clorox Company is a corporation organized under the laws of State of Delaware, with a principal place of business in Oakland, California. The Clorox Company has effective control over Defendants The Clorox Sales Company, The Kingsford Products Company, LLC, and Kingsford Manufacturing Company.

14. The Clorox Sales Company is a subsidiary of The Clorox Company. The Clorox Sales Company is a Delaware corporation. The Clorox Sales Company sells a large variety of household and consumer products throughout the United States and the State of Delaware, including Kingsford[®] charcoal products.

15. The Kingsford Products Company, LLC is a subsidiary of the Clorox Company and a parent of Kingsford Manufacturing Company. The Kingsford Products Company, LLC is a Delaware limited liability company.

16. Defendant Kingsford Manufacturing Company is a subsidiary of The Kingsford

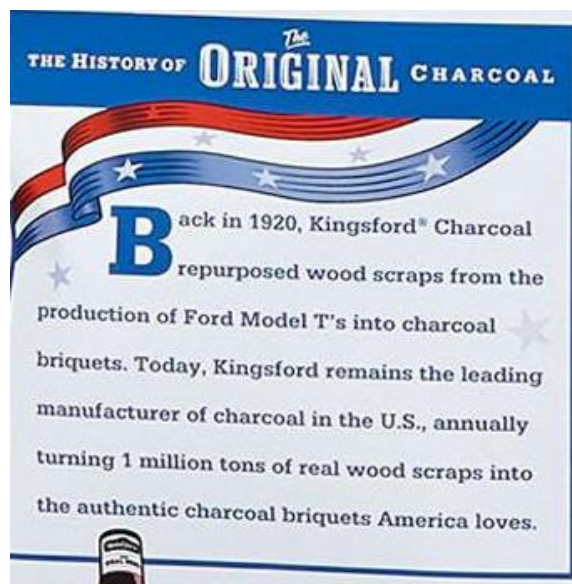
Products Company, LLC. Kingsford Manufacturing Company is a Delaware corporation. The Kingsford Manufacturing Company manufactures charcoal-briquet products used for cooking and barbecuing.

17. Clorox markets and sells its charcoal-briquet products under the brand name Kingsford[®].

18. Clorox manufactures Kingsford[®] charcoal-briquet products, including, but not limited to, Kingsford[®] Original Charcoal, Kingsford[®] Match Light[®] Charcoal, Kingsford Professional Briquets, Kingsford[®] Charcoal with Hickory, Kingsford[®] Charcoal with Mesquite, Kingsford[®] Charcoal with Applewood, Kingsford[®] Easy Light Bag, Kingsford[®] BBQ Bag, Kingsford[®] Match Light[®] Charcoal with Mesquite, and Kingsford[®] 100% Natural Lump Briquets, in the United States.

19. Clorox sells Kingsford[®] charcoal-briquet products, including, but not limited to, Kingsford[®] Original Charcoal, Kingsford[®] Match Light[®] Charcoal, Kingsford Professional Briquets, Kingsford[®] Charcoal with Hickory, Kingsford[®] Charcoal with Mesquite, Kingsford[®] Charcoal with Applewood, Kingsford[®] Easy Light Bag, Kingsford[®] BBQ Bag, Kingsford[®] Match Light[®] Charcoal with Mesquite, and Kingsford[®] 100% Natural Lump Briquets, in the United States.

20. Clorox is a leader in charcoal manufacturing. According to the charcoal-briquet packaging for the Kingsford[®] charcoal-briquet products, as shown below, it is the leading manufacturer of charcoal in the United States.



21. Clorox has been the U.S. market leader of charcoal briquets sales from 2006 through the present.

22. In 2015, Clorox led the U.S. charcoal market with at least a 74% market share.¹

JURISDICTION AND VENUE

23. This action arises under the patent laws of the United States, including 35 U.S.C. § 271 *et seq.* This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

24. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391(b) and (c) and 1400(b), because Clorox resides in this District, is subject to personal jurisdiction in this District, and is committing acts of infringement in this District.

25. This Court has personal jurisdiction over Clorox because, among other things, Clorox is committing, aiding, abetting, contributing to, and/or participating in acts of patent

¹ See Investor Relations Fact Sheet, available at: http://investors.thecloroxcompany.com/common/download/download.cfm?companyId=CLX&fileid=798779&filekey=35b4fd0d-c9ad-45ed-a00c-49959a548836&filename=IRFactSheet_FINAL.pdf. Attached hereto as Exhibit B.

infringement in violation of 35 U.S.C. § 271 in this District that lead to foreseeable harm and injury to Creative Spark within the District.

26. This Court also has personal jurisdiction over Clorox because, among other things, Clorox has established minimum contacts within the forum such that the exercise of jurisdiction over Clorox will not offend traditional notions of fair play and substantial justice. For example, Clorox has placed infringing products into the stream of commerce with the reasonable knowledge, expectation, and/or understanding that such products are used and sold in this District. Those acts are causing and will continue to cause injury to Creative Spark within the District. In addition, Clorox has sold, advertised, marketed, and distributed products in this District that practice the claimed inventions of the '803 Patent. Clorox derives revenue from the sale of infringing products distributed within the District, and/or expects or should reasonably expect its actions to have consequences within the District

FACTUAL BACKGROUND

I. Creative Spark Invented Novel Charcoal Briquets For Use In Cooking.

27. Charcoal cooking briquets date back to the 1920s and are used by millions of consumers throughout the United States. When used for cooking, charcoal briquets are first arranged in a grill or other cooking apparatus and ignited. During the ignition phase, the briquets slowly heat up until they have reached an appropriate cooking temperature. Once they have fully ignited, the briquets are spread out in the grill for the cooking phase, sometimes called the burn phase. The cooking phase lasts until charcoals are exhausted and the temperature of the grill drops below the cooking temperature.

28. Anyone who has used these briquets appreciates that they present several problems for the griller who wants a quick ignition and a sustained cooking phase. For example, conventional charcoal briquets are hard to ignite. And even when they do ignite, they spend a

long time in the ignition phase and not enough time in the cooking phase. These suboptimal ignition and burn characteristics are a significant drawback associated with conventional briquets.

29. The inventors of the '803 Patent developed the technology described in the '803 Patent as part of Creative Spark's efforts to solve both problems. By placing appropriately designed grooves on briquets, the inventors' design provides additional air circulation within a pile of briquets while allowing contact between adjacent briquets. The grooves increase air circulation around the periphery of each briquet, and between adjacent briquets, for aiding spreading of combustion from one briquet to another during the ignition and cooking phases.

30. During the initial ignition stage, the grooves allow for circulation of air within the piling, which aids in the ignition process. As the briquets continue to burn, cycling from the ignition phase to the cooking phase, the outer layer of the coal turns to ash, and the briquet's grooves burn away. As the grooves dissipate, the briquet takes on a geometry with reduced surface variations and reduced air flow — providing a burn characteristic that further extends the allowable cooking time. Additionally, by lighting quickly and more efficiently, the briquets conserve energy normally consumed during lighting, which leaves more of the briquet, *i.e.* energy, available to use while grilling or barbequing. Thus, using the novel groove design, the inventors of the '803 Patent were able to overcome both the ignition and burn time problems that frustrate grillers everywhere.

31. To protect its intellectual property resulting from its research and development, Creative Spark applied for and obtained several patents directed to various aspects of charcoal briquets and their packaging. For example, the '803 Patent, titled "Charcoal Briquet and Packaged Charcoal Briquet Product," was duly and properly issued by the USPTO on September

15, 2015. The USPTO issued a certificate of correction for the '803 Patent on July 5, 2016. A copy of the '803 Patent and its associated certificate of correction are attached hereto as Exhibit A.

32. The '803 Patent is valid and enforceable.

33. Creative Spark is the assignee of the '803 Patent and exclusive owner of all rights, title, and interest in the '803 Patent, including the right to bring this suit to recover damages for any current or past infringement of the '803 Patent.

II. Clorox Has Built Its Business On The Back Of Creative Spark's Technology.

34. On January 18, 2006, Clorox announced that it would be replacing its existing briquets across the entire product line – from the Kingsford[®] Original charcoal to all-in-one Match Light[®] briquets – with briquets having Sure Fire Grooves[®].² According to Clorox, Sure Fire Grooves[®] were the “biggest innovation in the history of the brand” – which started in the 1920s.³

35. Before it began marketing the Sure Fire Grooves[®] briquets, Clorox had never before sold charcoal-briquet products with grooves. Instead, Clorox sold pillow-shaped briquets with relatively smooth surfaces.

36. Since as least September 15, 2015, Clorox's charcoal-briquet products feature Sure Fire Grooves[®].⁴

37. According to Clorox, the charcoal-briquets with Sure Fire Grooves[®] have “grooves that expose more of the briquet's surface area to oxygen” – creating a more effective

² See <http://investors.thecloroxcompany.com/releasedetail.cfm?ReleaseID=184591>. A true and correct copy is attached hereto as Exhibit C.

³ See Id.

⁴ See <https://www.kingsford.com/how-to/light-the-coals/#>. A true and correct copy is attached hereto as Exhibit D.

path for air to flow through, enabling the charcoal to burn more efficiently – and that the new briquets “minimize the amount of time it takes to reach cooking temperature, ultimately using less energy in the lighting stage, saving it for a longer cooking time.”⁵

38. As a result of the new grooves, Clorox boasts that “the new Kingsford charcoal lights 38 percent more easily, is ready for cooking 22 percent sooner and burns 13 percent longer.”⁶

39. Clorox’s Sure Fire Grooves[®] charcoal briquets were met with immediate success. In the fourth quarter of 2006, Clorox “delivered all-time record shipments of Kingsford[®] charcoal, and achieved the highest dollar market share at U.S. food, drug and mass-merchandise retail outlets in the history of the brand.”⁷

40. Clorox realized a double-digit percentage increase in sales from 2006 to 2007 upon introduction of Sure Fire Grooves[®].

41. Clorox’s new line of charcoal briquets with Sure Fire Grooves[®] still lead the charcoal-briquet market. In 2015, Clorox had net sales of \$5.7 Billion, of which at least 11% is attributable to sales of Clorox’s charcoal brands in the United States.⁸

42. The Sure Fire Grooves[®] on Clorox’s charcoal-briquet products make them superior to other non-grooved charcoal briquet products, including Clorox’s previous non-grooved charcoal product.

⁵ See Exhibit C.

⁶ See Exhibit C.

⁷ See The Clorox Company 2006 Annual report, available at: https://www.thecloroxcompany.com/downloads/annual-reports/ar06_complete.pdf. A true and correct copy is attached hereto as Exhibit E.

⁸ See The Clorox Company 2015 Annual report, available at: https://annualreport.thecloroxcompany.com/_pdf/Clorox_2015_Annual_Report.pdf. A true and correct copy is attached hereto as Exhibit F.

43. According to Clorox, its charcoal briquets contain “Sure Fire Grooves[®], which help the coals light faster than ever before, while still burning as hot and long as ever.”⁹ In fact, Clorox proclaims that its charcoal-briquet products are ready to cook in about 15 minutes or less.¹⁰

III. The Accused Products

44. Clorox’s has sold and continues to sell several charcoal-briquet products, including, but not limited to, Kingsford[®] Original Charcoal, Kingsford[®] Match Light[®] Charcoal, Kingsford Professional Briquets, Kingsford[®] Charcoal with Hickory, Kingsford[®] Charcoal with Mesquite, Kingsford[®] Charcoal with Applewood, Kingsford[®] Easy Light Bag, Kingsford[®] BBQ Bag, Kingsford[®] Match Light[®] Charcoal with Mesquite, and Kingsford[®] 100% Natural Lump Briquets.

45. Clorox advertises its charcoal-briquet products on Clorox’s website at <https://www.kingsford.com/products>.

46. Clorox advertises the fact that its charcoal-briquet products have Sure Fire Grooves[®], including on Clorox’s website.¹¹

47. Clorox’s Sure Fire Grooves[®] briquets are approximately two inches long, approximately two inches wide, and approximately one inch high.

48. Clorox’s Sure Fire Grooves[®] briquets have a convex upper surface and convex lower surface, like a pillow.

⁹ <https://www.kingsford.com/products/original-charcoal/>. A true and correct copy is attached hereto as Exhibit G.

¹⁰ See Exhibit G; see also <https://www.kingsford.com/products/match-light-charcoal/>; <https://www.kingsford.com/products/charcoal-with-hickory/>; <https://www.kingsford.com/products/charcoal-with-mesquite/>; <https://www.kingsford.com/products/charcoal-with-applewood/>.

¹¹ See e.g., <https://www.thecloroxcompany.com/corporate-responsibility/products/product-sustainability/kingsford>. A true and correct copy is attached hereto as Exhibit H.

49. Clorox uses a press roll system to manufacture its briquets with Sure Fire Grooves[®]. The grooves in Clorox's Sure Fire Grooves[®] briquets are created using dies as shown below.¹² The press roll system uses the dies to create grooves on the briquet surface having prescribed depths and shape.



50. Clorox's Sure Fire Grooves[®] briquets have a plurality of grooves on the upper convex surface and the lower convex surface. The grooves extend across a majority of the convex upper surface and convex lower surface of the briquets.

51. The depth of the grooves on Clorox's Sure Fire Grooves[®] briquets vary as a function of distance from the external periphery of the briquet. The grooves are deeper towards the center of the briquet and shallower towards the periphery.

52. The maximum depth of the grooves on Clorox's Sure Fire Grooves[®] briquets is less than approximately 0.25 inches.

53. Clorox's Sure Fire Grooves[®] briquets have a total surface area that can be measured in square inches and a total volume that can be measured in cubic inches.

¹² See e.g., <http://www.sciencechannel.com/tv-shows/how-its-made/videos/how-its-made-charcoal-briquettes/>

54. Clorox's Sure Fire Grooves[®] briquets have a total surface area of approximately 8.75 square inches.

55. Clorox's Sure Fire Grooves[®] briquets have a total volume of approximately 1.75 cubic inches.

56. The ratio of total surface area to volume of Clorox's Sure Fire Grooves[®] briquets is in the range of approximately 13.7 to approximately 2.16.

57. Clorox uses charcoal-briquet packaging that expressly identifies the fact that the charcoal briquets contained within the bag have Sure Fire Grooves[®] and the benefits of having these grooves, as seen on the packaging for Kingsford[®] Original Charcoal shown below.



58. Clorox advertises the benefits of Sure Fire Grooves[®] to the public, including on its website, as shown below.¹³



¹³ See Exhibit H.

59. Clorox uses charcoal-briquet packaging that instructs the consumer on the proper use of the product, including the steps of: stacking the charcoal briquets in a pyramid, adding lighter fluid, lighting the charcoal, and spreading the charcoal briquets in a single layer once the charcoal briquets are covered in ash.

60. Clorox sells its Sure Fire Grooves[®] briquet products in the United States.

61. Clorox's Sure Fire Grooves[®] briquets are ready to cook on within approximately 15 minutes from ignition.

62. Clorox's Sure Fire Grooves[®] briquets reach a cooking temperature of at least 1000 degrees Fahrenheit.

63. Clorox's Sure Fire Grooves[®] briquets maintain a cooking temperature of at least 1000 degrees Fahrenheit for at least 15 minutes.

IV. Clorox's Knowledge Of Creative Spark's Patent Portfolio Related To Grooved Charcoal Briquets.

64. Clorox was aware of Creative Spark's patent portfolio related to grooved charcoal briquets by at least April 9, 2007. For example, on April 9, 2007 Clorox sent a letter to Creative Spark's patent prosecution attorney regarding a parent application to the '803 Patent, U.S. Patent Application 10/858,224 (the "'224 Patent Application").

65. The '224 Patent Application shares a common specification with the '803 Patent. In particular, the specification of the '224 Patent Application discloses the inventions which are now claimed in the '803 Patent.

66. Clorox continues to monitor Creative Spark's inventions and patent portfolio related to grooved charcoal briquets.

67. On November 9, 2005, more than 1 year after Creative Spark filed its '224 Patent Application, Clorox filed patent application 11/270,943 (the "'943 Patent Application") related

to charcoal briquets. In particular, the '943 Patent Application attempted to claim inventions related to grooved charcoal briquets.

68. Upon filing the '943 Patent Application with the Patent Office, Clorox also submitted a request that, pursuant to 37 C.F.R. §1.604, the Patent Office declare an Interference between the '224 Patent Application and the '943 Patent Application claiming that its later filed claims covered the same patentable invention as those contained in Creative Spark's earlier filed claims. Clorox further argued that it was the first to conceive of the grooved charcoal briquets covered by the claims and reduce them to practice.

69. On August 24, 2007, Clorox amended the claims of its '943 Patent Application, cancelling the previously submitted claims, and copying the claims of Creative Spark's '224 Patent Application. As shown below, Clorox copied Creative Spark's claim language.

<p align="center">Creative Spark's Claim Language '224 Patent Application (submitted July 7, 2007)</p>	<p align="center">Clorox's Claim Language '943 Patent Application (submitted August 24, 2007)</p>
<p>111. (Currently Amended) A charcoal briquet <u>for cooking</u> having a convex upper surface, a convex lower surface and a periphery, said upper surface having a plurality of parallel grooves and said lower surface having a plurality of parallel grooves <u>wherein each of said grooves having a width and a depth, said width is substantially equal to said depth thereby providing increased surface area of said briquet for aid in spreading combustion from one said briquet to another said briquet.</u></p>	<p>23. (New) A charcoal briquet for cooking having a convex upper surface, a convex lower surface and a periphery, said upper surface having a plurality of parallel grooves and said lower surface having a plurality of parallel grooves wherein each of said grooves having a width and a depth, said width is substantially equal to said depth thereby providing increased surface area of said briquet for aid in spreading combustion from one said briquet to another said briquet.</p>
<p>112. (Original) The charcoal briquet of claim 111 wherein said periphery is an ellipse having a minor axis.</p>	<p>24. (New) The charcoal briquet of claim 23, wherein said periphery is an ellipse having a minor axis.</p>
<p>113. (Original) The charcoal briquet of claim 112 wherein said grooves are parallel to said minor axis.</p>	<p>25. (New) The charcoal briquet of claim 24, wherein said grooves are parallel to said minor axis.</p>
<p>114. (Original) The charcoal briquet of claim 113 wherein said briquet has three grooves in said upper surface and three grooves in said lower surface.</p>	<p>26. (New) The charcoal briquet of claim 25, wherein said briquet has three grooves in said upper surface and three grooves in said lower surface.</p>

70. On December 12, 2008, the Patent Office rejected Clorox's amended claims, in part, as being unsupported by the patent specification and drawings submitted with its '943 Patent Application.

71. While Clorox tried to obtain patents for grooved briquets by amending the claims several times, the Patent Office rejected all the claims presented.

72. On March 9, 2010, counsel for Clorox approached representatives from Creative Spark to discuss Creative Spark’s patent portfolio. In particular, Clorox’s counsel inquired about Creative Spark’s valuation of its patent portfolio regarding grooved charcoal briquets.

73. On November 21, 2014, Clorox filed a new U.S. patent application, 14/550,658 (the “’658 Patent Application”), which is a continuation of the ’943 Patent Application.

74. The proposed claims of Clorox’s ’658 Patent Application were submitted on November 21, 2014, about 4 months after Creative Spark submitted its claims that ultimately issued as the ’803 Patented inventions.

75. Clorox’s ’658 Patent Application also is directed to charcoal-briquets with grooves. In fact, as shown below, the claims of Clorox’s ’658 Patent Application are almost an exact copy of the claims of Creative Spark’s ’803 Patent.

<p align="center">Creative Spark’s Claim Language ’803 Patent (submitted July 23, 2014)</p>	<p align="center">Clorox’s Claim Language ’658 Patent Application (submitted November 21, 2014)</p>
<p>9. A charcoal briquet having a total surface area measurable in square inches and a total volume measurable in cubic inches, the ratio of said total surface area to said total volume comprising a value in a range between approximately 13.7 to approximately 2.16; wherein said briquet further comprises at least one means for enhancing the circulation of air around said briquet during combustion; and wherein said briquet is configured to achieving a cooking temperature of about 1000 degrees Fahrenheit within about fifteen minutes after ignition and holding at least said temperature for at least fifteen minutes thereafter when disposed relative to a plurality of other similar briquets and ignited; and wherein said means for enhancing the circulation enables both (i) said achievement of a cooking temperature of about 1000 degrees within about fifteen minutes after ignition, and (ii) said holding of at least said temperature for at least fifteen minutes thereafter.</p>	<p>9. A charcoal briquet having a total surface area measurable in square inches and a total volume measurable in cubic inches, the ratio of said total surface area to said total volume comprising a value in a range between approximately 13.7 to approximately 2.16; wherein said briquet further comprises at least one means for enhancing the circulation of air around said briquet during combustion; and wherein said briquet is configured to achieving a temperature suitable for cooking quickly after ignition and holding said temperature for an adequate amount of time for cooking thereafter when disposed relative to a plurality of other similar briquets and ignited; and wherein said means for enhancing the circulation enables both (i) said achievement of quick ignition, and (ii) said adequate amount of time for cooking thereafter.</p>

76. Clorox was aware of the claimed inventions of the ’803 Patent by at least

November 21, 2014, when it submitted its proposed claims for the '658 Patent Application.

77. On August 15, 2015, the Patent Office allowed the claims of the '803 Patent, and on September 15, 2015 the '803 Patent issued.

78. On September 15, 2015, Creative Spark filed a lawsuit alleging that Clorox infringed the '803 Patent by virtue of its Sure Fire Grooves[®] briquets. Clorox received that Complaint at least as early as October 5, 2015, when it was formally served.

COUNT ONE

INFRINGEMENT OF THE '803 PATENT

79. Creative Spark incorporates by reference the preceding paragraphs as if fully set forth herein.

80. Clorox has directly infringed, and continues to directly infringe one or more of the '803 Patent claims, including at least claim 10, under 35 U.S.C. § 271(a), either literally and/or under the doctrine of equivalents, by making, using, selling, and/or offering for sale in the United States, and/or importing into the United States, products encompassed by those claims, including for example, by making, using, selling, offering for sale, and/or importing charcoal briquets with Sure Fire Grooves[®].

81. Clorox's charcoal briquets with Sure Fire Grooves[®] have characteristics, as identified above, that meet the claim limitations of the claims of the '803 Patent. For example, Clorox infringes claim 10 of the '803 Patent by, for example, making and selling its Sure Fire Grooves[®] products. Claim 10 of the '803 Patent recites:

10. A pillow-shaped charcoal briquet having a convex upper surface, a convex lower surface, and a plurality of grooves extending across a majority of both said convex upper surface and said convex lower surface, said grooves having a prescribed depth of at least a portion thereof so as to aid combustion by providing air circulation around said pillow-shaped briquet when said pillow-shaped briquet is at least partly surrounded by other similar briquets;

wherein said briquet is configured to achieve a cooking temperature of at least 1000 degrees Fahrenheit within about fifteen minutes after ignition and hold about said temperature for at least fifteen minutes thereafter when disposed relative to said other similar briquets, and ignited; and

wherein said plurality of grooves enables both (i) said achievement of a cooking temperature of at least 1000 degrees within about fifteen minutes after ignition, and (ii) said holding of about said temperature for at least fifteen minutes thereafter.

82. For instance, visual inspection of the Clorox charcoal briquets (such as the Kingsford® Original Charcoal, Kingsford® Match Light® briquets) reveals that Clorox's briquets have convex upper and lower surfaces with grooves extending across a majority of said surfaces with prescribed depths.¹⁴



83. According to Clorox, the Sure Fire Grooves® aid combustion by providing air circulation around said pillow-shaped briquet when said pillow-shaped briquet is at least partly surrounded by other similar briquets.

84. Moreover, testing of Clorox charcoal briquets with Sure Fire Grooves® further confirms that the briquets have grooves that are configured to achieve a cooking temperature of at least 1000 degrees Fahrenheit within about fifteen minutes after ignition and hold about said

¹⁴ See e.g., Exhibits D and H.

temperature for at least fifteen minutes thereafter when disposed relative to said other similar briquets.

85. Creative Spark has been and continues to be damaged by Clorox's direct infringement of the '803 Patent. Creative Spark is entitled to recover from Clorox the damages sustained by Creative Spark as a result of Clorox's wrongful acts in an amount adequate to compensate Creative Spark for Clorox's infringement, subject to proof at trial.

86. In addition to direct infringement, Clorox also indirectly infringes one or more of the '803 Patent claims, including at least claim 10. Clorox was aware of the '803 Patent at least from September 15, 2015. Additionally, Clorox was aware of the '803 Patent claims by at least November 21, 2014, when Clorox submitted the proposed claims of its '656 Patent Application that copies the claims of the '803 Patent.

87. Clorox knew that its charcoal-briquet products with Sure Fire Grooves[®] infringed the '803 Patent, or at a minimum believed there was a high probability that Clorox's charcoal-briquet products with Sure Fire Grooves[®] were covered by the '803 Patent, but willfully blinded itself to Creative Spark's patent and the infringing nature of the charcoal-briquet products with Sure Fire Grooves[®].

88. Clorox actively induced, and continues to actively induce others to infringe the claims of the '803 Patent, in violation of 35 U.S.C. § 271(b).

89. Despite Clorox's knowledge of the '803 Patent and knowledge of Creative Spark's allegations of infringement, Clorox is actively inducing others to use Clorox products covered by one or more of the '803 Patent claims with the intent these others will infringe the '803 Patent.

90. Third parties, including Clorox's customers, have infringed, and continue to

infringe, one or more claims of the '803 Patent under 35 U.S.C. § 271(a), either literally and/or under the doctrine of equivalents, by making, using, selling, and/or offering for sale in the United States, and/or importing into the United States, products encompassed by those claims, including for example, by making, using, selling, offering for sale, and/or importing Clorox's charcoal briquet products with Sure Fire Grooves[®].

91. For example, consumers of Clorox's charcoal briquet products with Sure Fire Grooves are directly infringing claims of the '803 Patent through their use of the briquets covered by these claims.

92. Clorox instructs the consumers of its charcoal-briquet products with Sure Fire Grooves[®] to use the briquets in an infringing manner, including through marketing material, packaging instructions, and other instructions.

93. Clorox also performs and instructs others to perform infringing uses of its charcoal briquet products with Sure Fire Grooves[®] on its website and its Youtube channel. See, for example:

- "How to: Light the Coals," available at <https://www.youtube.com/watch?v=KCHYq5Zk1nM>
- "How to: light the coals," available at <https://www.kingsford.com/how-to/light-the-coals/#>

94. Creative Spark has been and continues to be damaged by Clorox's induced infringement of the '803 Patent. Creative Spark is entitled to recover from Clorox the damages sustained by Creative Spark as a result of Clorox's wrongful acts in an amount adequate to compensate Creative Spark for Clorox's infringement subject to proof at trial.

95. Clorox has committed and continues to commit acts of infringement under 35 U.S.C. § 271 with its charcoal briquet products with Sure Fire Grooves[®]. In committing these

acts of infringement, Clorox acted despite an objectively high likelihood that its actions constituted infringement of a valid patent, and Clorox actually knew or should have known that its actions constituted an unjustifiably high risk of infringement of a valid and enforceable patent.

96. The full extent of Clorox's infringement is not presently known by Creative Spark. Clorox has made and sold, or will make and sell, products under different names or part numbers that infringe the '803 Patent in a similar manner.

97. The infringement by Clorox of the '803 Patent was deliberate and willful, entitling Creative Spark to increased damages under 35 U.S.C. § 284 and to attorney fees and costs incurred in prosecuting this action under 35 U.S.C. § 285.

PRAYER FOR RELIEF

WHEREFORE, Creative Spark prays for judgment as follows:

- A. That Clorox has infringed the '803 Patent;
- B. That Clorox's infringement of the '803 Patent has been willful;
- C. That Creative Spark be awarded all damages adequate to compensate it for Clorox's infringement of the '803 Patent, such damages to be determined by a jury and, if necessary to adequately compensate Creative Spark for the infringement, and accounting, and that such damages be trebled and awarded to Creative Spark with pre-judgment and post-judgment interest;
- D. That this case be declared an exceptional case within the meaning of 35 U.S.C. § 285 and that Creative Spark be awarded the attorney fees, costs, and expenses incurred in connection with this action; and
- E. That Creative Spark be awarded such other and further relief as this Court deems just and proper.

DEMAND FOR JURY TRIAL

Creative Spark hereby demands trial by jury on all claims and issues so triable.

Dated: July 25, 2016

Respectfully submitted,

By: /s/ Brian E. Farnan

Brian E. Farnan (Bar No. 4089)

FARNAN LLP

919 North Market Street

12th Floor

Wilmington, DE 19801

(302) 777-0300

(302) 777-0301

bfarman@farnanlaw.com

John M. Desmarais

Alan S. Kellman

Jason Berrebi

DESMARAIS LLP

230 Park Avenue

New York, NY 10169

(212) 351-3400 (Telephone)

(212) 351-3401 (Facsimile)

Counsel for Plaintiff