

JS 44 (Rev. 06/17)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

<p>I. (a) PLAINTIFFS E. Mishan & Sons, Inc. 230 Fifth Avenue, Suite 800 New York, New York 10001</p> <p>(b) County of Residence of First Listed Plaintiff <u>New York County</u> (EXCEPT IN U.S. PLAINTIFF CASES)</p> <p>(c) Attorneys (Firm, Name, Address, and Telephone Number) Robinson & Cole LLP - Nuala E. Dronney, Esq. 280 Trumbull Street Hartford, CT 06103 860-275-8346</p>	<p>DEFENDANTS Halo2Cloud, LLC 148 Eastern Boulevard Glastonbury, CT 06033</p> <p>County of Residence of First Listed Defendant <u>Hartford County</u> (IN U.S. PLAINTIFF CASES ONLY)</p> <p>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.</p> <p>Attorneys (If Known)</p>
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<p>II. BASIS OF JURISDICTION (Place an "X" in One Box Only)</p> <p><input type="checkbox"/> 1 U.S. Government Plaintiff</p> <p><input type="checkbox"/> 2 U.S. Government Defendant</p> <p><input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)</p> <p><input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)</p>	<p>III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)</p> <table style="width:100%;"> <tr> <td style="width:33%;">Citizen of This State</td> <td style="width:10%;"><input type="checkbox"/> 1</td> <td style="width:10%;"><input type="checkbox"/> 1</td> <td style="width:33%;">Incorporated or Principal Place of Business In This State</td> <td style="width:10%;"><input type="checkbox"/> 4</td> <td style="width:10%;"><input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td><input type="checkbox"/> 2</td> <td><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business In Another State</td> <td><input type="checkbox"/> 5</td> <td><input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td><input type="checkbox"/> 3</td> <td><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td><input type="checkbox"/> 6</td> <td><input type="checkbox"/> 6</td> </tr> </table>	Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
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IV. NATURE OF SUIT (Place an "X" in One Box Only) Click here for: Nature of Suit Code Descriptions.

<p>CONTRACT</p> <p><input type="checkbox"/> 110 Insurance</p> <p><input type="checkbox"/> 120 Marine</p> <p><input type="checkbox"/> 130 Miller Act</p> <p><input type="checkbox"/> 140 Negotiable Instrument</p> <p><input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment</p> <p><input type="checkbox"/> 151 Medicare Act</p> <p><input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans)</p> <p><input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits</p> <p><input type="checkbox"/> 160 Stockholders' Suits</p> <p><input type="checkbox"/> 190 Other Contract</p> <p><input type="checkbox"/> 195 Contract Product Liability</p> <p><input type="checkbox"/> 196 Franchise</p>	<p>TORTS</p> <p>PERSONAL INJURY</p> <p><input type="checkbox"/> 310 Airplane</p> <p><input type="checkbox"/> 315 Airplane Product Liability</p> <p><input type="checkbox"/> 320 Assault, Libel & Slander</p> <p><input type="checkbox"/> 330 Federal Employers' Liability</p> <p><input type="checkbox"/> 340 Marine</p> <p><input type="checkbox"/> 345 Marine Product Liability</p> <p><input type="checkbox"/> 350 Motor Vehicle</p> <p><input type="checkbox"/> 355 Motor Vehicle Product Liability</p> <p><input type="checkbox"/> 360 Other Personal Injury</p> <p><input type="checkbox"/> 362 Personal Injury - Medical Malpractice</p> <p>PERSONAL INJURY</p> <p><input type="checkbox"/> 365 Personal Injury - Product Liability</p> <p><input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability</p> <p><input type="checkbox"/> 368 Asbestos Personal Injury Product Liability</p> <p>PERSONAL PROPERTY</p> <p><input type="checkbox"/> 370 Other Fraud</p> <p><input type="checkbox"/> 371 Truth in Lending</p> <p><input type="checkbox"/> 380 Other Personal Property Damage</p> <p><input type="checkbox"/> 385 Property Damage Product Liability</p>	<p>FORFEITURE/PENALTY</p> <p><input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881</p> <p><input type="checkbox"/> 690 Other</p> <p>LABOR</p> <p><input type="checkbox"/> 710 Fair Labor Standards Act</p> <p><input type="checkbox"/> 720 Labor/Management Relations</p> <p><input type="checkbox"/> 740 Railway Labor Act</p> <p><input type="checkbox"/> 751 Family and Medical Leave Act</p> <p><input type="checkbox"/> 790 Other Labor Litigation</p> <p><input type="checkbox"/> 791 Employee Retirement Income Security Act</p> <p>IMMIGRATION</p> <p><input type="checkbox"/> 462 Naturalization Application</p> <p><input type="checkbox"/> 465 Other Immigration Actions</p>	<p>BANKRUPTCY</p> <p><input type="checkbox"/> 422 Appeal 28 USC 158</p> <p><input type="checkbox"/> 423 Withdrawal 28 USC 157</p> <p>PROPERTY RIGHTS</p> <p><input type="checkbox"/> 820 Copyrights</p> <p><input checked="" type="checkbox"/> 830 Patent</p> <p><input type="checkbox"/> 835 Patent - Abbreviated New Drug Application</p> <p><input type="checkbox"/> 840 Trademark</p> <p>SOCIAL SECURITY</p> <p><input type="checkbox"/> 861 HIA (1395ff)</p> <p><input type="checkbox"/> 862 Black Lung (923)</p> <p><input type="checkbox"/> 863 DIWC/DIWW (405(g))</p> <p><input type="checkbox"/> 864 SSID Title XVI</p> <p><input type="checkbox"/> 865 RSI (405(g))</p> <p>FEDERAL TAX SUITS</p> <p><input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)</p> <p><input type="checkbox"/> 871 IRS--Third Party 26 USC 7609</p>	<p>OTHER STATUTES</p> <p><input type="checkbox"/> 375 False Claims Act</p> <p><input type="checkbox"/> 376 Qui Tam (31 USC 3729(a))</p> <p><input type="checkbox"/> 400 State Reapportionment</p> <p><input type="checkbox"/> 410 Antitrust</p> <p><input type="checkbox"/> 430 Banks and Banking</p> <p><input type="checkbox"/> 450 Commerce</p> <p><input type="checkbox"/> 460 Deportation</p> <p><input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations</p> <p><input type="checkbox"/> 480 Consumer Credit</p> <p><input type="checkbox"/> 490 Cable/Sat TV</p> <p><input type="checkbox"/> 850 Securities/Commodities/Exchange</p> <p><input type="checkbox"/> 890 Other Statutory Actions</p> <p><input type="checkbox"/> 891 Agricultural Acts</p> <p><input type="checkbox"/> 893 Environmental Matters</p> <p><input type="checkbox"/> 895 Freedom of Information Act</p> <p><input type="checkbox"/> 896 Arbitration</p> <p><input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision</p> <p><input type="checkbox"/> 950 Constitutionality of State Statutes</p>
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V. ORIGIN (Place an "X" in One Box Only)

1 Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 Transferred from Another District (specify) 6 Multidistrict Litigation - Transfer 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
Patent Act, 35 U.S.C. § 271

Brief description of cause:
Infringement of United States Patents 9,534,752 and D804,070

VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. **DEMAND \$** _____ CHECK YES only if demanded in complaint: **JURY DEMAND:** Yes No

VIII. RELATED CASE(S) IF ANY (See instructions): JUDGE _____ DOCKET NUMBER _____

DATE 02/02/2018 SIGNATURE OF ATTORNEY OF RECORD Nuala E. Dronney

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

E. MISHAN & SONS, INC.,

Plaintiff,

v.

HALO2CLOUD, LLC,

Defendant.

Civil Action No.

Jury Trial Demanded

FEBRUARY 5, 2018

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff, E. Mishan & Sons, Inc. (“Emson”), by its attorneys, Notaro, Michalos & Zaccaria P.C., brings this action for patent infringement against Defendant, Halo2Cloud, LLC (“Halo2Cloud”).

Nature of the Action

1. This action arises under the patent laws of the United States, 35 U.S.C. § 1, *et seq.*, for infringement of United States Patent No. 9,534,752 and for infringement of United States Design Patent No. 804,070 (the “Asserted Patents”).

Parties

2. Plaintiff Emson is a corporation organized and existing under the laws of the State of New York with its principal place of business at 230 Fifth Avenue, Suite 800, New York, New York 10001.

3. On information and belief, Defendant Halo2Cloud is a corporation organized and existing under the laws of the State of Delaware, having a place of business at 148 Eastern Boulevard, Glastonbury, Connecticut 06033.

Jurisdiction and Venue

4. This Court has subject matter jurisdiction over this action under 28 U.S.C. § 1331 and 28 U.S.C. § 1338(a).

5. This Court has personal jurisdiction over Halo2Cloud because the claims asserted herein arose in this judicial district and/or because Halo2Cloud transacts business within this district and has committed infringing acts complained of hereinafter within this district, because Halo2Cloud derives substantial revenue from interstate commerce and has committed acts of patent infringement both within and without this district having injurious consequences within this district, and Halo2Cloud is otherwise within the jurisdiction of this Court. Halo2Cloud has purposefully availed itself of this forum by, among other things, offering to sell and selling, and causing others to use, offering to sell, and selling infringing products in the State of Connecticut including in this judicial district and deriving revenue from such activities.

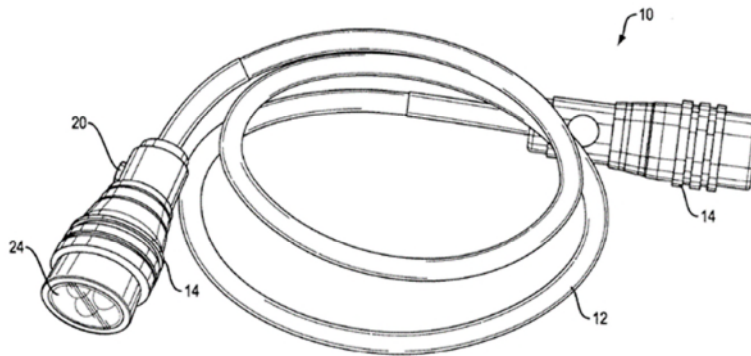
6. Venue in this judicial district is proper under 28 U.S.C. § 1400(b) because Halo2Cloud has committed acts of infringement in this district, and, on information and belief, has a regular and established place of business in this district.

Facts Pertaining to Emson's Patents

7. United States Patent No. 9,534,752 ("the '752 patent"), titled "Flexible two headed flashlight," duly and legally issued on January 3, 2017. A true and correct of the '752 patent is attached hereto as Exhibit A.

8. Plaintiff Emson is the owner by assignment of all right, title and interest in and to the '752 patent.

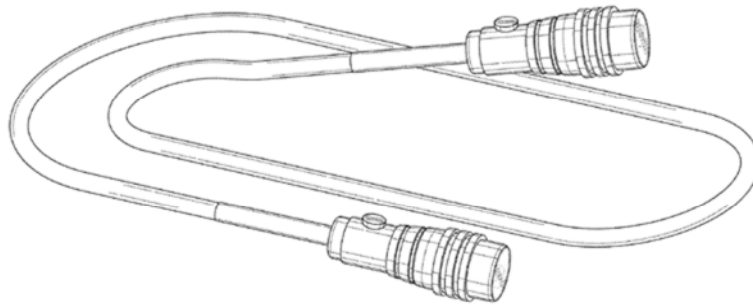
9. The Abstract of the '752 patent reads as follows: "A flexible, two headed flashlight arrangement has a bendable elongated shaft with opposite ends, the shaft having a thin diameter of selected length and being bendable into any selected shape and a separate self-powered flashlight assembly fixed to each end of the shaft. Each flashlight assembly comprising a housing containing an LED circuit with at least one LED, a switch having open and closed positions for respectively interrupting and passing electricity to the LED, and at least one battery for powering the LED when the switch is closed." Figure 1 of the '752 patent is reproduced below:



10. United States Design Patent No. 804,070, titled "Flexible Flashlight," duly and legally issued on November 28, 2017 ("the D'070 patent"). A true and correct of the D'070 patent is attached hereto as Exhibit B.

11. Plaintiff Emson is the owner by assignment of all right, title and interest in and to the D'070 patent.

12. The D'070 patent claims the ornamental design for a flexible flashlight as shown and described in the accompanying nine figures. Figure 1 of the D'070 patent is reproduced below:



Facts Pertaining to Defendant Halo2Cloud

13. Halo2Cloud imports, offers for sale, and sells in the United States a flashlight product under the name "HALO Flexlight." An image of a HALO Flexlight flashlight is reproduced below:



14. The instructions for a HALO Flexlight flashlight which are included in the product packaging describe the product as follows: “The HALO Flexlight is the most versatile flashlight yet! With its 34 inch flexible gooseneck, these flashlights can be molded into any shape you need making it a great hands free tool. Each end is equipped with a bright LED light and strong magnets which allows users to retrieve objects in hard to reach and dark areas.”

15. Halo2Cloud offers for sale and sells HALO Flexlight flashlights in this judicial district and elsewhere throughout the United States.

16. On information and belief, Halo2Cloud’s HALO Flexlight flashlight is offered for sale and sold in this judicial district on television cable channels and the website www.qvc.com.

17. Halo2Cloud is not licensed or authorized by Emson to make, sell, offer to sell, use or import Halo2Cloud’s infringing HALO Flexlight flashlights.

18. Halo2Cloud has had actual knowledge of the Asserted Patents since at least as early as its receipt of Emson’s correspondence to Halo2Cloud asserting that Halo2Cloud’s HALO Flexlight flashlights are covered by one or more claims of the Asserted Patents which, on information and belief, occurred on December 6, 2017.

COUNT I - Claim for Infringement of the ‘752 patent

19. Emson realleges and incorporates by reference each of paragraphs 1 through 18, above, as if fully set forth herein.

20. The table below demonstrates the complete correspondence between each and every element of Claim 1 of the '752 patent and Halo2Cloud's HALO Flexlight flashlights:

Correspondence of Claim 1 of the '752 patent to HALO Flexlight	
<p><i>HALO Flexlight Flashlight Images</i> (Annotated with reference numbers corresponding to the '752 patent)</p>	
U.S. Patent 9,534,752	HALO Flexlight
<p>1. A flexible, two headed flashlight arrangement (10), comprising:</p>	<p>10', Fig. 1'.</p>
<p>a bendable elongated shaft (12) having opposite ends, the shaft having a diameter of about 5 mm (about 3/16 inch) to about 10 mm (about 3/8 inch) that is substantially constant between the opposite ends, a length of about 610 mm (about 24 inch) to about 1220 mm (about 48 inch), and being bendable into any selected shape; and</p>	<p>HALO's Flexlight has a bendable shaft with a substantially constant 9 mm diameter between opposite ends and a length of approximately 860 mm, and it is bendable into any shape.</p>

<p>a separate self-powered flashlight assembly (14) fixed to each end of the shaft (12), each flashlight assembly comprising a housing (16) containing an LED circuit with at least one LED (18), a switch (20) having open and closed positions for respectively interrupting and passing electricity to the LED (18) and at least one battery (22) for powering the LED when the switch is closed;</p>	<p>HALO's Flexlight has a separate self-powered flashlight assembly 14' fixed to each end of shaft 12' as shown in Fig. 1'. Each flashlight assembly of HALO's Flexlight comprising a housing 16' (Figs. 2' and 3') containing an LED circuit 42' with LEDs 18', a switch 20' for interrupting or passing electricity to LEDs 18' and batteries 22' for powering the LEDs 18' when switch 20' is closed (Figs. 2' and 3').</p>
<p>each flashlight assembly housing (16) having one end fixed to one end of the shaft (12) and an opposite end, a lens (24) covering the opposite end of the housing and extending over the at least one LED, and a magnetic ring (40) around the lens (24) and in the opposite end of the housing.</p>	<p>Each HALO Flexlight flashlight assembly housing 16' is fixed to one end of shaft 12' with a lens 24' covering the housing's opposite end and LEDs 18'; magnetic ring 40' surrounds lens 24' in the end of the housing (Figs. 2' and 3').</p>

21. Halo2Cloud's HALO Flexlight flashlight is a flexible, two headed flashlight which infringes at least Claim 1 of the '752 patent.

22. Halo2Cloud has infringed and continues to infringe the '752 patent, in violation of 35 U.S.C. § 271, by importing, offering for sale and selling HALO Flexlight flashlights that infringe the '752 patent.

23. On information and belief, Halo2Cloud acted with full knowledge of the '752 patent and without a reasonable basis for believing that it would not be liable for infringement of the '752 patent. At minimum, Halo2Cloud was and continues to be

willfully blind to the existence of the '752 patent and continues to make, sell, offer for sale, import into the United States, its infringing HALO Flexlight flashlights.

24. Halo2Cloud has engaged in egregious infringing behavior with knowledge of the '752 patent, which has been duly issued by the United States Patent and Trademark Office, and is presumed valid. On information and belief, Halo2Cloud has known or should have known that its actions constituted and continue to constitute infringement of the '752 patent and that the '752 patent is valid, at least as of the date Halo2Cloud was notified by Emson that its HALO Flexlight flashlights infringe at least one claim of the '752 patent. Halo2Cloud could not reasonably, subjectively believe that its actions do not constitute infringement of the '752 patent, nor could it reasonably, subjectively believe that the '752 patent is invalid. Despite that absence of knowledge and subjective belief, and the objectively high likelihood that its actions constitute infringement, Halo2Cloud has continued its infringing activities. As such, Halo2Cloud willfully infringes the '752 patent.

25. Emson is entitled to damages for Halo2Cloud's infringement of the '752 patent pursuant to 35 U.S.C. § 284.

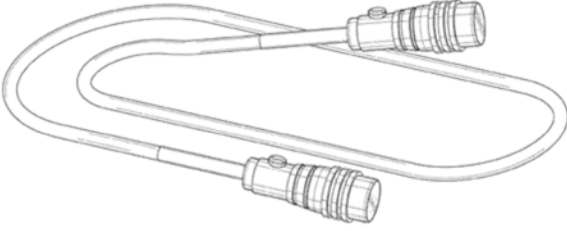

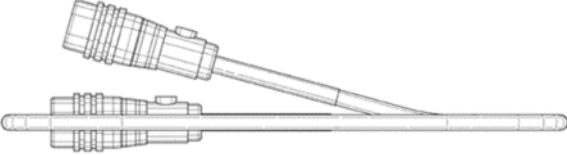

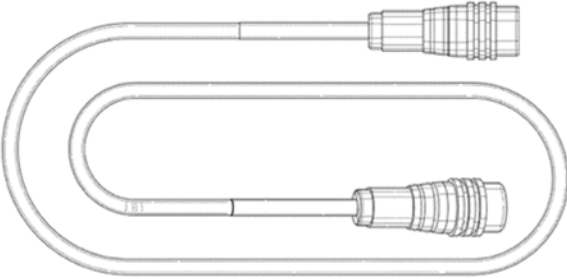

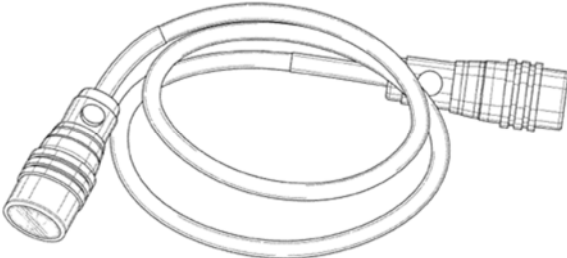

26. On information and belief, Halo2Cloud's infringement of the '752 patent will continue until restrained and enjoined by this Court.

27. Halo2Cloud's infringement of the '752 patent has caused and, unless enjoined and restrained by this Court, will continue to cause, irreparable injury to Emson not fully compensable in monetary damages and for which Emson has no adequate remedy at law. Emson is therefore entitled to preliminary and permanent injunctions enjoining Halo2Cloud from further infringement of the '752 patent.

COUNT II - Claim for Infringement of the D'070 patent

28. Emson realleges and incorporates by reference each of paragraphs 1 through 26, above, as if fully set forth herein.

29. The table below compares exemplary figures of the D'070 patent with exemplary images of Halo2Cloud's HALO Flexlight flashlight:

D'070 Patent	HALO Flexlight
 <p data-bbox="472 905 509 921">FIG. 1</p>	
 <p data-bbox="464 1136 509 1152">FIG. 4</p>	
 <p data-bbox="456 1488 509 1505">FIG. 7</p>	
 <p data-bbox="448 1824 493 1841">FIG. 8</p>	

30. Halo2Cloud has infringed and continues to infringe the D'070 patent, in violation of 35 U.S.C. § 271, by importing, offering for sale and selling HALO Flexlight flashlights that infringe the D'070 patent.

31. On information and belief, Halo2Cloud acted with full knowledge of the D'070 patent and without a reasonable basis for believing that it would not be liable for infringement of the D'070 patent. At minimum, Halo2Cloud was and continues to be willfully blind to the existence of the D'070 patent and continues to make, sell, offer for sale, import into the United States, its infringing HALO Flexlight flashlights.

32. Halo2Cloud has engaged in egregious infringing behavior with knowledge of the D'070 patent, which has been duly issued by the United States Patent and Trademark Office, and is presumed valid. On information and belief, Halo2Cloud has known or should have known that its actions constituted and continue to constitute infringement of the D'070 patent and that the D'070 patent is valid, at least as of the date Halo2Cloud was notified by Emson that its HALO Flexlight flashlights infringe the D'070 patent. Halo2Cloud could not reasonably, subjectively believe that its actions do not constitute infringement of the D'070 patent, nor could it reasonably, subjectively believe that the D'070 patent is invalid. Despite that absence of knowledge and subjective belief, and the objectively high likelihood that its actions constitute infringement, Halo2Cloud has continued its infringing activities. As such, Halo2Cloud willfully infringes the D'070 patent.

33. Emson is entitled to damages for Halo2Cloud's infringement of the D'070 patent pursuant to 35 U.S.C. § 284.

34. Emson is entitled to an award of the total profits realized by Halo2Cloud from its infringement of the D'070 patent pursuant to 35 U.S.C. § 289.

35. On information and belief, Halo2Cloud's infringement of the D'070 patent will continue until restrained and enjoined by this Court.

36. Halo2Cloud's infringement of the D'070 patent has caused and, unless enjoined and restrained by this Court, will continue to cause, irreparable injury to Emson not fully compensable in monetary damages and for which Emson has no adequate remedy at law. Emson is therefore entitled to preliminary and permanent injunctions enjoining Halo2Cloud from further infringement of the D'070 patent.

PRAYER FOR RELIEF

WHEREFORE, E. Mishan & Sons, Inc. respectfully requests that this Court enter judgment in its favor, against Halo2Cloud, LLC, and grant the following relief:

A. A judgment that Halo2Cloud, LLC has infringed and is infringing each of the Asserted Patents under 35 U.S.C. § 271;

B. A judgment awarding damages adequate to compensate E. Mishan & Sons, Inc. for Halo2Cloud, LLC's infringement under 35 U.S.C. § 284, including prejudgment and post-judgment interest, costs, and damages for any post-verdict infringement occurring prior to entry of a final judgment;

C. A judgment that Halo2Cloud, LLC's infringement of the Asserted Patents has been willful and awarding E. Mishan & Sons, Inc. treble damages under 35 U.S.C. § 284;

D. A judgment awarding E. Mishan & Sons, Inc. the total profits realized by Halo2Cloud, LLC from its infringement of the D'070 patent pursuant to 35 U.S.C. § 289;

E. Issue preliminary and permanent injunctions enjoining Halo2Cloud, LLC and its officers, agents, servants, employees and attorneys, and all other persons acting in concert or participation with any of them, from directly or indirectly infringing the Asserted Patents in any manner;

F. A judgment that this is an exceptional case under 35 U.S.C. § 285 and awarding E. Mishan & Sons, Inc. its reasonable attorneys' fees and costs.

G. A judgment awarding E. Mishan & Sons, Inc. its costs under 28 U.S.C. § 1920; and

H. For such other and further relief as the Court may deem proper and just.

JURY TRIAL DEMAND

E. Mishan & Sons, Inc. hereby requests a trial by jury of all issues so triable.

Respectfully submitted,

Dated: February 5, 2018

/s/ Nuala E. Droney

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