

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS**

<p>LIGHTWIRE, LLC, a California limited liability company,</p> <p style="text-align: center;">Plaintiff, v.</p> <p>SS CHOICE, LLC, a Texas limited liability company,</p> <p style="text-align: center;">Defendant.</p>	<p>Civil Action No. _____</p> <p style="text-align: center;">JURY TRIAL DEMANDED</p>
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COMPLAINT FOR PATENT INFRINGEMENT

Lightwire, LLC (“Plaintiff”) brings this complaint against SS Choice, LLC (“SS Choice” or “Defendant”). Plaintiff alleges as follows:

NATURE OF THE ACTION

1. This is an action under 35 U.S.C. § 271 for infringement of United States Patent No. 7,614,402 (“the ‘402 Patent”).

THE PARTIES

2. Plaintiff Lightwire is a California limited liability company having a principal place of business at 177 E. Colorado Blvd., Suite 200, Pasadena, California 91101.

3. Defendant SS Choice is a Texas limited liability company having a principal place of business at 525 Commerce Street, Suite 100, Southlake, Texas 76092.

JURISDICTION AND VENUE

4. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a) because it arises under United States Patent law.

5. This Court has personal jurisdiction over the Defendant because, *inter alia*, it resides in the State of Texas; regularly conducts business in the State of Texas; and continues to commit acts of patent infringement in the State of Texas including by making, using, offering to sell, and/or selling Accused Products within the State of Texas and this district.

6. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391(b), 1391(c) and 1400(b). Defendant is subject to this Court's personal jurisdiction because, *inter alia*, Defendant has committed and continues to commit acts of patent infringement including making, using, offering to sell, and/or selling Accused Products in this district, and/or importing Accused Products into this district; Defendant has a principal place of business in this judicial district, and Defendant employs personnel in this judicial district.

FACTS

7. Plaintiff is the owner, by assignment, of U.S. Patent No. 7,614,402 ("the '402" Patent), entitled "Simulated Cigarette," which was duly and legally issued on November 10, 2009. A true and correct copy of which is attached as Exhibit A.

8. The claims of the '402 Patent are valid and enforceable.

COUNT I: CLAIM FOR PATENT INFRINGEMENT **UNDER 35 U.S.C. § 271(a) and (b)**

9. Plaintiff hereby incorporates by reference the allegations of paragraphs 1 through 8 of this Complaint as if fully set forth herein.

10. Claim 1 of the '402 Patent covers "a simulated cigarette for use as a smoking cessation aid, said simulated cigarette comprising a cylindrical member having a predetermined size and shape, said cylindrical member having a first and second portion; a filter member formed at an end of said first portion of said cylindrical member, said filter member having a predetermined size and shape

capable of being comfortably held between a user's lips; (c) an opening within an end of said filter member; (d) a hollow portion formed within said filter member; and (e) a flavoring means placed within said hollow portion, said flavoring means capable of dispersing flavoring through said opening of said filter member and into a user's mouth upon the application of pressure to said filter member to aid in the reduction of a user's urge for a cigarette; wherein said hollow portion comprises a plastic tube which extends through said filter member for containing said flavoring means therein.”

11. Defendant manufactures, imports into the United States, offers for sale, and/or sells cigarette-like devices, which infringe at least Claim 1 of the '402 Patent (hereafter “Accused Product”).

12. Defendant’s Accused Product includes, without limitation, 7’s Micro Battery and Micro Cartridges.

13. A claim chart comparing Claim 1 of the '402 Patent to the Accused Product is attached as Exhibit B.

14. The Accused Product includes a two-piece cartomizer system that, when used, simulates holding an actual cigarette in a user’s mouth and/or hand. See Exhibit B, pages 1 – 3.

15. The Accused Product is in the shape of a tube of predetermined size, the tube including a fluid storage portion and a power storage portion that stores, amongst other elements, the battery. See Exhibit B, page 4.

16. The Accused Product includes a filter member meant to replicate the sensation of a filter of a traditional cigarette. See Exhibit B, page 4.

17. The Accused Product includes a simulated filter outlet. See Exhibit B, page 5.

18. The Accused Product includes a hollow space within the fluid storage portion wherein fluid is stored. See Exhibit B, page 5.

19. The Accused Product includes liquid flavorings stored within the hollow space of the fluid storage portion. See Exhibit B, page 6.

20. The Accused Product includes a window exposing a plastic tube within the filter member for gauging an amount of fluid remaining in the fluid storage portion. See Exhibit B, page 7.

21. Each one of the elements included in the Accused Product, itemized in paragraphs 15–22 above, is an element in Claim 1 of the ‘402 Patent.

22. Defendant has indirectly infringed and continues to indirectly infringe one or more claims of the ‘402 Patent, including at least Claim 1, by, among other things, actively inducing infringement through customers’ use of the Accused Product to practice the claims of the ‘402 Patent. Specifically, Defendant has been on notice of the ‘402 Patent since at least February 9, 2018. Further Defendant, knowingly and with specific intent, induced Defendants’ customers of the Accused Product who purchase and/or operate such products in accordance with Defendant’s instructions and the capabilities built into the Accused Product.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for relief against Defendant as follows:

A. In favor of Plaintiff that Defendant has infringed one or more claims of the ‘402 Patent, either literally or under the doctrine of equivalents;

B. In favor of Plaintiff that Defendant has induced infringement of one or more claims of the ‘402 Patent;

C. Requiring Defendant to pay Plaintiff its damages, costs, expenses, and prejudgment and post-judgment interest for Defendant’s infringement of the ‘402 Patent as provided under 35 U.S.C. § 284, but not less than a reasonable royalty; and

D. For such other and further relief, as may be just and equitable.

JURY DEMAND

Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiff hereby demands a trial by jury on all issues triable of right by a jury.

Respectfully submitted,

Dated: February 19th, 2018

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