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IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA

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LIGHTWIRE, LLC,
a California limited liability company

Case No.:

CLERK, US DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA, FLORIDA

Plaintiff,

8:18cv722T-36-TEW

v.

LEAD BY SALES, LLC
a Florida limited liability company

Defendant.

COMPLAINT FOR PATENT INFRINGEMENT
(Jury Trial Demanded)
(Injunctive Relief Sought)

LIGHTWIRE, LLC (“Plaintiff”) brings this complaint against LEAD BY SALES, LLC (“Defendant”), and as grounds therefore 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”) (copy attached as **Exhibit “A”**).

THE PARTIES

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

3. Defendant is a Florida limited liability company having a principal place of business of 1827 Industrial Blvd., Tarpon Springs, Florida 34688.

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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 has a principal place of business in the State of Florida; regularly conducts business in the State of Florida; is a Florida limited liability company; and continues to commit acts of patent infringement in the State of Florida, including by making, using, offering to sell, and/or selling infringing products within the State of Florida, including in 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’s principal place of business is in this district, Defendant has committed and continues to commit acts of patent infringement including making, using, offering to sell, and/or selling infringing products in this district, and/or importing infringing products into this district; Defendant has a regular and established place of business in this district, and Defendant employs personnel in this district.

‘402 PATENT

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 the ‘402 Patent is attached as Exhibit A.

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

9. 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.”

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

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

11. Defendant manufactures, imports into the United States, offers for sale, and/or sells cigarette-like devices under the brand name “FLING” (hereinafter the “FLING Product”) which infringe at least Claim 1 of the ‘402 Patent.

12. Defendant’s FLING Product includes, without limitation, all of the elements claimed in claim 1 of the ‘402 Patent.

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

14. Such infringement has been and is willful and deliberate.

15. The Plaintiff has been damaged by the acts of infringement complained of herein.

16. The Plaintiff has no adequate remedy without intervention of this Court.

17. This case is “exceptional” within the meaning of 35 U.S.C. § 285.

COUNT II: CLAIM FOR PATENT INFRINGEMENT
UNDER 35 U.S.C. § 271(a) and (b) (CIRRUS Brand)

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

19. Defendant manufactures, imports into the United States, offers for sale, and/or sells cigarette-like devices under the brand name “CIRRUS” (hereinafter the “CIRRUS Product”) which infringe at least Claim 1 of the ‘402 Patent.

20. Defendant’s CIRRUS Product includes, without limitation, all of the elements claimed in claim 1 of the ‘402 Patent.

21. A claim chart comparing Claim 1 of the ‘402 Patent to the CIRRUS Product is attached as Exhibit C.

22. Such infringement has been and is willful and deliberate.

23. The Plaintiff has been damaged by the acts of infringement complained of herein.

24. The Plaintiff has no adequate remedy without intervention of this Court.

25. This case is “exceptional” within the meaning of 35 U.S.C. § 285.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for the following relief against Defendant as follows:

A. A judgment in favor of Plaintiff that Defendant’s FLING and CIRRUS Products infringe one or more claims of the ‘402 Patent, either literally or under the doctrine of equivalents;

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

C. A judgment in favor of Plaintiff requiring Defendant to pay Plaintiff its damages, costs, expenses and pre-judgment 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;

D. An injunction in favor of Plaintiff prohibiting Defendant from further engaging in the acts of infringement complained of herein;

E. An award of attorney's fees and costs as permitted by 35 U.S.C. § 285; and

F. Such other and further relief as may be just and equitable.

JURY TRIAL 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.

By: /s/ Kevin P. Crosby
Kevin P. Crosby, Esq.
Florida Bar No. 654360
kevin.crosby@gray-robinson.com
GRAYROBINSON, P.A.
Counsel for Plaintiff Lightwire, LLC
401 East Las Olas Boulevard, Suite 1000
Fort Lauderdale, Florida 33301
Telephone: (954) 761-8111
Facsimile: (954) 761-8112