



**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 Florida; regularly conducts business in the State of Florida; and continues to commit acts of patent infringement in the State of Florida including by making, using, offering to sell, and/or selling Accused Products within the State of Florida 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*, Defendants have committed and continue 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 the '402 Patent, entitled "Simulated Cigarette," which was duly and legally issued on November 10<sup>th</sup>, 2009 by the United States Patent and Trademark Office ("USPTO").

8. A copy of the '402 Patent is attached to this Complaint as Exhibit A.

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

**COUNT I: CLAIM FOR PATENT INFRINGEMENT**  
**UNDER 35 U.S.C. § 271(b) ('402 PATENT)**

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

11. Claim 1 of the '402 Patent covers "a simulated cigarette for use as a smoking cessation aid, said simulated cigarette comprising: (a) a cylindrical member having a predetermined size and shape, said cylindrical member having a first and second portion, (b) 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.”

12. Defendant manufactures, imports into the United States, offers for sale, and/or sells simulated cigarettes, which infringe at least Claim 1 of the ‘402 Patent (hereafter “Accused Product(s)”).

13. Defendant’s Accused Product(s) include, without limitation V2 Standard Kit, V2 Standard Kit – EX Series, V2EX Battery and V2EX Cartridges.

14. A claim chart comparing Claim 1 of the ‘402 Patent to the Accused Product(s) is attached as Exhibit B.

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

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

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

18. Plaintiff has been, and will continue to be, irreparably harmed by Defendant’s ongoing infringement of the ‘402 Patent.

19. As a direct and proximate result of Defendant’s infringement of the ‘402 Patent, Plaintiff has been and will continue to be damaged in an amount yet to be determined.

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

### **PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff prays for relief against Defendant as follows:

A. A judgment 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. 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.

**DEMAND FOR TRIAL BY JURY**

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiff hereby demands a jury trial on all issues and causes of action triable to a jury.

Dated: August 22, 2018

Respectfully submitted,

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