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Attorney(s) for Plaintiff

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

RJ BRANDS, LLC D/B/A CHEFMAN	)	
	)	
Plaintiff,	)	CIVIL ACTION NO.: 2:20-CV-13808
	)	
v.	)	
	)	
CONAIR CORPORATION	)	**JURY TRIAL DEMANDED**
Defendant.	)	

AMENDED COMPLAINT

Plaintiff RJ BRANDS, LLC, doing business as CHEFMAN ("Plaintiff" or "Chefman"), by and through its attorneys, hereby alleges for its Amended Complaint against Conair Corporation ("Defendant" or "Conair") on personal knowledge as to its own activities and on information and belief as to all other matters, as follows:

NATURE OF THE ACTION

1. This is an action for a declaratory judgment of non-infringement and invalidity of United States Design Patent No. D848,197 (the "'197 Patent") arising under

the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, and the patent laws of the United States, 35 U.S.C. § 1 et seq.

PARTIES

2. Plaintiff is a New Jersey limited liability company with a place of business at 200 Performance Drive, Mahwah, New Jersey 07495. Plaintiff manufactures, imports and sells various home appliances and kitchen products.

3. Upon information and belief, Defendant Conair Corporation is a Delaware corporation with a place of business at One Cummings Point Road, Stamford, Connecticut 06902. Defendant may be served with process through its agent, CT Corporation System, at 67 Burnside Avenue, East Hartford, Connecticut 06108-3408. Upon information and belief, Defendant sells small appliances and personal care products.

JURISDICTION AND VENUE

4. This action arises under the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, and the provisions of the Patent Laws of the United States of America, Title 35 of the United States Code, §§ 100, *et seq*., due to Defendant's assertion of infringement of the '197 Patent against Plaintiff.

5. Subject matter jurisdiction over the claims is conferred upon this Court by 28 U.S.C. § 2201 and 2202 (declaratory judgment), 28 U.S.C. § 1331 (federal question jurisdiction), 28 U.S.C. § 1332 (diversity jurisdiction); and 28 U.S.C. § 1338(a) (patent jurisdiction).

6. Plaintiff is a citizen of the State of New Jersey. Upon information and belief, Defendant is a citizen of the States of Connecticut and Delaware. The amount in controversy exceeds $75,000, exclusive of interest and costs.

7. This Court also has personal jurisdiction over Defendant because, upon information and belief, Defendant has committed acts giving rise to this action within this District. Plaintiff markets, sells, and/or offers for sale the Accused Product (defined *infra*) nationally, including in New Jersey. Moreover, Plaintiff's principal place of business, through which it designs, imports, processes, sells, offers for sale and ships the Accused Product, is within this State and in this District. Therefore, Plaintiff has established minimum contacts with this forum. Defendant also regularly conducts business in this forum, engages in other persistent courses of conduct and derives substantial revenue from products and/or services provided in this District, demonstrating that Defendant has purposefully established substantial, continuous and systematic contacts with New Jersey.

8. The exercise of personal jurisdiction comports with Defendant's right to due process, because it has purposefully availed itself of the privilege of conducting activities nationally, including within the District of New Jersey, such that it should reasonably anticipate being haled into court here. Moreover, Defendant has caused damages to Plaintiff in this District, as a result of Defendant's interference with Plaintiff's ability to sell and ship the Accused Product from this District.

9. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) and (c) and § 1400(b) at least because Plaintiff's place of business is within this District, and both Plaintiff and Defendant transact business within this District. Moreover, Defendant has directed its enforcement activities at the District and a substantial part of the events giving rise to the claim occurred in this District.

THE PATENT-IN-SUIT

10. The '197 Patent, entitled "Oven," names Chi Ho Kurt Wong as the inventor

and lists an issue date of May 14, 2019. Attached as Exhibit A is a true and correct copy of the '197 Patent.

11. The '197 Patent is directed to "the ornamental design for an oven."

12. On information and belief, Defendant is the assignee of all right, title and interest in the '197 Patent.

DEFENDANT'S AIRFRYER OVENS

13. Defendant sells a product called the "Cuisinart TOA-60 Convection Toaster Oven Airfryer," which appears to be an embodiment of the claims of the '197 Patent. On information and belief, this product was available for purchase since at least as early as August 9, 2016.

EXISTENCE OF AN ACTUAL CONTROVERSY

14. There is an actual controversy within the jurisdiction of this Court under 28 U.S.C. §§ 2201 and 2202.

15. Plaintiff currently sells and offers for sale its Chefman RJ50-M and RJ-50-SS-M20, also known as the "Chefman Air Fryer Toaster Oven" (collectively, the "Accused Product") on various websites and brick and mortar retailers. A true and correct copy of a listing for the Accused Product on Amazon.com is attached hereto as Exhibit B.

16. On September 1, 2020, Defendant sent a letter to Plaintiff received by Plaintiff in this District, alleging patent infringement of the '197 Patent, based on Plaintiff's sale of the Accused Product. Defendant's September 1, 2020 letter was sufficient to establish an actual controversy within the jurisdiction of this Court between the parties. In particular, Defendant accused Plaintiff of infringing the '197 Patent and demanded that "Chefman immediately cease and desist all sales and distribution of the

infringing oven."

17. Based on the foregoing, a justiciable controversy exists between Plaintiff and Defendant as to whether Plaintiff's Accused Product infringes the '197 Patent and whether the '197 Patent is valid.

18. Absent a declaration of non-infringement and/or invalidity, Defendant will continue to wrongfully allege that Plaintiff's Accused Product infringes the '197 Patent, and thereby cause irreparable injury and damage to Plaintiff.

COUNT ONE: DECLARATION OF INVALIDITY OF U.S. PATENT NO. D848,197 UNDER 35 U.S.C. § 112(a) FOR LACK OF WRITTEN DESCRIPTION AND ENABLEMENT

19. Plaintiff re-alleges and incorporates the allegations in each of the paragraphs of this complaint as if fully set forth herein.

20. Plaintiff is entitled to a declaratory judgment that the '197 Patent is invalid under 35 U.S.C. § 112(a) as lacking written description and enablement for certain limitations of the claimed design.

21. On May 25, 2017, the date of filing of the application corresponding to the '197 Patent, Conair included numerous drawings. However none of the drawings in the application, as filed, included surface shading.

22. Based on the lack of appropriate surface shading in the drawings as filed, Defendant's design was not enabled at the time of filing.

23. The drawings included, for example, Fig. 1, showing a perspective view:

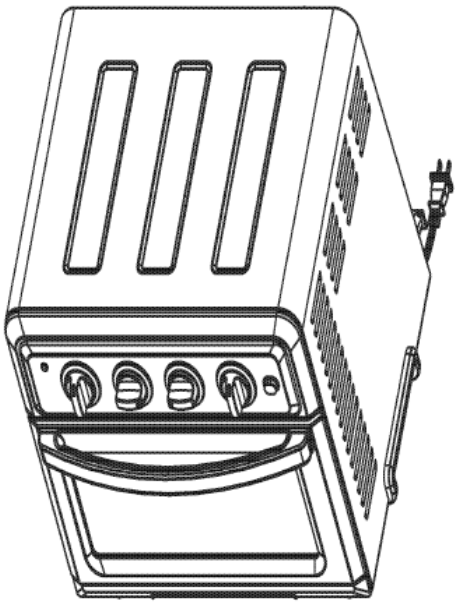


FIG. 1

24. FIG. 1 included three rectangular bars running front to back at the top. It is unclear whether these bars are recessed within the top of the product, or protrude above it. Moreover, it is unclear, whether these are openings.

25. FIG. 3 as filed, shown below, illustrates, a large rectangular surface in the bottom half of the drawing, and an inverted "U" shape on the top half. It is unclear whether such surfaces protrude outward, or are recessed within the wall. FIGS. 4, 5 and 7 contain similar deficiencies.

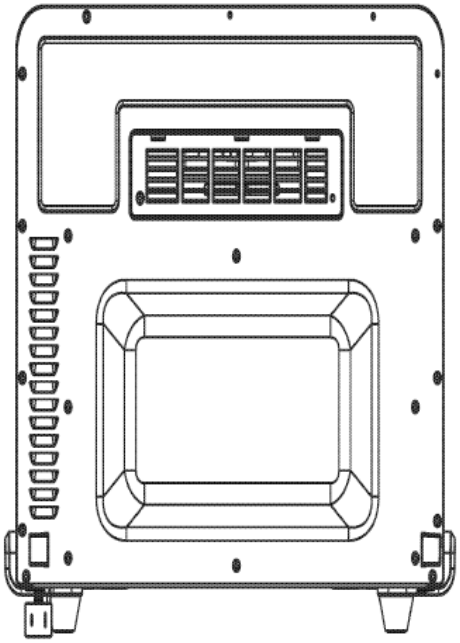


FIG. 3

26. In an Office Action dated April 16, 2018, the Examiner of the '197 Patent rejected the claims under § 112, explaining as follows:

> The claim is indefinite and nonenabling because the surfaces shown in FIGS. 1, 3, 4, 5, and 7 are not understood. For example, it is unclear whether or not said surfaces are recessed or opened; the appearance of said surfaces is hereby left to conjecture. At the same time, it should be understood that when a surface or portion of an article is disclosed in full lines in the drawing it is considered part of the claimed design and its shape and appearance must be clearly and accurately depicted in order to satisfy the requirements of 35 U.S.C. 112(a) and (b) (or for applications filed prior to September 16, 2012, the first and second paragraphs of

35 U.S.C. 112). When the appearance and shape or configuration of the design for which protection is sought cannot be determined or understood due to an inadequate visual disclosure, then the claim, which incorporates the visual disclosure, fails to particularly point out and distinctly claim the subject matter the inventor(s) regard as their invention, in violation of the second paragraph of 35 U.S.C. 112(b) (or for applications filed prior to September 16, 2012, 35 U.S.C. 112, second paragraph). Furthermore, such disclosure also fails to enable a designer of ordinary skill in the art to make an article having the shape and appearance of the design for which protection is sought. Therefore, this rejection of the claim under both 35 U.S.C. 112(a) and (b) (or for applications filed prior to September 16, 2012, the first and second paragraphs of 35 U.S.C. 112) is warranted, *see illustrations below*.

27. For example, the Examiner painstakingly annotated the originally filed figures, explaining how they fail to satisfy 35 USC § 112.

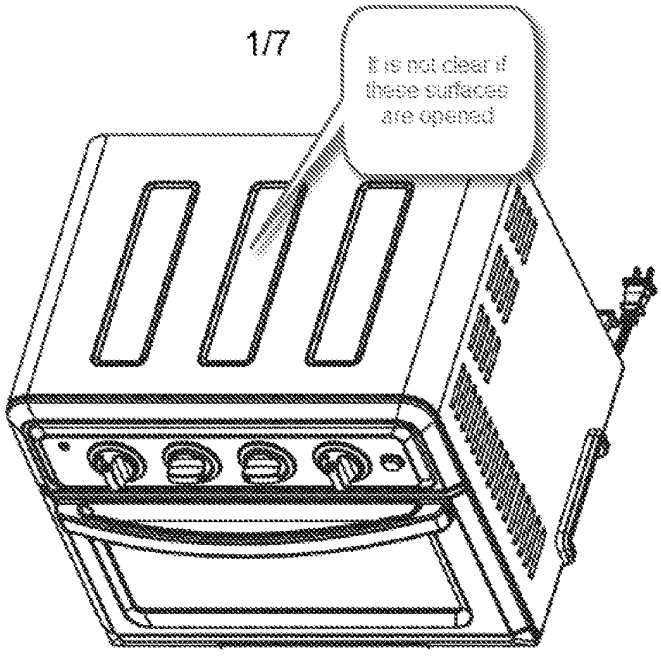


FIG. 1

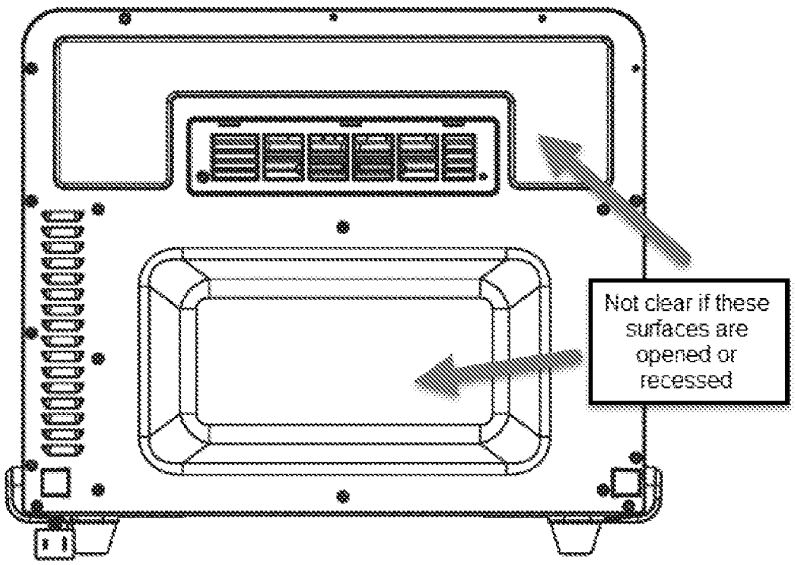


FIG. 3

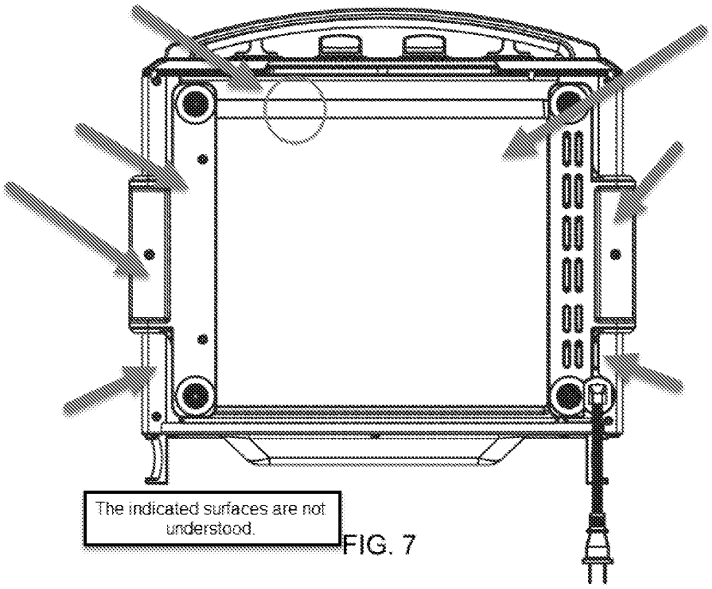


FIG. 7

28. In response to the Examiner's rejection, Conair filed amended drawings on August 8, 2018, adding straight-line surface shading. These amended drawings are the ones found in the issued '197 Patent.

29. Defendant's addition of surface shading constitutes new matter and renders the '197 Patent invalid.

30. Defendant's amended surface shading was not evident from the drawings as filed, and therefore added new matter to the application.

31. The addition of surface shading constituted addition of non-enabled features.

32. The addition of surface shading constituted addition of features lacking written description.

33. For at least these reasons, the claimed design of the '197 Patent is invalid under 35 USC § 112(a) for lack of enablement and written description.

COUNT TWO: DECLARATION OF INVALIDITY OF U.S. PATENT NO. D848,197 UNDER 35 U.S.C. § 112(b) AS INDEFINITE

34. Plaintiff is entitled to a declaratory judgment that the '197 Patent is invalid under 35 U.S.C. § 112(b) as being indefinite.

35. The claim of the '197 Patent is indefinite for failing to particularly point and distinctly claim the subject matter regarded as the invention. In particular, certain surfaces of the figures in the '197 Patent are unclear as to whether they are open and recessed, or closed and raised.

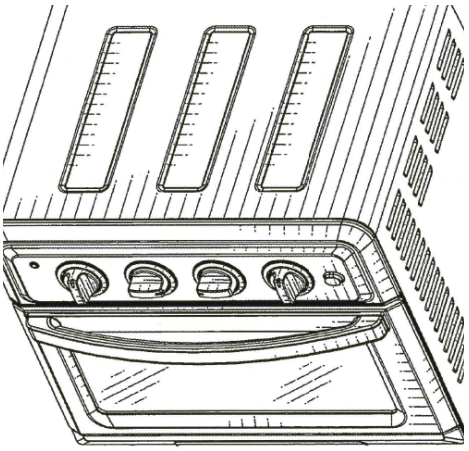


FIG. 1

36. For example, on the top portion of the design in the '197 Patent, it is unclear whether the surface of the three parallel bars are recessed, or raised. This is illustrated in FIG. 1, above.

37. In FIG. 2, shown below, it is unclear whether the surface of the border surrounding the knobs is recessed or protruding. In certain figures, like FIG. 1, it appears to be protruding and raised above the surface, while in others, such as FIG. 2, it appears to be recessed inward and sunken in.

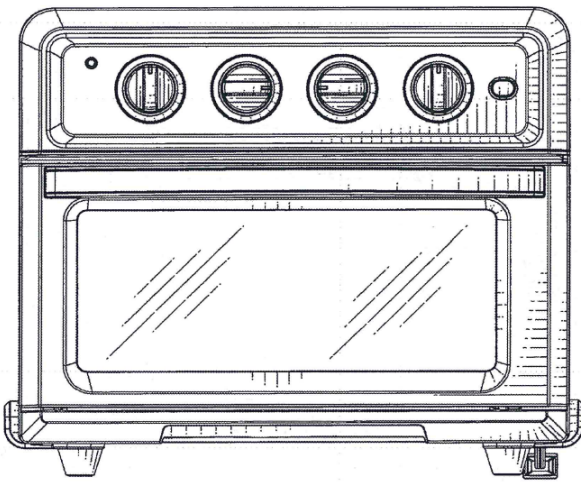
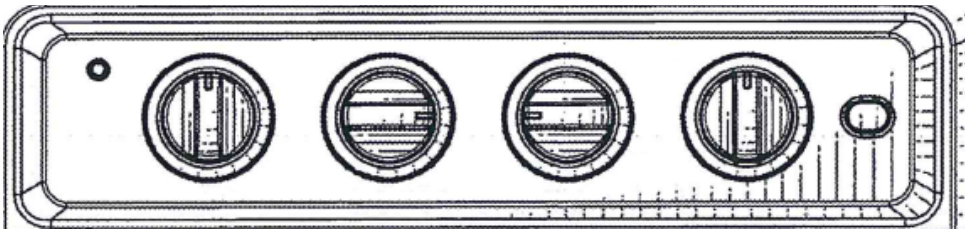


FIG. 2



38. In FIG. 3, shown below, it is unclear whether the large rectangular surface on the bottom half of the drawing is recessed inward or protruding outward. In FIGS. 4-5, it is unclear whether the vents open upward, or downward.

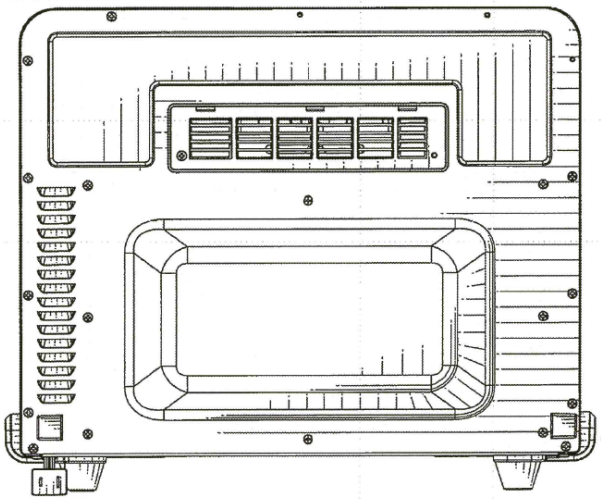


FIG. 3

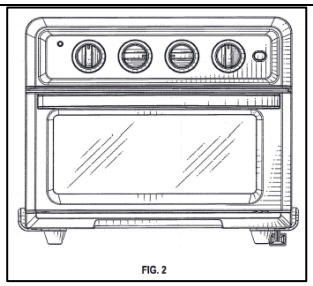
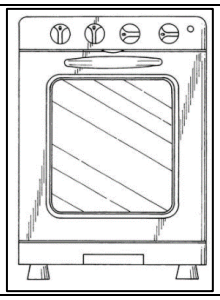
39. For at least the above reasons, the claimed design of the '197 Patent is invalid under 35 U.S.C. § 112(b) as indefinite.

COUNT THREE: DECLARATION OF INVALIDITY OF U.S. PATENT NO. D848,197 UNDER 35 USC § 103 AS BEING OBVIOUS IN VIEW OF PRIOR ART

40. Plaintiff is entitled to a declaratory judgment that the claimed design of the '197 Patent is invalid under 35 U.S.C. § 103 as obvious in view of various prior art references, alone or in combination. For example, the following references, in addition to

numerous others, render the '197 obvious: (i) CN 303822869, attached hereto as Exhibit D; (ii) U.S. Patent No. D539,593, attached hereto as Exhibit E; and (iii) U.S. Patent No. D708,005, attached hereto as Exhibit F.

41. As shown below, the prior art ovens illustrate the claimed features of the '197 Patent:

'197 Patent	CN303822869	U.S. Pat. No. D539593
		

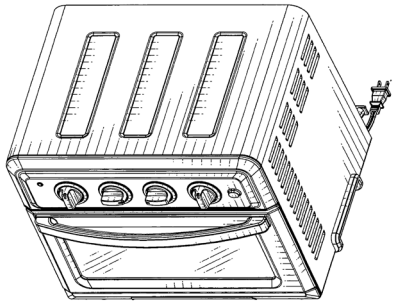
42. Any differences between the claimed invention of the '197 Patent and the prior art are such that the claimed invention as a whole would have been obvious before the effective filing date of the '197 Patent to a person having ordinary skill in the art to which the claimed invention pertains.

COUNT FOUR: DECLARATION OF NON-INFRINGEMENT OF U.S. PATENT NO. D848,197 BY THE ACCUSED PRODUCT

43. Plaintiff re-alleges and incorporates the allegations of each of the paragraphs of this complaint as if fully set forth herein.

44. Plaintiff's Accused Product does not infringe, has not induced others to infringe, and does not contribute to the infringement, directly or indirectly, of any valid claim of the '197 Patent, and Plaintiff is entitled to a declaratory judgment reflecting the same.

45. For example, Plaintiff's Accused Products do not include the following features of the '197 Patent:

FIG. 1	
'197 Patent	Accused Product
 FIG. 1	

46. In FIG. 1, the Accused Product does not include the three rectangular bars on the top, nor does it include any rectangular bars from front to back. Further, the shape of the handle is distinct. Whereas the Accused Product is perfectly rounded and semi-circular, the handle in the '197 Patent includes a pair of corners, where the handle ends first proceed straight outward, and then curve.

FIG. 2	
'197 Patent	Accused Product

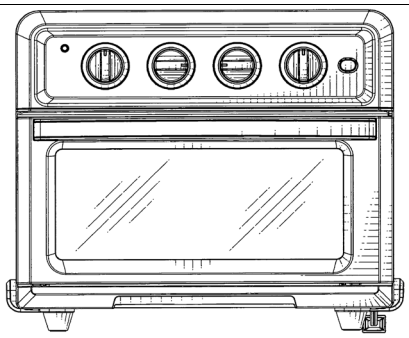


FIG. 2

47. In FIG. 2, the Accused Product does not include the button on the right side of the rightmost knob. Further the knobs of the Accused Product are perfectly circular, whereas those of the '197 Patent include a rectangular gripping member. Moreover, the Accused Product does not include a border around the knobs, unlike the '197 Patent. Yet further, the '197 Patent includes a prominent indentation below the door, whereas this feature is lacking from the Accused Product.

48. FIG. 2 also includes bumpers on the outermost portions of the bottom on the left and right side, and prominent legs. The Accused Product lacks such features. Finally, the Accused Product does not include a horizontal line at the bottom portion of the door, whereas the '197 Patent includes this feature.

49. Additional differences may be found in FIGS. 3-7.

50. For at least these reasons, the Accused Product does not infringe the claim of the '197 Patent.

51. For at least the above reasons, Plaintiff is entitled to a judgment declaring that it does not infringe, and has not infringed, the claim of the '197 Patent.

COUNT FIVE: DECLARATION OF UNENFORCEABILITY OF U.S. PATENT NO. D848,197 DUE TO INEQUITABLE CONDUCT

52. Plaintiff re-alleges and incorporates the allegations of each of the paragraphs of this complaint as if fully set forth herein.

53. Upon information and belief, Conair committed inequitable conduct in the prosecution of the application that ultimately issued into the '197 Patent (the "Conair Application").

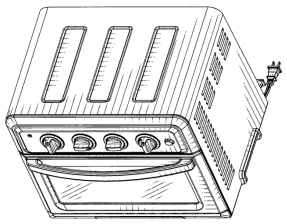
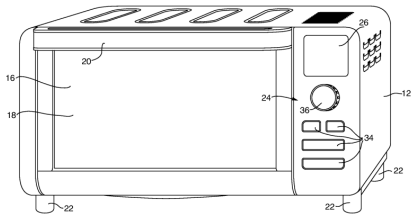
54. Conair is a well-known manufacturer of ovens, and has intimate knowledge not only of its own products and patents, but those of its competitors.

55. When Conair filed the Conair Application, it was aware of and failed to disclose multiple material references of which it was aware. Specifically, Conair is the owner of each of the following patents and published patent applications for ovens similar to the oven in the '197 Patent: U.S. Pat. Nos. D708,005 (the "'005 Patent"), D533,390 (the "'390 Patent"), 9,756,981 (the "'981 Patent"), U.S. Patent Pub. Nos. 2016/0033141 (the "'141 Application"), 2016/0029829 (the "'829 Application"), 2010/0176114 (the "'114 Application"), 2015/040774 (the "'774 Application"), and Chinese Patent No. CN203828757U (collectively, the "Conair Prior Art"). Each of the references comprising the Conair Prior Art was issued or published prior to the filing date of the Conair Application. The reference comprising the Conair Prior Art is incorporated herein by reference.

56. Conair was aware of the Conair Prior Art at the time it filed the Conair Application and was aware of the Conair Prior Art throughout the prosecution of the Conair Application.

57. With respect to each of the references comprising the Conair Prior Art, such references are material to the patentability of the ’197 Patent. Had the USPTO been aware of any of the references comprising the Conair Prior Art during the prosecution of the ’197 Patent, the ’197 Patent would not have issued.

58. For example, the ’774 Application is clearly material to the ’197 Patent:

’197 Patent	‘775 Application
 FIG. 1	 FIG. 1

59.

60. As can be seen, the above have multiple similarities including being ovens that include (1) rectangular doors; (2) that rotate about a bottom hinge and open from the top; (3) glass doors; (4) a horizontal handlebar extending the length of the door and being disposed at the top of the doors; (5) multiple parallel rectangular vents at the top extending from front to rear of the oven. Other similarities are made clear from the other views of the respective publications such as four pegs at the bottom of the ovens.

61. The failure to cite the ’775 Application is a but for cause of the ’197 Patent issuing. Had the ’775 Application been cited in the prosecution of the ’197 Patent, the ’197 Patent would have been rejected by the Examiner as obvious and would not have issued. The Examiner would have rejected the ’197 Patent as obvious either in view of the ’775 Application alone or in view of the ’775 Application in combination with other references that comprise the Conair Prior Art.

62. Not only was Conair aware of the Conair Prior Art at the time it filed the Conair application, but prosecution counsel was also aware of certain references comprising the Conair Prior Art. The Conair Application was filed and prosecuted by the law firm McCormick, Paulding & Huber LLP ("McCormick"). The application that issued as the '005 Patent was also filed and prosecuted by McCormick. The '005 Patent issued prior to the filing date of the Conair Application. The '390 Patent was filed and prosecuted by Conair in-house counsel, Mr. Lawrence Cruz ("Mr. Cruz"). The '114 Application was prosecuted by Mr. Cruz.

63. Mr. Cruz, the Chief Patent Counsel at Conair, was aware of the Conair Prior Art at the time of filing of the Conair Application throughout the prosecution of the Conair Application. Mr. Cruz was a patent attorney at McCormick between 1998 and 2000 and has been in-house patent counsel at Conair since 2002. Mr. Cruz is listed on the Application Data Sheet in multiple patents and published applications comprising the Conair Prior Art including the '981 Patent, the '141 Application, the '829 Application, and the '774 Application. Mr. Cruz is listed as the prosecuting attorney at least on the '390 Patent, and the '114 Application.

64. Mr. Cruz was aware of multiple applications for ovens that were material to the '197 Patent including each reference comprising the Conair Prior Art. As mentioned above, Mr. Cruz was involved in the prosecution of multiple applications comprising the Conair Prior Art.

65. McCormick was aware of multiple applications for ovens that were material to the '197 Patent.

66. Mr. Cruz, who personally prosecuted multiple oven applications for Conair

that were material to the '197 Patent and issued prior to the filing date of the Conair Application, had intent to deceive the USPTO in not citing any of the Conair Prior Art. Mr. Cruz was aware of each of the references comprising the Conair Prior Art. More specifically, Mr. Cruz's job is to obtain issued patents. Mr. Cruz was aware that citing material references to the USPTO would make it much more likely that the patent would not be issued. Examiners rarely make substantive rejections in design patent applications unless a material reference is cited in an information disclosure statement. Mr. Cruz had incentive to withhold material references from the USPTO because his job was to obtain patents and he was aware that if he could not obtain such patents, Conair would not be able to stifle its competition by threatening such competitors with suit, as it did in this case. Thus, Mr. Cruz deliberately withheld multiple references, including the Conair Prior Art, from the USPTO.

67. McCormick prosecuted the '005 Patent. The '005 Patent was issued on July 1, 2014, prior to the filing date of the Conair Application on May 25, 2017. In not citing the '005 Patent, McCormick, by its patent attorney Ms. Marina F. Cunningham, had intent to deceive the USPTO. Aside from the '005 Patent, McCormick and Ms. Cunningham were aware that Conair is a large company and had multiple patent applications and patents that were material to the patentability of the '197 Patent. Information Disclosure Statements are filed by patent prosecution attorneys in nearly every application for large companies such as Conair, especially when such company has been operating in a particular space (ovens) for many years. McCormick was aware that Conair was operating in the oven space for years and had multiple oven related patents and applications that were material to the patentability of the '197 Patent. Conair was an important client for

McCormick and Ms. Cunningham and they were aware that citing material references to the USPTO would make it less likely that such patent would not be issued. Therefore, McCormick and Ms. Cunningham deliberately failed to cite the '005 Patent and other material references of which they were aware in prosecuting the Conair Application. Thus, McCormick and Ms. Cunningham had intent to deceive the USPTO in failing to cite the '005 Patent and other material references in prosecuting the Conair Application.

68. Conair failed to file any Information Disclosure Statements listing any reference that may be material to patentability. It is not possible that a large corporation with a strong market position in ovens is unaware of *any* relevant prior art.

69. Prior to launching a product, it is standard practice for in-house counsel or outside counsel to conduct a freedom to operate search, a search for patents that the product may infringe. Prior to launching its products, Conair conducts such searches. Prior to filing a patent application, it is standard practice for in-house counsel or outside counsel to conduct a patentability search, a search for patents and other references which may anticipate or render obvious the invention of the patent application. Conair conducted multiple freedom to operate, patentability and other searches relating to ovens prior to filing the Conair Application (the "Search Results"). The Search Results included references that are material to the patentability of the '197 Patent. Conair deliberately withheld the Search Results from the USPTO. The Search Results included references that were material to the '197 Patent. The USPTO would not have issued the '197 Patent but for Conair withholding the Search Results. The USPTO would have rejected the '197 Patent as anticipated or obvious in view of the references in the Search Results. Conair had the specific intent to deceive the USPTO in withholding the Search Results because

it knew the USPTO would not issue the '197 Patent had it cited the references in the Search Results.

70. Therefore, Conair has breached its duty of candor and good faith to the USPTO by withholding known material information including the Conair Prior Art, and the Search Results. Such action was clearly done with a specific intent to deceive the USPTO, so that a patent may issue therefrom, namely the '197 Patent.

71. For at least these reasons, the '197 Patent is unenforceable due to inequitable conduct by Conair.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court enter judgment against Defendant as follows:

A. Adjudging that Plaintiff has not infringed and is not infringing, either directly or indirectly, the '197 Patent, in violation of 35 U.S.C. § 271;

B. Adjudging that the '197 Patent is invalid and unenforceable;

C. Awarding a permanent injunction enjoining Defendant and its affiliates, officers, agents, employees, attorneys, and all other persons acting in concert with Defendant from interfering with Plaintiff's business or making any claims of infringement;

D. Issuing a judgment declaring that Defendant and each of its officers, directors, agents, counsel, servants, employees, and all persons in active concert or participation with any of them, be restrained and enjoined from alleging, representing, or

otherwise stating that Plaintiff infringes the '197 Patent or from instituting or initiating any action or proceeding alleging infringement of the '197 Patent against Plaintiff or any customers, manufacturers, users, importers, or sellers of Plaintiff's products;

E. Declaring Plaintiff as the prevailing party and this case as exceptional, and awarding Plaintiff their reasonable attorneys' fees, pursuant to 35 U.S.C. § 285;

F. Ordering that Defendant pay all fees, expenses, and costs associated with this action; and

G. Granting Plaintiff such further relief as this Court deems just and proper under the circumstances.

DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury on all claims and issues so triable.

Dated: December 21, 2020

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Attorney(s) for Plaintiff

CERTIFICATION PURSUANT TO LOCAL CIVIL RULES 11.2 and 40.1

I hereby certify that, to the best of my knowledge, the matter in controversy is not the subject of any other action pending in any court or of any pending arbitration or administrative proceeding.

Dated: December 21, 2020

By: s/ Andrew D. Bochner
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