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9 **UNITED STATES DISTRICT COURT**

10 **DISTRICT OF NEVADA**

11 FOHSE INC., a Nevada corporation,

12 Plaintiff,

14 vs.

15 ESTTECH INC., a Washington corporation

16 Defendant.

Case No.: 2:22-cv-00618

**COMPLAINT FOR DECLARATORY
JUDGMENT**

JURY TRIAL DEMANDED

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19 Plaintiff FOHSE Inc. ("FOHSE") brings this action for declaratory judgment against
20 ESTTECH Inc. ("ESTtech"). FOHSE seeks, among other things, declaratory judgment of
21 noninfringement of U.S. Patent No. 10,638,670 (the '670 Patent") and that certain claims of the
22 '670 Patent are invalid. FOHSE alleges as follows:

23 **JURISDICTION AND VENUE**

24 1. This action arises under the Declaratory Judgment Act, 28 U.S.C. §§ 2201 et seq.,
25 and under the Patent Laws of the United States, as enacted under Title 35 of the United States
26 Code. This Court has jurisdiction over this action pursuant to 35 U.S.C. §§ 271 et seq. and 28
27 U.S.C. §§ 1331, 1338, and 2201-2202.

28 2. ESTtech is subject to personal jurisdiction in this judicial district because ESTtech

1 has purposefully availed itself of the privilege of conducting business and receiving revenue in
2 this judicial district as ESTtech serves and solicits customers in this judicial district, and has
3 sufficient minimum contacts with Nevada to render the exercise of jurisdiction over ESTtech
4 compatible with due process.

5 3. Venue is proper in this Court under 28 U.S.C. §§ 1391(b)(2) and 1391(c), as
6 ESTtech is subject to personal jurisdiction in this District, a substantial part of the events giving
7 rise to FOHSE's claims occurred through ESTtech's actions relating to this District and a
8 substantial part of FOHSE's property and interests that are subject of this action is situated in this
9 District.

10 **NATURE OF THE ACTION**

11 4. This is an action for declaratory judgment of non-infringement and invalidity of
12 the '670 Patent. See Exhibit 1.

13 **THE PARTIES**

14 5. Plaintiff FOHSE Inc. is a Nevada corporation having a principal place of business
15 at 6280 Annie Oakley Drive, Las Vegas, Nevada 89120.

16 6. FOHSE develops and markets horticultural grow lights and related industry
17 products.

18 8. FOHSE alleges, on information and belief, that Defendant ESTtech Inc. is a
19 Washington corporation with a principal place of business at 5951 E 18th St. Suite 102 in
20 Vancouver, Washington 98661.

21 9. FOHSE alleges, on information and belief, that ESTtech was formed on April 29,
22 2016, and its business is directed to the entire United States and other jurisdictions.

23 10. ESTtech's website and marketing materials indicate that it does business in this
24 District, including by having current customers "working in relationship with ESTtech in
25 Nevada, *i.e.*, within this judicial district. Exhibit 2.

26 11. ESTtech's website and marketing materials indicate that its products and product
27 technology "are protected by" the '670 Patent. Exhibit 3.

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THE PATENT AT ISSUE

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12. The '670 Patent issued on December 3, 2019. See Ex. 1. The '670 Patent is entitled “Full Spectrum LED Plant Illumination Lamp with a Lens Structure.” Id. The '670 Patent identifies the alleged sole inventor as Baijun Wu of Yuyao, China. The '670 Patent lists its earliest foreign application priority date as May 28, 2018. Id.

13. FOHSE alleges, on information and belief, that ESTtech has not and does not mark any of its products with the patent number of the '670 Patent.

14. FOHSE alleges, on information and belief, that ESTtech has not, in any license, settlement, or other agreement, required any licensee or other third-party to mark products with the patent number of the '670 Patent.

15. ESTtech claims to have the right to exclude others and to enforce, sue, and recover damages for past and future infringement of the '670 Patent.

16. Yuyao Tanghong International Trade Co., Ltd., of Yuyao, China, is the listed applicant and listed assignee on the '670 Patent. Exhibit 1

17. The United States Patent and Trademark Office does not have any further assignment records for the '670 Patent.

18. In a Declaration of inventor Baijun Wu, dated December 27, 2019 in the prosecution file history of the '670 Patent, Baijun Wu self-identifies as “I, Baijun Wu, am a general manager of Yuyao Tanghong International Trade CO., Ltd.”, of Yuyao, China. Exhibit 4. Mr. Wu does not identify any connection or relationship with Defendant ESTTECH, Inc. in this Declaration or otherwise in the prosecution file history of the '670 Patent. See id.

19. FOHSE alleges, on information and belief, that the named owner and named assignee of the '670 Patent, Yuyao Tanghong International Trade Co., Ltd., of Yuyao, China, is the factual and true owner of the '670 Patent.

20. FOHSE alleges, on information and belief, that ESTtech lacks standing to bring claims of infringement based on the '670 Patent.

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ESTTECH'S ACTIVITIES

21. FOHSE alleges, on information and belief, that ESTtech will initiate suit against FOHSE for patent infringement and/or will initiate suits against users of FOHSE's LED grow light products for patent infringement.

22. In the Declaration of inventor Baijun Wu, dated December 27, 2019, see Ex. 4, Mr. Wu declares that “HUIZOU MINGYU HARDWARE EQUIPMENT CO LTD is a company which coping [sic] our product, and the name of the product coping our product is led grow light EST-LED-480-I. Currently, our company is suing HUIZHOU MINGYU HARDWARE EQUIPMENT CO LTD for infringement.” Id. (emphasis added).

23. In the accompanying Declaration of Brett Stevens in Support of FOHSE’s Complaint for Declaratory Judgment, the Declarant identifies communications with authorized representatives of Defendant that reveal Defendant’s intention and expectation to imminently file a lawsuit against FOHSE for the same ’670 Patent that Yuyao Tanghong International Trade Co., Ltd. states, in a sworn declaration, that it is currently suing a third-party grow light seller for alleged infringement. Furthermore, the FOHSE industrial horticultural LED grow light products are functionally similar to the EST-LED-480-I that is identified as an alleged infringing product in Mr. Wu’s sworn declaration. See Ex. 4. Thus, FOHSE operates under significant apprehension of an imminently impending lawsuit being filed against it and its interests.

24. Unless enjoined, ESTtech's actions against FOHSE and its customers threaten irreparable harm for which there is no adequate remedy of law.

25. Based on the foregoing, there is a substantial and justiciable controversy between FOHSE and ESTtech that warrants declaratory judgment.

COUNT ONE

DECLARATORY JUDGMENT OF NON-INFRINGEMENT

26. FOHSE repeats and realleges the foregoing paragraphs as if fully set forth herein.

27. ESTtech claims to have the right to exclude other and to enforce, sue and recover damages for past and future infringement of the '670 Patent.

28. ESTtech's allegations of infringement for the '670 Patent include allegations that

1 FOHSE's products and services infringe, either directly or indirectly, claims of the '670 Patent.

2 29. ESTtech's allegations indicate ESTtech believes FOHSE is liable for direct or
3 indirect infringement of the '670 Patent.

4 30. FOHSE has not infringed and does not infringe, either literally or under the
5 doctrine of equivalents, any valid and enforceable claim of the '670 Patent.

6 31. FOHSE has not infringed and does not infringe, either contributorily, by
7 inducement, or in any other manner, any valid and enforceable claim of the '670 Patent.

8 32. The products provided by FOHSE to its customers and utilized by its customers
9 do not infringe, either directly, indirectly, or contributorily, any valid claim of the '670 Patent.
10 The products provided by FOHSE do not embody all claim limitations of any claim of the '670
11 Patent including, but not limited to, the factor that the FOHSE LED cells do not incorporate a
12 "concave cavity located in a middle of the heat-dissipation plates," whereas the claims of the '670
13 Patent each and all recite and require this limitation. See Ex. 1 (the sole independent claim, claim
14 1). There are other distinguishing factors between each and all FOHSE products and the '670
15 Patent claim limitations as recited. Thus, as the FOHSE products, even on cursory facial
16 examination, do not embody all of the claim limitations of any '670 Patent claim, FOHSE and the
17 FOHSE products cannot be deemed to infringe any claim of the '670 Patent.

18 33. An actual and justiciable controversy exists between ESTtech and FOHSE
19 regarding ESTtech's allegations that FOHSE's products, services, or actions infringe the '670
20 Patent.

21 34. FOHSE is entitled to a Declaration of this Court stating that it has not infringed
22 and does not infringe the '670 Patent in any manner whatsoever.

23 35. A judicial declaration is necessary and appropriate so that FOHSE may ascertain
24 its rights regarding the '670 Patent.

25 36. FOHSE additionally seeks any further relief deemed appropriate by this Court
26 pursuant to 28 U.S.C. § 2202.

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COUNT TWO

DECLARATORY JUDGMENT OF INVALIDITY

37. FOHSE repeats and realleges the foregoing paragraphs as if fully set forth herein.

38. FOHSE contends that one or more claims of the '670 Patent are invalid and/or unenforceable for failure to meet the conditions of patentability and/or otherwise comply with the requirements of 35 U.S.C. § 1, et seq., including but not limited to §§ 101, 102, 103, and/or 112.

39. As examples, one or more claims of the '670 Patent are invalid under 35 U.S.C. § 102 as anticipated in full by at least U.S. Patent No. 7,695,161 (Zhang et al., “Heat Dissipation Device for Light Emitting Diode Module,” issued Apr. 13, 2010); U.S. Patent No. 8,052,300 (Zhang et al., “LED Lamp Including LED Mounts with Fin Arrays,” issued Nov. 8, 2011); U.S. Pat. Pub. No. 2008/0068807 (Hornig et al., “Heat-Dissipating Device for Back Light Source for Flat Panel Display”; published Mar. 20, 2008); and/or U.S. Pat. Pub. No. 2008/0106892 (Griffiths et al., “Light Fixture”; published May 8, 2008). The FOHSE products at issue, and as currently offered and sold, have also been available and on the market in the same functional form since no later than August 2017, and thus predate and thereby anticipate the ‘670 Patent, which has an earliest possible priority date of May 29, 2018. See Decl. of Brett Stevens; see Ex. 1.

40. Further, one or more claims of the '670 Patent are invalid under 35 U.S.C. § 103 as obvious over select disclosures of the above-mentioned patents and/or products in combination with each other.

41. One or more claims of the ‘670 Patent are invalid under 35 U.S.C. § 101 for patent ineligible subject matter, as the patent claims are seeking exclusive patent rights over the application of full-spectrum (sun) light to promote the growth of plants so that “the middle and lower layers of plant . . . can grow well,” Ex. 1 (‘670 Patent at Abstract), which is a patent-ineligible abstract idea. Further, the ‘670 Patent claims merely offer full-spectrum “grow light” technology that has been long practiced with horticultural products, and is well-understood, routine and conventional; these lights for plant growth thereby lack an “inventive concept” sufficient to transform the patent claim subject matter to objectively patent eligible claims.

42. One of more claims of the ‘670 Patent are invalid under 35 U.S.C. § 112 for

1 inadequate written description and/or indefiniteness in the scope of the claim language. The claim
2 language is fatally indefinite in its scope in its unclear use of a number of claim term, *inter alia*,
3 the use of the term “concave cavity” in claim 1. As but one example, claim 1 of the ’670 Patent
4 explicitly refers to a “concave cavity” amid the “middle of the heat-dissipation plates” of the
5 device. Accepted standard definitions of “concave” denote the term as “having an outline or
6 surface that curves inward in the manner of the interior bound of a circle or sphere”; however, the
7 middle chambers at issue, as depicted in FIG. 3 and FIG. 4 of the ’670 Patent, solely depict a
8 rectangular chamber with substantively straight, planar sides and right angles linking each
9 rectangular side (there are no curves, let alone concave curves). As such, the support in the
10 specification either does not disclose a concave cavity, or the claim term “concave” is not used
11 properly and it fatally unclear and indefinite in its scope, as even a person skilled in the art
12 (“PHOSITA”) would be unable to understand if they were or were not practicing the invention
13 based on the claim terms as recited. Claim 3 of the ’670 Patent refers to portions of a sealing ring
14 as “concave”—and in FIG. 3 and FIG. 4 the ring portions are, in fact, concave; however, the claim
15 recites, with reference to the sealing ring, that “the convex portions are concave,” which is abjectly
16 self-contradictory and renders both the “convex” and “concave” terms unclear and indefinite, and
17 provides no helpful guidance for the construction of the “concave” term in claim 1.

18 43. Further, with regard to the invalid nature of one or more of the ’670 Patent claims
19 under 35 U.S.C. § 112 for inadequate written description and/or indefiniteness in the scope of the
20 claim language, claim 1 also recites that the height of heat-dissipation plates “near” the concave
21 cavity (substantially rectangular partially-enclosed chamber) is taller than the heat-dissipation
22 plates away from the concave cavity. However, common dictionary definitions offer that the
23 definition of “near” is: at, within, or to a short distance or time; and a review of the ’670 Patent
24 support for the claim, at FIG. 3 and FIG. 4, see Ex. 1, reveals that the heat-dissipation plates
25 at and within the “concave cavity” are actually not taller than the heat-dissipation plates away
26 from the concave cavity; these plates near (within, at) the “concave cavity” are instead
27 markedly lesser or shorter in size than the heat-dissipation plates away from the concave cavity.
28 As such, the support in the specification either does not disclose this claim element as recited or

1 contradicts the claim as recited, or the claim term, in its reference to taller (and not taller) heat-
2 dissipation plates, is fatally unclear and indefinite in its scope, as even a person skilled in the art
3 (“PHOSITA”) would be unable to understand if they were or were not practicing the invention
4 based on the claim terms as recited.

5 44. As a result of the acts described in the foregoing paragraphs, there exists a
6 substantial controversy of sufficient immediacy and reality to warrant the issuance of a
7 declaratory judgment.

8 45. An actual and justiciable controversy exists between FOHSE and ESTtech with
9 respect to whether the '670 Patent is invalid.

10 46. A judicial declaration is necessary and appropriate so that FOHSE may ascertain
11 its rights regarding the '670 Patent.

12 47. FOHSE additionally seeks any further relief deemed appropriate by this Court
13 pursuant to 28 U.S.C. § 2202.

14 **COUNT THREE**

15 **DECLARATORY JUDGMENT OF LACK OF STATUTORY STANDING**

16 48. FOHSE repeats and realleges the foregoing paragraphs as if fully set forth hereat.

17 49. ESTtech claims to have the right to exclude other and to enforce, sue and recover
18 damages for past and future infringement of the '670 Patent.

19 50. Yuyao Tanghong International Trade Co., Ltd. of Yuyao, China, is the listed owner
20 and assignee of the '670 Patent in the assignment records of the USPTO.

21 51. The United States Patent and Trademark Office does not have any further
22 assignment records for the '670 Patent.

23 52. FOHSE alleges, on information and belief, that Yuyao Tanghong International
24 Trade Co., Ltd., and not ESTtech, is the owner of the '670 Patent.

25 53. FOHSE alleges, on information and belief, that ESTtech lacks standing to bring
26 claims of infringement based on the '670 Patent.

27 54. Despite ESTtech's lack of statutory standing for claims of infringement of the '670
28 Patent, ESTtech is alleging the FOHSE's products and services infringe the '670 Patent.

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55. As a result of the acts described in the foregoing paragraphs, there exists a substantial controversy of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

56. An actual and justiciable controversy exists between FOHSE and ESTtech with respect to whether ESTtech has statutory standing to enforce the '670 Patent.

57. A judicial declaration is necessary and appropriate so that FOHSE may ascertain its rights regarding the '670 Patent and ESTtech.

58. FOHSE additionally seeks any further relief deemed appropriate by this Court pursuant to 28 U.S.C. § 2202.

PRAYER FOR RELIEF

WHEREFORE, FOHSE requests relief as follows:

- A. A declaration that FOHSE does not infringe, induce infringement, or contributorily infringe any valid and enforceable claim of the '670 Patent;
- B. A declaration that ESTtech's claims from the '670 Patent are invalid;
- C. A declaration that ESTtech lacks statutory standing to bring patent infringement claims based on the '670 Patent;
- D. A declaration that ESTtech's infringement allegations against FOHSE's products and services are meritless and exceptional;
- E. An award of FOHSE's costs of suit, attorney's fees, and expenses in defending against the Complaint; and
- F. Such other and further relief as this Court shall deem just and proper.

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DEMAND FOR JURY TRIAL

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, FOHSE demands trial by jury on all claims and issues so triable.

DATED: April 13, 2022

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