

FILED

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2008 APR 11 PM 2:26

CLERK U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
LOS ANGELES

BY _____

Attorneys for Plaintiff ALPINE CORPORATION

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

ALPINE CORPORATION, a
California corporation,

Plaintiff,

v.

RSR SALES, INC., doing business as
ECHO VALLEY PRODUCTS, a
Michigan corporation; and DOES 1
through 10 inclusive,

Defendants.

CASE NO.:

CV08-02402 GPS

(SSx)

COMPLAINT FOR DECLARATORY
JUDGMENT AND DAMAGES

JURY TRIAL DEMANDED

1 Plaintiff ALPINE CORPORATION, by its attorneys, for its complaint
2 against RSR SALES, INC. d/b/a Echo Valley Products, complains and alleges as
3 follows:
4

5 **PARTIES**

6 1. Plaintiff ALPINE CORPORATION ("Alpine") is a corporation
7 organized and existing under the laws of the State of California, having its
8 principal place of business at 7727 Somerset Boulevard, Paramount, CA 90723

9 2. Based on information and belief, defendant RSR SALES, INC. d/b/a
10 Echo Valley Products ("RSR") is a corporation organized and existing under the
11 laws of the State of Michigan, having its principal place of business at 232
12 Haeussler Court, Ann Arbor, MI 48103.
13

14 **NATURE OF THE ACTION**

15 3. This is a declaratory judgment action for patent invalidity and non-
16 infringement arising under the patent laws of the United States, Title 35, United
17 States Code, Sections 100 et seq.
18

19 **JURISDICTION AND VENUE**

20 4. This Court has jurisdiction over the subject matter of this action
21 pursuant to 28 U.S.C. §§ 1331, 1338(a), 2201 and 2202.

22 5. This Court has personal jurisdiction over RSR by virtue of, inter alia,
23 RSR's presence in California and its continuous and systematic contacts with
24 California.

25 6. Venue is proper in this judicial district pursuant to 28 U.S.C. §§1391.
26
27
28

ACTS GIVING RISE TO THIS DECLARATORY JUDGMENT ACTION

7. Based on information and belief, RSR is the purported assignee and owner of U.S. Patent Nos. 7,252,889 ("the 889 Patent"), entitled "Glow in the Dark Gazing Globes and Other Ornaments Particularly for Gardens" issued on August 7, 2007. A true and correct copy of the 889 Patent is attached hereto as Exhibits A.

8. Based on information and belief, RSR claims to be the purported owner of all right, title, and interest in the 889 Patent. Based on information and belief, RSR has asserted that the 889 Patent was duly and legally issued.

9. RSR has created, on the part of Alpine, a reasonable apprehension that RSR will unreasonably and, without cause, pursue litigation against Alpine for alleged infringement of 889 Patent. Examples of such actions by RSR include, but are not limited to, the following: (1) RSR has charged that Alpine imports, sells, offers for sale, and/or distributes goods, including Alpine's GID Glow in the Dark Gazing Globes" ("Alpine's Goods"), that infringe the claims of the 889 Patent; and (2) RSR has sent threat letters to Alpine's Goods and stating that RSR intends to enforce its patent rights.

10. Alpine is not infringing and is not threatening to infringe the 889 Patent, directly or indirectly.

**FIRST CAUSE OF ACTION FOR
DECLARATION OF NON-INFRINGEMENT
OF U.S. PATENT NO. 7,252,889**

11. Alpine realleges and incorporates by reference, as though fully set forth herein, the allegations contained in paragraphs 1 through 10 above.

12. Based on RSR's allegations of infringement contained in its ceased and desist letter sent to Alpine, RSR necessarily considers Alpine's importation,

1 sale and/or offer for sale of Alpine's Goods to be an act of infringement. RSR has
2 thus necessarily accused Alpine of patent infringement.

3 13. None of Alpine's Goods, including the "GID Glow In The Dark
4 Gazing globes", or Alpine's importation of such goods into the United States, have
5 infringed, are presently infringing, or threaten to infringe, directly, contributorily,
6 or by way of inducement, any valid claim of the 889 Patent.

7 14. Based on RSR's allegations of infringement contained in its cease and
8 desist demand to Alpine, RSR has put Alpine in the position either of pursuing
9 behavior that RSR would allege constitutes an infringement or of abandoning a
10 course of action which Alpine believes it has a lawful right to pursue. Therefore,
11 there exists an actual controversy between the parties, and Alpine requests a
12 declaratory judgment in its favor of non-infringement of the 889 Patent.

13
14 **SECOND CAUSE OF ACTION FOR**
15 **DECLARATION OF INVALIDITY**
16 **OF U.S. PATENT NO. 7,252,889**

17 15. Alpine realleges and incorporates by reference, as though fully set
18 forth herein, the allegations contained in paragraphs 1 through 10 above.

19 16. RSR has alleged that the 889 Patent was duly and legally issued.

20 17. Based on RSR's allegations of infringement contained in its cease and
21 desist letter to Alpine, RSR necessarily considers Alpine's importation, offer for
22 sale, sale and/or distribution of the Alpine's Goods to be an act of infringement of
23 a valid U.S. Patent. RSR has thus necessarily accused Alpine of patent
24 infringement.

25 18. The claims of the 889 Patent is invalid and void at least under one or
26 more of the provisions of Title 35, United States Code, Sections 101, 102, 103,
27 104, and 112.

1 19. Based on RSR's allegations of infringement contained in its cease and
2 desist letter to Alpine, RSR has put Alpine in the position either of pursuing
3 behavior that RSR would allege constitutes an infringement of a valid U.S. Patent
4 or abandoning a course of action which Alpine believes it has a lawful right to
5 pursue. Therefore, there exists an actual controversy between the parties as to the
6 validity of the 889 Patent, and Alpine requests a declaratory judgment in its favor
7 that the 889 Patent is invalid.

8
9 **THIRD CAUSE OF ACTION FOR**
10 **INTENTIONAL INTERFERENCE**
11 **WITH ECONOMIC ADVANTAGE**

12 20. Alpine realleges and incorporates by reference, as though fully set
13 forth herein, the allegations contained in paragraphs 1 through 10 above.

14 21. Alpine has developed relationships with clients through its years of
15 business and, in so doing, received past and present economic advantages and that
16 had the probability of future economic benefit to Alpine.

17 22. Upon information and belief, RSR knowingly, and knowing the
18 results thereof, is attempting by way of its baseless claims as asserted in its cease
19 and Desist letter to Alpine, to wrongfully use it's the purported 889 Patent to
20 interfere with Alpine's relationships with its customers, in order to wrongfully gain
21 a competitive advantage.

22 23. As a direct result of RSR's misconduct, Alpine has suffered and will
23 suffer substantial damages, including but not limited to the loss of profits and the
24 ability to conduct business with the aforementioned customers, and will suffer
25 irreparable injury for which it has no adequate remedy at law. Alpine has suffered
26 and will suffer substantial monetary damages in a sum not yet fully known to
27 Alpine.

1 24. Alpine is entitled to recover all profits heretofore realized by RSR
2 from its illegal conduct, its damages, and attorneys' fees and costs. In addition, by
3 reason of Defendants' deliberate, malicious, and reprehensible conduct as alleged
4 above, Alpine is entitled to recover punitive damages.

5 25. As a result of the wrongful acts as alleged herein above, Alpine has
6 suffered irreparable harm, and unless the continuance of such acts is enjoined, will
7 continue to suffer irreparable harm. Alpine has no adequate remedy at law, and is
8 entitled to a Preliminary and Permanent Injunction prohibiting RSR from all
9 further wrongful acts, including but not limited to, any further interference with
10 Alpine's economic relations with its clients.

11
12 WHEREFORE, Alpine respectfully requests the following relief:

13 1. A judgment in favor of Alpine declaring that:

14 (a) U.S. Patent No. 7,252,889 has not been directly or contributorily
15 infringed by Alpine, nor infringed by inducement, and is not infringed by the
16 making, using, promoting, offering for sale, selling, or distributing in the United
17 States, or the importing into the United States, of any of Alpine's Goods including
18 without limitation the GID Glow In the Dark Gazing Globes; and

19 (b) US. Patent No.7,252,889 is invalid and void in law.

20 2. A judgment in favor of Alpine that this case is exceptional and granting an
21 award of reasonable attorneys' fees and expenses to Alpine pursuant to Title 35,
22 United States Code, Section 285.

23 3. For general and special damages in a sum or according to proof, plus
24 prejudgment interest thereon at the lawful rate;

25 4. For punitive damages;

26 5. For injunctive relief;

27 6. For disgorgement of profits;

1 7. A judgment in favor of Alpine assessing costs against RSR.

2 8. For such other and further relief as the Court may deem just and appropriate.

3 DATED: April 11, 2008

NOVIAN & NOVIAN, LLP

Attorneys at Law

By 

FARHAD NOVIAN

JOSH MENDELSON

Attorneys for Plaintiff ALPINE
CORPORATION

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

NOTICE OF ASSIGNMENT TO UNITED STATES MAGISTRATE JUDGE FOR DISCOVERY

This case has been assigned to District Judge George P. Schiavelli and the assigned discovery Magistrate Judge is Suzanne H. Segal.

The case number on all documents filed with the Court should read as follows:

CV08- 2402 GPS (SSx)

Pursuant to General Order 05-07 of the United States District Court for the Central District of California, the Magistrate Judge has been designated to hear discovery related motions.

All discovery related motions should be noticed on the calendar of the Magistrate Judge

===== :
NOTICE TO COUNSEL

A copy of this notice must be served with the summons and complaint on all defendants (if a removal action is filed, a copy of this notice must be served on all plaintiffs).

Subsequent documents must be filed at the following location:

☒ **Western Division**
312 N. Spring St., Rm. G-8
Los Angeles, CA 90012

☐ **Southern Division**
411 West Fourth St., Rm. 1-053
Santa Ana, CA 92701-4516

☐ **Eastern Division**
3470 Twelfth St., Rm. 134
Riverside, CA 92501

Failure to file at the proper location will result in your documents being returned to you.

Josh Mendelsohn, Esq.
 Novian & Novian, LLP
 1801 Century Park East
 Suite 1201
 Los Angeles, CA 90067
 310 553-1222

**UNITED STATES DISTRICT COURT
 CENTRAL DISTRICT OF CALIFORNIA**

Alpine Corporation, a California
 corporation

Plaintiff(s)

v.

RSR Sales, Inc., doing business as Echo Valley
 Products, a Michigan corporation; and DOES 1
 through 10, inclusive

Defendant(s)

CASE NUMBER:

CV08-02402 GPS (SSx)

SUMMONS

TO: THE ABOVE-NAMED DEFENDANT(S):

YOU ARE HEREBY SUMMONED and required to file with this court and serve upon plaintiff's attorney
Josh Mendelsohn, Esq., whose address is:

1801 Century Park East, Suite 1201
 Los Angeles, CA 90067

an answer to the ☒ complaint ☐ _____ amended complaint ☐ counterclaim ☐ cross-
 claim which is herewith served upon you within 20 days after service of this Summons upon you, exclusive
 of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded
 in the complaint.

CLERK, U.S. DISTRICT COURT

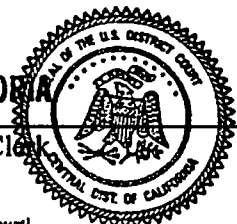
Date: APR 11 2008

By: _____

NATALIE LONGORIA

Deputy Clerk

(Seal of the Court)



1198

SUMMONS

COPY

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET

I (a) PLAINTIFFS (Check box if you are representing yourself <input type="checkbox"/>) Alpine Corporation, a California corporation	DEFENDANTS RSR Sales, Inc., doing business as Echo Valley Products, a Michigan corporation; and DOES 1 through 10, inclusive
(b) County of Residence of First Listed Plaintiff (Except in U.S. Plaintiff Cases):	County of Residence of First Listed Defendant (In U.S. Plaintiff Cases Only):
(c) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.) Josh Mendelsohn, Esq. Novian & Novian, LLP 1801 Century Park East Suite 1201 Los Angeles, CA 90067 310 553-1222	Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an X in one box only.) <input type="checkbox"/> 1 U.S. Government Plaintiff <input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party) <input type="checkbox"/> 2 U.S. Government Defendant <input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)	III. CITIZENSHIP OF PRINCIPAL PARTIES - For Diversity Cases Only (Place an X in one box for plaintiff and one for defendant.) <table style="width:100%; border: none;"> <tr> <td style="width:33%; border: none;">Citizen of This State</td> <td style="width:10%; border: none; text-align: center;">PTF <input type="checkbox"/> 1</td> <td style="width:10%; border: none; text-align: center;">DEF <input type="checkbox"/> 1</td> <td style="width:33%; border: none;">Incorporated or Principal Place of Business in this State</td> <td style="width:10%; border: none; text-align: center;">PTF <input checked="" type="checkbox"/> 4</td> <td style="width:10%; border: none; text-align: center;">DEF <input type="checkbox"/> 4</td> </tr> <tr> <td style="border: none;">Citizen of Another State</td> <td style="border: none; text-align: center;"><input type="checkbox"/> 2</td> <td style="border: none; text-align: center;"><input type="checkbox"/> 2</td> <td style="border: none;">Incorporated and Principal Place of Business in Another State</td> <td style="border: none; text-align: center;"><input type="checkbox"/> 5</td> <td style="border: none; text-align: center;"><input checked="" type="checkbox"/> 5</td> </tr> <tr> <td style="border: none;">Citizen or Subject of a Foreign Country</td> <td style="border: none; text-align: center;"><input type="checkbox"/> 3</td> <td style="border: none; text-align: center;"><input type="checkbox"/> 3</td> <td style="border: none;">Foreign Nation</td> <td style="border: none; text-align: center;"><input type="checkbox"/> 6</td> <td style="border: none; text-align: center;"><input type="checkbox"/> 6</td> </tr> </table>	Citizen of This State	PTF <input type="checkbox"/> 1	DEF <input type="checkbox"/> 1	Incorporated or Principal Place of Business in this State	PTF <input checked="" type="checkbox"/> 4	DEF <input type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5	<input checked="" type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
Citizen of This State	PTF <input type="checkbox"/> 1	DEF <input type="checkbox"/> 1	Incorporated or Principal Place of Business in this State	PTF <input checked="" type="checkbox"/> 4	DEF <input type="checkbox"/> 4														
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Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6														
IV. ORIGIN (Place an X in one box only.) <input checked="" type="checkbox"/> 1 Original Proceeding <input type="checkbox"/> 2 Removed from State Court <input type="checkbox"/> 3 Remanded from Appellate Court <input type="checkbox"/> 4 Reinstated or Reopened <input type="checkbox"/> 5 Transferred from another district (specify): <input type="checkbox"/> 6 Multi-District Litigation <input type="checkbox"/> 7 Appeal to District Judge from Magistrate Judge																			
V. REQUESTED IN COMPLAINT: JURY DEMAND: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No (Check "Yes" only if demanded in complaint.) CLASS ACTION under F.R.C.P. 23: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No MONEY DEMANDED IN COMPLAINT: \$ _____																			
VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.) Title 35, United States Code, Sections 100 et seq																			

VII. NATURE OF SUIT (Place an X in one box only.)					
STATE STATUTES <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Act <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Info. Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes	RECONTRACT <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 180 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 198 Franchise REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Fed. Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury-Med Malpractice <input type="checkbox"/> 365 Personal Injury-Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability BANKRUPTCY <input type="checkbox"/> 422 Appeal 28 USC 168 <input type="checkbox"/> 423 Withdrawal 28 USC 157 CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 American with Disabilities - Employment <input type="checkbox"/> 446 American with Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	CRIMINAL PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus/Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition FORFEITURE/PENALTY <input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 680 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litig. <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input checked="" type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SCIENCE/TECHNOLOGY <input type="checkbox"/> 861 HIA (13957) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DMWC/DWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) GENERAL REMEDIES <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609

VIII(a). IDENTICAL CASES: Has this action been previously filed and dismissed, remanded or closed? ☒ No ☐ Yes
 If yes, list case number(s):

FOR OFFICE USE ONLY: Case Number: _____