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3:02-CV-00273 KOITO MANUFACTURING V. TURN KEY TECH LLC  
\*1\*  
\*CMP.\*

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10 ATTORNEYS FOR PLAINTIFFS  
11 KOITO MANUFACTURING Co., LTD. AND  
NORTH AMERICAN LIGHTING, INC.

12  
13 UNITED STATES DISTRICT COURT  
14 SOUTHERN DISTRICT OF CALIFORNIA

15 KOITO MANUFACTURING Co., LTD., )  
16 and )  
17 NORTH AMERICAN LIGHTING, INC. )  
18 Plaintiffs, )  
19 vs. )  
20 TURN-KEY-TECH, L.L.C. and JENS OLE )  
21 SORENSEN, )  
22 Defendants )

Case No. **02 CV 0273 H (JFS)**

**COMPLAINT FOR DECLARATORY  
JUDGMENT OF PATENT NON-  
INFRINGEMENT, INVALIDITY, AND  
UNENFORCEABILITY**

**DEMAND FOR JURY TRIAL**

23  
24 Plaintiffs, Koito Manufacturing Co., Ltd. ("Koito") and North American Lighting, Inc.  
25 ("NAL"), by and through their attorneys, for their Complaint against defendants Turn-Key-Tech,  
26 L.L.C. ("Turn-Key") and Jens Ole Sorensen ("Sorensen"), allege and state as follows:  
27  
28

FILED  
02 FEB 12 PM 12:15  
CLERK, U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA  
DEPUTY

1 **NATURE OF THE ACTION**

2 1. Koito and NAL bring this action for declaratory relief, requesting the Court to  
3 declare United States Patent No. 5,045,268 (the “268 patent”) not infringed, invalid, and  
4 unenforceable.

5 **THE PARTIES**

6 2. Koito is a company organized and existing under the laws of Japan, having a  
7 principal place of business located at 4-8-3, Takanawa, Minato-ku, Tokyo 108-8711, Japan.  
8 Among other things, Koito manufactures and sells automobile tail light lamps.

9 3. NAL is a Michigan corporation having a principal place of business at 20  
10 Industrial Park, Flora, Illinois 62839. Among other things, NAL manufactures and sells  
11 automobile tail light lamps.

12 4. Upon information and belief, defendant Turn-Key is a California limited liability  
13 company with a principal place of business at 9930 Mesa Rim Road, San Diego, California  
14 92121. Turn-Key has represented that it is a licensee of the ‘268 patent, with the contractual  
15 right to initiate litigation to enforce the ‘268 patent. Upon information and belief, Turn-Key  
16 acquires rights under patents, by assignment, license, or otherwise, and generates revenue by  
17 licensing or offering to license patents within this district.

18 5. Upon information and belief, defendant Sorensen is the owner and named  
19 inventor of the ‘268 patent, and an individual claiming residence at Box 221, North Side, 382  
20 Water Kay Road, Cayman Kai, Grand Cayman Islands, B.W.I.

21 **JURISDICTION AND VENUE**

22 6. Koito and NAL bring this action pursuant to the Patent Laws of the United States,  
23 35 U.S.C. § 1 *et seq.*, and seek declaratory relief under the Declaratory Judgments Act, 28 U.S.C.  
24 §§ 2201 and 2202.

25 7. Jurisdiction is conferred on this Court pursuant to 28 U.S.C. §§ 1331 (federal  
26 question jurisdiction) and 1338(a) (original jurisdiction under patent laws).

27 8. Venue in this district is proper pursuant to 28 U.S.C. §1391(b) and (c) (general  
28 venue statute).

**FACTUAL BACKGROUND**

1  
2 9. Upon information and belief, on or about September 3, 1991, the '268 patent  
3 issued with Sorensen named as an inventor. A certificate of correction for the '268 patent issued  
4 on June 13, 1995. A true and correct copy of the '268 patent, along with its corresponding  
5 certificate of correction, are attached as Exhibit A.

6 10. On or about April 17, 1998, Turn-Key began accusing Koito and/or Koito's and  
7 NAL's customers of infringing the '268 patent.

8 11. Since April 17, 1998, Turn-Key has accused each of the following Koito and/or  
9 NAL customers of infringing the '268 patent: Nissan Motor Co. Ltd., Toyota Motor Co., Honda  
10 Motor Co., Ltd., Mitsubishi Motors Corp., and Isuzu Motors Ltd.

11 12. On or about February 24, 1999, Turn-Key filed a lawsuit against NAL, alleging  
12 infringement of the '268 patent based, in part, on products designed and/or manufactured by  
13 NAL.

14 13. On or about February 24, 1999, Turn-Key filed a lawsuit against Koito's and  
15 NAL's customer, Nissan Motor Co., Ltd., alleging infringement of the '268 patent based, in part,  
16 on products designed and/or manufactured by Koito and/or NAL.

17 14. On or about November 26, 2001, Turn-Key filed a lawsuit against Koito's and  
18 NAL's customer, Toyota Motor Co., alleging infringement of the '268 patent based, in part, on  
19 products designed and/or manufactured by Koito and/or NAL.

20 15. On or about November 26, 2001, Turn-Key filed a lawsuit against Koito's and  
21 NAL's customer, Honda Motor Co., Ltd., alleging infringement of the '268 patent based, in part,  
22 on a product designed and/or manufactured by Koito and/or NAL.

23 16. On or about November 26, 2001, Turn-Key filed a lawsuit against NAL's  
24 customer, Mitsubishi, alleging infringement of the '268 patent based, in part, on a product  
25 designed and/or manufactured by Koito and/or NAL.

26 17. A real and justiciable controversy now exists between Koito and NAL, on the one  
27 hand, and Turn-Key, on the other hand, in that Turn-Key asserts infringement of the '268 patent  
28 based on various products designed and/or made by Koito and NAL, and Koito and NAL have

1 asserted that the '268 patent is not infringed, invalid and unenforceable. Turn-Key has filed suit  
2 against customers of Koito and/or NAL based, in part, on products Koito and/or NAL supply to  
3 those customers. Koito and NAL believe that they are lawfully entitled to supply, and  
4 accordingly intend to continue to supply such products to their customers despite these threats of  
5 infringement.

6 **COUNT I**

7 **(Declaratory Judgment of Patent Non-Infringement)**

8 18. Koito and NAL incorporate by reference paragraphs 1 through 17 as though fully  
9 set forth herein.

10 19. Koito and NAL have not infringed and do not infringe any claim of the '268  
11 patent.

12 20. The manufacturing processes used by Koito and NAL to make products do not  
13 infringe and have not infringed any claim of the '268 patent, directly or indirectly, nor have  
14 Koito or NAL contributed to infringement of the '268 patent by others, nor actively induced  
15 others to infringe the '268 patent.

16 **COUNT II**

17 **(Declaratory Judgment of Patent Invalidity)**

18 21. Koito and NAL incorporate by reference paragraphs 1 through 20 as though fully  
19 set forth herein.

20 22. The claims of the '268 patent are invalid for failure to meet the conditions for  
21 patentability specified in 35 U.S.C. § 1 *et seq.*, including but not limited to, 35 U.S.C. §§ 102,  
22 103, 112 and 132.

23 23. The claims of the '268 patent are invalid under Title 35, United States Code, and  
24 more specifically under 35 U.S.C. § 102, because the claimed subject matter of the '268 patent is  
25 anticipated by the prior art.

26 24. The claims of the '268 patent are invalid under Title 35, United States Code, and  
27 more specifically under 35 U.S.C. § 103, because the claimed subject matter of the '268 patent  
28 would have been obvious to one skilled in the pertinent art in view of the prior art.

1           25.     The claims of the '268 patent are invalid under Title 35, United States Code, and  
2 more specifically under 35 U.S.C. § 112, because the claims of are indefinite and/or are not  
3 adequately described by the originally-filed written description, and/or because the written  
4 specification fails to enable the claimed invention and/or to disclose the best mode. More  
5 specifically, on information and belief, Sorensen failed to disclose that the best mode of  
6 practicing the alleged invention of the '268 patent involved the manufacture of very thin molded  
7 parts, as little as one tenth (or less) as thick as the Koito and NAL products whose manufacture  
8 Turn-Key has accused of infringing the '268 patent.

9           26.     While the specification for the '268 patent states that the alleged invention  
10 disclosed therein results in improved flexure and impact strength, there are no part or mold  
11 thicknesses, numerical, relative, or otherwise, disclosed in the patent.

12           27.     On information and belief, when Sorensen was developing his alleged invention,  
13 he was aware that the improved flexure and impact strength allegedly achieved, occurred only  
14 with very thin molded parts. Sorensen performed experiments to produce parts having a  
15 thickness of 0.1 to 0.15 mm – a dimension which is at least an order of magnitude (*i.e.* at least  
16 ten times) thinner than the accused Koito and NAL parts. No evidence has been produced  
17 regarding production of any parts having thicknesses within an order of magnitude of the  
18 thicknesses of the accused Koito and NAL parts.

19           28.     In others of his issued patents (issued both before and after the September 3, 1991  
20 issue date of the '268 patent), Sorensen has specified part or mold thicknesses on a numerical or  
21 a relative basis. However, no such parameters are disclosed anywhere in the '268 patent.  
22 Sorensen's work with very thin molded parts, and his reference to part thicknesses, is evidenced,  
23 *inter alia*, by the following:

- 24           a) U.S. Patent No. 5,176,284 ("Reduction of flexure in a plastic container having a thin  
25 flexible side wall") – *see* col. 2, lines 58 and 59;
- 26           b) U.S. Patent No. 5,149,482 ("Injection-Molding Dimension-Control and Clamp-  
27 Reduction") - *see* col. 7, lines 27-30;
- 28

- 1 c) U.S. Patent No. 5,132,071 (“Ultra thin wall injection molding by utilizing film  
2 section insert and flow channels combination”) – *see* col. 4, lines 36-39 and col. 6,  
3 lines 39-42;
- 4 d) U.S. Patent No. 5,008,064 (“Injection-Molding Dimension-Control and Clamp-  
5 Reduction”) – *see* col. 4, lines 16-18.
- 6 e) U.S. Patent No. 4,966,744 (“Apparatus and method for injection moulding a thin-  
7 walled container having a base wall with a planar interior surface”) – *See* col. 2, lines  
8 60 and 61.

9 Sorensen’s other work with very thin molded parts is evidenced, *inter alia*, by the  
10 following:

- 11 a) U.S. Patent No. 4,960,557 (“Method of injection molding thin-walled plastic  
12 products”);
- 13 b) U.S. Patent No. 4,935,188 (“Stabilized-core injection molding of hollow thin-walled  
14 plastic products”);
- 15 c) U.S. Patent No. 4,844,405 (“Injection molding of thin-walled plastic products”);
- 16 d) U.S. Patent No. 4,807,775 (Injection molding of thin-walled plastic products”);
- 17 e) U.S. Patent No. 4,789,326 (“Stabilized-core injection molding of hollow thin-walled  
18 plastic products”).

19 29. The claims of the ‘268 patent are invalid under Title 35, United States Code, and  
20 more specifically under 35 U.S.C. § 132(a), because during the prosecution of the ‘268 patent,  
21 the applicant added new matter to the disclosure of the invention. Specifically, the above-  
22 mentioned Certificate of Correction changed the definition of the flow channel as it appears in  
23 claims 1 and 21 of the ‘268 patent and the change is not supported in the original written  
24 specification.

25 30. The claims of the ‘268 patent are invalid under Title 35, United States Code, and  
26 more specifically under 35 U.S.C. § 255, because the Certificate of Correction changed the  
27 definition of certain limitations in claims 1 and 21 and the changes were not of a minor character,  
28

1 were not made in good faith, and impermissibly added new matter, thus circumventing the  
2 procedure for reissue under 35 U.S.C. § 251.

3 **COUNT III**

4 **(Declaratory Judgment of Patent Unenforceability - Failure to Cite Prior Art)**

5 31. Koito and NAL incorporate by reference paragraphs 1 through 30 as though fully  
6 set forth herein.

7 32. The '268 patent is unenforceable under the doctrine of inequitable conduct for the  
8 failure to cite to the United States Patent and Trademark Office ("USPTO"), with intent to  
9 deceive, U.S. Patent No. 4,789,326 (the "'326 patent"), of which, upon information and belief,  
10 the applicant for the '268 patent was aware during the '268 patent's prosecution.

11 33. The '326 patent issued on December 6, 1989, which is more than one year prior  
12 to filing date of the '268 patent application.

13 34. Upon information and belief, the named inventor of the '326 patent is Jens O.  
14 Sorensen, who is the same person as the named inventor of the '268 patent.

15 35. Upon information and belief, the same attorney, Edward W. Callan ("Callan"),  
16 prosecuted both the '326 patent and the '268 patent.

17 36. During prosecution of the '268 patent in the USPTO, Sorensen amended the  
18 originally filed claims to further define a flow channel as being "significantly thicker and wider  
19 than the adjacent mold cavity thickness for the purpose of directing the flow of injected plastic."

20 37. The '326 patent is material to the patentability of the claims of the '268 patent at  
21 least because it discloses flow channels that "are significantly thicker than adjacent portions of  
22 the mold cavity 14 and the average wall-defining thickness of the mold cavity 14 and direct the  
23 subsequently injected molten plastic."

24 **COUNT IV**

25 **(Declaratory Judgment of Patent Unenforceability – Certificate of Correction)**

26 38. Koito and NAL incorporate by reference paragraphs 1 through 37 as though fully  
27 set forth herein.

28



1           39.     Fig. 1 of the '268 patent shows the "flow-channel 6" and the adjacent thinner  
2 "layer-defining-mold-cavity-section 2," as defined in the '268 patent as issued on September 3,  
3 1991.

4           40.     Consistent with the plain meaning of the term "channel," the "thickness" of the  
5 flow-channel is defined in the '268 patent as dimension "F," the distance between the bottom of  
6 the "flow-channel" and the top of the flow-channel's side walls.

7           41.     The "flow-channel" element in the '268 patent was a focus of express debate  
8 between Sorensen and the USPTO.

9           42.     In an Office Action on October 1, 1990, the USPTO examiner rejected the claims  
10 originally filed in the '268 patent application, determining that the claims were not patentable  
11 because, among other reasons, the use of a "flow-channel to direct molten plastic flow" was  
12 anticipated by several prior art patents.

13           43.     In response to the Office Action dated October 1, 1990, on December 21, 1990,  
14 Sorensen amended the originally-submitted '268 patent application claims to add additional  
15 limitations to the defined "flow-channel."

16           44.     The additional limitations added in the December 21, 1990 Amendment expressly  
17 defined the claimed "flow-channel" in terms of its thickness, a dimension which was clearly  
18 defined in the patent specification.

19           45.     In the December 21, 1990 Amendment, Sorensen explicitly limited the claims to  
20 avoid a specific prior art patent, Wogerer, U.S. Patent No. 3,822,107.

21           46.     Sorensen's justification in the remarks supporting the December 21, 1990  
22 Amendment stated:

23                   Wogerer does not describe an injection molding system in which injected  
24 plastic is directed by flow channels, as recited in amended Claim 1 and new  
25 Claim 28 (which respectively correspond to original Claims 2 and 3). The  
26 definition of "flow channel" added to these claims by this amendment precludes  
27 the Examiner's interpretation of Wogerer's cavity as including sections that are  
28 equivalent to flow channels. If the flow channels are not significantly thicker and  
wider than the adjacent mold cavity thickness, they do not significantly direct the  
flow of the injected plastic.

1           47.     Also on December 21, 1990, Sorensen filed with the PTO a "Request to Amend  
2 Drawing," and a "Substitute Specification."

3           48.     The remarks accompanying the Request to Amend Drawing and Substitute  
4 Specification stated that the requested changes were to "correct errors" in the drawings and to  
5 "correct various clerical errors" in the written text.

6           49.     The definition of flow-channel thickness repeated three times in the original '268  
7 patent specification was not changed by the Substitute Specification.

8           50.     Through amendments to the '268 patent claims directly responsive to the "flow-  
9 channel" issue raised by the examiner, Sorensen intended to distinguish his claims from the prior  
10 art, and therefore, expressly limited the claims to methods using "flow-channels" satisfying a  
11 specific thickness requirement.

12           51.     Flow-channel "thickness" in the amended claims of the '268 patent was plainly  
13 measured on the basis of the defined flow-channel thickness appearing in the '268 specification.

14           52.     Based on Sorensen's amendments, the USPTO allowed the '268 patent to issue.

15           53.     The named inventor of the '268 patent, Sorensen, is a named inventor of over 80  
16 issued U.S. patents.

17           54.     Sorensen was personally and intimately involved in the preparation of the '268  
18 patent application.

19           55.     Sorensen personally drafted the entire '268 patent application, including the  
20 written specification, drawings, and claims.

21           56.     Sorensen now contends that he erroneously defined the '268 patent flow-channel  
22 thickness as the distance from the bottom of the flow-channel to the top of the side walls.

23           57.     Sorensen made the same alleged "mistake" at each of three locations in the '268  
24 specification, which consistently define the flow-channel thickness as the distance from the  
25 bottom of the flow-channel to the top of the side walls, i.e., Fig. 1 (thickness F), Fig. 4 (thickness  
26 H) and Fig. 5 (thickness L).

27           58.     Sorensen now asserts that his "mistake" would have been apparent to any skilled  
28 person who read the patent, while also claiming that he himself was unaware of the thrice

1 repeated "mistake" when he drafted the '268 patent, throughout the entire prosecution thereof,  
2 and for over three years after it issued.

3 59. The patent attorney, Callan, who represented Sorensen in prosecuting the '268  
4 patent application (subsequent to receipt of the first Office Action from the USPTO) also failed  
5 to identify the purported mistake in the definition of flow-channel thickness in the '268 patent  
6 specification.

7 60. As noted above, in response to the adverse October 1, 1990 Office Action from  
8 the USPTO, Callan filed amended drawings, a corrected written specification, and new claims on  
9 December 21, 1990.

10 61. No fewer than fifty-one minor clerical errors appearing in the original '268 patent  
11 specification were corrected by the December 21, 1990 Amendment, indicating that Callan had  
12 reviewed the specification with extreme care upon assuming representation of Sorensen.

13 62. The December 21, 1990 Amendment in the '268 patent application left intact (and  
14 thereby reaffirmed) the express definition of the flow-channel thickness was at all three locations  
15 where it appeared in the specification.

16 63. The thickness of the claimed flow-channel was then asserted as a basis for  
17 patentability of the amended '268 patent claims over the relevant prior art.

18 64. Callan reviewed the drawings yet again at the time the '268 patent was allowed to  
19 issue.

20 65. Prior to issuance of the '268 patent, Callan never identified any problem  
21 whatsoever with the definition of flow-channel thickness appearing in the specification and  
22 drawings.

23 66. Upon information and belief, in 1994, Sorensen began efforts to enforce the '268  
24 patent by making threats against, at least, General Motors.

25 67. Upon information and belief, in 1994, Primtec, a company then owned by  
26 Sorensen and the licensee of the '268 patent at the time, accused General Motors of infringing  
27 the '268 patent in a letter dated December 30, 1994.

28

1           68.     Upon information and belief, relying on the scope of the claims read in light of  
2 the patent specification as originally issued, General Motors denied Primtec's claims of  
3 infringement in a letter dated March 20, 1995.

4           69.     On April 14, 1995, within one month of receiving General Motors' letter dated  
5 March 20, 1995, Sorensen filed a Request for the Certificate of Correction now at issue.

6           70.     Sorensen realized at the beginning of his '268 patent enforcement activities that  
7 the issued patent claims (which require the flow-channel to be "significantly thicker and wider  
8 than the adjacent mold cavity thickness") are quite narrow.

9           71.     The original '268 specification and drawings do not permit an interpretation of the  
10 flow-channel thickness to include the additional thickness of the adjacent mold-cavity section.

11           72.     The '268 patent is not infringed by mold systems in which the distance from the  
12 flow-channel bottom to the top of the side walls (the originally defined thickness) is not  
13 "significantly thicker" than the adjacent cavity thickness.

14           73.     The Request for the Certificate of Correction, submitted 3 ½ years after issuance  
15 of the '268 patent, sought seventeen additional changes to the written specification of the '268  
16 patent.

17           74.     In the Remarks filed with the '268 patent Request for the Certificate of  
18 Correction, Sorensen stated:

19                   The mistakes by applicant were made in good faith and the correction of  
20 these errors does not involve such changes in the patent as would constitute new  
matter or would involve reexamination.

21           75.     Sorensen's Remarks submitted with the Request for the Certificate of Correction  
22 were false and made with the intent to deceive the USPTO.

23           76.     Artfully drafted changes to the claim language and specification substantively  
24 modified the '268 patent by redefining the thickness of a "flow-channel" to include the thickness  
25 of both the flow-channel itself (as previously defined), and that of the adjacent" layer-defining-  
26 mold-cavity-section.

27           77.     The specification as issued stated as follows:

28                   [T]he second-layer-defining-mold-cavity-section 4 with thickness C is at

1 least as thick as the first-cavity-flow-channel 6 with thickness F, whereby it is  
2 possible to mold a product without a ribbed surface.

3 The Certificate of Correction changed this portion of the specification to read:

4 [T]he second-layer-defining-mold-cavity-section 4 with thickness C is at  
5 least as thick as the first-cavity-flow-channel 6 minus the first-layer-defining  
6 mold cavity 2 with resulting thickness F, whereby it is possible to mold a product  
7 without a ribbed surface.

8 78. The Certificate of Correction was filed for the transparent purpose of changing the  
9 definition of the term "flow-channel thickness" in an effort to eliminate a fundamental  
10 distinction (which gave rise to an absolute infringement defense) between the '268 patent claims  
11 and various accused mold systems.

12 79. The '268 patent is unenforceable because the '268 patent was obtained through  
13 inequitable conduct by Sorensen and/or Callan.

14 80. Sorensen and/or Callan intended to deceive the USPTO by misrepresenting  
15 material information during the prosecution of the '268 patent.

16 81. As mentioned in the allegations above, Sorensen and/or Callan submitted a  
17 Certificate of Correction for the '268 patent which contained false statements regarding the  
18 propriety of the changes in the Certificate of Correction. Those statements were material  
19 statements of fact. Sorensen and/or Callan knew the statements were false at the time the  
20 statements were made. This conduct was inequitable. Moreover, this makes Sorensen and/or  
21 Callan guilty of unclean hands, so that it would be inequitable to allow Turn-Key to enforce the  
22 '268 patent.

23 **PRAYER FOR RELIEF**

24 WHEREFORE, Plaintiff prays for a judgment from the Court against Defendants as  
25 follows:

- 26 a) A declaration the '268 patent is not infringed by any product manufactured by  
27 Koito or NAL and/or sold to any of Koito's or NAL's customers;
- 28 b) A declaration that the claims of the '268 patent are invalid.
- c) A declaration that the '268 patent is unenforceable;

1 d) A permanent injunction prohibiting Defendants and those acting on their behalf  
2 from asserting or threatening to assert infringement of the '268 patent against Koito and NAL, or  
3 any of their agents, employees, representatives, strategic business partners, distributors,  
4 contractors, customers, advisors and investors;

5 e) A finding that this is an exceptional case and an award to Koito and NAL of its  
6 reasonable costs and attorneys' fees; and

7 f) Such other and further relief as may be just and proper.

8 **JURY DEMAND**

9 Plaintiffs Koito and NAL hereby demand trial by jury on all issues triable to a jury.

10 Date: February 11, 2002

11 Respectfully submitted,

12 

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14 CRAIG W. SCHMOYER, BAR NO. 208303  
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23 ATTORNEYS FOR PLAINTIFFS KOITO  
24 MANUFACTURING CO., LTD. AND NORTH  
25 AMERICAN LIGHTING, INC.  
26  
27  
28

02 CV 0273 H (JFS)

JS44  
(Rev. 07/89)

CIVIL COVER SHEET

FILED

sheet. (SEE INSTRUCTIONS ON THE SECOND PAGE OF THIS FORM)

1 (a) PLAINTIFFS **KOITU MFG. CO. LTD.**  
**AND**  
**NORTH AMERICAN LIGHTING, INC.**

02 FEB 12 2002  
DEBTORS  
**Turn-Key-Tech, LLC**  
**and**  
**Jens Ole Sorensen**

DISTRICT COURT  
DISTRICT OF CALIFORNIA

Country  
(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF  
(EXCEPT IN U.S. PLAINTIFF CASES)

**Japan**

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT  
(IN U.S. PLAINTIFF CASES ONLY)

**San Diego**

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)  
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II. BASIS OF JURISDICTION (PLACE AN X IN ONE BOX ONLY)

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN X IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT (For Diversity Cases Only))

- 1 U.S. Government Plaintiff  3 Federal Question (U.S. Government Not a Party)
- 2 U.S. Government Defendant  4 Diversity (Indicate Citizenship of Parties in Item III)

	PT	DEF		PT	DEF
Citizen of This State	• 1	• 1	Incorporated or Principal Place of Business in This State	• 4	• 4
Citizen of Another State	• 2	• 2	Incorporated and Principal Place of Business in Another State	• 5	• 5
Citizen or Subject of a Foreign Country	• 3	• 3	Foreign Nation	• 6	• 6

IV. CAUSE OF ACTION (CITE THE US CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY).

**Declaratory judgment of non-infringement, invalidity, and unenforceability (patent) 15:112b-rc**

V. NATURE OF SUIT (PLACE AN X IN ONE BOX ONLY)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<ul style="list-style-type: none"> <li>• 110 Insurance</li> <li>• 120 Marine</li> <li>• 130 Miller Act</li> <li>• 140 Negotiable Instrument</li> <li>• 150 Recovery of Overpayment &amp; Enforcement of Judgment</li> <li>• 151 Medicare Act</li> <li>• 152 Recovery of Defaulted Student Loans (Excl. Veterans)</li> <li>• 153 Recovery of Overpayment of Veterans Benefits</li> <li>• 160 Stockholders Suits</li> <li>• 190 Other Contract</li> <li>• 195 Contract Product Liability</li> </ul>	<p><b>PERSONAL INJURY</b></p> <ul style="list-style-type: none"> <li>• 310 Airplane</li> <li>• 315 Airplane Product Liability</li> <li>• 320 Assault, Libel &amp; Slander</li> <li>• 330 Federal Employers' Liability</li> <li>• 340 Marine</li> <li>• 345 Marine Product Liability</li> <li>• 350 Motor Vehicle</li> <li>• 355 Motor Vehicle Product Liability</li> <li>• 360 Other Personal Injury</li> </ul> <p><b>PERSONAL INJURY</b></p> <ul style="list-style-type: none"> <li>• 362 Personal Injury-Medical Malpractice</li> <li>• 365 Personal Injury - Product Liability</li> <li>• 368 Asbestos Personal Injury Product Liability</li> </ul> <p><b>PERSONAL PROPERTY</b></p> <ul style="list-style-type: none"> <li>• 370 Other Fraud</li> <li>• 371 Truth in Lending</li> <li>• 380 Other Personal Property Damage</li> <li>• 385 Property Damage Product Liability</li> </ul>	<ul style="list-style-type: none"> <li>• 610 Agriculture</li> <li>• 620 Other Food &amp; Drug</li> <li>• 625 Drug Related Seizure of Property 21 USC881</li> <li>• 630 Liquor Laws</li> <li>• 640 RR. &amp; Truck</li> <li>• 650 Airline Regs</li> <li>• 660 Occupational Safety/Health</li> <li>• 690 Other</li> </ul> <p><b>LABOR</b></p> <ul style="list-style-type: none"> <li>• 710 Fair Labor Standards Act</li> <li>• 720 Labor/Mgmt. Relations</li> <li>• 730 Labor/Mgmt. Reporting &amp; Disclosure Act</li> <li>• 740 Railway Labor Act</li> <li>• 790 Other Labor Litigation</li> <li>• 791 Empl. Ret. Inc. Security Act</li> </ul>	<ul style="list-style-type: none"> <li>• 422 Appeal 28 USC 158</li> <li>• 423 Withdrawal 28 USC 157</li> </ul> <p><b>PROPERTY RIGHTS</b></p> <ul style="list-style-type: none"> <li>• 820 Copyrights</li> <li>• 830 Patent</li> <li>• 840 Trademark</li> </ul> <p><b>SOCIAL SECURITY</b></p> <ul style="list-style-type: none"> <li>• 861 HIA (13958)</li> <li>• 862 Black Lung (923)</li> <li>• 863 DIWC/DIWW (405(g))</li> <li>• 864 SSID Title XVI</li> <li>• 865 RSI (405(e))</li> </ul> <p><b>FEDERAL TAX SUITS</b></p> <ul style="list-style-type: none"> <li>• 870 Taxes (U.S. Plaintiff or Defendant)</li> <li>• 871 IRS - Third Party 26 USC 7609</li> </ul>	<ul style="list-style-type: none"> <li>• 400 State Reappointment</li> <li>• 410 Antitrust</li> <li>• 430 Banks and Banking</li> <li>• 450 Commerce/ICC Rates/etc.</li> <li>• 460 Deportation</li> <li>• 470 Racketeer Influenced and Corrupt Organizations</li> <li>• 810 Selective Service</li> <li>• 850 Securities/Commodities Exchange</li> <li>• 875 Customer Challenge 12 USC</li> <li>• 891 Agricultural Acts</li> <li>• 892 Economic Stabilization Act</li> <li>• 893 Environmental Matters</li> <li>• 894 Energy Allocation Act</li> <li>• 895 Freedom of Information Act</li> <li>• 900 Appeal of Fee Determination Under Equal Access to Justice</li> <li>• 950 Constitutionality of State</li> <li>• 890 Other Statutory Actions</li> </ul>
<p><b>REAL PROPERTY</b></p> <ul style="list-style-type: none"> <li>• 210 Land Condemnation</li> <li>• 220 Foreclosure</li> <li>• 230 Rent Lease &amp; Ejectment</li> <li>• 240 Tort to Land</li> <li>• 245 Tort Product Liability</li> <li>• 290 All Other Real Property</li> </ul>	<p><b>CIVIL RIGHTS</b></p> <ul style="list-style-type: none"> <li>• 441 Voting</li> <li>• 442 Employment</li> <li>• 443 Housing/Accommodations</li> <li>• 444 Welfare</li> <li>• 440 Other Civil Rights</li> </ul>	<p><b>PRISONER PETITIONS</b></p> <ul style="list-style-type: none"> <li>• 510 Motions to Vacate Sentence Habeas Corpus</li> <li>• 530 General</li> <li>• 535 Death Penalty</li> <li>• 540 Mandamus &amp; Other</li> <li>• 550 Civil Rights</li> <li>• 555 Prisoner Conditions</li> </ul>		

VI. ORIGIN (PLACE AN X IN ONE BOX ONLY)

- Original Proceeding
- 2 Removal from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from another district (specify)
- 6 Multidistrict Litigation
- 7 Appeal to District Judge from Magistrate Judgment

VII. REQUESTED IN COMPLAINT: DEMAND \$ \_\_\_\_\_ Check YES only if demanded in complaint: JURY DEMAND: **YES** • NO

VIII. RELATED CASE(S) IF ANY (See Instructions): JUDGE **Lorenz** Docket Number **99cv 321, 00cv 692, 01 cv 381**

DATE **2/4/02** SIGNATURE OF ATTORNEY OF RECORD **Frank L. Bernstein**

#07944K \$150.00 bld  
::ODMA\PCDOCS\WORDPERFECT\22816\1 January 24, 2000 (3:10pm)

## INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS-44

## Authority For Civil Cover Sheet

The JS-44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should completed the form as follows:

I.(a) Plaintiffs - Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved).

(c) Attorneys. Enter firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place the "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction is based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an X in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

III. Residence (citizenship) of Principal Parties. This section of the JS-44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause.

V. Nature of Suit. Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section IV above, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

VI. Origin. Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate's decision.

VII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

VIII. Related Cases. This section of the JS-44 is used to reference relating pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.  
(rev. 07/89)