E-filing e. robert (bob) wallach, esq. (SBN 29078) 1 Lawyer-Counselor Law Offices of e. robert (bob) wallach, P.C. 2 P. O. Box 2670 San Francisco, CA 94126-2670 3 155 Jackson Street, No. 602 4 San Francisco, CA 94111 415-989-6445 5 Harris Zimmerman, Esq. (SBN 22653) Michael James Cronen, Esq. (SBN 131087) 6 Law Offices of Harris Zimmerman 7 1330 Broadway, Suite 710 Oakland, CA 94612 8 510-465-0828 Fax: 510-465-2041 9 Alan L. Barry, Esq. Noelle J. Quinn, Esq. 10 BELL, BOYD & LLOYD LLC 70 West Madison Street, Suite 3100 11 Chicago, IL 60602 12 312-372-1121 Fax: 312-827-8000 13 Attorneys for Sharper Image Corporation 14 UNITED STATES DISTRICT COURT 15 FOR THE NORTHERN DISTRICT OF CALIFORNIA 16 SHARPER IMAGE CORPORATION, a C05-01260 17 Delaware corporation, Case No. 05-18 Plaintiff, COMPLAINT FOR DECLARATORY 19 RELIEF FURNACE BROOK, LLC, a New York limited 20 Demand for Jury Trial liability corporation, 21 Defendant. 22 23 Plaintiff Sharper Image Corporation ("Sharper Image"), for its complaint against defendant 24 Furnace Brook LLC ("Furnace Brook"), alleges as follows: 25 26 Jurisdiction 27 28

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21. Sharper Image does not infringe the '832 Patent and/or the '832 Patent is invalid or otherwise unenforceable.

- 11. Upon information and belief, Furnace Brook accused Williams-Sonoma, Inc. of infringing the '832 Patent.
- 12. Upon information and belief, Furnace Brook accused Hammacher-Schlemer of infringing the '832 Patent.
- Upon information and belief, Furnace Brook accused L.L. Bean of infringing the '832
  Patent.
- 14. In correspondence between the parties, Sharper Image has denied infringing the '832 Patent and/or has asserted the '832 Patent is invalid. Nonetheless, Furnace Brook has demanded Sharper Image pay damages, and within certain time constraints.
- 15. These demands have been made with increasing frequency and intensity, suggesting that unless they are met, Sharper Image will be sued.
- 16. On February 25, 2005, Furnace Brook advised counsel for Sharper Image that on April 1, 2005, Furnace Brook "will commence the litigation portion of its efforts to enforce its '832 Patent against unauthorized use of the invention of that patent."
- 17. On March 29, 2005, Sharper Image reached a final impasse with Furnace Brook. Accordingly, because it was apparent that further negotiations would be fruitless, Sharper Image communicated to Furnace Brook that it was not infringing the '832 Patent and terminated all settlement discussions.
- 18. By virtue of the totality of the foregoing, because it is unwilling to accede to Furnace Brook's damage demands, and given the threat of imminent litigation, Sharper Image reasonably apprehends being sued by Furnace Brook for infringement of the '832 Patent.
- 19. An actual and justiciable controversy exists between Furnace Brook and Sharper Image concerning whether the '832 Patent is invalid and/or not infringed by Sharper Image. At this time, declaratory relief is appropriate so the parties may ascertain their rights and duties in relation to the '832 Patent.

# Count I - Declaratory Relief as to U.S. Patent No. 5,721,832

20. Sharper Image realleges and incorporates by reference the allegations contained in paragraphs 1 through 19.

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- 1. This is an action under the Federal Declaratory Judgments Act, 28 U.S.C. §§ 2201 and 2202, for a declaration pursuant to the patent laws of the United States, 35 U.S.C. § 1 et seq., that the Furnace Brook Patents are not infringed by Sharper Image or are invalid or both.
- Pursuant to 28 U.S.C. §§ 1331 and 1338, this Court has jurisdiction over the federal claims alleged herein.

#### The Parties

- 3. Sharper Image is a Delaware corporation with its principal place of business at 650 Davis Street, San Francisco, California.
- 4. Furnace Brook is a New York limited liability company with its principal place of business at 204 Furnace Dock Road, Cortlandt Manor, New York 10567.
- This Court has personal jurisdiction over Furnace Brook because Furnace Brook has sufficient minimum contacts with California; Furnace Brook solicits business within this district and elsewhere in California.

#### Venue

6. Under 28 U.S.C. § 1391, venue lies in this judicial district because Furnace Brook conducts continuous and systematic business in this district, and/or advertises in this district, and/or is subject to personal jurisdiction in this district, and/or has caused the injuries complained of herein in this district, and/or is present in this district.

## Sharper Image's Business

- 7. Sharper Image was founded in 1977 and is a leading specialty retailer/product developer that is nationally and internationally renowned as the source of innovative, high quality products that are useful, entertaining, and designed to make life easier and more enjoyable.
- 8. Furnace Brook has alleged that Sharper Image infringes U.S. Patent 5,721,832 (the "832 Patent).
  - 9. A true and correct copy of the '832 Patent is attached as **Exhibit A**.
- 10. Moreover, by its actions, Furnace Brook has caused several entities to reasonably apprehend being sued for infringement of the '832 Patent.

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## PRAYER FOR RELIEF

WHEREFORE, Sharper Image prays for relief against Furnace Brook as follows:

- A. For a declaration that Sharper Image does not infringe any valid claim of the '832 Patent, and/or the '832 Patent is invalid or otherwise unenforceable;
- B. For a declaration that this is an exceptional case under 35 U.S.C. § 285 and for an award to Sharper Image of its attorneys' fees and costs in this action; and
  - C. Any other relief this Court deems just and proper.

## **CERTIFICATION OF INTERESTED PARTIES OR PERSONS**

Pursuant to Civil L.R. 3-16, the undersigned certifies that as of this date, other than the named parties, there is no other interest to report.

## JURY DEMAND

Plaintiff, Sharper Image Corporation, requests a trial by jury of all claims so triable.

DATED: March 29, 2005.

SHARPER IMAGE CORPORATION, Plaintiff

By:

e. robert (bob) wallach, esq.

Lawyer Counselor

Law Offices of e. robert (bob) wallach, P.C.

Harris Zimmerman Michael James Cronen

Law Offices of Harris Zimmerman

Alan L. Barry Noelle J. Quinn

Bell, Boyd & Lloyd, LLC