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10 **IN THE UNITED STATES DISTRICT COURT**
11 **FOR THE DISTRICT OF ARIZONA**

12 DIGITEL LLC dba KLEINN AUTOMOTIVE Civil Case No.:
13 ACCESSORIES and dba
14 MYPUSHCART.COM, a Connecticut
15 Limited Liability Corporation; ERIC and
16 CAROL SCHAFFER, husband and wife,

17 **COMPLAINT FOR DECLARATORY**
18 **JUDGMENT**

19 Plaintiffs,

20 **(JURY TRIAL REQUESTED)**

21 v.

22 THE HOFFMAN GROUP LLC, an Oregon
23 Limited Liability Corporation; DREW
24 HOFFMAN,

25 Defendants.

26
27 Plaintiffs Digitel LLC, Eric Schaffer and Carol Schaffer (hereafter collectively,
28 “Plaintiffs”), for their Complaint for declaratory judgment against The Hoffman Group LLC
and Drew Hoffman, allege that United States Patent #6,711,856 (“the ‘856 patent) is not
infringed by Plaintiffs, is invalid and/or is unenforceable.

PARTIES

1. Plaintiff Digitel LLC is a Limited Liability Corporation incorporated in the State of
Connecticut and based in, doing extensive business in and registered as a foreign corporation in
the State of Arizona.

2. Eric and Carol Schaffer are husband and wife, are the owners of Digitel LLC and at all times
material hereto, lived in and did business in the State of Arizona.

3. The Hoffman Group LLC (“THG”) is an Oregon Limited Liability Corporation which does

1 extensive business in Maricopa County, Arizona, both through selling to Maricopa County
2 based end sellers and through selling directly on line to Maricopa County consumers.

3 4. Drew Hoffman is the owner of THG and is listed as the inventor of the '856 patent. He has
4 done extensive business in Maricopa County and has caused events to occur in Maricopa
5 County which give rise to the subject litigation.

6 5. This action arises under the Patent Laws of the United States. See, 35 U.S.C. § 1 et. seq.

7 6. This Court has jurisdiction over the subject matter of these claims under 28 U.S.C. § 1331,
8 1338(a), 2201 and 2202.

9 7. Venue is proper in this judicial district under 28 U.S.C. § 1391(b)(2) and 1391(c).

10 **BACKGROUND/STANDING**

11 8. Plaintiff Digitel LLC sells automotive products under two different names: Kleinn
12 Automotive Accessories and Mypushcart.com. Digitel LLC is owned by Plaintiffs Eric and
13 Carol Schaffer, who are married.

14 9. Under the name Mypushcart.com, Plaintiff Digitel LLC sells a number of products through
15 eBay. One of these products is a "door popper," a device for opening doors.

16 10. On information and belief, the '856 patent is currently either the property of Defendant
17 THG or is owned by Defendant Hoffman and licensed to Defendant THG.

18 11. In February, 2010, Defendant THG sent Plaintiffs an e-mail stating that the door poppers
19 Plaintiff Digitel was selling infringed the '856 patent. Plaintiffs explained to Defendant THG
20 why the door poppers Plaintiffs were selling did not infringe the '856 patent.

21 12. On August 19, 2010, Plaintiffs were informed by eBay that they would be prohibited from
22 selling the door popper product on eBay, because Defendants had informed eBay that the door
23 popper infringes the '856 patent.

24 13. Defendants made a subsequent complaint to eBay and managed to prevent the sale of
25 certain types of air horns, again on the theory that these products somehow violated a patent for
26 a door opening device.

27 14. Plaintiffs explained why the claims to eBay by Defendants were baseless and warned
28 Defendants to cease and desist in their interference with a substantial portion of Plaintiff's

1 business, but these communications were disregarded by Defendants.

2 15. An actual and justiciable controversy exists between Plaintiffs and Defendants, in that
3 Plaintiffs have lost substantial sales as a result of Defendants' baseless claim that the '856
4 patent is being infringed.

5 **COUNT ONE**

6 **DECLARATION OF NON INFRINGEMENT**

7 16. Plaintiffs reallege and incorporate herein by reference the allegations set forth in paragraphs
8 1-15.

9 17. Plaintiffs do not now and have never infringed any claim of the subject patent.

10 18. Non infringement is based on many factors, including but not limited to the following. All
11 claims in the '856 patent are dependent on Claim 1 and Claim 10 therein. Claim 1 and Claim
12 10 therein specifically claim an adjustable door popper.

13 19. The door popper sold by Defendants is non adjustable. The rod in the door popper at issue
14 is only threaded a quarter inch up the shaft, which is just long enough to hold the nut. The nut
15 cannot be tightened, because there is no threading beyond the initial quarter inch and if the nut
16 is loosened, the assembly falls apart, because there is nothing to hold the nut below the quarter
17 inch of threading.

18 **COUNT TWO**

19 **DECLARATION OF INVALIDITY**

20 20. Plaintiffs reallege and incorporate herein by reference the allegations set forth in paragraphs
21 1-19.

22 21. One or more claims of the subject patents are invalid and void for failure to comply with
23 one or more sections of Title 35 of the United States Code, including without limitation, 35
24 U.S.C. §§ 101, 102, 103 and/or 112.

25 22. Invalidity is based on many factors, including but not limited to the following. Defendants
26 claim the door poppers sold by Plaintiffs on eBay incorporate the claims of the '856 patent.
27 Plaintiffs have provided a catalogue to Defendants establishing that the door poppers Plaintiffs
28 sold on eBay were publicly advertised for sale and displayed at least as early as the year 2000.

1 The filing date on the '856 patent is September 19, 2002.

2 **DEMAND FOR JURY TRIAL**

3 23. Defendants, pursuant to Rule 38, FRCP, hereby demand a trial to a jury on all issues so
4 triable.

5 **PRAYER FOR RELIEF**

6 WHEREFORE, Plaintiffs request judgment against Defendant in their favor as follows:

7 A. A declaration that Plaintiffs have not committed any act of direct or indirect infringement of
8 the '856 patent.

9 B. A declaration that the '856 patent is invalid and void.

10 C. A declaration that this case is "exceptional" within the meaning of 35 U.S.C. § 287.

11 D. An award to Plaintiffs of their costs, attorneys fees and expenses pursuant to 35 U.S.C. §
12 285.

13 E. After reasonable notice and hearing, an award of those losses resulting from the wrongful
14 assertion of the '856 patent, pursuant to 28 U.S.C. § 2202.

15 F. An award of any further relief the Court deems just and necessary.

16 DATED: September 27, 2010

Respectfully Submitted,

17 /s/ B. Lance Entrekin

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