

1 this judicial district, and continues to commit acts of infringement in this district.

2 **THE PARTIES**

3 3. Whalen is a corporation organized and existing under the laws of the state of
4 California, having its principal place of business at 1578 Air Wing Road, San Diego, California
5 92154.

6
7 4. On information and belief, Walker Edison is a corporation organized and existing
8 under the laws of the state of Utah and has a principal place of business at 4350 West 2100 South,
9 Suite A, Salt Lake City, Utah 84120.

10 5. On information and belief, Walker Edison has committed acts of infringement alleged
11 herein within this judicial district.

12 **COUNT I**

13 **(Infringement of U.S. Patent No. 8,079,311)**

14 6. Whalen repeats and realleges paragraphs 1-5 above.

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16 7. Whalen is the owner of the entire right, title and interest in United States Patent No.
17 8,079,311, entitled "TELEVISION SUPPORT AND MOUNTING KIT," which was duly and legally
18 issued by the United States Patent and Trademark Office on December 20, 2011 (the "'311 patent").
19 A true and correct copy of the '311 patent is attached as Exhibit A and is incorporated by reference.

20 8. Whalen has the exclusive right to make, use, sell, offer for sale and import into the
21 United States embodiments of the inventions claimed in the '311 patent, and the exclusive right to
22 authorize others to do the same.

23
24 9. Walker Edison, without permission or license from Whalen, has unlawfully and
25 wrongfully made, used, sold, offered for sale, and/or imported, and is now making, using, selling,
26 offering for sale and/or importing, in direct competition with Whalen, television stands in the United
27 States and this District that are covered by one or more claims of the '311 patent, including but not
28

1 limited to, the: Walker Edison V42MWF, Walker Edison V42MWFES, Walker Edison V60MWF,
2 Walker Edison V60MWFES, Walker Edison V48EC1ES, Walker Edison V60EC1ES, Walker Edison
3 V48EC1BL and Walker Edison V60EC1BL (the “Accused Products”).

4 10. Walker Edison’s unlawful and wrongful making, using, selling, offering for sale and/or
5 importing; contributing to the making, using, selling, offering for sale and/or importing; and inducing
6 of others to make, use, sell, offer for sale and/or import, the Accused Products within the United States
7 including this judicial district constitutes at least direct infringement of at least one claim of the ’311
8 patent, under 35 U.S.C. §§ 271 et seq.

9 11. By reason of Walker Edison’s infringing activities, Whalen has suffered, and will
10 continue to suffer, substantial damages in an amount to be proven at trial.

11 12. Walker Edison’s continuing acts of infringement are irreparably harming and causing
12 damage to Whalen, for which Whalen has no adequate remedy at law, and will continue to suffer such
13 irreparable injury unless Walker Edison’s continuing acts of infringement are enjoined by the Court.
14 The hardships, if any, that would be imposed by an injunction are less than those faced by Whalen
15 should an injunction not issue. The public interest would be served by issuance of an injunction.

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18 **PRAYER FOR RELIEF**

19 WHEREFORE, Whalen respectfully requests that this Court:

20 A. Enter judgment in favor of Whalen that Walker Edison has infringed the ’311 patent as
21 aforesaid;

22 B. Grant a permanent injunction enjoining Walker Edison, its officers, directors, agents,
23 servants, affiliates, employees, divisions, subsidiaries, branches, parents and all others acting in
24 concert or privity therewith from any and all further infringement of the ’311 patent pursuant to 35
25 U.S.C. § 283;

26 C. Grant an accounting of damages resulting from Walker Edison’s infringement of the
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CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings 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. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

WHALEN FURNITURE MFG., INC.

(b) County of Residence of First Listed Plaintiff San Diego (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number) Law Offices of Randall S. Waier, 20241 Birch Street, Suite 103, Newport Beach, California 92660, (949) 476-2511.

DEFENDANTS

WALKER EDISON FURNITURE CO. LLC

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

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

Attorneys (If Known)

'11CV3001 AJB WMC

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

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

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship and business location (Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation).

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Large table with categories: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed 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

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 35 U.S.C. § 271 et seq.

Brief description of cause: Patent Infringement

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23, DEMAND \$, CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): Janis L. Sammartino and John A. Houston, 11cv2958-JLS-POR and 11cv2988-JAH-MDD

DATE: 12/22/2011 SIGNATURE OF ATTORNEY OF RECORD: /s/Randall S. Waier

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RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE