

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
GAINESVILLE DIVISION**

VOLK ENTERPRISES, INC.,

Plaintiff,

v.

TURKEY POP UP TIMERS and
WWW.POPUPTIMERS.COM,

Defendants.

Civil Action No. 2:12-cv-157-WCO

JURY TRIAL DEMANDED

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff, Volk Enterprises, Inc., for its Complaint against Defendants, Turkey Pop Up Timers and www.popuptimers.com, alleges as follows:

INTRODUCTION

1. This is an action for patent infringement arising under the patent laws of the United States, Title 35, United States Code.

THE PARTIES

2. Plaintiff, Volk Enterprises, Inc. (hereinafter “Volk”) is a Delaware Corporation with a principal place of business located at 1335 Ridgeland Parkway, Suite 120, Alpharetta, GA 30004.

3. On information and belief, Defendants Turkey Pop Up Timers and Defendants popuptimers.com have a business location at No. 855, Xianyuan Road, Wucheng District, Jinhua City, Zhejiang Province, China (321000).

4. On information and belief, Defendants design, manufacture, market, and sell products under the name “Pop Up Timers,” “Turkey Pop Up Timers” and other names shown at www.popuptimers.com.

JURISDICTION AND VENUE

5. This Court has subject matter jurisdiction over all causes of action set forth herein pursuant to 28 U.S.C. §§ 1331 and 1338(a) because this action arises under the patent laws of the United States, Title 35, United States Code, including 35 U.S.C. §271 *et seq.*

6. This Court has personal jurisdiction over Defendants as: (i) Defendants maintain regular and systematic business contacts with the State of Georgia and within this judicial district and division; (ii) Defendants purposely, regularly, and continuously conduct business in the State of Georgia and within this judicial district and division; (iii) Defendants purposefully direct their activities at residents of the State of Georgia; (iv) the cause of action set forth herein arises out of or relates to the Defendants’ activities in the State of Georgia; and (v) the exercise of jurisdiction over Defendants will not offend the traditional notions of fair play and

substantial justice.

7. Venue is proper in this judicial district and division pursuant to 28 U.S.C. §1331, §1338(a), §§1391(b)(c), and §1400(b).

COUNT ONE: PATENT INFRINGEMENT
(U.S. Patent No. 5,799,606)

8. Volk realleges and incorporates herein the preceding allegations of this Complaint as if fully set forth herein.

9. On September 1, 1998, the United States Patent and Trademark Office duly and legally issued United States Patent No. 5,799,606, entitled “Pop-Up Temperature Indicating Device.” A true and correct copy of U.S. Patent No. 5,799,606 is attached hereto as Exhibit “A.”

10. Volk is the owner, by assignment, of all right, title, and interest in and to U.S. Patent No. 5,799,606 (hereinafter the “‘606 Patent”), including the right to bring suit for past, present, and future patent infringement, and to collect past, present, and future damages.

11. The ‘606 Patent is valid.

12. The ‘606 Patent is enforceable.

13. Defendants have in the past and continue to infringe one or more claims of the ‘606 Patent in violation of 35 U.S.C. §271(a). Defendants’ infringing acts include, but are not necessarily limited to, Defendants’ manufacture, use, offer

for sale, sale, and/or importation of disposable cooking thermometers and temperature indicating devices for use in cooking food.

14. A representative example of Defendants' infringing disposable cooking thermometers includes, but is not necessarily limited to, Defendants' manufacture, use, offer for sale, sale and/or importation of the disposable cooking thermometer shown in Exhibit "C."

15. Customers who reside in the State of Georgia, including the Northern District of Georgia, can purchase Defendants' disposable cooking thermometers directly from Defendants via the Internet, including at the website www.popuptimers.com.

16. On information and belief, Defendants' infringement of one or more claims of the '606 Patent has been, and continues to be, objectively reckless, willful, and deliberate, entitling Volk to increased damages pursuant to 35 U.S.C. §284 and to attorneys' fees pursuant to 35 U.S.C. §285.

17. Volk has and continues to suffer damages as a direct and proximate result of Defendants' infringement of one or more claims of the '606 Patent and will suffer additional and irreparable damages unless Defendants are permanently enjoined by this Court from continuing their infringement. Volk has no adequate remedy at law.

18. Volk is entitled to: (i) damages adequate to compensate it for Defendants' infringement of the '606 Patent, which amounts to, at a minimum, a reasonable royalty; (ii) Volk's lost profits; (iii) treble damages; (iv) attorneys' fees; (v) costs; and (vi) a preliminary and thereafter permanent injunction.

COUNT TWO: PATENT INFRINGEMENT
(U.S. Patent No. 5,988,102)

19. Volk realleges and incorporates herein the allegations of the preceding paragraphs of this Complaint as if fully set forth herein.

20. On November 23, 1999, the United States Patent and Trademark Office duly and legally issued United States Patent No. 5,988,102, also entitled "Pop-Up Temperature Indicating Device." A true and correct copy of U.S. Patent No. 5,988,102 is attached hereto as Exhibit "B."

21. Volk is the owner, by assignment, of all right, title, and interest in and to U.S. Patent No. 5,988,102 (hereinafter the "'102 Patent"), including the right to bring suit for past, present, and future patent infringement, and to collect past, present, and future damages.

22. The '102 Patent is valid.

23. The '102 Patent is enforceable.

24. Defendants have in the past and continue to infringe one or more claims of the '102 Patent in violation of 35 U.S.C. §271(a). Defendants' infringing

acts include, but are not necessarily limited to, Defendants' manufacture, use, offer for sale, sale, and/or importation of disposable cooking thermometers and temperature indicating devices for use in cooking food.

25. A representative example of Defendants' infringing disposable cooking thermometer includes, but is not necessarily limited to, the disposable cooking thermometer shown in Exhibit "C."

26. Customers who reside in the State of Georgia, including the Northern District of Georgia, can purchase the disposable cooking thermometers directly from Defendants via the Internet, including at the website www.popuptimers.com.

27. On information and belief, Defendants' infringement of one or more claims of the '102 Patent has been, and continues to be, objectively reckless, willful and deliberate, entitling Volk to increased damages pursuant to 35 U.S.C. §284 and to attorneys' fees pursuant to 35 U.S.C. §285.

28. Volk has and continues to suffer damages as a direct and proximate result of Defendants' infringement of one or more claims of the '102 Patent and will suffer additional and irreparable damages unless Defendants are permanently enjoined by this Court from continuing their infringement. Volk has no adequate remedy at law.

29. Volk is entitled to: (i) damages adequate to compensate it for Defendants' infringement of the '102 Patent, which amounts to, at a minimum, a reasonable royalty; (ii) Volk's lost profits; (iii) treble damages; (iv) attorneys' fees; (v) costs; and (vi) a preliminary and thereafter permanent injunction.

PRAYER FOR RELIEF

WHEREFORE, Volk seeks the following relief:

a. That Defendants are enjoined from further infringement of the '606 Patent and the '102 Patent pursuant to 35 U.S.C. §283;

b. That Defendants are ordered to pay damages adequate to compensate Volk for Defendants' infringement of the '606 Patent and the '102 Patent pursuant to 35 U.S.C. §284;

c. That all Defendants are ordered to pay Volk Volk's lost profits due to Defendants' infringement of the '606 Patent and the '102 Patent pursuant to 35 U.S.C. §284;

d. That Defendants are ordered to pay Volk treble damages pursuant to 35 U.S.C. §284;

e. That Defendants are ordered to pay prejudgment interest pursuant to 35 U.S.C. §284;

f. That Defendants are ordered to pay all costs associated with this action pursuant to 35 U.S.C. §284;

g. That Defendants are ordered to pay Volk's attorneys' fees pursuant to 35 U.S.C. §285; and

h. That Volk is granted such other and additional relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Pursuant to Fed. R. Civ. P. 38(b), Volk demands a trial by jury of all issues triable of right by a jury.

Respectfully submitted, this 30th day of June, 2012.

/s/ Stephen R. Risley _____

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