

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

**Sam Ligon, an individual, and
Jokari/US, Inc., a Texas corporation,**

Plaintiffs

vs.

**Arthur Kleinpell II, an individual,
*Defendant.***

00C 6633

DOCKETED

OCT 26 2000

JUDGE PLUNKETT

MAGISTRATE JUDGE LEVIN

FILED-ED4
00 OCT 25 PM 3:12
CLERK
U.S. DISTRICT COURT

COMPLAINT FOR A DECLARATORY JUDGMENT

**Now come Plaintiffs and for their Complaint for a Declaratory Judgment against
Defendant allege as follows:**

THE PARTIES, JURISDICTION AND VENUE

1. Plaintiff, Sam Ligon (hereinafter "Ligon"), is an individual and resident and citizen of the State of Texas; Plaintiff, Jokari/US, Inc. (hereinafter "Jokari"), is a Texas corporation with a principal place of business at 1205 Venture Court, Carrollton, Texas 75006; and, on information and belief, Defendant, Arthur Kleinpell II (hereinafter "Defendant"), is an individual residing at 457 North Cranbrook Road, Bloomfield Hills, Michigan 48301 and a citizen of the State of Michigan.
2. This matter arises under the Declaratory Judgment act of the United States, and this court has subject matter jurisdiction over this Complaint for Declaratory Relief pursuant to 28 U.S.C. § 2201 and § 1331, and personal jurisdiction over Defendant, and venue is proper in this judicial district.

3. In the summer of 1996, Jokari began development of a new clip (hereinafter referred to as the "Jokari Product") which was to be shaped in the form of two lips which would clamp together, and, as part of the development of the Jokari Product, it engaged the services of an outside design and consulting firm which created the final overall design of the Jokari Product.

4. On September 12, 1996 the outside design and consulting firm faxed to Jokari, for approval and acceptance, its proposed design for the Jokari Product, and, thereafter, Jokari approved the proposed design for the Jokari Product and began manufacturing and marketing it throughout the United States.

5. More than a year after the outside design and consulting firm had offered its proposed design for acceptance and acquisition by Jokari, and long after the Jokari Product had been on sale throughout the United States, on October 31, 1997 Defendant filed an application, Serial Number 078712, for a design patent in the United States Patent and Trademark Office.

6. On July 7, 1998 the United States Patent and Trademark Office issued United States Letters Patent No. Des. 395,920 to Defendant on his above identified application Serial No. 078712.

7. After the issuance of United States Letters Patent No. Des. 395,920, the attorneys for Defendant wrote to Jokari/US, Inc. informing Jokari of the issuance of the said Letters Patent, and asserting that the Jokari Product infringed said Letters Patent.

8. Following Jokari's receipt of the above identified letter from Defendant's attorneys, Defendant, through his attorneys, engaged in further correspondence with the attorneys for Jokari, all of which was directed to the Chicago offices of Jokari's attorneys.

9. The forgoing correspondence from Defendant's attorneys for Defendant to the attorneys for Jokari in Chicago culminated with a letter dated October 19, 2000 (a copy of which is attached hereto

as Exhibit A to this Complaint) threatening to file a complaint (a copy of which is attached hereto as Exhibit B to this Complaint) alleging infringement of United States Letters Patent No. Des.395,920 against Jokari and its president, Mr. Sam Ligon.

10. Although Ligon is an officer of Jokari, Inc., namely its president, he does not own or hold any stock in Jokari/US, Inc., and, apart from his position as president of Jokari, in his individual capacity, Ligon has never engaged in the manufacture, use and or sale of the product which is alleged by Defendant, in his proposed complaint, to infringe said Letters Patent No. Des.395,920.

11. On information and belief, United States Letters Patent No. Des.395,920 are invalid and unenforceable by reason of one or more of the following reasons:

- A. The invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the alleged invention thereof by Defendant [35 U.S.C. § 102(a)]; and/or
- B. The invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more that one year prior to the application for patent in the United States [35 U.S.C. § 102(b)]; and/or
- C. Defendant did not himself invent the subject matter sought to be patented [35 U.S.C. § 102(f)]; and/or
- D. Before the Defendant's invention thereof the invention was made in this country by another who had not abandoned, suppressed or concealed it [35 U.S.C. § 102(g)]; and/or,
- E. The differences between the subject matter claimed in said Letters Patent and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said

subject matter pertains [35 U.S.C. § 103]; and/or

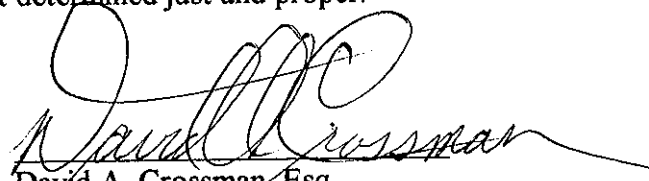
F. Upon such other grounds as may be hereinafter discovered by the Plaintiffs.

12. A Declaratory Judgment is, therefore, necessary to adjudicate the validity of the Letter's Patent upon which Defendant has threatened litigation in the District Court of the United States against plaintiffs and to adjudicate that they are not liable for any infringement of any valid rights claimed by Defendant against them.

WHEREFORE, Plaintiffs pray for a declaratory judgment against defendant as follows:

1. That United States Letter Patent No. Des.395,920 be adjudged invalid and unenforceable against Plaintiffs and not infringed by them, or either of them.
2. That Plaintiffs be awarded their costs, expenses and attorneys fees incurred herein, and
3. For such other and further relief as the Court determined just and proper.

DATED: October 25, 2000


David A. Crossman, Esq.
Law Offices of David A. Crossman
433 Briar Place, Suite 11C
Chicago, Illinois 60657
Telephone: (773) 248 1530
Fax: (773) 248 5750

Attorney for Plaintiffs

KOHN & ASSOCIATES

Intellectual Property Law

KENNETH I. KOHN, Ph.D.
AMY E. RINALDO[†]

[†]also admitted in Ohio

October 19, 2000

David A. Crossman, Esq.
433 Briar Place
Suite 11 C
Chicago, IL 60657

Re: Design Patent Number: 395,920
Issued: July 7, 1998
NOVELTY CLIP
Our File No.: 3105.00002

Dear Mr. Crossman:

After making numerous attempts to resolve this matter amicably, we are now in a position enforce our client's patent rights through legal resolution. Enclosed is a Verified Complaint which we intend to file unless we hear from you by **Thursday, October 26, 2000**.

Very truly yours,

KOHN & ASSOCIATES



Kenneth I. Kohn

KIK/mmd
Enclosures

EXHIBIT A

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN

ARTHUR S. KLEINPELL, II
an Individual,

Plaintiff,

v.

Civil Action No. _____

Jokari/U.S., Inc., a Texas corporation
and Samuel B. Ligon, an Individual,

Hon. _____

Defendants.

_____/

Kenneth I. Kohn (P_____)
Amy E. Rinaldo (P_____)
KOHN & ASSOCIATES
30500 Northwestern Hwy.
Suite 410
Farmington Hills, Michigan 48334
(248) 539-5050

_____/

VERIFIED COMPLAINT

JURISDICTION AND VENUE

1. This is an action for patent infringement. It arises under the patent laws of the United States, 35 U.S.C. § 1 et seq.

EXHIBIT B

2. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331, 1332 and 1338. The amount in controversy, exclusive of interest and costs, is in excess of \$75,000.00.

3. Venue is proper in this Court pursuant to 28 U.S.C. § 1339(b) and (c).

4. Plaintiff Arthur S. Kleinpell ("Plaintiff") is an individual residing at 457 North Cranbrook Road, Bloomfield Hills, Michigan 48301.

5. Defendant, Samuel B. Ligon ("Ligon"), an individual, is, upon information and belief a Texas resident, residing at _____
_____, Texas _____.

6. The Defendant, Jokari/US, Inc. ("Jokari"), is, upon information and belief, a Texas corporation having a principal place of business at 1205 Venture Court, Suite 101, Carrollton, Texas 75006.

BACKGROUND

7. Plaintiff filed a design patent application covering the invention at issue on October 31, 1997 and was issued United States Letters Patent Des. 395,920. A copy is attached hereto as Exhibit A.

8. The invention is an ornamental design for a novelty clip shaped as a pair of lips.

9. Plaintiff has become aware that Defendants are manufacturing, using, selling and offering for sale a novelty clip which, is a duplicate of Plaintiff's patented novelty clip described above.

10. On information and belief, since the issuance of the United States Letters Patent Number Des. 395,920, (or whenever Kleinpell believes is the beginning date of infringement) Defendants have been and are now, manufacturing, using, selling and offering for sale a novelty clip which, is a duplicate of Plaintiff's novelty clip described in said patent.

11. Defendants have been, and are now, infringing United States Letters Patent Number Des. 395,920 as a result of such manufacture, use or sale of the novelty clip which is a duplicate of Plaintiff's.

12. The actions of the Defendants complained of herein constitute a willful and deliberate infringement of Plaintiff's United States Letters Patent Number Des. 395,920.

13. On information and belief, Defendants have profited by its infringing activities. Plaintiff has been damaged in an amount not yet determined by Defendants' infringing activities and will be irreparably injured unless such infringement activities are enjoined by this Court.

WHEREFORE, Plaintiff prays unto this Honorable Court as follows:

B. Ligon, his heirs, successors, assigns or other legal representatives be enjoined both preliminarily and permanently thereafter from further infringement of the United States Letters Patent Number Des. 395,920.

C. Jokari, its officers, agents, servants, employees and those person in active concert or participation be enjoined both preliminarily and permanently thereafter from further infringement of the United States Letters Patent Number Des. 395,920.

D. Defendants be required to pay Plaintiff such damages as Plaintiff has sustained as a consequence of Defendants' acts of infringement and that such damages be trebled based on Defendants' willful, wanton disregard of the rights of Plaintiff.

E. Defendants be directed to file with this Court and serve on Plaintiff within thirty (30) days after service of the injunction, a report in writing, under oath, setting forth in detail the manner and form in which the Defendant has complied with the injunction.

F. Defendants be required to account for and pay to the Plaintiff all gains, profits and advantages realized from the sale of the relevant products.

G. Plaintiff be awarded its attorneys' fees, costs and expenses incurred herein.

H. Plaintiff be awarded such further relief and this Court may deem appropriate.

VERIFICATION

I, Arthur S. Kleinpell, an individual, verify that the statements set forth in this Verified Complaint are true and accurate to the best of my knowledge.

Respectfully submitted,

Dated:

Arthur S. Kleinpell

Dated:

Kenneth I. Kohn (P35170)
Amy E. Rinaldo (P58662)
KOHN & ASSOCIATES
30500 Northwestern Hwy.
Suite 410
Farmington Hills, Michigan 48334
(248) 539-5050

JS 44
(Rev. 12/96)

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

Mr. Sam Ligon, an individual
and
Jekani/U.S., Inc., a Texas Corporation

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF Dallas County, TX
(EXCEPT IN U.S. PLAINTIFF CASES)

DEFENDANTS

Arthur Klempell, II, an individual

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

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

David A. Crossman, Esq.
Law Offices of David A. Crossman
4333 Brian Place, MC, Chicago, IL 60657
(773) 248 1530

ATTORNEYS (IF KNOWN)

DOCKETED

OCT 26 2000

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

(For Diversity Cases Only)

- ☒ Plaintiff of This State
☐ Citizen of Another State
☐ Alien or Subject of a Foreign Country

- PTF DEF
☐ 1 ☐ 1
☐ 2 ☐ 2
☐ 3 ☐ 3

- Incorporated or Principal Place of Business In This State ☐ 4 ☐ 4
Incorporated and Principal Place of Business In Another State ☐ 5 ☐ 5
Foreign Nation ☐ 6 ☐ 6

IV. ORIGIN

☒ 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

V. NATURE OF SUIT

(PLACE AN "X" IN ONE BOX ONLY)

CONTRACT

- ☐ 110 Insurance
☐ 120 Marine
☐ 130 Miller Act
☐ 140 Negotiable Instrument
☐ 150 Recovery of Overpayment & Enforcement of Judgment
☐ 151 Medicare Act
☐ 152 Recovery of Defaulted Student Loans (Excl. Veterans)
☐ 153 Recovery of Overpayment of Veteran's Benefits
☐ 160 Stockholders' Suits
☐ 190 Other Contract
☐ 195 Contract Product Liability

REAL PROPERTY

- ☐ 210 Land Condemnation
☐ 220 Foreclosure
☐ 230 Rent Lease & Ejectment
☐ 240 Torts to Land
☐ 245 Tort Product Liability
☐ 290 All Other Real Property

TORTS

- PERSONAL INJURY**
☐ 310 Airplane
☐ 315 Airplane Product Liability
☐ 320 Assault, Libel & Slander
☐ 330 Federal Employers' Liability
☐ 340 Marine
☐ 345 Marine Product Liability
☐ 350 Motor Vehicle
☐ 355 Motor Vehicle Product Liability
☐ 360 Other Personal Injury

- PERSONAL INJURY**
☐ 362 Personal Injury - Med. Malpractice
☐ 365 Personal Injury - Product Liability
☐ 368 Asbestos Personal Injury Product Liability

- PERSONAL PROPERTY**
☐ 370 Other Fraud
☐ 371 Truth In Lending
☐ 380 Other Personal Property Damage
☐ 385 Property Damage Product Liability

CIVIL RIGHTS

- ☐ 441 Voting
☐ 442 Employment
☐ 443 Housing/Accommodations
☐ 444 Welfare
☐ 440 Other Civil Rights

PRISONER PETITIONS

- ☐ 510 Motions to Vacate Sentence
HABEAS CORPUS:
☐ 530 General
☐ 535 Death Penalty
☐ 540 Mandamus & Other
☐ 550 Civil Rights
☐ 555 Prison Condition

FORFEITURE/PENALTY

- ☐ 610 Agriculture
☐ 620 Other Food & Drug
☐ 625 Drug Related Seizure of Property 21 USC 881
☐ 630 Liquor Laws
☐ 640 R.R. & Truck
☐ 650 Airline Regs.
☐ 660 Occupational Safety/Health
☐ 690 Other

LABOR

- ☐ 710 Fair Labor Standards Act
☐ 720 Labor/Mgmt. Relations
☐ 730 Labor/Mgmt. Reporting & Disclosure Act
☐ 740 Railway Labor Act
☐ 790 Other Labor Litigation
☐ 791 Empl. Ret. Inc. Security Act

BANKRUPTCY

- ☐ 422 Appeal 28 USC 158
☐ 423 Withdrawal 28 USC 157

PROPERTY RIGHTS

- ☐ 820 Copyrights
☒ 830 Patent
☐ 840 Trademark

SOCIAL SECURITY

- ☐ 861 HIA (1395ff)
☐ 862 Black Lung (923)
☐ 863 DIWC/DIWW (405(g))
☐ 864 SSID Title XVI
☐ 865 RSI (405(g))

FEDERAL TAX SUITS

- ☐ 870 Taxes (U.S. Plaintiff or Defendant)
☐ 871 IRS - Third Party 26 USC 7609

OTHER STATUTES

- ☐ 400 State Reapportionment
☐ 410 Antitrust
☐ 430 Banks and Banking
☐ 450 Commerce/ICC Rates/etc.
☐ 460 Deportation
☐ 470 Racketeer Influenced and Corrupt Organizations
☐ 480 Selective Service
☐ 490 Securities/Commodities/Exchange
☐ 475 Customer Challenge 12 USC 3410
☐ 891 Agricultural Acts
☐ 892 Economic Stabilization Act
☐ 893 Environmental Matters
☐ 894 Energy Allocation Act
☐ 895 Freedom of Information Act
☐ 900 Appeal of Fee Determination Under Equal Access to Justice Act
☐ 890 Constitutional of State Statutes
☐ 890 Other Statutory Actions

VI. CAUSE OF ACTION

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

Declaratory Judgment of Patent invalidity pursuant to 28 U.S.C. § 22

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. This case

☒ is not a refiling of a previously dismissed action.
☐ is a refiling of case number _____ previously dismissed by Judge _____

SIGNATURE OF ATTORNEY OF RECORD

DATE

October 25, 2000

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS**

In the Matter of

Sam Ligon and Tokari/US, Inc.
Plaintiffs

vs

Mr. Arthur Klempell II,
Defendant

APPEARANCES ARE HEREBY FILED BY THE UNDERSIGNED AS ATTORNEY(S) FOR

Mr. Sam Ligon and Tokari/US, Inc. - Plaintiffs

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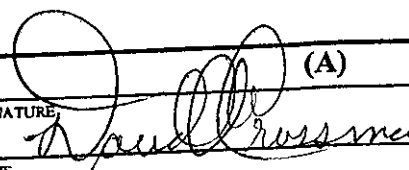
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U.S. DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS

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JUDGE PLUNKETT

(A)		(B)	
SIGNATURE 		SIGNATURE MAGISTRATE JUDGE LEVIN	
NAME DAVID A. CROSSMAN		NAME	
FIRM Law Offices of David A. Crossman		FIRM	
STREET ADDRESS 433 Brian Place, Suite 11C		STREET ADDRESS	
CITY/STATE/ZIP Chicago, IL 60657		CITY/STATE/ZIP	
TELEPHONE NUMBER 773 248 1530	FAX NUMBER 773 248 5750	TELEPHONE NUMBER	FAX NUMBER
E-MAIL ADDRESS david-crossman@juno.com		E-MAIL ADDRESS	
IDENTIFICATION NUMBER (SEE ITEM 4 ON REVERSE) 31222-81		IDENTIFICATION NUMBER (SEE ITEM 4 ON REVERSE)	
MEMBER OF TRIAL BAR? YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>		MEMBER OF TRIAL BAR? YES <input type="checkbox"/> NO <input type="checkbox"/>	
TRIAL ATTORNEY? YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>		TRIAL ATTORNEY? YES <input type="checkbox"/> NO <input type="checkbox"/>	
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