

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No. 1:12-cv-1969-MSK-MJW

OTTER PRODUCTS, LLC, a Colorado  
Limited Liability Company,

Plaintiff,

v.

MOPHIE, LLC, a Michigan Limited  
Liability Corporation,

Defendant.

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**AMENDED COMPLAINT AND JURY DEMAND**

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Plaintiff Otter Products, LLC (“OtterBox”), by and through its undersigned attorneys, for its Complaint against mophie, LLC. (“mophie”) states as follows:

**PARTIES**

1. Plaintiff OtterBox is a Colorado limited liability company with its principal place of business at 209 S. Meldrum Street, Fort Collins, Colorado 80521.

2. Upon information and belief, Defendant mophie, LLC. is a Michigan

Limited Liability Corporation with a principle place of business at 760 S Kalamazoo Street, Paw Paw, Michigan 49079.

3. Upon information and belief, mophie, LLC is a distributor of the accused product and a licensee of certain intellectual property to mophie, Inc., which has a principal place of business at 2850 Red Hill Avenue, Suite 128, Santa Ana, California 92705.

### **JURISDICTION AND VENUE**

4. This is a civil action for patent infringement arising under the patent laws of the United States, 35 U.S.C. § 101, *et seq.*

5. This court has jurisdiction over the subject matter of this action under 28 U.S.C. § 1338.

6. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391 and 28 U.S.C. § 1400 because mophie is engaged in the regular, continuous, and systematic transaction of business in this judicial district, including through the distribution, sale and or offer for sale of the Juice Pack PRO case through its website, and has committed acts of patent infringement in this judicial district. This Court also has specific jurisdiction over mophie as infringing products were purchased from mophie in this judicial district.

### **OTTERBOX & THE TECHNOLOGY AT-ISSUE**

7. OtterBox was founded by current CEO Curtis (“Curt”) Richardson in his garage in Ft. Collins, Colorado. In that garage, Mr. Richardson created a first of its kind prototype of a waterproof case. The OtterBox waterproof product line was a rapid success, and soon OtterBox was creating waterproof cases as well as

specially designed cases for electronic products that allow users to protect their devices without sacrificing access to the device's controls or hampering the use of the device.

8. OtterBox was then and is now known as a leading innovator in device protection and interaction. In 2010 alone, OtterBox won National Geographic's "Gear of the Year Award" the United States' Postal Services' "Creative Business Solutions Award" and TESSCO Technology's "Innovator Award."

9. The OtterBox inventions at-issue pertain to innovations tracing back to OtterBox's roots: waterproof protective devices. OtterBox products based on and stemming from the waterproof patent family have won many awards, including "Best of WES" (Wireless Exposition Symposium) (2006) and "Editor's Choice" from Best of PC Magazine (2006).

10. The asserted OtterBox patents claim groundbreaking innovations that teach the design, manufacture, and use of electronic devices that are water-resistant and impact-resistant but still allow full sensory interaction with and use of the enclosed device. OtterBox's innovations solved long-standing problems and its products were and are incredibly well-received in the market place and copied with an astonishing regularity.

### **OTTERBOX'S INTELLECTUAL PROPERTY**

11. On October 27, 2009, United States Patent No. 7,609,512 ("the '512 Patent"), entitled "Protective Enclosure For Electronic Device," was duly and legally issued to Curtis R. Richardson and Alan Morine. A true and correct copy of the '512 Patent is attached as **Exhibit A**.

12. The '512 Patent is enforceable and, pursuant to 35 U.S.C. § 282, carries a statutory presumption of validity.

13. By assignment, OtterBox owns all rights, title, and interests in the '512 Patent, including, without limitation, the right to enforce this patent and collect damages for its infringement.

14. On January 2, 2007, United States Patent No. 7,158,376 (“the '376 Patent”), entitled “Protective Enclosure For An Interactive Flat-Panel Controlled Device,” was duly and legally issued to Curtis R. Richardson et. al. A true and correct copy of the '376 Patent is attached as **Exhibit B**.

15. The '376 Patent is enforceable and, pursuant to 35 U.S.C. § 282, carries a statutory presumption of validity.

16. By assignment, OtterBox owns all rights, title, and interests in the '376 Patent, including, without limitation, the right to enforce this patent and collect damages for its infringement.

17. On April 26, 2011, United States Patent No. 7,933,122 (“the '122 Patent”), entitled “Protective Enclosure For A Computer,” was duly and legally issued to Curtis R. Richardson et. al. A true and correct copy of the '122 Patent is attached as **Exhibit C**.

18. The '376 Patent is enforceable and, pursuant to 35 U.S.C. § 122, carries a statutory presumption of validity.

19. By assignment, OtterBox owns all rights, title, and interests in the '122 Patent, including, without limitation, the right to enforce this patent and collect damages for its infringement.

**FIRST CLAIM FOR RELIEF**  
**Infringement of U.S. Patent No. 7,609,512**

20. OtterBox incorporates by reference paragraphs 1 through 19 as if set forth in their entirety.

21. mophie is making, using, selling, and/or offering to sell in the United States and/or importing into the United States the Juice Pack Pro.

22. mophie's activities in making, using, selling, and/or offering to sell in the United States and/or importing into the United States the Juice Pack Pro constitutes infringement of the '512 Patent, in violation of 35 U.S.C. § 271.

23. mophie's infringement of the '512 Patent has caused and will continue to cause damage to OtterBox in an amount to be determined at trial.

24. mophie's infringement of the '512 Patent has caused and will continue to cause irreparable injury to OtterBox as to which there exists no adequate remedy at law. mophie's infringement will continue unless enjoined by this Court.

**SECOND CLAIM FOR RELIEF**  
**Infringement of U.S. Patent No. 7,158,376**

25. OtterBox incorporates by reference paragraphs 1 through 24 as if set forth in their entirety.

26. mophie is making, using, selling, and/or offering to sell in the United States and/or importing into the United States the Juice Pack Pro.

27. mophie's activities in making, using, selling, and/or offering to sell in the United States and/or importing into the United States the Juice Pack Pro constitutes infringement of the '376 Patent, in violation of 35 U.S.C. § 271.

28. mophie's infringement of the '376 Patent has caused and will continue to cause damage to OtterBox in an amount to be determined at trial.

29. mophie's infringement of the '376 Patent has caused and will continue to cause irreparable injury to OtterBox as to which there exists no adequate remedy at law. mophie's infringement will continue unless enjoined by this Court.

**THIRD CLAIM FOR RELIEF**  
**Infringement of U.S. Patent No. 7,933,122**

30. OtterBox incorporates by reference paragraphs 1 through 29 as if set forth in their entirety.

31. mophie is making, using, selling, and/or offering to sell in the United States and/or importing into the United States the Juice Pack Pro.

32. mophie's activities in making, using, selling, and/or offering to sell in the United States and/or importing into the United States the Juice Pack Pro constitutes infringement of the '122 Patent, in violation of 35 U.S.C. § 271.

33. mophie's infringement of the '122 Patent has caused and will continue to cause damage to OtterBox in an amount to be determined at trial.

34. mophie's infringement of the '122 Patent has caused and will continue to cause irreparable injury to OtterBox as to which there exists no adequate remedy at law. mophie's infringement will continue unless enjoined by this Court.

**DEMAND FOR JURY TRIAL**

35. OtterBox hereby requests a trial by jury.

**PRAYER FOR RELIEF**

WHEREFORE, OtterBox prays as follows on all claims:

- A. For a temporary restraining order, and preliminary and permanent injunctions enjoining and restraining mophie, and all related entities or persons acting in concert with them, from manufacturing, selling, or offering for sale the Juice Pack Pro;
- B. For an award of OtterBox's damages as appropriate under the patent laws of the United States, comprising:
  - (i) Lost profits, in an amount to be ascertained at trial;
  - (ii) A reasonably royalty, in an amount to be ascertained at trial;
  - (iii) Treble damages;
- C. For its reasonable attorneys' fees and costs; and
- D. For such other and further relief as the Court deems just and proper.

DATED: September 27, 2012

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*Attorneys for Otter Products, LLC,  
d/b/a OtterBox*

**CERTIFICATE OF SERVICE**

I hereby certify that I electronically filed the above *Amended Complaint* in the United States District Court for the District of Colorado, and that service will be automatically accomplished through Notice of Electronic Filing.

/s/ James W. Beard  
James W. Beard  
TURNER BOYD LLP