

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

<p>WINVIC SALES INC. and NII NORTHERN INTERNATIONAL INC.</p> <p style="text-align:center">Plaintiffs,</p> <p style="text-align:center">v.</p> <p>COSTCO WHOLESALE CORPORATION</p> <p style="text-align:center">Defendant.</p>	<p>Civil Action No.:</p> <p><b>TRIAL BY JURY DEMANDED</b></p>
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**COMPLAINT IN CIVIL ACTION**

Plaintiffs Winvic Sales Inc. and Nii Northern International Inc. (hereinafter “Plaintiffs”), for its complaint against Defendant, Costco Wholesale Corporation (hereinafter “Defendant”), alleges as follows:

**INTRODUCTION**

1. This is an action brought by Plaintiffs arising under the patent laws of the United States and/or the state of Illinois.
2. Plaintiffs seek an injunction and damages against Defendant for infringement of Plaintiffs’ patent rights.

**THE PARTIES**

3. Plaintiff Winvic Sales Inc. is a Canadian corporation having its principal place of business at 401 Bentley St., Unit #1, Markham, Ontario, Canada L3R 9T2.

4. Plaintiff Nii Northern International Inc. is a Canadian corporation having a place of business at 1 Burbidge Street, Suite 101, Coquitlam, British Columbia, Canada V3K 7B2.

5. On information and belief, Defendant is a Washington corporation having an address at 999 Lake Drive, Issaquah, WA 98027 and conducting business in the state of Illinois and within this judicial district.

### **JURISDICTION AND VENUE**

6. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338 and 35 U.S.C. § 281 for claims arising under 35 U.S.C. §§ 1 *et seq.*, the Patent Laws of the United States.

7. This Court has personal jurisdiction over Defendant pursuant to 735 I.L.C.S. §5/2-209, which authorizes an exercise of personal jurisdiction to the extent consistent with federal due process. Personal jurisdiction is proper here because Defendant has sufficient minimum contacts with Illinois such that the maintenance of this suit does not offend traditional notions of fair play and substantial justice.

8. Defendant has offered for sale, sold and/or otherwise distributed lantern products through its warehouse stores. Defendant has multiple stores nationwide, including in Illinois. Defendant's warehouse stores are located in this judicial district, including at 2900 Patriot Blvd, Glenview, IL 60026 and 1430 S. Ashland Ave, Chicago, IL 60608.

9. Defendant caused the infringing lanterns to be offered for sale and sold nationwide at its stores. For example, Defendant's infringing lantern products are offered for sale at: 2900 Patriot Blvd, Glenview, IL 60026; 1430 S. Ashland Ave, Chicago, IL 60608; 600 West Arbrook Blvd, Arlington, TX 76014-3702; 61-35 Junction Boulevard, Rego Park, NY

11374; 1445 West Elliot Road, Tempe, AZ 85294; 115 Technology West Drive, Irvine, CA 92618.

10. Defendant has established distribution channels in Illinois. Defendant knew the likely destination of its products and established connections with the Illinois. Defendant's established distribution channel indicates an expectation that Defendant's products will be purchased by consumers in Illinois. Defendant has purposefully directed its activities at residents in Illinois, the claim here arises out of or relates to those activities, and Defendant knew that its conduct and connections with this district were such that they should reasonably have anticipated being brought into court in the Northern District of Illinois. The assertion of personal jurisdiction is reasonable and fair.

11. Venue in this Court is based upon 28 U.S.C. §§ 1391 and 1400.

### **FACTUAL BACKGROUND**

12. United States Patent No. 7,093,961 ("the '961 patent"; attached at Exhibit A), entitled "Lantern With Imitation Flame Source," was duly and legally issued on August 22, 2006, and lists Roger D. Bentley, Bradford B. Jensen, and Kim I. McCavit as inventors.

13. All rights, title, and interest in and to the '961 patent has been assigned to Plaintiffs.

14. By way of agreement, Plaintiff Nii Northern International Inc. has exclusive rights to sell products that practice the '961 patent in the United States, and sells such products marked with the '961 patent in the United States.

15. Upon information and belief, Defendant at least offers for sale and sells lantern products with imitation flame source, and sells such lantern products; for example, Costco

Flameless LED Candle Lantern, Item Number 925391, is sold through Costco Wholesale warehouse stores (hereinafter “accused lantern products”).

16. An example of such a lantern product (*see* Exhibit B) was purchased from Defendant at 2900 Patriot Blvd, Glenview, IL 60026. Defendant offers to sell and sells such lantern products, including at, among other stores, its Chicago, Illinois area store at 1430 S. Ashland Ave, Chicago, IL 60608.

**COUNT I**  
**PATENT INFRINGEMENT OF U.S. PATENT NO. 7,093,961**

17. Plaintiffs hereby re-allege the allegations of Paragraphs 1-16 of this complaint as if fully set forth herein.

18. Upon information and belief, Defendant has for a time past and continues to infringe, either literally or under the doctrine of equivalents, the '961 patent by making, using, selling, offering for sale, and/or importing lantern products, embodying the patented invention to customers in the United States, either directly or through intermediaries, where they have been made available for sale and sold in Illinois, and/or contributing to and/or inducing the infringement by others. Examples of such infringing lantern products are shown in Exhibit B.

19. After a reasonable opportunity for further investigation or discovery, it is likely that the evidence will show that Defendant’s infringing activities have continued, despite Defendant’s knowledge of Plaintiffs’ rights in and to the '961 patent and/or with Defendant’s knowledge that Defendant does not have the right to practice any invention claimed by the '961 patent. Accordingly, Defendant is willfully infringing the '961 patent.

20. By the foregoing acts and otherwise, Defendant will continue to infringe Plaintiffs’ rights in the '961 patent unless restrained by this Court.

21. As a result of Defendant's patent infringement, Plaintiffs have suffered and continues to suffer irreparable injury, for which it has no adequate remedy at law.

**WHEREFORE, Plaintiffs pray for the following relief:**

1. A finding that the '961 patent is valid, and that the Defendant has infringed the '961 patent.
2. An injunction permanently enjoining the Defendant, its directors, officers, agents, servants, employees and all other persons in active concert or privity or in participation with it, from:
  - a. directly or indirectly infringing the '961 patent;
  - b. continuing to make, use, sell, or offer to sell any products which infringe the '961 patent; and
  - c. assisting, inducing, or aiding or abetting any other person or entity in engaging in any of the activities prohibited in subparagraphs (a) through (b) above.
3. An order requiring the impounding and destruction of all products in the possession of the Defendant that infringe the '961 patent.
4. An order requiring the Defendant to file with the Court and serve on the Plaintiffs, within 30 days after service of the Court's order as herein prayed, a report (or other form of proof) in writing under oath setting forth in detail the manner and form in which Defendant has complied with the Court's injunction.
5. A judgment entered for Plaintiffs and against Defendant for all damages sustained by Plaintiffs and/or any applicable statutory damages for Defendant's acts of patent infringement, including Defendant's profits, any damages sustained by Plaintiffs, costs and attorneys' fees of this action, treble damages, and prejudgment interest.

6. An accounting from Defendant for all gains, profits, and advantages derived from acts of patent infringement and/or other violations of the law as alleged herein.

7. An order requiring that all gains, profits, and advantages derived by Defendant from acts of patent infringement and/or other violations of the law as alleged herein is deemed to be in constructive trust for the benefit of Plaintiffs.

8. An order for such other, further, and different just and equitable relief as the Court deems proper under the circumstances, including punitive damages if appropriate pursuant to the evidence of record.

**JURY DEMAND**

Plaintiffs hereby demand a trial by jury on all issues so triable.

Dated: December 4, 2012

Respectfully submitted,

/s/ Christopher V. Carani

Christopher V. Carani

Wil Rao

Tanvi Patel

**MCANDREWS, HELD & MALLOY, LTD.**

500 West Madison Street, 34th Floor

Chicago, Illinois 60661

Telephone: (312) 775-8000

Facsimile: (312) 775-8100

E-Mail: ccarani@mcandrews-ip.com

wrao@mcandrews-ip.com

tpatel@mcandrews-ip.com

**Attorneys for Plaintiffs,**

**Winvic Sales Inc.**

**Nii Northern International Inc.**