

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Norfolk Division**

E-Z Ink Inc.,
Zhuhaiikedamaoyiyouxiangongsi (Akda),
Imagetechn Direct Inc., Lemero, Plenty
Talent Corp.,

Plaintiffs,

v.

Brother Industries, Ltd.,

Defendant.

Case No. 2:21-cv-00564-AWA-DEM

DEFENDANT BROTHER INDUSTRIES LTD.'S ANSWER TO COMPLAINT

Defendant Brother Industries Ltd. (“Brother”), by its attorneys, answers Plaintiffs E-Z Ink Inc., Zhuhaiikedamaoyiyouxiangongsi (Akda), Imagetechn Direct Inc., Lemero, Plenty Talent Corp.’s (collectively “EZ-Ink” or “Plaintiffs”) Complaint as follows:

THE PARTIES

1. Brother lacks sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 1 of the Complaint and therefore denies them.
2. Brother lacks sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 2 of the Complaint and therefore denies them.
3. Brother lacks sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 3 of the Complaint and therefore denies them.
4. Brother lacks sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 4 of the Complaint and therefore denies them.

5. Brother lacks sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 5 of the Complaint and therefore denies them.

6. Brother admits that it is a corporation organized and existing under the laws of Japan with its principal place of business located at 15-1, Naeshiro-cho, Mizuho-ku Nagoya-shi, Aichi-ken, Japan 467-8561.

NATURE OF THE CASE

7. Brother admits that the Complaint contains allegations under the Declaratory Judgment Act, 28 U.S.C. §§ 2201-2202, and the patent laws of the United States, 35 U.S.C. §§ 1 *et seq.*

8. Brother admits that the Complaint contains allegations seeking a declaratory judgment that U.S. Patent No. 8,867,932 (the '932 patent) is invalid. Brother admits that a purported copy of the '932 Patent is attached as Exhibit A to the Complaint. Brother specifically denies that any claim of U.S. Patent No. 8,867,932 (the '932 Patent) is invalid.

9. No response to paragraph 9 is required as this allegation was dismissed by the Court's Order of September 27, 2022 (Dkt. 41).

10. Brother admits that, on August 9, 2021, Brother submitted a formal request to participate in Amazon's Utility Patent Neutral Evaluation ("UPNE") program with respect to the '932 Patent. Brother admits that, to the best of its knowledge, Amazon notified Plaintiffs of Brother's UPNE filing on August 30, 2021, and Amazon informed Plaintiffs that they had three weeks to respond. Brother admits that, to the best of its knowledge, Plaintiffs did not respond to Amazon's August 30th UPNE notice until September 21, 2021, after the deadline had passed. Brother admits that Amazon confirmed to Brother that Amazon was removing the reported ASINs

because none of the sellers chose to participate in the UPNE. Brother otherwise denies the allegations in paragraph 10 of the Complaint.

11. Brother lacks sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 11 of the Complaint and therefore denies them.

JURISDICTION AND VENUE

12. Admitted.

13. Admitted.

14. Admitted.

FACTUAL BACKGROUND

15. Admitted.

16. Admitted.

17. Brother admits that Plaintiffs sell products on Amazon.com. Brother lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations of paragraph 17 of the Complaint and therefore denies them.

18. Brother admits that Plaintiffs offer products on Amazon, and that those products can serve as replacements for one another. Brother specifically denies that the products Plaintiffs offer on Amazon are suitable replacements for genuine Brother TN-630 and TN-660 toner cartridges.

19. Brother lacks sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 19 of the Complaint and therefore denies them.

20. Brother lacks sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 20 of the Complaint and therefore denies them.

21. Brother lacks sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 21 of the Complaint and therefore denies them.

22. Brother admits that Amazon offered a procedure called the “Amazon Utility Patent Neutral Evaluation Procedure” (UPNE) on August 9, 2021. Upon information and belief, Amazon no longer offers the UPNE procedure.

23. Brother admits that, in August 2021, Amazon’s UPNE Procedure document stated: “To efficiently resolve claims that third-party product listings infringe utility patents, Amazon offers a simple, low-cost procedure called Neutral Patent Evaluation.” Brother lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 23 of the Complaint and therefore denies them.

24. Brother admits that, in August 2021, Amazon’s UPNE Procedure document stated: “No discovery (e.g., depositions, document requests, etc.) will occur in the Evaluation, nor will there be a trial or hearing.” Brother lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 23 of the Complaint and therefore denies them.

25. Brother admits that, in August 2021, Amazon’s UPNE Procedure document stated: “To request an Evaluation, a Patent Owner submits an Amazon Utility Patent Neutral Evaluation Agreement (“Agreement”) to Amazon, with all information requested in its Exhibit 1. Amazon then sends that Agreement to each Seller listing Accused Counterclaim Products and gives each the option of: (i) executing and returning the Agreement within three weeks, with all information requested in its Exhibit 2; or (ii) having their listings on Accused Counterclaim Products removed from www.amazon.com. If a Seller does not participate in the Evaluation or does not comply with the Agreement, Amazon intends to remove its listings of Accused Products.” *See* Ex. A (Amazon

Utility Patent Neutral Evaluation Procedure). Brother lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 25 of the Complaint and therefore denies them.

26. Brother admits that, in August 2021, Amazon's UPNE Procedure document stated: "Only two defenses other than non-infringement based on failure to meet one or more claim limitations will be considered by the Evaluator. First, Sellers can defend on the basis of invalidity and/or unenforceability of the asserted patent claim by providing a finding by a court of competent jurisdiction, or by the U.S. Patent Office or U.S. International Trade Commission ("ITC"), that the asserted patent claim is invalid or unenforceable. Arguments regarding, for example, invalidating prior art will not be accepted; the only way Sellers can show invalidity/unenforceability is by presenting a court, Patent Office, or ITC order finding an asserted patent claim invalid or unenforceable. Second, Sellers may show that the Accused Counterclaim Products (or physically identical products) were on sale one year or more before the asserted patent's earliest effective filing date, only by using credible evidence that the Evaluator can independently observe (such as a date of sale on amazon.com, or on the Wayback Machine). The Evaluator will not accept affidavits, declarations, or mere arguments about the date of a sale; the Seller must come forward with independently verifiable objective evidence that the Evaluator can confirm." *See* Ex. A. Brother lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 26 of the Complaint and therefore denies them.

27. Brother admits that, in August 2021 Amazon's UPNE Procedure document stated: "Arguments regarding, for example, invalidating prior art will not be accepted; the only way Sellers can show invalidity/unenforceability is by presenting a court, Patent Office, or ITC order finding an asserted patent claim invalid or unenforceable." *See* Ex. A. Brother lacks sufficient

knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 27 of the Complaint and therefore denies them.

28. Brother admits that, on August 9, 2021, it submitted a formal request to participate in Amazon's UPNE procedure with respect to claim 1 of the '932 Patent against certain E-Z Ink, Valuetoner, Arthur Imaging, INKNI, and LEMERO branded toner cartridges that Brother previously purchased from Amazon.com and analyzed. This request was attached as Exhibit S to Brother's Opposition to Plaintiff's Motion for Preliminary Injunction (Dkt. 14-21). Brother received an invitation to participate in Amazon's UPNE process on August 10, 2021. Brother executed Amazon's Evaluation Agreement with respect to claim 1 of the '932 Patent on August 27, 2021. Brother otherwise denies the allegations in paragraph 28 of the Complaint.

29. Brother admits that a purported copy of the executed Amazon Utility Patent Neutral Evaluation Agreement relating to claim 1 of the '932 Patent is attached as Exhibit B to the Complaint.

30. Brother admits that it executed the Amazon Utility Patent Neutral Evaluation Agreement with respect to the '932 Patent. Brother admits that the Agreement contains a provision stating that "Patent Owner represents and warrants that it owns or has the right to enforce the patent identified in Exhibit 1 ("Patent"), and asserts that listings identified by the Amazon Standard Identification Numbers ("ASINs") in Exhibit 1 ("Products") infringe the patent claim identified in Exhibit 1." Brother admits that it owns or has the right to enforce the '932 Patent. Brother otherwise denies the allegations contained in paragraph 30 of the Complaint.

31. Brother admits that, at 10:51 a.m. Eastern Time on September 21, 2021, Amazon confirmed to Brother that it was removing the reported ASINs because "none of the reported sellers have chosen to participate." Brother lacks sufficient knowledge or information to form a belief as

to the truth of the remaining allegations in paragraph 31 of the Complaint and therefore denies them.

32. Brother lacks sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 32 of the Complaint and therefore denies them.

33. No response required.

COUNT I

DECLARATORY JUDGMENT OF INVALIDITY OF U.S. PATENT NO. 8,867,932

34. Brother incorporates paragraphs 1 through 33 of its Answer as if set forth fully in this section.

35. Denied.

36. Brother admits that, on its face, the '932 Patent states: (1) U.S. Patent Application Publication No. 2007/0031158 (the '158 application) was published on February 8, 2007, and (2) U.S. Patent Application Publication No. 2007/0059018 (the '018 application) was published on March 15, 2007. Brother specifically denies that the '932 does not comply with 35 U.S.C. §§ 102 and 103, and also denies any remaining allegations in paragraph 36 of the Complaint.

37. Brother admits that a claim chart showing claim elements of claim 1 of the '932 Patent is attached as Exhibit C to the Complaint. Brother admits that a purported copy of the '158 Application is attached as Exhibit D to the Complaint. Brother specifically denies that each element of claim 1 of the '932 Patent is taught by the '158 Application, and also denies any remaining allegations in paragraph 37 of the Complaint.

38. Denied.

39. Denied.

COUNT II

DECLARATORY JUDGMENT OF UNENFORCEABILITY

The Court dismissed Count II in its Order dated September 27, 2022 (Dkt. 41), and therefore no response is required to any of the allegations in the count.

40. No response required.

41. No response required.

42. No response required.

43. No response required.

44. No response required.

45. No response required.

46. No response required.

47. No response required.

48. No response required.

49. No response required.

50. No response required.

51. No response required.

52. No response required.

53. No response required.

54. No response required.

PRAYER FOR RELIEF

55. Brother denies that Plaintiffs are entitled to any remedy or relief whatsoever, including those requests in the Complaint.

DEMAND FOR JURY TRIAL

56. No response required.

DEFENSES

Further answering the Complaint, Brother asserts the following affirmative defenses without admitting any allegations of the Complaint not otherwise expressly admitted and without assuming any burden it would not otherwise have.

First Defense
(Validity)

The '932 Patent is valid.

Second Defense
(No Damages)

Plaintiffs have suffered no damages and/or failed to mitigate its damages, if any.

Third Defense
(No Irreparable Harm)

Plaintiffs have not suffered any harm or irreparable harm.

Fourth Defense
(Adequate Remedy at Law)

Plaintiffs are not entitled to injunctive or other equitable relief because there is an available remedy at law.

Fifth Defense
(Equitable Defenses)

Plaintiffs are barred from recovery, in whole or in part, by one or more of the equitable doctrines of laches, waiver, estoppel, acquiescence, and/or unclean hands due in part to delay, relinquishment of rights, inaction, and/or inequitable or unfair acts or conduct.

RESERVATION OF DEFENSES

Brother expressly reserves the right to allege additional Affirmative Defenses under Federal Rule of Civil Procedure 8(c) and any other defenses, at law or in equity, that may now exist or in the future become available, based on discovery and factual investigation in this case.

BROTHER'S COUNTERCLAIM

Defendant and Counterclaim-Plaintiff Brother, by its attorneys, asserts the following counterclaim against Plaintiffs (together, "Counterclaim-Defendants").

NATURE OF THE ACTION

1. This counterclaim is for patent infringement under the Patent Laws of the United States, 35 U.S.C. § 1 *et seq.*, of Brother's U.S. Patent No. 8,867,932 (the "'932 Patent"), and for such other relief as the Court deems just and proper.

2. Brother is a multinational electronics and electrical equipment company.

3. Within its printing and solutions business, Brother develops printing systems, including toner cartridges, printers, fax machines, scanners, and printer/copier/scanner/fax combinations ("Multi-Function Centers" or "MFCs").

4. The '932 Patent, entitled "Cartridge and image forming apparatus," was issued by the United States Patent and Trademark Office on October 21, 2014, to named inventors Masamitsu Ukai, Yasuo Fukamachi, and Motoaki Mushika. *See* Exhibit B. The application leading to the '932 Patent was filed on April 29, 2013, and is a continuation of U.S. Application No. 13/075,157, filed on March 29, 2011, which issued as U.S. Patent No. 8,463,145. *See id.*

5. Counterclaim-Defendants have, for years, infringed, directly or indirectly, Brother's '932 Patent by making, using, selling, and/or offering for sale within the United States and/or importing into the United States products that are covered by one or more of the claims of the '932 Patent, including at least claim 1 ("Asserted Claim") and including at least the family of toner cartridge products that Counterclaim-Defendants market as being compatible with printers, MFCs, or other devices that are designed for use with Brother's own TN-630 and/or TN-660

cartridges, and other products with similar components and characteristics (collectively, the “Accused Counterclaim Products”).

6. On August 9, 2021, Brother submitted a formal request to participate in Amazon’s UPNE program with respect to the ’932 Patent. Opp., Exhibit S. Its submission was backed by claim charts and invoices showing Counterclaim-Defendants selling infringing products on Amazon.com, identified by Amazon Standard Identification Number, or ASIN. Opp., Exhibits T-Z. Amazon appears to have notified Counterclaim-Defendants of Brother’s UPNE filing on August 30, 2021, though Counterclaim-Defendants claim to have received the notice on August 31, 2021, because they are “based in China” (notwithstanding what is written in their Complaint). Mot. Ex. 4. Amazon’s notice stated that Counterclaim-Defendants had three weeks to respond. Mot. Ex. 7.

7. Counterclaim-Defendants first attempted to respond to Amazon’s notice on 2:29 p.m Eastern Time on September 21, 2021. Mot. Ex. 1. By this time, it was already 2:29 a.m. on September 22, 2021, in Beijing, China. Meaning that, even if Counterclaim-Defendants are based in China and not the United States, more than 21 days had passed since they had received notice of the UPNE from Amazon. Amazon determined that Counterclaim-Defendants had missed their response deadline, and found in Brother’s favor.

THE PARTIES

8. Counterclaim-Plaintiff Brother Industries Ltd. (“Brother”) is a corporation organized and existing under the laws of Japan with its principal place of business located at 15-1, Naeshiro-cho, Mizuho-ku Nagoya-shi, Aichi-ken, Japan 467-8561.

9. Counterclaim-Defendant E-Z Ink Inc. asserts it is a corporation duly organized and existing under the laws of New York. It asserts that its principal place of business is located at 140 58th Street STE 4E, Brooklyn, NY 11220.

10. Counterclaim-Defendant Zhuhaiikedamaoyiyouxiangongsi (Akda) asserts it is a corporation duly organized and existing under the laws of China. It asserts that its principal place of business is located at Xiangzhouqunanpingkejigongyuyuanpingdongsilu13hao, sanqichangfangsilou416, Zhuhaiishi, Guangdongsheng, China 519060.

11. Counterclaim-Defendant Imagetech Direct Inc. asserts it is a corporation duly organized and existing under the laws of New York. It asserts that its principal place of business is located at 418 Broadway, 2nd Floor, Bayonne, NJ 07002.

12. Counterclaim-Defendant Lemero asserts it is a corporation duly organized and existing under the laws of California. It asserts that its principal place of business is located at 12523 Limonite Ave., Ste 440-2531 Mira Loma, CA 91710.

13. Counterclaim-Defendant Plenty Talent Corp. asserts it is a corporation duly organized and existing under the laws of California. It asserts that its principal place of business is located at 12523 Limonite Ave. Ste 440-2532 Mira Loma, CA 91710.

JURISDICTION AND VENUE

14. Brother incorporates by reference paragraphs 1-13.

15. These counterclaims arise under the United States patent laws at 35 U.S.C. § 100 *et seq.*

16. This Court has subject matter jurisdiction over the counterclaims pursuant to 28 U.S.C. §§ 1331 and 1338 as they arise under the patent laws of the United States.

17. Counterclaim-Defendants have consented to personal jurisdiction of this Court at least by commencing its action for declaratory judgment against Brother in this Court. This Court also has personal jurisdiction over Counterclaim-Defendants because Counterclaim-Defendants are present within or have minimum contacts within this judicial district, Counterclaim-Defendants have purposefully availed themselves of the privileges of conducting business in this judicial district, and Counterclaim-Defendants each regularly conduct business within this judicial district, as admitted in their Complaint.

18. To the extent the action initiated by Counterclaim-Defendants' Complaint is adjudicated in this District, venue is proper in this District pursuant to 28 U.S.C. §§ 1391(b) and (c).

COUNTERCLAIM COUNT I

(INFRINGEMENT OF THE '932 PATENT)

19. Brother repeats incorporates by references the allegations of paragraphs 1-18.

20. Brother is the owner of the '932 Patent and has full right to enforce and license the '932 Patent.

21. Counterclaim-Defendants have infringed, and continue to infringe, one or more claims of the '932 Patent, including at least claim 1, either literally or under the doctrine of equivalent, by making, using, selling and/or offering for sale within the United States and/or importing into the United States the Accused Counterclaim Products in violation of 35 U.S.C. § 271(a).

22. For example, Counterclaim-Defendants have infringed and continue to infringe, at least claim 1 of the '932 Patent:

1. A cartridge comprising:

a housing including a first side wall and a second side wall opposed to the first side wall in a longitudinal direction;

a receiving unit configured to receive a driving force from outside, mounted at the housing, and configured to rotate around a first axis line parallel to the longitudinal direction; and

a detected body mounted at the first side wall and including a detected part configured to be detected by a detecting unit,

wherein the detected body is configured to advance outwards in the longitudinal direction with respect to the first side wall and is configured to retract inwards in the longitudinal direction with respect to the first side wall.

23. The Accused Counterclaim Products are toner cartridges marketed as being replacements for genuine Brother TN-630 and TN-660 toner cartridges and compatible with genuine Brother HL-L2300D, HL-L2305W, HL-L2315DW, HL-L2320D, HL-L2340DW, and HL-L2360DW printers and genuine Brother HL-L2380DW, DCP-L2520DW, DCP-L2540DW, MFC-L2680W, MFC-L2685DW, MFC-L2700DW, MFC-L2705DW, MFC-L2707DW, MFC-L2720DW, and MFC-L2740DW MFCs.

24. Counterclaim-Defendants have also infringed, and continue to infringe, at least claims 2-7 and 10 of the '932 Patent, either literally or under the doctrine of equivalent, by making, using, selling and/or offering for sale within the United States and/or importing into the United States the Accused Counterclaim Products in violation of 35 U.S.C. § 271(a).

25. The Accused Counterclaim Products infringe, either literally or under the doctrine of equivalents, at least claims 1-7 and 10 of the '932 Patent as shown in the attached Exhibits C-H.

26. Specifically, E-Z Ink sold toner cartridges that infringe claims 1-7 and 10 of the '932 Patent in different packaging configurations under at least the following ASINs:

B08KWBQWJ5 and B08KW9WY7F. ECF No. 9-1 (Declaration of Wyman Xu In Support of Plaintiffs' Motion for Preliminary Injunction).

27. Akda sold toner cartridges that infringe claims 1-7 and 10 of the '932 Patent in different packaging configurations under at least the following ASINs: B08KWBQWJ5, B08KW9WY7F, B08MTW7PYG, B08M8YLV3, and B08M9SGXX1. ECF No. 9-2 (Declaration of Haibo Zhu In Support of Plaintiffs' Motion for Preliminary Injunction).

28. Toner cartridges sold under at least the following ASINs B08KWBQWJ5, B08KW9WY7F, B08MTW7PYG, B08M8YLV3, and B08M9SGXX1 infringe claims 1-7 and 10 of the '932 Patent, as shown in attached Exhibit C.

29. Lemero sold toner cartridges that infringe claims 1-7 of the '932 Patent in different packaging configurations under at least the following ASINs: B07W5Z9F1B, B074M3DQT6, and B08ZYGCM. ECF No. 9-5 (Declaration of ShuChun Dai in Support of Plaintiffs' Motion for Preliminary Injunction).

30. Toner cartridges sold under at least the following ASINs, B07W5Z9F1B, B074M3DQT6, and B08ZYGCM, infringe claims 1-7 of the '932 Patent, as shown in attached Exhibit D.

31. Imagetech Direct sold toner cartridges that infringe claims 1-7 and 10 of the '932 Patent under at least the following ASINs: B081JR8RFM and B08P3178JT. ECF No. 9-5 (Declaration of Ming Lin in Support of Plaintiffs' Motion for Preliminary Injunction).

32. Toner cartridges sold under ASINs B081JR8RFM and B08P3178JT infringe claims 1-7 and 10 of the '932 Patent, as shown in attached Exhibit E.

33. Plenty Talent sold toner cartridges that infringe claims 1-7 of the '932 Patent under at least the following ASIN: B07Z1K8F8Y. ECF No. 9-4 (Declaration of Juan Wu in Support of Plaintiffs' Motion for Preliminary Injunction).

34. Toner cartridges sold under ASIN B07Z1K8F8Y infringe claims 1-7 of the '932 Patent, as shown in attached Exhibit F.

35. Plenty Talent sells toner cartridges that infringe claims 1-7 of the '932 Patent under at least the following ASIN: B09KXTLYRQ.

36. Toner cartridges sold under ASIN B09KXTLYRQ infringe claims 1-7 of the '932 Patent, as shown in attached Exhibit G.

37. EZ-Ink has sold or is selling toner cartridges that infringe claims 1 and 2 of the '932 Patent under at least the following ASIN: B09GK6BNGX.

38. Toner cartridges sold under ASIN B09GK6BNGX infringe claims 1 and 2 of the '932 Patent, as shown in attached Exhibit H.

39. In addition to directly infringing the '932 Patent, Defendants have indirectly infringed and continue to indirectly infringe one or more claims of the '932 Patent.

40. Counterclaim-Defendants were notified of their infringement of the '932 Patent at least as of the date Amazon notified Counterclaim-Defendants of the UPNE proceeding, when Brother provided Counterclaim-Defendants with claim charts comparing claim 1 of the '932 Patent to Accused Counterclaim Products. *See* Exhibits C, D, E, and F.

41. For all the above reasons, the Accused Counterclaim Products practice claims 1-7 and 10—as Brother effectively informed Plaintiffs before filing suit with the commencement of the UPNE process with respect to the '932 Patent.

42. Plaintiffs had notice of infringement of claim 1 of the '932 Patent of certain Accused Counterclaim Products sold under the ASINs identified in Exhibits C, D, E, and F.

43. The Amazon Neutral Evaluator indicated a likelihood of infringement by finding that the case was suitable for Patent Evaluation.

44. Plaintiffs have not contested infringement of the '932 Patent. Dkt. 35.

45. In violation of 35 U.S.C. § 271(b), each of the Counterclaim-Defendants has actively induced and continues to actively induce others (such as customers of the Accused Counterclaim Products) to directly infringe the '932 Patent, including at least claims 1-7 and 10, by engaging in and actively acting in concert with each other relating to: (a) the marketing, distribution, and/or sale of the Accused Counterclaim Products to customers (including on Amazon); and (b) the instruction and encouragement of customers (such as by advertising the Accused Counterclaim Products as compatible with Brother on Amazon) to use the Accused Counterclaim Products in an infringing manner with knowledge that these actions would infringe the '932 Patent.

46. In violation of 35 U.S.C. § 271(c), each of the Counterclaim-Defendants has also contributed to and is continuing to contribute to infringement of the '932 Patent by others (such as other Counterclaim-Defendants and customers) by selling and/or offering for sell within the United States and/or importing into the United States the Accused Counterclaim Products, that are especially made and/or adapted for infringing the '932 Patent and are not staple articles of commerce suitable for substantial non-infringing use.

47. Counterclaim-Defendants' infringement of the '932 Patent is deliberate and willful, justifying enhanced damages under 35 U.S.C. § 284 and attorneys' fees and costs incurred in prosecuting this action under 35 U.S.C. § 285. Despite being on notice of their infringement of

the '932 Patent, at least Counterclaim-Defendants Plenty Talent and E-Z Ink continued to make use, sell, offer to sell, and/or import the Accused Counterclaim Products knowing and intending to infringe the '932 Patent, at least by re-listing and continuing to re-list those products on Amazon.

48. Counterclaim-Defendants' infringement has caused and is continuing to cause damage and irreparable injury to Brother, and Brother will continue to suffer damage and irreparable injury unless and until that infringement is enjoined by this Court. By this action, Brother seeks to stop Counterclaim-Defendants' willful, unauthorized, and improper use of the '932 Patent, and to obtain damages for the significant harm caused to Brother by Counterclaim-Defendants' willful infringement to date.

PRAYER FOR RELIEF

WHEREFORE, Brother prays for relief as follows:

- a. That each Plaintiff has infringed and continues to infringe the '932 Patent, either directly and/or indirectly, induces infringement, and/or contributes to infringement;
- b. That each Plaintiff's infringement of the '932 Patent has been and continues to be willful;
- c. That the '932 Patent remains good and valid and has been infringed by Plaintiffs;
- d. In accordance with 35 U.S.C. § 284, that each Plaintiff be ordered to pay to Brother all monetary damages to which Brother is entitled (together with pre and post judgment interest), including increased damages for willful infringement;
- e. That this case be declared exceptional in accordance with 35 U.S.C. § 285 and that Brother be awarded and Plaintiffs pay Brother's attorneys' fees;
- f. An injunction prohibiting further infringement of the '932 Patent; and

f. Such other and further relief as this Court may deem just and equitable.

DEMAND FOR JURY TRIAL

49. A jury trial is demanded on all claims and issues so triable.

Respectfully submitted,

Dated: October 25, 2022

/s/ Andrew T. George
Andrew T. George

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