

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

CREE, INC.,

Plaintiff,

v.

E. MISHAN & SONS, INC.,

Defendant.

Civil Action No. 16-CV-12275

JURY TRIAL DEMANDED

COMPLAINT

Plaintiff Cree, Inc. (“Cree”) files this complaint against defendant E. Mishan & Sons, Inc. (“Emson”), based upon actual knowledge as to itself and its own actions, and upon information and belief as to all other persons and events, as follows:

PARTIES

1. Plaintiff Cree is a corporation organized and existing under the laws of the State of North Carolina with a principal place of business at 4600 Silicon Drive, Durham, North Carolina, 27703.

2. Upon information and belief, Emson is a New York corporation with its principal place of business at 230 5th Ave, Suite 800, New York, NY 10001.

JURISDICTION AND VENUE

3. This action for patent infringement arises under the patent laws of the United States, Title 35 of the United States Code. This Court has original jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1338(a) and 1331.

4. On information and belief, Emson regularly transacts and/or solicits business within this Judicial District and has purposefully availed itself of the privilege of conducting business in the Commonwealth of Massachusetts.

5. On information and belief, Emson regularly sells and offers for sale products within this Judicial District over the Internet (*see, e.g.*, <http://www.emsoninc.com/> and <http://www.emsoninc.com/tac-light/>) and through retailers that operate brick and mortar stores within this Judicial District.

6. On information and belief, Emson has committed acts of infringement in this Judicial District by, *inter alia*, selling and offering for sale the infringing products within this Judicial District.

7. Accordingly, this Court has personal jurisdiction over Emson.

8. Upon information and belief, venue is proper under 28 U.S.C. §§ 1391(b), (c) and 28 U.S.C. § 1400(b) because Emson is subject to personal jurisdiction in this Judicial District.

BACKGROUND

9. Since its founding in 1987, Cree has become a market-leading innovator engaged in the design, manufacture, and sale of light emitting diodes (“LED”), lighting products using LEDs, and semiconductor solutions for wireless and power applications.

10. LEDs provide environmentally friendly and energy-efficient alternatives to traditional light sources such as incandescent light bulbs.

11. Cree’s LED products include LED fixtures and lamps, LED chips, high brightness LEDs, and lighting-class power LEDs, and are used in applications such as general illumination, backlighting, flashlights and electronic signs and signals.

12. According to Emson’s website, “Emson is an importer of promotional products, television supported, and general merchandise. This enables the company to maximize full profit potential for each product marketed. Categories include: electrical and non-electrical appliances, beauty and personal care, pet care, fitness, auto and outdoor products. Emson’s

customer base includes major department stores, drug chains, supermarkets, discounters, mail order, catalog showroom, warehouse clubs, premium, demonstration and international sales.”
<http://www.emsoninc.com/our-crew/>.

13. According to Emson’s website, building brands such as Bell+Howell® has allowed Emson to increase product categories and expand its marketing ability to all accounts across the nation. Examples of such categories are flashlights, including TACLIGHT.

14. This action arises out of Emson’s infringement of six Cree patents.

15. On October 5, 2010, U.S. Patent No. 7,808,013 (“the ’013 patent”), entitled “Integrated Heat Spreaders For Light Emitting Devices (LEDs) and Related Assemblies,” was duly and legally issued to inventors Nicholas W. Medendorp, Jr. and Peter Andrews. Cree is the owner of all right, title, and interest in and to the ’013 patent by assignment. The ’013 patent is valid and subsisting. A copy of the ’013 patent is attached as Exhibit A.

16. The ’013 patent generally relates to a light emitting device assembly that may include an electrically insulating substrate and a thermally conductive layer on a surface of the insulating substrate. A light emitting device may be on the thermally conductive layer so that the thermally conductive layer is between the light emitting device and the electrically insulating substrate. A plurality of thermally conductive vias are thermally and electrically coupled to the thermally conductive layer.

17. On December 28, 2010, U.S. Patent No. 7,858,998 (“the ’998 patent”), entitled “Semiconductor Light Emitting Devices Including Flexible Silicone Film Having a Lens Therein,” was duly and legally issued to the inventor Gerald H. Negley. Cree is the owner of all right, title, and interest in and to the ’998 patent by assignment. The ’998 patent is valid and subsisting. A copy of the ’998 patent is attached as Exhibit B.

18. The '998 patent generally relates to a light emitting device assembly that may include a solid alumina block and a light emitting diode on a face of the solid alumina block. A flexible unitary film comprising silicone extends conformally on the face of the solid alumina block and includes a lens.

19. On May 1, 2012, U.S. Patent No. 8,167,463 ("the '463 patent"), entitled "Power Surface Mount Light Emitting Die Package," was duly and legally issued to the inventor Ban P. Loh. Cree is the owner of all right, title, and interest in and to the '463 patent by assignment. The '463 patent is valid and subsisting. A copy of the '463 patent is attached as Exhibit C.

20. The '463 patent generally relates to a light emitting die package that may include a substrate, a thermal pad disposed in a middle portion of the bottom surface of the substrate, and a plurality of traces disposed on opposing sides of and isolated from the thermal pad.

21. On January 7, 2014, U.S. Patent No. 8,622,582 ("the '582 patent"), entitled "Power Surface Mount Light Emitting Die Package," was duly and legally issued to the inventor Ban P. Loh. Cree is the owner of all right, title, and interest in and to the '582 patent by assignment. The '582 patent is valid and subsisting. A copy of the '582 patent is attached as Exhibit D.

22. The '582 patent generally relates to a light emitting die package that may include an electrically insulating substrate, a plurality of traces disposed on the top surface of the substrate, a light emitting diode mounted on the top surface of the substrate and proximate a center of the substrate, and a thermal contact pad disposed on the bottom surface of the substrate.

23. On June 30, 2015, U.S. Patent No. 9,070,850 ("the '850 patent"), entitled "Light Emitting Diode Package And Method For Fabricating Same," was duly and legally issued to

inventors Bernd Keller, Nicholas W. Medendorp, Jr., and Thomas Cheng-Hsin Yuan. Cree is the owner of all right, title, and interest in and to the '850 patent by assignment. The '850 patent is valid and subsisting. A copy of the '850 patent is attached as Exhibit E.

24. The '850 patent generally relates to an LED package that includes a submount having a top and bottom surface with a plurality of top electrically and thermally conductive elements on its top surface. An LED is included on one of the top elements such that an electrical signal applied to the top elements causes the LED to emit light. A bottom thermally conductive element is on the bottom surface not in electrical contact with the top electrically and thermally conductive elements, a lens is over the LED, and a protective layer extends from a bottom of the lens.

25. On May 11, 2010, U.S. Patent No. D615,504 ("the '504 patent"), entitled "Emitter Package," was duly and legally issued to inventors Bernd Keller, Nicholas W. Medendorp, Jr., and Thomas Cheng-Hsin Yuan. Cree is the owner of all right, title, and interest in and to the '504 patent by assignment. The '504 patent is valid and subsisting. A copy of the '504 patent is attached as Exhibit F.

26. The '504 patent is a design patent for the ornamental design of a light emitter package.

DEFENDANT'S EXEMPLARY INFRINGING PRODUCT

27. On information and belief, Emson markets, offers for sale and sells infringing flashlight or lighting products, including at least an infringing tactical flashlight product under the name TACLIGHT throughout the United States and within this Judicial District.

28. According to TACLIGHT's product packaging (*see* Exh. G), TACLIGHT is a

Bell+Howell® TACLIGHT flashlight distributed by Emson. The product packaging also alleges, *inter alia*, that the accused product is 22-times brighter than a regular flashlight, that when in use, the flashlight can be seen from five nautical miles, and that the product may be used in five different modes: high, medium, low, strobe and SOS. The product packaging also alleges that the product has been “Seen on TV”. On information and belief, the “as Seen on TV” label refers to a commercial that shows the TACLIGHT product in use and effectively teaches an end-user how to use the accused product. *See, e.g.*, <https://www.youtube.com/watch?v=uNc-Wl2Z3pQ> (“As Seen On TV video”).

29. On information and belief, Emson offers infringing flashlight or lighting products, including its infringing TACLIGHT tactical flashlight product for sale on its websites (<http://www.emsoninc.com/tac-light/> and <https://www.tryTACLIGHT.com/>) throughout the United States and within this Judicial District. Attached as Exhibit H is a printout showing two Emson websites offering the TACLIGHT product for sale.

30. The importation, sale, and offer for sale of Emson’s flashlight or lighting products, including TACLIGHT tactical flashlight infringes at least one or more claims of the ’013, ’998, ’463, ’582, ’850, and ’504 patents (the “Asserted Patents”). *See* Exh. I. For example, Emson’s TACLIGHT tactical flashlight includes a light emitting diode (LED) component meeting the limitations of at least one claim of each of the Asserted Patents. *Id.*

31. Since at least as early as August 25, 2016, or as of the filing date of this action, Emson has known of the Asserted Patents and knew that its sale of the TACLIGHT tactical flashlight product infringed the Asserted Patents. *See* Exh. J.

COUNT 1 – PATENT INFRINGEMENT OF U.S. PAT. NO. 7,808,013

32. Cree repeats and realleges the allegations set forth in paragraphs 1-31 above, as

though fully set forth herein.

33. This cause of action arises under Section 35 of the patent Laws of the United States, 35 U.S.C. § 271.

34. The '013 patent is valid and enforceable.

35. Upon information and belief, Emson has committed acts of infringement of the '013 patent, and continues to commit such acts of infringement, by importing, selling and offering for sale flashlight or lighting products, including the TACLIGHT flashlight that directly infringes one or more claims of the '013 patent.

36. Upon information and belief, the light emitting device assembly incorporated in the TACLIGHT flashlight infringes at least claim 1 of the '013 patent. *See* Exh. I-1. Emson sells and offers for sale the infringing TACLIGHT flashlight in the United States.

37. Representative claim 1 of the '013 patent recites:

A light emitting device (LED) assembly comprising:

an electrically insulating substrate;

a continuous thermally conductive layer adjacent a surface of the electrically insulating substrate;

a light emitting device adjacent the continuous thermally conductive layer so that the continuous thermally conductive layer is between an entirety of the light emitting device and the electrically insulating substrate, wherein the continuous thermally conductive layer extends beyond an edge of the light emitting device in at least one direction a distance greater than half of a width of the light emitting device; and

a plurality of thermally conductive vias through the electrically insulating substrate, wherein the plurality of thermally conductive vias are thermally and electrically coupled to the continuous thermally conductive layer and wherein portions of the electrically insulating substrate adjacent the light emitting device are free of the plurality of thermally conductive vias.

38. As shown in Exhibit I-1, the TACLIGHT flashlight incorporates a light emitting device assembly that includes each recited element of claim 1 of the '013 patent. The light

emitting device assembly includes an electrically insulating substrate and a continuous thermally conductive layer adjacent to a surface of the insulating substrate. The assembly includes a light emitting device adjacent the continuous thermally conductive layer so that the thermally conductive layer lies in its entirety between the light emitting device and the electrically insulating substrate. Further, the light emitting device includes the recited plurality of thermally conductive vias.

39. Emson received notice of the '013 patent at least as early as August 25, 2016 (*see* Exh. J), as well as by the filing and service of the Complaint in this action. On information and belief, at all times relevant hereto, Emson has had actual knowledge of the '013 patent, but nonetheless has infringed and continues to infringe the '013 patent in a willful and deliberate disregard of Plaintiff's respective rights therein and with the intent to infringe those rights.

40. By the acts alleged above, Emson has made, used, offered to sell, sold and/or imported into the United States, and on information and belief, still is making, using, offering to sell, selling, and/or importing into the United States, products that directly infringe, literally or under the doctrine of equivalents, at least one claim of the '013 patent, without Cree's authorization or consent.

41. On information and belief, Emson had actual notice of the '013 patent at least as early as August 25, 2016 (*see* Exh. J) when Cree sent Emson a letter informing Emson of its infringement. The notice letter identified the Asserted Patents, the accused product and the infringing LED structure included in the accused TACLIGHT tactical flashlights. The notice letter provided images of a counterfeit LED structure that is incorporated in the accused TACLIGHT flashlights. Based on that letter, as early as August 25, 2016, Emson knew or should have known that the accused products infringed at least one or more claims of the '013

patent.

42. On information and belief, Emson indirectly infringes the '013 patent either by knowingly, actively, and with specific intent inducing others to directly infringe, or with willful blindness to the fact that their product packaging and television commercials would induce others to directly infringe. As of at least August 25, 2016, Emson knew or should have known that their actions would induce actual infringement by others, including but not limited to, its customers.

43. On information and belief, Emson's infringement has been intentional and willful, making this an exceptional case. Emson has known of the '013 patent since the filing of this action and at least as early as August 25, 2016 (*see* Exh. J), but nonetheless has infringed and continues to infringe the patent in a willful and deliberate disregard of Cree's respective rights therein and with the intent to infringe those rights.

44. As a direct and proximate cause of Emson's infringement, as alleged above, Cree has suffered damages. Emson is liable to Cree for the amount of any such damages.

45. Emson will, on information and belief, continue to infringe upon Cree's rights under § 271 of the Patent Act, unless and until it is enjoined by this Court. Cree has been and is likely to continue to be irreparably injured unless Emson is enjoined. Cree has no adequate remedy at law.

COUNT 2 – PATENT INFRINGEMENT OF U.S. PAT. NO. 7,858,998

46. Cree repeats and realleges the allegations set forth in paragraphs 1-31 above, as though fully set forth herein.

47. This cause of action arises under Section 35 of the patent Laws of the United States, 35 U.S.C. § 271.

48. The '998 patent is valid and enforceable.

49. Upon information and belief, Emson has committed acts of infringement of the '998 patent, and continues to commit such acts of infringement, by importing, selling and offering for sale flashlight or lighting products, including the TACLIGHT flashlight that directly infringes one or more claims of the '998 patent.

50. Upon information and belief, the light emitting device in the TACLIGHT flashlight infringes at least claim 1 of the '998 patent. *See* Exh. I-2. Emson sells and offers for sale the infringing TACLIGHT flashlight in the United States.

51. Representative claim 1 of the '998 patent recites:

A semiconductor light emitting device comprising:

a solid alumina block;

a light emitting diode on a face of the solid alumina block; and

a flexible unitary film comprising silicone that extends conformally on the face of the solid alumina block outside the light emitting diode and that also extends on the light emitting diode, the flexible unitary film comprising silicone including therein a lens comprising silicone adjacent the light emitting diode, such that the light emitting diode emits light through the lens.

52. As shown in Exhibit I-2, the TACLIGHT flashlight incorporates a light emitting device that includes each recited element of claim 1 of the '998 patent, including a semiconductor light emitting device with a solid alumina block, a light emitting diode on a face of the solid alumina block, and a flexible unitary film comprising silicone.

53. Emson received notice of the '998 patent at least as early as August 25, 2016 (*see* Exh. J), as well as by the filing and service of the Complaint in this action. On information and belief, at all times relevant hereto, Emson has had actual knowledge of the '998 patent, but

nonetheless has infringed and continues to infringe the '998 patent in a willful and deliberate disregard of Plaintiff's respective rights therein and with the intent to infringe those rights.

54. By the acts alleged above, Emson has made, used, offered to sell, sold and/or imported into the United States, and on information and belief, still is making, using, offering to sell, selling, and/or importing into the United States, products that directly infringe, literally or under the doctrine of equivalents, at least one claim of the '998 patent, without Cree's authorization or consent.

55. On information and belief, Emson had actual notice of the '998 patent at least as early as August 25, 2016 (*see* Exh. J) when Cree sent Emson a letter informing Emson of its infringement. The notice letter identified the Asserted Patents, the accused product and the infringing LED structure included in the accused TACLIGHT tactical flashlights. The notice letter provided images of a counterfeit LED structure that is incorporated in the accused TACLIGHT flashlights. Based on that letter, as early as August 25, 2016, Emson knew or should have known that the accused products infringed at least one or more claims of the '998 patent.

56. On information and belief, Emson indirectly infringes the '998 patent either by knowingly, actively, and with specific intent inducing others to directly infringe, or with willful blindness to the fact that their product packaging and television commercials would induce others to directly infringe. As of at least August 25, 2016, Emson knew or should have known that their actions would induce actual infringement by others, including but not limited to, its customers.

57. On information and belief, Emson's infringement has been intentional and willful, making this an exceptional case. Emson has known of the '998 patent since the filing of this

action and at least as early as August 25, 2016 (*see* Exh. J), but nonetheless has infringed and continues to infringe the patent in a willful and deliberate disregard of Cree's respective rights therein and with the intent to infringe those rights.

58. As a direct and proximate cause of Emson's infringement, as alleged above, Cree has suffered damages. Emson is liable to Cree for the amount of any such damages.

59. Emson will, on information and belief, continue to infringe upon Cree's rights under § 271 of the Patent Act, unless and until it is enjoined by this Court. Cree has been and is likely to continue to be irreparably injured unless Emson is enjoined. Cree has no adequate remedy at law.

COUNT 3 – PATENT INFRINGEMENT OF U.S. PAT. NO. 8,167,463

60. Cree repeats and realleges the allegations set forth in paragraphs 1-31 above, as though fully set forth herein.

61. This cause of action arises under Section 35 of the patent Laws of the United States, 35 U.S.C. § 271.

62. The '463 patent is valid and enforceable.

63. Upon information and belief, Emson has committed acts of infringement of the '463 patent, and continues to commit such acts of infringement, by importing, selling and offering for sale flashlight or lighting products, including the TACLIGHT flashlight that directly infringes one or more claims of the '463 patent.

64. Upon information and belief, the light emitting die package in the TACLIGHT flashlight infringes at least claim 1 of the '463 patent. *See* Exh. I-3. Emson sells and offers for sale the infringing TACLIGHT flashlight in the United States.

65. Representative claim 1 of the '463 patent recites:

A light emitting die package, comprising:

a substrate comprising a top surface, a bottom surface and a plurality of sides;

a thermal pad disposed in a middle portion of the bottom surface of the substrate; and

a plurality of traces disposed on opposing sides of and isolated from the thermal pad on the bottom surface of the substrate.

66. As shown in Exhibit I-3, the TACLIGHT flashlight incorporates a light emitting die package that includes each recited element of claim 1 of the '463 patent, including a substrate with a top and bottom surfaces and a plurality of sides, a thermal pad disposed in a middle portion of the bottom surface of the substrate, and a plurality of traces disposed on opposing sides of and isolated from the thermal pad on the bottom surface of the substrate.

67. Emson received notice of the '463 patent at least as early as August 25, 2016 (*see* Exh. J), as well as by the filing and service of the Complaint in this action. On information and belief, at all times relevant hereto, Emson has had actual knowledge of the '463 patent, but nonetheless has infringed and continues to infringe the '463 patent in a willful and deliberate disregard of Plaintiff's respective rights therein and with the intent to infringe those rights.

68. By the acts alleged above, Emson has made, used, offered to sell, sold and/or imported into the United States, and on information and belief, still is making, using, offering to sell, selling, and/or importing into the United States, products that directly infringe, literally or under the doctrine of equivalents, at least one claim of the '463 patent, without Cree's authorization or consent.

69. On information and belief, Emson had actual notice of the '463 patent at least as early as August 25, 2016 (*see* Exh. J) when Cree sent Emson a letter informing Emson of its infringement. The notice letter identified the Asserted Patents, the accused product and the

infringing LED structure included in the accused TACLIGHT tactical flashlights. The notice letter provided images of a counterfeit LED structure that is incorporated in the accused TACLIGHT flashlights. Based on that letter, as early as August 25, 2016, Emson knew or should have known that the accused products infringed at least one or more claims of the '463 patent.

70. On information and belief, Emson indirectly infringes the '463 patent either by knowingly, actively, and with specific intent inducing others to directly infringe, or with willful blindness to the fact that their product packaging and television commercials would induce others to directly infringe. As of at least August 25, 2016, Emson knew or should have known that their actions would induce actual infringement by others, including but not limited to, its customers.

71. On information and belief, Emson's infringement has been intentional and willful, making this an exceptional case. Emson has known of the '463 patent since the filing of this action and at least as early as August 25, 2016 (*see* Exh. J), but nonetheless has infringed and continues to infringe the patent in a willful and deliberate disregard of Cree's respective rights therein and with the intent to infringe those rights.

72. As a direct and proximate cause of Emson's infringement, as alleged above, Cree has suffered damages. Emson is liable to Cree for the amount of any such damages.

73. Emson will, on information and belief, continue to infringe upon Cree's rights under § 271 of the Patent Act, unless and until it is enjoined by this Court. Cree has been and is likely to continue to be irreparably injured unless Emson is enjoined. Cree has no adequate remedy at law.

COUNT 4 – PATENT INFRINGEMENT OF U.S. PAT. NO. 8,622,582

74. Cree repeats and realleges the allegations set forth in paragraphs 1-31 above, as though fully set forth herein.

75. This cause of action arises under Section 35 of the patent Laws of the United States, 35 U.S.C. § 271.

76. The '582 patent is valid and enforceable.

77. Upon information and belief, Emson has committed acts of infringement of the '582 patent, and continues to commit such acts of infringement, by importing, selling and offering for sale flashlight or lighting products, including the TACLIGHT flashlight that directly infringes one or more claims of the '582 patent.

78. Upon information and belief, the light emitting die package in the TACLIGHT flashlight infringes at least claim 1 of the '582 patent. *See* Exh. I-4. Emson sells and offers for sale the infringing TACLIGHT flashlight in the United States.

79. Representative claim 1 of the '582 patent recites:

A light emitting die package, comprising:

an electrically insulating substrate comprising a substantially planar top surface and a substantially planar bottom surface;

a plurality of traces disposed on the top surface of the substrate;

a light emitting diode (LED) mounted on the top surface of the substrate and proximate a center of the substrate, and the LED being connected to one or more traces of the plurality of traces; and

a thermal contact pad disposed on the bottom surface of the substrate.

80. As shown in Exhibit I-4, the TACLIGHT flashlight incorporates each recited element of claim 1, including a light emitting die package with an electrically insulating

substrate, a plurality of traces on the top surface of the substrate, an LED mounted on the top surface of the substrate proximate to the center of the substrate and connected to one or more traces, and a thermal contact pad disposed on the bottom surface of the substrate.

81. Emson received notice of the '582 patent at least as early as August 25, 2016 (*see* Exh. J), as well as by the filing and service of the Complaint in this action. On information and belief, at all times relevant hereto, Emson has had actual knowledge of the '582 patent, but nonetheless has infringed and continues to infringe the '582 patent in a willful and deliberate disregard of Plaintiff's respective rights therein and with the intent to infringe those rights.

82. By the acts alleged above, Emson has made, used, offered to sell, sold and/or imported into the United States, and on information and belief, still is making, using, offering to sell, selling, and/or importing into the United States, products that directly infringe, literally or under the doctrine of equivalents, at least one claim of the '582 patent, without Cree's authorization or consent.

83. On information and belief, Emson had actual notice of the '582 patent at least as early as August 25, 2016 (*see* Exh. J) when Cree sent Emson a letter informing Emson of its infringement. The notice letter identified the Asserted Patents, the accused product and the infringing LED structure included in the accused TACLIGHT tactical flashlights. The notice letter provided images of a counterfeit LED structure that is incorporated in the accused TACLIGHT flashlights. Based on that letter, as early as August 25, 2016, Emson knew or should have known that the accused products infringed at least one or more claims of the '582 patent.

84. On information and belief, Emson indirectly infringes the '582 patent either by knowingly, actively, and with specific intent inducing others to directly infringe, or with willful

blindness to the fact that their product packaging and television commercials would induce others to directly infringe. As of at least August 25, 2016, Emson knew or should have known that their actions would induce actual infringement by others, including but not limited to, its customers.

85. On information and belief, Emson's infringement has been intentional and willful, making this an exceptional case. Emson has known of the '582 patent since the filing of this action and at least as early as August 25, 2016 (*see* Exh. J), but nonetheless has infringed and continues to infringe the patent in a willful and deliberate disregard of Cree's respective rights therein and with the intent to infringe those rights.

86. As a direct and proximate cause of Emson's infringement, as alleged above, Cree has suffered damages. Emson is liable to Cree for the amount of any such damages.

87. Emson will, on information and belief, continue to infringe upon Cree's rights under § 271 of the Patent Act, unless and until it is enjoined by this Court. Cree has been and is likely to continue to be irreparably injured unless Emson is enjoined. Cree has no adequate remedy at law.

COUNT 5 – PATENT INFRINGEMENT OF U.S. PAT. NO. 9,070,850

88. Cree repeats and realleges the allegations set forth in paragraphs 1-31 above, as though fully set forth herein.

89. This cause of action arises under Section 35 of the patent Laws of the United States, 35 U.S.C. § 271.

90. The '850 patent is valid and enforceable.

91. Upon information and belief, Emson has committed acts of infringement of the '850 patent, and continues to commit such acts of infringement, by importing, selling and

offering for sale flashlight or lighting products, including the TACLIGHT flashlight that directly infringes one or more claims of the '850 patent.

92. Upon information and belief, the LED package in the TACLIGHT flashlight infringes at least claim 1 of the '850 patent. *See* Exh. I-5. Emson sells and offers for sale the infringing TACLIGHT flashlight in the United States.

93. Representative claim 1 of the '850 patent recites:

An LED package, comprising:

a submount comprising a top surface and a bottom surface;

a plurality of top electrically and thermally conductive elements on said top surface of said submount;

an LED on one of said top electrically and thermally conductive elements, an electrical signal applied to said top electrically and thermally conductive elements causing said LED to emit light, said top electrically and thermally conductive elements spreading heat from said LED across the majority of said submount top surface;

a bottom thermally conductive element on said bottom surface not in electrical contact with said top electrically and thermally conductive elements and conducting heat from said submount;

a lens over said LED; and

a protective layer in direct contact with and extending from a bottom of said lens;

wherein at least a portion of said lens is above a top surface of said protective layer.

94. As shown in Exhibit I-5, the TACLIGHT flashlight incorporates each element of claim 1, including an LED package that has a submount with a top surface and a bottom surface, a plurality of top electrically and thermally conductive elements on top surface that when an electrical signal is applied causes the LED to emit light. The top electrically and thermally conductive elements spread heat from the LED across the majority of the submount top surface.

The LED package also includes a recited bottom thermally conductive element for conducting heat from the submount.

95. Emson received notice of the '850 patent at least as early as August 25, 2016 (*see* Exh. J), as well as by the filing and service of the Complaint in this action. On information and belief, at all times relevant hereto, Emson has had actual knowledge of the '850 patent, but nonetheless has infringed and continues to infringe the '850 patent in a willful and deliberate disregard of Plaintiff's respective rights therein and with the intent to infringe those rights.

96. By the acts alleged above, Emson has made, used, offered to sell, sold and/or imported into the United States, and on information and belief, still is making, using, offering to sell, selling, and/or importing into the United States, products that directly infringe, literally or under the doctrine of equivalents, at least one claim of the '850 patent, without Cree's authorization or consent.

97. On information and belief, Emson had actual notice of the '850 patent at least as early as August 25, 2016 (*see* Exh. J) when Cree sent Emson a letter informing Emson of its infringement. The notice letter identified the Asserted Patents, the accused product and the infringing LED structure included in the accused TACLIGHT tactical flashlights. The notice letter provided images of a counterfeit LED structure that is incorporated in the accused TACLIGHT flashlights. Based on that letter, as early as August 25, 2016, Emson knew or should have known that the accused products infringed at least one or more claims of the '850 patent.

98. On information and belief, Emson indirectly infringes the '850 patent either by knowingly, actively, and with specific intent inducing others to directly infringe, or with willful blindness to the fact that their product packaging and television commercials would induce

others to directly infringe. As of at least August 25, 2016, Emson knew or should have known that their actions would induce actual infringement by others, including but not limited to, its customers.

99. On information and belief, Emson's infringement has been intentional and willful, making this an exceptional case. Emson has known of the '850 patent since the filing of this action and at least as early as August 25, 2016 (*see* Exh. J), but nonetheless has infringed and continues to infringe the patent in a willful and deliberate disregard of Cree's respective rights therein and with the intent to infringe those rights.

100. As a direct and proximate cause of Emson's infringement, as alleged above, Cree has suffered damages. Emson is liable to Cree for the amount of any such damages.

101. Emson will, on information and belief, continue to infringe upon Cree's rights under § 271 of the Patent Act, unless and until it is enjoined by this Court. Cree has been and is likely to continue to be irreparably injured unless Emson is enjoined. Cree has no adequate remedy at law.

COUNT 6 – PATENT INFRINGEMENT OF U.S. PAT. NO. D615,504

102. Cree repeats and realleges the allegations set forth in paragraphs 1-31 above, as though fully set forth herein.

103. This cause of action arises under Section 35 of the patent Laws of the United States, 35 U.S.C. §§ 271 and 289.

104. The '504 patent is valid and enforceable.

105. Upon information and belief, Emson has committed acts of infringement of the '504 patent, and continues to commit such acts of infringement, by importing, selling and offering for sale flashlight or lighting products, including the TACLIGHT flashlight that directly

infringes one or more claims of the '504 patent.

106. Upon information and belief, the light emitter package in the TACLIGHT flashlight infringes the claim of the '504 patent. *See* Exh. I-6. Emson sells and offers for sale the infringing TACLIGHT flashlight in the United States.

107. The claim of the '504 patent recites:

The ornamental design for an emitter package, as shown and described.

108. As shown in Exhibit I-6, the TACLIGHT flashlight incorporates an ornamental design for an emitter package according to claim 1.

109. Emson received notice of the '504 patent at least as early as August 25, 2016 (*see* Exh. J), as well as by the filing and service of the Complaint in this action. On information and belief, at all times relevant hereto, Emson has had actual knowledge of the '504 patent, but nonetheless has infringed and continues to infringe the '504 patent in a willful and deliberate disregard of Plaintiff's respective rights therein and with the intent to infringe those rights.

110. By the acts alleged above, Emson has made, used, offered to sell, sold and/or imported into the United States, and on information and belief, still is making, using, offering to sell, selling, and/or importing into the United States, products that directly infringe, literally or under the doctrine of equivalents, at least one claim of the '504 patent, without Cree's authorization or consent.

111. On information and belief, Emson had actual notice of the '504 patent at least as early as August 25, 2016 (*see* Exh. J) when Cree sent Emson a letter informing Emson of its infringement. The notice letter identified the Asserted Patents, the accused product and the infringing LED structure included in the accused TACLIGHT tactical flashlights. The notice letter provided images of a counterfeit LED structure that is incorporated in the accused

TACLIGHT flashlights. Based on that letter, as early as August 25, 2016, Emson knew or should have known that the accused products infringed the '504 patent.

112. On information and belief, Emson's infringement has been intentional and willful, making this an exceptional case. Emson has known of the '504 patent since the filing of this action and at least as early as August 25, 2016 (*see* Exh. J), but nonetheless has infringed and continues to infringe the patent in a willful and deliberate disregard of Cree's respective rights therein and with the intent to infringe those rights.

113. As a direct and proximate cause of Emson's infringement, as alleged above, Cree has suffered damages. Emson is liable to Cree for the amount of any such damages.

114. Emson will, on information and belief, continue to infringe upon Cree's rights under § 271 of the Patent Act, unless and until it is enjoined by this Court. Cree has been and is likely to continue to be irreparably injured unless Emson is enjoined. Cree has no adequate remedy at law.

PRAYER FOR RELIEF

115. Wherefore, Cree demands judgment against Emson, its affiliates, officers, agents, servants, employees and all persons in active concert or participation with Emson, as follows:

116. Entry of permanent injunctive relief prohibiting Emson from further acts of infringement of the Asserted Patents. Such relief should prohibit at least the importing, distributing, promoting, selling or offering for sale the TACLIGHT tactical flashlight product, or any other flashlight or lighting product whose operation falls within the scope of the Asserted Patents;

117. An award to Cree of such damages as it shall prove at trial against Emson, adequate to compensate Cree for Emson's infringement of the Asserted Patents, to include but not limited to Emson's profits under 35 U.S.C. § 289, and/or, Cree's lost profits, but in no event, an award of less than a reasonable royalty pursuant to 35 U.S.C. § 284, together with prejudgment interest;

118. A declaration that Emson has infringed and is infringing the Asserted Patents;

119. A declaration that the Asserted Patents are valid;

120. A declaration that Emson's infringement is willful, and an award of enhanced damages pursuant to 35 U.S.C. § 284;

121. A declaration that this is an exceptional case and an award of attorneys' fees pursuant to 35 U.S.C. § 285;

122. An award to Cree of the costs incurred by Cree in this action; and

123. Such other and further relief as this Court shall deem proper and just.

Dated: November 11, 2016

Respectfully submitted,

CREE, INC.,

By its counsel,

/s/ Christopher M. Morrison

Christopher M. Morrison (BBO# 651335)

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