

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

NEXT LIGHTING CORP.,	§	
	§	
<i>Plaintiff,</i>	§	
	§	
v.	§	Civ. Action No.: 3:19-cv-651
	§	
ACUITY BRANDS LIGHTING, INC.,	§	JURY DEMANDED
	§	
<i>Defendant.</i>	§	

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff NEXT Lighting Corp. (“Plaintiff” or “NEXT”) files this Complaint for Patent Infringement against Defendant Acuity Brands Lighting, Inc. (“Defendant” or “Acuity”) as follows:

NATURE OF LAWSUIT

1. This is a claim for patent infringement that 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 claim under 28 U.S.C. §§ 1331 and 1338(a).

THE PARTIES

1. NEXT is a corporation organized and existing under the laws of Delaware. NEXT, through its predecessor entity, was founded in San Francisco in 2009 with a vision to develop environmentally friendly lighting solutions for the mass market. NEXT is an innovator in the lighting market, having developed extensible lighting platforms, control solutions, and efficient, low-glare lighting systems that optimize light distribution. An overview of some of NEXT’s innovations is available at www.nextlighting.com/products.

2. Upon information and belief, Defendant Acuity is a corporation organized and existing under the laws of the state of Delaware, having a place of business within this district at 2700 Esters Boulevard, Suite 100, Irving, Texas; 124 Commercial Street, Garland, Texas; and 2100 N. Stemmons Freeway, Dallas, Texas. Defendant may be served through its registered agent, Corporation Service Company, 211 E. 7th Street, Suite 620, Austin, Texas 78701.

JURISDICTION AND VENUE

3. This is an action for patent infringement arising under the patent laws of the United States, Title 35, United States Code. Jurisdiction as to these claims is conferred on this Court by 35 U.S.C. §§1331 and 1338(a).

4. Venue is proper within this District under 28 U.S.C. § 1400(b) because Defendant maintains a regular and established place of business in this District and has committed infringing acts in this District. Having purposefully availed itself of the privilege of conducting business within this District, Defendant should reasonably and fairly anticipate being brought into court here.

INFRINGEMENT OF UNITED STATES PATENT NO. 8,491,165

5. NEXT incorporates the above paragraphs as if fully set forth herein.

6. On July 23, 2013, United States Patent No. 8,491,165 (“the ’165 patent”) entitled “Lighting Unit Having Lighting Strips with Light Emitting Elements and a Remote Luminescent Material” was duly and legally issued after full and fair examination. NEXT is the owner of all right, title, and interest in and to the ’165 patent by assignment, with full right to bring suit to enforce the patent, including the right to recover for past infringement damages and the right to recover future royalties, damages, and income. A copy of the ’165 patent is attached hereto as Exhibit A.

7. Claim 34 of the '165 patent states:

A lighting strip comprising:

a linear support structure;

an at least partially reflective reflector extending substantially along the length of said support; and

a plurality of open-air light emitting elements disposed along the length of said support structure, wherein light from said light emitting elements does not pass through secondary optics, and wherein the light from said light emitting elements is reflected at least once before leaving the lighting strip.

8. Defendant has infringed and continues to infringe (literally and/or under the doctrine of equivalents) one or more claims of the '165 patent in this judicial district and elsewhere in the United States, by making, using, importing, selling, and offering for sale lighting products that incorporate the claimed lighting unit design ("Accused Products"). On information and belief, the Accused Products have been purchased by end-users located in this judicial district, installed in locations within this judicial district, and used by persons within this judicial district.

9. One example of Defendant's infringing products is Defendant's Peerless Open LED line of suspended ceiling lighting products. This line includes, without limitation, Defendant's OPM4, OPM4W, OPMS, and OPMW models, and all lengths, including, without limitation, 4-foot, 6-foot, and 8-foot lengths. On information and belief, the Open LED products are sold through the Acuity brand "Peerless". Acuity's website reveals exemplary information regarding the Open LED product line (<https://www.acuitybrands.com/products/detail/368991/Peerless/Open-LED-Suspended-Direct/OPMS-LED-Direct-Suspended>). It is also depicted below:

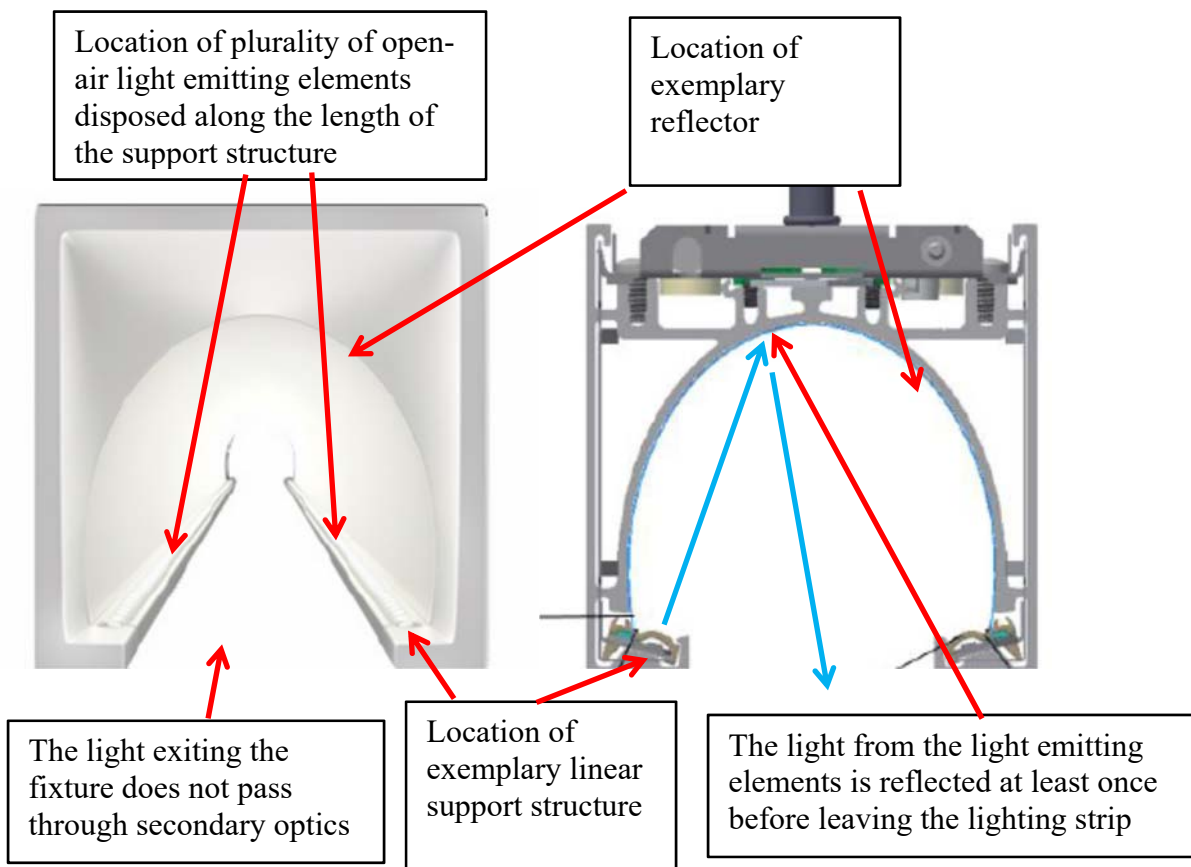


10. Another example of Defendant's infringing products is Defendant's Breez Series Recessed Indirect LED Luminaires. On information and belief, the Breez Series products are sold through the Acuity brand "Lithonia Lighting". Acuity's website reveals exemplary information regarding the Breez Series product (www.acuitybrands.com/products/detail/255660/lithonia-lighting/bzl). It is also depicted below:



11. Defendant's Peerless Open LED is a lighting strip incorporating a linear support structure. The Peerless Open LED uses a reflector extending substantially along the length of the support. The Peerless Open LED's reflector uses a high-reflectance finish. The Peerless

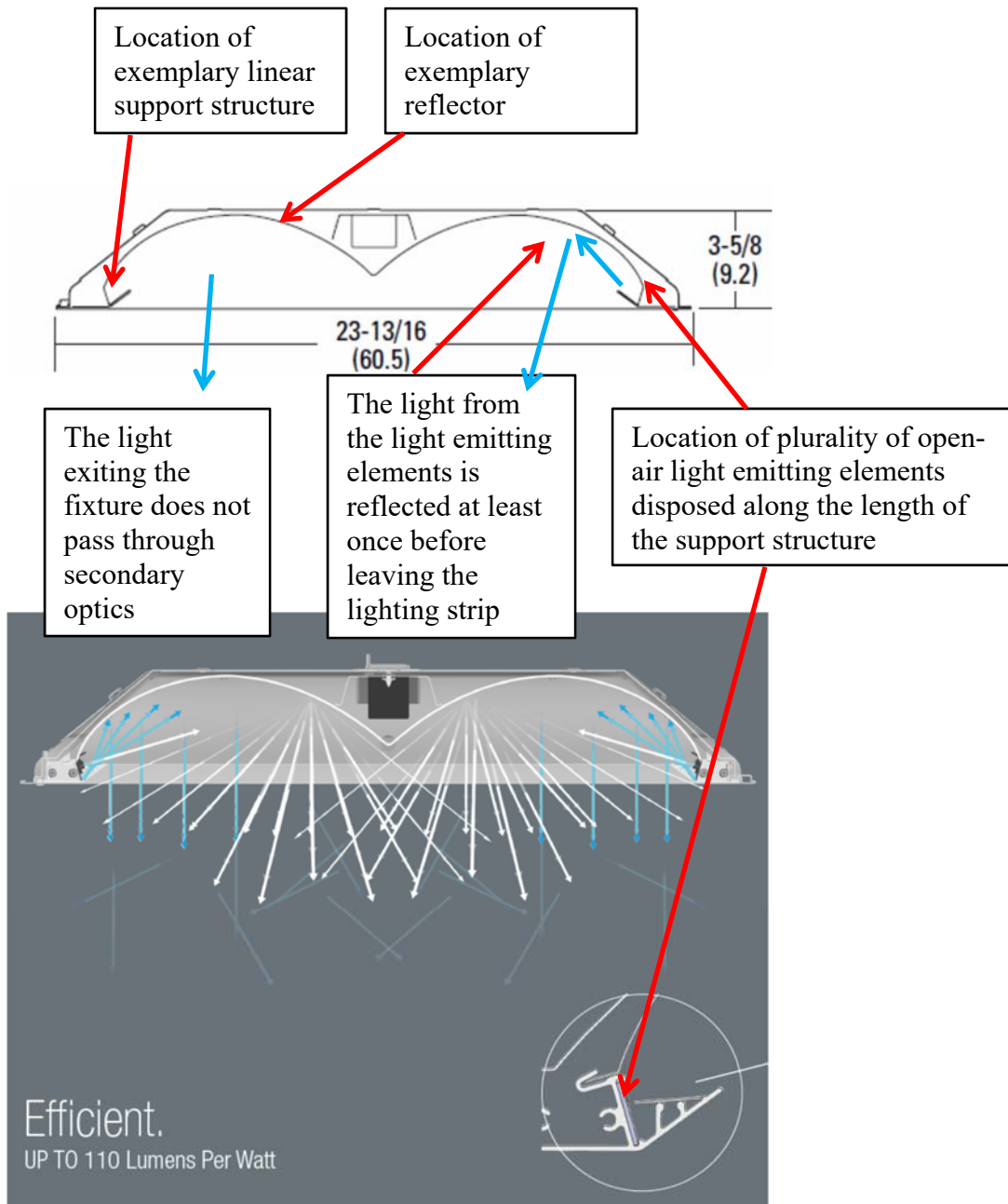
Open LED also incorporates a plurality of open-air light emitting elements disposed along the length of the support structure. The Peerless Open LED uses high brightness light-emitting diodes (“LEDs”), advertised as producing up to 100 lumens per watt, as shown at <https://www.acuitybrands.com/products/detail/368991/Peerless/Open-LED-Suspended-Direct/OPMS-LED-Direct-Suspended>. The LEDs are disposed along the length of the support structure. Light from the Peerless Open LED luminaire’s LEDs does not pass through secondary optics. Light from the Peerless Open LED luminaire’s LEDs is reflected at least once before leaving the lighting strip. The Peerless Open LED luminaire meets each and every limitation of claim 34 of the ’165 patent.



Left-hand image: *Peerless Open Brochure*, p. 8 (February 22, 2019), [https://www.acuitybrands.com/products/detail/368991/Peerless/Open-LED-Suspended-Direct/-/media/products/Peerless/368991/document/Peerless-Open-](https://www.acuitybrands.com/products/detail/368991/Peerless/Open-LED-Suspended-Direct/-/media/products/Peerless/368991/document/Peerless-Open-Brochure_pdf.pdf?DOC_Type=Brochures)

[Brochure_pdf.pdf?DOC_Type=Brochures](https://www.acuitybrands.com/products/detail/368991/Peerless/Open-LED-Suspended-Direct/-/media/products/Peerless/368991/document/Peerless-Open-Brochure_pdf.pdf?DOC_Type=Brochures) (annotated). Right-hand image: *Peerless General Installation Instructions*, p. 4 (February 22, 2019), https://www.acuitybrands.com/products/detail/368991/Peerless/Open-LED-Suspended-Direct/-/media/products/Peerless/368991/document/open-suspended-installation-instructions_pdf.pdf?DOC_Type=Installation_Instruction_Sheets (annotated).

12. Defendant's Breez Series luminaire is a lighting strip incorporating a linear support structure. The Breez Series luminaire uses a reflector extending substantially along the length of the support. The Breez Series luminaire's reflector uses a high-reflectance finish. The Breez Series luminaire also incorporates a plurality of open-air light emitting elements disposed along the length of the support structure. The Breez Series luminaire uses high brightness light-emitting diodes ("LEDs"), advertised as producing up to 105 lumens per watt, as the light emitting elements, as shown at https://www.acuitybrands.com/products/detail/255660/lithonia-lighting/-/media/products/Lithonia_Lighting/255660/document/2BZL-2X2_pdf.pdf?DOC_Type=SPEC_SHEET. The LEDs are disposed along the length of the support structure. Light from the Breez Series luminaire's LEDs does not pass through secondary optics. Light from the Breez Series luminaire's LEDs is reflected at least once before leaving the lighting strip. The Breez Series luminaire meets each and every limitation of claim 34 of the '165 patent.



Top image: *Lithonia Lighting Features & Specifications Brochure*, p. 4 (February 22, 2019), https://www.acuitybrands.com/products/detail/255660/lithonia-lighting/-/media/products/Lithonia_Lighting/255660/document/2BZL-2X2_pdf.pdf?DOC_Type=SPEC_SHEET (annotated). Bottom image: *Lithonia Lighting breez*

Series Brochure, p. 8 (February 22, 2019),

<https://www.acuitybrands.com/products/detail/255660/lithonia-lighting/->

[/media/products/Lithonia_Lighting/255660/document/Breez-Series-LED-](/media/products/Lithonia_Lighting/255660/document/Breez-Series-LED-Brochure_pdf.pdf?DOC_Type=Brochures)

[Brochure_pdf.pdf?DOC_Type=Brochures](#) (annotated).

13. Defendant has infringed and continues to infringe (literally and/or under the doctrine of equivalents) one or more claims of the '165 patent in this judicial district and elsewhere in the United States, by making, using, importing, selling, and offering for sale the Accused Products that incorporate the claimed lighting unit design.

14. Defendant has been at no time, either expressly or impliedly, licensed under the '165 patent.

INFRINGEMENT OF UNITED STATES PATENT NO. 8,684,566

15. NEXT incorporates the above paragraphs as if fully set forth herein.

16. On April 1, 2014, United States Patent No. 8,684,566 (“the '566 patent”) entitled “Lighting Unit with Indirect Light Source” was duly and legally issued after full and fair examination. NEXT is the owner of all right, title, and interest in and to the '566 patent by assignment, with full right to bring suit to enforce the patent, including the right to recover for past infringement damages and the right to recover future royalties, damages, and income. A copy of the '566 patent is attached hereto as Exhibit B.

17. Claim 1 of the '566 patent states:

A lighting unit comprising

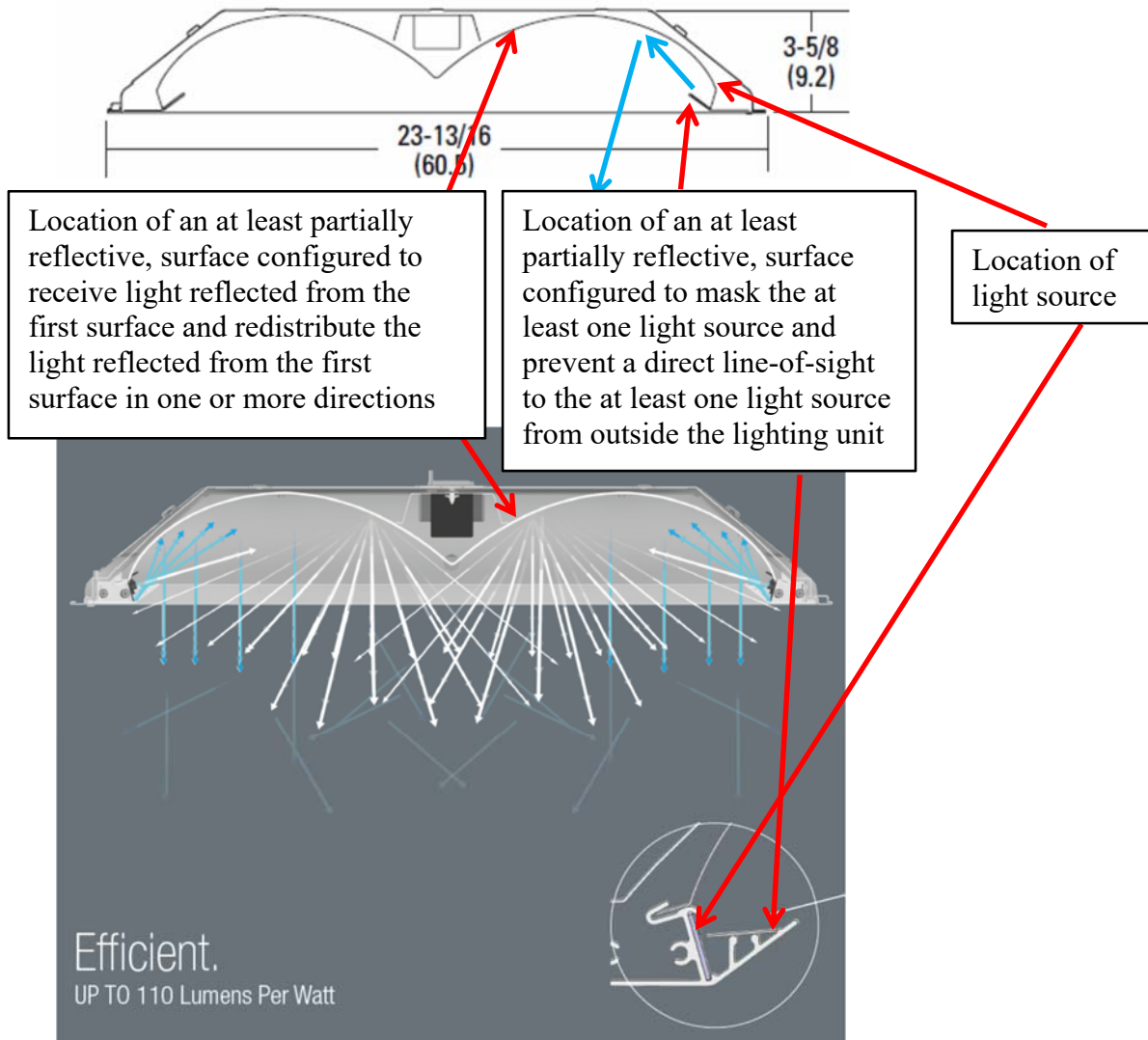
at least one light source;

a first, at least partially reflective, surface configured to mask the at least one light source and prevent a direct line-of-sight to the at least one light source from outside the lighting unit; and

a second, at least partially reflective, surface configured to receive light reflected from the first surface and redistribute the light reflected from the first surface in one or more directions.

18. Defendant has infringed and continues to infringe (literally and/or under the doctrine of equivalents) one or more claims of the '566 patent in this judicial district and elsewhere in the United States, by making, using, importing, selling, and offering for sale the Accused Products, which incorporate the claimed lighting unit design. On information and belief, the Accused Products have been purchased by end-users located in this judicial district, installed in locations within this judicial district, and used by persons within this judicial district.

19. Defendant's Peerless Open LED luminaire is a lighting unit that uses LEDs as the light source. The Peerless Open LED luminaire uses a first surface that masks the LEDs and prevents a direct line-of-sight to the LEDs from outside the lighting unit. The Peerless Open LED luminaire also uses a second surface that is configured to receive light from the first surface and redistribute the light in multiple directions. The Peerless Open LED luminaire meets each and every limitation of claim 1 of the '566 patent.



Top image: *Lithonia Lighting Features & Specifications Brochure*, p. 4 (February 22, 2019), https://www.acuitybrands.com/products/detail/255660/lithonia-lighting/-/media/products/Lithonia_Lighting/255660/document/2BZL-2X2_pdf.pdf?DOC_Type=SPEC_SHEET (annotated). Bottom image: *Lithonia Lighting breez Series Brochure*, p. 8 (February 22, 2019), https://www.acuitybrands.com/products/detail/255660/lithonia-lighting/-/media/products/Lithonia_Lighting/255660/document/Breez-Series-LED-Brochure_pdf.pdf?DOC_Type=Brochures (annotated).

20. The Peerless Open LED luminaire meets each and every limitation of claim 1 of the '566 patent.

21. Defendant has infringed and continues to infringe (literally and/or under the doctrine of equivalents) one or more claims of the '566 patent in this judicial district and elsewhere in the United States, by making, using, importing, selling, and offering for sale the Accused Products that incorporate the claimed lighting unit design.

22. Defendant has been at no time, either expressly or impliedly, licensed under the '566 patent.

23. Defendant's acts of infringement have caused damage to NEXT. NEXT is entitled to recover from Defendant the damages sustained by NEXT as a result of the wrongful acts of Defendant in an amount subject to proof at trial.

24. To the extent required by law, NEXT has complied with the provisions of 35 U.S.C. § 287.

25. Since at least March 4, 2019, Defendant has had knowledge of the '165 and '566 patents by its receipt of a letter from NEXT. Since at least November or 2017, Defendant has had knowledge of the '165 and '566 patents through discussions with NEXT. Upon information and belief, prior to, and at least since, the filing and/or the date of service of the Original Complaint in this action, Defendant has had knowledge of its infringement of the '165 and '566 patents.

26. Defendant's infringement of the '165 and '566 patents continues to be willful and deliberate, entitling NEXT to enhanced damages and attorneys' fees. Additional allegations regarding Defendant's knowledge of the '165 and '566 patents and willful infringement will likely have evidentiary support after a reasonable opportunity for discovery. Upon information

and belief, the risks of infringement were known to Defendant and/or were so obvious under the circumstances that the infringement risks should have been known. Defendant has acted despite an objectively high likelihood that its actions constituted infringement of the '165 and '566 patents. In addition, this objectively-defined risk was known or should have been known to Defendant. Defendant's actions constitute egregious behavior beyond typical infringement.

27. Further and in the alternative, at least since the filing and service of the Original Complaint, Defendant has been and now is actively inducing infringement of at least claim 34 of the '165 patent and claim 1 of the '566 patent in violation of 35 U.S.C. § 271(b). Users of the Accused Products directly infringe at least claim 34 of the '165 patent and claim 1 of the '566 patent when they use the Accused Products in the ordinary, customary, and intended way. Defendant's affirmative acts of selling the Accused Products, causing the Accused Products to be manufactured and distributed, and providing instruction manuals for the Accused Products have induced and continue to induce Defendant's manufacturers, resellers, and/or end-users to make or use the Accused Products in their normal and customary way to infringe the '165 and '566 patents. For example, it can be reasonably inferred that retailers will re-sell the infringing products, and that end-users will use the infringing products, which will cause the Accused Products that are the subject of the claimed invention to be used. By way of example only, the lighting products that are the subject of the claimed invention are used when one of the Accused Products is turned on and its LEDs illuminated. In addition, Defendant provides instructional materials, such as user guides, that specifically teach end-users to use the Accused Products. For example, Defendant makes available an installation guide pertaining to the Accused Products at <https://www.acuitybrands.com/products/detail/368991/Peerless/Open-LED-Suspended-Direct/-/media/products/Peerless/368991/document/open-suspended-installation->

instructions_pdf.pdf?DOC_Type=Installation_Instruction_Sheets. By providing such instructions, Defendant knows (and has known), or was willfully blind to the probability that its actions have, and continue to, actively induce infringement. These actions have induced and continue to induce the direct infringement of the '165 and '566 patents by end-users, businesses, distributors, resellers, and sales representatives.

DEMAND FOR JURY TRIAL

NEXT hereby demands a jury for all issues so triable.

PRAYER

WHEREFORE, NEXT respectfully requests that the Court:

1. Enter judgment that Defendant has infringed the '165 and '566 patents;
2. A judgment and order permanently enjoining Defendant and its directors, officers, employees, agents, parents, subsidiaries, affiliates, and all persons in active concert or participation with it from infringement, inducement to infringe, or contributory infringement of the '165 and '566 patents, including the making, use, sale, offer for sale, distribution, or promotion of products and/or services falling within the scope of the claims of the '165 and '566 patents pursuant to 35 U.S.C. § 283;
3. A judgment and order requiring Defendant to pay NEXT damages sufficient to compensate NEXT for Defendant's infringement of the '165 and '566 patents, in an amount not less than NEXT's lost profits and/or a reasonable royalty and interest and costs, pursuant to 35 U.S.C. § 284, and supplemental damages for any continuing post-verdict infringement up until entry of final judgment with an accounting, as needed;

4. A judgment and order awarding NEXT enhanced damages, pursuant to 35 U.S.C. § 284, if Defendant's acts of infringement of the '165 and '566 patents are determined to be willful;
5. An award of all costs and reasonable attorney's fees against Defendant, pursuant to 35 U.S.C. §§ 284 and 285, based on its infringement of the '165 and '566 patents; and
6. Award any other relief deemed just and equitable.

DATED: March 15, 2019

Respectfully submitted,

/s/ Robert D. Katz

Robert D. Katz

Texas Bar No. 24057936

Email: rkatz@katzfirm.com

KATZ PLLC

6060 N. Central Expressway, Suite 560

Dallas, TX 75206

Phone: (214) 865-8000

**ATTORNEY FOR PLAINTIFF
NEXT LIGHTING CORP.**