

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

THE GERSON COMPANIES,)	
)	
Plaintiff,)	CIVIL ACTION NO. _____
)	
v.)	
)	JURY TRIAL DEMANDED
QUANXIN LIGHTING & ELECTRICAL)	
(USA) INC.,)	
)	
Defendant.)	
_____)	

COMPLAINT

Comes now Plaintiff, The Gerson Companies, by counsel, and for its Complaint against Defendant, Quanxin Lighting & Electrical (USA) Inc., states the following:

INTRODUCTION

1. This is a Complaint for civil damages and injunctive relief. Count I states a claim for Patent Infringement by and through Defendant's use of Plaintiff's registered design patents. Gerson owns exclusive rights in the ornamental designs claimed in United States Design Patent Nos. US D759,855 S (the " '855 patent") and US D789,568 S (the " '568 patent") (collectively, the "Gerson Patents"). Plaintiff seeks damages for Defendant's infringement, an enhancement of damages due to Defendant's willful and deliberate infringement, an injunction barring Defendant from further infringing conduct, reasonable attorney's fees and costs, and all other appropriate relief.

PARTIES

2. Plaintiff, The Gerson Companies (“Gerson”), is a Missouri corporation with its principal place of business located at 1450 S. Lone Elm Road, Olathe, Kansas 66061.

3. Defendant, Quanxin Lighting & Electrical (USA), Inc. (“Quanxin”), is a Delaware corporation with its principal place of business located at 1601 Elm Street, Suite 4360, Dallas, Texas 45201.

JURISDICTION AND VENUE

4. This is an action for design patent infringement arising under the Patent Act, 35 U.S.C. § 101 et seq. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331, and 28 U.S.C. § 1338 as this Complaint alleges violations of federal patent law. Additionally and alternatively, this Court has original diversity jurisdiction over this controversy pursuant to 28 U.S.C. § 1332(a)(1), as the parties are residents of different states and the amount in controversy is in excess of \$75,000, exclusive of interest and costs.

5. The Court has personal jurisdiction over the Defendant because the Defendant is incorporated in this District.

6. Venue in this jurisdiction is proper under 28 U.S.C. § 1400(b) and 28 U.S.C. § 1391 because the Defendant is incorporated in this District and therefore, resides in this District.

FACTUAL BACKGROUND

7. Gerson is the creator and owner of certain solar light bulb designs that are at issue in this litigation.

8. Gerson is the owner of the ‘855 Patent, titled “Solar Light Bulb”, for the ornamental design of its solar light bulb. Drawings of the Solar Light Bulb as depicted in the ‘855 Patent are below:

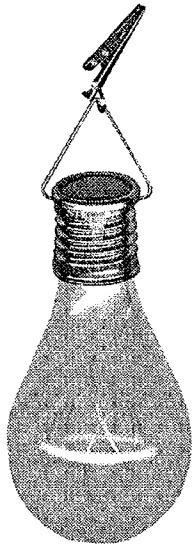


Figure No. 1

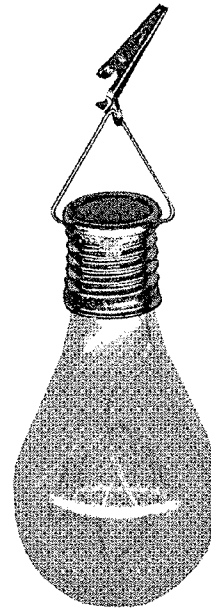


Figure No. 2

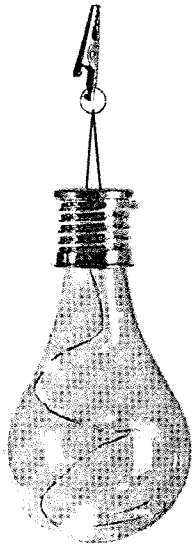


Figure No. 3

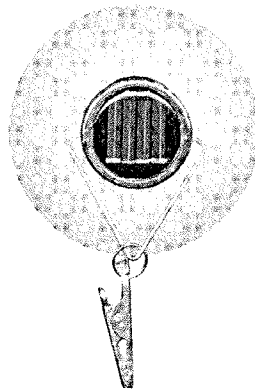


Figure No. 4



Figure No. 5

9. The '855 Patent was duly and legally issued by the United States Patent and Trademark Office on June 21, 2016.

10. A copy of the '855 Patent is incorporated herein by reference and attached hereto as Exhibit A.

11. Gerson is the owner of the '568 Patent, titled "Solar Light Bulb", for the ornamental design of its solar light bulb. The drawings of the Solar Light Bulb as depicted in the '568 Patent is below:

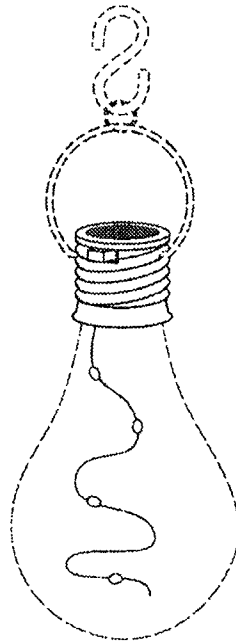


Figure No. 1

12. The '568 Patent was duly and legally issued by the United States Patent and Trademark Office on June 13, 2017.

13. A copy of the '568 Patent is incorporated herein by reference and attached hereto as Exhibit B.

14. Since issuance, the '855 and '568 Patents have been and remain in force.

15. As owner of the '855 and '568 Patents, Gerson is authorized and has standing to enforce all rights arising thereunder.

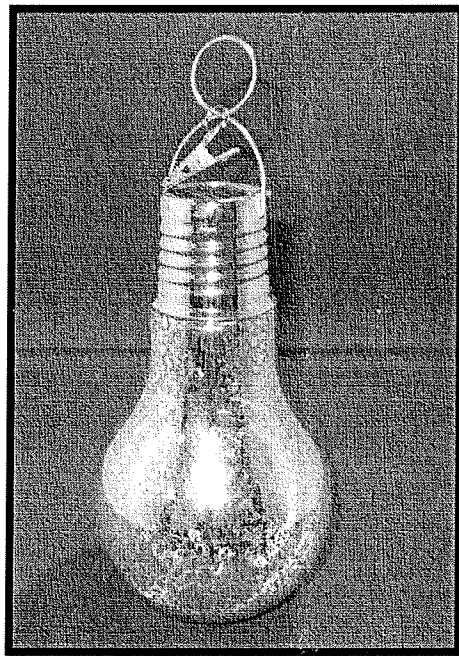
16. Gerson has practiced the '855 and '568 Patents with the commercialization of its Everlasting Glow® LED/Solar Bulb Light with Clip.

17. On or about June 2, 2017, Gerson discovered a solar light bulb for sale on The Home Depot's website that infringed upon the Gerson Patents.

18. Gerson subsequently discovered that Quanxin sold the infringing solar light bulb to The Home Depot and other retailers. Quanxin has engaged in the unlawful making, using, offering for sale, sale, and importation into the United States of infringing versions of Gerson's Solar Light Bulb, which infringing versions have been sold to The Home Depot as "Solar Eureka Mercury Bulb", to Sam's Club as "Members Mark 6 Mercury Glass Solar Powered Light Bulbs", and elsewhere.

19. Quanxin has applied Gerson's patented design on a colorable imitation thereof to the Quanxin solar light bulbs, and has offered for sale and sold its solar light bulbs.

20. Quanxin's solar light bulb is shown below:



21. Quanxin's design is the same or substantially the same as the designs of the Gerson Patents. Quanxin's design is so similar as to be nearly identical such that an ordinary observer would be deceived by the similarity in the designs.

22. Gerson has not granted a license to Quanxin or any other authorization to make, use, offer for sale, sell or import the designs of the Gerson Patents.

23. Despite Gerson's exclusive rights to the ornamental designs of the Gerson Patents, Quanxin willfully and knowingly infringed on the Gerson Patents, resulting in injury and damage to Gerson.

24. Quanxin's infringement of the Gerson Patents will continue unless enjoined by this Court.

COUNT 1
INFRINGEMENT OF U.S. DESIGN PATENT NOS. US D759,855 S AND US D789,568 S

25. Gerson incorporates by reference the allegations contained in paragraphs 1 through 24 as though fully set forth below.

26. Gerson provided actual notice to Quanxin of Quanxin's infringement of Gerson's designs since at least June 2017.

27. Quanxin has infringed and continues to infringe upon the Gerson Patents by making, using, offering to sell, or selling in the United States products infringing the ornamental designs covered by the Gerson Patents in violation of 35 U.S.C. § 271.

28. Quanxin's designs infringe on the Gerson Patents because, in the eye of an ordinary observer giving such attention as a purchaser usually would, the designs are of the '855 and '568 Patents and the design of Quanxin's solar light bulb are substantially the same and the resemblance is such that it would deceive such an ordinary observer and induce them to purchase one supposing it to be the other.

29. Quanxin's infringing acts were committed without authority, permission, or license from Gerson.

30. Upon information and belief, Quanxin has actual knowledge of the '855 and '568 Patents and actual knowledge that its activities constitute direct infringement of the '855 and '568 Patents, or Quanxin has willfully blinded itself to the infringing nature of its activities, and is continuing its infringing activities.

31. Quanxin's infringement of the '855 and '568 Patents has been and will continue to be willful, deliberate and intentional.

32. Gerson has suffered damages as a result of Quanxin's infringement and continues to suffer damages, in an amount to be established at trial. The damages sustained by Gerson are irreparable and will continue to be irreparable unless Quanxin is enjoined from its continued infringement of the Gerson Patents.

33. Gerson is entitled to a complete accounting of all revenue and profits derived by Quanxin from the unlawful conduct alleged herein, including without limitation, Quanxin's total profits pursuant to 35 U.S.C. § 289.

34. Quanxin has engaged and is engaged in willful and deliberate infringement of the Gerson Patents. Such willful and deliberate infringement justifies an increase of three times the damages pursuant to 35 U.S.C. § 284 and further qualifies this action as an exceptional case supporting an award of reasonable attorney's fees pursuant to 35 U.S.C. § 285.

35. Gerson is entitled to a permanent injunction preventing Quanxin from further infringement of the Gerson Patents.

PRAYER FOR RELIEF

WHEREFORE, Gerson demands the following relief:

- a. A judgment entered in favor of Gerson on its claim for patent infringement;
- b. A preliminary and permanent injunction restraining Quanxin, its agents, servants, employees, successors, assigns, and all others in concert or privity with Quanxin from infringing the Gerson Patents, and from manufacturing, importing, selling, and offering to sell and otherwise using the Gerson Patents without authorization;
- c. That Quanxin be required to account and pay to Gerson all damages to which Gerson is entitled pursuant to 35 U.S.C. §§ 284 and 289;
- d. That Quanxin be required to pay treble damages for its willful patent infringement;
- e. That Quanxin be compelled to pay Gerson's cost and attorney fees incurred in connection with this action pursuant to 35 U.S.C. § 285;
- f. An award of all actual and compensatory damages;
- g. An award of interest, including prejudgment interest, on all damages;
- h. Trial by jury of all issues so triable; and
- i. All other and further relief to which Gerson may otherwise be entitled.

PRICKETT, JONES & ELLIOTT, P.A.

Of Counsel:

Kyle Anne Citrynell
SEILLER WATERMAN LLC
Meidinger Tower, 22nd Floor
465 S. Fourth Street
Louisville, KY 40202
Phone: (502) 584-7400
Fax: (502) 371-9219
citrynell@derbycitylaw.com

/s/ Eric J. Juray
J. Clayton Athey (#4378)
Eric J. Juray (#5765)
1310 King Street, Box 1328
Wilmington, DE 19899
Phone: (302) 888-6500
Fax: (302) 658-8111
jcathey@prickett.com
ejjuray@prickett.com

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