

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. _____

VOVOMART (HK) ENTERPRISES CO., LTD., a Hong Kong corporation, and
HK SANODESK CO., LTD., a Hong Kong corporation, and
LOCTEK INC., a California corporation,

Plaintiffs,

v.

OFFICE KICK, INC., a Colorado corporation, and
CKNAPP SALES INC. d/b/a VIVO,

Defendants.

COMPLAINT FOR DECLARATORY JUDGMENT OF NON-INFRINGEMENT

Plaintiffs Vovomart (HK) Enterprises Co., Ltd., HK Sanodesk Co., Ltd., and Loctek Inc. (collectively, “Plaintiffs” or “Loctek”), by and through their undersigned attorneys, for their Complaint for Declaratory Judgment of Non-Infringement against Defendants Office Kick, Inc. (“Office Kick”) and CKnapp Sales Inc. d/b/a VIVO (“VIVO”) (collectively, “Defendants”) allege as follows:

NATURE OF THE ACTION

1. This is a case stemming from the Defendants’ efforts to leverage Amazon.com, Inc.’s (“Amazon”) Utility Patent Neutral Evaluation Program to wrongfully stop most of Loctek’s U.S. sales and to gain an unfair sales advantage.

2. Loctek comes to this Court seeking relief under the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the patent laws of the United States, 35 U.S.C. § 1 *et seq.*, so that the

parties can resolve this dispute in a venue that provides Loctek appropriate due process, that will interpret the patent claims according to their legal scope, that allows full discovery on all relevant issues, and that will exercise the judicial power of the United States under Article III to rule on Defendants' wrongful infringement claims that, to date, have only been presented under seal to Amazon.

PARTIES

3. Plaintiff Vovomart (HK) Enterprises Co., Ltd. is a corporation organized under the laws of Hong Kong with its registered office at 6/F Manulife Place, 348 Kwun Tong Road, Kowloon, Hong Kong.

4. Plaintiff HK Sanodesk Co., Ltd. is a corporation organized under the laws of Hong Kong with its registered office at Level 54 Hopewell Ctr. 183, Queen's Road East, Hong Kong.

5. Plaintiff Loctek, Inc., is a corporation organized under the laws of California with its principal place of business at 6475 Las Positas Rd, Livermore, CA 94551.

6. On information and belief, Defendant Office Kick is a Colorado corporation with its principal place of business at 1942 Broadway Street, STE 314C, Boulder, CO 80302.

7. On information and belief, Defendant VIVO is an Illinois corporation with its principal place of business at 195 East Martin Dr., Goodfield, IL 61742, and is a parent or related company of Office Kick.

NATURE OF ACTION

8. This is an action for declaratory judgment, pursuant to the Declaratory Judgment Act, 28 U.S.C. §§ 2201-2202, of non-infringement of U.S. Patent No. 11,160,367 ("the '367

patent”).

JURISDICTION AND VENUE

9. This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1338(a) because this Court has exclusive jurisdiction over declaratory judgment claims arising under the patent laws of the United States, 35 U.S.C. § 1 *et seq.*

10. This Court has subject matter jurisdiction under 28 U.S.C. § 1332 because complete diversity exists between the Plaintiffs and Defendants, and the amount in controversy is greater than \$75,000.

11. This Court has personal jurisdiction over Defendant Office Kick as a resident of Colorado.

12. This Court has personal jurisdiction over Defendant VIVO because VIVO has established minimum contacts with this forum such that the exercise of jurisdiction over VIVO would not offend traditional notions of fair play and substantial justice. On information and belief, Defendant VIVO has taken actions in this district to enforce the '367 patent on behalf of the patent's sole assignee, Defendant Office Kick, including by partnering with Colorado-resident Office Kick to send letters to Amazon accusing Loctek of patent infringement and requesting that Loctek remove Loctek's products from the Amazon marketplace.

13. Venue is proper in the District of Colorado pursuant to 28 U.S.C. § 1391. Both Defendants are deemed to reside in this district pursuant to 28 U.S.C. § 1391(c)(2), because Defendants are subject to personal jurisdiction in this district with respect to this action. A substantial part of the events giving rise to the claim occurred in this district. For example,

Office Kick, who is a resident of this district and assignee of the subject patent, has partnered with its parent company VIVO in submitting letters to Amazon alleging patent infringement by the plaintiffs.

14. There is an actual and justiciable controversy between the parties as to the infringement of the '367 patent. Loctek is a seller of ergonomic products including adjustable platform desks. Loctek sells a substantial amount of its products through the Amazon marketplace. Defendants have alleged that Loctek's adjustable platform desk products infringe claims 1 and 10 of the '367 patent. As a result of Defendants' allegations of infringement, many of Loctek's products have been delisted from Amazon, causing significant harm to Loctek's business.

FACTUAL BACKGROUND

15. Loctek sells ergonomic products, including adjustable platform desks.

16. Adjustable platform desks, generally speaking, provide users with a height-adjustable work surface. The product can be placed on tables and desks, and users can manually lift or lower a platform to adjust the height of their work space. This allows users to work while either standing up or sitting down without having to switch desks. Below is an exemplary photo of a Loctek adjustable platform desk.



17. Loctek has been selling its products for sixteen years, including on Amazon for the last eight years.

18. Upon information and belief, Loctek has been in the industry longer than Defendants.

19. Nevertheless, Defendants have secured certain U.S. Patents, including the subject '367 patent titled "Desktop Workspace That Adjusts Vertically," which issued on November 2, 2021. The '367 patent is attached as Exhibit A.

20. Office Kick, Inc. is listed as the sole assignee on the face of the patent, but as noted, VIVO has been responsible for (or at least partaken in) sending enforcement letters to Amazon.

21. On November 9, 2021, just one week after the '367 patent issued, Defendants ran to Amazon, alleging that certain Loctek products infringe the '367 patent. Defendants also submitted a request for neutral evaluation by Amazon on November 18.

22. To handle removal requests like the Defendants', Amazon has instituted a "Patent Evaluation Procedure" whereby patent holders may seek to have products removed from Amazon that allegedly infringe their patents.

23. The process is initiated, as Loctek understands it, by filing a notice of infringement with Amazon. A patent holder does not need to submit any specific evidence to support its complaint, nor does the submitting party need to have a court order. The patent holder must simply affirm that it has good-faith belief in its infringement allegations.

24. After a notice of infringement is filed, Amazon may contact the seller and provide two options: (1) the seller may seek to resolve the issue with the rights holder or (2) the seller may choose to have the claim analyzed by a neutral third party who follows an Amazon-designed process. The process includes no discovery, no *Markman*, no hearing, or any other typical safeguards provided in the U.S. judicial system. The neutral third party simply does a binary yes/no analysis as to whether, in its opinion, there is a good-faith infringement showing.

25. Upon information and belief, over the course of approximately five months, Defendants have alleged to Amazon that more than 30 Loctek product listings infringe the '367 patent. The Loctek products subject to VIVO's allegations include products associated with the following Amazon Standard Identification Numbers: B08GS99LD5, B08GPC4JPZ, B078RH3D1W, B078RJBMBJ, B01MSZQLML, B06Y2XGKP4, B01N0RHZAW, B01HPE05BM, B01HPE05B2, B06X9HHSGV, B07DQ34F23, B07DQ8DB3S, B093BQ85V4, B08XBPL351, B07C8B9L5M, B0762K7JJT, B086XC7WP3, B08WXFJCBP, B0978GNY8L, B0762LT49K, B08J7293Y3, B07CBRYXGD, B078H6L4X1, B09536MH4W, B0978JNZPR, B08M187F2V, B08GR1GR9T, B07L68S8CS, B08WWNHJ15, B07L5CHW91, B09STHM3C1, B09STJQ1P8, B01IEIJU7S, and B01IEIJU6Y (collectively, "the Accused Products").

26. The Accused Products were targeted in at least three waves. First, there was a

takedown request in November 2021 related to a specific model of the Accused Products. Being unfamiliar with the system, Plaintiffs did not seek neutral evaluation, so this product model was removed from Amazon without any input from Plaintiffs on December 10.

27. In a second wave, initiated by Defendants on December 15, Defendants targeted an additional product model. In response, Plaintiffs pursued neutral evaluation, but the arbiter of Plaintiffs' request decided that the listings affected by the second wave should be taken down by March 31, 2022.

28. Then, on April 6, 2022—with no advance notice whatsoever—a third wave of Plaintiffs' products were removed from Amazon. Plaintiffs immediately tried to appeal but that effort was futile.

29. As a result of Defendants' allegations, none of the Accused Products are available on Amazon in any way.

30. Importantly, a majority of Loctek's U.S. sales of the Accused Products are made via the Amazon marketplace, and thus Loctek is suffering immediate and significant financial losses given its inability to sell the Accused Products on that platform.

31. Given the volume percentage of sales that Loctek has relied upon via the Amazon marketplace over the life of these Accused Products, it now faces immediate and seemingly irreparable harm. Indeed, the majority of Loctek's U.S. sales for the Accused Products go through Amazon. These takedowns are effectively a permanent injunction against the majority of Loctek's sales, one that Defendants would not be able to obtain from a U.S. court because they could not satisfy the requirements for injunctive relief.

32. Additionally, Loctek is quickly approaching a time where not only can it not sell

its products, but it will be obligated to either pay Amazon to store products sitting in Amazon warehouse or else to ship, store, and sell the products elsewhere.

33. Highlighting the Defendants' business tactics here, there is at least one other pending declaratory-judgment action against the Defendants prompted by a similar takedown request of other products (*Factory Direct Wholesale LLC v. Office Kick, Inc.*, Case No. 4-21-cv-00368 (S.D. Ga.)), and Loctek believes the Defendants may be using the Amazon process to get even more companies that sell competitive products off the Amazon marketplace, which is particularly important in the desk-riser industry.

34. While the Defendants appear to be particularly aggressive with asserting this patent in the Amazon procedures, they have not asserted it once in any litigation.

35. Loctek has been told that a judicial declaration of non-infringement would provide a vehicle for reinstatement of its listings, thus emphasizing the need for judicial intervention.

Loctek Does Not Infringe Defendants' '367 Patent

36. The '367 patent was issued on November 2, 2021. The patent has 19 claims, of which claims 1, 10, 11, 12, 18, and 19 are independent.

37. Defendants have alleged that the Accused Products infringe claims 1 and 10 of the patent. The two claims are highly similar, so only claim 1 is reproduced in full below; the difference compared to claim 10 is annotated.

1. A desktop workspace that adjusts vertically, comprising:
 - a work surface platform;
 - a keyboard platform in a position that protrudes out, down, and parallel to the work surface platform;
 - a base configured to sit on an existing platform; and
 - a height adjustment mechanism connecting the work surface platform and the

base, the height adjustment mechanism including:
a set of pivot arms that connect at a scissoring pivot point creating a scissoring motion when raising and lowering the work surface platform to various heights;
a base pivot point fixed relative to the base and connecting the base and the set of pivot arms;
a platform pivot point fixed relative to the work surface platform and connecting the work surface platform and the set of pivot arms;
a sliding mechanism on an end of an arm of the set of pivot arms between the end of the arm and either the work surface platform or the base; and
a gas spring that assists in elevation of the work surface platform by applying a force to rotate one of the set of pivot arms as part of the scissoring motion,
[1] wherein an end of the gas spring is *fixed to the work surface platform*.

[10] wherein the gas spring is *attached directly to the one of the set of pivot arms*.

38. Defendants' allegations of infringement are wrong for a number of reasons, including because the Accused Products do not have one or more of the following claim elements: (1) "a height adjustment mechanism," (2) "pivot arms that connect at a scissoring point," (3) "a platform pivot point . . . connecting the work surface platform and the set of pivot arms," (4) "a sliding mechanism," (5) "a gas spring . . . fixed to the work surface platform," and (6) a "gas spring . . . attached directly to the one of the set of pivot arms."

39. As a result, Loctek does not infringe either the asserted claims or any other claim of the '367 patent.

40. An actual and justiciable controversy exists between Loctek and the Defendants.

FIRST CLAIM FOR RELIEF
DECLARATORY JUDGMENT OF NON-INFRINGEMENT OF THE '367 PATENT

41. Loctek realleges and incorporates by reference the allegations of paragraphs 1-39 as though fully set forth herein.

42. A present, genuine, and justiciable controversy exists between Loctek and Defendants regarding, *inter alia*, whether the manufacture, use, offer for sale, sale, importation

and/or marketing of the Accused Products would infringe any valid or enforceable claim of the '367 patent, either directly or indirectly, that is of sufficient immediacy and reality to warrant the issuance of a Declaratory Judgment.

43. The manufacture, use, offer for sale, sale, importation, and/or marketing of the Accused Products would not infringe any valid or enforceable claim of the '367 patent, either directly or indirectly.

44. Loctek is entitled to a declaration that it has not infringed, is not infringing, and will not infringe, directly or indirectly, literally or under the doctrine of equivalents, one or more valid or enforceable claims of the '367 patent.

PRAYER FOR RELIEF

WHEREFORE, Loctek respectfully prays for judgment in its favor and against Defendants:

- (a) Declaring that the manufacture, use, sale, offer for sale, importation, and/or marketing of Loctek's Accused Products has not infringed and does not infringe, either directly or indirectly, any claim of the '367 patent either literally or under the doctrine of equivalents; and
- (b) That the Court award such other and further relief as the Court deems just and equitable.

Dated: May 12, 2022

Respectfully submitted,

/s/ William M. Jay

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