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7 Fan Bao and Zico USA, Inc.

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9 **UNITED STATES DISTRICT COURT**
10 **CENTRAL DISTRICT OF CALIFORNIA**
11 **SOUTHERN DIVISION**

12 FAN BAO, an individual; and ZICO USA,
13 INC., a California Corporation,

14 Plaintiffs,

15 v.

16 WENZHOU HAOKE ELECTRIC
17 APPLIANCE CO., LTD., a Chinese
corporation; EPEUS CO. LTD., a Hong
18 Kong limited company; and WU
XINGHONG, an individual,

19 Defendants.

Case No. 8:22-cv-01885

**COMPLAINT FOR PATENT
INFRINGEMENT**

DEMAND FOR JURY TRIAL

1 For their Complaint against Wenzhou Haoke Electric Appliance Co., Ltd.,
2 (“Haoke”), Epeus Co. Ltd, (“Epeus”), and Wu Xinghong, (“Xinghong”)(collectively,
3 “Defendants”), Plaintiffs Fan Bao and Zico USA, Inc., (Collectively “Zico” or
4 “Plaintiffs”) hereby allege as follows:

5 **I. NATURE OF THE ACTION**

6 1. This is an action for patent infringement of United States Patent Nos.
7 D961,152 (“the ’152 Patent”) and 10,701,965 (“the ’965 Patent”) (collectively, “the
8 Asserted Patents”), arising under the Patent Laws of the United States, 35 U.S.C. §1, *et*
9 *seq.*, seeking damages and other relief under 35 U.S.C. § 281, *et seq.*

10 **II. THE PARTIES**

11 2. Plaintiff Fan Bao is an individual residing in this District, is a principal with
12 Plaintiff Zico, and is the named inventor on the Asserted Patents in this action.

13 3. Plaintiff Zico is a limited liability company organized and existing under the
14 laws of California with a principal place of business located at 921 Mariner St., Brea, CA
15 92821. Plaintiff Zico makes products covered by the Asserted Patents and which
16 compete directly with the Accused Products described below.

17 4. Upon information and belief, Haoke is a corporation organized under the
18 laws of China with a principal place of business located at No. 709-795 Zheng Song Da
19 Dao, Songqiao Village, Wanquan Town, PingYang County, Wenzhou, Zhejiang
20 Province, China. Haoke is a manufacturer and seller of the Accused Products described
21 below.

22 5. Upon information and belief, Epeus is a limited company organized under
23 the laws of Hong Kong with a principal place of business located at 6/F Manulife Place,
24 348 Kwun Tong Road, Hong Kong. Epeus is a reseller of one or more of the Accused
25 Products described below.

26 6. Upon information and belief, Xinghong is an individual who resides at 6F
27 Huari Garden, No 1004 Nigang West Rd, Shenzhen, Luohu, Guangdong 51800, China.
28 Xinghong is a reseller of one or more of the Accused Products described below.

1 7. Upon information and belief, Defendants sell and offer to sell products and
2 services throughout the United States, including in this District, and introduces products
3 and services into the stream of commerce and that incorporate infringing technology
4 knowing that they would be sold in this District and elsewhere in the United States.

5 8. Upon information and belief, Defendants conduct a significant, persistent
6 and regular amount of business in this District through product sales by its distributors,
7 customers, and resellers and through online marketing, and derives substantial revenue
8 from such business.

9 **III. JURISDICTION AND VENUE**

10 7. This is an action for patent infringement arising under the Patent Laws of the
11 United States, Title 35 of the United States Code.

12 8. This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 and
13 1338(a).

14 9. Venue is proper in this District because Defendants are foreign companies
15 and venue is therefore governed by the general venue statute, which provides that “a
16 defendant not resident in the United States may be sued in any judicial district.” 28
17 U.S.C. § 1391(c)(3); *see also In re HTC Corp.*, 889 F.3d 1349, 1358 (Fed. Cir. 2018)

18 10. Upon information and belief, this Court has personal jurisdiction over
19 Defendants because they have purposefully availed themselves of the privileges and
20 benefits of the laws of the State of California. Further, Defendants are subject to this
21 Court’s general and specific personal jurisdiction because Defendants have sufficient
22 minimum contacts within the State of California, pursuant to due process and/or the
23 California Long Arm Statute, because Defendants purposefully availed themselves of the
24 privileges of conducting business in the State of California, and because Plaintiff’s causes
25 of action arise directly from Defendants’ business contacts and other activities in the
26 State of California, including Defendants regularly doing or soliciting business and
27 deriving substantial revenue from providing products and services to individuals in this
28 District, including the Accused Products described below, which are accused of

1 infringing the Asserted Patents. The exercise of jurisdiction over Defendants would not
2 offend traditional notions of fair play and substantial justice.

3 **IV. BACKGROUND**

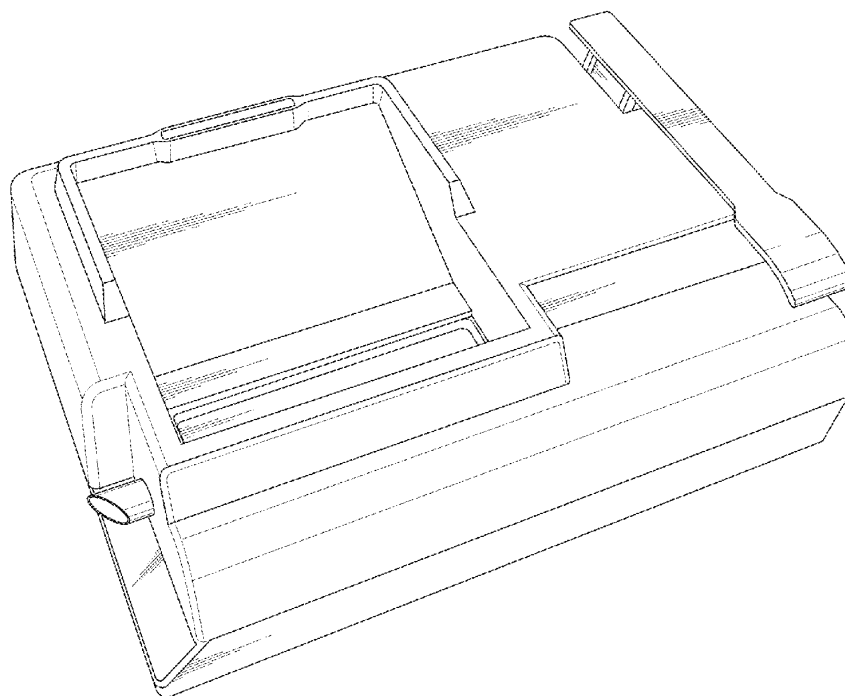
4 11. Plaintiffs are innovators in the development of lighters, pipes, grinders, roll-
5 your-own products, and numerous other implements to assist in the enjoyment of tobacco
6 products. One of these products is Zico’s innovative “Powermatic III” cigarette rolling
7 device, which comprises an automatic cigarette rolling machine having a packer module
8 with movable fingers for compressing tobacco within the cigarette sleeve. Below is a
9 photo of Zico’s Powermatic III device:



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18 12. Another Zico product is the Powermatic IV cigarette rolling device, which is
19 pictured below:



1 13. Plaintiffs have sought patent protection on both the Powermatic III and
2 Powermatic IV cigarette rolling devices. This includes the '152 Patent, entitled "Tobacco
3 Tube Filler Device." **Ex. A.** The '152 Patent describes and claims the ornamental design
4 found in the Powermatic IV cigarette rolling device. Below is a representative figure
5 from the '152 design patent:



19 14. This patent protection also includes the '965 patent, entitled "Systems,
20 Methods, and Devices for Delivering Tobacco into Tobacco Casing Tubes." **Ex. B.** The
21 '965 patent describes and claims the functionality found in the Powermatic III cigarette
22 rolling device.

23 15. Reproduced below are exemplary images from the written description of the
24 '965 patent:

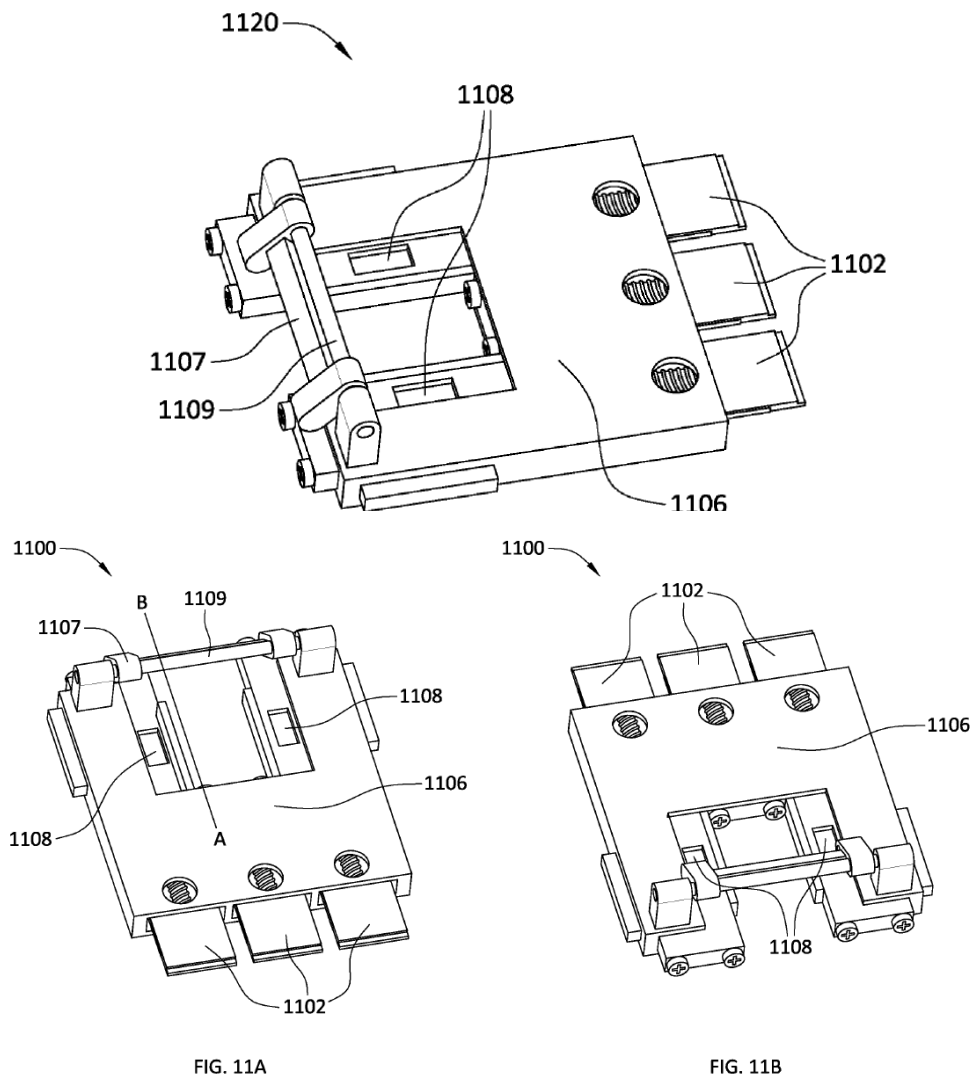


FIG. 11A

FIG. 11B

16. Defendants manufacture and export into the United States cigarette tube and tobacco injectors, and cigarette rolling devices. Defendants’ products include the “Hawkmatic HK-2” and “Hawkmatic HK-3” cigarette rollers (collectively, “Accused Products”).

17. On information and belief, the Hawkmatic HK-2 and Hawkmatic HK-3 cigarette rollers are no more than knock-offs of Zico’s Powermatic III and Powermatic IV cigarette rolling devices. Pictured below are the Hawkmatic HK-2 and Hawkmatic HK-3 cigarette rollers (left photos), compared against Zico’s Powermatic III and Powermatic IV products (right photos).



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15 18. Defendants' HK-2 cigarette rolling device is a blatant knock-off of Zico's
16 patented Powermatic IV cigarette rolling device and – more importantly – infringes the
17 patented design depicted in the '152 design patent.

18 19. And Defendants' HK-3 cigarette rolling device is another knock-off, this
19 time of Zico's Powermatic III cigarette rolling device, which is protected by Zico's '965
20 patent, including at least claim 1 of that patent.

21 **COUNT I**

22 **INFRINGEMENT OF THE '152 PATENT**

23 20. Plaintiff hereby restates the allegations contained in the preceding
24 paragraphs above as if fully set forth herein.

25 21. The '152 Patent was duly and legally issued to Plaintiff Fan Bao by the
26 United States Patent and Trademark Office.

1 22. Plaintiff Fan Bao is the inventor and owner of the right, title, and interest in
2 and to the '152 Patent, including the right to assert all causes of action arising under the
3 '152 Patent and the right to any remedies for infringement of the '152 Patent.

4 23. Plaintiff Zico USA manufactures and sells the Powermatic IV cigarette
5 device, which is covered by one or more claims of the '152 Patent.

6 24. Defendants have infringed and continue to infringe the '152 Patent under 35
7 U.S.C. § 271, literally or under the doctrine of equivalents, by making, using, selling,
8 and/or offering for sale in the United States, and/or importing into the United States
9 without authorization, at least the Hawkmatic HK-2 cigarette device.

10 25. As shown in the figures below and based on Zico's preliminary investigation
11 to date, the Hawkmatic HK-2 cigarette device infringes the ornamental design of the '152
12 Patent. Under the "ordinary observer" test for design patent infringement, the
13 Hawkmatic HK-2 cigarette device and '152 Patent designs are substantially the same,
14 such that they would deceive an ordinary observer into purchasing the Hawkmatic HK-2
15 cigarette device, thinking it to be the patented design. The figures / photos below
16 demonstrate the substantial similarity between the two designs.



25 26. Moreover, Defendants have infringed the '152 Patent with full knowledge
26 that their making, using, selling, offering for sale, and import of the Hawkmatic HK-2
27 cigarette device constitutes infringement of the '152 Patent. In particular, prior to filing
28 this complaint for patent infringement, Plaintiffs contacted Defendants in writing to (1)

1 identify for Defendants both the '152 Patent (which was then pending) and the issued
2 '965 Patent, and (2) notify Defendants of Plaintiffs' infringement concerns regarding the
3 '152 and '965 Patents.

4 27. But despite having full knowledge of the '152 Patent and their infringement
5 thereof, Defendants have – on information and belief – continued to manufacture, use,
6 sell, offer for sale, and import the Hawkmatic HK-2 cigarette device. Indeed,
7 Defendants' Hawkmatic HK-2 cigarette device appears to be a direct copy of Plaintiffs'
8 patented Powermatic cigarette device. Defendants' infringement thus has been willful,
9 subjecting it to treble damages in accordance with 35 U.S.C. § 284.

10 **COUNT II**

11 **INFRINGEMENT OF THE '965 PATENT**

12 28. Plaintiff hereby restates the allegations contained in the preceding
13 paragraphs above as if fully set forth herein.

14 29. The '965 Patent was duly and legally issued to Plaintiff Fan Bao by the
15 United States Patent and Trademark Office.

16 30. Plaintiff Fan Bao is the inventor and owner of the right, title, and interest in
17 and to the '965 Patent, including the right to assert all causes of action arising under the
18 '965 Patent and the right to any remedies for infringement of the '965 Patent.

19 31. Plaintiff Zico USA manufactures and sells the Powermatic III cigarette
20 device, which is covered by one or more claims of the '965 Patent.

21 32. Defendants have infringed and continue to infringe the '965 Patent under 35
22 U.S.C. § 271, literally or under the doctrine of equivalents, by making, using, selling,
23 and/or offering for sale in the United States, and/or importing into the United States
24 without authorization, at least the Hawkmatic HK-3 cigarette device.

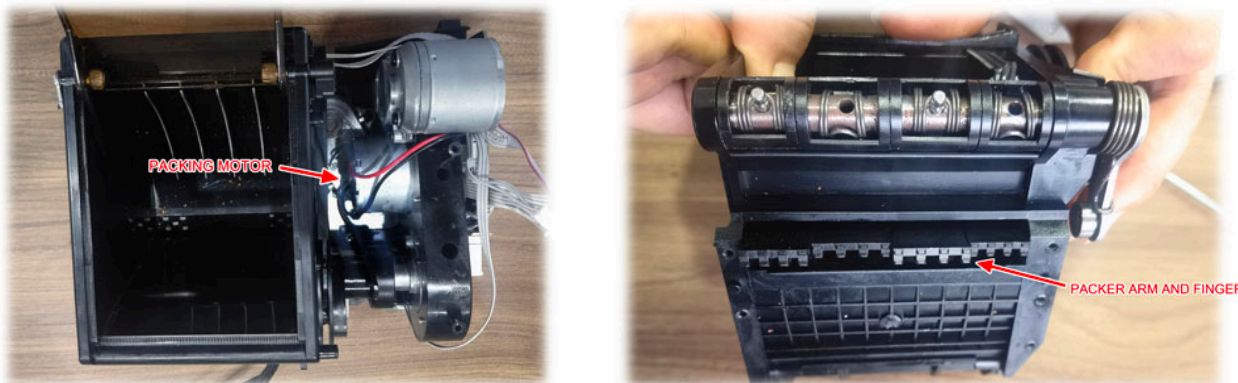
25 33. Based on Zico's preliminary investigation to date, the Hawkmatic HK-3
26 infringes at least claim 1 of the '965 Patent.

27 34. The Hawkmatic HK-3 comprises an automatic cigarette filling system for
28 packing and filling cigarette tubes with tobacco. As shown in the photos below, the

1 Hawkmatic HK-3 includes a housing body having a tobacco holding compartment to
2 receive tobacco and a nozzle to dispense packed tobacco from the tobacco holding
3 compartment into a cigarette casing tube.

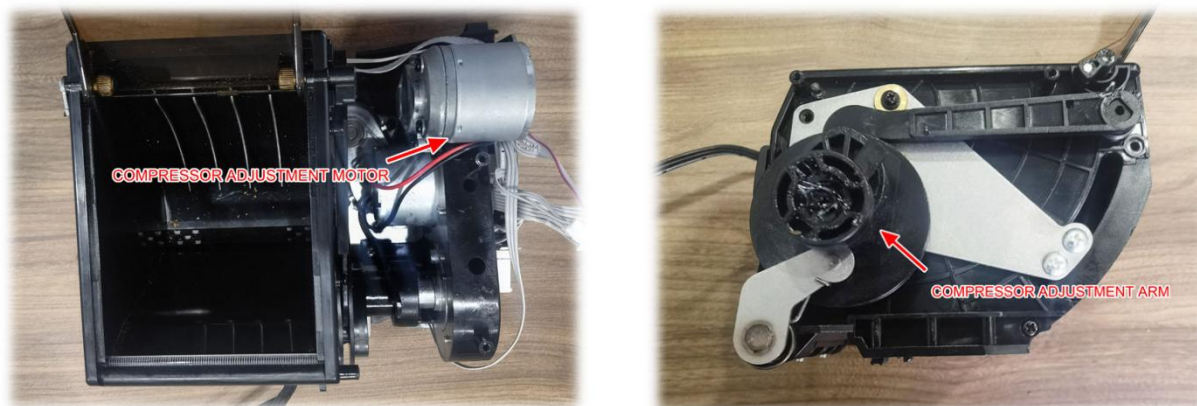


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12 35. The Hawkmatic HK-3 includes a packer module located at least partially
13 within the tobacco holding compartment, which includes packing motor, a packing
14 platform coupled to the packing motor by a movable packer arm, and at least one finger
15 slidably coupled with the packing platform to pack tobacco to a predetermined
16 compression.



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25 36. The Hawkmatic HK-3 includes a dispensing spoon to dispense packed
26 tobacco from the tobacco holding compartment via the nozzle.

1 37. The Hawkmatic HK-3 includes a tobacco compression adjustment module
2 having a compressor adjustment motor and a compressor adjustment arm that contacts the
3 packing platform.



12 38. The Hawkmatic HK-3 includes a control system, comprising: a user
13 interface to receive input from a user; and an electrical control module comprising non-
14 transitory computer readable memory and at least one processor that is operably coupled
15 with the user interface and the packing motor. This control system is shown below:



24 39. When connected to a power supply and upon receiving an input from the
25 user, the electrical control module of the Hawkmatic HK-3 causes the packing motor to
26 actuate the packer arm and thereby pack the tobacco to a predetermined compression
27 using the at least one finger before dispensing it into a cigarette casing tube using the
28 dispensing spoon.

1 40. Upon receiving a compression adjustment user input, the electrical control
2 module of the Hawkmatic HK-3 causes the compressor adjustment motor to actuate the
3 compressor adjustment arm and thereby change the compression of the tobacco being
4 packed.

5 41. The Hawkmatic HK-3 thus practices every limitation of at least Claim of the
6 '965 Patent.

7 42. Moreover, Defendants have infringed the '965 Patent with full knowledge
8 that their making, using, selling, offering for sale, and import of the Hawkmatic HK-3
9 constitutes infringement of the '965 Patent. In particular, prior to filing this complaint for
10 patent infringement, Plaintiffs contacted Defendants in writing to (1) identify for
11 Defendants both the '152 Patent (which was then pending) and the issued '965 Patent,
12 and (2) notify Defendants of Plaintiffs' infringement concerns regarding the '152 and
13 '965 Patents.

14 43. But despite having full knowledge of the '965 Patent and their infringement
15 thereof, Defendants have – on information and belief – continued to manufacture, use,
16 sell, offer for sale, and import the Hawkmatic HK-3 cigarette device. Indeed,
17 Defendants' Hawkmatic HK-3 cigarette device appears to be a direct copy of Plaintiffs'
18 patented Powermatic cigarette device. Defendants' infringement thus has been willful,
19 subjecting it to treble damages in accordance with 35 U.S.C. § 284.

20 **PRAYER FOR RELIEF**

21 WHEREFORE, Plaintiff prays for judgment as follows:

22 a. Declaring that Defendants have infringed the '152 and '965 Patents and that
23 such infringement was willful.

24 b. Awarding damages arising out of Defendants' infringement of the '152 and
25 '965 Patents to Plaintiffs, together with prejudgment and post-judgment interest, in an
26 amount according to proof.

27 c. As a consequence of Defendants' willful infringement, trebling the
28 foregoing damages award in accordance with 35 U.S.C. § 284.

1 d. Awarding attorneys' fees to Plaintiffs' pursuant to 35 U.S.C. § 285 or as
2 otherwise permitting by law.

3 e. Awarding such other costs and further relief as the Court may deem just and
4 proper.

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6 Dated: October 14, 2022

ONE LLP

7
8 By: /s/ Nathaniel L. Dilger

Nathaniel L. Dilger

Peter R. Afrasiabi

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10 *Attorneys for Plaintiffs,*

11 Fan Bao and Zico USA, Inc.
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DEMAND FOR JURY TRIAL

Plaintiffs hereby demand trial by jury of all issues so triable under the law.

Dated: October 14, 2022

ONE LLP

By: /s/ Nathaniel L. Dilger

Nathaniel L. Dilger

Peter R. Afrasiabi

Attorneys for Plaintiffs,
Fan Bao and Zico USA, Inc.