

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK**

QUEST USA CORP.)	
(a New York corporation),)	
)	Case No. 1:23-cv-02267
Plaintiff,)	
v.)	
)	
FLYGRIP INC.)	
(a Texas corporation) and)	
MICHAEL KARMAZ)	Jury Trial Demanded
(a New York resident),)	
)	
)	
Defendants.)	
)	
)	

**COMPLAINT FOR DECLARATORY JUDGMENT OF
NON-INFRINGEMENT OF U.S. PATENT NO. 10,800,024**

Plaintiff Quest USA Corp. (“Quest USA”) hereby brings this action under the Declaratory Judgment Act against Defendants Flygrip Inc. (“Flygrip”) and Michael Karmatz (“Karmatz”) (collectively “Defendants”) and alleges as follows:

NATURE OF THE ACTION

1. This is an action under the Declaratory Judgment Act for a declaration that Quest USA Corp. and its SPINPOP and 4TERRA products do not infringe U.S. Patent No. 10,800,024 (the “’024 Patent”), attached as Exhibit A.

THE PARTIES

2. Quest USA is a corporation organized under the laws of the State of New York and has a principal place of business at 495 Flatbush Avenue, Brooklyn, New York 11225.

3. On information and belief, Flygrip is a corporation organized under the laws of the State of Texas and has a principal place of business at 7 Pineridge St., Melville, New York 11747.

4. Flygrip is the record owner of the '024 Patent.

5. On information and belief, Karmatz is a resident of the State of New York and resides at 7 Pineridge St., Melville, New York 11747.

6. On information and belief, Karmatz is the sole director of Flygrip and controls Flygrip.

JURISDICTION AND VENUE

7. Quest re-alleges, and incorporates in full herein, each preceding paragraph.

8. This is an action for a declaration under the Declaratory Judgment Act, 28 U.S.C. §§ 2201–2202, that neither Quest nor its products infringe any claim of the '024 Patent under the patent laws of the United States, 35 U.S.C. §§ 1 *et seq.*

9. This Court has subject-matter jurisdiction over the claims alleged in this action 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. *See* 28 U.S.C. §§ 1331, 1338(a), 2201, and 2202.

10. This Court has personal jurisdiction over Defendants because, on information and belief, Defendants purposely avail themselves of the privilege of doing business in the State of New York, derive substantial revenue from goods and services provided to individuals in the State of New York, and/or reside in the State of New York.

11. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b) and (c) because on information and belief, Defendant Flygrip has a regular and established place of business in this district and Defendant Karmatz is a resident of this district.

BACKGROUND FACTS

12. Quest re-alleges and incorporates by reference all of the allegations set forth in the preceding paragraphs.

13. Quest USA is in the business of marketing and selling collapsible and expandable devices designed to be mounted on mobile phones or similar products. Among the products marketed and sold by Quest USA in the U.S. is the SPINPOP product and the 4TERRA product. It sells these products through its website and through retailers, including Five Below, Inc. and Walmart Inc.

14. On October 18, 2021, Flygrip filed a complaint in the Western District of Texas, Waco Division alleging that Five Below, Inc. infringed the '024 Patent. The case is captioned *Flygrip, Inc. v. Five Below, Inc.*, Civil Action No. 6:21-cv-1080-ADA (the “Five Below litigation”). Before filing the Five Below litigation, Flygrip knew that Quest USA was Five Below, Inc.’s vendor for the Quest USA product it accused of infringement, but it chose not to join Quest USA as a party to the Five Below litigation.

15. Flygrip alleges in the complaint that Flygrip is controlled by Michael Karmatz, inventor of the '024 Patent.

16. In its complaint in the Five Below litigation, Flygrip also alleges that “[e]xamples of products accused of infringement (the “Exemplary Products”) below include . . . The Quest USA Corp. line of SpinPop products.” Five Below litigation, ECF No. 1 ¶ 14. The complaint

also attaches a chart “comparing the asserted claims of the ’024 Patent” to Quest USA’s SPINPOP product. *Id.* ¶ 22.

17. “The Quest USA Corp. line of SpinPop products” in the Five Below litigation refers to Quest USA’s SPINPOP product only.

18. On January 23, 2023, Flygrip filed a contested motion seeking an order finding that Quest USA’s 4TERRA product is an accused product in the Five Below litigation. Five Below, Inc. disputes that Flygrip took the action necessary to bring the 4TERRA product into the litigation. The court in the Five Below litigation has not yet ruled on this motion.

19. On October 18, 2021, Flygrip also sued Walmart Inc. for patent infringement in the Western District of Texas, Waco Division (the “Walmart litigation”). The case is captioned *Flygrip, Inc. v. Walmart Inc.*, Civil Action No. 6:21-cv-1082-ADA. Before filing the Walmart litigation, Flygrip knew that Quest USA was Walmart Inc.’s vendor for the Quest USA product it accused of infringement, but it chose not to join Quest USA as a party to the Walmart litigation.

20. Flygrip alleges in the complaint that Flygrip is controlled by Michael Karmatz, inventor of the ’024 Patent.

21. In its complaint in the Walmart litigation, Flygrip alleges that “[e]xamples of products accused of infringement (the “Exemplary Products”) below include . . . The Quest USA Corp. line of SpinPop products.” Walmart litigation, ECF No. 1 ¶ 14. The complaint also attaches a chart “comparing the asserted claims of the ’024 Patent” to Quest USA’s SPINPOP product. *Id.* ¶ 25.

22. “The Quest USA Corp. line of SpinPop products” in the Walmart litigation refers to Quest USA’s SPINPOP product only.

23. On January 23, 2023, Flygrip filed a contested motion seeking an order finding that Quest USA's 4TERRA product is an accused product in the Walmart litigation. Walmart Inc. disputes that Flygrip took the action necessary to bring the 4TERRA product into the litigation. The court in the Walmart litigation has not yet ruled on this motion.

24. Quest's 4TERRA product is not an accused product before the Court in either the Five Below litigation or the Walmart litigation.

25. An actual controversy exists between Quest USA and Defendants, under 28 U.S.C. § 2201 relating to the alleged infringement of the '024 Patent.

COUNT I – NON-INFRINGEMENT OF THE '024 PATENT

26. Quest USA re-alleges and incorporates by reference the allegations set forth in the preceding paragraphs.

27. Defendants have alleged and continue to allege that Quest USA's SPINPOP and 4TERRA products infringe the '024 Patent.

28. Quest USA and its SPINPOP and 4TERRA products do not directly or indirectly infringe any claim of the '024 Patent.

29. Quest USA and its SPINPOP and 4TERRA products do not infringe any claim of the '024 Patent literally or under the doctrine of equivalents.

30. For example, the SPINPOP and 4TERRA products do not include "a single piece conical telescoping flexible tubular structure, consisting essentially of a plurality of graduated sections, more flexible between the sections, that flex and/or fold over and into one-another" as recited in claim 2 of the '024 Patent.

31. As a result of the acts described in the forgoing paragraphs, there exists an actual and justiciable controversy of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

32. Quest USA seeks a judicial determination and declaration of the respective rights and duties of the parties based on Defendants' contentions as set forth in the paragraphs above. Such a determination and declaration is necessary and appropriate at this time so that the parties may ascertain their respective rights and duties regarding the noninfringement of the claims of the '024 Patent.

PRAYER FOR RELIEF

WHEREFORE, Quest USA Corp. prays that the Court enter judgment against Defendants as follows:

- a. A declaration that Quest USA Corp. has not infringed, induced infringement of, or contributorily infringed, and does not infringe, induce infringement of, and/or contributorily infringe, any valid or enforceable claim of U.S. Patent No. 10,800,024;
- b. A declaration that the SPINPOP product does not infringe any claim of U.S. Patent No. 10,800,024;
- c. A declaration that the 4TERRA product does not infringe any claim of U.S. Patent No. 10,800,024;
- d. A declaration that this case is "exceptional" within the meaning of 35 U.S.C. § 285;
- e. An award to Quest USA Corp. of their costs, attorney fees, and expenses pursuant to 35 U.S.C. § 285; and
- f. That Quest USA Corp. be awarded such other and further relief as this Court deems proper and just.

DEMAND FOR JURY TRIAL

Quest USA Corp. demands a trial by jury of all issues properly triable to a jury in this case.

Date: March 23, 2023

Respectfully submitted,

/s/ A. Hyun Rich

Mrs. A. Hyun Rich
Squire Patton Boggs (US) LLP
1211 Avenue of the Americas, 26th Floor
New York, New York 10036
Telephone: (212) 872-9800
Facsimile: (212) 872-9815
ally.rich@squirepb.com

Steven M. Auvil (*pro hac vice* forthcoming)
Squire Patton Boggs (US) LLP
1000 Key Tower
127 Public Square
Cleveland, Ohio 44114
Telephone: (216) 479-8500
Facsimile: (216) 479-8780
steven.auvil@squirepb.com

Attorneys for Plaintiff
Quest USA Corp.