

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

WEBER KNAPP COMPANY

Plaintiff,

v.

Civil No. 23-801

PHASE 2 LLC d/b/a VISION GRILLWORKS

Defendant.

COMPLAINT

Plaintiff, WEBER KNAPP COMPANY (hereinafter “Weber Knapp”) by and through its undersigned attorneys for its Complaint against Defendant PHASE 2 LLC d/b/a VISION GRILLWORKS (hereinafter “Phase 2”) herein alleges the following:

THE PARTIES

1. Plaintiff Weber Knapp is a corporation organized and existing under the laws of the State of New York, with a principal place of business at 441 Chandler Street, Jamestown, New York 14702, which is in this judicial district. Weber Knapp manufactures and sells hardware, including certain hinges and counterbalances, for distribution throughout the United States, including New York.

2. Upon information and belief, Defendant Phase 2 is a limited liability company organized and existing under the laws of the State of Missouri, with its principal place of business located at 120 S. Central Ave., Ste. 1800, St. Louis, Missouri 63105-1726. Phase 2 manufactures and sells grills, smokers, and accessories for grills and smokers throughout the United States, including New York.

JURISDICTION AND VENUE

3. This claim arises under the patent laws of the United States, 35 U.S.C. § 101, *et seq.*, including 35 U.S.C. § 271.

4. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1338(a), and 1367.

5. This Court has personal jurisdiction over the Defendant pursuant to N.Y. C.P.L.R. § 302(a) because, among other things, Defendant transacts business in New York and in this judicial district. Defendant has sold and/or offered to sell products that infringe the asserted patent, as alleged below, in New York and in this judicial district. Defendant also manages and controls a website that markets the infringing products for sale to customers, including those residing in New York and in this judicial district.

6. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391 and 1400(a), as well as N.Y. C.P.L.R. § 302(a).

FACTUAL BACKGROUND

7. Weber Knapp manufactures and sells, *inter alia*, hinges and counterbalance assemblies, referred to herein as the counterbalances.

8. Weber Knapp owns United States Patent No. 11,142,934, issued October 12, 2021, for an invention entitled, “Counterbalance and Method of Making the Same”, (hereinafter referred to as the “Patent”) which Patent is valid and in force.

9. Weber Knapp is and has at all times been the owner of all right, title, and interest in the Patent.

10. Phase 2 manufactures and sells grills, smokers, and accessories for grills and smokers.

11. Upon information and belief, Phase 2 has at least two official retailers within the State of New York: including Marty’s True Value in Schenectady, New York; and, Parry’s in Hamilton, New York.

12. Phase 2 sells grills, smokers, and accessories for grills and smokers through National Authorized Vision Grill Retailers, including: The Home Depot; Lowe’s; Sam’s Club; Wayfair; Williams Sonoma; and, Academy Sports Outdoors.

13. Phase 2 sells grills and smokers via its website: <https://visiongrills.com/>, including the Elite Series Model XR402 Deluxe and the Elite Series Model XD702 Maxis.

14. On or about November 28, 2022, Weber Knapp discovered the Elite Series Model XR402 Deluxe and the Elite Series Model XD702 Maxis having a counterbalance assembly.

15. On or about December 14, 2022, Weber Knapp purchased one of the Elite Series Model XR402 Deluxe (hereinafter “Model”) from a Home Depot located in New York State.

16. A front view of a counterbalance assembly from the Model purchased on December 14, 2022, is shown below:



17. “Phase 2” is shown on a product identification tag in a rear view of the counterbalance assembly from the Model purchased on December 14, 2022:



18. On or about February 9, 2023, Weber Knapp sent a letter to Phase 2 informing them of the Patent and inquired as to whether Phase 2 would have an interest in taking a license under the Patent.

19. On or about March 14, 2023, Weber Knapp sent a second letter to Phase 2 informing them of the Patent, which letter repeated the inquiry regarding a possible license.

20. On or about April 18, 2023, Simpson & Simpson, PLLC, on behalf of Weber Knapp sent a letter informing Phase 2 of the Patent, which letter repeated Weber Knapp’s inquiry regarding a possible license.

21. Phase 2 has not replied to the letters of February 9, 2023, March 14, 2023, and April 18, 2023.

22. As of July 17, 2023, Phase 2 advertises its Elite Series Model XR402 Deluxe and the Elite Series Model XD702 Maxis products using the language, “Easy-Lift KamadoMatic™ Hinge: Includes a locking latch and New Hi Temp gasket for a tighter seal.”

23. As of July 17, 2023, Phase 2 offers the Elite Series Model XR402 Deluxe and the Elite Series Model XD702 Maxis products for sale on their website.

COUNT ONE - INFRINGEMENT OF THE '934 PATENT

24. Weber Knapp repeats and realleges the allegations set forth in paragraphs 1-23 with the same force and effect as is more fully set forth herein.

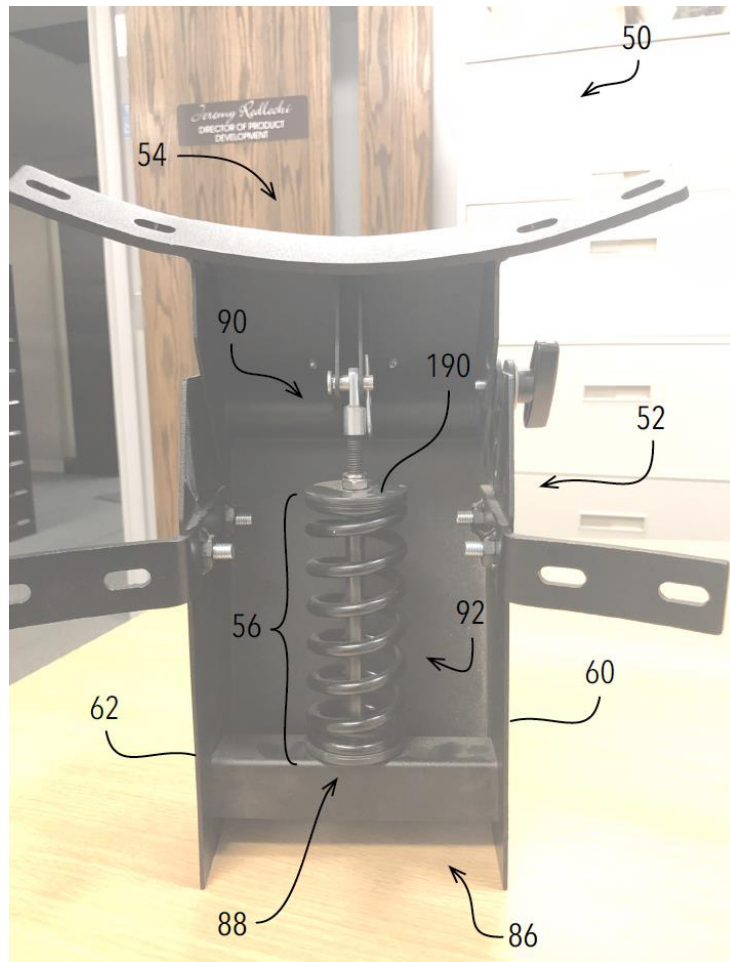
25. This cause of action arises under 35 U.S.C. §§101 *et seq.*

26. A copy of the Patent is attached as **Exhibit A**.

27. Weber Knapp is the owner by assignment of all right, title, and interest in the Patent.

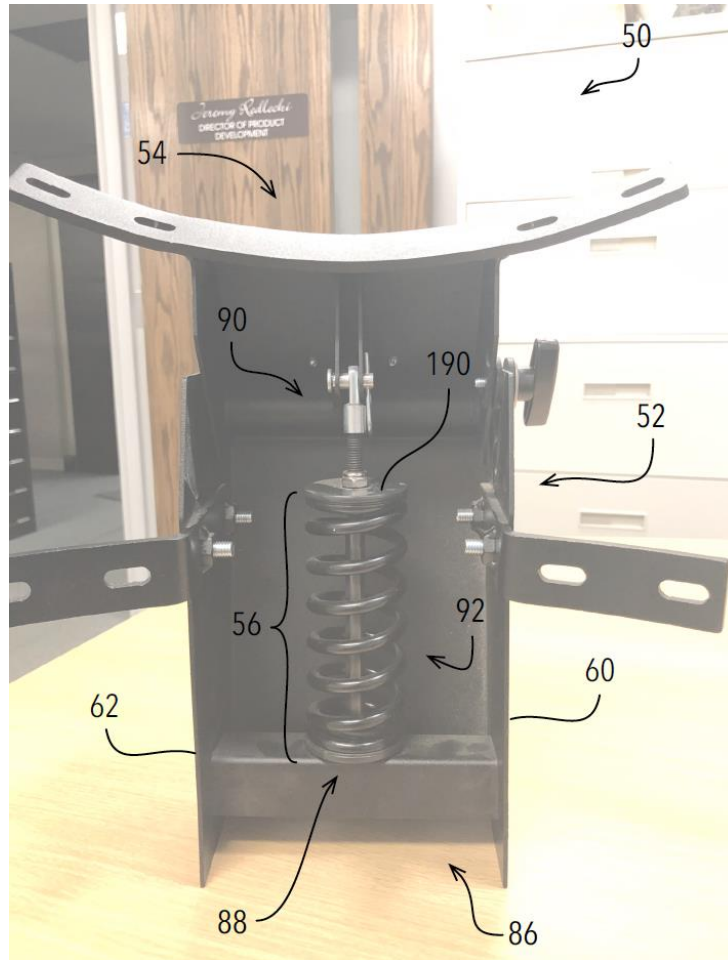
28. A claim chart comparing the Model of the counterbalance assembly purchased on December 14, 2022, and Claim 1 of the patent and an annotated picture of the counterbalance assembly, including the reference numbers recited in the Patent, are provided below:

Claim 1, U.S. Patent No. 11,142,934	Counterbalance Assembly of the Models
A counterbalance assembly (50), comprising:	Each of the Models has a counterbalance assembly (hereinafter “CBA”)
a housing (52) including:	The CBA has a housing
a first housing side wall (60); and,	The housing includes a first side wall
a second housing side wall (62) oppositely disposed relative to the first housing side wall (60);	The housing includes a second side wall oppositely disposed relative to the first side wall
a pivot nose (54) pivotably connected to the housing (52); and,	The housing includes a pivot nose pivotably connected to the housing
a spring pack (56) disposed within a volume (86) formed by the housing, the spring pack including:	The CBA include a spring pack, where the spring pack is disposed within a volume of the housing
a first end (88) engaged with the housing (52);	The spring pack includes a first end engaged with the housing
a second end (90) engaged with the pivot nose (54);	The spring pack includes a second end engaged with the pivot nose
an energy storage device (92) arranged between the first end (88) and the second end (90); and,	The spring pack includes an energy storage device arranged between the first end and the second end
a spring retainer (190) operatively arranged between the second end (90) and the energy storage device (92) to adjust a force of the energy storage device (92) on the pivot nose (54).	The CBA includes a spring retainer between the second end and the energy storage device and the energy storage device is arranged to adjust a force of the energy storage device on the pivot nose.



29. A claim chart comparing the Model of the counterbalance assembly purchased on December 14, 2022, and Claim 20 of the patent and an annotated picture of the counterbalance assembly, including the reference numbers recited in the Patent, are provided below:

Claim 20, U.S. Patent No. 11,142,934	Counterbalance Assembly of the Models
A counterbalance assembly (50), comprising:	Each of the Models has a counterbalance assembly (hereinafter "CBA")
a housing (52):	The CBA has a housing
a pivot nose (54) pivotably connected to the housing (52); and,	The housing includes a pivot nose pivotably connected to the housing
a spring pack (56) disposed within a volume (86) formed by the housing (52), the spring pack including:	The CBA has a spring pack disposed within a volume formed by the housing
a first end (88) engaged with the housing (52);	The spring pack includes a first end engaged with the housing
a second end (90) engaged with the pivot nose (54);	The spring pack includes a second end engaged with the pivot nose
an energy storage device (92) arranged between the first end (88) and the second end (90); and,	The spring pack includes an energy storage device between the first and second ends of the spring pack
a spring retainer (190) operatively arranged between the second end (90) and the energy storage device (92) to adjust a force of the energy storage device on the pivot nose (54).	The CBA includes a spring retainer between the second end and the energy storage device and the energy storage device is arranged to adjust a force of the energy storage device on the pivot nose.



30. Defendant has infringed and continues to infringe one or more claims of the Patent in violation of 35 U.S.C. § 271 by making, using, selling, and/or offering for sale, in this district and elsewhere, the counterbalances recited in one or more claims of the Patent, including but not limited to, the ELITE SERIES MODEL XR402 DELUXE CERAMIC KAMADO GRILL AND THE ELITE SERIES MODEL XD702 MAXIS CERAMIC KAMADO GRILL products.

31. Defendant's actions in infringing the Patent have been, and continue to be, willful, deliberate, and/or in conscious disregard of the rights of Weber Knapp and as such, merit an award of treble damages pursuant to 35 U.S.C. §284, also making this an exceptional case within the meaning of 35 U.S.C. § 285.

32. As a result of Defendant's infringing activities, Weber Knapp has sustained damages in an amount to be proven at trial, but in no event less than a reasonable royalty.

33. Defendant will continue their infringing activities unless and until they are restrained and enjoined by this Court.

34. Defendant's infringing activities have caused, and will continue to cause, Weber Knapp irreparable harm for which there is no adequate remedy at law.

DEMAND FOR JURY TRIAL

35. Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiff demands trial by jury in this action of all issues so triable.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for relief and demands judgment against the Defendant as follows:

1. Declaring that Defendant has infringed one or more claims of the '934 Patent;
2. For a preliminary and permanent injunction restraining Defendant, its officers, agents, servants, employees, attorneys, subsidiaries, affiliates and all other persons in active concert or participating with Defendant or with any of the foregoing from making, using, selling, and/or offering for sale any products and/or counterbalance assemblies that infringe one or more claims of the Patent, or otherwise directly or indirectly committing further acts of infringement of that Patent;
3. Adjudging that the Patent is valid and enforceable;

4. Ordering an accounting for damages arising from Defendant's acts of infringement including pre-judgment and post-judgment interest and costs;

5. Awarding damages, including treble damages, under 35 U.S.C. §§ 284 and 285, with interest;

6. Finding that Defendant's infringement is willful, that this is an exceptional case, and awarding reasonable attorneys' fees to Plaintiff under 35 U.S.C. § 285; and,

7. Awarding such further relief as this Court deems proper.

Dated: August 8, 2023
Buffalo, New York

RUPP PFALZGRAF LLC
Attorneys for Weber Knapp Company

By: s/James Graber/
James Graber
graber@rupppfalzgraf.com
1600 Liberty Building
424 Main Street
Buffalo, NY 14202
Telephone No. (716) 854-3400