

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS**

<b>PLEMINNYK TRADING LLC</b>	)	
	)	
<b>Plaintiff,</b>	)	<b>Civil Case No.</b>
	)	
<b>v.</b>	)	
	)	<b>JURY TRIAL DEMANDED</b>
<b>SHENZHEN ORANGE ANT TECHNOLOGY CO.</b>	)	
	)	
<b>Defendant.</b>	)	
_____	)	

**COMPLAINT FOR DECLARATORY JUDGMENT**

Plaintiff Pleminky Trading LLC (“Plaintiff”) files this Complaint for Declaratory Judgment against Defendant Shenzhen Orange Ant Technology Co. (“Defendant”).

**NATURE OF ACTION**

1. This is an action for Declaratory Judgment of patent invalidity and non-infringement. Plaintiff seeks a declaration that U.S. Design Patent No. 902,631 (“the ‘631 Patent”) is invalid and is not liable for infringement by the manufacture, use, sale and offer for sale and importation of Plaintiff’s products.

**THE PARTIES**

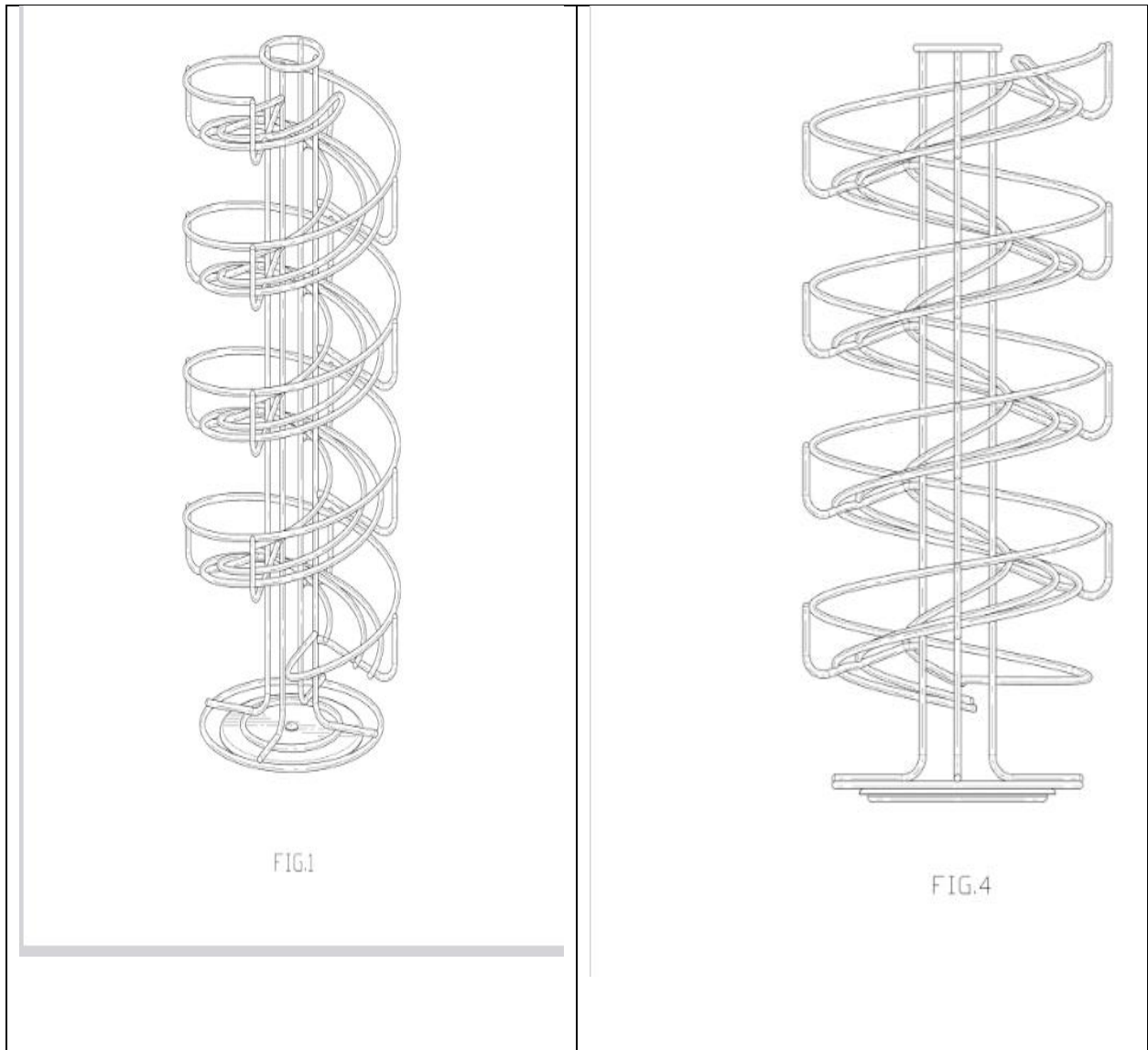
2. Plaintiff is a limited liability company incorporated in the State of Delaware.  
3. Upon information and belief, Defendant received all rights in the ‘631 Patent by an assignment from the inventor, Wenwen Yin. The Defendant and the inventor, on information and belief, are resident of China.

**JURISDICTION AND VENUE**

4. This is an action for Declaratory Judgment arising under the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, the Patent Laws of the U.S., Title 35 U.S.C. § 1 *et seq.* and Rule 57 of the Federal Rules of Civil Procedure.
5. This Court has subject matter jurisdiction over this matter pursuant to 28 U.S.C. §§ 1331, 1338(a), 1391(b)(3), 2201, 2202 and/or 1400(b).
6. An immediate, real, and justiciable controversy exists between Plaintiff and Defendant as to whether (a) the '631 Patent is valid; (b) whether Plaintiff is liable for making, importing, using, or selling products that infringe the invalid '631 Patent, and (c) whether this Court may grant the Declaratory Relief sought pursuant to 28 U.S.C. §§ 2201 and 2202.
7. Defendant is a Chinese entity with a principal office in China and is not subject to any one state's general jurisdiction.
8. Both Plaintiff and Defendant are engaged in selling products through Amazon.com throughout this country and particularly in major cities such as Houston, TX.
9. Defendant targeted Plaintiff's sales in Houston, TX by complaining to Amazon.com that Plaintiff was infringing the '631 Patent by the sale of certain accused products. Thereafter, Amazon.com stopped Plaintiff from selling the accused products on Amazon.com.
10. Due process is satisfied for this lawsuit as to Defendant because Defendant intentionally targeted and purposely availed itself to this forum by continuing to sell through Amazon.com into this forum while preventing Plaintiff from making any sales in Houston, TX, or anywhere else through Amazon.com.

**FACTUAL BACKGROUND**

11. On information and belief, Defendant owns the '631 Patent which is a design patent entitled, "Rack for Storage". See Ex. A. The patented Rack for Storage is in the form of a helix. The patented product sold by Defendant is for storing eggs with the idea being that when an egg is removed from the bottom, then a fresh egg will move down the helix to replace the eggs that have been removed. The Defendant's advertisement from Amazon.com is shown in Ex. B.



EGG SPIRAL RACK (FIG. 1 AND 4) FROM '631 PATENT

12. Defendant initially had the named inventor of the '631 Patent complain to Amazon.com that Plaintiff was infringing his patent. Amazon.com stopped Plaintiff from selling the accused products on Amazon.com.

13. Subsequently, Amazon.com was notified by Plaintiff that the inventor of the '631 Patent assigned all rights away as shown on the first page of the '631 Patent so he had no right to assert the '631 Patent.

14. In response to Plaintiff's notification, Amazon.com allowed the sale of the accused production Amazon.com.

15. Subsequently, Defendant complained to Amazon.com that the accused products was infringing its copyright, and Amazon.com threatened to stop the sale of accused products on Amazon.com.

16. In response, Plaintiff pointed out to Amazon.com that Plaintiff was not infringing any copyright owned by Defendant even though Defendant mistakenly thought it had a copyrighted protection covering the accused product.

17. Once again, Amazon.com resumed Plaintiff's rights to sell the accused products on Amazon.com.

18. Thereafter, Defendant again complained to Amazon.com that accused products infringed the '631 Patent and Amazon.com stopped Plaintiff's sales of the accused product.

19. Amazon.com has a process in which an impartial person can be appointed by Amazon.com to provide a non-binding opinion as to the sole issue of patent infringement, and if the impartial person decides that there is no patent infringement, then Amazon.com will allow the accused products to be sold on Amazon.com.

20. Plaintiff's defense to patent infringement is based on the '631 Patent being invalid for two separate reasons, and the impartial person available from Amazon.com is not authorized to consider such arguments from any accused infringer. Hence, that simple path to resolve the conflict is unavailable to Plaintiff.

### **CLAIMS FOR RELIEF**

#### **First Claim for Relief**

##### **(Declaratory Judgment of '631 Patent is invalid and Unenforceable)**

21. Plaintiff repeats and incorporates by reference the statements and allegations in paragraphs 1-20 of the Complaint as though fully set forth herein.

22. There exists an actual, substantial and immediate controversy between Plaintiff and Defendant concerning the validity of the '613 Patent, and Plaintiff's alleged infringement of the invalid '631 Patent.

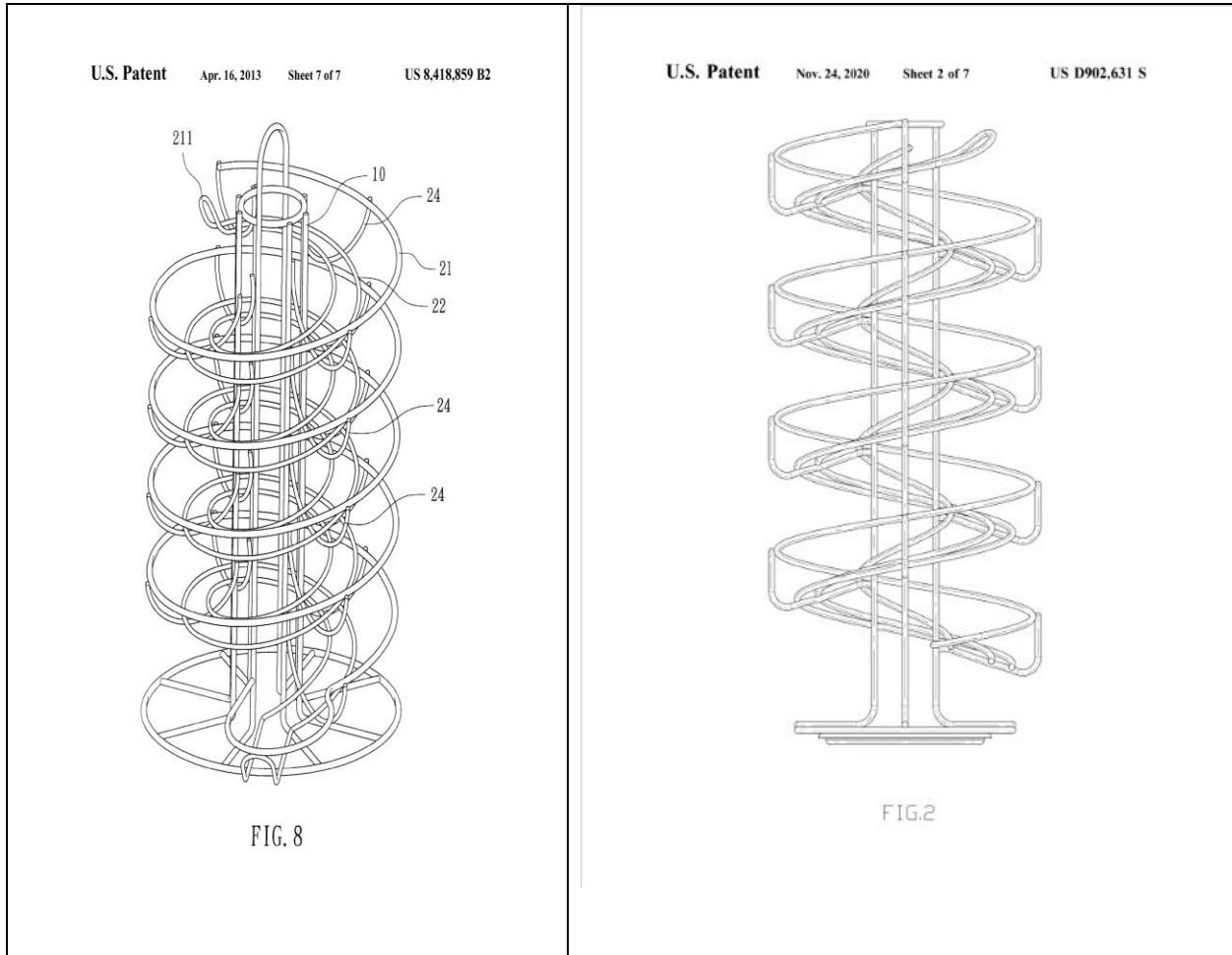
23. The controversy was created by Defendant complaining to Amazon.com that the accused product infringes the '631 Patent and intentionally preventing Plaintiff from selling on Amazon.com in Houston, TX and other areas on this country.

24. Plaintiff unequivocally asserts that the '631 Patent is invalid in view of U.S. Patent No. 8,418,859 ("the '859 Patent") (See Ex. C) for two independent reasons.

25. The '859 Patent issued April 16, 2013 with a filing date of October 6, 2010, well before the '631 Patent which issued on November 20, 2020 with a filing date of April 12, 2012.

26. The '859 Patent is entitled, "Spiral Type Cap-Shaped Object Rack"; however, even though the patent claims are directed to a "spiral type cup-shaped object rack", the specification at Col. 2, Lines 47-51 disclose and describe an embodiment for holding eggs as shown in Fig. 8 of the '859 Patent.

27. Viewing the design shown at Fig. 8 of the '859 Patent next to the design shown at Fig. 3 of the '631 Patent reveals that the ordinary designer would find the design in the '631 Patent obvious in view of Fig. 8 of the '859 Patent.



EGG RACK FROM '859 PATENT

EGG RACK FROM '631 PATENT

28. Thus, the '631 Patent is invalid and an invalid patent is unenforceable.

**CLAIMS FOR RELIEF**

**Second Claim for Relief**

**(Declaratory Judgment of '631 Patent is invalid and Unenforceable)**

29. Plaintiff repeats and incorporates by reference the statements and allegations in paragraphs 1-28 of the Complaint as though fully set forth herein.

30. The '859 Patent at Col 2, Lines 26-40 points out the advantages of the functional design of the inventions disclosed in the '859 Patent which is directed to the spiral type cup-shaped object rack shown in Figs. 1-7, but also the spiral egg rack shown in Fig. 8:

Thus, the spiral type cup-shaped object rack has the advantages: (1) as shown in FIG. 5, cup-shaped objects 5 can be carried on the inner wire rods 22 and held in the spiral carrier frame unit 20 by the outer wire rod 21; (2) as shown in FIG. 4, the spiral design of the spiral carrier frame unit can carry a big amount of cup-shaped objects 5; (3) as shown in FIG. 4 the spiral storage space defined by the outer wire rod 21 and the inner wire rod 22 around the upper stand 10 is a top open storage place and the user access to the spiral storage space from the top side at any selected location for storing or taking a cup-shaped object 5; (4) when the user takes any storage cup-shaped object 5 from the spiral storage space, the other upper storage cup-shaped objects 5 will slide downwards along the spiral storage space and will be automatically kept in good order. (Note that the numbering of Figs. 4, 5 and 8 are identical so the foregoing applies to the spiral rack for eggs.)

31. Thus, the spiral rack disclosed and claimed in the '859 Patent and its imitators as shown in the '631 Patent are functional created to have a utilitarian function, not for aesthetics.

Thus, the '631 Patent is invalid and an invalid patent is unenforceable.

### **JURY DEMAND**

32. Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiff demands a trial by jury of all issues so triable.

### **PRAYER FOR RELIEF**

WHEREOF, Plaintiff seeks a judgment by entered on Plaintiff's favor and against the Defendant:

- (a) Declaring the '631 Patent invalid;
- (b) Declaring that the '631 Patent cannot be liable for infringing an invalid '631 Patent;
- (c) Enjoining Defendant from enforcing the '631 Patent;

- (d) A finding that this case is exceptional under 35 U.S.C. § 285;
- (e) An order awarding attorney's fees and costs, and other expenses incurred in connection with this action to Plaintiff, and
- (f) An order awarding such other relief the Court deems just and proper.

Date: February 1, 2024

*/s/ David Fink*  
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