

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

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NAZANO-US, NewStart-US and Sunpor-US	:	
	:	
Plaintiffs,	:	Case No. 24-cv-03355
	:	
-against-	:	
	:	
Shenzhen Aixiangpai E-Business Co., Ltd.	:	
a/k/a Aixiangpai, Xiaodong Wang and Zhiyuan	:	
Han	:	
	:	
Defendants.	:	
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COMPLAINT

Plaintiffs NAZANO-US, NewStart-US and Sunpor-US (“Plaintiffs”) file this Declaratory Judgment action against Defendants Shenzhen Aixiangpai E-Business Co., Ltd. a/k/a Aixiangpai, Xiaodong Wang and Zhiyuan Han (“Aixiangpai”, “Wang” and “Han” respectively and “Defendants” collectively) and allege as follows:

NATURE OF THE ACTION

1. This is an action for declaratory judgment of design patent invalidity and non-infringement arising 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. Plaintiff is seeking a declaratory judgment of invalidity and non-infringement of U.S. Design Patent No. US D981466 S (“the ‘466 Patent”) entitled “MAGNIFIER”, which was issued on March 21, 2023 from U.S. Patent Application No. 29/799.476, filed on July 14, 2021. The ‘466 Patent is invalid as being

anticipated by prior art references listed herein and is unenforceable for failure to disclose material information known to Defendants during the pendency of the '466 Patent.

2. Plaintiffs also allege that Defendants have violated the common law of the State of Illinois by committing tortious interference with a contractual relationship and tortious interference with a prospective business expectancy.

THE PARTIES

3. Plaintiffs NAZANO-US, NewStart-US and Sunpor-US are online businesses operating on the Amazon platform, with Amazon Seller IDs: A2VNN4CDVZ7G0, A32OS38J3C41HG and A2QC3VP9Z009QY, respectively.

4. Upon information and belief, Aixiangpai is the Applicant of the '466 Patent and is a company organized and existing under the laws of the People's Republic of China located at Shenzhen, P.R. China. Aixiangpai operates an Amazon online store under the store name Aixiangpai and ASIN No. B07G55FSPX, which competes directly with Plaintiffs. Aixiangpai has a place of business at Room 501, Building A13, Matian Street, Guangming New District, Shiwei New Village, Shiwei District, Shenzhen, Guangdong Province 518107, P.R. China. Both inventors of the '466 Patent, Wang and Han, reside at Block a, Huayang Tongda, 86 Gongye West Road, Longhua Street, Longhua District, Shenzhen 518000, P.R. China. Aixiangpai, Wang and Han may be served with process or notice of these proceedings by service upon their designated registered agent with the United States Patent and Trademark Office: Mr. Jack Spigel, 14408 Pebble Run Path Manor, TX 78653, pursuant to 35 U.S.C. § 293.

JURISDICTION AND VENUE

5. This Court has subject matter jurisdiction over this matter pursuant to 28 U.S.C. § 1331, 1338(a), 1367, and 2201(a).

6. On information and belief, this Court has personal jurisdiction over Defendants as Defendants has constitutionally sufficient contacts with this District so as to make personal jurisdiction over Defendants proper as Defendants have committed the acts complained of herein within this Judicial District. Furthermore, upon information and belief, Aixiangpai owns and/or operates the Amazon storefront Aixiangpai which sell magnifier products that embody the ‘466 Patent within the forum state and within this judicial District.

7. Venue is proper in this District pursuant to 28 U.S.C. § 1391(c) as Defendants are foreign company and individuals which reside in the People’s Republic of China and which have no established place of business within the United States.

THE ‘466 PATENT

8. The ‘466 Patent discloses an ornamental design for a magnifier. See the ‘466 Patent, attached hereto as Exhibit A.

9. The ‘466 Patent was filed on July 14, 2021 and issued on March 21, 2023.

10. Wang and Han the owners with all rights and title, of the ‘466 Patent. Aixiangpai is listed as Applicant, with no assignment of patent rights from Wang and/or Han.

11. Mr. Jack Spigel of 14408 Pebble Run Path Manor, TX 78653 is the listed attorney and/or agent of record with the USPTO for the ‘466 Patent.

FACTUAL BACKGROUND

12. Plaintiffs are sellers of, among other things, magnifiers via their Amazon storefronts, NAZANO-US, NewStart-US and Sunpor-US, respectively. Each of the Plaintiffs has enjoyed considerable commercial success over time.

13. Prior to the July 14, 2021 filing date of the ‘466 Patent, identical magnifier was disclosed in a Chinese Design Patent, CN304505382S (“the ‘CN382 Patent” Exhibit B) on

September 25, 2017. On December 8, 2018, identical/near identical magnifier was also disclosed in another Chinese Patent, CN305317529S (“the ‘CN 529 Patent” Exhibit C).

14. Aixiangpai further disclosed identical magnifier on Amazon marketplace on August 3, 2018 (Exhibit D). Alibaba also had sale record of identical magnifiers on July 16, 2019 (Exhibit E). The magnifiers from the four prior art references are directly compared with that claimed in the ‘466 Patent in the table below:

Claim of the ‘466 Patent	The ‘CN382 Patent	The ‘CN529 Patent	Aixiangpai’s Prior Sale on Amazon	Prior Sale on Alibaba
From Exhibit A	From Exhibit B	From Exhibit C	From Exhibit D	From Exhibit E
July 14, 2021	Sept. 25, 2017	Dec. 7, 2018	August 3, 2018	July 16, 2019
				

15. As is plainly evident from even a cursory glance of the figures in the above table, each of the four prior art references disclosed identical/near identical magnifiers as that claimed in the ‘466 Patent and such prior art disclosures anticipate/render obvious the claim of the ‘466 Patent under 35 U.S.C. §102/§103. Aixiangpai is assumed to know its own Amazon listing of the magnifier on August 3, 2018 and did not disclose its own Amazon listing to the USPTO during the pendency of the ‘466 Patent.

16. Plaintiffs’ Amazon sales are conducted under the Amazon Services Solutions Agreements.

17. On or around April 1, 2024, Defendants, under the alias of Amyy123 and from email address systemt18803@126.com, filed two Amazon Infringement Complaints (Complaint IDs: 15025583291, and 15025583181) against NAZANO-US's magnifier product listings. Defendants then changed to a different alias, Amy12345 to file two additional Amazon Infringement Complaints from the email address of systemt18803@126.com under the same ID Number (Complaint ID: 15053746331) against NAZANO-US's magnifier product listings on April 7, 2024.

18. On or around April 10, 2024, Defendants, under the alias of Amy12345 and from email address systemt18803@126.com, filed an Amazon Infringement Complaints (Complaint ID: 15053746331) against NewStart-US's magnifier product listings.

19. On or around April 11, 2024, Defendants, under the alias of system and from email address systemt18803@126.com, filed an Amazon Infringement Complaints (Complaint ID: 15065966831) against Sunpor-US's magnifier product listings.

20. Defendants alleged that Plaintiffs' magnifiers (ASINs: B09YHDSGPM, B0CGTQ7LRQ, B08PP4RJ5J, B08PP4RJ5J and B09LVB92V2) infringe the '466 Patent.

21. Further, Defendants knew or should have known that the 'CN529 Patent and/or the 'CN382 Patent are invalidating prior art to the '466 Patent. The identical nature of the designs points to Defendants' copying the 'CN529 Patent and/or the 'CN382 Patent in an attempt to gain design patent protection illegally in the United States.

22. By filing Amazon Infringement Complaints against Plaintiffs for alleged infringement of the '466 Patent, Defendants have made bad faith allegations that are knowingly and objectively false.

23. As a direct result of the bad faith and false Amazon Infringement Complaints, Plaintiffs' product listings have been removed, prohibiting Plaintiffs from selling on Amazon, thereby directly causing harm to Plaintiffs' current and future business operations.

24. An actual and justiciable controversy exists between the Parties concerning the validity of the '466 Patent and whether Plaintiffs' products infringe any valid claim of the '466 Patent.

25. Moreover, an actual and justiciable controversy exists between the Parties as to whether Defendants tortiously interfered with Plaintiffs' contractual relationship with Amazon and whether Defendants tortiously interfered with Plaintiffs' prospective business expectancy.

26. Plaintiffs now seek a declaratory judgment of invalidity and non-infringement of the '466 Patent, as well as a judgment that Defendants have tortiously interfered with Plaintiffs' contractual relationship with Amazon and tortiously interfered with Plaintiffs' prospective business expectancy.

COUNT I: DECLARATORY JUDGMENT OF PATENT INVALIDITY

27. Plaintiffs incorporate by reference the preceding paragraphs as if fully set forth herein.

28. The '466 Patent is invalid for failing to comply with at least the condition of patentability set forth in 35 U.S.C §102/§103. Specifically, the '466 Patent is anticipated by the cited prior art/being obvious over the prior art references herein, including the 'CN382 Patent, the 'CN529 Patent, Aixiangpai's Prior Sale on Amazon and Prior Sale on Alibaba.

29. Each of the four prior art references, made available to the public on September 25, 2017, December 7, 2018, August 3, 2018 and July 16, 2019, respectively, predate the July 14, 2021 filing date of the '466 Patent by more than one year.

30. As plainly shown in the table in Paragraph 14 in a side-by-side comparison of the prior art designs and that claimed in the '466 Patent, each of the four prior art references publicly disclosed the identical/near identical magnifier design more than one year before the filing date of the '466 Patent and thus invalidates the '466 Patent under 35 U.S.C. §102/§103.

31. Pursuant to the Federal Declaratory Judgment Act, Plaintiffs seek a judicial declaration of invalidity of the '466 Patent for failing to meet the condition of patentability set forth in 35 U.S.C. §102/§103, as the '466 Patent is anticipated by/being obvious over each of the four prior art references, and is, therefore, invalid.

COUNT II: DECLARATORY JUDGMENT OF PATENT UNENFORCEABILITY

32. Plaintiffs incorporate by reference the preceding paragraphs as if fully set forth herein.

33. Aixiangpai's prior sale of the magnifier products on Amazon on August 3, 2018 as shown in Exhibit D is material to the patentability of the '466 Patent because the magnifier sold is identical to that claimed in the '466 Patent.

34. Defendants are presumed to know their own magnifiers sold more than two years before the filing date of the '466 Patent on July 14, 2021.

35. Had Defendants disclosed the August 3, 2018 magnifier sale to the USPTO, the '466 Patent would not have been issued because the magnifier from the August 3, 2018 sale anticipate the claim of the '466 Patent and render the claim invalid under 35 U.S.C. §102.

36. Failure to disclose to the USPTO material information on prior sale of identical magnifier known to patentees constitute inequitable conduct which render the '466 Patent unenforceable.

37. Pursuant to the Federal Declaratory Judgment Act, Plaintiffs seek a judicial

declaration of unenforceability of the '466 Patent for engaging in inequitable conduct against the USPTO during the pendency of the '466 Patent.

COUNT III: DECLARATORY JUDGMENT OF NON-INFRINGEMENT

38. Plaintiffs incorporate by reference the preceding paragraphs as though fully set forth herein.

39. Since the '466 Patent is invalid for failing to comply with at least the condition of patentability set forth in 35 U.S.C §102/§103 and is also unenforceable for inequitable conduct, it is axiomatic that Plaintiffs' magnifiers do not infringe any valid claim of the '466 Patent. *Commil USA, LLC v. Cisco Sys., Inc.*, 575 U.S. 632 (2015) (stating that it is axiomatic that one cannot infringe an invalid patent because there is nothing to infringe upon).

40. Pursuant to the Federal Declaratory Judgment Act, Plaintiffs seek a judicial declaration that Plaintiffs' magnifier products do not infringe the '466 Patent because the '446 Patent is invalid and unenforceable.

COUNT IV: TORTIOUS INTERFERENE WITH CONTRACT

41. Plaintiffs incorporate by reference the preceding paragraphs as though fully set forth herein.

42. Plaintiffs and Amazon, Inc. have valid contractual relationships via the Amazon Services Business Solutions Agreements in which Plaintiffs were permitted to sell goods on the Amazon marketplace in exchange for certain fees.

43. Defendants were aware of Plaintiffs' contractual relationships with Amazon, Inc. as they knew Plaintiffs offered their products on their Amazon storefronts, NAZANO-US, NewStart-US and Sunpor-US, respectively.

44. Defendants intentionally and unjustifiably induced Amazon to breach its agreements with Plaintiffs by filing bad faith Amazon Infringement Complaints with knowledge that the '466 Patent is invalid and unenforceable.

45. Amazon did in fact breach its agreements with all three Plaintiffs as a result Defendants' bad faith complaints, removing Plaintiffs' magnifier products from the Amazon marketplace.

46. Defendants' actions have caused economic and financial harms to Plaintiffs.

COUNT V: TORTIOUS INTERFERENCE WITH PROSPECTIVE BUSINESS EXPECTANCY

47. Plaintiffs incorporate by reference the preceding paragraphs as though fully set forth herein.

48. Plaintiffs had a reasonable expectation of entering into a valid business relationship with Amazon and with the consumers via its online marketplace platform.

49. Defendants were fully aware of Plaintiffs' expectation as they knew Plaintiffs sold their products on the Amazon marketplace, as shown by their objectively false Amazon Infringement Complaints.

50. Defendant purposefully interfered with Plaintiff's prospective business relationships by filing bad faith Amazon Infringement Complaints with knowledge that the '466 Patent is invalid.

51. As a result of Defendants' false Amazon Infringement Complaints, Amazon removed Plaintiffs' products from the Amazon marketplace, thereby causing economic and financial harm to Plaintiffs.

DEMAND FOR JURY TRIAL

Plaintiffs, under Rule 38 of the Federal Rules of Civil Procedure, request a trial by jury of any issues so triable by right.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court enter judgment as follows:

- a. a declaration that the '466 Patent is invalid;
- b. a declaration that the '466 Patent is unenforceable;
- c. a declaration that Plaintiffs' magnifiers do not infringe the '436 Patent;
- d. a judgment that Defendants have tortiously interfered with Plaintiffs' contractual relationships;
- e. a judgment that Defendant has tortiously interfered with Plaintiffs' prospective business relationships;
- f. a declaration that this case is exceptional and an award to Plaintiffs of their costs, expenses, and reasonable attorneys' fees incurred in this action pursuant to 35 U.S.C §285; and
- g. Further relief as the Court may deem just and proper.

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