IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

ELECTRONIC SCRIPTING PRODUCTS, INC.,	Civil Action No.: 1:24-cv-00930
Plaintiff,	
v.	**TRIAL BY JURY DEMANDED**
BENDON, INC.,	
Defendant.	

COMPLAINT FOR PATENT INFRINGEMENT

COMES NOW Plaintiff ELECTRONIC SCRIPTING PRODUCTS, INC. ("ESPi"), for its Complaint against Defendant BENDON, INC. ("Bendon"), alleges as follows:

THE PARTIES

1.   ESPi is a company organized under the laws of the State of Delaware, having its principal place of business located at 446 Old County Road, Suite 201, Pacifica, California 94044 and mailing address at 555 Bryant Street #142, Palo Alto, California 95301.

2.   On information and belief, Bendon is a registered foreign corporation in Ohio with its principal place of business located at 1840 Baney Road, Ashland, Ohio 44805, with its registered agent listed as Corporation Service Company, 1160 Dublin Road, Suite 400, Columbus, Ohio 43215.

JURISDICTION AND VENUE

3.   This is an action for patent infringement in violation of the Patent Act of the United States, 35 U.S.C. §§ 1 *et seq*.

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4.   This Court has original and exclusive subject matter jurisdiction over the patent infringement claims for relief under 28 U.S.C. §§ 1331 and 1338(a).

5.   This Court has personal jurisdiction over Bendon because it maintains a regular and established place of business in this District. On information and belief, Bendon has transacted and is continuing to transact business in this District that includes, but is not limited to, committing acts of patent infringement giving rise to this action by use and sale of products and systems that practice the subject matter claimed in the patent involved in this action.

6.   Venue is proper in this District under 28 U.S.C. § 1400(b) because Bendon has a regular and established place of business in this District. On information and belief, Bendon has committed acts of infringement in this District.

FACTS

7.   On January 29, 2019, United States Patent No. 10,191,559 B2 entitled "Computer Interface For Manipulated Objects With An Absolute Pose Detection Component" was duly and legally issued. A true and correct copy of United States Patent No. 10,191,559 B2 ("the '559 Patent") is attached hereto as Exhibit A and incorporated herein by this reference.

8.   Plaintiff is the assignee of the entire right, title, and interest in and to the '559 Patent, including all rights to enforce the '559 Patent and to recover for infringement.

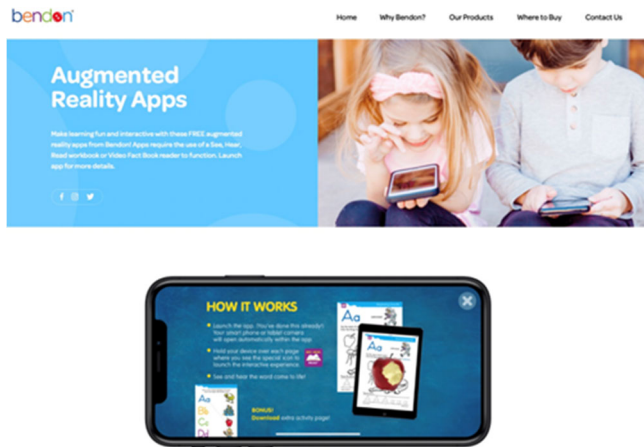9.   Claim 1 of the '559 Patent claims:

1. A manipulated object cooperating with a first plurality of high optical contrast features disposed in a real three-dimensional environment, said manipulated object comprising:

a) a photodetector configured to detect said first plurality of high optical contrast features and generate photodetector data representative of the positions of said first plurality of high optical contrast features;

b) a controller configured to identify a derivative pattern of said first plurality of high optical contrast features from said photodetector data, wherein said derivative pattern is indicative of the position of said photodetector; and

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c) at least one component selected from the group consisting of an auxiliary motion detection component, an active illumination component and a scanning component.

On information and belief, Bendon infringes Claim 1 of the '559 Patent by making, using, selling and/or offering to sell in the United States, including in this District, through its augmented reality apps that work with its other products ("Accused Products"). Specifically:
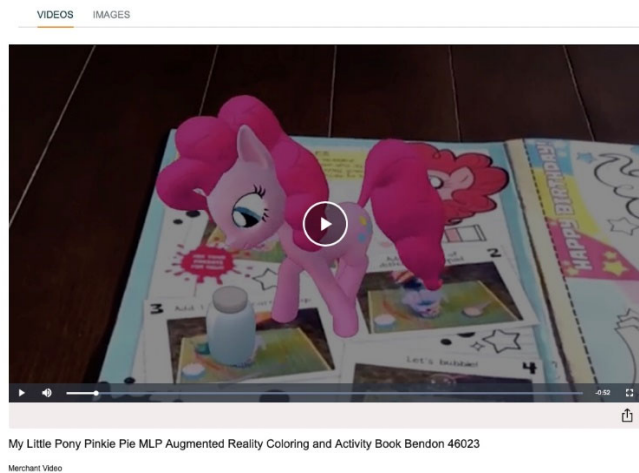

10.   Bendon infringes each element of Claim 1 as follows:

"A manipulated object cooperating with a first plurality of high optical contrast features disposed in a real three-dimensional environment, said manipulated object comprising:" – To the extent that the preamble is included in an infringement analysis, below demonstrates the various elements -- Bendon uses as manipulated object embodied by a mobile device such as an iOS device or an Android device:
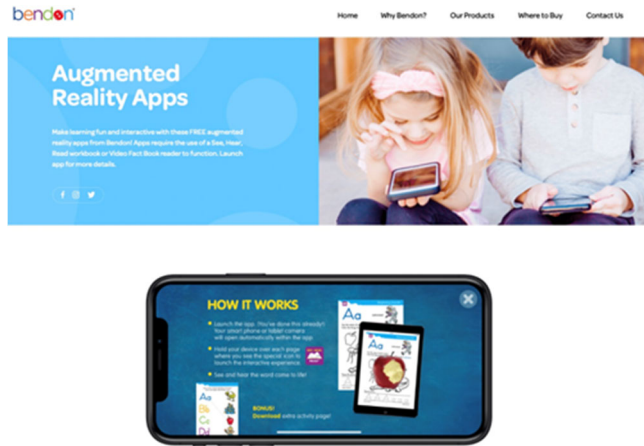
The device cooperates with high contrast features in the real three-dimensional environment, e.g., augmented reality book positioned in the real three-dimensional environment (e.g., on a table) with its drawings and markings:

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In cases where Bendon uses an iPhone the Apple ARKit or equivalent looks for features:
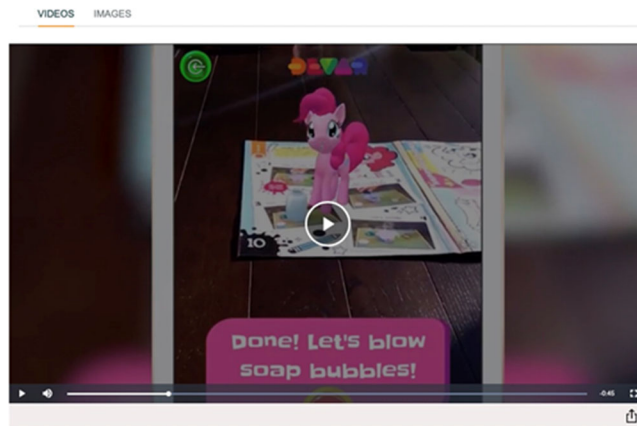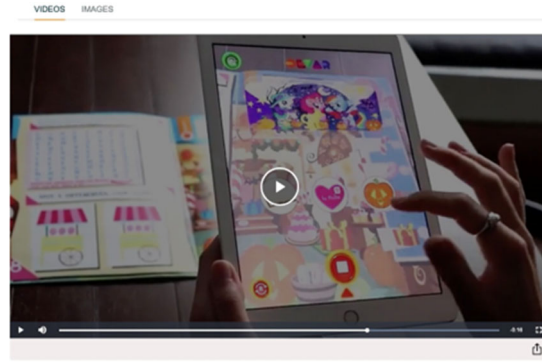
scene visible to the device's camera. ARKit recognizes notable features in the scene image, tracks differences in the positions of those features across video frames, and compares that information with motion sensing data. The result is a high-precision model of the device's position and motion.

In cases where Bendon uses an Android phone, the Google ARCore or equivalent looks for features:

Environmental understanding

ARCore is constantly improving its understanding of the real world environment by detecting feature points and planes.

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"a)   a photodector configured to detect said first plurality of high optical contrast features and generate photodetector data representative of the positions of said first plurality of high optical contrast features;" – Bendon uses a camera of an iOS device or Android device as the photodector to detect the high optical contrast features and generate data representative of the positions of these features:

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"b)   a controller configured to identify a derivative pattern of said first plurality of high optical contrast features from said photodetector data, wherein said derivative pattern is indicative of the position of said photodetector; and" – Bendon uses the iOS or Android device's processing unit(s) as controller(s) that identify the derivative pattern and this derivative pattern is indicative of the position of the photodetector here by the phone's camera:
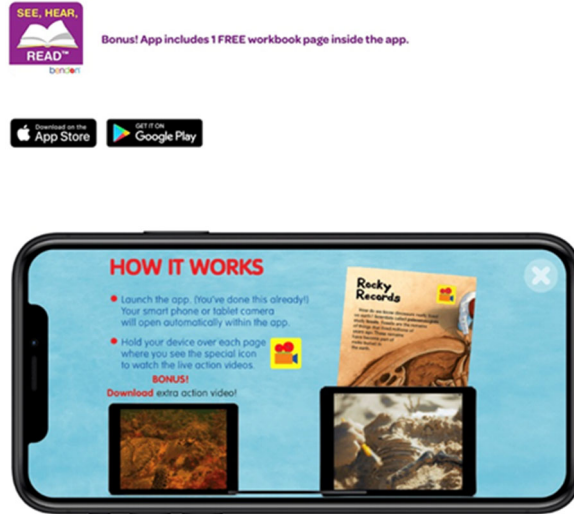
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"c)   at least one component selected from the group consisting of an auxiliary motion detection component, an active illumination component and a scanning component." – Bendon uses at least one of the iOS or Android device's auxiliary motion detection components such as inertial device (Inerterial Measurement Unit or IMU or motion sensing unit), using the Apple ARKit, Google ARCore:
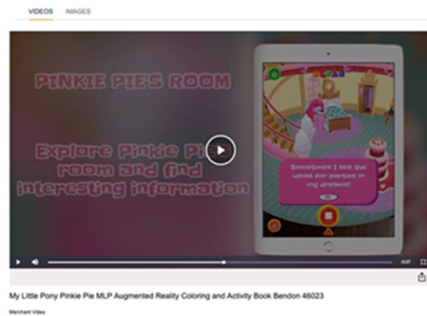
11.   Similarly, Bendon also infringes Claims 6, 7, 10, 15, 16, 19, 24, and 25.

12.   On November 2, 2010, United States Patent No. 7,826,641 B2 entitled "Apparatus And Method For Determining An Absolute Pose Of A Manipulated Object In A Real Three-Dimensional Environment With Invariant Features" was duly and legally issued. A true and correct

copy of United States Patent No. 7,826,641 B2 ("the '641 Patent") is attached hereto as Exhibit B

and incorporated herein by this reference.

13.   ESPi is the assignee of the entire right, title, and interest in and to the '641 Patent,

including all rights to enforce the '641 Patent and to recover for infringement.

14.   Claim 1 of the '641 Patent claims:

> 1. An apparatus for processing absolute pose data derived from an absolute pose of a manipulated object in a real three-dimensional environment, said apparatus comprising:
>
> a) at least one invariant feature in said real three-dimensional environment;
>
> b) an optical measuring means for optically inferring said absolute pose from on-board said manipulated object using said at least one invariant feature and expressing said inferred absolute pose with absolute pose data (f, q, y, x, y, z) representing Euler rotated object coordinates expressed in world coordinates (X_o, Y_o, Z_o) with respect to a reference location;
>
> c) a processor for preparing said absolute pose data and identifying a subset of said absolute pose data; and
>
> d) a communication link for transmitting said subset to an application.

15.   On information and belief, Bendon infringes Claim 1 of the '641 Patent by making,

using, selling and/or offering to sell in the United States, including in this District, through its

augmented reality apps that work with its other products ("Accused Products").

16.   Bendon infringes each element of Claim 1 as follows:

"An apparatus for processing absolute pose data derived from an absolute pose of

a manipulated object in a real three-dimensional environment, said apparatus comprising:" – To

the extent that the preamble is included in an infringement analysis, below demonstrates the

various elements: Bendon has an apparatus for processing absolute pose data derived from an

absolute pose of a manipulated object that is a mobile device such as an iOS device (e.g.,

iPad/iPhone) or an Android device held by a user in a real three-dimensional environment:
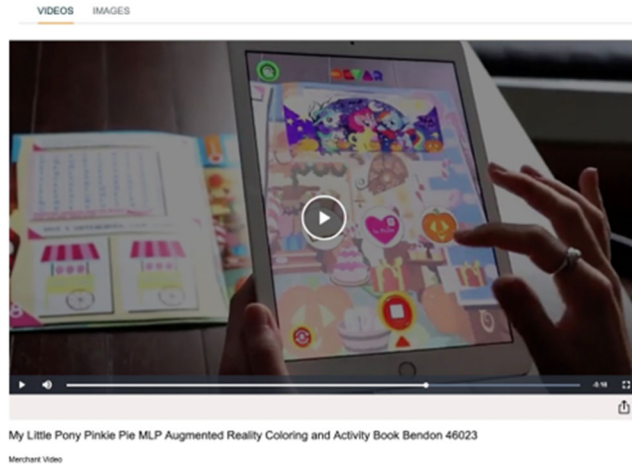
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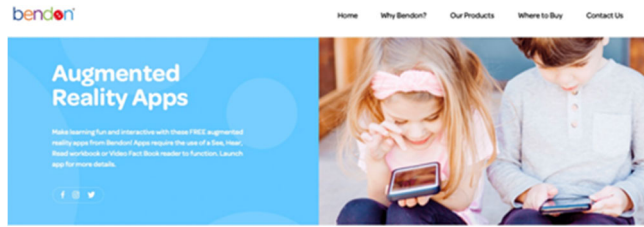
"a)   at least one invariant feature in said real three-dimensional environment;" – Bendon uses at least one invariant feature in the real three-dimensional environment, namely the augmented reality book positioned in the real three-dimensional environment (e.g., on a table) with its drawings and markings:
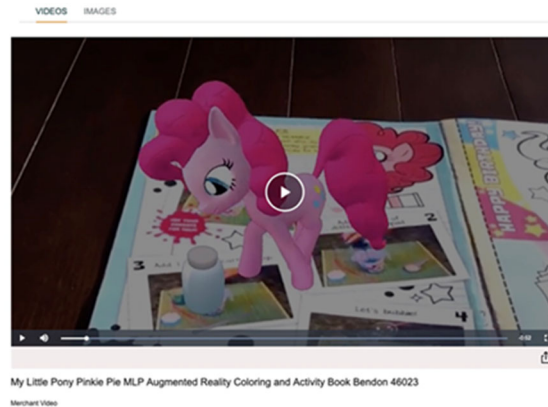
"b)   an optical measuring means for optically inferring said absolute pose from on-board said manipulated object using said at least one invariant feature and expressing said inferred absolute pose with absolute pose data (f, q, y, x, y, z) representing Euler rotated object coordinates expressed in world coordinates (X_o, Y_o, Z_o) with respect to a reference location;" – Bendon uses a camera of an iOS or Android device as the optical measuring means for optically inferring said absolute pose from onboard an iOS or Android device:

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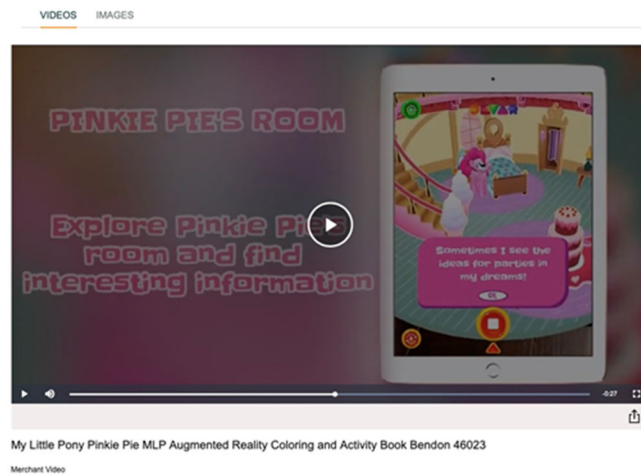
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Further, it uses the at least one invariant feature and expressing the absolute pose data by rotation angles (pitch, yaw, roll) expressing the orientation and (x,y,z) expressing the position portions of the absolute pose with respect to a reference location.

"c)   a processor for preparing said absolute pose data and identifying a subset of said absolute pose data; and" – Bendon uses an iOS device's or an Android device's processing unit(s) as controller(s) for preparing the absolute pose data and identifying a subset of the absolute pose data where the subset can include all the pose data:

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"d)   a communication link for transmitting said subset to an application" – Bendon uses a communication link internal to the manipulated object such as an iPhone or an Android phone for transmitting the subset to an application, e.g., seeing a character or a room from every angle in its augmented reality application:

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17.   Similarly, Bendon also infringes Claim 29.

FIRST CLAIM FOR RELIEF
(Direct Infringement of the '559 in Violation of 35 U.S.C. § 271(a))

18.   ESPi refers to and incorporates herein by reference paragraphs 1-17.

19.   The '559 Patent is valid and enforceable.

20.   Bendon has infringed and continues to infringe at least Claims 1, 6, 7, 10, 15, 16, 19, 24, and 25 of the '559 Patent under 35 U.S.C. 271(a), either literally or under the Doctrine of Equivalents, by making, using, selling, or offering to sell the Accused Products.

21.   Bendon has had knowledge and notice of the '559 Patent, as well as of its own infringement of the '559, since at least the date of the filing of this Complaint.

22.   ESPi has been and continues to be damaged by Bendon's infringement of the '559 Patent.

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23.   Bendons's infringement of the '559 Patent has been and continues to be willful.

SECOND CLAIM FOR RELIEF
(Inducing Infringement of the '559 Patent, in Violation of 35 U.S.C. § 271(b))

24.   ESPi refers to and incorporates herein by reference paragraphs 1-23.

25.   Bendon is also liable for indirect infringement under 35 U.S.C. §271(b), bcause Bendon knowingly induced and continues to induce the direct infringement of one or more of the Claims by end-users and other third parties (i.e. wholesalers, retailers, customers, etc.) in the United States.

26.   Said-users and other third parties have directly infringed at least Claims 1, 10 and 19 of the '559 Patent by using or operating the Accused Products, in the manner for which such Accused Products were and are designed and marketed; that is when the Accused Products are used as Bendon intends them to be used, the user and the act of usage thereof necessarily directly infringe the '559 Patent.

27.   Bendon knowingly took active steps to induce end-users and other third parties in the United States to engage in direct infringement of the '559 Patent since Bendon knew that when the Accused Products are used for their intended purpose by third parties and end users, such third parties and users directly infringe the claims of the '559 Patent. For example, to induce such third parties' and users' infringement, Bendon, on information and belief, provided, sold, or promoted the Accused Products to end-users or other third parties along with specific instructions or training regarding the use of those products, which instructions or training actively induced said end-users and other third parties to practice one or more of the Claims and said instructions or training caused direct infringement of such Claims.

28.   Bendon possessed the specific intent to induce direct infringement of the Claims by end-users and other third parties which intent was manifested, inter alia, by its instructions

and/or training for using the Accused Products to end users and third parties, and sale of the Accused Products to end users and third parties, and its knowledge of the '559 Patent and its knowledge that any use of the Accused Products by end-users and other third parties would necessarily directly infringe one or more of the claims of the '559 Patent.

29.   Bendon knew or should have known that testing, demonstrating, marketing, making, using, offering to sell, selling, and/or importing the Accused Products constituted infringement of one or more of the claims of the '559 Patent, based on, among other things, the reasons alleged in the foregoing paragraph.

30.   By reason of the acts of Bendon alleged herein, ESPi has suffered damage in an amount to be proved at trial.

THIRD CLAIM FOR RELIEF
(Direct Infringement of the '641 in Violation of 35 U.S.C. § 271(a))

31.   ESPi refers to and incorporates herein by reference paragraphs 1-30.

32.   The '641 Patent is valid and enforceable.

33.   Bendon has infringed and continues to infringe at least Claims 1 and 29 of the '641 Patent under 35 U.S.C. 271(a), either literally or under the Doctrine of Equivalents, by making, using, selling, or offering to sell the Accused Products.

34.   Bendon has had knowledge and notice of the '641 Patent, as well as of its own infringement of the '641 Patent, since at least the date of the filing of this Complaint.

35.   ESPi has been and continues to be damaged by Bendon's infringement of the '641 Patent.

36.   Bendon's infringement of the '641 Patent has been and continues to be willful.

FOURTH CLAIM FOR RELIEF
(Inducing Infringement of the '641 Patent, in Violation of 35 U.S.C. § 271(b))

37.   ESPi refers to and incorporates herein by reference paragraphs 1-36.

38.   Bendon is also liable for indirect infringement under 35 U.S.C. §271(b), because Bendon knowingly induced and continues to induce the direct infringement of one or more of the Claims by end-users and other third parties (i.e. wholesalers, retailers, customers, etc.) in the United States.

39.   Said-users and other third parties have directly infringed at least Claims 1 and 29 of the '641 Patent by using or operating the Accused Products, in the manner for which such Accused Products were and are designed and marketed; that is when the Accused Products are used as Bendon intends them to be used, the user and the act of usage thereof necessarily directly infringe the '641 Patent.

40.   Bendon knowingly took active steps to induce end-users and other third parties in the United States to engage in direct infringement of the '641 Patent since Bendon knew that when the Accused Products are used for their intended purpose by third parties and end users, such third parties and users directly infringe the claims of the '641 Patent. For example, to induce such third parties' and users' infringement, Bendon, on information and belief, provided, sold, or promoted the Accused Products to end-users or other third parties along with specific instructions or training regarding the use of those products, which instructions or training actively induced said end-users and other third parties to practice one or more of the Claims and said instructions or training caused direct infringement of such Claims.

41.   Bendon possessed the specific intent to induce direct infringement of the Claims by end-users and other third parties which intent was manifested, inter alia, by its instructions and/or training for using the Accused Products to end users and third parties, and sale of the

Accused Products to end users and third parties, and its knowledge of the '641 Patent and its knowledge that any use of the Accused Products by end-users and other third parties would necessarily directly infringe one or more of the claims of the '641 Patent.

42.   Bendon knew or should have known that testing, demonstrating, marketing, making, using, offering to sell, selling, and/or importing the Accused Products constituted infringement of one or more of the claims of the '641 Patent, based on, among other things, the reasons alleged in the foregoing paragraph.

43.   By reason of the acts of Bendon alleged herein, ESPi has suffered damage in an amount to be proved at trial.

PRAYER FOR RELIEF

WHEREFORE, ESPi prays for relief as follows:

A.   Judgment that Bendon has directly infringed, and induced others to infringe, the '559 Patent either literally and/or under the doctrine of equivalents;

B.   Judgment that Bendon has directly infringed, and induced others to infringe, the '641 Patent either literally and/or under the doctrine of equivalents;

C.   Judgment awarding ESPi general and/or specific damages, including a reasonable royalty and/or lost profits, in amounts to be fixed by the Court in accordance with proof, including enhanced and/or exemplary damages, as appropriate, as well as all of Bendon's profits or gains of any kind from its acts of patent infringement.

D.   Judgment awarding ESPi all of its costs, including its attorneys' fees, incurred in prosecuting this action, including, without limitation, pursuant to 35 U.S.C. § 285 and other applicable law;

E.   Judgment awarding ESPi pre-judgment and post-judgment interest; and

F.	Judgment awarding ESPi such other and further relief as the Court may deem just and proper.

JURY DEMAND

Pursuant to Federal Rule of Civil Procedure 38(b), ESPi hereby demands a trial by jury on all issues triable to a jury.

Dated: May 28, 2024

Respectfully submitted,

SAND, SEBOLT & WERNOW CO., LPA

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