

1 Jennifer Ishimoto (SBN 211845)
Banie & Ishimoto LLP
2 2100 Geng Road, Suite 210
Palo Alto, California 94303
3 Telephone: 408-981-9472
Email: ishimoto@banishlaw.com

4 *Attorneys for Plaintiff*
5 CyboEnergy, Inc.

6
7 **IN THE UNITED STATES DISTRICT COURT**
8 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

9
10 CYBOENERGY, INC., a Delaware
Corporation,

11 Plaintiff,

12 v.

13 DURACELL POWER CENTER, LLC, a
14 limited liability company existing under the
laws of California,

15 Defendant.
16

Case No.: _____

**PLAINTIFF’S ORIGINAL COMPLAINT
FOR PATENT INFRINGEMENT**

(35 U.S.C. § 271)

JURY TRIAL DEMANDED

17
18 **ORIGINAL COMPLAINT FOR PATENT INFRINGEMENT**

19 TO THE HONORABLE JUDGE OF SAID COURT:

20
21 CyboEnergy, Inc. (“CyboEnergy”) files this Original Complaint and demand for jury trial
22 seeking relief from patent infringement of the claims of U.S. Patent No. 9,331,488 (“the ‘488
23 patent”) and U.S. Patent No. 9,331,489 (“the ‘489 patent”) (referred to as the “Patents-in-Suit”) by
24 Duracell Power Center, LLC (“Duracell PC”).

25 **PARTIES**

26 1. Plaintiff is a Delaware Corporation with its principal place of business located in Sacramento
27 County, California.
28

- 1 2. On information and belief, Defendant is a California limited liability company with a
2 principal address of *5400 Hellyer Ave., San Jose, CA 95138*, which is also a regular and
3 established place of business. Defendant is registered to do business in California and may
4 be served via its registered agent, or wherever else they may be found.
- 5
- 6 3. On information and belief, Defendant directly and/or indirectly develops, designs,
7 manufactures, distributes, markets, offers to sell and/or sells infringing products and services
8 in the United States, including in the Northern District of California, and otherwise directs
9 infringing activities to this District in connection with its products and services.

10 **JURISDICTION**

- 11 4. This civil action arises under the Patent Laws of the United States, 35 U.S.C. § 1 *et seq.*,
12 including without limitation 35 U.S.C. §§ 271, 281, 283, 284, and 285 based on Defendant's
13 unauthorized commercial manufacture, use, importation, offer for sale, and sale of the
14 Accused Products in the United States. This is a patent infringement lawsuit over which this
15 Court has subject matter jurisdiction under, *inter alia*, 28 U.S.C. §§ 1331, 1332, and 1338(a).
- 16
- 17 5. This United States District Court for the Northern District of California has general and
18 specific personal jurisdiction over Defendant because, directly or through intermediaries,
19 Defendant has committed acts within the District giving rise to this action and are present in
20 and transact and conduct business in and with residents of this District and the State of
21 California.
- 22
- 23 6. Plaintiff's causes of action arise, at least in part, from Defendant's contacts with and
24 activities in this District and the State of California.
- 25
- 26 7. Defendant has committed acts of infringing the Patents-in-Suit within this District and the
27 State of California by making, using, selling, offering for sale, and/or importing in or into
28 this District and elsewhere in the State of California, products claimed by the Patents-in-

1 Suit, including without limitation products made by practicing the claimed methods of the
2 Patent-in-Suit. Defendant, directly and through intermediaries, makes, uses, sells, offers for
3 sale, imports, ships, distributes, advertises, promotes, and/or otherwise commercializes such
4 infringing products into this District and the State of California. Defendant regularly
5 conducts and solicits business in, engages in other persistent courses of conduct in, and/or
6 derives substantial revenue from goods and services provided to residents of this District and
7 the State of California.
8

9 8. This Court has personal jurisdiction over Defendant. Personal jurisdiction exists over
10 Defendant because Defendant has minimum contacts with this forum as a result of business
11 regularly conducted within the State of California and within this district, and, on
12 information and belief, specifically as a result of, at least, committing the tort of patent
13 infringement within California and this District. This Court has personal jurisdiction over
14 Defendant, in part, because Defendant does continuous and systematic business in this
15 District, including by providing infringing products and services to the residents of the
16 Western District of California that Defendant knew would be used within this District, and
17 by soliciting business from the residents of the Northern District of California. For example,
18 Defendant is subject to personal jurisdiction in this Court because, *inter alia*, Defendant has
19 regular and established places of business throughout this District, including at least at 5400
20 *Hellyer Ave., San Jose, CA 95138*, and directly and through agents regularly does, solicits,
21 and transacts business in the Northern District of California. Also, Defendant has hired and
22 is hiring within this District for positions that, on information and belief, relate to
23 infringement of the Patents-in-Suit. Accordingly, this Court's jurisdiction over the
24 Defendant comports with the constitutional standards of fair play and substantial justice and
25
26
27
28

1 arises directly from the Defendant’s purposeful minimum contacts with the State of
2 California.

3 9. This Court also has personal jurisdiction over Defendant, because in addition to Defendant’s
4 own online website and advertising within this District, Defendant has also made its products
5 available within this judicial district and advertised to residents within the District to hire
6 employees to be located in this District.
7

8 10. The amount in controversy exceeds \$75,000 exclusive of interests and costs.

9 11. Venue is proper in this Court under 28 U.S.C. § 1400(b) based on information set forth
10 herein, which is hereby repeated and incorporated by reference. Further, upon information
11 and belief, Defendant has committed or induced acts of infringement, and/or advertise,
12 market, sell, and/or offer to sell products, including infringing products, in this District. In
13 addition, and without limitation, Defendant has regular and established places of business
14 throughout this District, including at least at *5400 Hellyer Ave., San Jose, CA 95138*.
15

16 **THE PATENTS-IN-SUIT**

17 12. On May 3, 2016, United States Patent No. 9,331,488 (“the ‘488 Patent”), entitled “Enclosure
18 and Message System of Smart and Scalable Power Inverters” was duly and legally issued by
19 the United States Patent and Trademark Office (“USPTO”). The ‘488 Patent claims patent-
20 eligible subject matter and is valid and enforceable. Plaintiff is the exclusive owner by
21 assignment of all rights, title, and interest in the ‘488 Patent, including the right to bring this
22 suit for damages, and including the right to sue and recover all past, present, and future
23 damages for infringement of the ‘488 Patent. Defendant is not licensed to practice the ‘488
24 Patent, either expressly or implicitly, nor do they enjoy or benefit from any rights in or to
25 the ‘488 patent whatsoever. A true and correct copy of the ‘488 patent is attached hereto as
26

27 **Exhibit A.**
28

1 13. On May 3, 2016, United States Patent No. 9,331,489 (“the ‘489 Patent”), entitled
2 “Maximizing Power production at Low Sunlight by Solar Power Mini-Inverters” was duly
3 and legally issued by the United States Patent and Trademark Office (“USPTO”). The ‘489
4 Patent claims patent-eligible subject matter and is valid and enforceable. Plaintiff is the
5 exclusive owner by assignment of all rights, title, and interest in the ‘489 Patent, including
6 the right to bring this suit for damages, and including the right to sue and recover all past,
7 present, and future damages for infringement of the ‘489 Patent. Defendant is not licensed
8 to practice the ‘489 Patent, either expressly or implicitly, nor do they enjoy or benefit from
9 any rights in or to the ‘489 patent whatsoever. A true and correct copy of the ‘489 patent is
10 attached hereto as **Exhibit C**.

11
12 14. The ‘488 patent and the ‘489 patent are referred to herein as the “Patents-in-Suit.”

13
14 15. Plaintiff is the owner of the entire right, title, and interest in and to the Patents-in-Suit. The
15 Patent-in-Suit are presumed valid under 35 U.S.C. § 282.

16 **ACCUSED INSTRUMENTALITIES**

17 16. The term “Accused Instrumentalities” or “Accused Products” refers to, by way of example
18 and without limitation, Duracell PC’s solar power inverters (*see, e.g.*,
19 [https://duracellpowercenter.com/wp-content/uploads/2023/10/Microinverter-Brochure-](https://duracellpowercenter.com/wp-content/uploads/2023/10/Microinverter-Brochure-Spec-Sheet_09-21-23.pdf)
20 [Spec-Sheet_09-21-23.pdf](https://duracellpowercenter.com/wp-content/uploads/2023/10/Microinverter-Brochure-Spec-Sheet_09-21-23.pdf)).

21
22 **COUNT I**
23 **PATENT INFRINGEMENT OF THE ‘488 PATENT**

24 17. Plaintiff restates and realleges the preceding paragraphs of this Complaint as if fully set forth
25 herein.

26 18. Defendant has, under 35 U.S.C. §271(a), directly infringed, and continues to directly
27 infringe, literally and/or under the doctrine of equivalents, at least claim 16 of the ‘488
28

1 patent, by making, using, testing, selling, offering for sale and/or importing into the United
2 States Defendant's Accused Products.

3 19. On information and belief, Defendant has made no attempt to design around the claims of
4 the '488 patent or the '489 patent.

5 20. On information and belief, Defendant did not have a reasonable basis for believing that the
6 claims of the '488 patent or the '489 patent were invalid.

7 21. On information and belief, Defendant's Accused Products are available to businesses and
8 individuals throughout the United States and in the State of California, including in this
9 District.

10 22. Plaintiff has been damaged as the result of Defendant's infringement.

11 23. The claim chart attached hereto as **Exhibit B** describes how the elements of an exemplary
12 claim 16 of the '488 patent is infringed by the Accused Products. This provides details
13 regarding only one example of Defendant's infringement, and only as to a single patent
14 claim. Plaintiff reserves its right to amend and fully provide its infringement arguments and
15 evidence thereof until its Preliminary and Final Infringement Contentions are later produced
16 according to the court's scheduling order in this case.

17 24. Defendant has and continues to induce infringement from at least the filing date of the
18 lawsuit. Defendant has actively encouraged or instructed others (e.g., its customers and/or
19 the customers of its related companies), and continues to do so, on how to use its products
20 and services (e.g., power inverters) and related services that provide question and answer
21 services across the Internet such as to cause infringement of at least claim 16 of the '488
22 patent, literally or under the doctrine of equivalents. Defendant, from at least the filing date
23 of the lawsuit, has continued to encourage and instruct others on how to use the products
24 showing specific intent. Moreover, Defendant has known of the '488 patent and the
25
26
27
28

1 technology underlying it from at least the filing date of the lawsuit.¹ For clarity, direct
2 infringement is previously alleged in this complaint.

3 25. Defendant has and continues to contributorily infringe. Defendant has actively encouraged
4 or instructed others (e.g., its customers and/or the customers of its related companies), and
5 continues to do so, on how to use its products and services (e.g., .., instructing customers and
6 others on the use of power inverters and related systems through its website and product
7 instruction manuals) such as to cause infringement of one or more of claim 16 of the ‘488
8 patent, literally or under the doctrine of equivalents. Moreover, Defendant has known of the
9 ‘488 patent and the technology underlying it from at least the filing date of the lawsuit.² For
10 clarity, direct infringement is previously alleged in this complaint. The product’s and
11 services’ only reasonable use is an infringing use and there is no evidence to the contrary.
12 The product and service is not a staple commercial product and Defendant had reason to
13 believe that the customer’s use of the product and/or service would be an infringing use. As
14 shown on Defendant’s website, <https://duracellpowercenter.com>, Defendant offers the
15 products and/or service with instruction or advertisement that suggests an infringing use.
16
17 26. Defendant has caused and will continue to cause Plaintiff damage by direct and indirect
18 infringement of (including inducing infringement of) the claims of the ‘488 patent.
19
20

21 **COUNT II**
22 **PATENT INFRINGEMENT OF THE ‘489 PATENT**

23 27. Plaintiff restates and realleges the preceding paragraphs of this Complaint as if fully set forth
24 herein.
25
26

27 ¹ Plaintiff reserves the right to amend and add inducement pre-suit if discovery reveals an earlier
28 date of knowledge.

² Plaintiff reserves the right to amend if discovery reveals an earlier date of knowledge.

1 28. Defendant has, under 35 U.S.C. §271(a), directly infringed, and continues to directly
2 infringe, literally and/or under the doctrine of equivalents, one or more of claims 14, 15 and
3 16 of the '489 patent, by making, using, testing, selling, offering for sale and/or importing
4 into the United States Defendant's Accused Products.

5 29. On information and belief, Defendant has made no attempt to design around the claims of
6 the '489 patent.

7 30. On information and belief, Defendant did not have a reasonable basis for believing that the
8 claims of the '489 patent were invalid.

9 31. On information and belief, Defendant's Accused Products are available to businesses and
10 individuals throughout the United States and in the State of California, including in this
11 District.

12 32. Plaintiff has been damaged as the result of Defendant's infringement.

13 33. The claim chart attached hereto as **Exhibit D** describes how the elements of exemplary
14 claims 14, 15 and 16 of the '489 patent are infringed by the Accused Products. This provides
15 details regarding only one example of Defendant's infringement, and only as to a single
16 patent claim. Plaintiff reserves its right to amend and fully provide its infringement
17 arguments and evidence thereof until its Preliminary and Final Infringement Contentions are
18 later produced according to the court's scheduling order in this case.

19 34. Defendant has and continues to induce infringement from at least the filing date of the
20 lawsuit. Defendant has actively encouraged or instructed others (e.g., its customers and/or
21 the customers of its related companies), and continues to do so, on how to use its products
22 and services (e.g., power inverters) and related services that provide question and answer
23 services across the Internet such as to cause infringement of at least claims 14, 15 and 16 of
24 the '489 patent, literally or under the doctrine of equivalents. Defendant, from at least the
25
26
27
28

1 filing date of the lawsuit, has continued to encourage and instruct others on how to use the
2 products showing specific intent. Moreover, Defendant has known of the '489 Patent and
3 the technology underlying it from at least the filing date of the lawsuit.³ For clarity, direct
4 infringement is previously alleged in this complaint.

5
6 35. Defendant has and continues to contributorily infringe. Defendant has actively encouraged
7 or instructed others (e.g., its customers and/or the customers of its related companies), and
8 continues to do so, on how to use its products and services (e.g., ., instructing customers and
9 others on the use of power inverters and related systems through its website and product
10 instruction manuals) such as to cause infringement of one or more of claims 14, 15 and 16
11 of the '489 Patent, literally or under the doctrine of equivalents. Moreover, Defendant has
12 known of the '489 patent and the technology underlying it from at least the filing date of the
13 lawsuit.⁴ For clarity, direct infringement is previously alleged in this complaint. The
14 product's and services' only reasonable use is an infringing use and there is no evidence to
15 the contrary. The product and service is not a staple commercial product and Defendant had
16 reason to believe that the customer's use of the product and/or service would be an infringing
17 use. As shown on Defendant's website, <https://duracellpowercenter.com>, Defendant offers
18 the products and/or service with instruction or advertisement that suggests an infringing use.
19

20
21 36. Defendant has caused and will continue to cause Plaintiff damage by direct and indirect
22 infringement of (including inducing infringement of) the claims of the '489 Patent.

23 **CONDITIONS PRECEDENT**
24
25
26

27 ³ Plaintiff reserves the right to amend and add inducement pre-suit if discovery reveals an earlier
28 date of knowledge.

⁴ Plaintiff reserves the right to amend if discovery reveals an earlier date of knowledge.

1 37. Plaintiff is a practicing entity that marks its products. Plaintiff has pled all statutory
2 requirements to obtain pre-suit damages. Further, all conditions precedent to recovery are
3 met.

4
5 **JURY TRIAL DEMANDED**

6 38. Pursuant to FED. R. CIV. P. 38, Plaintiff CyboEnergy hereby demands a trial by jury on all
7 issues so triable.

8 **PRAYER FOR RELIEF**

9 WHEREFORE, Plaintiff prays for relief as follows:

- 10 a. enter judgment that Defendant has infringed the claims of the Patents-in-Suit;
11 b. award Plaintiff damages in an amount sufficient to compensate it for Defendant's
12 infringement of the claims of the Patents-in-Suit in an amount no less than a reasonable
13 royalty or lost profits, together with pre-judgment and post-judgment interest and costs under
14 35 U.S.C. § 284;
15 c. award Plaintiff an accounting for acts of infringement not presented at trial and an award by
16 the Court of additional damage for any such acts of infringement;
17 d. declare this case to be "exceptional" under 35 U.S.C. § 285 and award Plaintiff its attorneys'
18 fees, expenses, and costs incurred in this action;
19 e. declare Defendant's infringement to be willful and treble the damages, including attorneys'
20 fees, expenses, and costs incurred in this action and an increase in the damage award
21 pursuant to 35 U.S.C. § 284;
22 f. a decree addressing future infringement that either (i) awards a permanent injunction
23 enjoining Defendant and its agents, servants, employees, affiliates, divisions, and
24 subsidiaries, and those in association with Defendant from infringing the claims of the
25 Patents-in-Suit, or (ii) awards damages for future infringement in lieu of an injunction in an
26
27
28

1 amount consistent with the fact that for future infringement the Defendant will be an
2 adjudicated infringer of a valid patent, and trebles that amount in view of the fact that the
3 future infringement will be willful as a matter of law; and

4 g. award Plaintiff such other and further relief as this Court deems just and proper.
5

6
7 DATED: December 10, 2024

Respectfully submitted,

8 BANIE & ISHIMOTO LLP

9 By: /s/Jennifer Ishimoto

10 Jennifer Ishimoto

11 **Attorneys for Plaintiff**
12 ***CyboEnergy, Inc.***

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DEMAND FOR JURY TRIAL

Plaintiff hereby requests a trial by jury on issues so triable by right.

DATED: December 10, 2024

Respectfully submitted,
BANIE & ISHIMOTO LLP

By: /s/Jennifer Ishimoto
Jennifer Ishimoto