

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

BROADWAY PINE BRANDS LLC,

Plaintiff,

v.

OATSLIKEME, *et al.*,

Defendants.

Civil Action No. 23-cv-1750

Judge Ranjan

**MEMORANDUM IN SUPPORT OF MOTION FOR DEFAULT JUDGMENT AND  
PERMANENT INJUNCTION**

Plaintiffs submit this Memorandum in Support of its Motion for Default Judgment pursuant to Fed. R. Civ. P. 55 (b)(2) seeking entry of Judgment against all the defaulting Defendants (“Defendants”) as to Count I for patent infringement.

**I. INTRODUCTION**

Plaintiff is before this Court seeking relief from the tireless efforts of the online copycats trying to destroy Plaintiff’s small business. The defendants are sellers of infringing product on at least one of the Amazon.com, Aliexpress.com, eBay.com, Joybuy.com, Walmart.com, Temu.com or wish.com online marketplaces. The remaining Defendants in this lawsuit have all defaulted and failed to cooperate in discovery. It remains for the Court to consider the unrefuted facts and the supporting law and render a judgment consistent with prior judgments against e-commerce scofflaws.

The Defendants have been properly served pursuant to Fed. R. Civ. P. 4 and are aware of this action, but nevertheless chose not to respond. The Clerk has entered default. The Plaintiff

also served discovery upon Defendants, including Requests for Admission, and no response to the discovery was received. Plaintiff filed a Motion with this Court under Fed. R. Civ. P. 55(b)(2) for a default judgment, in each case, against Defendants for patent infringement (Count I) after Defendants established internet stores to offer to sell, and sold, knock-off and infringing versions of Plaintiff's Product, the SLIDEAWAY<sup>®1</sup> toy storage bin protected by U.S. Patent No. 11,154,128 ("the '128 Patent").

There are no issues of fact remaining in this suit, and a default judgment should be entered against Defendants providing for permanent injunctive relief, a damage award of \$1,800,000.00 against each individual Defendant, plus interest, a post-judgment asset restraining order, and an order authorizing the release and transfer of Defendants' assets, in whole or in part, awarded to Plaintiff. This award and the method for calculating it is consistent with other awards made for admitted intentional patent infringement in the Western District of Pennsylvania. *See Broadway Pine Brands LLC v. Mustb Toy Store*, No. 21-1736 (W.D. Pa., November 30, 2022)(Ranjan, J) and related cases; *Aquapaw LLC v. Allnice*, No. 20-1954 (W.D. Pa., July 29, 2022)(Wiegand, J.); *Aquapaw Brands LLC v. Flopet*, No. 21-988 (W.D. Pa., July 29, 2022)(Wiegand, J); *Aquapaw Brands LLC v. TikToks*, No. 21-696 (W.D. Pa., August 2, 2022)(Wiegand, J); *Doggie Dental, Inc. v AVANTDIGITAL*, No. 21-cv-271 (W.D. Pa., Feb. 22, 2022) (Hornak, CJ); *Doggie Dental, Inc. v CDOFFICE*, No. 21-cv-565 (W.D. Pa., Feb. 22, 2022) (Hornak, CJ); *Doggie Dental, Inc. v Ahui, et al.*, No. 19-cv-1627 (W.D. Pa., Sept. 27, 2021 (Hornak, CJ).

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<sup>1</sup> U.S. Reg. No. 5994698 ("Plaintiff's Mark").

## II. ARGUMENT

### A. **This Court has Jurisdiction to Enter Default Judgment Against the Defendants**

This Court has jurisdiction to grant Plaintiff's motion and enter default judgment against Defendants because the Court has subject matter jurisdiction over this action as well as personal jurisdiction over the Defendants. This Court has subject matter jurisdiction over this action pursuant the Patent Act, 35 U.S.C. § 271, and The All Writs Act, 28 U.S.C. § 1651(a).

Personal jurisdiction may be established either by specific or general jurisdiction, but specific jurisdiction is appropriate in this case because of Defendants' contact with the forum. *See* 42 P. A. Cons. Stat. § 5322. The factors to consider when establishing specific jurisdiction are: "(1) the extent to which defendant 'purposefully avail[ed]' itself of the privilege of conducting activities in the State; (2) whether the Plaintiff's claims arise out of those activities directed at the State; and (3) whether the exercise of personal jurisdiction would be constitutionally 'reasonable.'" *See IMO Industries, Inc. v. Kiekert AG*, 155 F.3d 254, 259 (3rd Cir.1998). Defendants satisfy each of the factors to establish specific personal jurisdiction. Likewise, Venue is proper pursuant 28 U.S.C. § 1391 and 28 U.S.C. § 1400(b).

First, Defaulting Defendants purposefully availed themselves of the privilege of conducting business in Pennsylvania and this Judicial District. Defendants purposefully targeted sales of Infringing Products to the Western District of Pennsylvania, offered to sell Infringing Products to Pennsylvania residents, and did in fact sell Infringing Products into Pennsylvania. *See oatslikeme Complaint*, ¶ 11 [ECF No. 2]. These actions are sufficient to establish jurisdiction over Defaulting Defendants. 42 Pa. Cons. Stat. § 5322 (a). Second, Plaintiff's claims arise directly from actions that occurred in this Judicial District. Plaintiff purchased Infringing

Products to determine their authenticity and had the Infringing Products shipped to Pennsylvania. *See oatslikeme, Dee Odell Declaration*. [ECF No. 13]. These unauthorized and unlicensed sales of Infringing Products in this Judicial district establish this Court’s jurisdiction over Defaulting Defendants. Lastly, this Court’s exercise of specific personal jurisdiction over Defendants is “reasonable” under the constitution. *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 292 (1980).

The record in this case does not suggest that the burden of litigation in this District is extraordinary. Defendants offered to ship and sell their Infringing Products to any part of the United States. *oatslikeme Complaint*, ¶ 11 [ECF No. 2]. Pennsylvania and this Court have a valid interest in the resolution of the grievances of its citizens and businesses, particularly when they potentially involve issues of [Pennsylvania] law. *See Square D Co. v. Scott Elec. Co.*, No. 06-459, 2008 WL 4462298, at \*12 (W.D. PA September 30, 2008). Plaintiff have a valid and substantial interest in having their legal rights recognized and vindicated. *Id.* Therefore, this Court’s exercise of specific personal jurisdiction over Defendants is constitutionally reasonable.

#### **B. Joinder of the Defendants is Appropriate**

The courts in this district have universally approved the joinder of online patent infringement defendants in one case. *See Aquapaw Brands LLC v. Tiktoks*, No. 21-cv-696 (W.D. Pa., Jul. 29, 2022) (Wiegand, J.) [ECF No. 56]; *Aquapaw Brands LLC v. Flopet*, No. 21-cv-988 (W.D. Pa., Jul. 29, 2022) (Wiegand, J.) [ECF No. 58]; *Aquapaw Brands LLC v. Yan-Peng*, No. 1784 (W.D. Pa., Jul. 29, 2022) (Wiegand, J.) [ECF No. 62]; *Aquapaw LLC v. Allnice*, No. 20-1954 (W.D. Pa., Jul. 29, 2022) (Wiegand, J.) [ECF No. 85]; *Doggie Dental, Inc. v. Cdoffice*, No. 21-cv-271 (W.D. Pa., Sept. 7, 2021) (Hornak, C.J.) [ECF No. 126].

Joinder of the defendants is proper when plaintiff seeks relief “jointly, severally, or in the

alternative with respect to arising out of the same transaction, occurrence or series of transactions or occurrences;” and “any question of law or fact common to all defendants will arise in the action.” Fed. R. Civ. P. 20(a)(2). There is no difference in the analysis under either Rule 20 or 35 U.S.C. § 299 of the Patent Act. *See* 157 Cong. Rec. S5429 (daily ed. Sept. 8, 2011) (statement of Sen. Kyl observing that Section 299 “effectively codifies current law as it has been applied everywhere outside of the Eastern District of Texas”). Joinder is consistent with the strongly encouraged policy of “entertaining the broadest possible scope of action consistent with fairness to the parties.” *See United Mine Workers of Am. v. Gibbs*, 383 U.S. 715, 724 (1966).

In a decision on joinder in an online counterfeiting case, the Northern District of Illinois found joinder was appropriate, stating:

According to the Merriam-Webster dictionary, “transaction” generally involves a “reciprocal effect” or “exchange,” whereas an “occurrence” is defined as something that simply “happens” or “appears.” Unlike a “transaction,” an “occurrence” is not necessarily the product of joint or coordinated action. The internet frequently produces occurrences that can be described as cooperative but not transactional or intentionally coordinated. Individual actions which alone may have minimal impact on society or the economy can have a substantial impact through aggregation that is only possible through the internet. Individuals on the internet can openly reach billions of people with a single click of a mouse, while at the same time hiding their identities, frustrating law enforcement. As a result, an “occurrence” of mass harm easily can be inflicted even if there is no express “transactional” coordination among the attackers.

Rule 20’s inclusion of the term “occurrence” should allow plaintiffs to join in a single case the defendants who participate in such unlawful occurrences, despite the lack of a “transactional link.” The kind of harmful occurrences the internet enables — including mass foreign counterfeiting — were inconceivable when Rule 20 was drafted. But the Rule’s inclusion of the term “occurrence” suggests that joinder is appropriate in cases alleging harm that is not strictly “transactional.” *Bose Corp. v. The Partnerships and Unincorporated Associations Identified on Schedule “A”*, No. 19-cv-7467 (N.D. Ill. Feb. 19, 2020) (Durkin, J.) at 10-11 [DE 46].

Moreover, in the present case there is something more -- the admitted allegations of the Complaint (*i.e.*, cooperating, communicating, coordinating with a common goal of creating one

illegal competing marketplace). These additional activities further establish the necessary commonality to join the defendants into one action under either Rule 20 or Section 299. Thus, the well-pled factual allegations of Plaintiff's Complaint properly allege the elements for joinder and the Defendants are properly joined in this case.

Recognizing this, in the recent case of *Doggie Dental, Inc. v. CDOFFICE, et al*, No. 21-cv-271, Chief Judge Hornak ruled joinder of the Defendants was permissible because the Complaint sufficiently alleged the right to relief against the joined defendants arises "out of the same transaction, occurrence, or series of transactions or occurrences," and that are "questions of law or fact common to all the defendants." [ECF No. 126]. For at least these reasons, the Defendants are properly joined in this case. *See also Aquapaw v. Allnice*, No. 20-1954 (W.D. Pa, July 29, 2022) (Wiegand, J.) [ECF No. 85] (joinder of patent defendants appropriate when accused products or processes are the same in respects relevant to the patent).

### **C. Plaintiff Are Entitled to a Default Judgment Against Defendants**

#### **1. The Clerk Properly Entered Default as to Defendants**

The Clerk of this Court enters a default "[w]hen a party against whom judgment for affirmative relief is sought has failed to plead or otherwise defend, and that failure is shown by affidavit or otherwise." Fed. R. Civ. P. 55(a). The Clerk entered default against Defendants because, as the docket reflects, the time for filing a responsive pleading expired.

#### **2. Factual Allegations Establish Defaulting Defendants' Liability**

By failing to appear and defend against the Complaint, Defaulting Defendants are deemed to have admitted every allegation therein, and the Court must only determine whether Plaintiff's Complaint properly states a claim for relief. *See Hritz v. Woma Corp.*, 732 F.2d 1178,

1180 (3d Cir. 1984); *see also Pair Networks, Inc. v. Lim Cheng Soon*, 2013 WL 452565, \*1 (W.D. Pa., February 6, 2013). Plaintiff now move this Court for a default judgment finding that Defaulting Defendants are liable on Plaintiff's Complaint.

“Section 271(a) of the Patent Act defines direct infringement as ‘whoever without authority makes, uses, offers to sell, or sells any patented invention, within the U.S. or imports into the U.S. any patented invention during the term of the patent therefor, infringes the patent. 35 U.S.C. § 271(a).’ *Grecia v. McDonald’s Corp.*, 2018 U.S. App. LEXIS 5903, at \*7-8 (Fed. Cir. Mar. 6, 2018).

In this case, Plaintiff is the lawful owner of the ‘128 patent. Plaintiff has submitted extensive documentation showing that Defendants make, use, offer for sale, sell, and/or import in the United States for subsequent sale or use products that infringe directly at least claim 1 of the ‘128 patent. *oatslikeme, Dee Odell Dec.*, Composite Exhibit 1 [ECF No. 13]; *Michael Scotese Declaration*, ¶¶ 23 - 31; Exhibit 4 to the Complaint [ECF No. 2-4]. To show infringement, Plaintiff submitted a detailed infringement claim chart for Plaintiff's ‘128 patent that set forth the text of the patent claim to compare with images of the infringing products. Thus, Plaintiff has proven by uncontroverted evidence their patent infringement claims.

As to validity, “[e]ach issued patent carries with it a presumption of validity under 35 U.S.C. § 282.” *Tinnus Enters., LLC v. Telebrands Corp.*, 846 F.3d 1190, 1205 (Fed. Cir. 2017). “This presumption is sufficient to establish a likelihood of success on the validity issue, absent a challenge by the accused infringer.” *Id.* Here, there is no challenge by any of the accused infringers, thus validity is established by default as well.

The well-pled factual allegations of Plaintiff's Complaint, including specifically those in

Paragraphs 51 - 59, properly allege the elements for each of the above claims. Moreover, the factual allegations in Plaintiff's Complaint, substantiated by the evidence submitted, conclusively establish the Defaulting Defendants' liability asserted in the Complaint.

In addition to the well pled factual allegations, admitted by default, and established by the evidence, Defendants have also made admissions by failing to respond to the *Requests for Admissions* served upon them concurrent with the service of the Complaint and Summons. In addition to the well-pled factual allegations, admitted by default, and established by the evidence, Defendants have also made certain admissions by failing to respond to the *Requests for Admissions* served upon them. *See Malkin Dec.*,<sup>2</sup> ¶ 5. These deemed admissions include the following:

At all times relevant hereto, Plaintiff owned Plaintiff's Patent (defined as U.S. Patent No. 11,154,128 entitled "STORAGE CONTAINER WITH AN INTEGRATED MAT, and which covers Plaintiff's Product).

You were on notice of the '128 patent before you began manufacturing, offering for sale, selling, promoting, advertising, and otherwise distributing the Infringing Product.

You have intentionally infringed and continue to infringe at least one claim of the Plaintiff's Patent either directly or indirectly through acts of contributory infringement or inducement in violation of 35 U.S.C. § 271, by making, using, selling, importing and/or offering to sell Infringing Products.

But for your infringement and/or counterfeiting of Plaintiff's products, Plaintiff would have made each sale you made instead and at Plaintiff's pre-infringement selling price.

At all times relevant hereto, there was consumer demand for the Plaintiff's Product.

At all times relevant hereto, Plaintiff have the manufacturing and marketing capability to meet the consumer demand for the Plaintiff's Product.

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<sup>2</sup> Refers to *Declaration of Brian Samuel Malkin* submitted herewith.

Admit that there is no acceptable non-infringing substitute for the Plaintiff's Product.

Admit that you are selling the infringing product on multiple online platforms including the online platform identified in this lawsuit.

Accordingly, a Default Judgment pursuant to Rule 55 of the Federal Rules of Civil Procedure as to liability should be entered against the Defaulting Defendants.

### **3. The Damages are Established by the Evidence**

Defendants have also made certain admissions about damages by failing to respond to the *Requests for Admissions* served upon them. *See Malkin Dec.*, ¶ 5. These deemed admissions include the following:

Admit that each month you sold 15,000 units of the Infringing Product;

Admit that the profit per unit of the Infringing Product was at least \$20.00;

Accordingly, a Default Judgment pursuant to Rule 55 of the Federal Rules of Civil Procedure considering the evidence on damages, as discussed below, should be entered against the Defaulting Defendants.

### **4. Plaintiff are Entitled to a Damage Award Under the Patent Act**

This lawsuit is for intentional patent infringement damages. In each lawsuit, Plaintiff is seeking an award of \$1,800,000.00 against each Defendant for their intentional patent infringement over at least a one-month period. *See Aquapaw LLC v. Allnice*, No. 20-1954 (W.D. Pa., July 29, 2022)(Wiegand, J.); *Aquapaw Brands LLC v. Flopet*, No. 21-988 (W.D. Pa., July 29, 2022)(Wiegand, J.); *Aquapaw Brands LLC v. TikToks*, No. 21-696 (W.D. Pa., August 2, 2022)(Wiegand, J); *Doggie Dental, Inc. v AVANTDIGITAL*, No. 21-cv-271 (W.D. Pa., February 23, 2022)(Hornak, CJ); *Doggie Dental, Inc. v CDOFFICE*, No. 21-cv-565 (W.D. Pa., February

23, 2022)(Hornak, CJ); *Doggie Dental, Inc. v Ahui, et al.*, No. 19-cv-1627 (W.D. Pa., Sept. 27, 2021 (Hornak, CJ).

Using the same methodology for calculating damages, Chief Judge Hornak awarded individual judgments of \$2,128,500.00 against patent infringing defendants. *See Doggie Dental, Inc. v AVANTDIGITAL*, No. 21-cv-271 (W.D. Pa., February 23, 2022) (Hornak, CJ); *Doggie Dental, Inc. v CDOFFICE*, No. 21-cv-565 (W.D. Pa., February 23, 2022) (Hornak, CJ); *Doggie Dental v. Ahui*, No. 19-cv-1627 (W.D. Pa., September 27, 2021) (Hornak, CJ). Indeed, this Court has followed this methodology and awarded individual patent judgments of \$1,800,000.00. *Broadway Pine Brands LLC v. Cococity*, No. 22-cv-510 (November 30, 2022)(Ranjan, J); *Broadway Pine Brands LLC v. Mustb Toy Store*, No. 21-cv-1665 (November 30, 2022)(Ranjan, J.); and *Broadway Pine Brands LLC v. Amtoy*, No. 22-cv-358 (November 30, 2022)(Ranjan,J).

Returning to the current case, the claims of Plaintiff's Patent as published were the subject of a first office action allowance. Thus, the allowed claims and published claims were identical and Plaintiff is entitled to damages beginning from at least as early as November 21, 2019 (the publication date). 35 USC § 154(d). The Plaintiff's evidence by way of the screenshots of the Amazon storefronts provided in Composite Exhibit 1 to the Dee Odell Declaration filed in support of the Motion for the Temporary Restraining Order proves that each Defendant offered the Infringing Product for at least one month over the time that Plaintiff purchased the product, filed the lawsuit, and the Third-Party Service Providers confirmed that the listings were suspended and no longer offering Infringing Products.

Thus, as a matter of law, the Defendants intentionally infringed on Plaintiffs' Patent for at least two (2) months. Defendants admitted, by their failure to answer requests for admissions that they sold 15,000 infringing units each month at least \$20.00 profit of infringing unit sales. That

is admitted profits of \$600,000.00 over two months. When that amount is trebled against each Defendant for their admitted intentional infringement, it comes to \$1,800,000.00.

Proving lost profits damages first requires evidence that the infringer's activities directly led to the lost profits. "To recover lost profits damages, the patentee must show a reasonable probability that, 'but for' the infringement, it would have made the sales that were made by the infringer." *Rite-Hite Corp. v. Kelley Co.*, 56 F.3d 1538, 1542 (Fed. Cir. 1995). One way to show the reasonable probability occurred is by applying the "Panduit test: (1) demand for the patented product; (2) absence of acceptable non-infringing substitutes; (3) manufacturing and marketing capability to exploit the demand; and (4) the amount of the profit it would have made." *Rite-Hite Corp. v. Kelley Co.*, 56 F. 3d 1538, 1545 (Fed. Cir. 1995). Here, Plaintiff has offered its testimony by way of declaration plus the admissions of the Defendants in order to meet each of these elements.

In this case, Plaintiff have handily proven each of the elements required to recover lost profits through their patent, claims chart, testimony and the admissions of the Defendants. Defendants have not contested or put forth any evidence to contradict the Plaintiff's damages case as to the infringement of their patent.

Our Courts in this district and this Court have relied, in part, on admissions made though failure to answer in awarding damages against similar counterfeiting and infringing defendants in prior cases. *See Broadway Pine Brands LLC v. Cococity*, No. 22-cv-510 (November 30, 2022)(Ranjan, J); *Broadway Pine Brands LLC v. Mustb Toy Store*, No. 21-cv-1665 (November 30, 2022)(Ranjan, J.); and *Broadway Pine Brands LLC v. Amtoy*, No. 22-cv-358 (November 30, 2022)(Ranjan,J); *Aquapaw LLC v. Allnice*, No. 20-1954 (W.D. Pa., July 29, 2022)(Wiegand, J.); *Aquapaw Brands LLC v. Flopet*, No. 21-988 (W.D. Pa., July 29, 2022)(Wiegand, J); *Aquapaw*

*Brands LLC v. TikToks*, No. 21-696 (W.D. Pa., August 2, 2022)(Wiegand, J); *Doggie Dental, Inc. v AVANTDIGITAL*, No. 21-cv-271 (W.D. Pa., February 23, 2022)(Hornak, CJ); *Doggie Dental, Inc. v CDOFFICE*, No. 21-cv-565 (W.D. Pa., February 23, 2022)(Hornak, CJ); *Doggie Dental, Inc. v Ahui, et al.*, No. 19-cv-1627 (W.D. Pa., Sept. 27, 2021 (Hornak, CJ); *Doggie Dental v. Anywill*, No. 19-cv-682 (W.D. Pa., August 14, 2020)(Hornak, CJ); *Doggie Dental v. Max\_Buy*, 19-746 (W.D. Pa., August 14, 2020) (Hornak, CJ); *Doggie Dental v. Go Well*, 19-1282(W.D. Pa., August 14, 2020) (Hornak, CJ); and *Doggie Dental v. Worthbuyer*, 19-1283 (W.D. Pa., August 14, 2020) (Hornak, CJ). It is submitted that the award sought in this case would achieve the purposes of punishment, deterrence, and parity with similar damage awards. This Court has recognized the importance of all of these points in its prior damage awards. *See id.*

As an example, a deemed admission of over two million dollars (\$2,000,000) or more in profit to be disgorged is not objectively unreasonable. In similar cases in this District the Court has awarded two million dollars (\$2,000,000) in damages or more against each defendant. Such an award serves the public interest in making the misconduct unprofitable, deterring future willful violations, and achieving parity in damage awards in this District. *See Broadway Pine Brands LLC v. Cococity*, No. 22-cv-510 (November 30, 2022)(Ranjan, J); *Broadway Pine Brands LLC v. Mustb Toy Store*, No. 21-cv-1665 (November 30, 2022)(Ranjan, J.); and *Broadway Pine Brands LLC v. Amtoy*, No. 22-cv-358 (November 30, 2022)(Ranjan,J); *Aquapaw LLC v. Allnice*, No. 20-1954 (W.D. Pa., July 29, 2022)(Wiegand, J.); *Aquapaw Brands LLC v. Flopet*, No. 21-988 (W.D. Pa., July 29, 2022)(Wiegand, J); *Aquapaw Brands LLC v. TikToks*, No. 21-696 (W.D. Pa., August 2, 2022)(Wiegand, J); *Doggie Dental, Inc. v AVANTDIGITAL*, No. 21-cv-271 (W.D. Pa., February 23, 2022)(Hornak, CJ); *Doggie Dental, Inc. v CDOFFICE*,

No. 21-cv-565 (W.D. Pa., February 23, 2022)(Hornak, CJ); *Doggie Dental, Inc. v Ahui, et al.*, No. 19-cv-1627 (W.D. Pa., Sept. 27, 2021 (Hornak, CJ); *See Doggie Dental v. Anywill*, No. 19-cv-682 (W.D. Pa., August 14, 2020) (Hornak, CJ); *Doggie Dental v. Max\_Buy*, 19-746 (W.D. Pa., August 14, 2020) (Hornak, CJ); *Doggie Dental v. Go Well*, 19-1282 (W.D. Pa., August 14, 2020) (Hornak, CJ); and *Doggie Dental v. Worthbuyer*, 19-1283 (W.D. Pa., August 14, 2020) (Hornak, CJ). *See Airigan Solutions, LLC v. Belvia*, No. 20-cv-284 (W.D. Pa., April 21, 2020) (Schwab, J.) (\$2 million in damages against each defendant) [ECF No. 34]; *Airigan Solutions, LLC v. Abigail*, No. 19-cv-503 (W.D. Pa., Aug 13, 2019) (Fischer, J.) (same) [ECF No. 52], *Rapid Slicer LLC v. Art-House*, No. 19-411 (W.D. Pa., Jan. 9, 2020) (Horan, J.) (same) [ECF No. 44].

In short, since Plaintiff has proven at least one month of admitted damages, the total amounts having been supported by the fact and the law, the total damages awarded against each Defendant should be \$1,800,000.00.

### **5. Plaintiff is Entitled to Permanent Injunctive Relief**

In addition to the foregoing relief, Plaintiff seeks entry of a permanent injunction enjoining Defaulting Defendants from infringing or otherwise violating Plaintiff's rights in its patent product, including at least all injunctive relief previously awarded to by this Court to Plaintiff in the temporary restraining order and preliminary injunction. 35 U.S.C. § 283 and Federal Rule of Civil Procedure 65. Plaintiff are also entitled to injunctive relief so they can take prompt action against any new online marketplace accounts or websites that are identified, found to be linking to Defendants, and selling Infringing Product. The injunctive relief ordering storefronts selling infringing products taken down ensures that "zombie" sales (sales of infringing products from prior restrained storefronts) cannot take place using that storefront's electronic

communications and processing in the future. This relief has been approved such relief in prior cases. *See Broadway Pine Brands LLC v. Cococity*, No. 22-cv-510 (November 30, 2022)(Ranjan, J); *Broadway Pine Brands LLC v. Mustb Toy Store*, No. 21-cv-1665 (November 30, 2022)(Ranjan, J.); and *Broadway Pine Brands LLC v. Amtoy*, No. 22-cv-358 (November 30, 2022)(Ranjan,J); *Aquapaw LLC v. Allnice, No. 20-1954 (W.D. Pa., July 29, 2022)(Wiegand, J.)*; *Aquapaw Brands LLC v. Flopet, No. 21-988 (W.D. Pa., July 29, 2022)(Wiegand, J)*; *Aquapaw Brands LLC v. TikToks, No. 21-696 (W.D. Pa., August 2, 2022)(Wiegand, J)*; *Doggie Dental, Inc. v AVANTDIGITAL*, No. 21-cv-271 (W.D. Pa., February 23, 2022)(Hornak, CJ); *Doggie Dental, Inc. v CDOFFICE*, No. 21-cv-565 (W.D. Pa., February 23, 2022)(Hornak, CJ); *See Doggie Dental v. Ahui*, No. 19-cv-1627 (W.D. Pa., September 27, 2021 (Hornak, CJ)); *See Doggie Dental v. Anywill*, No. 19-cv-682 (W.D. Pa., August 14, 2020)(Hornak, CJ); *Doggie Dental v. Max\_Buy*, 19-746 (W.D. Pa., August 14, 2020) (Hornak, CJ); *Doggie Dental v. Go Well*, 19-1282(W.D. Pa., August 14, 2020) (Hornak, CJ); and *Doggie Dental v. Worthbuyer*, 19-1283 (W.D. Pa., August 14, 2020) (Hornak, CJ).

A permanent injunction, like the trebled lost profit damages, would help deter other individuals or corporations from infringing Plaintiff's valuable patent rights. Additionally, entry of a permanent injunction against Defendants in these cases will help expedite any future litigations between the Defaulting Defendants and Plaintiff, if a case between the parties arises in the future. This equitable result would be in the interest of justice and provide Plaintiff with more flexibility to protect its intellectual property rights. As such, permanent injunctions are routinely entered by other Courts in similar counterfeiting cases. *See Broadway Pine Brands LLC v. Cococity*, No. 22-cv-510 (November 30, 2022)(Ranjan, J); *Broadway Pine Brands LLC v. Mustb Toy Store*, No. 21-cv-1665 (November 30, 2022)(Ranjan, J.); and *Broadway Pine Brands*

*LLC v. Amtoy*, No. 22-cv-358 (November 30, 2022)(Ranjan,J); *Aquapaw LLC v. Allnice*, No. 20-1954 (W.D. Pa., July 29, 2022)(Wiegand, J.); *Aquapaw Brands LLC v. Flopet*, No. 21-988 (W.D. Pa., July 29, 2022)(Wiegand, J); *Aquapaw Brands LLC v. TikToks*, No. 21-696 (W.D. Pa., August 2, 2022)(Wiegand, J); *Doggie Dental, Inc. v Ahui, et al.*, No. 19-cv-1627 (W.D. Pa., Sept. 27, 2021 (Hornak, CJ); *Doggie Dental v. Anywill*, No. 19-cv-682 (W.D. Pa., August 14, 2020)(Hornak, CJ); *Doggie Dental v. Max\_Buy*, 19-746 (W.D. Pa., August 14, 2020) (Hornak, CJ); *Doggie Dental v. Go Well*, 19-1282(W.D. Pa., August 14, 2020) (Hornak, CJ); and *Doggie Dental v. Worthbuyer*, 19-1283 (W.D. Pa., August 14, 2020) (Hornak, CJ); *Airigan Solutions, LLC v. Belvia*, No. 20-cv-284 (W.D. Pa., April 21, 2020) (Schwab, J.) [ECF No. 34]; *Rapid Slicer LLC v. Art-House*, No. 19-411 (W.D. Pa., Jan. 9, 2020) (Horan, J.) [ECF No. 44]; and *Airigan Solutions, LLC v. Abagail*, No. 19-cv-503 (W.D. Pa., Aug 13, 2019) (Fischer, J.) [ECF No. 52].

**6. Plaintiff Request That This Court Order the Transfer to Them of Remaining Assets in Defaulting Defendants' Accounts**

Plaintiff requested a temporary restraining order and preliminary injunction, *inter alia*, to prevent Defaulting Defendants from transferring the funds held in their Third-Party Service Provider(s) and Financial Institution(s) accounts beyond this Court's jurisdiction. This Court granted the temporary restraining order and preliminary injunction, preventing Defendants from accessing the funds in their Third-Party Service Provider(s) and Financial Institution(s) accounts. This Court found that Plaintiff had established a likelihood of success on the merits and irreparable harm in the absence of a temporary restraining order and preliminary injunction.

Plaintiff now request that this Court order the Third-Party Service Provider(s) and Financial Institution(s) to transfer to Plaintiff the assets currently held in the defaulting

Defendants' Third-Party Service Provider(s) and Financial Institution(s) accounts in partial payment of any award of damages. In the absence of such an Order, it is likely that Plaintiff will be left without any effective means by which to collect from Defendants any monetary judgment entered by this Court. As explained, previously, Defendants and any assets they own, other than those held in their respective Third-Party Service Provider(s) and Financial Institution(s) accounts, are presumably located in China. There is no bilateral treaty or multilateral convention in force between the United States and any other country on reciprocal recognition and enforcement of judgments. Moreover, as explained in some detail previously, Defendants are involved in illegal counterfeiting operations and go to great lengths to conceal their identities and whereabouts. As a result, even in the unlikely event that Plaintiff could enforce a U.S. judgment in the Chinese courts, it will be virtually impossible to locate Defendants or any assets they may hold in order to satisfy any monetary damages awarded in this case.

Such orders are routinely entered by this Court to satisfy monetary judgment awards in similar counterfeiting cases. *See Broadway Pine Brands LLC v. Cococity*, No. 22-cv-510 (November 30, 2022)(Ranjan, J); *Broadway Pine Brands LLC v. Mustb Toy Store*, No. 21-cv-1665 (November 30, 2022)(Ranjan, J.); and *Broadway Pine Brands LLC v. Amtoy*, No. 22-cv-358 (November 30, 2022)(Ranjan,J); *Aquapaw LLC v. Allnice*, No. 20-1954 (W.D. Pa., July 29, 2022)(Wiegand, J.); *Aquapaw Brands LLC v. Flopet*, No. 21-988 (W.D. Pa., July 29, 2022)(Wiegand, J); *Aquapaw Brands LLC v. TikToks*, No. 21-696 (W.D. Pa., August 2, 2022)(Wiegand, J); *Doggie Dental, Inc. v AVANTDIGITAL*, No. 21-cv-271 (W.D. Pa., February 23, 2022)(Hornak, CJ); *Doggie Dental, Inc. v CDOFFICE*, No. 21-cv-565 (W.D. Pa., February 23, 2022)(Hornak, CJ); *Doggie Dental, Inc. v Ahui, et al.*, No. 19-cv-1627 (W.D. Pa., Sept. 27, 2021 (Hornak, CJ); *Doggie Dental v. Anywill*, No. 19-cv-682 (W.D. Pa., August 14,

2020)(Hornak, CJ); *Doggie Dental v. Max\_Buy*, 19-746 (W.D. Pa., August 14, 2020) (Hornak, CJ); *Doggie Dental v. Go Well*, 19-1282(W.D. Pa., August 14, 2020) (Hornak, CJ); and *Doggie Dental v. Worthbuyer*, 19-1283 (W.D. Pa., August 14, 2020) (Hornak, CJ); *Airigan Solutions, LLC v. Belvia*, No. 20-cv-284 (W.D. Pa., April 21, 2020) (Schwab, J.) [ECF No. 34]; *Rapid Slicer LLC v. Art-House*, No. 19-411 (W.D. Pa., Jan. 9, 2020) (Horan, J.) [ECF No. 44]; and *Airigan Solutions, LLC v. Abigail*, No. 19-cv-503 (W.D. Pa., Aug 13, 2019) (Fischer, J.) [ECF No. 52]. See also *Eye Safety Sys., Inc. v. The Partnerships and Unicorporated Ass'ns. Identified in Schedule "A"*, Case No. 18-cv-00034 (N.D. Ill. Mar. 1, 2018) (ordering PayPal to transfer defendants' funds to Plaintiff as partial satisfaction of judgment) [ECF No. 41]; *Yeti Coolers, LLC v. Taneil George*, Case No. 17-cv-62215 [ECF No. 46] (S.D. Fl. Mar. 29, 2018) (same).

#### **IV. CONCLUSION**

For the foregoing reasons, Plaintiff respectfully requests that the Court grant their Motion for Default Judgment and Permanent Injunction; enter judgment against Defendants for patent infringement (Count I); permanently enjoin Defendants; award Plaintiff trebled lost profits consistent with 35 U.S.C. § 284; award Plaintiff pre-judgment interest on the above damage awards; and grant such further relief as this Court deems appropriate. Plaintiff additionally requests that this Court order the Third-Party Service Provider(s) and Financial Institution(s) to transfer Defendants' assets held by the Third-Party Service Provider(s) and Financial

Institution(s) to Plaintiff in partial payment of any default judgment entered against Defendants.

Respectfully submitted,

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