

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA**

NICOLAS HOLIDAY, INC.)	
a British Virgin Islands corporation,)	
)	
Plaintiff,)	
)	Civil Action No. <u>3:13-877-CMC</u>
v.)	
)	
1 ENERGY SOLUTIONS, INC.)	
a California corporation,)	(JURY TRIAL DEMANDED)
)	
Defendant.)	
_____)	

COMPLAINT FOR DECLARATORY JUDGMENT

COMES NOW Plaintiff Nicolas Holiday, Inc. (“Nicolas Holiday”), by and through its attorneys, and hereby states the following for its Complaint for Declaratory Judgment against 1 Energy Solutions, Inc. (“Energy Solutions”):

Nature of the Action

1. This Complaint is an action 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.* for a judgment declaring the claims of United States Patent No. RE 43890 (“the ‘890 Patent”) invalid, and not infringed by Nicolas Holiday. A true and correct copy of the ‘890 Patent is attached hereto as *Exhibit A*.

The Parties

2. Nicolas Holiday is a corporation organized and existing under the laws of the British Virgin Islands with a principal place of business in Taipei, Taiwan.

3. Energy Solutions is a corporation organized under the laws of California and having its principal place of business in El Monte, California.

Jurisdiction and Venue

4. This Court has subject matter jurisdiction over this action pursuant to the Declaratory Judgment Act, 28 U.S.C §§2201 and 2202, and under 38 U.S.C. §1338(a).

5. Venue is proper in this judicial jurisdiction pursuant to 28 U.S.C. §1391(b) and §1400.

Acts Giving Rise to the Complaint

6. U.S. Patent No. 7,045,965 (the '965 Patent) was issued on May 16, 2006. This patent disclosed a lighting module having improved reliability using LEDs connected in parallel for use in light strings (Christmas lights), as well as a method for making the module and light strings. A true and correct copy of the '965 Patent is attached hereto as *Exhibit B*.

7. Since at least 2008, Nicolas Holiday has made, used, offered for sale and sold various light string sets, including the *Energy Smart LED C-5* light string (Product Code 97505HD) and the *Energy Smart 50 LED Colorite Miniature Lights* light string (Product Code 97116HD).

8. More than two (2) years after the grant of the '965 Patent, a reissue application of the '965 Patent was filed on October 6, 2011.

9. On January 1, 2013, this reissue application matured into the '890 Patent.

10. A review of the file history of the '890 Patent and a comparison of the claims of the '890 Patent to the claims of the '965 Patent reveals that new matter was introduced and the claims of the '890 Patent are broader than those of the '965 Patent.

11. In the intervening six and one-half (6 1/2) years between issuance of the '965 Patent and reissuance of the '890 Patent, Nicolas Holiday made substantial preparations for the continued manufacture, use, offer for sale, and sale of its light strings

12. Approximately two (2) weeks after reissuance, Energy Solutions sent letters to customers and a trademark licensor of Nicolas Holiday claiming that light strings made and sold by Nicolas Holiday infringed the claims of the '890 Patent.

Exhibit C.

13. Energy Solutions has asserted that the '890 Patent is not invalid and is infringed by Nicolas Holiday (and its customers), while Nicolas Holiday contends that this patent is invalid, not infringed by Nicolas Holiday or its customers, and cannot be properly asserted against Nicolas Holiday or its customers. Energy Solutions' assertion of validity, combined with Energy Solutions' threats to sue Nicolas Holiday and its customers for patent infringement, have given Nicolas Holiday a reasonable apprehension that Energy Solutions would sue for patent infringement. Accordingly, the aforesaid actions, accusations, and demands by Energy Solutions have given rise to an actual and justiciable controversy within the jurisdiction of this Court concerning the non-infringement and invalidity of the '890 Patent pursuant to 28 U.S.C. §§ 2201 and 2202.

14. A judicial declaration is necessary and appropriate in order to resolve this controversy.

COUNT I
(Declaratory Judgment of Non-Infringement)

15. Nicolas Holiday incorporates herein by reference Paragraphs 1 through 14 of this Complaint as if set forth in full.

16. Nicolas Holiday has not and does not infringe any claims of the '890 Patent through its products, processes, systems or activities alone or in connection with any other products, processes, systems, services or activities of others. Any claims of this Patent that are not invalid are so restricted in scope that Nicolas Holiday has not and does not infringe such claims through its products, processes, systems or activities alone or in combination with any other products, processes, systems, services or activities of others.

17. Nicolas Holiday does not contribute and has not contributed to the infringement of any valid or enforceable claim of the '890 Patent, and does not induce and has not induced the infringement of any valid or enforceable claim of the '890 Patent, either literally or under the doctrine of equivalents, through its products, processes, services or activities alone or in combination with any other products, services or activities of others.

COUNT II
(Declaratory Judgment of Invalidity)

18. Nicolas Holiday hereby incorporates herein by reference Paragraphs 1 through 17 of the Complaint as if set forth in full.

19. Each claim of the '890 Patent is invalid because of its failure to meet the conditions of patentability and to comply with the requirements of Title 35 of the United States Code, including 35 U.S.C. §§ 101, 102, 103, 112, and/or 251.

COUNT III

(Declaratory Judgment under 35 USC §252)

20. Nicolas Holiday hereby incorporates herein by reference Paragraphs 1 through 19 of the Complaint as if set forth in full.

21. Nicolas Holiday may continue to manufacture, use, offer for sale, sell, or import its light strings, which light strings were made, used, offered for sale, sold, and imported prior to the issuance of the '890 Patent.

PRAYER FOR RELIEF

WHEREFORE, Nicolas Holiday prays for the entry of judgment:

- a. Declaring that Nicolas Holiday has not and does not infringe any claims of the United States Patent RE 43890;
- b. Declaring that each claim of United States Patent RE 43890 is invalid and/or unenforceable;
- c. Declaring that Nicolas Holiday may continue to make, use, offer for sale, sell, and import its light strings as it did prior to issuance of United States Patent RE 43890;
- d. Declaring that this case is exceptional pursuant to 35 U.S.C. §285 and awarding Nicolas Holiday its reasonable attorney's fees, expenses and costs incurred in this action; and

- e. Awarding to Nicolas Holiday such other and further relief as may be just and proper.

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