

IN THE UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

Case No.: 15-CIV-61933-BLOOM/Valle

GLOBAL TECH LED, LLC,  
a Florida Limited Liability Company

Plaintiff,

v.

EVERY WATT MATTERS, LLC,  
a Florida Limited Liability Company,  
DRK ENTERPRISES, INC., a Colorado  
Corporation, and Dwayne R. Kula, an individual,

Defendants.

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**PLAINTIFF'S SECOND AMENDED COMPLAINT**

Plaintiff, GLOBAL TECH LED, LLC (hereinafter "Plaintiff") files this Second Amended Complaint for willful patent infringement against Defendants EVERY WATT MATTERS, LLC (hereinafter "EWM"), a Florida Limited Liability Company, DRK ENTERPRISES, INC. (hereinafter "DRK"), a Colorado Corporation, and Dwayne Kula (hereinafter "Kula"), an individual (collectively the "Defendants"), pursuant to this Court's Order (D.E. 50) granting leave for the same, and alleges as follows:

**JURISDICTION, VENUE, AND THE PARTIES**

1. Plaintiff, Global Tech LED, LLC, is a Florida limited liability company with its principal offices located at 8901 Quality Road, Bonita Springs, FL 34135, and is otherwise *sui juris*.

2. Defendant EWM is a Foreign Florida Limited Liability Company with its principal place of business at 3011 NW Luray Circle, Portland, OR 97210, having a registered agent located within this judicial district at 114 Banyan Isle Dr., Palm Beach Gardens, FL 33418, and is, for the reasons set forth below, subject to the jurisdiction of this Court; Defendant EWM is owned, operated, or controlled by at least one officer by the name of Dwayne R. Kula, having an address of 28 Lambie Circle, Portsmouth, RI 02871.

3. Upon information and belief and at all times material to this action, Defendant Kula was and is over the age of 18 and otherwise *sui juris*.

4. Defendant DRK is a Colorado corporation, with its principal place of business at 28 Lambie Circle, Portsmouth, RI 02871, the same address of Defendant EWM's officer Dwayne Kula, and is, for the reasons set forth below, subject to the jurisdiction of this Court.

5. Upon information and belief, Defendant DRK has been owned, operated, and/or controlled by Dwayne Kula, who is and has been the president of DRK, since at least 2010.

6. Defendants are all involved, directly or indirectly, in the manufacturing, distribution, sale, use, and/or offering for sale of LED lamp products, including those offered under the commercial designations of “LED Retrofit Kits” or “LED Retro Kits” that vary in wattages (hereinafter the “Accused Products”) in the United States, including in this judicial district.

7. Upon information and belief, based on their mutual control and/or ownership by Defendant Kula, Defendants have sourced or received their respective Accused Products from the same manufacturer or have used, offered for sale, and/or sold their respective Accused Products under different product codes, while said respective Accused Products are equivalent in structure.

8. Upon information and belief, at all times material hereto, Defendants were and are engaged in the solicitation or service of activities within this judicial district, and, upon further information and belief, Defendants, directly or indirectly through agents or representatives, distributed the Accused Products in the United States, including within this judicial district.

9. Defendant DRK operates and/or transacts business, at least in part, under the trade name and domain [www.myledlightingguide.com](http://www.myledlightingguide.com) (hereinafter “DRK Domain”), and Defendant DRK and the DRK Domain are owned and/or operated by Defendant EWM’s officer Dwayne Kula.

10. Defendant EWM operates and/or transacts business, at least in part, under the domain [www.everywattmatters.com](http://www.everywattmatters.com) (hereinafter “EWM Domain”).

11. Defendants are all involved, directly or indirectly, in the advertising or distribution of pamphlets, articles, or other media offering for sale and/or selling for sale LED lamp products, including the Accused Products, to actual and prospective consumers located in the United States, including within this judicial district.

12. Upon information and belief, Defendants both have the Accused Products manufactured, made, or distributed to them by the same entity and/or person for resale, distribution, and/or offering for sale.

13. This action arises under the patent laws of the United States, Title 35, United States Code, and is a claim for damages and injunctive relief pursuant to sections 281 and 283-85 of that Title.

14. Jurisdiction of this Court over this action is based on 28 U.S.C. § 1338. Venue properly lies with the Southern District of Florida pursuant to the provisions of 28 U.S.C. § 1391.

15. Plaintiff is the owner of United States Patent No. 9,091,424 (“the ’424 Patent”). A copy of the ’424 Patent is attached to this Complaint as Exhibit A.

16. GKM Holdings, Inc. and Jeffrey Jay Newman, Inc. are the managing members of Plaintiff Global Tech LED Holdings, LLC.

17. GKM Holdings, Inc. and Jeffrey Jay Newman, Inc. are also managing members of Global Tech LED, LLC, an entity which sells LED lighting covered under the '424 Patent.

18. Mart and Newman assigned all of their ownership rights in the '424 Patent to Global Tech LED Holdings, and Global Tech LED Holdings then transferred all such rights to Plaintiff, Global Tech LED, LLC, before the filing of this lawsuit.

### **GENERAL ALLEGATIONS**

19. On December 3, 2010, Gary K. Mart (hereinafter "Mart") and Jeffrey Newman (hereinafter "Newman") filed U.S. Patent Application Serial No. 12/996,221 (hereinafter "the '221 Application"). On March 17, 2015, the '221 Application issued into U.S. Patent No. 8,979,304 ("the '304 Patent"), wherein Mart and Newman were named inventors on the '304 Patent.

20. On December 31, 2012, Mart and Newman filed U.S. Patent Application Serial No. 13/731,224 (hereinafter "the '224 Application"). The '224 Application was a continuation application of the '221 Application (also known as the "parent application"). On July 28, 2015, the '224 Application issued into the '424 Patent, entitled "LED Light Bulb." Exhibit A.

21. Before the filing of this action, Defendants DRK and EWM engaged the same attorney to represent both of them, simultaneously, in intellectual property matters.

22. Upon information and belief, on January 16, 2013, Defendants, directly or indirectly through their shared intellectual property counsel, electronically filed within the file wrapper of the parent application (the '221 Application) what is known as a "third-party submission" under 37 C.F.R. § 1.290.

23. This third-party submission challenged the validity of the claims of the '221 Application with various patent and patent application publication references. In spite of the third-party submission and the references cited therein, the United States Patent and Trademark Office ("USPTO") allowed the '221 Application, which resulted in the issuance of the '304 Patent.

24. EWM had knowledge of the issuance of the '304 Patent, including, at or after the time of issuance of the '304 Patent, but before the filing of this action, and understood the scope of the claims contained within the '304 Patent.

25. EWM also had knowledge of the issuance of the '424 Patent, including, at or after the time of issuance of the '424 Patent, but before the filing of this action, and understood the scope of the claims contained within the '424 Patent.

26. DRK also had knowledge of the issuance of the '304 Patent, including, at or after the time of issuance of the '304 Patent, but before the filing of this action, and understood the scope of the claims contained within the '304 Patent.

27. DRK had knowledge of the issuance of the '424 Patent, including, at or after the time of issuance of the '424 Patent, but before the filing of this action, and understood the scope of the claims contained within the '424 Patent.

28. Upon information and belief, EWM had knowledge of the respective patent applications that matured into the '304 Patent and the '424 Patent, including the filing and rejection of the third-party submission in the '221 Application.

29. Upon information and belief, DRK had knowledge of the patent applications that matured into the '304 Patent and the '424 Patent, including the filing and rejection of the third-party submission in the '221 Application.

30. Demonstrating the attention Defendants' pay to Plaintiff's patent portfolio, including the '424 Patent, Defendants used, sold, and offered for sale retrofit LED products, before March 17, 2015, that electrically connected the LEDs and/or fan of the LED products to a connector of the LED products, which was a recited feature of the claims of the '304 Patent. In an attempt to avoid infringement of the '304 Patent, Defendants modified their respective LED

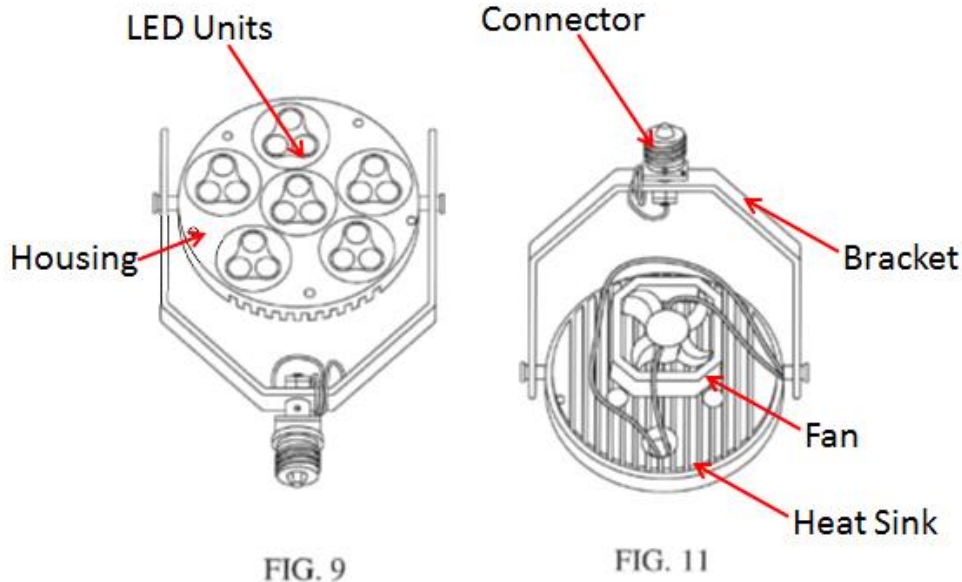
products to bypass electrical connection from the connector to the LEDs and/or fan.

31. The '424 Patent contains 20 total claims, wherein 3 of said claims are independent claims. *See* Exhibit A.

32. The '424 Patent is in force and enjoys a presumption of validity, pursuant to 35 U.S.C. § 282.

33. The claims of the '424 Patent inure economic benefit to the Plaintiff as Plaintiff makes, uses, sells, and/or offers for sale LED lamps that are the same or substantially similar to those LED lamps claimed in the '424 Patent.

34. Immediately below are annotated FIGS. 9 and 11 from the '424 Patent, which depict an exemplary illustration of the invention embodied by the claims of the '424 Patent. Annotated FIGS. 9 and 11 also depict features recited by the claims of the '424 Patent.





35. Plaintiff and Defendants are competitors in the marketplace.

36. Defendants are also in the business of manufacturing, distributing, offering for sale, and/or selling in the United States LED lamps, which include the Accused Products.

37. At all times material hereto, Defendants sold, offered for sale, and used or induced others, including retailers or distributors, to use, sell, or offer for sale (with knowledge of the '424 Patent—including its claim scope—and having the intent to infringe the same) Accused Products that include, but may not be necessarily limited to, LED Retrofit Kits or LED Retro Kits used, sold, and offered for sale by: (1) Defendant DRK under the part numbers “MLLG-GI-LED-RETRO” and “MLLG-RETRO4” and (2) Defendant EWM under the part numbers “RK-SM-03-MEN-C120,” “RK-SM-04-MEN-C120,” “RK-SM-06-MEN-C120,” “RK-MD-07-MEN-C120,” “RK-MD-10-MEN-C120,” “RK-MD-12-MEN-C120,” “RK-LG-15-MEN-C120,” “RK-XL-28-MEN-C120,” “RX-XL32-MEN-C120,” and “RK-XL-35-MEN-C120.”

38. Attached hereto as Exhibit B, which is incorporated herein by reference, is a claim chart comparing the asserted claims of the '424 Patent with the below-identified Accused Products of the respective Defendants DRK and EWM.

39. For example, with respect to Defendant DRK and the Accused Product identified as MLLG-GI-LED-RETRO, depicted by the images immediately below—one of which is annotated for comparison with the claims of the '424 Patent (see Exhibit B), at all times material to this action said Accused Product was used, sold, and/or offered for sale by Defendant DRK *inter alia* through the DRK Domain.



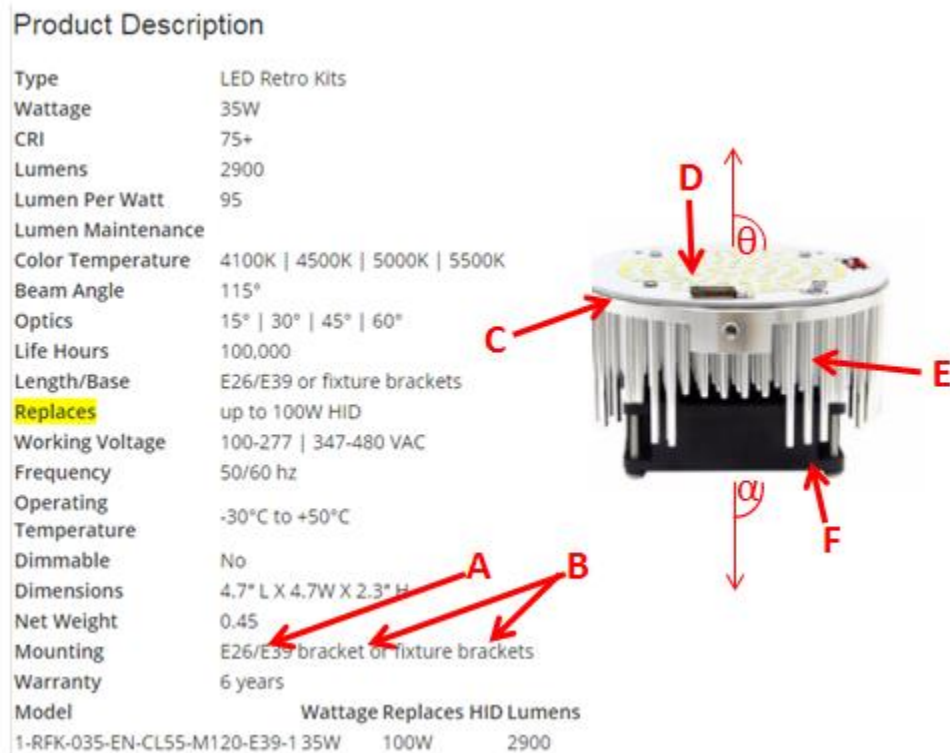
Type	LED Retro Kit
Wattage	35W
CRI	> 80
Lumens	2900
Lumen Per Watt	95
Replaces	up to 100W HID (Metal Halide, HPS, Mercury Vapor) **
Color Temperature	4100K   4500K   5000K   <b>5500K</b>
Beam Angle	115°
Optics	15°   30°   45°   60°
Life Hours	100,000
Working Voltage	<b>120-277</b>   347-480
Frequency	50 / 60 Hz
Operating Temperature	-40°C to +60°C
Dimmable	Yes (0-10V)
Dimensions	4.7" L x 4.7" W x 3.0" H
Net Weight	2.5 lbs
Driver	External Meanwell Driver - UL and cUL approved
Base	E26   E39
Mounting	Bracket mounting system or custom fabricated plates to fit most any HID fixture.
Warranty	8 years

40. Like the Accused Product identified by part number MLLG-GI-LED-RETRO, at all times material hereto Defendant DRK also used, sold, and/or offered for sale the Accused Product identified as MLLG-RETRO4, which includes all of the identified features and elements depicted for MLLG-GI-LED-RETRO used for comparison with the claims of the '424 Patent (as shown in Exhibit B).

41. Upon information and belief, Defendant Kula, as the principal officer and/or owner of Defendant DRK, was the controlling, motivating, directing, and/or authorizing force behind Defendant DRK's decision to use, sell, and/or offer for sale the Accused Products of Defendant DRK.

42. For example, and with respect to Defendant EWM and the Accused Product identified as RK-SM-03-MEN-C120 (previously identified by Defendants

as “RFK-035-EN-CL55-M120”), depicted by the images immediately below—one of which is annotated for comparison with the claims of the ’424 Patent (see Exhibit B), at all times material to this action said Accused Product was used, sold, and/or offered for sale by Defendant EWM *inter alia* through the EWM Domain.



43. Like the Accused Product sold under part number RK-SM-03-MEN-C120, at all times material hereto Defendant DRK used, sold, and/or offered for sale the Accused Products identified as RK-SM-04-MEN-C120, RK-SM-06-MEN-C120, RK-MD-07-MEN-C120, RK-MD-10-MEN-C120, RK-MD-12-MEN-C120, RK-LG-15-MEN-C120, RK-XL-28-MEN-C120, RX-XL32-MEN-C120, and RK-XL-35-MEN-C120, which include all of the identified features and elements

depicted for RK-SM-03-MEN-C120 used for comparison with the claims of the '424 Patent (as shown in Exhibit B).

44. Upon information belief, Defendants had knowledge of the claims of the '424 Patent before and after it issued into a patent, including the knowledge that their respective use, sale, and offering for sale of their respective Accused Products would be infringing the claims of the '424 Patent after issuance; yet, Defendants continued to use, sell, and offer for sale their respective Accused Products after issuance of the '424 Patent, in addition to inducing third-parties, such as retailers, to resell, distribute, or use their knowingly infringing respective Accused Products. Defendants also continued to use, sell, and offer for sale their respective Accused Products after issuance of the '424 Patent to end-users who used their knowingly infringing respective Accused Products.

45. Upon information and belief, Defendants advised resellers and end-users, in written instructions or installation manuals and/or verbally, how to use and install their respective Accused Products in an infringing manner, including, (1) when Defendants sold any LED housing(s) with all components attached thereto, i.e., LEDs, heat sink, fan, the recommendation and/or requirement to incorporate the use of a bracket (configured to be rotatably coupled with respect to the LED housing(s)) with a male screw base connector to attach the LED housing(s) to a light fixture receptacle or (2) when Defendants sold any LED

housing(s) with all components attached thereto, i.e., LEDs, heat sink, fan, and a bracket (configured to be rotatably coupled with respect to the LED housing(s)) without a connector, the recommendation and/or requirement to incorporate the use of a male screw base connector that attached to an end of the bracket that is used to attach the LED housing(s) to a light fixture receptacle.

46. Upon information and belief, Defendants continue to make, sell, offer for sale, use, and/or have, directly or indirectly, unjustly received and retained profits from the Accused Products in the United States.

47. Upon information and belief, Defendants were, and are currently actively inducing others to use, sell, or offer for sale the Accused Products in the United States.

48. Upon information and belief, Defendants were, and are currently actively contributing to third parties' ability to use, sell, and offer for sale the Accused Products in the United States.

49. On August 21, 2015, Defendants EWM and DRK received notice, through their counsel, of directly and indirectly infringing the '424 Patent by their sale, offering for sale, and/or use of the Accused Products. *See* Exhibit C. Despite this August 21, 2015, notice Defendants continued to use, sell, and offer for sale the Accused Products in the United States, knowing of their infringing nature.

50. The Defendants do not have a license, sub-license or other authorization from the Plaintiff to make, use, sell, offer to sell, or offer to sell the Accused Products or any product which reads on the claims of the '424 Patent in the United States.

51. Plaintiff has suffered damages, lost profits and other economic harm as a direct and proximate result of Defendants' infringement of the '424 Patent.

52. Plaintiff has and continues to suffer irreparable harm each day Defendants' infringement is permitted to continue.

53. Plaintiff has no adequate remedy at law.

54. Justice and the balance of the equities favor entry of preliminary and permanent injunctive relief restraining and enjoining Defendants, and those acting in concert with them, or at their direction, from making, using, selling, or offering for sale products that infringe upon the '424 Patent.

55. Plaintiff has satisfied all applicable prerequisites to suit, and all conditions subsequent to suit, if any, have either been satisfied, waived or have occurred.

56. As a direct and proximate result of Defendants' actions, Plaintiff has been forced to incur litigation costs and fees and to retain the undersigned law firm to represent them in this action and have agreed to pay said attorneys a reasonable fee for their services.

**COUNT I - WILLFUL DIRECT PATENT INFRINGEMENT**  
(against all Defendants)

57. Plaintiff realleges and revers paragraphs one (1) through fifty six (56) as if fully set forth herein.

58. This is an action for direct patent infringement pursuant to Title 35, United States Code, Section 271(a), of the United States Patent Act.

59. Defendants have infringed, and continue to infringe, claims 1-8, 10, 12-20 of the '424 Patent by, *at least*, making, using, selling, or offering for sale, one or more of the Accused Products.

60. Specifically, Defendants have infringed, literally and under the doctrine of equivalents, claims 1-8, 10, 12-20 of the '424 Patent by using, making, selling, and offering to sell LED lamps, including one or more of the Accused Products, that read on the claims 1-8, 10, 12-20 as set forth in the '424 Patent (see Exhibit B).

61. All such infringing conduct of Defendants has occurred and was committed in a willful manner.

62. Defendants' actions have caused and continue to cause irreparable harm to Plaintiff to which there is no adequate remedy at law.

63. Defendants' conduct in this instance is exceptional, and, as such, Plaintiff should be entitled to recover its attorneys' fees in this action pursuant to



35 USC § 285 which provides that the “court in exceptional cases may award reasonable attorney fees to the prevailing party.”

WHEREFORE, Plaintiff Global Tech LED, LLC, by and through the undersigned, hereby respectfully demands judgment against Defendants EWM, DRK, and Kula, said judgment which should include provisions:

- a) temporarily and permanently enjoining EVERY WATT MATTERS, LLC and DRK ENTERPRISES, INC., and all of those acting in concert with them, including, but not limited to, their agents, affiliates, subsidiaries, officers, directors, attorneys and employees from using, making, selling, or offering to sell the Accused Products, and all colorable imitations thereof;
- b) compensating Plaintiff for the full amount of damages sustained, including, but not limited to, any and all damage remedies available pursuant to the Patent Laws of the United States, 35 U.S.C. §§ 271, *et. seq.*, which include, but are not limited to, lost profits and a reasonable royalty award;
- c) declaring this case exceptional and trebling all damages awarded to Plaintiff;

- d) imposition of all pre- and post-judgment interest at the maximum allowable rate on the full compensatory and trebled amount awarded to Plaintiff;
- e) awarding remuneration of all attorneys' fees, costs and expenses for Plaintiff having to investigate, prepare and prosecute this action; and
- f) for such further and additional relief this Court deems just and proper under the circumstances.

**COUNT II - WILLFUL INDIRECT PATENT INFRINGEMENT**  
(against all Defendants)

64. Plaintiff realleges and revers paragraphs one (1) through fifty six (56) as if fully set forth herein.

65. This is an action for indirect patent infringement pursuant to Title 35, United States Code, Section 271(b)-(c), of the United States Patent Act.

66. Defendants have induced infringement of at least claims 1-8, 10, 12-20 of the '424 Patent by, *at least*, actively selling or otherwise disseminating, with knowledge of the '424 Patent, one or more of the Accused Products to third parties who directly infringe (see Exhibit B) claims 1-8, 10, 12-20 of the '424 Patent by their resale, sale, and/or use of the Accused Products.

67. Defendants have also induced infringement of at least claims 1-8, 10, 12-20 of the '424 Patent by having one or more of their distributors and other entities use, sell or offer for sale the Accused Products with knowledge of the '424

Patent, including its claims, and knowledge and intent that the use of said one or more distributors and other entities and individuals was directly infringing (see Exhibit B) at least claims 1-8, 10, 12-20 of the '424 Patent.

68. To the extent Defendants sold or otherwise disseminated one or more of the Accused Products to third parties without a bracket, or with the bracket and without a connector, (i.e., the housing with the heat sink and fan and other components referenced in Exhibit B) Defendants have also induced infringement of at least claims 1-8, 10, 12-20 of the '424 Patent because Defendants knew and intended that third parties, e.g., retailers, distributors, and/or end-users, would resell, offer for sale, and/or utilize the housing with a bracket having a connector that infringed, literally and under the doctrine of equivalents (as discussed in Exhibit B), claims 1-8, 10, 12-20 of the '424 Patent.

69. Defendants have also infringed at least claims 1-8, 10, 12-20 of the '424 Patent under 35 U.S.C. § 271(c) because they have offered for sale, imported, sold, or otherwise disseminated one or more of the Accused Products without a bracket, or with the bracket and without a connector, (i.e., the housing with the heat sink and fan), wherein said housing/heat sink/fan constituted a material part of the invention of the '424 Patent because of its ability to be configured, with the bracket and/or the connector, in a position with respect to a lighting fixture to dissipate heat and air in the claimed manner, and Defendants had knowledge that

said housing: (1) when sold with a bracket without a connector, was specially made and/or adapted to be used in an infringing manner with a connector or (2) when sold without a bracket or connector, was specially made and/or adapted to be used in an infringing manner (see Exhibit B) with a bracket and connector, with respect to claims 1-8, 10, 12-20 of the '424 Patent, wherein said housing/heat sink/fan, with and without the bracket as described above, is not a staple article or commodity of commerce suitable for substantial noninfringing use.

70. All such infringing conduct of Defendants has occurred and was committed in a willful manner by at least Defendants' knowledge of the '424 Patent and the scope of the claims to which it covers, yet continued to use, sell, and/or offer for sale the Accused Products.

71. Defendants' actions have caused and continue to cause irreparable harm to Plaintiff to which there is no adequate remedy at law.

72. Defendants' conduct in this instance is exceptional, and, as such, Plaintiff should be entitled to recover its attorneys' fees in this action pursuant to 35 USC § 285 which provides that the "court in exceptional cases may award reasonable attorney fees to the prevailing party."

WHEREFORE, Plaintiff Global Tech LED, LLC, by and through the undersigned, hereby respectfully demands judgment against Defendants EWM, DRK, and Kula, said judgment which should include provisions:

- a) temporarily and permanently enjoining EVERY WATT MATTERS, LLC and DRK ENTERPRISES, INC., and all of those acting in concert with them, including, but not limited to, their agents, affiliates, subsidiaries, officers, directors, attorneys and employees from using, making, selling, or offering to sell the Accused Products, and all colorable imitations thereof;
- b) compensating Plaintiff for the full amount of damages sustained, including, but not limited to, any and all damage remedies available pursuant to the Patent Laws of the United States, 35 U.S.C. §§ 271, *et. seq.*, which include, but are not limited to, lost profits and a reasonable royalty award;
- c) declaring this case exceptional and trebling all damages awarded to Plaintiff;
- d) imposition of all pre- and post-judgment interest at the maximum allowable rate on the full compensatory and trebled amount awarded to Plaintiff;
- e) awarding remuneration of all attorneys' fees, costs and expenses for Plaintiff having to investigate, prepare and prosecute this action; and
- f) for such further and additional relief this Court deems just and proper under the circumstances.

**DEMAND FOR JURY TRIAL**

Plaintiff, Global Tech LED, LLC, hereby demand trial by jury of all issues so triable as a matter of law.

**Dated this 27<sup>th</sup> day of May, 2016.**

Respectfully Submitted,

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By: s/ Mark C. Johnson  
MARK C. JOHNSON, ESQ.  
FOR THE FIRM

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that on May 27, 2016, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record, either via transmission of Notice of Electronic Filing Generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

By: s/ Mark C. Johnson  
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