

**UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND**

INMUSIC BRANDS, INC.

C. A. No.: 1:17-cv-00010-M-LDA

Plaintiff,

v.

Jury Trial Demanded

ROLAND CORPORATION

Defendant.

THIRD AMENDED COMPLAINT

Plaintiff inMusic Brands, Inc. (“inMusic”) brings this action for patent infringement against defendant Roland Corporation (“Roland”), and alleges as follows:

THE PARTIES

1. inMusic is a corporation organized and existing under the laws of the State of Florida, with its principal place of business at 200 Scenic View Drive, Cumberland, Rhode Island.

2. Roland is a corporation organized under the laws of Japan, with its principal place of business in Hamamatsu, Japan.

JURISDICTION AND VENUE

3. This action arises under the Patent Act, 35 U.S.C. § 1, *et seq.*

4. This Court has original subject matter jurisdiction over this matter pursuant to 28 U.S.C. §§ 1331 and 1338(a).

5. This Court has personal jurisdiction over Roland because Roland has committed alleged acts of patent infringement within this judicial district. Further, Roland has a continuous, systematic, and substantial presence within this district, including selling, and offering for sale

infringing products in this judicial district, and by committing acts of infringement in this district, including but not limited to selling infringing products directly to consumers and/or retailers in this district and selling, offering to sell and/or importing into the stream of commerce knowing such products would be sold in Rhode Island, which acts form a substantial part of the events giving rise to inMusic's claims. Further, Roland maintains an interactive website available to consumers within this district on which it advertises its products, including the infringing products, whereby consumers in this district can locate retailers, such as national retailer Guitar Center, to order and have shipped the infringing product into Rhode Island. In sum, Roland has targeted, made or established contacts within this judicial district sufficient to permit the exercise of personal jurisdiction by this Court over it.

6. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391 and 1400(b).

BACKGROUND

7. inMusic manufactures and sells, among other products, successful lines of electronic instruments that are protected by various patents. inMusic is a family of leading music technology and consumer electronics brands, including Alesis®.

8. On August 23, 2016, the United States Patent and Trademark Office ("USPTO") issued U.S. Patent No. 9,424,827 (the "'827 patent"), entitled "Electronic Percussion Instrument with Enhanced Playing Area." A true copy of the '827 patent is attached hereto as **Exhibit 1**.

9. inMusic is the assignee of all right, title and interest in and to the '827 patent.

10. On July 22, 2014, the USPTO issued U.S. Patent No. 8,785,758 (the "'758 patent"), entitled "Electronic Hi-Hat Cymbal Controller." A true copy of the '758 patent is attached hereto as **Exhibit 2**.

11. inMusic is the assignee of all right, title and interest in and to the '758 patent.

12. On October 18, 2011, the USPTO issued U.S. Patent No. 8,039,724 (the “‘724 patent”), entitled “Removable Electronic Drum Head for an Acoustic Drum.” A true copy of the ‘724 patent is attached hereto as **Exhibit 3**.

13. Alesis, L.P. was the assignee of all right, title and interest in and to the ‘724 patent at issuance.

14. In or about 2012, Alesis, L.P. assigned all right, title and interest in and to the ‘724 patent to inMusic.

15. Together, the ‘827 patent, ‘758 patent and ‘724 patent are referred to herein as the “Asserted Patents.”

16. Roland offers products in direct competition with inMusic, including electronic drum and cymbal equipment. inMusic recently learned that Roland is making, using, selling, offering for sale and/or importing into the United States products that infringe one or more claims of the Asserted Patents: e.g., a digital, electronic snare pad (“PD-140DS V-Pad”); an electronic hi-hat cymbal (“VH-13-MG Hi-Hat”); and an electronic drum head for an acoustic drum (“KD-A22 Kick Drum Converter”).

17. Upon information and belief, before this lawsuit was filed Roland was aware of and had notice of each of the Asserted Patents. Specifically, Roland and inMusic are competitors and Roland has monitored inMusic’s activities for years, as is evidenced by allegations Roland made to that effect in litigation pending between these parties in the United States District Court for the Southern District of Florida. Not only has Roland monitored inMusic and was, as a result, aware of its activities before the United States Patent and Trademark Office and the issuance of the three Asserted Patents, but Roland also provided inMusic with a substantive analysis of the Asserted Patents that make it reasonable to infer that

Roland had pre-suit knowledge of each Asserted Patent.

FIRST CAUSE OF ACTION
(Patent Infringement - U.S. Patent No. 9,424,827)

18. Paragraphs 1-17 are hereby incorporated by reference as if fully set forth herein.

19. inMusic is the owner of all right, title and interest in the '827 patent. The '827 patent has been in full force and effect since its issuance.

20. Roland has been, and is now, infringing the '827 patent in violation of 35 U.S.C. § 271(a) by making, using, selling, offering for sale and/or importing into the United States its PD-140DS V-Pad, which infringes at least claims 15 and 19 of the '827 patent.

21. Claim 15 of the '827 patent recites:

- a. an electronic percussion instrument system comprising an acoustic noise reducing cavity;
- b. a semi-permeable playing surface comprising connected strands of ductile material covering the acoustic noise reducing cavity, wherein a superior end of the semi-permeable playing surface is configured to receive an impact from a user;
- c. one or more plates;
- d. a plurality of shock absorbing posts communicatively coupled to the semipermeable playing surface and the one or more plates, and configured to transfer a force of the impact from the semi-permeable playing surface to the plates; and
- e. one or more electromechanical transducers, configured to sense the force of the impact transferred to the one or more plates, and to generate an electrical signal with a magnitude equivalent to the magnitude of the

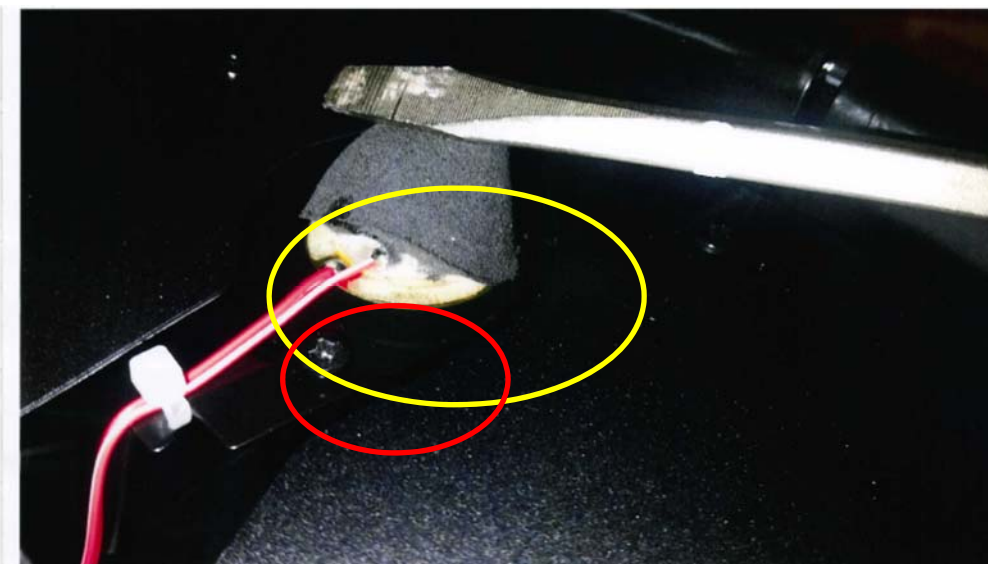
force of the impact, wherein at least one inferior end of the one or more transducers are communicatively coupled to at least one superior end of the one or more plates.

22. Roland's PD-140DS V-Pad meets all of the limitations of at least claim 15 of the '827 patent. The PD-140DS V-Pad is an electronic percussion instrument system having features that are recited by at least claim 15 of the '827 patent. Specifically, the PD-140DS V-Pad comprises:

- a. an acoustic noise reducing cavity within the drum shell;
- b. a semi-permeable playing surface comprising connected strands of ductile material covering the acoustic noise reducing cavity, wherein a superior end of the semipermeable playing surface is configured to receive an impact from a user as shown on Roland's website (www.roland.com/us/products/pd-140ds), which describes the PD-140DS V-Pad as having a "three-layer mesh head . . . fitted to a standard 14-inch shell, providing a natural rebound and feel" in response to a strike;
- c. one or more plates located within the drum shell as shown in the image below:



- d. a plurality of shock absorbing posts communicatively coupled to the semipermeable playing surface and the one or more plates, and configured to transfer a force of the impact from the semi-permeable playing surface to the plates as reflected in Roland's owner's manual for the PD-140DS V-Pad (the "V-Pad Manual") (highlighted copy attached hereto as **Exhibit 4**) (available at https://www.roland.com/us/support/by_product/pd-140ds/owners_manuals/e1c301b4-7616-4fe1-a5da-da8ccb372b2c/) (pp. 3-4 depicting plurality of posts); and
- e. one or more electromechanical transducers, configured to sense the force of the impact transferred to the one or more plates, and to generate an electrical signal with a magnitude equivalent to the magnitude of the force of the impact, wherein at least one inferior end of the one or more transducers are communicatively coupled to at least one superior end of the one or more plates, as depicted at least in the image of the accused PD-140DS V-Pad reproduced below (annotations added):



23. Roland has infringed and is continuing to infringe at least independent claim 15 of the ‘827 patent by making, using, offering to sell, selling and/or importing into the United States the PD-140DS V-Pad. As set forth above, upon information and belief, Roland had pre-suit knowledge of the ‘827 patent. Accordingly, Roland’s actions constitute willful and intentional infringement of the ‘827 patent.

24. Roland has also infringed, and is continuing to infringe numerous claims of the ‘827 patent, including at least claim 19, by actively inducing others to import, use, offer for sale, and sell the PD-140DS V-Pad. Roland’s customers who use the PD-140DS V-Pad in accordance with Roland’s instructions along with Roland’s TD-50 Drum Sound Module infringe at least claim 19 of the ‘827 patent, in violation of 35 U.S.C. § 271(a).

25. Roland intentionally, directly and/or indirectly instructs its customers to use the PD-140DS V-Pad in an infringing manner through training videos, demonstrations, brochures, installation and/or user guides, such as the V-Pad Manual (attached hereto as Exhibit 4). Roland has actual knowledge that the PD-140DS V-Pad must be used in conjunction with the TD-50 Drum Sound Module. *See, e.g.*, PD-140DS, Roland, <https://www.roland.com/us/products/pd-140ds/> (last visited Sept. 23, 2019) (“Designed for use with the flagship TD-50 sound module”). Roland specifically includes a digital trigger out connector with its PD-140DS V-Pad to enable its attachment to a sound module. *See* Ex. 4, V-Pad Manual, at 2. Roland’s PD-140DS V-Pad Manual also instructs the purchaser how to connect the PD-140DS V-Pad to a drum sound module. *See id.* at 2. Roland’s PD-140DS V-Pad Manual further discusses “adjust[ing] sound parameters in the sound module you are using.” *Id.* at 3.

26. Roland also induces infringement by failing to remove or distinguish infringing features of the PD-140DS V-Pad. Roland is thereby liable for infringement of the ‘827 patent

under 35 U.S.C. § 271(b).

27. Roland has also infringed, and is continuing to infringe, at least claim 19 of the ‘827 patent by using, selling, offering for sale and/or importing the PD-140DS V-Pad which is used in practicing the processes, or using the systems, of the ‘827 patent and constitute a material part of the invention. The PD-140DS V-Pad also includes elements that meet the limitations of the ‘827 patent that are especially made for use in an infringement of the ‘827 patent, and not a staple article or commodity of commerce suitable for substantial non-infringing use. Roland’s inclusion of a digital trigger out connector, instruction regarding how to connect the PD-140DS V-Pad to a drum sound module, and identification of the TD-50 Drum Sound Module further reflect that Roland’s PD-140DS V-Pad and the TD-50 Drum Sound Module are especially made or especially adapted for use in an infringement of the ‘827 patent, and are not staple articles or commodities of commerce suitable for substantial noninfringing use. Roland is thereby liable for infringement of the ‘827 patent under 35 U.S.C. § 271(c).

28. Roland will have been on notice of the ‘827 patent since, at the latest, the service of this complaint upon it. By the time of trial, Roland will have known and intended (since receiving such notice) that its continued actions would actively induce and contribute to the infringement of at least claim 19 of the ‘827 patent.

29. Roland’s infringing conduct has and will continue to damage inMusic.

30. Roland’s infringing conduct in violation of 35 U.S.C. § 271(a)-(c) will continue, resulting in continuing irreparable harm to inMusic, unless enjoined by the Court.

SECOND CAUSE OF ACTION
(Patent Infringement - U.S. Patent No. 8,785,758)

31. Paragraphs 1-30 are hereby incorporated by reference as if fully set forth herein.

32. inMusic is the owner of all right, title and interest in the ‘758 patent. The ‘758

patent has been in full force and effect since its issuance.

33. Roland has been, and is now, infringing the ‘758 patent in violation of 35 U.S.C. § 271(c) by making, using, selling, offering for sale and/or importing into in the United States its VH-13-MG Hi-Hat, which contributes, at least, to its customers’ infringement of at least claim 1 of the ‘758 patent.

34. Claim 1 of the ‘758 patent recites:

- a. an electronic hi-hat cymbal controller comprising a hi-hat cymbal stand with a foot pedal configured to lift a control shaft;
- b. a lower cymbal supported by the hi-hat cymbal stand;
- c. an upper cymbal supported by the control shaft and oriented over the lower cymbal; and
- d. a foot pedal control module comprising a position detector configured to detect the position of the control shaft relative to the foot pedal control module, as the control shaft moves up and down the hi-hat cymbal stand,
- e. wherein an electrical signal generated by the foot pedal control module is proportional to the position of the control shaft relative to the foot pedal control module.

35. The VH-13-MG Hi-Hat contributes to infringement of at least claim 1 as:

- a. it includes a hi-hat cymbal controller that is comprised of
- b. a lower cymbal to be supported by a hi-hat cymbal stand with a foot pedal configured to lift a control shaft. The images of the accused product on Roland’s website (<https://www.roland.com/global/products/vh-13-mg/>) depict a lower cymbal; Roland’s owner’s manual also depicts the lower

cymbal supported by a hi-hat cymbal stand (the “Hi-Hat Manual” at pp. 1, 6-9) (highlighted copy attached hereto as **Exhibit 5**) (available at https://www.roland.com/global/support/by_product/vh-13-mg/owners_manuals/c0717201-638c-48ef-a809-99c1e8cba7c6/);

- c. an upper cymbal as depicted on Roland’s website (<https://www.roland.com/global/products/vh-13-mg/>) designed to be supported by a control shaft and oriented over the lower cymbal. The Hi-Hat Manual further depicts an upper cymbal supported by a control shaft and oriented over the lower cymbal (Hi-Hat Manual at pp. 1, 3-4, 6-10); and
- d. a foot pedal control module generally between the upper and lower cymbals, as depicted in the Hi-Hat Manual at p. 7, comprising a position detector configured to detect the position of a control shaft relative to the foot pedal control module;
- e. wherein it generates an electrical signal from the foot pedal control module, as reflected in the Hi-Hat Manual showing output jacks to sound module, that is proportional to the position of a control shaft relative to a foot pedal control module (Hi-Hat Manual at p. 8); and
- f. the VH-13-MG Hi-Hat cannot function without a foot pedal, control shaft, and hi-hat cymbal stand (which may be inclusive of the control shaft).

36. Roland has been, and is now, infringing the ‘758 patent in violation of 35 U.S.C. § 271(b) by actively inducing sellers of its VH-13-MG Hi-Hat, such as Guitar Center, to infringe at least claim 1 of the ‘758 patent with knowledge of the ‘758 patent and with the intent to cause

infringement which includes pre-suit knowledge of the patents in suit and its infringement of them amounting to culpable conduct directed to encouraging the infringement as detailed herein.

37. Further, Roland had actual knowledge of the '758 patent not later than the filing of the Complaint on January 10, 2017 and is continuing its infringement in violation of 35 U.S.C. § 271(b) by actively inducing sellers of its VH-13-MG Hi-Hat, such as Guitar Center, to infringe at least claim 1 of the '758 patent with knowledge of the '758 patent and with the intent to cause infringement by making, using, offering to sell, selling and/or importing into the United States the VH-13-MG Hi-Hat.

38. Roland knows that the VH-13-MG Hi-Hat must be used in conjunction with a foot pedal, control shaft, and/or cymbal stand. Roland's Hi-Hat Manual depicts its VH-13-MG Hi-Hat in conjunction with a cymbal stand that includes a control shaft as well as a foot pedal. Hi-Hat Manual at pp. 1, 6. The Hi-Hat Manual specifies that the clutch sold with the Roland hi-hat stand is not compatible with the VH-13-MG Hi-Hat and thus Roland sells the VH-13-MG Hi-Hat with another clutch for the specific purpose of attaching the accused product to the cymbal stand. *See, e.g.*, Hi-Hat Manual at p. 5.

39. Thus, Roland has, and continues to, contribute to its customers' infringement of the '758 patent in violation of 35 U.S.C. § 271(c). In order to use the VH-13-MG Hi-Hat, Roland's customers directly infringe the '758 patent when incorporating the foot pedal, control shaft, and/or cymbal stand.

40. Further, sellers of Roland's VH-13-MG Hi-Hat such as Guitar Center sell the VH-13-MG Hi-Hat with a foot pedal, control shaft, and/or cymbal stand directly infringing the '758 patent. Roland knowingly intended to cause and/or knew or should have known its actions would induce infringement by providing the VH-13-MG Hi-Hat which it knew must be used in

conjunction with a foot pedal and cymbal stand and is a material part of the claimed invention. Indeed, Roland specifically includes a clutch with its VH-13-MG Hi-Hat to enable its attachment to a hi-hat stand. *See* Hi-Hat Manual at pp. 4, 6. In addition, Roland identifies stands compatible with the VH-13-MG Hi-Hat. Hi-Hat Manual at pp. 1, 10 (identifying “compatible stands”).

41. Roland’s inclusion of the clutch with its VH-13-MG Hi-Hat, identification of compatible stands, and depiction of the accused product with a foot pedal in its Hi-Hat Manual further reflect that Roland’s VH-13-MG Hi-Hat is especially made or especially adapted for use in an infringement of the ‘758 patent, and is not a staple article or commodity of commerce suitable for substantial noninfringing use.

42. Roland’s infringing conduct has and will continue to damage inMusic.

43. Roland’s infringing conduct in violation of 35 U.S.C. §§ 271(b)-(c) will continue, resulting in continuing irreparable harm to inMusic, unless enjoined by the Court.

THIRD CAUSE OF ACTION
(Patent Infringement - U.S. Patent No. 8,039,724)

44. Paragraphs 1-43 are hereby incorporated by reference as if fully set forth herein.

45. inMusic is the owner of all right, title and interest in the ‘724 patent. The ‘724 patent has been in full force and effect since its issuance.

46. Roland has been, and is now, directly infringing the ‘724 patent in violation of 35 U.S.C. § 271(a) by making, using, selling, offering for sale and/or importing into the United States KD-A22 Kick Drum Converter, which infringes at least claim 1 of the ‘724 patent.

47. Claim 1 of the ‘724 patent recites:

a. an electronic drum head comprising an elastic strike layer, a rigid plate

centered below the elastic strike layer, and a first sensor attached to a bottom surface of the rigid plate; and

- b. a structural body supporting the elastic strike layer, rigid plate and first sensor from below, the structural body having an upwardly extending sidewall configured and arranged to insert into a drum hoop and a lip extending outwardly from the sidewall configured and arranged to hook over an edge of the drum hoop.

48. The KD-A22 Kick Drum Converter meets all of the limitations of at least claim 1 of the '724 patent. The KD-A22 Kick Drum Converter is an electronic drum having features that are recited by at least claim 1. Specifically, the KD-A22 Kick Drum Converter is:

- a. an electronic drum head comprising an elastic strike layer, a rigid plate centered below the elastic strike layer, and a first sensor attached to a bottom surface of the rigid plate, as should in the images and corresponding description on Roland's website depicting the elastic strike layer as well as a reference to "a kick-pad sensor unit" (<https://www.roland.com/us/products/kd-a22/>); video demonstrating an overview of the operation of the accused product which shows double kick pedals arranged in front of the elastic strike layer (available at https://www.roland.com/us/rtv/quick_start/kd-a22_quick_start/; see 0:51); in the owner's manual identifying a batter head which includes the kick-pad sensor unit and the elastic strike layer as depicted with the pedal positioned in front of it (the "Kick Drum Converter Manual" at pp. 1-4) (highlighted copy attached hereto as **Exhibit 6**) (available at

https://www.roland.com/us/support/by_product/kd-a22/owners_manuals/371dc336-cd5e-4337-96dc-5e480c1ee2e0/); and in an image reproduced below (annotations added):



- b. a structural body supporting the elastic strike layer, rigid plate and first sensor from below, the structural body having an upwardly extending sidewall configured and arranged to insert into a drum hoop and a lip extending outwardly from the sidewall configured and arranged to hook over an edge of the drum hoop, as shown in the images and corresponding description on Roland's website depicting the elastic strike layer as well as a reference to "a kick-pad sensor unit" (<https://www.roland.com/us/products/kd-a22/>); the images and corresponding description on Roland's website of the accused product that reflect a batter head (<https://www.roland.com/us/products/kd-a22/>); as demonstrated an overview of the operation of the accused product which includes an installation demonstration showing the batter head (which has an elastic strike layer, rigid plate, and sensor attached to the bottom of the rigid plate) being placed on the drum shell via the batter head's structural body (available at https://www.roland.com/us/rtv/quick_start/kd-a22_quick_start/); in the Kick Drum Converter Manual depicting the batter head as well as the placement of the batter head on the drum shell via the batter head's structural body (at p. 2); and in an image reproduced below (annotations added):



49. Roland has infringed and continues to infringe at least independent claim 1 of the

‘724 patent by making, using, selling, offering for sale and/or importing into the United States the KD-A22 Kick Drum Converter. As set forth above, upon information and belief, Roland had pre-suit knowledge of the ‘724 patent. Accordingly, Roland’s actions constitute willful and intentional infringement of the ‘724 patent.

50. Further, Roland had actual knowledge of the ‘724 patent as of the filing of the Complaint on January 10, 2017 and is making, using, offering to sell, selling and/or importing into the United States the KD-A22 Kick Drum Converter. For this additional reason, Roland’s actions constitute willful and intentional infringement of the ‘724 patent.

51. Roland’s infringing conduct has and will continue to damage inMusic.

52. Upon information and belief, Roland’s infringing conduct in violation of 35 U.S.C. § 271(a) will continue, resulting in continuing irreparable harm to inMusic, unless enjoined by the Court.

PRAYER FOR RELIEF

WHEREFORE, inMusic respectfully requests this Court to:

A. Issue a temporary restraining order enjoining Roland (including its officers, directors, employees, agents, and all persons acting in concert with them) from infringing, inducing others to infringe, or contributing to the infringement of the Asserted Patents;

B. Issue a preliminary injunction enjoining Roland (including its officers, directors, employees, agents, and all persons acting in concert with them) from infringing, inducing others to infringe, or contributing to the infringement the Asserted Patents;

C. Issue a permanent injunction enjoining Roland (including its officers, directors, employees, agents, and all persons acting in concert with them) from infringing, inducing others to infringe, or contributing to the infringement the Asserted Patents;

D. Enter judgment in favor of inMusic and against Roland on each Count of the Complaint;

E. Order that Roland pay to inMusic damages for Roland's infringement of the Asserted Patents under 35 U.S.C. § 284 in an amount sufficient to compensate inMusic, including but not limited to, damages, in no event less than a reasonable royalty. For the sake of clarity, inMusic is not seeking lost profits damages;

F. Award treble damages for willful, deliberate and intentional infringement in accordance with 35 U.S.C. § 284;

G. Declare this case exceptional under 35 U.S.C. § 285 and award inMusic its reasonable attorneys' fees and expenses;

H. Order Roland to pay inMusic costs, pre-judgment interest and post-judgment interest; and

I. Grant other such relief that the Court deems appropriate.

JURY DEMAND

Plaintiff demands a trial by jury on all counts of its Complaint so triable.

Respectfully submitted,

INMUSIC BRANDS, INC.

By its Attorneys,

/s/ Craig M. Scott

Craig M. Scott (#4237)

Christine K. Bush (#5587)

Adam M. Ramos (#7591)

Gina K. Kim (*pro hac vice*)

Hinckley, Allen & Snyder LLP

100 Westminster Street

Suite 1500

Providence, RI 02903-2319

(401) 274-2000 Phone

(401) 277-9600 Fax

cscott@hinckleyallen.com

cbush@hinckleyallen.com

aramos@hinckleyallen.com

gkim@hinckleyallen.com

Dated: October 16, 2020

CERTIFICATE OF SERVICE

I hereby certify that the foregoing document was filed through the ECF system on October 16, 2020, and will be sent electronically to the registered participants identified on the Notice of Electronic Filing.

/s/ Laurel M. Gilbert