

ESTTA Tracking number: **ESTTA1336688**
Filing date: **01/28/2024**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding No.	92083415
Filing Party	Plaintiff ODP LLC
Other Party	Defendant Alan Poudrier
Pending Motion	There is no motion currently pending and no other motion is being filed concurrent with this consent motion.
Attachments	Motion to Suspend CANCELLATION.pdf(109291 bytes) Complaintmotion1.pdf(5967077 bytes) Complaintmotion2.pdf(3841656 bytes) Complaintmotion3.pdf(4048680 bytes)

Consent Motion for Suspension in View of Civil Proceeding

The parties are engaged in a civil action which may have a bearing on this proceeding. Accordingly, ODP LLC hereby requests suspension of this proceeding pending a final determination of the civil action. Trademark Rule 2.117.

ODP LLC has secured the express consent of all other parties to this proceeding for the suspension requested herein.

Certificate of Service

The undersigned hereby certifies that a copy of this submission has been served upon all parties, at their address of record by Email on this date.

Respectfully submitted,
/jmf/
Jeffrey M Furr
jeffmurr@furrllawfirm.com
01/28/2024

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE TRADEMARK
TRIAL AND APPEAL BOARD**

In the Matter of Registration Number 6745183
For the mark EZ DOOR CART
Date registered May 31, 2022

ODP LLC
95 JOHNSON ST.
WATERBURY, CONNECTICUT UNITED STATES 06710

Petitioner/Counterdefendant

Cancellation No. 92083415

vs.

Alan Poudrier
1103 Chip Lane
Niceville, FLORIDA UNITED STATES 32578

Respondents/Counterclaimants

UNITED STATES PATENT AND
TRADEMARK TRIAL AND APPEAL BOARD
PO BOX 1451
ALEXANDRIA VA 22313-1451

CONSENTED MOTION TO SUSPEND CANCELLATION

The Parties by and through its undersigned counsel and pursuant to 37

C.F.R. § 2.117(a), hereby moves the Trademark Trial and Appeal Board (the “Board”) to suspend the above-captioned Cancellation pending resolution of a lawsuit captioned *Rack Abilities, LLC., and Alan Poudrier v. EZ 4x4, LLC., Brian L. Goldwitz, Tracy Forlini, Elecor Manufacturing, LLC*, Case No. C3:23-cv-24645-MCR-HTC, currently pending in the UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF FLORIDA PENSACOLA DIVISION (the “Civil Action”).

The Parties respectfully asserts that the Board should suspend the Cancellation until the Civil Action is resolved because the Civil Action will have a bearing on, if not definitively resolve, many of the legal and factual issues presented in this Cancellation. *See generally* TBMP § 510.02(a) (“To the extent that a civil

action in a Federal district court involves issues in common with those in a proceeding before the Board, the decision of the Federal district court is often binding upon the Board, while the decision of the Board is not binding upon the court.”); *Daimler Chrysler Corp. v. Maydak*, 86 U.S.P.Q.2d 1945, 1950 (T.T.A.B. 2008). Where this is the case, “[o]rdinarily, the Board will suspend proceedings in the case before it if the final determination of the other proceeding will have a bearing on the issues before the Board.” TBMP § 510.02(a); *see also Gen. Motors Corp. v. Cadillac Club Fashions Inc.*, 22 U.S.P.Q.2d 1933, 1936-37 (T.T.A.B. 1992). A copy of the First Amended Complaint in the Civil Action is attached as Exhibit A.

Accordingly, in the interests of avoiding the burden associated with maintaining two parallel proceedings involving the same factual and legal issues, the Parties respectfully requests suspension of the Cancellation until resolution of the Civil Action.

Respectfully submitted,

 s/jmf/
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CERTIFICATE OF FILING

I hereby certify that this answer is being electronically filed with the United States Patent and Trademark Trial and Appeal Board on the 28th day of January 2024.

 /jmf/
 Jeffrey M. Furr, Esquire

CERTIFICATE OF SERVICE

I hereby certify that this paper is being deposited on the 28th day of January 2024 electronically to:

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/jmf/
Jeffrey M. Furr, Esquire

EXHIBIT A

**UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF FLORIDA PENSACOLA DIVISION**

**Rack Abilities, LLC., a Florida
Limited Liability Corporation, and
Alan Poudrier, a Natural Person,**

Plaintiffs,

v.

**EZ 4x4, LLC., a Connecticut
Limited Liability Company, Brian L.
Goldwitz, a natural person, Tracy
Forlini, a natural person, Elecor
Manufacturing, LLC, a Connecticut
Limited Liability Company,**

Defendants.

Case No.

**Complaint for Damages,
Declaratory and Injunctive
Relief and Jury Trial**

Plaintiffs, Rack Abilities, LLC., a Florida Limited Liability Company (“Plaintiff” or “RAL”) and Alan Poudrier (“Mr. Poudrier”), sue Defendants, EZ 4x4, LLC., a Connecticut Limited Liability Company (“EZ 4x4”) Brian L. Goldwitz, (“Mr. Goldwitz”), Tracy Forlini, and Elecor Manufacturing, LLC, (“Elecor”) and allege:

Jurisdiction and Parties to the Action

1. This is an action for declaratory and injunctive relief and for damages arising out of the breach of a patent license agreement, acts of patent and trademark infringement, and unfair competition.

2. The Court has original jurisdiction over this action and of the parties under 28 U.S.C. §1331, § 1338 (a) and (b), and 15 U.S.C. §§1114-17, and 35 U.S.C. §271.
3. The Court has supplemental jurisdiction over the substantially related claim set forth in Count V.
4. Because the declaratory judgment claim involves a federal question relating to patent infringement, the Court also has jurisdiction to adjudge the controversy under 28 U.S.C. § 2201.
5. Upon information and belief, Defendants control, solicit, and conduct business in this District and Division and distribute and cause to be distributed unlicensed and infringing goods within this District and Division.
6. Venue lies in this District and Division because Defendants have committed acts of infringement here and because a forum selection clause set forth in the Patent License Agreement executed by the parties operates as a waiver of any venue rights available to Defendants under 28 U.S.C. §1400(b).

7. Plaintiff Rack Abilities, LLC, is a Florida Limited Liability Company formed and organized by Alan Poudrier, an inventor, to license and commercially exploit Mr. Poudrier's technology, and in particular, his technology directed to after market goods for Jeeps and their owners.
8. Plaintiff Alan Poudrier is a resident of Niceville, Florida, within the Northern District of Florida.
9. Defendant EZ 4x4, LLC is a Connecticut Limited Liability Company which maintains an office at 95 Johnson Street, Waterbury, CT, 06710.
10. Defendant EZ 4X4, LLC is, upon information and belief, owned and controlled by Brian Lee Goldwitz and Tracy Forlini.
11. Defendant EZ 4X4, LLC was at times material to this action also qualified to do business in the State of Florida and registered with the Secretary of State of Florida until about September 22, 2023, where it maintained an office at 1006 N. Lincoln Ave, Tampa, Fl. 33607.
12. Defendants Brian Lee Goldwitz (Mr. Goldwitz) is an individual and is currently a resident of New Haven County, Ct.

13. Defendant Tracy Forlini is, upon information and belief, an owner and manager of various companies in common with Mr. Goldwitz, including EZ 4x4, LLC and Elecor Manufacturing, LLC.
14. Defendant Tracy Forlini is upon information and belief a resident of New Haven County, Ct.
15. Defendant Elecor Manufacturing, LLC (“Elecor”) is a Connecticut Limited Liability Company, whose address, like that of EZ 4x4, is 95 Johnson Street, Waterbury, CT 06710.
16. Upon information and belief, Elecor claims to be in the business of manufacturing sporting and athletic goods and imports articles manufactured in China.
17. Upon information and belief, EZ 4X4 is in the business of selling Jeep® related after-market products under various brand names.
18. Defendants are selling to customers in this District and Division or causing others to sell articles covered by one or more claims of the patent in suit, namely United States Patent 11,654,947, and have sold and shipped and caused to be shipped articles covered by that patent without license or legal right, namely, the E-Z 4x4 “Folding Rolling Door Cart”

identified on the packaging as being licensed under the aforementioned patent, together with a confusing claim that the same is also the subject of patents pending “in the United States, Canada and China.” The articles so sold to customers of Defendants in this District and Division include infringing articles sold via Amazon.com by Defendants or their affiliates.

The Patent and Trademark In Suit

19. On May 23, 2023, the Patent Office issued US. Patent 11,654,947 BI to Mr. Poudrier, hereinafter called the ‘947 Patent. An authentic copy of ‘947 Patent is attached as **Exhibit A.**
20. The ‘947 Patent is a continuation in part of application No. 16/537,593 filed on April 11, 2019, now US Patent 11,097,759, which is a continuation in part of application No. 16/125,672, filed on September 8, 2018, now US Patent 10, 376, 045, which is a continuation in part of application No. 15/962,262, filed on April 25, 2018, which application was abandoned.
21. The ‘947 Patent is directed to a versatile transport rack which rests on the ground surface or rolls on castors, and which enables the storage and

movement of removable doors from a Jeep ® or other sport utility vehicle, thereby offering the driver of such a vehicle a lightweight foldable door holder with wheels suitable for holding removable doors on Jeeps or similar sport utility vehicles.

22. Mr. Poudrier adopted and used in commerce as early as May 24, 2021, the trademark EZ DOOR CART in connection with his goods and services, and obtained United States Trademark Registration No. 6,745, 183, a true copy of such registration being attached hereto as **Exhibit B.**
23. On or about April 16, 2021, while certain of his patent applications were still in prosecution, Mr. Poudrier began offering his device for sale to consumers at a vendor booth in Daytona, Fl, at an event called the “Jeep Beach” event. Mr. Poudrier used the banner depicted in the following image, wherein he promoted the device initially as a “EZ as 1-2-3:”

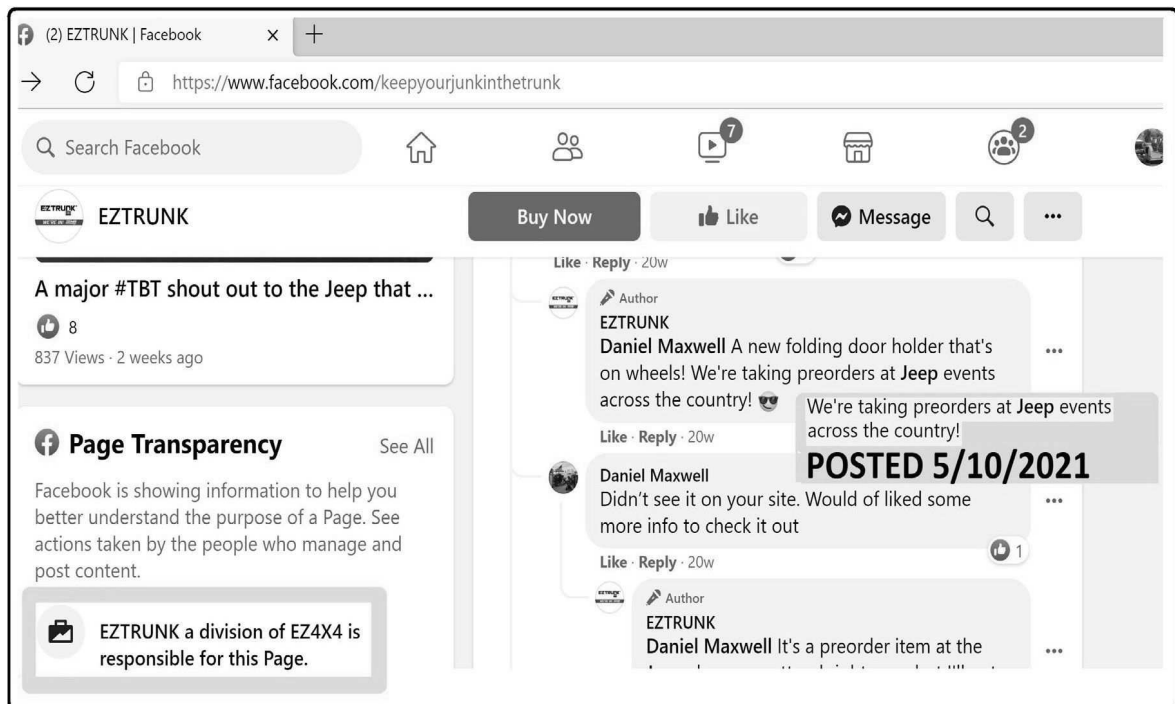


24. Defendants were present at the same “Jeep Beach” event attended by Mr. Poudrier and purchased two of the foldable cart units Mr. Poudrier was selling.

25. Upon information and belief, Goldwitz immediately sent one of the purchased units to China to obtain a reproduction of the unit, as he later boasted to Mr. Poudrier.

26. While he was waiting for his Chinese copy, Goldwitz and various agents of Defendants, including Forlini, began promoting Defendants’ intended knock-off product for sale to prospective customers using a

photograph of the genuine Poudrier product and promoting that genuine product as if it were the Defendants’ product – thereby engaging in the “reverse passing off” of the genuine article of Plaintiffs as that of Defendant. An example of this improper passing off is provided in the advertisement by Defendants to the “Jeep Community” appearing on the following images.





27. After Poudrier discovered the reverse passing off of his genuine article, Goldwitz approached Poudrier about taking a license to the ‘947 Patent, having taken many orders from prospective customers who thought they were buying Plaintiff’s genuine article.
28. By this time, Goldwitz had threatened Poudrier by saying that he would have his patents invalidated and that Poudrier should tell his patent lawyer that “it doesn’t matter . . . I’ve already sent it to China,” or words to that effect.

29. On or about May 20, after having already adopted EZ DOOR CART as his intended trademark, Mr. Poudrier emailed Goldwitz to let him know of the intended trademark.
30. Defendants expressed no concerns or objections about the intended trademark application and made no claim of a conflict with any alleged or possible marks of his various companies.
31. Thereafter Poudrier and Goldwitz began to discuss details of a patent license under Poudrier's patents and pending applications.
32. On July 14, 2021, Poudrier agreed to the Patent License Agreement attached hereto as **Exhibit C**. The Licensor under the Agreement is Poudrier's wholly owned LLC, Rack Abilities, LLC. The only Licensee mentioned by name in the Agreement is Defendant Elecor.
33. The Patent License Agreement granted to Elecor what is represented to be an exclusive license to "use, develop, and exploit" U.S. Patent 10,981,588 and "patent application 16/537593". The Agreement explicitly defines "Licensed Patent" to be the referenced and issued '588 Patent and the referenced application "16/537591" and expressly provides that "no other patent, patent application, or any other

intellectual property now owned or hereafter acquired by LICENSOR is part of or otherwise included in this Agreement.” Id, §1.7. By definition this Section of the Agreement excluded the ‘947 Patent, which did not issue until May 23, 2023.

34. The only defendant expressly licensed in the Patent License Agreement is Defendant Elecor.
35. The Patent License Agreement also grants Rack Abilities the right to make, use and sell 240 units of the Licensed Product “each year that this agreement is in effect.” Id., §2.1. And it obligates Elecor to provide Rack Abilities the units so licensed at wholesale and “within 31 calendar days.”
36. The Patent License Agreement has an effective date of July 14, 2021, with a term of one-year subject to automatic renewal “every year for an additional one-year term, up to the life of the last expiring patent that forms a part of this agreement.” Id., §3.1.
37. The Patent License Agreement requires, at §4.1, a minimum annual up-front royalty payment by the Licensee of \$25,000. It also requires at §4.2

that the Licensee submit accurate royalty reports “after the end of each calendar quarter.”

38. Elecor as Licensee paid the \$25,000 royalty in advance and Defendant then commenced sales of the Chinese copies to consumers under various brands as a “Door Holder” and more generally as a Folding Door Holder.

39. However it also came to the attention of Plaintiffs that Defendant EZ 4x4, which runs an e-commerce website, had begun to offer for sale Mr. Goldwitz’s Chinese copy as the “*EZ Folding Door Cart*,” as illustrated in the digital copy of the webpage EZTRUNK - Jlu, Jl, Jk, Jku, Tj, Jt, 2007-2022, Jeep 4x4 Accessories, Attached as **Exhibit D** hereto.

40. Because of the similarity of the Defendants’ “*EZ Folding Door Cart*” to Plaintiffs’ trademark registration EZ DOOR CART, Plaintiffs complained that the trade name used by Defendants was too similar to Plaintiffs’ marks for essentially the same goods and services Plaintiffs were using for their product line, which Plaintiffs were selling in accordance with §2.1 of the Patent License Agreement. Defendants however continued to use a deceptively similar name for their device, as

is shown in the photograph taken on October 17, 2023, just before the filing of this complaint, referred to above as **Exhibit D**.

41. The Patent License Agreement does not confer any right to use the EZ DOOR CART mark to promote their licensed goods, a fact Defendants completely understood since they had negotiated with Plaintiffs the right of Plaintiffs to sell their own brand of patented articles to consumers.
42. Defendants' use of a deceptively similar mark to promote the sales of their similar goods, however, was only one of many problems Plaintiffs encountered in doing business with Mr. Goldwitz and his companies or their affiliates. The royalty reports such as Exhibit E, only reported sales on the basis of what Defendants were paying to their Chinese affiliate, rather than their actual direct sales to consumers or their wholesale transactions with dealers. Section 4.2 of the Patent License Agreement specifies that Elecor will pay "five percent of the purchase order price of each unit ordered or obtained." But it also provides that the purchase order price "shall not be below that price as would be reached in an arm's length transaction between two nonaffiliated parties." This price, in other words, cannot be the low price paid to the Chinese affiliate but

must be the price two parties would negotiate for an arm's length deal. Defendants failed and refused to pay or negotiate such a price, even though they claimed that the wholesale price to wholesalers – people who are dealing at arm's length – was \$210 per unit. Defendants refused to pay 5% of sales at that arms-length price, even as their volume of sales steadily increased to a number that would have exceeded the minimum annual royalty payment amount. This became unacceptable to Plaintiffs as Defendants' reported sales exceeded about \$500,000.

Breach of Insurance Coverage Requirement

43. Even more important to Plaintiffs, as the volume of Defendants' sales increased, is that Defendants failed to accurately report their approximate annual sales of the Licensed product to their liability insurer, thereby compromising the liability protection required by §9 of the Patent License Agreement. That section requires that the Licensee (and affiliated parties) purchase and maintain in full force and effect an "occurrence" liability insurance policy insuring against product liability claims made against LICENSOR or LICENSEE including any claims associated with the "design, manufacture, use, sale or maintenance of the Licensed Products"

and it also requires that Defendants provide certificates of insurance proving the existence of the necessary insurance and showing that Plaintiffs were co-insureds under the policy. Defendants did produce some certificates, but they failed to accurately report the true sales of Defendants, a fact which imperiled the availability of insurance coverage to Plaintiffs. This was important because of defendants' sales and promotion practices, which failed to inform consumers of certain risks associated with the device as sold by Defendants, such as primitive camping events or beach and other outdoor events that occur on unlevel and unimproved terrain to appreciate the last point, it is necessary to add detail about the actual consumer use of the invention in real world conditions, where consumers do not necessarily pay close attention to safety. Plaintiffs determined that a proper use decal should be supplied to all consumers or users of the device because EZ4x4 and various representatives of the company and affiliated companies were not advising consumers of safety concerns that could be present if the consumer used the moveable cart carelessly on un-level surfaces. Plaintiffs believed that it was necessary to warn consumers with a decal against careless use of the device, such as represented below:

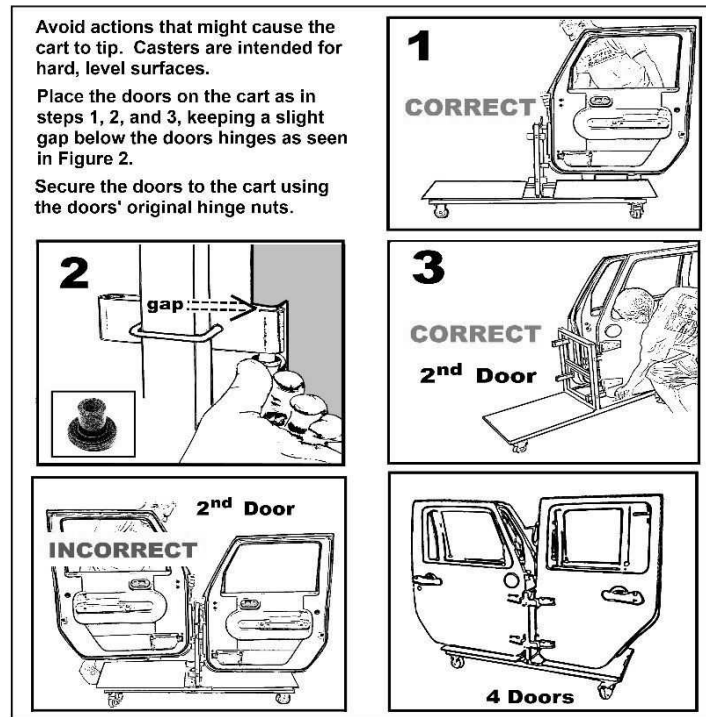


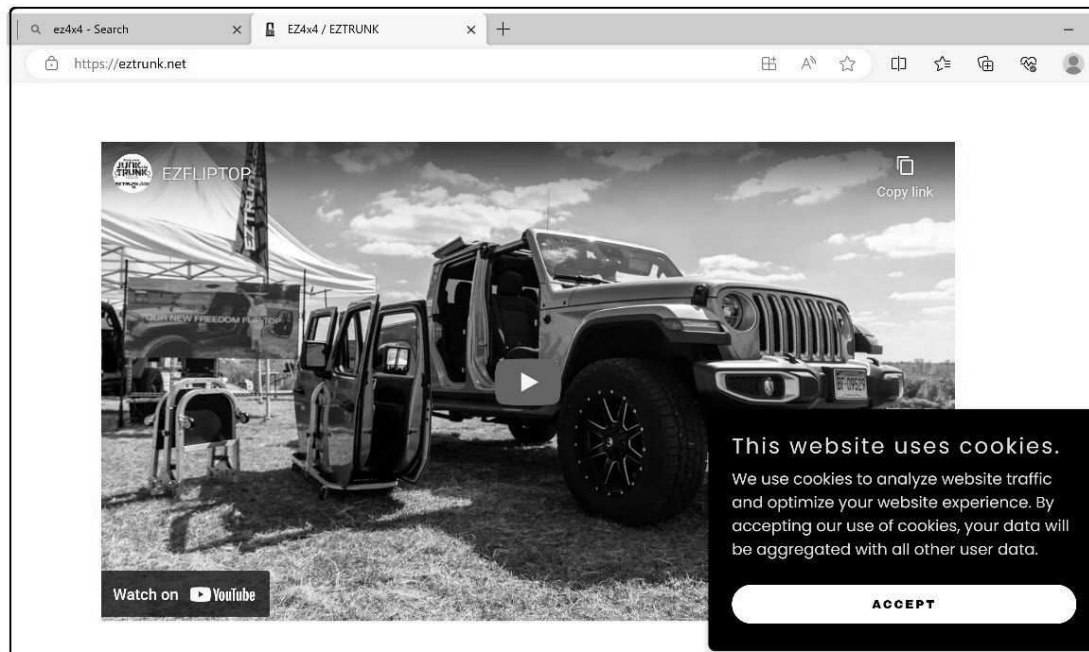
Figure 4: It was determined that the decal shown above should be secured to all door carts.

44. Defendants declined to provide the requested decals or to renew their liability insurance policy and correct their certificate of insurance to reflect their actual sales of in excess of \$500,000 to consumers and wholesalers.

45. Plaintiffs demanded, through counsel, that insurance certificates at the correct sales base be obtained, as is shown, as but one illustration, in Exhibit H hereto.

46. Defendants declined to update the insurance certificate to a correct amount or change their policies as to warning consumers of hazards associated with loading conditions in the field or beach.
47. Plaintiffs informed Defendants that the Patent License Agreement would not be renewed, and the agreement would be terminated if Defendants failed to address the above-mentioned concerns. In particular, Plaintiffs sent a demand letter dated September 30, 2022, a copy of which is attached hereto as **Exhibit E**, providing Defendants thirty days' notice of Plaintiffs' intent to terminate the Patent License Agreement if the necessary corrections to the certificate of insurance were not supplied and if Defendants did not cure the breaches in the Agreement, including the improper use of a confusingly similar trademark.
48. Defendants refused to rectify the problems, however. Accordingly, Plaintiffs declared the agreement terminated in the letter attached here to as **Exhibit F**, and dated December 9, 2022. Indeed, Defendants continue even at the present time to market their infringing knockoff by promoting hazardous uses of the knockoff product on unimproved terrain, to the

potential injury of Plaintiffs' brand, as shown below (from <https://eztrunk.net>):



49. Thereafter, a year after the Sept 2022 letter referenced above, Defendants tendered a new \$25,000 license fee, ignoring the cancellation of the License Agreement. The tendered fee was by wire transfer and Plaintiffs immediately returned the wire, declining to renew any business relationship with Defendants. The license relationship between the parties therefore terminated as of Plaintiffs' December 9, 2022, letter, **Exhibit F** above.

50. Upon information and belief, subsequent to the cancellation of the Patent License Agreement Defendants have continued to import into the United

States and have sold and continue to sell devices covered by one or claims of the '947 Patent and which are sold under a trade name confusingly similar to that EZ DOOR CART.

51. All conditions precedent to the filing of this complaint have occurred or been waived or excused by law.

Count I: Declaratory Judgment

52. This Count I is claim for declaratory judgment to determine that the Patent License Agreement has been cancelled and terminated and is no longer in force and effect, and to grant such additional and supplemental relief as may be appropriate, including a preliminary and permanent injunction against any continuing acts of infringement.

53. Plaintiffs hereby incorporate and reallege the allegations of paragraphs 1 through 51 above as if fully set forth herein.

54. Plaintiffs' declaratory claim arises under federal law, namely the Patent Act, and Plaintiffs' asserted rights to relief necessarily depend upon resolution of a substantial question of federal patent law, namely, whether the Patent License Agreement remains in effect, or it is has been terminated or canceled.

55. Plaintiffs, the patent owner and the agent for the patent owner, contend that the Patent License Agreement was lawfully terminated for material breach.
56. Defendants Elecor and the remaining defendants, who are affiliates of the former licensee and who are still selling or offering for sale certain embodiments of the patented invention, contend that the Patent License Agreement was not lawfully terminated and that the license remains in effect notwithstanding the termination notice and the refusal of Plaintiffs to renew the license upon tender of advance royalties.
57. Plaintiffs contend that Defendants breached the License Agreement and did so in a material way and that proper notice of the intent to terminate the license was given and that the Defendants did not cure the breach.
58. Plaintiffs further contend that the Patent License Agreement was not renewed, and that Plaintiffs properly declined to renew the license once the license term concluded, particularly in light of the material breach of the same.
59. Plaintiffs additionally contend that the license was breached in material respects not previously disclosed, including the failure to properly report and

account for royalties due Plaintiff over and above the mandatory minimum royalty amounts previously paid.

60. Plaintiffs further contend that Defendants are obligated to account for and to pay for sales made of devices covered by the patents and sold through the reverse passing off conduct described above, at a time before the license was signed, and which is an obligation expressly recognized in §4.1 (a) of the Patent License Agreement.

61. There is accordingly a justiciable controversy involving concrete issues between Plaintiffs and Defendants that requires an adjudication of the Court.

62. All necessary parties to the dispute are before the Court.

63. Accordingly, the Court should assume jurisdiction of the controversy, decide the contested issues of law and fact framed above, and declare the rights and obligations of the parties and grant such additional relief as may be appropriate.

WHEREFORE, Plaintiffs demand a declaratory judgment against Defendants Elecor, EZ and Brian L. Goldwitz and Tracy Forlini declaring the rights and obligations of the parties hereto, and with such supplemental relief as the Court shall

deem just and proper, finding in particular that the Patent License Agreement is no longer in effect and was properly terminated.

Count II: Infringement of The ‘947 Patent

64. This Count II is a claim under 35 U.S.C. §271 for patent infringement.

65. Plaintiffs hereby incorporate and reallege the allegations of paragraphs 1 through 51 above as if fully set forth herein.

66. Since the termination and nonrenewal of the Patent License Agreement, if not at times before, Defendants Elecor, Goldwitz, EZ and Forlini have infringed and caused to be infringed at least independent claim one of the ‘947 Patent by importing into the United States and by selling and offering for sale devices which are covered by independent claim one of the ‘947 Patent, namely the device of the kind sold in this District and Division as the “EZ Folding Rolling Door Cart” and promoted as a the *EZ Folding Door Cart*.

67. Plaintiffs have examined the articles sold in this District and Division as the aforementioned *EZ Folding Door Cart*, as shipped by Defendants through an Amazon sale to a customer within this District and Division.

68. A claim chart comparing the Defendants’ article against Claim I of the ‘947 patent appears below:

Patent Claim 1

Defendants’ EZ 4x4 “Door Cart”

<p>“A rack comprising</p>	<p>This “rolling door cart” comprises a rack having rails for holding and moving removable doors</p>
<p>A center frame having a pair of coextensive horizontally disposed center rails each having a first upper surface and an opposing first lower surface, the center frame also having a pair of vertical rails, each vertical rail extending upwardly from a respective one center rail</p>	<p>The rolling door cart has a center frame;</p> <p>There is a pair of coextensive horizontally disposed center rails (each having a first upper surface and an opposing first lower surface);</p> <p>The center frame has a pair of vertical rails, each vertical rail extending upwardly from a respective one center rail;</p>
<p>a first outer frame having a pair of coextensive first outer rails and having a second upper surface and an opposing second lower surface, such that each first outer rail is attached to a respective one center rail via a pair of first pins that each pass through a respective one of the first outer rail and through a respective one center rail with the first outer frame pivoting with respect to the center frame about the pair of first pins such that the first outer frame is capable of rotating between a first unfolded position wherein the first outer rails and</p>	<p>The rolling door cart has a pair of coextensive first outer rails having a second lower surface, such that each outer rail is attached to a respective one center rail;</p> <p>The device has a pair pins each of which pass through a respective one of the first outer rail and through a respective one center rail with the first outer frame pivoting with respect to the center frame about the pair of first pins such that the first outer frame is capable of rotating between a first unfolded position</p>

<p>the center rails are aligned on first parallel longitudinal axes and a first folded position wherein the first outer rails each abut one of the vertical rails and such that the first outer frame is locked into the first unfolded position via a pair of second pins that each pass through a respective one of the first outer rail and through a respective one center rail;</p>	<p>wherein the first outer rails and the center rails are aligned on first parallel longitudinal axes and a first folded position wherein the first outer rails abut one of the vertical rails;</p> <p>the first outer frame locks into the first unfolded position via a pair of second pins that each pass through a respective one of the first outer rail and through a respective one center rail;</p>
<p>a first of hinge pin receiver having a first vertically disposed opening, the first hinge pine receiver attached to one of the vertical rails;</p>	<p>Defendant’s cart has a vertically disposed hinge pin receiver opening, and it attaches to one of the vertical rails</p>
<p>and a second of hinge pin receiver having a second opening, the second hinge pin receiver attached to the same vertical rail to which the first hinge pin receiver is attached and below the first hinge pin receiver, such that the first opening of the first hinge pin receiver and the second opening of the second hinge pin receiver align with one another so that a first axis passes longitudinally through the aligned first opening and the second opening, the first axis also parallel with the vertical rail to which the first hinge pin and the second hinge pin receiver are attached.</p>	<p>Defendant’s cart has a second hinge pin receiver with a second opening, and the second hinge pin receiver attaches to the same vertical rail to which the first hinge pin receiver is attached and below the first hinge pin receiver, such that the first opening of the first hinge pin receiver and the second opening of the second hinge pin receiver align with one another so that a first axis passes longitudinally through the aligned first opening and the second opening, the first axis being parallel with the vertical rail to which the first hinge pin and the second hinge pin receiver are attached.</p>

69. Defendants' rolling door cart literally infringes at least claim 1 of the '947 Patent.

70. Defendants are still selling and promoting infringing articles of the above type, well knowing the same to be infringing the '947 Patent, and are, upon information and belief, concealing the entities through which Defendants are selling infringing articles.

71. Defendants have acted intentionally, fraudulently and without lawful justification, making this case an exceptional case warranting an award of attorneys' fees in accordance with 35 U.S.C. §285.

72. Plaintiffs are entitled to recover damages adequate to compensate for the acts of infringement in an amount not "less than a reasonable royalty for the use made of the invention by Defendants" in accordance with 35 U.S.C. §284.

WHEREFORE, Plaintiffs demand judgment against Defendants Elecor, EZ, Brian L. Goldwitz and Tracy Forlini for damages not less than a reasonable royalty and the following additional relief:

A. an Order preliminarily and permanently enjoining Defendants, their officers, directors, employees, agents, subsidiaries,

distributors, dealers, related companies, and all persons in active concert or participation with them, from infringing the patent and from any acts of infringement and from importing into the United States any infringing articles;

- B. An order finding that the infringement was willful and enhancing the amount of damages in accordance with 35 U.S.C. §285; and
- C. An order finding that this is an exceptional case warranting an award of attorneys' fees under 35 U.S.C. §284.

Count III: Trademark Infringement

73. This Count III is a claim against all defendants under 15 U.S.C. §1114 (1).

74. Plaintiffs hereby incorporate and reallege the allegations of paragraphs 1 through 51 above as if fully set forth herein.

75. Plaintiff Poudrier owns the Registered Mark EZ DOOR CART.

76. Defendants are without consent advertising, selling, distributing, and causing to be distributed a reproduction, copy and colorable imitation of Plaintiff's registered mark in connection with the sale, offering for sale, distribution, and advertising of goods, which use is likely to cause confusion,

or to cause mistake, or to deceive, in violation of Section 32(1) of the Lanham Act, 15 U.S.C. § 1114(1). The unauthorized reproduction includes the use of the confusingly similar trade name *EZ Folding Door Car*, which trade name is being used to promote substantially similar goods in nearly identical trade channels and to the same base of customers and for the purpose of causing confusion as to the source or origin of Defendants' goods and services.

77. There is a substantial likelihood of confusion as a direct and proximate result of the Defendants' conduct.

78. Defendants have aided and abetted each other in their acts of infringement.

79. As a direct and proximate result of Defendants' actions, Plaintiffs' have been injured, will suffer additional injury hereafter and has suffered damages and will suffer additional damages hereafter, together with prejudgment interest thereon.

80. Plaintiffs have suffered and will continue to suffer irreparable injury as the result of the conduct of Defendants.

WHEREFORE, Plaintiff requests that the Court enter judgment in its favor on each claim for relief set forth above, and that it order the following specific relief:

- (A) an Order declaring that Defendants have infringed the Plaintiffs registered mark and that they have engaged in trademark infringement;
- (B) an Order preliminarily and permanently enjoining Defendants, their officers, directors, employees, agents, subsidiaries, distributors, dealers, related companies, and all persons in active concert or participation with them,
 - (1) from using any name, mark, domain name, source-identifier, or designation comprised of or containing Plaintiffs mark, or any confusingly similar name, mark, domain name, source-identifier, or designation in any manner likely to cause confusion with Plaintiffs marks, or to otherwise cause injury to Plaintiffs or their reputation or goodwill; and
 - (2) from representing, by any means whatsoever, directly or indirectly, that Defendants, their goods or services, and/or

their activities originate from, are sponsored by, or are associated, affiliated, or connected with Plaintiff in any way;

- (C) an Order excluding the importation of all goods, packaging, product displays, literature, advertisements, marketing and promotional materials, and any other materials bearing the Infringing Marks or any confusingly similar variation, pursuant to 15 U.S.C. §1124 and other applicable laws;
- (D) an Order requiring Defendants to destroy all goods, packaging, product displays, literature, advertisements, marketing and promotional materials, and any other materials bearing the Infringing Marks or any confusingly similar variation, regardless of form, that are in, or come to be in, Defendants' possession, custody, or control;
- (E) an Order requiring Defendants to disseminate pre-approved corrective advertising and send pre-approved letters to all customers and agents; and
- (F) An order granting an award of attorneys' fees.

Count IV: False Designation

81. This Count IV is a claim under 15 U.S.C. §1125(a)(1)(A) against all Defendants for false designation of origin, passing off and unfair competition.
82. Plaintiffs hereby incorporate and reallege the allegations of paragraphs 1 through 51 above as if fully set forth herein.
83. Plaintiff Poudrier owns the Registered Mark EZ DOOR CART.
84. Defendants are improperly advertising and will continue to advertise their competing goods in commerce so as to imply or suggest an affiliation or connection between Plaintiffs and Defendants.
85. Defendants are now using and plan to continue to use in commerce a word, term, name, and false designation of origin that, in connection with their commercial activities, is likely to cause confusion, or to cause mistake, or to deceive as to an affiliation, connection or association of Defendants with Plaintiffs, or as to the origin, source, sponsorship, or approval of Defendants' goods by Plaintiffs, in violation of Section 43(a) (1)(A) of the Lanham Act, 15 U.S.C. §1125(a)(1)(A).

86. There is a substantial likelihood that consumers will suffer confusion as the direct result of Defendants' unlawful conduct.

87. Defendants have aided and abetted each other in their unlawful conduct.

88. Defendants have acted intentionally and in bad faith, intending to cause confusion among Jeep ® and other outdoors enthusiasts.

89. As a direct and proximate result of Defendants' conduct, Plaintiffs have suffered damages and will continue to suffer from such damages without the intervention of the Court.

90. Plaintiffs have suffered and will continue to suffer irreparable injury as a result of Defendants' conduct, which is continuing and is calculated to trade upon Plaintiffs' good will.

WHEREFORE, Plaintiff requests that the Court enter judgment in its favor on each claim for relief set forth above, and that it order the following specific relief:

(A) an Order declaring that Defendants have infringed the Plaintiffs' registered marks and have engaged in trademark infringement, false designation of origin, unfair competition, and misappropriation of Plaintiffs' domain names;

(B) an Order preliminarily and permanently enjoining Defendants, their officers, directors, employees, agents, subsidiaries, distributors, dealers, related companies, and all persons in active concert or participation with them,

(1) from using any name, mark, domain name, source-identifier, or designation comprised of or containing Plaintiffs marks, or any confusingly similar name, mark, domain name, source-identifier, or designation in any manner likely to cause confusion with Plaintiffs marks, or to otherwise cause injury to Plaintiffs or their reputation or goodwill; and

(2) from representing, by any means whatsoever, directly or indirectly, that Defendants, their goods or services, and/or their activities originate from, are sponsored by, or are associated, affiliated, or connected with Plaintiff in any way;

(C) an Order directing that Defendants transfer ownership of the domain names and cause the forfeiture of any claim to ownership of the domain names by Defendants and that they supply proof that the domain name registry has accomplished the transfer of ownership of the domain names

to Plaintiffs;

(D) an Order excluding the importation of all goods, packaging, product displays, literature, advertisements, marketing and promotional materials, and any other materials bearing the Infringing Marks or any confusingly similar variation, pursuant to 15 U.S.C. §1124 and other applicable laws;

(E) an Order requiring Defendants to destroy all goods, packaging, product displays, literature, advertisements, marketing and promotional materials, and any other materials bearing the Infringing Marks or any confusingly similar variation, regardless of form, that are in, or come to be in, Defendants' possession, custody, or control;

(F) an Order requiring Defendants to disseminate pre-approved corrective advertising and send pre-approved letters to all customers, agents, and representatives within the scope of harm from the acts of Defendants; address the actual and likely confusion caused from their use of the Infringing Marks;

(G) an Order requiring Defendants to account for and pay to Plaintiffs all profits arising from Defendants' unlawful acts and that such profits be increased, pursuant to 15 U.S.C. §1117 and other applicable laws;

(H) an Order requiring Defendants to pay Plaintiffs damages, in an amount to be determined by jury resulting from Defendants' unlawful acts and that such damages be trebled, pursuant to 15 U.S.C. §1117 and other applicable laws;

(I) an Order requiring Defendants to pay Plaintiffs' costs and attorneys' fees in this action, pursuant to 15 U.S.C. §1117 and other applicable laws; and

(J) such other relief as the Court may deem appropriate.

Count V: Common Law Trademark Infringement

91. This Count V is a claim for relief under the common law of Florida against Defendants for unfair competition and trademark infringement.
92. Plaintiffs hereby incorporate and reallege the allegations of paragraphs 1 through 51 above as if fully set forth herein.
93. Plaintiff Poudrier owns the mark EZ DOOR CART.
94. Rack Abilities, LLC is the marketing agent for Plaintiffs.
95. Defendants have in the state of Florida and elsewhere engaged in common law trademark infringement and unfair competition with Plaintiffs.

96. Defendants have caused confusion among consumers as to the source and origin of the goods associated with the EZ DOOR CART mark.

97. There is a substantial likelihood that consumers will continue to suffer confusion as the direct result of the Defendants' unlawful conduct.

98. Defendants have acted and are acting in bad faith and with the intent to injure Plaintiffs.

99. As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs have suffered loss and will continue to suffer loss.

100. Plaintiff has suffered and will continue to suffer irreparable injury as the direct result of the unlawful conduct of Defendants.

WHEREFORE, Plaintiff requests that the Court enter judgment in its favor on each claim for relief set forth above, and that it order the following specific relief:

(A) an Order declaring that Defendants have infringed the Plaintiffs' registered marks and have engaged in trademark infringement, false designation of origin, unfair competition, and misappropriation of Plaintiffs' domain names;

(B) an Order preliminarily and permanently enjoining Defendants, their

officers, directors, employees, agents, subsidiaries, distributors, dealers, related companies, and all persons in active concert or participation with them,

(1) from using any name, mark, domain name, source-identifier, or designation comprised of or containing Plaintiffs' marks, or any confusingly similar name, mark, domain name, source-identifier, or designation in any manner likely to cause confusion with Plaintiffs' marks, or to otherwise cause injury to Plaintiffs or their reputation or goodwill; and

(2) from representing, by any means whatsoever, directly or indirectly, that Defendants, their goods or services, and/or their activities originate from, are sponsored by, or are associated, affiliated, or connected with Plaintiffs in any way;

(C) an Order directing that Defendants transfer ownership of the domain names and cause the forfeiture of any claim to ownership of the domain names by Defendants and that they supply proof that the domain name registry has accomplished the transfer of ownership of the domain names to Plaintiffs;

(D) an Order excluding the importation of all goods, packaging, product displays, literature, advertisements, marketing and promotional materials, and any other materials bearing the Infringing Marks or any confusingly similar variation, pursuant to 15 U.S.C. §1124 and other applicable laws;

(E) an Order requiring Defendants to destroy all goods, packaging, product displays, literature, advertisements, marketing and promotional materials, and any other materials bearing the Infringing Marks or any confusingly similar variation, regardless of form, that are in, or come to be in, Defendants' possession, custody, or control;

(F) an Order requiring Defendants to disseminate pre-approved corrective advertising and send pre-approved letters to all customers, agents, and representatives within the scope of harm from the acts of Defendants; address the actual and likely confusion caused from their use of the Infringing Marks;

(G) an Order requiring Defendants to account for and pay to Plaintiffs all profits arising from Defendants' unlawful acts and that such profits be increased, pursuant to 15 U.S.C. §1117 and other applicable laws;

(H) an Order requiring Defendants to pay Plaintiffs damages, in an

amount to be determined by jury resulting from Defendants' unlawful acts and that such damages be trebled, pursuant to 15 U.S.C. §1117 and other applicable laws;

(I) an Order requiring Defendants to pay Plaintiffs' costs and attorneys' fees in this action, pursuant to 15 U.S.C. §1117 and other applicable laws;

and

(J) such other relief as the Court may deem appropriate.

Count VI: Breach of Patent License Agreement

101. This Count VI is a claim for damages for the breach of the Patent License Agreement.

102. Plaintiffs hereby incorporate and reallege the allegations of paragraphs 1 through 51 above as if fully set forth herein.

103. During the life of the Patent License Agreement, Defendants have materially breached the Agreement.

104. The breaches of the Agreement were material.

105. The breaches included but were not necessarily limited to the following violations of the Agreement:

106. Defendants did not pay Plaintiffs the accrued Royalty Payments due for units sold by Licensee or its affiliates and did not properly calculate the amount of such payments, which included profits made by one or more of Defendants from the reverse passing off conduct of Defendants, described hereinabove;

107. Defendants did not report accurately the royalty or properly calculate royalty due Plaintiffs under §4.1 (b), because they did not report or pay on sales at wholesale or any price that was at arm's length such as Defendants' admitted wholesale price to dealers;

108. Defendants concealed in bad faith their actual wholesale prices to customers and did not report the same for royalty purposes;

109. Defendants filed one or more patent applications on alleged improvements to the inventions of Plaintiffs, and then marketed those "patent pending" applications under a trademark which is confusingly similar to Plaintiffs' mark, intending to trade upon the good will of Plaintiffs' and their Mark;

110. Defendants did not report their actual sales of the licensed products, thereby causing the general liability insurance coverage in favor of Plaintiffs' to be compromised;

111. Defendants did not timely pay minimum royalty due under the Agreement while refusing to acknowledge that the License was no longer in force and effect; and

112. Defendants breached the implied duty of good faith and fair dealing owed to Plaintiffs under Florida law and acted in bad faith.

113. Plaintiff has suffered and will continue to suffer damages as the direct result of Defendants' material breach.

114. The damages include direct and consequential losses that cannot be quantified presently but exceeded, upon information and belief, in excess of \$50,000.

WHEREFORE, Plaintiff requests that the Court enter judgment in its favor on each claim for relief set forth above, and that it order the following specific relief:

(A) an Order declaring that Defendants have infringed the Plaintiffs' registered marks and have engaged in trademark infringement, false

designation of origin, unfair competition, and misappropriation of Plaintiffs' domain names;

(B) an Order preliminarily and permanently enjoining Defendants, their officers, directors, employees, agents, subsidiaries, distributors, dealers, related companies, and all persons in active concert or participation with them,

(1) from using any name, mark, domain name, source-identifier, or designation comprised of or containing Plaintiffs' marks, or any confusingly similar name, mark, domain name, source-identifier, or designation in any manner likely to cause confusion with Plaintiffs' marks, or to otherwise cause injury to Plaintiffs or their reputation or goodwill; and

(2) from representing, by any means whatsoever, directly or indirectly, that Defendants, their goods or services, and/or their activities originate from, are sponsored by, or are associated, affiliated, or connected with Plaintiff in any way;

(C) an Order directing that Defendants transfer ownership of the domain names and cause the forfeiture of any claim to ownership of the domain

names by Defendants and that they supply proof that the domain name registry has accomplished the transfer of ownership of the domain names to Plaintiffs;

(D) an Order excluding the importation of all goods, packaging, product displays, literature, advertisements, marketing and promotional materials, and any other materials bearing the Infringing Marks or any confusingly similar variation, pursuant to 15 U.S.C. §1124 and other applicable laws;

(E) an Order requiring Defendants to destroy all goods, packaging, product displays, literature, advertisements, marketing and promotional materials, and any other materials bearing the Infringing Marks or any confusingly similar variation, regardless of form, that are in, or come to be in, Defendants' possession, custody, or control;

(F) an Order requiring Defendants to disseminate pre-approved corrective advertising and send pre-approved letters to all customers, agents, and representatives within the scope of harm from the acts of Defendants; address the actual and likely confusion caused from their use of the Infringing Marks;

(G) an Order requiring Defendants to account for and pay to Plaintiff all

profits arising from Defendants' unlawful acts and that such profits be increased, pursuant to 15 U.S.C. §1117 and other applicable laws;

(H) an Order requiring Defendants to pay Plaintiff damages, in an amount to be determined by jury resulting from Defendants' unlawful acts and that such damages be trebled, pursuant to 15 U.S.C. §1117 and other applicable laws;

(I) an Order requiring Defendants to pay Plaintiffs' costs and attorneys' fees in this action, pursuant to 15 U.S.C. §1117 and other applicable laws;
and

(J) such other relief as the Court may deem appropriate.

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand trial by jury on all issues so triable.

Respectfully submitted this 19th day of
October 2023.

/s/ Stephen D. Milbrath, Esq.

Stephen D. Milbrath, Esq.

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