

BAKER & HOSTETLER LLP  
ATTORNEYS AT LAW  
COSTA MESA

1 R. SCOTT FELDMANN (SBN 169230)  
 sfeldmann@bakerlaw.com  
 2 ANDREW A. WOOD (SBN 279403)  
 awood@bakerlaw.com  
 3 BAKER & HOSTETLER LLP  
 600 Anton Boulevard, Suite 900  
 4 Costa Mesa, CA 92626-7221  
 Telephone: (714) 966-8862  
 5 Facsimile: (714) 754-6611

6 SHANNON V. McCUE (*pro hac vice to be applied for*)  
 smccue@bakerlaw.com  
 7 DAVID E. KITCHEN (*pro hac vice to be applied for*)  
 dkitchen@bakerlaw.com  
 8 BRENDAN E. CLARK (*pro hac vice to be applied for*)  
 bclark@bakerlaw.com  
 9 BAKER & HOSTETLER LLP  
 Key Tower  
 10 127 Public Square, Suite 2000  
 Cleveland, Ohio 44114-1214  
 11 Telephone: (216) 621-0200  
 Facsimile: (216) 696-0740

12 Attorneys for Plaintiff  
 13 EVOLV, LLC

14 UNITED STATES DISTRICT COURT  
 15 CENTRAL DISTRICT OF CALIFORNIA  
 16 SOUTHERN DIVISION

17 EVOLV, LLC,  
 18 Plaintiff,  
 19  
 20 v.  
 21 JOYETECH USA, INC., JOYETECH  
 (CHANGZHOU) ELECTRONICS  
 22 CO., LTD., and WISMEC INDUSTRY  
 CO. LTD.,  
 23 Defendants.

Case No. 8:16-cv-00459  
**COMPLAINT FOR PATENT  
 INFRINGEMENT**  
**DEMAND FOR JURY TRIAL**

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1 Plaintiff Evolv, LLC (“Evolv”), by and through its attorneys, hereby pleads  
2 the following claims for patent infringement of U.S. Patent No. 8,820,330 (“the  
3 ‘330 Patent”) against Defendants Joyetech USA Inc. (“Joyetech USA”), Joyetech  
4 (Changzhou) Electronics Co., Ltd., (“Joyetech China”) (collectively, Joyetech  
5 China and Joyetech USA are “Joyetech”), and Wismec Industry Co. Ltd.  
6 (“Wismec”) (collectively, Joyetech and Wismec are “Defendants”), alleging as  
7 follows:

8 **PARTIES**

9 1. Evolv, LLC is an Ohio corporation with its principal place of business  
10 at 5171 Hudson Drive, Hudson, Ohio 44236.

11 2. Joyetech USA, Inc. is a California corporation that is located at 16  
12 Technology Drive, Suite 118, Irvine, CA 92618, and that conducts business in the  
13 Central District of California.

14 3. On information and belief, Joyetech (Changzhou) Electronics Co., Ltd.  
15 “is a corporation organized and existing under the laws of China, having its  
16 principal address at New District, No. 7 Feng Xiang Road Changzhou, Jiangsu,  
17 China,” with the “principal address” constituting its principal place of business.

18 4. On information and belief, Wismec Industry Co. Ltd. is a corporation  
19 organized and existing under the laws of China, having its principal place of  
20 business at New District, No. 7 Feng Xiang Road Changzhou, Jiangsu, China.

21 **JURISDICTION AND VENUE**

22 5. This Court has subject matter jurisdiction over patent infringement  
23 claims under 28 U.S.C. §§ 1331 and 1338(a) because these claims against  
24 Defendants arise under Acts of Congress relating to patents including, but not  
25 limited to, 35 U.S.C. §§ 271(a)-(c), 281, 283-285, and 287(a).

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

27 **Joyetech USA**

28 7. This Court has personal jurisdiction over Joyetech USA because it is

1 incorporated in California and conducted business within California, conducts its  
2 principal operations in Orange County, California, and commits acts of  
3 infringement in violation of 35 U.S.C. § 271, by using, importing, offering to sell,  
4 and selling electronic vaporizers to distributors and consumers, in this judicial  
5 district. Defendant Joyetech USA regularly does business, solicits business, and/or  
6 derives substantial revenue from products provided to retailers, all while Joyetech  
7 induces the infringing resale of knockoff products. Joyetech USA has purposefully  
8 established substantial, systematic, and continuous contacts in California and this  
9 judicial district, and expects, or should reasonably expect, to be haled into court  
10 here. Additionally, the economic harm from the wrongful acts described in this  
11 Complaint were directed at and suffered by Evolv within this jurisdictional district.

12 8. Joyetech USA has also indirectly infringed by offering to sell to third-  
13 party U.S. manufacturers, within the United States, accused infringing circuit  
14 boards constituting a material part of the invention and lacking substantial non-  
15 infringing uses.

16 9. Upon information and belief, Joyetech USA has also placed infringing  
17 products containing said circuit boards into the stream of commerce throughout the  
18 United States with the expectation that such products have been and will continue  
19 to be, offered for sale, sold, and used in this judicial district.

20 10. Upon information and belief, Joyetech USA imports infringing  
21 products into the United States from, and is the official distributor and online  
22 retailer for, Joyetech (Changzhou) Electronics Co., Ltd., which controls Joyetech  
23 USA and other subsidiaries, affiliates, and related entities affiliated under the trade  
24 name, "Joyetech Group."

25 11. Upon information and belief, Joyetech USA also operates as the  
26 distributor and retailer for Wismec Industry Co. Ltd. in the United States.

27 12. Upon information and belief, the products that Joyetech USA imports,  
28 offers to sell, sells and distributes in the United States are sold under trademarks

1 including JOYETECH®, WISMEC®, ELEAF®, and ISMOKA™.

2 **Joyetech China**

3 13. This Court also has personal jurisdiction over Joyetech China because  
4 Joyetech China has availed itself of United States District Courts in order to sue  
5 defendants in the United States, alleging infringement of Joyetech China’s own  
6 alleged intellectual property. In previous third party litigation, Joyetech China has  
7 alleged that Joyetech China had “trademark applications for the marks eGo-T (U.S.  
8 Serial No. 851477422) and eGo-C (U.S. Serial No. 85451811),” and availing itself  
9 of filings with the United States Patent and Trademark Office (“PTO”).

10 14. Additionally, personal jurisdiction is proper because, upon information  
11 and belief, Joyetech China, acting through its controlled U.S. subsidiary, Joyetech  
12 USA, indirectly infringes upon the patent-in-issue by causing importation of  
13 infringing products into Orange County, California for redistribution throughout the  
14 United States with the specific intent that such importation would directly infringe  
15 the ‘330 Patent.

16 15. Furthermore, Joyetech China has indirectly infringed upon the patent-  
17 in-suit by inducing at least Joyetech USA to import, offer to sell, sell, and use the  
18 patented invention in the United States without Evolv’s permission. Joyetech  
19 China acted with prior knowledge of the ‘330 Patent, and with prior knowledge that  
20 its inducement of sales by Joyetech USA would infringe, both of which were  
21 provided to an officer of that company. Joyetech China acted with specific intent in  
22 China to cause others in the United States to directly infringe in California and  
23 within this judicial district, knowing and intending that the induced acts constituted  
24 infringement within the United States and this judicial district.

25 16. This Court also has personal jurisdiction over Joyetech China because  
26 Joyetech China advertises and provides product specifications and customer use  
27 instructions of infringing products in the United States and this district, through  
28 [www.joyetech.com](http://www.joyetech.com), in order to support direct sales by Joyetech USA, and by such

1 acts demonstrates Joyetech China's specific intent to indirectly infringe via  
2 inducement. Joyetech China has purposefully established substantial, systematic,  
3 and continuous contacts in California and this judicial district, and expects, or  
4 reasonably should expect, to be haled into Court here. Additionally, the economic  
5 harm from the wrongful acts described in this Complaint were directed at, and  
6 suffered by Evolv in this judicial district.

7 **Wismec**

8 17. This Court has personal jurisdiction over Wismec, which after being  
9 provided with a copy of the '330 Patent, and told that incorporating its planned  
10 circuit boards into electronic vaporizers would infringe upon Evolv's patent,  
11 proceeded to design a knockoff board anyway. Wismec specifically intended to  
12 infringe the '330 Patent by causing acts that Wismec knew would constitute direct  
13 infringement in the United States by others, such as inducing Joyetech USA to  
14 directly infringe via importation, offers to sell, and selling infringing circuit boards  
15 and electronic vaporizers to manufacturers and retailers, and the vaporizers' use by  
16 end users.

17 18. This Court also has personal jurisdiction over Wismec because  
18 Wismec advertises and provides product specifications and customer use  
19 instructions of infringing products in the United States and this judicial district,  
20 through [www.wismec.com](http://www.wismec.com), in order to support direct sales by Joyetech USA, and  
21 by such acts demonstrates Wismec's specific intent to indirectly infringe via  
22 inducement. Wismec has purposefully established substantial, systematic, and  
23 continuous contacts in California and this judicial district, and expects, or  
24 reasonably should expect, to be haled into Court here. Additionally, the economic  
25 harm from the wrongful acts described in this Complaint were directed at, and  
26 suffered by Evolv in this judicial district.

27 **FACTUAL BACKGROUND**

28 19. This patent infringement action arises out of Joyetech's and Wismec's

1 unauthorized inclusion of Evolv’s patented technology in power regulated  
2 vaporizers. Evolv seeks damages for Joyetech’s and Wismec’s infringement,  
3 enhancement of damages due to their willful infringement, and a preliminary and  
4 permanent injunction restraining Defendants from further infringement.

5 **Evolv Is The Leading Innovator of Vaporizers**

6 20. Evolv was founded in 2010 to make safe, intuitive, and high tech  
7 electronic vaporizer products.

8 21. Evolv has regularly pioneered significant innovations in the design of  
9 circuit boards for vaporizers, including the design and manufacture of eleven  
10 different circuit boards in the past five years.

11 22. For the personal health of one of the founders – as well as for millions  
12 of other smokers – Evolv’s founders desired to improve vaporizers so that demand  
13 for tobacco ends.

14 23. Evolv has received an award from the National Institutes of Health to  
15 create an electronic cigarette that records vapor output for use in clinical research.

16 24. Evolv serves as the administrator for the Technical Advisory Group  
17 for the American National Standards Institute charged with setting national  
18 standards for vaporizers.

19 25. Upon information and belief, electronic vaporizers have assisted  
20 smokers to transition away from tobacco use, and to completely stop smoking.  
21 Vaporizers present an opportunity to save millions of lives and to significantly  
22 reduce the burden of smoking-related diseases worldwide.

23 26. Vaporizers emit a water-based vapor that resembles smoke, but the  
24 devices do not include tobacco or combustion, and therefore emit substantially  
25 lower levels of harmful chemicals that are typically present in the smoke of tobacco  
26 products.

27 27. Evolv conducts research and development in the United States to  
28 improve vaporizer technology to invent products that appeal to traditional tobacco

1 users.

2 28. Evolv, in collaboration with a non-exclusive licensee, Dimension (also  
3 owned by a co-inventor of the '330 Patent), designs, manufactures, services, and  
4 sells circuit boards that serve as the “engines” of high-end power-regulated  
5 vaporizers. Evolv and Dimension market the inventors’ circuit boards throughout  
6 the United States and in dozens of countries worldwide.

7 29. Evolv is the leading entity based in the United States engaged in the  
8 innovation, design, manufacture, and sale of circuit boards for power regulated  
9 vaporizers. Evolv and its inventor-owned manufacturing licensee employ a staff of  
10 19 educated and skilled workers at their design, manufacturing, and assembly  
11 facilities in Ohio.

12 **Joyetech Copied Evolv’s Early Innovations**

13 30. Upon information and belief, Joyetech China distributes and sells  
14 products into the United States through Joyetech USA. Upon information and  
15 belief, Joyetech China operates under the trade name, “Joyetech Group,” and  
16 controls a world-wide family of related companies, including Joyetech USA.

17 31. Joyetech USA also operates as the distributor and retailer of Wismec  
18 products in the United States.

19 32. In or about April 2012, Evolv introduced the first wattage-control  
20 circuit board to market – the DNA® 12. Evolv introduced DNA® 20 and DNA®  
21 30 circuit boards to the market in or about December 2012 and December 2013,  
22 respectively. Evolv sold these boards to high-end device makers who included the  
23 boards in the vaporizers they sold to consumers.

24 33. In or about August 2014, Joyetech began marketing a 30-watt device  
25 that sold for less than one-third the price of devices containing Evolv’s circuit  
26 boards. Because of the very low price point, Joyetech’s product quickly dominated  
27 the low-quality end of the market.

28 34. In or about September 2014, Evolv released the DNA® 40, which not



1 only increased wattage, but was the first product to employ temperature control. As  
2 with Evolv's introduction each prior circuit boards, Joyetech again moved to bring  
3 out a similar, but still low-quality, product that that quickly dominated the low-  
4 quality end of the market.

### 5 **Evolv Pioneers Wattage Control**

6 35. Wattage control is a key recent innovation invented by Evolv for  
7 electronic vaporizers. Prior to Evolv's invention, existing vaporizers produced  
8 inconsistent vapor due to residue buildup. This buildup consumed the heating  
9 element, significantly altering the resistance generated when voltage was applied to  
10 the heating element. As the resistance changed, the quantity of vapor would vary  
11 from what the user intended and the quality of vapor would often deteriorate into an  
12 unpleasant burnt chemical taste.

13 36. Wattage control solved these problems by automatically accounting  
14 for variations in resistance. With wattage control, the circuitry automatically adjusts  
15 the current applied to the heating element to maintain a selected wattage. The  
16 power level, i.e. wattage, can be a pre-set level or a level selected by the user. By  
17 maintaining a steady level of power, wattage control provides the user with  
18 consistent control over the vapor produced.

### 19 **Evolv Granted Patent**

20 37. Evolv sought and obtained patent protection for its wattage control  
21 innovation.

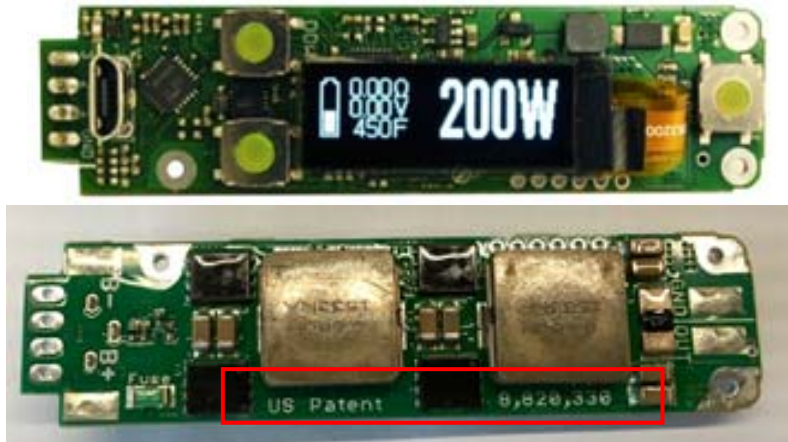
22 38. On September 2, 2014, the U.S. Patent and Trademark Office duly and  
23 legally issued U.S. Patent No. 8,820,330 titled "Personal Vaporizer That Simulates  
24 Smoking With Power Control." A true and correct copy of the '330 Patent is  
25 attached as Exhibit 1.

26 39. Evolv is the owner by assignment of all rights, title, and interest in and  
27 to the '330 Patent.

28 40. Evolv actively practices the inventions of the '330 Patent.



1 41. Evolv's circuit boards that incorporate the inventions claimed in the  
2 '330 Patent are marketed under the registered trademark DNA®. The below image  
3 depicts a DNA® 200 circuit board. The 200 designation indicates the maximum  
4 wattage produced by this DNA® circuit board. Each DNA® 200 circuit board is  
5 produced with notice of Evolv's patent on the board (red box in second photo  
6 below).



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15 42. Through its sole (US) licensee, Evolv sells DNA® 200 circuit boards  
16 to vapor device manufacturers who include the circuit boards as an integral part of  
17 the devices that the manufacturers in turn sell to distributors and end-users.

18 43. Wismec is one of the vaporizer manufacturers to whom Evolv has  
19 sold, and continues to sell, the DNA® 200 circuit boards. Evolv has sold DNA®  
20 200 circuit boards to Wismec since August 2015. Wismec's products containing  
21 Evolv's DNA® 200 circuit boards are not accused of infringement by this  
22 Complaint.

23 44. At Wismec's instructions, Evolv ships the DNA® 200 circuit boards  
24 purchased by Wismec to facilities in China, including facilities at the same  
25 Changzhou City address that operates as the principal place of business for both  
26 Wismec and Joyetech China. Wismec's payment to Evolv for the circuit boards are  
27 sent from overseas accounts in China.

28 45. Wismec actively touts the Evolv DNA® 200 circuit board in its

1 product marketing. Wismec named its product containing Evolv’s circuit board as  
2 the “Reuleaux DNA 200.” On the website where Wismec offers for sale the  
3 “Reuleaux DNA 200” in the United States – [www.wismec.com](http://www.wismec.com) – the first sentence  
4 of the product description reads: “Reuleaux, powered by DNA200, becomes the  
5 new highlight of Wismec.”

6 **Mr. Qian Holds Himself Out As An Officer In Three Companies: Joyetech**  
7 **USA, Joyetech Group, and Wismec**

8 46. On or around November 11, 2015, Evolv’s President met with  
9 representatives of Joyetech and Wismec in Irvine, California, to discuss the design  
10 and supply of DNA® 200 circuit boards for the “Reuleaux DNA 200.” One of the  
11 Joyetech representatives, Mr. Davy Qian, provided a business card listing his title  
12 as “General Manager, Joyetech USA Inc.” Upon information and belief, Mr. Qian  
13 has created publicly-available accounts on LinkedIn listing his corporate titles as  
14 “Vice President of Joyetech Group” and “VP at Joyetech USA Inc.” In subsequent  
15 written communications, Mr. Qian also represented that he was acting on behalf of  
16 “Wismec Shenzhen Co. Ltd.,” and stated that he was “responsible for the whole  
17 [Wismec] operations in China.”

18 **Evolv Meets With Joyetech And Informs Joyetech of Patent and Infringement**

19 47. During the November 11, 2015 meeting in Irvine, California,  
20 Joyetech’s and Wismec’s representative informed Evolv’s President of Joyetech  
21 and Wismec’s intent to market a competing “low budget” 200-wattage device based  
22 upon a new circuit board alternative to the DNA® 200.

23 48. During the same meeting, Evolv’s President, Brandon Ward, advised  
24 Mr. Qian of the ’330 Patent and instructed him that the ’330 Patent claims many of  
25 the inventions found in the DNA® 200 circuit board. Mr. Ward informed Mr. Qian  
26 of the need for Joyetech to obtain a license from Evolv in order to import, make,  
27 sell, or offer for sale the “low budget” 200-wattage vaporizer containing a circuit  
28 board not purchased from Evolv. Mr. Qian did not initially respond except to

1 request a copy of the '330 Patent.

2 49. On or about November 17, 2015, Evolv's President e-mailed Mr. Qian,  
3 providing him with a copy of the '330 Patent, and offering to further discuss  
4 Joyetech and Wismec's planned "low budget" 200-wattage device. Mr. Qian  
5 replied that he had forwarded the '330 Patent to "our IP department" for review.

6 50. Evolv's President reiterated that Joyetech and Wismec must obtain a  
7 license of the '330 Patent to avoid infringement. Evolv offered to negotiate such a  
8 license in order to mitigate the harm that would result from a flood of Joyetech and  
9 Wismec's pirated products being imported into the United States, as at the time the  
10 license was offered, Defendants had to date only produced low quality products.

11 51. Joyetech and Wismec refused to negotiate any license, instead making  
12 a *pro forma* denial of infringement, but refusing to explain why when asked.  
13 Again, without providing any explanation, Mr. Qian made an oblique reference to a  
14 "2008 publication," but did not identify it. Defendants did not back away from  
15 their intended plan to sell copied circuit boards, and to incorporate them into  
16 infringing vaporizers, for importation, sale and re-sale within the United States.

17 **Wismec's KnockOff "Reuleaux RX 200" Enters Market Last Thanksgiving**

18 52. Rather than negotiate a license, Wismec promptly began selling its  
19 "low budget" 200-wattage vaporizer – the "Reuleaux RX 200." On information and  
20 belief, Wismec began selling the "Reuleaux RX 200" in the United States on or  
21 about November 23, 2015.

22 53. The images below are taken from [www.wismec.com](http://www.wismec.com), where Wismec  
23 presents a "Product Introduction" for both the "Reuleaux DNA 200" – which  
24 includes Evolv's DNA® 200 circuit board – and the low budget "Reuleaux RX  
25 200."  
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Reuleaux DNA 200



Reuleaux RX 200

54. The circuit board included in the “Reuleaux RX 200” vaporizer is designed, manufactured, and sold by Joyetech and Wismec under the Wismec® brand. The product description provided to online retailers for the “Reuleaux RX 200” devices includes the language: “Designed in conjunction with Wismec and Joyetech, the chipset features an equally powerful 200W maximum output, with full temperature control that is compatible with Ni200 Nickel, Titanium, and Stainless Steel heating materials.”

55. Upon information and belief, the circuit board included in the “Reuleaux RX 200” was jointly designed by Joyetech and Wismec by copying the design of the DNA® 200 circuit board.

### **Accelerated Price Erosion Begins**

56. Upon information and belief, Joyetech and Wismec’s “Reuleaux RX 200” is marketed at a substantially lower price compared to the “Reuleaux DNA 200.” Many online retailers offer the knockoff “Reuleaux RX 200” device at prices under one-half that of the “Reuleaux DNA 200” and other legitimate devices that contain Evolv’s DNA® 200 circuit board.

57. Upon information and belief, Joyetech and Wismec actively tout the

1 price difference between the “Reuleaux RX 200” and the “Reuleaux DNA 200” as a  
2 primary point of consumer interest. The product description provided to online  
3 retailers for the “Reuleaux RX 200” devices includes the language: “The Wismec  
4 Reuleaux RX200 Box Mod by Jay Bo Designs builds upon the Reuleaux triple  
5 18650 (batteries sold separately) platform, utilizing the chassis and design while  
6 integrating an equally powerful 200W chipset that simultaneously brings the device  
7 to a much more affordable price point.”

8 58. Upon information and belief, Wismec has placed on its website,  
9 [www.wismec.com](http://www.wismec.com), a video review of the “Reuleaux RX 200” by  
10 “VapingwithTwisted420.” The video review states that the “Reuleaux RX 200” is  
11 “pretty much identical” to the “Reuleaux DNA 200,” that it uses a “Joyetech  
12 board,” and that it is “basically a Reuleaux but cheaper.”

13 59. Upon information and belief, Joyetech and Wismec continue to offer  
14 for sale its “Reuleaux DNA 200” vaporizer, which includes a legitimate DNA® 200  
15 circuit board. Evolv has not instructed Joyetech and Wismec to cease sales of the  
16 “Reuleaux DNA 200,” nor taken any action to limit Joyetech and Wismec’s sales of  
17 vaporizers that include Evolv’s DNA® 200 circuit boards.

18 60. The Food and Drug Administration (“FDA”) has announced its  
19 intention to regulate electronic vaporizers.

20 61. Upon information and belief, Joyetech and Wismec’s decision to  
21 market a knockoff version of the “Reuleaux” product, while having an authorized  
22 version freely available, is based on Joyetech and Wismec’s intention to drive down  
23 the price of all vaporizers featuring Evolv’s patented circuit boards, and thereby  
24 effectively drive Evolv and other manufacturing competitors from the United States  
25 market before the market consolidates around FDA-approved devices.

26 **Joyetech’s Latest KnockOff Device, The “Cuboid”**

27 62. On information and belief, Joyetech began selling a second knockoff  
28 device – the Cuboid – to distributors and retailers in the United States on or about

1 December 28, 2015.

2 63. The images below are taken from [www.joyetech.com](http://www.joyetech.com), where Joyetech  
3 presents product information for the new device.

## 4 Cuboid



16 64. TThe Cuboid device is designed and manufactured by Joyetech China,  
17 and imported, offered for sale, and sold by Joyetech USA in this district, and  
18 throughout the United States. A news release posted on Joyetech’s website states  
19 that the device has a 150 watt output, but can be upgraded to 200 watts with free  
20 downloadable firmware.

21 65. Upon information and belief, the circuit board included in the Cuboid  
22 was copied by Joyetech China, which reverse engineered Evolv’s DNA® 200  
23 circuit board.

24 66. Upon information and belief, Joyetech’s Cuboid is marketed at a  
25 substantially lower price compared to the “Reuleaux DNA 200.” Many online  
26 retailers offer the knockoff Cuboid device at prices under one-half to one-third that  
27 of the “Reuleaux DNA 200” and other legitimate devices that contain Evolv’s  
28 DNA® 200 circuit board.



1           67. Upon information and belief, Joyetech’s decision to market a second  
2 knockoff device, while having Evolv’s boards freely available for purchase and  
3 integration into the finished product, is based on Joyetech’s intention to drive down  
4 the price of all vaporizers featuring Evolv’s patented circuit boards and thereby  
5 drive Evolv and other competitors from the United States market before the market  
6 consolidates around FDA-approved devices.

7 **Joyetech and Wismec’s Piracy Threatens Evolv’s Survival**

8           68. Since its founding in 2010, Evolv has consistently brought new  
9 innovations to the electronic vaporizer market to encourage traditional tobacco  
10 consumers to stop smoking.

11           69. Upon information and belief, if Defendants’ piracy is allowed to  
12 continue unabated, Evolv will be driven from the electronic vaporizer circuit board  
13 market, and the only significant remaining market entities will be Chinese-based  
14 manufacturers, and the consumer market will be denied the benefit of future  
15 technology developments from Evolv.

16           70. Because of the stark price difference between the Defendants’  
17 knockoff devices and legitimate devices containing Evolv’s DNA® 200 circuit  
18 boards, Evolv is under pressure by its customers – the vaporizer manufacturers – to  
19 reduce the price of its circuit boards. One high volume device manufacturer has  
20 already cancelled a purchase order for DNA® 200 circuit boards, explaining that it  
21 can no longer realistically sell vaporizers containing the DNA® 200 circuit board  
22 because of the low-priced “Reuleaux RX 200” alternative. Other manufacturers  
23 have ceased placing new orders for Evolv’s circuit board.

24           71. Moreover, Joyetech and Wismec have recently begun selling the RX  
25 200 circuit board as a replacement for Evolv’s DNA® 200 circuit board – creating  
26 a direct competition with Evolv, and undermining Evolv’s relationships with its  
27 vaporizer manufacturer customers.

28           72. Upon information and belief, the “Reuleaux DNA 200” has confused



1 and will continue to confuse end-users who mistakenly believe that the device  
2 contains an Evolv circuit board. Complaints regarding the “Reuleaux RX 200” have  
3 already been logged with Evolv’s service department by consumers who mistakenly  
4 believe that Evolv is the manufacturer of the Joyetech and Wismec’s low-budget  
5 devices.

6 **Joyetech and Wismec’s Cuboid And Reuleaux RX 200 Devices Infringe**

7 73. Joyetech and Wismec have infringed and continue to infringe claims  
8 1-23 of the ’330 Patent in the United States by making, using, offering for sale,  
9 selling and importing products that are covered by the claims of ’330 Patent.  
10 Specifically, the Wismec “Reuleaux RX 200” and Joyetech “Cuboid” infringe  
11 every claim of the ’330 Patent.

12 74. A claim chart showing infringement of all of the claims of ’330 Patent  
13 by Wismec’s “Reuleaux RX 200” vaporizer is attached as Exhibit 2.

14 75. A claim chart showing infringement of all of the claims of ’330 Patent  
15 by Joyetech’s “Cuboid” vaporizer is attached as Exhibit 3.

16 76. For example, a summary of the infringement of Claim 1 of the ’330  
17 Patent is provided as follows:

18 a. Preamble: The RX 200 and Cuboid devices are each personal  
19 vaporizers used to simulate smoking.

20 b. Element 1[a]: The RX 200 and Cuboid devices each contain  
21 control buttons (boxed in red) that provide a user input device that allows a user to  
22 select a wattage setting (boxed in yellow) from a plurality of wattage settings. In  
23 each device, the wattage setting corresponds to a power level in watts that is  
24 delivered to a heating element for vaporizing material during a simulated smoking  
25 session. Testing by Evolv’s technical expert witness confirms correspondence of a  
26 set power level to an actual power level employing multiple resistors of known  
27 resistance.  
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c. Reuleaux RX 200

Cuboid

Element 1[b]: The RX 200 and Cuboid devices each contain a plurality of batteries (IMR 18650 3.7V / 3000MAH / 40A) that generate a power level delivered to the heating element. The power source is the sole source of power. Testing by Evolv’s technical expert witness confirms that the selected power level corresponds to the power delivered to the heating element.



d. Reuleaux RX 200

Cuboid

Element 1[c]: The RX 200 and Cuboid devices each contain control elements (generally boxed in red) that function as a power manager to perform the claimed aspects in the circuit. Testing by Evolv’s technical expert witness confirms accurate control based on the user input regardless of heating element parameters (e.g.,

1 actual resistance) and regardless of the state of the power source. This was shown  
 2 by, e.g., varying resistance in testing to simulate changes in the heating element.



9 e. Reuleaux RX 200

Cuboid

10 77. On information and belief, the following vaporizer products directly  
 11 infringe at least claim 1 of the '330 Patent: Wismec Reuleaux RX 200, Wismec  
 12 Presa Standard, Wismec Presa TC75W, Wismec Presa TC40W, Wismec  
 13 VaporFlask series (including at least the Classic, Lite, and Stout models), Joyetech  
 14 Cuboid, Joyetech eVic Series (including at least the VT, VTC, and VTC mini  
 15 models), Joyetech eGrip Series (including at least the VT and OLED models),  
 16 Joyetech eCom wattage controlled, Joyetech eMode, and Eleaf iStick series  
 17 (including at least the Eleaf Mini iStick 10W, Eleaf Mini iStick 20W, Eleaf iStick  
 18 20W, Eleaf iStick 30W, Eleaf iStick 50W, Eleaf iStick 100W, Eleaf iStick TC40W,  
 19 Eleaf iStick TC60W, and Eleaf iStick TC100W models).

20 78. More specifically, Joyetech and Wismec make, use, sell, offer to sell,  
 21 supply, and/or cause to be supplied to retailers and end users at least the following  
 22 vaporizers that contain technology disclosed and claimed in the '330 Patent:  
 23 Wismec Reuleaux RX 200, Wismec Presa Standard, Wismec Presa TC75W,  
 24 Wismec Presa TC40W, Wismec VaporFlask series (including at least the Classic,  
 25 Lite, and Stout models), Joyetech Cuboid, Joyetech eVic Series (including at least  
 26 the VT, VTC, and VTC mini models), Joyetech eGrip Series (including at least the  
 27 VT and OLED models), Joyetech eCom wattage controlled, Joyetech eMode, and  
 28 Eleaf iStick series (including at least the Eleaf Mini iStick 10W, Eleaf Mini iStick

1 20W, Eleaf iStick 20W, Eleaf iStick 30W, Eleaf iStick 50W, Eleaf iStick 100W,  
2 Eleaf iStick TC40W, Eleaf iStick TC60W, and Eleaf iStick TC100W models), and  
3 the circuit boards contained within each of them, (collectively, vaporizer products  
4 and circuit boards are “Accused Products”).

5 79. Upon information and belief, all of the Accused Products specified in  
6 paragraph 78 of this Complaint infringe a least claim 1 of the ‘330 Patent.

7 80. Defendants’ infringement of claims 1-23 of the ‘330 Patent has injured  
8 Evolv and will cause irreparable injury in the future unless Defendants are  
9 preliminarily and permanently enjoined from further infringement.

10 **FIRST CLAIM FOR RELIEF**

11 **(Infringement of U.S. Patent No. 8,820,330)**

12 81. Evolv re-alleges and incorporates by reference the foregoing  
13 paragraphs 1-80 as though fully set forth herein.

14 82. Joyetech USA has directly infringed and continues to infringe all  
15 claims of the ‘330 Patent in violation of 35 U.S.C. § 271(a), by importing into the  
16 United States, and by offering to sell, selling, supplying, using, and/or causing to be  
17 used within the United States, devices and/or systems that embody or practice the  
18 inventions claimed in the ‘330 Patent, including the Accused Products.

19 83. Joyetech USA has indirectly infringed, and continues to infringe,  
20 within the United States, all claims of the ‘330 Patent in violation of 35 U.S.C. §  
21 271(b), with prior knowledge of the ‘330 Patent and with the specific intent that the  
22 acts of “selling” by other retailers, “making” by manufacturers, and “using” by  
23 consumers, which Joyetech USA induces, would infringe all claims of the ‘330  
24 Patent.

25 84. Joyetech USA has also indirectly infringed all claims of the ‘330  
26 Patent in violation of 35 U.S.C. § 271(c), within the United States, after importing,  
27 and with specific intent to cause infringement by others, by offering to sell to at  
28 least one U.S.-based third-party manufacturer of electronic vaporizers, circuit

1 boards that Joyetech USA knows would contributorily infringe if “offered for sale,”  
2 “sold,” or “used,” as the circuit boards are a material part of the patented invention,  
3 especially made for an infringing use, and not a staple article or commodity of  
4 commerce without substantial non-infringing uses.

5 85. Joyetech China and Wismec, within China, have also indirectly  
6 infringed all claims of the ‘330 Patent, each of them, pursuant to 35 U.S.C. §  
7 271(b), with prior knowledge of the ‘330 Patent and the specific intent to cause  
8 Joyetech USA within the United States to make infringing designs, import, offer for  
9 sale, and sell to retailers, manufacturers, and consumers the Accused Products,  
10 including the Wismec Reuleaux RX 200 and Joyetech Cuboid, with the specific  
11 intent that such induced acts would infringe. With specific intent to cause  
12 infringement, Joyetech China and Wismec provided instructions regarding how to  
13 use the Accused Products, Accused Product specifications, and advertised  
14 infringing Accused Products within the United States, at least through their  
15 respective company websites.

16 86. Additionally, after saturating the United States market with knock-offs  
17 for almost four months, Defendants, and each of them, finally conceded after  
18 prodding, that a license to avoid infringement was necessary. Defendants’ Mr.  
19 Qian wrote in a March 7, 2016 e-mail, “[w]e have fully studied your patent with 22  
20 [sic] claimed rights. How much do you need us pay for each licensed products...?”

21 87. Evolv replied as follows in relevant part, “Evolv is not willing to sell  
22 or license its patent. We are willing to continue to sell Wismec and Joyetech our  
23 boards, and to work with you to fulfill all of your needs [*i.e.*, sell Evolv’s circuit  
24 boards in sufficient quantities].

25 88. The circuit board components included in the infringing Accused  
26 Products drive the demand for the entire product.

27 89. As a result of Defendants’ infringement of the ‘330 Patent by Joyetech  
28 China and Wismec, Evolv has been damaged, and will continue to be damaged, by



1 Defendants' conduct. Evolv is, therefore, entitled to such damages pursuant to 35  
2 U.S.C. § 284 in an amount that presently cannot be ascertained, but that will be  
3 determined at trial.

4 90. Evolv has complied with the statutory requirement pursuant to 35  
5 U.S.C. § 287(a) of giving notice of the '330 Patent to Wismec and Joyetech by  
6 identifying the patent number in advance of this lawsuit as described above.

7 91. Upon information and belief, Defendants' past and continued  
8 infringement of the '330 Patent has been deliberate and willful, and this case is  
9 therefore an exceptional case, which warrants an award of treble damages and  
10 attorneys' fees to Evolv pursuant to 35 U.S.C. § 285. Each of the Defendants had  
11 advance knowledge of the '330 Patent prior to the filing of this Complaint, and  
12 prior notice that Wismec and Joyetech's proposed "low budget" 200-wattage  
13 vaporizer would infringe. Notwithstanding Defendants' prior knowledge of the  
14 patent and resulting infringement, Defendants chose to make the Accused Devices  
15 and caused within the United States importation, and the offer for sale, sale and use  
16 of the Accused Products without a license from Evolv, in order to drive demand  
17 away from 200-wattage vaporizer devices that contain Evolv's DNA® 200 circuit  
18 boards, and to thereby injure Evolv's profitability and ultimately drive Evolv from  
19 the marketplace.

20 92. The direct and indirect infringement by Joyetech USA, and indirect  
21 infringement by Joyetech China and Wismec, has injured and continues to injure  
22 Evolv and will cause irreparable harm unless Defendants are enjoined from  
23 infringing the claims of the '330 Patent. Accordingly, Evolv is entitled to  
24 temporary, preliminary, and/or permanent injunctive relief against each Defendant  
25 from further infringements pursuant to 35 U.S.C. § 283.

26 WHEREFORE, Plaintiff Evolv prays for the following judgment and relief:

27 a. entry of judgment that Joyetech USA, Inc. has directly and indirectly  
28 infringed the '330 Patent pursuant to 35 U.S.C. § 271(a)-(c);

1           b.       entry of judgment that Joyetech (Changzhou) Electronics Co., Ltd.,  
2 and Wismec Industry Co. Ltd., each of them, have indirectly infringed the '330  
3 Patent pursuant to 35 U.S.C. § 271(b);

4           c.       entry of judgment that Joyetech USA, Inc., Joyetech (Changzhou)  
5 Electronics Co., Ltd., and Wismec Industry Co. Ltd., each of them, have willfully  
6 infringed the '330 Patent;

7           d.       an order that Evolv is entitled to preliminary and permanent  
8 injunctions enjoining Joyetech USA, Inc., Joyetech (Changzhou) Electronics Co.,  
9 Ltd., and Wismec Industry Co. Ltd., and their respective agents, servants, officers,  
10 directors, employees, affiliated companies, successors-in-interest, and persons or  
11 entities acting in concert with each of them from infringing directly or indirectly,  
12 inducing others to directly infringe, and/or contributing to the infringement of  
13 claims of the '330 Patent;

14           e.       an order that Joyetech USA, Inc., Joyetech (Changzhou) Electronics  
15 Co., Ltd., and Wismec Industry Co. Ltd., each of them, provide an accounting and  
16 pay to Evolv damages in an amount adequate to compensate Evolv for Defendants'  
17 infringement of the '330 Patent, including damages for lost profits, but in no event  
18 less than a reasonable royalty, including up to treble damages for willful  
19 infringement pursuant to 35 U.S.C. § 284;

20           f.       an order that Joyetech USA, Inc., Joyetech (Changzhou) Electronics  
21 Co., Ltd., and Wismec Industry Co. Ltd., each of them, be ordered to file with this  
22 Court, and to promptly serve on counsel for Evolv, within twenty (20) days after  
23 entry of any injunction issued by the Court in this action, a sworn statement setting  
24 forth in detail the manner and form in which that Joyetech USA, Inc., Joyetech  
25 (Changzhou) Electronics Co., Ltd., and Wismec Industry Co. Ltd., each of them,  
26 have complied with the injunction;

27           g.       an order that Evolv is entitled to prejudgment and postjudgment  
28 interest and costs from each Defendant;



1 h. an order that this is an exceptional case under 35 U.S.C. § 285  
2 meriting that Evolv be awarded its costs, including its reasonable attorneys’ fees  
3 and other expenses incurred in connection with this action from each Defendant;  
4 and,

5 i. any other relief that the Court finds legal, just and equitable, as may be  
6 available under law or equity, and which the Court finds proper.  
7

8 Dated: March 9, 2016

BAKER & HOSTETLER LLP

9 By: /s/ R. Scott Feldmann  
10 R. Scott Feldmann

11 BAKER & HOSTETLER LLP  
12 R. SCOTT FELDMANN (SBN 169230)  
13 sfeldmann@bakerlaw.com  
14 ANDREW A. WOOD (SBN 279403)  
15 awood@bakerlaw.com  
16 600 Anton Boulevard, Suite 900  
17 Costa Mesa, CA 92626-7221  
18 Telephone: (714) 966-8862  
19 Facsimile: (714) 754-6611

20 SHANNON V. McCUE (*pro hac vice to be*  
21 *applied for*)  
22 smccue@bakerlaw.com  
23 DAVID E. KITCHEN (*pro hac vice to be*  
24 *applied for*)  
25 dkitchen@bakerlaw.com  
26 BRENDAN E. CLARK (*pro hac vice to be*  
27 *applied for*)  
28 bclark@bakerlaw.com  
29 BAKER & HOSTETLER LLP  
30 Key Tower  
31 127 Public Square, Suite 2000  
32 Cleveland, Ohio 44114-1214  
33 Telephone: (216) 621-0200  
34 Facsimile: (216) 696-0740

35 Attorneys for Plaintiff  
36 EVOLV, LLC

BAKER & HOSTETLER LLP  
ATTORNEYS AT LAW  
COSTA MESA

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**DEMAND FOR JURY TRIAL**

Pursuant to United States District Court, Central District of California Local Rule 38-1, Plaintiff Evolv demands trial by jury in this action of all issues so triable.

Dated: March 9, 2016

BAKER & HOSTETLER LLP

By: /s/ R. Scott Feldmann  
R. Scott Feldmann

BAKER & HOSTETLER LLP  
R. SCOTT FELDMANN (SBN 169230)  
sfeldmann@bakerlaw.com  
ANDREW A. WOOD (SBN 279403)  
awood@bakerlaw.com  
600 Anton Boulevard, Suite 900  
Costa Mesa, CA 92626-7221  
Telephone: (714) 966-8862  
Facsimile: (714) 754-6611

SHANNON V. McCUE (*pro hac vice to be applied for*)  
smccue@bakerlaw.com  
DAVID E. KITCHEN (*pro hac vice to be applied for*)  
dkitchen@bakerlaw.com  
BRENDAN E. CLARK (*pro hac vice to be applied for*)  
bclark@bakerlaw.com  
BAKER & HOSTETLER LLP  
Key Tower  
127 Public Square, Suite 2000  
Cleveland, Ohio 44114-1214  
Telephone: (216) 621-0200  
Facsimile: (216) 696-0740

Attorneys for Plaintiff  
EVOLV, LLC

608313902.9

BAKER & HOSTETLER LLP  
ATTORNEYS AT LAW  
COSTA MESA