

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

BRK BRANDS, INC.,

Plaintiff,

v.

NEST LABS, INC.,

Defendant.

Civil Action No.:

**COMPLAINT**

**JURY TRIAL DEMANDED**

**COMPLAINT FOR PATENT INFRINGEMENT**

Plaintiff BRK Brands, Inc. (“BRK”), through its attorneys, K&L Gates LLP, brings this action against Defendant Nest Labs, Inc. (“Nest”) to obtain preliminary and permanent injunctive relief, actual damages, treble damages, attorneys’ fees, and costs for Nest’s infringement of BRK’s asserted patents.

**NATURE OF THE ACTION**

1. This is an action arising under the patent laws of the United States, 35 U.S.C. §§ 1 et seq. and is brought by BRK against Nest for Nest’s infringement of U.S. Patent Nos. 6,144,310 (“the ‘310 patent”), 6,600,424 (“the ‘424 patent”), 6,323,780 (“the ‘780 patent”), 6,784,798 (“the ‘798 patent”), 7,158,040 (“the ‘040 patent”), and 6,377,182 (“the ‘182 patent”) (collectively, “Patents-in-Suit”).

**THE PARTIES**

2. BRK Brands, Inc. is a Delaware corporation with its principal place of business in Aurora, Illinois. BRK provides smoke and carbon monoxide alarms, home security solutions, fire extinguishers, and safety and cash boxes.

3. Nest Labs, Inc. is a Delaware corporation with its principal place of business in Palo Alto, California. Nest makes “next generation” thermostats and is currently advertising and offering for sale a new smoke and carbon monoxide alarm named Nest Protect. According to Nest, Nest Protect has not been shipped to any actual customers and will be made available to consumers some time in November. Before developing the Nest Protect, Nest had never sold any smoke and carbon monoxide alarms.

### **JURISDICTION AND VENUE**

4. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a) because this action arises under the patent laws of the United States.

5. This Court has personal jurisdiction over Nest. Nest has committed acts of infringement in this Judicial District in violation of 35 U.S.C. § 271, and places infringing products into the stream of commerce, with the knowledge or understanding that such products will be sold and used in this Judicial District. Nest offers its products for sale on its website ([www.nest.com](http://www.nest.com)). Additionally, Nest partners with various certified professionals that have been “trained and certified by Nest.” A printout from Nest’s website is attached as Exhibit G. Nest instructs its customers to contact these “certified professionals” to “buy a Nest product or arrange installation.” *Id.*

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

### **FACTUAL BACKGROUND**

7. BRK incorporates Paragraphs 1 through 6 of its Complaint as if fully set forth herein.

#### ***The Patents-in-Suit***

8. The ‘310 patent, the ‘424 patent, the ‘780 patent, the ‘798 patent, and the ‘040 patent (collectively, “Morris Patents”) are related patents, invented by Dr. Gary J. Morris. Dr.

Morris has exclusively licensed the Morris Patents to BRK.

9. The '182 patent was invented by BRK engineers and is unrelated to the Morris Patents. The named inventors of the '182 patent are Mark Devine, Mark Watson, Andrew Ivanecky, Lulzim Osmani, Kenneth Venzant, and Samuel Lopez. The '182 patent is assigned to BRK.

***BRK's Development of Its First Alert® Smoke and Carbon Monoxide Alarms***

10. Before the introduction of BRK's smoke and carbon monoxide alarm, home owners would only hear a loud beeping noise from alarms to indicate some kind of danger. BRK revolutionized the home safety industry when it introduced its smoke and carbon monoxide alarms in 2003, which provide a home owner with the type and location of danger through a talking alarm. BRK further revolutionized the home safety market when it introduced alarms with its patented smoke vent system that helps to reduce the number of false alarms.

11. As a direct result of its innovations, BRK has achieved significant commercial success and is the market leader in the area of smoke and carbon monoxide alarms.

12. BRK's smoke and carbon monoxide alarms prominently display that they are covered by the Patents-in-Suit. For example, BRK's PC900V model indicates that it is covered by each of the Patents-in-Suit. BRK's SCO7CN model states that it is covered by the '182 patent.

13. BRK's smoke and carbon monoxide alarms further highlight the patented features. For example, BRK's PC900V model prominently features that it has "Voice & Location Technology" to "[h]elp quickly identify the danger," as well as a "Patented Smoke Entry System," which results in "Fewer False Alarms":

**First Alert**

**MAXIMUM PROTECTION**

**SMOKE/FIRE & CARBON MONOXIDE ALARM**

**2-in-1**

- Voice & Location Technology  
Help quickly identify the danger
- Patented Smoke Entry System  
Fewer false alarms
- Easy To Install  
Wall or ceiling mount with easy slide mounting bracket
- Test/Silence Button

**7 Year**

**1/2 THE SIZE OF THE STANDARD ALARM**

**ALL THE PROTECTION NEW SLIM DESIGN**

**2 AA Batteries Included**

**PC900VCN**

**First Alert**

**MAXIMUM PROTECTION**

**Patented Smoke Entry System**  
Allows for a direct path to smoke sensor

**Fewer False Alarms**  
Less confusion and frustration

**NEW Slim Design with Maximum Protection**  
It's protection at its finest. The new slim design of the P900 series adds an element of style to safety. Half the size of the standard alarm with all the protection needed to keep what matters most safe and secure.

**PC900VCN**

**Voice & Location Technology**  
Sounds alarm and tells you the location and the potential danger

**2 in 1 Combination Alarm**  
More protection in one alarm, Smoke/Fire & Carbon Monoxide

**Easy Install**  
Mount on wall or ceiling with easy slide mounting bracket

**Photoelectric Smoke Sensor**

**Power LED and Alarm Indicator**

**Low 85dB Alarm**

**7-Year Limited Warranty**

**End of Life Signal**  
Replace alarm 84 months after installation

**Where To Place Safety Products:**

- Smoke & Fire Alarm  
One on every level and in every bedroom
- Carbon Monoxide Alarm  
One on every level and each sleeping area
- Fire Extinguisher  
One on every level, plus kitchen and garage

**1/2 THE SIZE OF THE STANDARD ALARM**

**2 AA Batteries Included**

**PC900VCN**

14. BRK's SC07CN model similarly highlights that it has an "Exclusive Talking Alarm," which "[t]ells you [the] type and location of danger":

**First Alert**

**2 IN 1** Combination **SMOKE & CARBON MONOXIDE ALARM**

- Exclusive Talking Alarm**  
Tells you type and location of danger
- Mute Button**  
Immediately silences false alarms
- Photoelectric Sensor**  
Sensor stops most false alarms

**7 YEAR**

**2 AA Batteries Included**

**SC07CN**

**First Alert**

**Combination Smoke & Carbon Monoxide Alarm**

**The Most Trusted Name In Home Safety**

For over 50 years, we have been designing and engineering innovations you can rely on. The Smoke & Carbon Monoxide Alarm you're holding in your hands has exceeded rigorous testing through every level of production to be sure it is up to the task of protecting what matters most.

**Maximum Safety Assurance**

Every single CO alarm we make is tested at each stage of production for Maximum Safety Assurance. From the circuitry to the durability, no alarm is left unturned.

**Sensor Test** - The electrochemical sensors are tested for maximum accuracy.

**Siren Test** - We make sure the siren sounds at 85db, loud enough to alert your family.

**Life Simulation** - We take the assembled product and test it against the kind of dangerous levels of CO you could find in your home to be certain all components work accordingly.

**Potential Sources of Carbon Monoxide in the Home**

- Blocked Chimney
- Pumice
- Attached Garage
- Range Hood
- Char-Broil Oven
- Portable Heater
- Water Heater
- Fireplace
- Indoor Coking

**Where To Place Safety Products:**

- Smoke Alarm  
One on every level and in every bedroom
- Carbon Monoxide Alarm  
One on every level and each sleeping area
- Fire Extinguisher  
One on every level, plus kitchen and garage

**WARNING** THIS PRODUCT IS INTENDED FOR USE IN ORDINARY RESIDENCE LOCATIONS OF A RESIDENTIAL NATURE. IT IS NOT DESIGNED TO MEET OR EXCEED ANY COMMERCIAL OR INDUSTRIAL STANDARD. INDIVIDUALS WITH MEDICAL CONDITIONS MAY CONSIDER HAZARDOUS. ALWAYS PROTECT YOURSELF AND YOUR FAMILY. ALWAYS FOLLOW THE INSTRUCTIONS AND REGULATORY REQUIREMENTS INCLUDING UL2034.

English/Spanish User's Manual Included (Spanish/Inglés manual de usuario)

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**www.firstalert.com**

**CS-0494-004**

**Cat. SC07CN**

15. The SCO7CN model further identifies BRK's First Alert® Smoke & Carbon Monoxide Alarm as "The Most Trusted Name In Home Safety":

## **The Most Trusted Name In Home Safety**

For over 50 years, we have been designing and engineering innovations you can rely on. The Smoke & Carbon Monoxide Alarm you're holding in your hands has exceeded rigorous testing through every level of production to be sure it is up to the task of protecting what matters most.

16. BRK has expended considerable resources investing in research and development, marketing, and sales related to its patented smoke and carbon monoxide alarms to ensure maximum safety for its customers.

17. BRK has also expended considerable resources to exclusively license the Morris Patents.

### ***Nest's Infringing Product***

18. Nest recently began advertising the Accused Product, the Nest Protect, on its website. *See Ex. G.*

19. The Nest Protect is advertised as a smoke and carbon monoxide alarm:



20. Like BRK's patented products, the Nest device provides verbal (in English or Spanish) alerts. When it senses smoke, it first gives a verbal warning about the type of problem and its location in the house. *See id.*

21. The Nest alarm provides different types of voice warnings, including a "heads-up" and an emergency alarm. *See id.* For example, the device can alert "head's up, there is smoke in the dining room" or "emergency, there is smoke in the living room" and also provide a tonal alert and flashing red light. *See id.*

22. According to Nest's website, the device is not yet available to the public. *See id.* However, the product website indicates that a customer can reserve one and will be charged (\$129) when the product actually becomes commercially available. *See id.*

23. According to press releases from early October, Nest expects the Nest Protect to go on sale in November. Nest's press releases are attached as Exhibit H.

24. Nest intends to sell its products both on its website and through retailers, including the Apple Store, Best Buy, and Home Depot. *See id.*

25. The product will be available for purchase in more than 5,000 stores in the U.S., Canada, and United Kingdom. *See id.*

**FIRST CLAIM: INFRINGEMENT OF U.S. PATENT NO. 6,144,310**

26. BRK incorporates Paragraphs 1 through 25 of its Complaint as if fully set forth herein.

27. On November 7, 2000, the United States Patent and Trademark Office duly and legally issued the '310 Patent, entitled "Environmental Condition Detector with Audible Alarm and Voice Identifier." A copy of the '310 Patent is attached as Exhibit A.

28. The '310 Patent is marked on BRK's smoke and carbon monoxide alarm products.

29. On information and belief, Nest has knowledge of the '310 Patent because it is marked on BRK's smoke and carbon monoxide alarm products.

30. Nest has infringed and is infringing, either literally or under the doctrine of equivalents, the '310 Patent by making, using, offering to sell, and/or selling within the United States, and/or importing into the United States, without authority, its Nest Protect product.

31. The Nest Protect product infringes at least Claims 5, 11, 12, and 13 of the '310 Patent.

32. BRK has been and continues to be damaged by Nest's infringement of the '310 Patent, in an amount to be determined at trial.

33. BRK has suffered irreparable injury for which there is no adequate remedy at law and will continue to suffer such irreparable injury unless Nest's infringement of the '310 Patent is preliminarily and permanently enjoined by this Court.

34. Upon information and belief, Nest's infringement of the '310 Patent is, and has been, willful.

35. Nest's infringement of the '310 Patent is exceptional, and thus, pursuant to 35 U.S.C. §285, BRK is entitled to its reasonable attorneys' fees and costs incurred in prosecuting this action.

**SECOND CLAIM: INFRINGEMENT OF U.S. PATENT NO. 6,600,424**

36. BRK incorporates Paragraphs 1 through 35 of its Complaint as if fully set forth herein.

37. On July 29, 2003, the United States Patent and Trademark Office duly and legally issued the '424 Patent, entitled "Environment Condition Detector with Audible Alarm and Voice Identifier." A copy of the '424 Patent is attached as Exhibit B.

38. The '424 Patent is marked on BRK's smoke and carbon monoxide alarm products.

39. On information and belief, Nest has knowledge of the '424 Patent because it is marked on BRK's smoke and carbon monoxide alarm products.

40. Nest has infringed and is infringing, either literally or under the doctrine of equivalents, the '424 Patent by making, using, offering to sell, and/or selling within the United States, and/or importing into the United States, without authority, its Nest Protect product.

41. The Nest Protect product infringes at least Claims 2, 4, 8, 23, 25, 26, and 38 of the '424 Patent.

42. BRK has been and continues to be damaged by Nest's infringement of the '424 Patent, in an amount to be determined at trial.

43. BRK has suffered irreparable injury for which there is no adequate remedy at law and will continue to suffer such irreparable injury unless Nest's infringement of the '424 Patent is preliminarily and permanently enjoined by this Court.

44. Upon information and belief, Nest's infringement of the '424 Patent is, and has been, willful.

45. Nest's infringement of the '424 Patent is exceptional, and thus, pursuant to 35 U.S.C. §285, BRK is entitled to its reasonable attorneys' fees and costs incurred in prosecuting this action.

**THIRD CLAIM: INFRINGEMENT OF U.S. PATENT NO. 6,323,780**

46. BRK incorporates Paragraphs 1 through 45 of its Complaint as if fully set forth herein.

47. On November 27, 2001, the United States Patent and Trademark Office duly and legally issued the '780 Patent, entitled "Communicative Environmental Alarm System with Voice Indication." A copy of the '780 Patent is attached as Exhibit C.

48. The '780 Patent is marked on BRK's smoke and carbon monoxide alarm products.

49. On information and belief, Nest has knowledge of the '780 Patent because it is marked on BRK's smoke and carbon monoxide alarm products.

50. Nest has infringed and is infringing, either literally or under the doctrine of equivalents, the '780 Patent by making, using, offering to sell, and/or selling within the United States, and/or importing into the United States, without authority, its Nest Protect product.

51. The Nest Protect product infringes at least Claims 2, 4, 5, 6, 13, 17, 24, 42, 43, 44, 46, and 47 of the '780 Patent.

52. BRK has been and continues to be damaged by Nest's infringement of the '780 Patent, in an amount to be determined at trial.

53. BRK has suffered irreparable injury for which there is no adequate remedy at law and will continue to suffer such irreparable injury unless Nest's infringement of the '780 Patent is preliminarily and permanently enjoined by this Court.

54. Upon information and belief, Nest's infringement of the '780 Patent is, and has been, willful.

55. Nest's infringement of the '780 Patent is exceptional, and thus, pursuant to 35 U.S.C. §285, BRK is entitled to its reasonable attorneys' fees and costs incurred in prosecuting this action.

**FOURTH CLAIM: INFRINGEMENT OF U.S. PATENT NO. 6,784,798**

56. BRK incorporates Paragraphs 1 through 55 of its Complaint as if fully set forth herein.

57. On August 31, 2004, the United States Patent and Trademark Office duly and legally issued the '798 Patent, entitled "Environmental Condition Detector with Audible Alarm and Voice Identifier." A copy of the '798 Patent is attached as Exhibit D.

58. The '798 Patent is marked on BRK's smoke and carbon monoxide alarm products.

59. On information and belief, Nest has knowledge of the '798 Patent because it is marked on BRK's smoke and carbon monoxide alarm products.

60. Nest has infringed and is infringing, either literally or under the doctrine of equivalents, the '798 Patent by making, using, offering to sell, and/or selling within the United States, and/or importing into the United States, without authority, its Nest Protect product.

61. The Nest Protect product infringes at least Claims 1, 2, 25, and 26 of the '798 Patent.

62. BRK has been and continues to be damaged by Nest's infringement of the '798 Patent, in an amount to be determined at trial.

63. BRK has suffered irreparable injury for which there is no adequate remedy at law and will continue to suffer such irreparable injury unless Nest's infringement of the '798 Patent is preliminarily and permanently enjoined by this Court.

64. Upon information and belief, Nest's infringement of the '798 Patent is, and has been, willful.

65. Nest's infringement of the '798 Patent is exceptional, and thus, pursuant to 35 U.S.C. §285, BRK is entitled to its reasonable attorneys' fees and costs incurred in prosecuting this action.

**FIFTH CLAIM: INFRINGEMENT OF U.S. PATENT NO. 7,158,040**

66. BRK incorporates Paragraphs 1 through 65 of its Complaint as if fully set forth herein.

67. On January 2, 2007, the United States Patent and Trademark Office duly and legally issued the '040 Patent, entitled "Environmental Condition Detector with Audible Alarm and Voice Identifier." A copy of the '040 Patent is attached as Exhibit E.

68. The '040 Patent is marked on BRK's smoke and carbon monoxide alarm products.

69. On information and belief, Nest has knowledge of the '040 Patent because it is marked on BRK's smoke and carbon monoxide alarm products.

70. Nest has infringed and is infringing, either literally or under the doctrine of equivalents, the '040 Patent by making, using, offering to sell, and/or selling within the United States, and/or importing into the United States, without authority, its Nest Protect product.

71. The Nest Protect product infringes at least Claims 1, 2, and 3 of the '040 Patent.

72. BRK has been and continues to be damaged by Nest's infringement of the '040 Patent, in an amount to be determined at trial.

73. BRK has suffered irreparable injury for which there is no adequate remedy at law and will continue to suffer such irreparable injury unless Nest's infringement of the '040 Patent is preliminarily and permanently enjoined by this Court.

74. Upon information and belief, Nest's infringement of the '040 Patent is, and has been, willful.

75. Nest's infringement of the '040 Patent is exceptional, and thus, pursuant to 35 U.S.C. §285, entitles BRK to its reasonable attorneys' fees and costs incurred in prosecuting this action.

**SIXTH CLAIM: INFRINGEMENT OF U.S. PATENT NO. 6,377,182**

76. BRK incorporates Paragraphs 1 through 75 of its Complaint as if fully set forth herein.

77. On April 23, 2002, the United States Patent and Trademark Office duly and legally issued the '182 Patent, entitled "Smoke Detector with Sensor Having Improved Mounting Configuration." A copy of the '182 Patent is attached as Exhibit F.

78. The '182 Patent is marked on BRK's smoke and carbon monoxide alarm products.

79. On information and belief, Nest has knowledge of the '182 Patent because it is marked on BRK's smoke and carbon monoxide alarm products.

80. Nest has infringed and is infringing, either literally or under the doctrine of equivalents, the '182 Patent by making, using, offering to sell, and/or selling within the United States, and/or importing into the United States, without authority, its Nest Protect product.

81. The Nest Protect product infringes at least Claims 8, 11, 20, and 30 of the '182 Patent.

82. BRK has been and continues to be damaged by Nest's infringement of the '182 Patent, in an amount to be determined at trial.

83. BRK has suffered irreparable injury for which there is no adequate remedy at law and will continue to suffer such irreparable injury unless Nest's infringement of the '182 Patent is preliminarily and permanently enjoined by this Court.

84. Upon information and belief, Nest's infringement of the '182 Patent is, and has been, willful.

85. Nest's infringement of the '182 Patent is exceptional, and thus, pursuant to 35 U.S.C. §285, BRK is entitled to its reasonable attorneys' fees and costs incurred in prosecuting this action.

#### **RELIEF REQUESTED**

WHEREFORE, BRK prays for the following judgment and relief against Nest:

- A. That Nest has infringed the Patents-in-Suit;
- B. That Nest, its officers, agents, and employees, and those persons in active concert or participation with any of them, and their successors and assigns be preliminarily and permanently enjoined from infringement of the Patents-in-Suit, including but not limited to an injunction against making, using, offering to sell, and selling within the United States, and importing into the United States, any products covered by the Patents-in-Suit;
- C. That BRK be awarded all damages adequate to compensate it for Nest's infringement of the Patents-in-Suit, such damages to be determined by a jury, and if necessary to adequately compensate BRK for the infringement, an accounting and treble damages as a result of Nest's willful infringement;

D. That BRK be awarded pre-judgment and post-judgment interest at the maximum rate allowed by law;

E. That this case be declared an exceptional case within the meaning of 35 U.S.C. § 285 and that BRK be awarded its reasonable attorney fees, expenses, and costs incurred in connection with this action; and

F. That BRK be awarded such other and further relief as this Court deems just and proper.

### **JURY DEMAND**

BRK hereby demands a trial by jury on all issues so triable.

Dated: November 4, 2013

Respectfully submitted,

/s/ Sanjay K. Murthy

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