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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Nespresso USA, Inc., Plaintiff, v. K-fee System GmbH, Defendant.	Case No. 2:22-cv-9295 **COMPLAINT FOR DECLARATORY JUDGMENT** **JURY TRIAL DEMANDED**

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Plaintiff Nespresso USA, Inc. ("Nespresso") for its complaint against K-fee System GmbH ("K-fee") alleges and states as follows:

SUMMARY OF ACTION

1. This action arises under 28 U.S.C. §§ 1331, 1338(a), 2201, and 2202.

2. In this action, Nespresso seeks a declaration that it does not infringe any claim of U.S. Patent Nos. 11,465,829 (the "'829 Patent") and 11,465,830 (the "'830 Patent") (collectively, the "Patents-in-Suit").

3. This action is related to prior and ongoing U.S. litigations between Nespresso and K-fee that K-fee filed in this District in 2021 and 2022.

THE PARTIES

4. Nespresso is a company organized under the laws of the state of Delaware and maintains its principal place of business at 100 Park Avenue, 7th Floor, New York, New York 10017.

5. On information and belief, K-fee is a company organized under the laws of Germany and maintains its principal place of business at Senefelderstraße 44, 51469 Bergisch Gladbach, Germany. K-fee is a wholly-owned indirect subsidiary of Krüger GmbH & Co. KG ("Krüger").

JURISDICTION AND VENUE

6. This action for declaratory judgment arises under federal law, and this Court has jurisdiction pursuant to 28 U.S.C. §§ 1331, 1338(a), 2201, and 2202.

7. This Court has personal jurisdiction over K-fee in this action because, on information and belief, K-fee engages in regular business within the State of California and this judicial district.

8. This Court separately has personal jurisdiction over K-fee because K-fee has purposefully availed itself to this jurisdiction by filing three lawsuits in this District: *K-fee System GmbH v. Nespresso USA, Inc.*, Case No. 2:21-cv-03402-GW-AGR ("*K-fee I*"), *K-fee System GmbH v. Nespresso USA, Inc.*, Case No. 2:22-cv-00525-GW-AGR

("*K-fee II*"), and *In re ex parte Application of K-fee System GmbH*, Case No. 2:21-mc-01011-GW-AGR.

9. K-fee has engaged in actions in this District that form the basis of Nespresso's declaratory judgment claims against K-fee. Specifically, K-fee's two patent infringement lawsuits against Nespresso in this District involved the same Nespresso products that are at issue in this action and related patents with same inventor as and very similar subject matter to the Patents-in-Suit.

10. In *K-fee I*, K-fee sought out this District to resolve whether Nespresso's Vertuo™ line of single-serve coffee capsules and related coffee systems (Vertuo, Vertuo Next, VertuoPlus, and Evoluo) (collectively, the "Vertuo Products") infringed three patents related to the Patents-in-Suit. On June 28, 2022, this Court entered judgment of noninfringement in favor of Nespresso. *K-fee I*, Dkt. 219

11. In *K-fee II*, K-fee again sought out this District to resolve whether Nespresso's Vertuo products infringe three additional patents related to the Patents-in-Suit. *K-fee II* remains pending in this District.

12. On information and belief, K-fee has also investigated infringement claims against Nespresso based on Nespresso's retail stores in this District, including whether Vertuo Products sold in this District infringe its patents, including the Patents-in-Suit.

13. K-fee has also engaged multiple law firms and counsel located in this District to litigate *K-fee I* and the still-ongoing *K-fee II*.

14. As a result of K-fee's actions described above, K-fee has established sufficient minimum contacts with this District such that K-fee is subject to specific personal jurisdiction in the Central District of California for this action. Further, the exercise of personal jurisdiction based on these repeated, ongoing, and highly pertinent contacts does not offend traditional notions of fair play and substantial justice.

15. An actual and justiciable controversy exists between Nespresso and K-fee with respect to whether Nespresso infringes any claim of the Patents-in-Suit, requiring

a declaration by the Court. Nespresso contends that the Vertuo Products do not infringe any claim of the Patents-in-Suit. On information and belief, K-fee's position is that Nespresso infringes one or more claims of each of the Patents-in-Suit.

16. The controversy is immediate and substantial because, as discussed below, a threat of actual and imminent injury exists to Nespresso in view of K-fee's obvious patent prosecution strategy of targeting Nespresso's single-serve beverage systems and capsules, K-fee's actions in filing multiple suits against Nespresso in this District and against Nespresso's affiliate in other jurisdictions, and K-fee's numerous statements to Nespresso's foreign affiliates about the value of K-fee's patent portfolio, the risk it presents to Nespresso, and the utility of a license or the acquisition of title by Nespresso to that portfolio. That injury is sufficiently immediate and real to warrant the issuance of a declaratory judgment.

17. Venue is proper in this District under 28 U.S.C. §§ 1391 and 1400(b) because K-fee is a foreign corporation, and venue is proper as to a foreign defendant in any district. 28 U.S.C. § 1391(c)(3). Additionally, K-fee has not disputed venue in *K-fee I* or *K-fee II*, which it brought against Nespresso regarding infringement of patents related to the Patents-in-Suit against the same Vertuo Products at issue in this action.

PATENTS-IN-SUIT

18. The '829 Patent, entitled "Portion Capsule Having An Identifier," was issued by the U.S. Patent and Trademark Office ("PTO") on October 11, 2022. The '829 Patent states on its face that it is assigned to K-fee. A copy of the '829 Patent is attached as **Exhibit A**. K-fee is also identified in the PTO Patent Assignment Database as the assignee of the '829 Patent. **Exhibit B**.

19. The '830 Patent, entitled "Portion Capsule Having An Identifier," was issued by the PTO on October 11, 2022. The '830 Patent states on its face that it is assigned to K-fee. A copy of the '830 Patent is attached as **Exhibit C**. K-fee is also

identified in the PTO Patent Assignment Database as the assignee of the ’830 Patent. **Exhibit D**.

20. All of the Patents-in-Suit purport to claim priority, *inter alia*, to PCT/EP2011/003677, filed on July 22, 2011.

21. All of the patents previously and currently asserted by K-fee in *K-fee I* and *K-fee II* also purport to claim priority to, *inter alia*, PCT/EP2011/003677, and share a common specification with each other and with the Patents-in-Suit. Accordingly, all of the Patents-in-Suit purport to be in the same family as all patents previously asserted by K-fee in this District against Nespresso’s Vertuo Products.

BACKGROUND

22. Nespresso is a leader in the single-serve coffee market and has been offering coffee and espresso machines and compatible espresso capsules, consumables, and accessories under the Nespresso® name in the United States since the early 2000s.

23. K-fee is a wholly-owned indirect subsidiary of Krüger founded in 2010. It is a relative newcomer to the United States single-serve capsule business, launching its first system in the United States in 2019.

24. K-fee is a serial patent litigant that has demonstrated a repeated interest in suing Nespresso and its foreign affiliates for patent infringement based on Nespresso’s Vertuo Products. Although K-fee offers no product in the United States that practices any claim of the Patents-in-Suit, K-fee continues to bolster its Vertuo-targeted patent portfolio by filing numerous continuation applications and inundating the PTO with hundreds of prior art references.

25. On information and belief, K-fee’s serial litigation strategy is to obtain as many patents as possible that it contends cover the Vertuo Products in an attempt to extract patent damages or settlement monies from Nespresso and/or its foreign affiliates.

26. This case arises out of K-fee’s continuous and ongoing assertions that Nespresso infringes K-fee’s ever-expanding U.S. patent portfolio through Nespresso’s

use, sale, and distribution of Vertuo single-serve coffee and espresso machines and capsules.

A. K-fee's Patent Prosecution Attempts to Target Nespresso's Vertuo Products

27. In 2013, K-fee began filing claims in the United States directed to portion capsules with "identifiers" such as gearwheels and electrically conductive sections. These claims were ultimately rejected by the PTO and abandoned by K-fee. At that time, the claims of K-fee's United States applications had nothing to do with Nespresso's Vertuo Products. That soon changed.

28. In 2014, Nespresso launched its Vertuo single-serve coffee and espresso brewing machines and capsules, which had been in development since at least as early as 2008. In 2017, K-fee began filing derivative applications attempting to obtain coverage of the Vertuo Products, often with hyper-specific claim language found nowhere in K-fee's priority filings and inspired only by what K-fee was able to determine from examination of Nespresso's Vertuo Products.

29. On information and belief, in connection with these derivative applications, at the direction of Krüger and/or K-fee, K-fee's employees and agents reverse-engineered the Vertuo Products as commercialized since 2014 to determine what claim limitations to include in its new line of patent applications.

30. As a result of its prosecution strategy, K-fee's new claims became increasingly untethered from its original priority filings, as well as the current specifications of the Patents-in-Suit. Numerous claim terms appear nowhere in those specifications. For example, all claims of the Patents-in-Suit recite "a seal that is configured to bear against a top side of the cover in a region between the peripheral region of the cover and the region of the cover that is pierced by the chamfered mandrel." While the Patents-in-Suit discuss a seal, they say nothing about a seal that is "configured to bear against a top side of a cover" or a "region between the peripheral region of the

cover and the region of the cover that is pierced by the chamfered mandrel." In fact, they say nothing about a "peripheral region" at all.

31. As another example, the specifications of the Patents-in-Suit focus heavily on gearwheels and electrically conductive sections as identifiers, as opposed to the optically detectable identifiers claimed in the '830 Patent (the '829 Patent simply recites an "identifier"). In particular, the '830 Patent claims recite an identifier that includes a "repeat pattern" or "optically detectable repeat pattern." Yet the only mention of a repeat pattern in the specification is a single sentence stating that "[p]referably the print is a barcode, logo or a repeat pattern."

32. More recently, K-fee's prosecution strategy can be directly tied to developments in the discussions between K-fee's representatives and Nespresso's foreign affiliates, as well as K-fee's lawsuits in the United States. For example, after Nespresso informed K-fee that it had an inexpensive, commercially feasible design-around related to the "ribs" and "grooves" claim elements present in all of the patents asserted in *K-fee I*, K-fee's representatives responded in a manner suggesting that K-fee would prosecute patent claims that would not be implicated by Nespresso's design-around. On information and belief, K-fee took this new information about Nespresso's design-around and began prosecuting patents that did *not* require ribs and grooves.

33. As another example, after this Court construed "barcode" in a way that squarely precluded K-fee's infringement case for five out of six patents asserted in K-fee's United States suits, K-fee turned its prosecution efforts entirely to claims that did not specify a barcode, but rather recited an "identifier," "individualization identifier," or an identifier comprising a "repeat pattern."

34. Finally, after this Court construed the terms "wall region with an electrically conductive section" and "base element comprises an electrically conductive section" to have their "plain and ordinary meaning (*i.e.*, consistent with Nespresso's suggestion)," that is, a "wall region/base element where some but not all of the wall

region/base element is electrically conductive," K-fee attempted to manufacture a claim differentiation issue by prosecuting claims directed to electrically conductive sections that were all over the wall region or base element, contrary to this Court's construction of these terms.

35. These prosecution tactics reflect K-fee's clear plan to relentlessly pursue claims specifically inspired by, and attempting to cover, the Vertuo Products. In some instances, K-fee has been able to push its applications through the PTO by requesting the expedited "Track One" examination program, where it has received first-action allowances with little or no substantive examination, and inundating the PTO with excessive volumes of material to consider. This is often the tactic of a party which intends to bring litigation immediately upon issuance of a pending patent application.

36. For other applications, K-fee has obtained allowances through less-than-forthcoming prosecution tactics. For example, to distract from the weaknesses in its applications, K-fee filed Information Disclosure Statements ("IDSs") with *hundreds* of prior art references—even those with little relevance to the allegedly patentable features, including a reference related to lawnmowers. K-fee's flooding of the PTO with prior art led one Examiner to state:

> [T]*he cloaking of a clearly relevant reference in a long list of references may not comply with applicants' duty to disclose*, see Penn Yan Boats, Inc. v. Sea Lark Boats, Inc., 359 F. Supp. 948, aff'd 479 F.3d 1338. . . . *With regard to the numerous IDS submissions, applicants are invited to indicate the relevance of the submissions to the claims. . . . Without claim listings the examiner is unable to determine how the claims in the reports relate to the claims under examination.*

Application No. 16/438,818, 4/30/2020 Non-Final Rejection at 2.

37. As another example, K-fee engaged in manipulative tactics in order to avoid an interference in connection with U.S. Application No. 15/646,980. Nespresso's affiliate filed a Suggestion for Interference with Application No. 13,697,297 ("Jarisch")

due to the fact that K-fee's claims overlapped in scope with those of Nespresso's affiliate. This resulted in the PTO withdrawing K-fee's claims from allowance and issuing a rejection over Jarisch. K-fee did not respond to the rejection or potential interference and instead filed a Notice of Appeal of the rejection, which it never pursued. K-fee later withdrew its appeal and changed scope of its claims to remove the interfering "barcode" identifier limitation altogether. On information and belief, K-fee used these tactics to avoid adjudication of the interference and to delay while *K-fee I* was pending. Once the present interference threat subsided, K-fee added the identifier limitations back in, this time without the "barcode" limitation based on which this Court granted summary judgment of noninfringement in favor of Nespresso in *K-fee I*.

38. K-fee has several additional patent applications pending before the PTO which similarly seek to target the Vertuo Products. On information and belief, those applications are likely to issue as patents in the very near future, and when they do, Nespresso will seek to add those patents to this Complaint.

39. Notwithstanding K-fee's attempts to obtain claims that read directly on the Vertuo Products, the claims of the Patents-in-Suit contain numerous elements that are not present in those products.

B. The Contentious History between K-fee and Nespresso

40. Over the past two-and-a-half years, K-fee has sued Nespresso and its affiliates for patent infringement three times: twice in the United States and once in Switzerland. K-fee also filed an additional action against Nespresso and its affiliate in this District in connection with the parties' disputes in Germany, France, and Austria. As a result of K-fee's attempts to compete in the courtroom rather than the marketplace, K-fee and Nespresso's affiliates have been, and continue to be, heavily engaged in patent infringement and validity disputes in the United States and across Europe regarding K-fee's patents and Nespresso's Vertuo Products.

41. In the United States, on April 21, 2021, K-fee filed *K-fee I* against Nespresso in this District alleging that the Vertuo Products infringe U.S. Patent Nos. 10,858,176 (the "'176 Patent"), 10,858,177 (the "'177 Patent"), and 10,870,531 (the "'531 Patent"). *K-fee System GmbH v. Nespresso USA, Inc.*, Case No. 2:21-cv-03402-GW-AGR, Dkt. 1 ¶ 14. The Patents-in-Suit are related to, and share common specifications with, the previously asserted '176 Patent, the '177 Patent, and the '531 Patent. These patents include several similar, and, in some cases, identical, claim limitations as the Patents-in-Suit.

42. On July 5, 2021, K-fee filed an *ex parte* application for discovery under 28 U.S.C. § 1782, also in this District. *In re ex parte Application of K-fee System GmbH*, Case No. 2:21-mc-01011-GW-AGR. K-fee sought discovery from Nespresso and its affiliate Nestlé Holdings for use in patent infringement proceedings filed by Nespresso's affiliate Société des Produits Nestlé S.A. against K-fee in Germany, France, and Austria.

43. On January 25, 2022, K-fee filed a third action in this District alleging that Nespresso infringes U.S. Patent Nos. 10,994,923 (the "'923 Patent") and 11,230,430 (the "'430 Patent") either directly, indirectly, or contributorily through the use, sale, and distribution of Nespresso's Vertuo Products. *K-fee System GmbH v. Nespresso USA, Inc.*, Case No. 2:21-cv-030525-GW-AGR, Dkt. 1. On March 10, 2022, K-fee filed an amended complaint alleging that Nespresso additionally infringes U.S. Patent No. 11,254,491 (the "'491 Patent") either directly, indirectly, or contributorily. *Id.*, Dkt. 24. This litigation remains ongoing and has not been dismissed by K-fee. The Patents-in-Suit relate to, and share common specifications with, the '923 Patent, the '430 Patent, and the '491 Patent. These patents also include several similar, and, in some cases, identical, claim features as the Patents-in-Suit.

44. In connection with their various disputes, K-fee's representatives and Nespresso's foreign affiliates have had extensive discussions related to their respective patent portfolios. During those discussions, K-fee has emphasized the value of its

current and pending United States patent portfolios, Nespresso and its affiliates' large risk exposure associated with those portfolios, and the value to Nespresso of acquiring title or a license to K-fee's portfolios. K-fee has also continually emphasized the importance of the Vertuo Products to Nespresso and its affiliates.

45. K-fee's saber-rattling began more than a year ago and continues to this day. For example, in a July 2021 meeting, K-fee's lawyers asked that Nespresso's foreign affiliates review not only K-fee's granted patents, but also its pending patent applications. K-fee's representatives noted Nespresso's affiliates' position that they could easily design around K-fee's then-current patents, but stated that K-fee was confident that pending United States patent applications that would be granted soon would provide Nespresso's affiliates additional protection.

46. After Nespresso informed K-fee that it had an inexpensive, commercially feasible design-around related to the "ribs" and "grooves" claim elements present in all of the patents asserted in *K-fee I*, K-fee's representatives responded in a manner suggesting that K-fee would prosecute patent claims that would not be implicated by Nespresso's design-around.

47. On June 20, 2021, in order to allow good-faith-settlement discussions, K-fee, Nespresso, and their affiliates entered into a "Standstill Agreement" pursuant to which the parties agreed to a certain timeframe during which neither party would initiate infringement proceedings against the other. K-fee terminated the Standstill Agreement in August 2021, meaning it was free to initiate new infringement proceedings against Nespresso and its affiliates. As discussed above, K-fee did exactly that, filing its second infringement suit in this District on January 25, 2022.

48. In February 2022, following *K-fee II*, K-fee warned that Nespresso and its foreign affiliates' situation would become even worse in the coming weeks, as K-fee had additional patents for which the difference between a bit code and a barcode is irrelevant. K-fee also highlighted the issuance of a new patent that did not have ribs and

grooves (elements which Nespresso had informed K-fee could be easily designed around), which K-fee continues to assert in the ongoing *K-fee II* action. Finally, K-fee heavily emphasized the amount of money at stake in the existing United States litigations, as well as the possibility of an injunction.

49. After Nespresso's affiliate filed a cross-border entitlement action in Germany seeking ownership of K-fee's European patents related to the Patents-in-Suit, it obtained a stay of all pending oppositions against K-fee's European patent applications and of the prosecution of K-fee's European patent applications in the same family. As a consequence of this stay, upon information and belief, K-fee turned its focus and game plan towards its prosecution and litigation efforts in the United States.

50. K-fee's threats are part and parcel of K-fee's years-long effort to improperly obtain patent claims that attempt to cover Nespresso's flagship product and to use those claims to hold Nespresso hostage as it waits for the day when K-fee will inevitably sue it yet again for infringement.

C. This Court Grants Summary Judgment of Noninfringement in *K-fee I*

51. Each claim of the patents asserted in *K-fee I*, as well as the first two patents asserted in *K-fee II*, requires a capsule with a "barcode" on the bottom side of the flange, or rim, of the capsule.

52. In *K-fee I*, this Court construed the term "barcode" as "having its plain and ordinary meaning (*i.e.*, a code having bars of variable width, which includes the lines and gaps), the scope of which is understood by the clear and unequivocal statements K-fee made to the EPO (*i.e.*, the scope of barcode does not include the type of bit code disclosed in Jarisch/D1)." *K-fee I*, Dkt. 111 at 13.

53. In view of the fact that K-fee was arguing in the litigation that a "bit code" was within the scope of "barcode" for infringement purposes, when it had previously represented the opposite to the EPO for validity purposes, the Court expressly cautioned that "[a]s this case proceeds, [K-fee] will not be heard to advocate for a different scope

of 'barcode' than that used to defend its related European patent." *Id.*; *see also id.* (K-fee "may not seek a different plain and ordinary meaning than that for which it argued strenuously before the EPO because a different meaning would serve different interests here").

54. On June 16, 2022, the Court granted Nespresso's motion for summary judgment of noninfringement in a straightforward application of its claim construction, concluding that "based on the undisputed facts . . . the accused products do not contain a 'barcode' as claimed in the Asserted Patents because the code employed by the accused products contains only '0s' and '1s,' like the Jarisch bit code." *Id.* Dkt. 209 at 11. The Court entered judgment in favor of Nespresso on June 28, 2022 (*id.* Dkt. 219), and K-fee appealed to the Federal Circuit. *K-fee System GmbH v. Nespresso USA, Inc.*, Case No. 22-2042 (Fed. Cir.).

55. On September 1, 2022, this Court granted the parties' Joint Stipulation and ordered that *K-fee II* be stayed until the Federal Circuit issues its mandate in the appeal. *K-fee II*, Dkt. 88.

D. Immediate, Concrete, and Substantial Controversy in the United States

56. There is an immediate, concrete, and substantial controversy between K-fee and Nespresso about whether the Vertuo Products infringe any valid patent right possessed by K-fee in the Patents-in-Suit.

57. *K-fee II*, which concerns the same Vertuo Products at issue in this action, remains ongoing and has not been dismissed by K-fee.

58. Thus, K-fee continues today to assert that the Vertuo Products infringe its patents, in litigation in this District, including patents with common specifications and claim limitations as the Patents-in-Suit. In particular, the patents currently asserted by K-fee in *K-fee II* include many of the same claim limitations as the Patents-in-Suit. For example, K-fee asserts in that action that the Vertuo Products meet the following claim limitations, all of which are also contained in the claims of the Patents-in-Suit:

- an "identifier";
- a "base element being symmetrical about a central longitudinal axis thereof";
- a "barrier layer to prevent moisture or aroma from escaping out of the single-serve capsule";
- a "filter inside of the cavity";
- a "region configured to be pierced at a location that is offset from the central longitudinal axis" ('829 Patent);
- a "pair of holding arms for guiding" the capsule ('829 Patent);
- a "pump controlled to supply water into the single-serve capsule only upon a detection of the identifier with the sensor/detector and a determination by the beverage machine that the single-serve capsule is suitable for use with the beverage machine" ('829 Patent);
- an "electrically conductive section" ('830 Patent); and
- a "ledge" ('830 Patent).

59. Thus, Nespresso has reason to believe that K-fee contends that the Vertuo Products infringe the Patents-in-Suit and that K-fee will imminently file infringement litigation to assert the Patents-in-Suit.

60. In view of K-fee's ongoing prosecution strategy of targeting the Vertuo Products, K-fee's actions in filing multiple suits against Nespresso in this District and Nespresso's affiliate in Switzerland, and K-fee's numerous statements about the value of K-fee's patent portfolio and the risk it presents to Nespresso, a threat of actual and imminent injury exists to Nespresso that can be redressed by judicial relief, and that controversy is sufficiently immediate and real to warrant the issuance of a declaratory judgment.

61. Such injury includes, among other things, uncertainty as to whether the development, use, and sale of the Vertuo Products will be free from infringement claims

based on the Patents-in-Suit. Until the ambiguity associated with the Patents-in-Suit is resolved, Nespresso's ability to sell and offer to sell its Vertuo Products in the United States, and to import its Vertuo Products into United States, without risk of patent infringement allegations by K-fee will remain in question.

62. Accordingly, Nespresso brings this action to remove any cloud of uncertainty that hangs over it regarding the Patents-in-Suit and protect its continued and substantial investment in its coffee and espresso machine products, including the Vertuo Products.

COUNT I

(**Declaratory Judgment of Noninfringement of U.S. Patent No. 11,465,829**)

63. Nespresso hereby repeats, realleges, and incorporates by reference each and every allegation contained in the preceding paragraphs as though fully stated herein.

64. As described in further detail below, Nespresso has not infringed and does not infringe any claim of the '829 Patent, either directly or indirectly, literally, or under the doctrine of equivalents, including by making, using, importing, offering for sale, or selling the Vertuo Products.

65. All claims of the '829 Patent require an "identifier," the purpose of which is to "individualize the respective portion capsule." '829 Patent at 1:33–35. The '829 Patent consistently defines "individualizing" as preventing the use of capsules that are not suitable for the coffee machine, whether through the use of a capsule that will not fit into the machine in the first instance, a capsule that will fall directly through the machine when inserted into it, or a machine that will not operate properly if the capsule is not suitable. The purpose of the code of the Vertuo Products is not to allow the coffee machine to distinguish between suitable and non-suitable capsules. Instead, the Vertuo code encodes brewing parameters such as pre-wet volume and a recipe code. For at least this reason, the Vertuo Products do not meet the "identifier" limitation.

66. All claims of the ’829 Patent require “the base element being symmetrical about a central longitudinal axis thereof.” The Vertuo Products do not meet this limitation at least because the base element of the Vertuo capsules is not symmetrical about a central longitudinal axis thereof, including at least due to the placement of physical features and a Nespresso logo on the base element.

67. All claims of the ’829 Patent require that “the cover includes a region configured to be pierced at a location that is offset from the central longitudinal axis.” The Vertuo Products do not meet this limitation at least because the cover of the Vertuo capsules is not configured to be pierced at any particular location, and the piercing location depends on the design of the particular machine.

68. All claims of the ’829 Patent require “a barrier layer to prevent moisture or aroma from escaping out of the portion capsule.” The Vertuo Products do not meet this limitation at least because Vertuo capsules do not include a barrier layer. Furthermore, the Vertuo Products do not contain a barrier layer with the purpose of preventing, or a barrier layer that in fact prevents, moisture or aroma from escaping out of the portion capsule.

69. All claims of the ’829 Patent require “an insertion shaft.” The Vertuo Products do not meet this limitation at least because Vertuo brewing machines do not contain an “insertion shaft.”

70. Claims 1–11 of the ’829 Patent further require “an insertion shaft configured to receive the portion capsule and to enable detection of the identifier on the bottom side of the rim by the sensor/detector.” The Vertuo Products do not meet this limitation at least because Vertuo brewing machines do not have any component that is both configured to “receive the portion capsule” and “enable detection of the identifier on the bottom side of the rim by the sensor/detector.”

71. All claims of the ’829 Patent require “a chamfered mandrel that [is configured to pierce or pierces] the cover at the location that is offset from the central

longitudinal axis." The Vertuo Products do not meet this limitation at least because the Vertuo brewing machines do not contain any chamfered mandrel that is configured to pierce or does pierce a cover at a location that is offset from the central longitudinal axis.

72. All claims of the '829 Patent require "a seal that is configured to bear against a top side of the cover in a region between the peripheral region of the cover and the region of the cover that is pierced by the chamfered mandrel." The Vertuo Products do not meet this limitation at least because, to the extent that the Vertuo Products contain a seal that is configured to bear against a top side of the cover, the seal does not do so in a "region between the peripheral region of the cover and the region of the cover that is pierced by the chamfered mandrel."

73. Claims 1–11 of the '829 Patent require "a pump controlled to supply hot water into the portion capsule only upon detection of the identifier by the sensor/detector and a determination by the beverage machine that the portion capsule is suitable for use with the beverage machine." The Vertuo Products do not meet this limitation at least because the pump of the Vertuo brewing machine is not controlled to supply hot water only upon the detection of the code by the sensor/detector and a determination by the beverage machine that the portion capsule is suitable for use with the beverage machine. Indeed, as discussed above, the Vertuo Products do not make any determination as to whether the portion capsule is suitable for use with the machine.

74. Claims 2–11 and 13–19 of the '829 Patent require that "the operation of the pump, which pushes the hot water through a brewing chamber is prevented upon a determination by the beverage machine that the portion capsule is not suitable for use with the beverage machine." As discussed above, the Vertuo Products do not make any determination as to whether the portion capsule is suitable for use with the machine.

75. Claims 6–11 and 15–19 of the '829 Patent require that "the rim guides the portion capsule in the insertion shaft such that the portion capsule drops into the brewing chamber in a specific position." The Vertuo Products do not meet this limitation at least

because, to the extent that K-fee alleges that the brewing chamber is the "insertion shaft," the rim does not guide the portion capsule into the brewing chamber. Instead, the position of the capsule is dictated by the position and shape of the brewing chamber.

76. Claims 8 and 17 of the '829 Patent require that "the portion capsule comprises a filter inside of the cavity." The Vertuo Products do not meet this limitation at least because Vertuo capsules do not contain any filter inside of the cavity.

77. Claims 11 and 19 of the '829 Patent require that "the beverage machine comprises a pair of holding arms for guiding the portion capsule." The Vertuo Products do not meet this limitation at least because Vertuo brewing machines do not contain "a pair of holding arms for guiding the portion capsule."

78. For at least the above reasons, Nespresso has not infringed and does not infringe any claim of the '829 Patent directly or indirectly, literally, or under the doctrine of equivalents.

79. As set forth above, an actual controversy exists between Nespresso and K-fee with respect to the alleged infringement of the '829 Patent, and this controversy is ongoing and likely to continue.

80. A judicial declaration is necessary and appropriate so that Nespresso may ascertain its rights regarding the '829 Patent.

81. Accordingly, Nespresso seeks a judgment declaring that any manufacture, use, sale, offer for sale, or importation of the Accused Products has not infringed and does not infringe, directly or indirectly, contributorily, or by inducement, any claim of the '829 Patent.

COUNT II

(**Declaratory Judgment of Noninfringement of U.S. Patent No. 11,465,830**)

82. Nespresso hereby repeats, realleges, and incorporates by reference each and every allegation contained in the preceding paragraphs as though fully stated herein.

83. As described in further detail below, Nespresso has not infringed and does not infringe any claim of the ’830 Patent, either directly or indirectly, literally, or under the doctrine of equivalents, including by making, using, importing, offering for sale, or selling the Vertuo Products.

84. All claims of the ’830 Patent require “an optically detectable individualization identifier.” The purpose of the identifier is to “individualize the respective portion capsule.” ’830 Patent at 1:33–35; Cls. 1, 8. The ’830 Patent consistently defines “individualizing” as preventing the use of capsules that are not suitable for the coffee machine, whether through the use of a capsule that will not fit into the machine in the first instance, a capsule that will fall directly through the machine when inserted into it, or a machine that will not operate properly if the capsule is not suitable. The purpose of the code of the Vertuo Products is not to allow the coffee machine to distinguish between suitable and non-suitable capsules. Instead, the Vertuo code encodes brewing parameters such as pre-wet volume and a recipe code. For at least this reason, the Vertuo Products do not meet the “optically detectable individualization identifier” limitation.

85. All claims of the ’830 Patent further require that “the optically detectable individualization identifier is configured to be read by a sensor/detector of a beverage machine to individualize the portion capsule and to activate a pump of the beverage machine.” For the same reasons discussed above, the Vertuo Products do not meet this limitation at least because the code of the Vertuo Products is not configured to be read by a sensor/detector of a beverage machine to individualize the portion capsule. Nor is it configured to be read by a sensor/detector to activate the pump of the Vertuo Products.

86. All claims of the ’830 Patent require “the base element including a wall that is symmetrical about a central longitudinal axis thereof.” The Vertuo Products do not meet this limitation at least because the base element of the Vertuo capsule does not include a wall that is symmetrical about a central longitudinal axis thereof, including at

least due to the placement of physical features and a Nespresso logo on the wall of the base element.

87. All claims of the ’830 Patent require that the cover includes a region “configured to be pierced by a mandrel of the beverage machine at a location that is laterally offset from the central longitudinal axis.” The Vertuo Products do not meet this limitation at least because the cover of the Vertuo capsules is not configured to be pierced at any particular location—the piercing location depends on the design of the particular machine. In addition, the Vertuo Products do not contain a “mandrel.”

88. All claims of the ’830 Patent require “a barrier layer to prevent moisture or aroma from escaping out of the portion capsule.” The Vertuo Products do not meet this limitation at least because the Vertuo capsules do not include a barrier layer. Furthermore, the Vertuo capsules do not contain a barrier layer with the purpose of preventing, or a barrier layer that in fact prevents, moisture or aroma from escaping out of the portion capsule.

89. All claims of the ’829 Patent require “a sealing region that is configured to be sealed against by a seal of the beverage machine, the sealing region is located between the piercing region and the perimeter of the cover.” The Vertuo Products do not meet this limitation at least because, to the extent that the Vertuo Products contain “a sealing region that is configured to be sealed against by a seal of the beverage machine,” that “sealing region” is not located between the piercing region and the perimeter of the cover.

90. Claims 1–7 of the ’830 Patent require “a ledge formed at the inside surface of the wall and projecting towards the central longitudinal axis, the ledge is spaced below the open end of the base element.” The Vertuo Products do not meet this limitation at least because Vertuo capsules do not contain any ledge, let alone “a ledge formed at the inside surface of the wall and projecting towards the central longitudinal axis, the ledge is spaced below the open end of the base element.”

91. Claims 2–7 and 10–12 of the ’830 Patent require that “the optically detectable individualization identifier is located on the wall of the base element.” The Vertuo Products do not meet this limitation at least because the code of the Vertuo capsules is located on the bottom of the flange, not on the wall of the base element.

92. Claims 6 and 11 of the ’830 Patent require that “the portion capsule includes a filter inside of the cavity.” The Vertuo Products do not meet this limitation at least because Vertuo capsules do not contain any filter inside of the cavity.

93. Claim 9 of the ’830 Patent requires that “the inside surface of the wall comprises a ledge projecting towards the central longitudinal axis.” The Vertuo Products do not meet this limitation at least because Vertuo capsules do not contain any ledge, let alone “a ledge projecting towards the central longitudinal axis.”

94. Claims 11 and 12 of the ’830 Patent require that “the wall comprises an electrically conductive section.” The Vertuo Products do not meet this limitation at least because the wall of the Vertuo capsules does not comprise an electrically conductive section under the Court’s construction of that term in *K-fee I*.

95. For at least the above reasons, Nespresso has not infringed and does not infringe any claim of the ’830 Patent directly or indirectly, literally, or under the doctrine of equivalents.

96. As set forth above, an actual controversy exists between Nespresso and K-fee with respect to the alleged infringement of the ’830 Patent, and this controversy is ongoing and likely to continue.

97. A judicial declaration is necessary and appropriate so that Nespresso may ascertain its rights regarding the ’830 Patent.

98. Accordingly, Nespresso seeks a judgment declaring that any manufacture, use, sale, offer for sale, or importation of the Accused Products has not infringed and does not infringe, directly or indirectly, contributorily, or by inducement, any claim of the ’830 Patent.

PRAYER FOR RELIEF

WHEREFORE, Nespresso seeks the following relief:

a) The entry of judgment in favor of Nespresso and against K-fee on each and every count of the Complaint;

b) An order declaring that the Vertuo Products have not infringed and do not infringe any claim of the Patents-in-Suit;

c) An order declaring that this is an exceptional case and awarding Nespresso its reasonable attorney fees under 35 U.S.C. § 285 and all other applicable statutes, rules, and common law;

d) An order awarding Nespresso its costs of suit; and,

e) Such other and further relief as the Court deems just and proper.

Dated: December 22, 2022

By: */s/ Wayne Barsky*_____

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DEMAND FOR JURY TRIAL

In accordance with Rule 38 of the Federal Rules of Civil Procedure and Local Rule CV-38-1, Nespresso respectfully demands a jury trial of all issues triable to a jury.

Dated: December 22, 2022

By: */s/ Wayne Barsky*_____

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