

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

THE CHAMBERLAIN GROUP, INC.,	)	
	)	Civil Action No.: 1:16-cv-06097
Plaintiff,	)	
v.	)	The Honorable Thomas M. Durkin
	)	
TECHTRONIC INDUSTRIES CO. LTD.,	)	Magistrate Judge Sidney Schenkier
TECHTRONIC INDUSTRIES NORTH AMERICA,	)	
INC., ONE WORLD TECHNOLOGIES INC.,	)	<b><u>JURY TRIAL DEMANDED</u></b>
OWT INDUSTRIES, INC., ET TECHNOLOGY	)	
(WUXI) CO. LTD., AND RYOBI	)	<b>PUBLIC, REDACTED VERSION</b>
TECHNOLOGIES, INC.	)	
	)	
Defendants.	)	

**PLAINTIFF'S MEMORANDUM  
IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION**

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## I. INTRODUCTION

Plaintiff The Chamberlain Group, Inc. (“CGI”) respectfully moves under Fed. R. Civ. P. 65(a) for a preliminary injunction barring Defendants Techtronic Industries North America, Inc. (“Techtronic NA”); One World Technologies Inc.; OWT Industries, Inc.; and Ryobi Technologies, Inc. (“Ryobi”) (collectively, “TTI”) from infringing claims 9 and 14 of U.S. Patent No. 7,635,966 (“the ’966 patent”) and claims 1 and 5 of U.S. Patent No. 7,224,275 (“the ’275 patent”).<sup>1</sup>

Since the 1950’s, Elmhurst-based CGI has invested substantial resources to develop the safest and most innovative residential garage door openers (“GDOs”) on the market. CGI has expanded beyond traditional GDOs to become a market leader for GDO-integrated technology, including GDOs with battery back-up power and wireless functionality. CGI has obtained over 350 patents on its innovations, most related to GDOs; has created hundreds of jobs in the United States (most in this District); and has secured the safety of ██████████ of American homes. CGI has a long history of bringing products that practice its patents to market and into the hands of consumers, including CGI’s signature do-it-yourself Chamberlain® and professionally installed LiftMaster® products.

Until this year, TTI was not a direct competitor of CGI and had never sold a GDO. Then, in April, TTI suddenly started competing head-to-head with CGI with the Ryobi Ultra-Quiet GD200 garage door opener (“Ryobi GDO”). The only possible way for TTI to enter the market so quickly was to do so on the back of CGI’s decades of efforts and investment, including CGI’s substantial investment in patent protection. TTI’s Ryobi GDO is infringing at least two core CGI

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<sup>1</sup> Named defendants Techtronic Industries Co. Ltd. (the parent company of Techtronic NA, One World Technologies Inc., OWT Industries, Inc., and Ryobi) and Et Technology (Wuxi) Co. Ltd. (the relevant manufacturer for at least One World Technologies Inc.) are headquartered in China. CGI is in the process of effecting service.

GDO patents: the '966 patent covering the battery invention Chamberlain disclosed to TTI in 2009 and the '275 patent covering wireless monitoring and other inventions related to the internet connected GDO.

It is undisputable that TTI's infringement will directly impact CGI's business. In fact, the already established evidence shows that consumers are now forced to choose between two very similar products, albeit both built on the same core patented technology. The irreparable harm caused by such infringement is real and TTI poses an immediate threat to erode CGI's market share and reputation as well as to jobs and innovation at CGI. The law is clear that CGI should not have to compete with its own technology. CGI respectfully requests that this Court enjoin TTI's infringing behavior before further irreparable harm is done.

## **II. FACTUAL BACKGROUND**

### **A. CGI's History of Innovation in the Garage Door Opener Industry**

CGI is based in Elmhurst, Illinois, and has a history of quality and safety stretching back more than one hundred years to the 1906 founding of Waterloo Rope Belt Co. (later renamed Chamberlain Machine Works). Declaration of Colin Willmott submitted herewith ("Willmott Decl."), ¶ 3. CGI, through a predecessor company Perma Power Corp., which CGI acquired in 1968, formally entered the garage door market with its first garage door opener product in 1958. *Id.*, ¶¶ 4-5. CGI introduced the market-leading GDO, now well-known as the signature LiftMaster® opener, just nine years later in 1967. *Id.*, ¶¶ 5, 7. Through its acquisition of Perma Power and since, CGI has created numerous jobs in the United States, including hundreds in this District. Declaration of John Fitzgerald submitted herewith ("Fitzgerald Decl."), ¶ 3. CGI has long been a leader in the industry, first establishing itself as a leader in safety issues surrounding garage door openers, such as infrared sensors and other safety measures to protect people from

inadvertent closures. Willmott Decl., ¶¶ 8-17. These safety measures and other innovative technologies have long defined CGI's commitment to development and public safety. *Id.*

Today, CGI designs, manufactures, and sells innovative access control devices, including residential garage door openers, commercial door operators, perimeter access solutions, home connectivity products, and related accessories. Fitzgerald Decl., ¶ 3. CGI's LiftMaster® products are the number one brand of professionally installed garage door openers in the United States, and CGI's do-it-yourself Chamberlain®, LiftMaster®, and private-labeled CGI manufactured products are present in a majority of garages in America. *Id.*, ¶ 7. It is estimated that ██████████ of American homes are currently protected with CGI GDO products. Fitzgerald Decl., ¶ 7. CGI's MyQ® technology allows users to remotely monitor and control garage doors, lights, and gates in their homes and businesses with their smartphones. *Id.* at ¶ 8. MyQ® technology has been widely praised, and products incorporating this technology met with immediate commercial success and industry praise upon release. *Id.* at ¶¶ 8-9. CGI currently has over 50 GDO products on the market including its signature do-it-yourself Chamberlain® and professionally installed LiftMaster® products, and over ██████ more GDO accessories. Fitzgerald Decl., ¶ 7.

It is CGI's substantial investments in research and product development, manufacturing, marketing, and sales that have made it the undisputed leader in the field of garage door openers nationwide. *See* Fitzgerald Decl., ¶¶ 4-6. Through these investments, CGI is able to continually improve its product offerings for its customers. As a result, CGI's products have a reputation for safety, security, and reliability, and CGI has received accolades as an innovation leader in its field of technology. *Id.*, ¶ 6. CGI's substantial investments in R&D have resulted in the issuance of over 350 U.S. patents, and have encouraged its engineers to continue to innovate.



Willmott Decl., ¶ 17. CGI relies upon these patents to protect its business, recoup its substantial research and product development investment, and protect its reputation from imitation devices that are less safe, less secure, or otherwise inferior. *Id.*

**B. CGI's Patented Inventions**

The '966 and '275 Patents are just two of the many CGI patents that reflect CGI's substantial investment in GDO innovations.

The '966 patent describes a battery charging station powered by a garage door head unit, where the battery both provides backup power to the garage door motor in case of a power outage and is capable of being used to power tools often stored in a garage like a saw or a drill. This invention allows users to reduce the number of batteries and battery charging stations in their households, thereby providing savings with respect to cost and space. Claim 9 of the '966 patent recites:

9. A battery charging apparatus, comprising:

a battery charging station in electrical communication with a rechargeable battery and in electrical communication with a head unit of a barrier movement operator for supplying power to at least one rechargeable battery, the at least one rechargeable battery being removably connectable to electrically powered equipment other than and physically separate or separable from the barrier movement operator to provide power to the electrically powered equipment; and

circuitry electrically connected to the battery charging station to supply power from the at least one rechargeable battery to the head unit.

Declaration of Dr. V. Thomas Rhyne submitted herewith ("Rhyne Decl."), ¶ 35. Claim 14 is a dependent claim that specifies that the electrically powered equipment "comprises a tool." *Id.*, ¶ 36.

The '275 patent describes wirelessly monitoring the status of features associated with the environment of modern garage door openers, while also providing users the security and

assurance of knowing that the monitored statuses are unique to their garage door openers, not their neighbors'. Claim 1 of the '275 patent recites:

1. A movable barrier operator comprising:

a controller having a plurality of potential operational status conditions defined, at least in part, by a plurality of operating states;

a movable barrier interface that is operably coupled to the controller;

a wireless status condition data transmitter that is operably coupled to the controller, wherein the wireless status condition data transmitter transmits a status condition signal that:

corresponds to a present operational status condition defined, at least in part, by at least two operating states from the plurality of operating states; and

comprises an identifier that is at least relatively unique to the movable barrier operator, such that the status condition signal substantially uniquely identifies the movable barrier operator.

*Id.*, ¶ 54. Claim 5 is a dependent claim that identifies fourteen specific operating states, for example “moving a movable barrier in a first direction” or “a vacation mode status change.” *Id.*,

¶ 55. Most of CGI’s most popular products practice claims 1 and 5 of the '275 patent, including CGI’s MyQ® smartphone-controlled garage door openers such as Model No. HD950WF.

Rhyne Decl., ¶¶ 56-71.

### C. CGI’s Prior Dealings with TTI

Around 2009, CGI sought to expand its garage door opener offerings by designing a GDO with battery system that embodied the '966 patent to be sold within the [REDACTED] stores.<sup>2</sup> Declaration of Ron Brogle submitted herewith (“Brogle Decl.”), ¶¶ 3-5. CGI had already been manufacturing GDOs for [REDACTED] which were sold under the [REDACTED] brand name, a practice which has continued to this date. Brogle Decl., ¶ 5. The companies discussed modifying a garage door opener so that a [REDACTED] a rechargeable battery

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<sup>2</sup> See, e.g., Rhyne Decl., ¶¶ 37-48 (explaining how CGI’s prototype meets every claim element of the '966 patent’s claims 9 and 14).

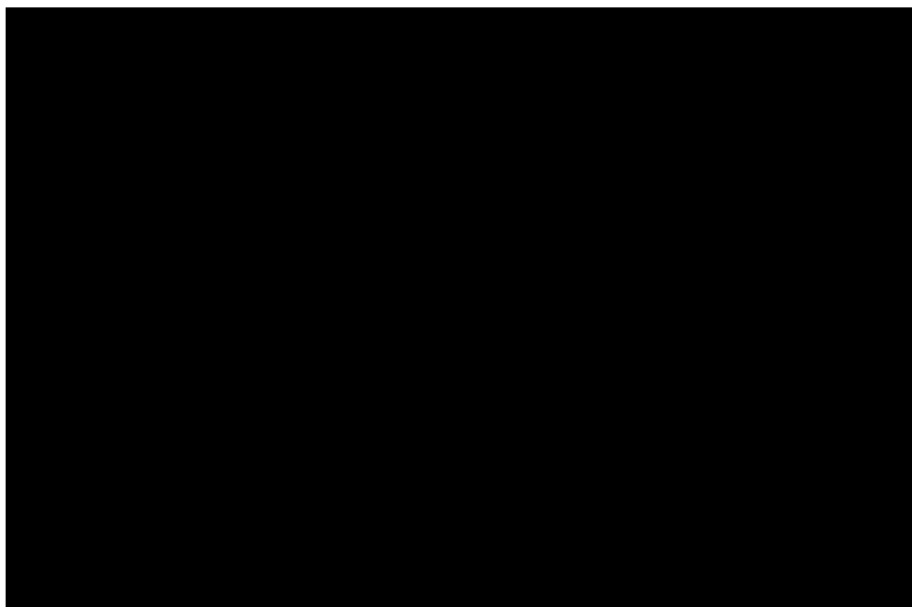
used to power a number of [REDACTED] products ranging from cordless drills to circular saws—could be charged by, and used as back-up power for the garage door opener manufactured by CGI. Brogle Decl., ¶ 6. CGI expected that this battery system would be highly desirable to customers, driving sales of CGI’s garage door openers and [REDACTED]. Brogle Decl., ¶ 7.

[REDACTED] was interested in this idea and directed CGI to Techtronic NA, the supplier of the [REDACTED] batteries for the [REDACTED] line of tools. Brogle Decl., ¶ 8. Techtronic NA agreed to discuss the project with CGI, on the condition that CGI purchase Techtronic NA’s battery charging boards for incorporation into CGI’s GDOs. *Id.*, ¶ 9. CGI agreed, disclosed its patented and other ideas with Techtronic NA, and worked through a number of technical, regulatory, and financial hurdles to come up with final design requirements, interface, and operating parameters for the product. *Id.*, ¶ 10. At the conclusion of this work, however, Techtronic NA inexplicably raised the price for its battery charging boards to more than twice CGI’s estimated cost, making the product cost-prohibitive to consumers, and effectively terminating the project. *Id.*, ¶¶ 11-13.

On April 20, 2009, shortly after the negotiations between TTI and CGI ended, employees of Techtronic Industries filed a patent application entitled “Garage Door Opener With Secondary Power Source,” covering technology similar to that disclosed by CGI during these negotiations. *See* Declaration of Maria Elena Stiteler submitted herewith (“Stiteler Decl.”), ¶¶ 3, 7 & Ex. A. This application claimed the benefit of an earlier provisional application filed on Dec. 19, 2008. *Id.* These applications were eventually abandoned. *See* Stiteler Decl., ¶¶ 4-5.

#### **D. The Infringing Ryobi Garage Door Opener**

TTI recently started importing into the United States and Canada and selling through Home Depot’s physical and online stores the Ryobi GDO—a product that embodies the patented ideas that Techtronic NA learned from the companies’ 2009 communications:



See Rhyne Decl. ¶¶ 39-48, 79-99 (discussing features of CGI’s design for █████ and the Ryobi GDO with respect to ’966 patent claims 9 and 14).

The Ryobi GDO was introduced about two months ago and is now being imported from China into the U.S and sold nationwide, through TTI’s exclusive U.S. retailer for Ryobi: The Home Depot. Fitzgerald Decl., ¶ 10. The Ryobi GDO

includes a battery back-up feature that infringes CGI’s ’966 patent. Rhyne Decl. ¶¶ 79-99. This feature allows the Ryobi GDO to be powered by “an electric power source” in normal mode and to switch to the Ryobi battery in emergency power outages. See

Stiteler Decl., Exhibit N, p. 2. The battery also (as TTI prominently highlights in its advertising) is used to power more than seventy Ryobi-branded tools. *Id.*, Exhibit D, p. 7 & Exhibit H, p. 1.

TTI’s advertising proclaims: “Rest assured even in power outages, this unit is compatible with



**Ryobi GD200 garage door opener, featuring the RYOBI ONE+ battery.**

the RYOBI ONE+ system, and is battery backup ready with over 100 openings using a RYOBI ONE+ P108 4Ah Battery.” Stiteler Decl., Exhibit D, p. 8.

The Ryobi GDO also includes a system for sending status updates wirelessly in a manner that infringes CGI’s ’275 patent. Rhyne Decl., ¶¶ 100-136. The system is used in connection with a Ryobi Smartphone App and allows users to remotely monitor and control the Ryobi GDO’s status, for example by checking whether the garage door is open/closed and whether the light is on. *Id.*, ¶¶ 104-05. TTI markets this feature as “mak[ing] your garage smart.” Stiteler Decl., Exhibit D, p. 2.



GD200 App

### III. ARGUMENT

“A plaintiff seeking a preliminary injunction must establish that he [or she] is likely to succeed on the merits, that he [or she] is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his [or her] favor, and that an injunction is in the public interest.” *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). “The purpose of a preliminary injunction is merely to preserve the relative positions of the parties until a trial on the merits can be held.” *Univ. of Tex. v. Camenisch*, 451 U.S. 390, 395 (1981). The decision to award or deny a preliminary injunction is committed to the discretion of the district court. *Titan Tire Corp. v. Case New Holland, Inc.*, 566 F.3d 1372, 1375 (Fed. Cir. 2009). This Court has recognized the importance of granting preliminary injunctions where a proper showing is made, even in situations much less clear or egregious than the present one.<sup>3</sup>

<sup>3</sup> See *Scholle Corp. v. Rapak LLC*, 35 F. Supp. 3d 1005, 1015 (N.D. Ill. 2014) (granting preliminary injunction, even though balance of equities and public interest weighed only slightly in favor of an injunction); *Tuf-Tite, Inc. v. Fed. Package Networks, Inc.*, No. 14-CV-2060, 2014 WL 6613116 (N.D. Ill. Nov. 21, 2014) (granting preliminary injunction); *Abbott Labs. v. Sandoz, Inc.*, 500 F. Supp. 2d 807, 845 (N.D. Ill. 2007) (granting preliminary injunction, even though alleged infringer “submitted detailed

This is not a case where TTI was already in the market and added a small feature to its already existing product. *See, e.g., i4i Ltd. P'ship v. Microsoft Corp.*, 598 F.3d 831, 840 (Fed. Cir. 2010) (affirming permanent injunction where the infringing feature was merely a small addition to an already existing product); *Techtronic*, 395 F. Supp. 2d at 724 (awarding injunction even though both companies were previously in the business of selling power tools). Here, TTI is using CGI's own innovations—at one of its largest customers—and the only way to “preserve the relative positions of the parties,” *Univ. of Tex.*, 451 U.S. at 395, is to preliminarily enjoin TTI from infringing CGI's patented inventions.

**A. CGI Has a Strong Likelihood of Success on the Merits**

A likelihood of success on the merits is shown when a patent owner “demonstrate[s] that it will likely prove infringement of one or more claims of the patents-in-suit, and that at least one of those same allegedly infringed claims will also likely withstand the validity challenges presented by the accused infringer.” *AstraZeneca LP v. Apotex, Inc.*, 633 F.3d 1042, 1050 (Fed. Cir. 2010) (internal quotations omitted). To overcome this showing, the alleged infringer must “raise[] a substantial question concerning infringement or validity.” *Id.* A showing of a likelihood of success on the merits does not require that infringement be “proved beyond all question, or that there be no evidence supporting the viewpoint of the accused infringer.” *H.H. Robertson, Co. v. United Steel Deck, Inc.*, 820 F.2d 384, 390 (Fed. Cir. 1987), *abrogated on other grounds by Markman v. Westview Instruments, Inc.*, 52 F.3d 967 (Fed. Cir. 1995).

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evidence that they would face severe hardship if it in fact turns out that this Court incorrectly granted a preliminary injunction and recall”), *aff'd*, 544 F.3d 1341 (Fed. Cir. 2008) ; *Techtronic Indus. Co. v. Chervon Holdings, Ltd.*, 395 F. Supp. 2d 720, 737 (N.D. Ill. 2005) (granting preliminary injunction, even though the balance of hardships “weigh[ed] only slightly in favor of [the patentee]”); *Garvey Corp. v. Barry-Wehmler Design Grp., Inc.*, 365 F. Supp. 2d 893 (N.D. Ill. 2005) (granting preliminary injunction).

Here, as shown below, the infringement analyses for the '966 and '275 patents are straightforward, demonstrating a strong likelihood that CGI will prove that the Ryobi GDO infringes its patents. Moreover, there are no substantial questions relating to infringement, validity or enforceability. Thus, this factor weighs heavily in favor of granting a preliminary injunction.

**1. The Ryobi GDO and ONE+ Battery Infringe at Least Claims 9 and 14 of the '966 Patent**

TTI is liable under § 271(a) for making, importing to the United States, selling, and offering to sell Ryobi GDOs that infringe claims 9 and 14 of the '966 patent. An infringement analysis has two steps: first, construing the asserted claims, and second, comparing the construed claims to the accused product. *Pfizer, Inc. v. Teva Pharm., USA, Inc.*, 429 F.3d 1364, 1372 (Fed. Cir. 2005). Here, there are no terms in the first step that require construction because claims 9 and 14 of the '966 patent use plain, understandable language and the Ryobi products infringe under any reasonable construction of these terms. *See* Rhyne Decl., ¶¶ 31 & 72-99 (Dr. Rhyne's infringement analysis for the '966 patent).

For the second step of the infringement analysis, CGI is submitting herewith the technical declaration of Dr. V. Thomas Rhyne, an expert in this field. Dr. Rhyne's declaration explains in detail how TTI's own materials demonstrate infringement and how Dr. Rhyne's testing and analysis confirmed that the Ryobi GDO meets every claim limitation of the '966 patent's claims 9 and 14. Rhyne Decl., ¶¶ 72-99.

For example, Dr. Rhyne explains that the Ryobi GDO includes a "battery charging station" that is in electrical communication with "a rechargeable battery" (the Ryobi ONE+ battery) and with "a head unit" (the Ryobi GDO head unit, or the unit installed in the garage to physically open the garage door). Rhyne Decl., ¶¶ 79-87. The Ryobi GDO head unit is designed

to supply power to the Ryobi battery which in turn provides backup power to the Ryobi GDO. Rhyne Decl., ¶¶ 82, 84-85, 94-97. The “battery charging station” of the Ryobi GDO accepts a Ryobi ONE+ battery designed to be “removably connectable” to “provide power” to “electronically powered equipment” such as Ryobi power tools. *Id.*, ¶¶ 88-93. Dr. Rhyne’s declaration establishes that CGI is more than likely to succeed in showing infringement of the ’966 patent’s claims 9 and 14.

**2. The Ryobi GDO Infringes at Least Claims 1 and 5 of the ’275 Patent**

TTI is also liable under § 271(a) for making, importing to the United States, selling, and offering to sell Ryobi GDO garage door openers that infringe claims 1 and 5 of the ’275 patent. Again, claim construction is not necessary, because the claim terms are written in plain, understandable language and the Ryobi GDO infringes claims 1 and 5 under any reasonable construction. *See* Rhyne Decl., ¶¶ 31, 100-136 (Dr. Rhyne’s infringement analysis for the ’275 patent).

Dr. Rhyne explains how the Ryobi GDO satisfies every element of the ’275 patent’s claims 1 and 5. Rhyne Decl., ¶¶ 100-136. For example, Dr. Rhyne explains that the Ryobi GDO is a “movable barrier operator” that includes a “controller” (a printed-circuit board) “having a plurality of potential operational status conditions defined, at least in part, by a plurality of operating states” (for example, relating to the position of the door, the status of the light, and the status of the battery being charged). Rhyne Decl., ¶¶ 100-107. The Ryobi GDO includes a “wireless status condition data transmitter” (an RF chip and antennas) that transmits a signal that “corresponds to a present operational status condition defined, at least in part, by at least two operating states” (for example, a signal sent to a cell phone running the Ryobi app that corresponds to door OPEN or CLOSED, LED ON or OFF). Rhyne Decl., ¶¶ 111-114. The signal also “comprises an identifier that is at least relatively unique to the movable barrier



operator” (for example, the unique MAC identifier for the Wi-Fi communications). Rhyne Decl., ¶¶ 118-122. With respect to claim 5, Dr. Rhyne explains how the Ryobi GDO includes many of the recited operational states, while claim 5 only requires inclusion of “at least one of” the recited states. Rhyne Decl., ¶¶ 124-136. Dr. Rhyne’s declaration establishes that CGI is very likely to succeed in showing infringement of the ’275 patent’s claims 1 and 5.

**3. There Are No Substantial Questions as to the Validity or Enforceability of the CGI Patents**

The ’966 and ’275 patents are presumed valid under 35 U.S.C. § 282. To overcome the strong showing of infringement here, TTI has the burden to identify “persuasive evidence of invalidity.” *Canon Comput. Sys. v. Nu-Kote Int’l, Inc.*, 134 F.3d 1085, 1088 (Fed. Cir. 1998) (alleged infringer must “identify any persuasive evidence of invalidity, [or] the very existence of the patent satisfies [movant’s] burden on the validity issue”). TTI will not be able to present a reasonable challenge to the validity or enforceability of either CGI patent.

The presumption of validity of a patent is bolstered by any evidence of commercial success, industry praise, and copying. *L.A. Gear, Inc. v. Thom McAn Show Co.*, 988 F.2d 1117, 1124 (Fed. Cir. 1993). And “objective indicia may often be the most probative and cogent evidence of nonobviousness in the record.” *Mintz v. Dietz & Watson, Inc.*, 679 F.3d 1372, 1378 (Fed. Cir. 2012) (internal quotations omitted); *see also Techtronic*, 395 F. Supp. 2d at 734 (weighing secondary considerations against a finding of obviousness). Here, the presumption of validity for the ’275 patent is bolstered by the tremendous commercial success and industry praise that CGI has achieved with respect to its MyQ® garage door openers that embody the technology claimed in the ’275 patent. Fitzgerald Decl., ¶¶ 8-9; Rhyne Decl., ¶ 56. Additionally, the presumption of validity for the ’966 patent is bolstered by the fact that TTI

copied CGI's idea to create a product that embodied '966 patent's claims. *See supra*, Section II.C.

**B. CGI Is Likely to Suffer Irreparable Harm Based on TTI's Infringement**

CGI is likely to suffer irreparable harm in the absence of preliminary relief. Irreparable harm can take on a number of different forms, including without limitation lost market share, price erosion, lost goodwill, and lost downstream sales. *See Robert Bosch LLC v. Pylon Mfg. Corp.*, 659 F.3d 1142, 1151 (Fed. Cir. 2011); *Celsis In Vitro, Inc. v. CellzDirect, Inc.*, 664 F.3d 922, 930 (Fed. Cir. 2012); *Apple Inc. v. Samsung Elecs. Co.*, 809 F.3d 633, 645 (Fed. Cir. 2015) ("*Apple IP*") (discussing how a patentee's lost sales can lead to fewer accessory sales and fewer customer recommendations of the product, resulting in a harm that cannot be quantified).

In fact, in a case like this where TTI is selling a product in direct competition with CGI's same product in [REDACTED] irreparable harm is all but inevitable. Home Depot sells the Ryobi product right alongside the CGI product and even advertises and promotes the Ryobi product when consumers search Home Depot for garage door openers. Stiteler Decl., ¶¶ 18-20; Fitzgerald Decl., ¶ 10, 14-15 (TTI is directly competing with CGI [REDACTED]); *id.* at ¶¶ 11, 14 (TTI's infringement puts at risk [REDACTED]

The Federal Circuit explains:

Competitors change the marketplace. Years after infringement has begun, it may be impossible to restore a patentee's (or an exclusive licensee's) exclusive position by an award of damages and a permanent injunction. Customers may have established relationships with infringers. The market is rarely the same when a market of multiple sellers is suddenly converted to one with a single seller by legal fiat. Requiring purchasers to pay higher prices after years of paying lower prices to infringers is not a reliable business option.

*Polymer Technologies, Inc. v. Bridwell*, 103 F.3d 970, 975-976 (Fed. Cir. 1996); *see also Douglas Dynamics, LLC v. Buyers Prods. Co.*, 717 F.3d 1336, 1345 (Fed. Cir. 2013) (holding in a case where the patentee and accused infringer had only 65% of the market: “[w]here two companies are in competition against one another, the patentee suffers the harm—often irreparable—of being forced to compete against products that incorporate and infringe its own patented inventions”).

Though companies other than CGI make and sell GDOs, through CGI’s innovation and investments in its reputation and quality of products, CGI has earned an estimate ██████ share of the U.S. residential garage door opener market, effectively creating a two player market: CGI and everyone else. Fitzgerald Decl., ¶ 12; *see Polymer Techs.*, 103 F.3d at 975 (“The fact that other infringers may be in the marketplace does not negate irreparable harm. A patentee does not have to sue all infringers at once. Picking off one infringer at a time is not inconsistent with being irreparably harmed.”). Courts have found that this type of market “may well serve as a substantial ground for *granting* an injunction—e.g., because it creates an inference that an infringing sale amounts to a lost sale for the patentee.” *Bosch*, 659 F.3d at 1151; *Hydrodynamic Indus. Co. v. Green Max Distributors, Inc.*, No. 2:12-CV-05058-ODW, 2014 WL 2740368, at \*3 (C.D. Cal. June 16, 2014) (“Evidence of a two-player market in which the patent holder is a direct-market competitor of the accused infringer serves as significant proof of irreparable harm.”).

Without an immediate injunction, not only will CGI be put in the untenable position of being forced to compete in the very same physical and online stores against products that “incorporate and infringe its own patented inventions,” *Douglas Dynamics*, 717 at 1345, it will be forced to compete against a product that bears the Ryobi brand that appears on hundreds of

other products sold and advertised by Home Depot. Stiteler Decl., Exhibit M; Fitzgerald Decl., ¶¶ 13-16, 18-21. CGI will also be forced to compete for consumers who have already established loyalty to the Ryobi brand through its other product lines and/or who are persuaded by TTI's marketing of its GDO as compatible with the power tools they already have in their garages.

Additionally, in the short time the Ryobi GDO has been on the market, CGI has already suffered actual harm through lost market share and harm to CGI's good will and reputation. CGI is also likely to suffer lost downstream sales, price erosion, and loss in revenue needed to maintain its level of innovation and its skilled employee base. Further, allowing such infringement to continue devalues CGI's many inventions and suggests to others that the market is open to new entrants who may also be infringing. *See Pittway Corp. v. Black & Decker (U.S.), Inc.*, 667 F. Supp. 585, 592 (N.D. Ill. 1987) (allowing the infringing sales to continue "will encourage others to copy Pittway's invention and flood the market with infringing products without fear of being stopped by a prompt injunction").

CGI is already losing sales and market share. The Ryobi GDO is offered at a lower price point than its comparable CGI model, and CGI will either need to lower its pricing or face a further loss in sales and reputational damage. *See* Fitzgerald Decl., ¶¶ 19-21. [REDACTED]

[REDACTED] Fitzgerald Decl., ¶¶ 9, 19-20; *see also* Stiteler Decl., ¶¶ 23-26. CGI is put in the untenable position of either alienating customers and losing revenue by maintaining current pricing or dropping prices during the period of infringement, not only causing a diminution in current revenue but making it difficult or impossible to raise prices later, and eroding CGI's ability to invest in further innovation. Fitzgerald Decl., ¶¶ 21-22; *see, e.g.,*

*Sanofi-Synthelabo v. Apotex, Inc.*, 470 F.3d 1368, 1382 (Fed. Cir. 2006); *Bosch*, 659 F.3d at 1154; *Celsis in Vitro*, 664 F.3d at 930.

Moreover, this Court should grant an injunction against TTI to prevent CGI from suffering the irreparable harm of being forced to bring suit against its customers to protect its patented invention. *Techtronic Indus. Co. v. Chervon Holdings, Ltd.*, 395 F. Supp. 2d 720, 736 (N.D. Ill. 2005) (explaining that “[t]he resulting harm to [the patentee’s] business relationship with Sears would be difficult to compensate through monetary measures”). Indeed, Techtronic Industries Co.— a defendant in this case—succeeded in obtaining an injunction against a competitor in the Northern District of Illinois under analogous facts. *See id.*

Additionally, even a current diminution in revenue in the short term will cause irreparable harm because CGI will need to make tough choices on whether to cut investments into its innovation programs which are the lifeblood of the company. Fitzgerald Decl., ¶¶ 4-5, 22. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] *See, e.g., Bio-Technology Gen. Corp. v. Genentech, Inc.*, 80 F.3d 1553, 1566 (Fed. Cir. 1996) (recognizing irreparable harm based on a reduction of funds available for research and development).

TTI’s improper use of the ’275 patent’s technology also harms CGI’s ability to attract future customers. [REDACTED]

[REDACTED]

[REDACTED]. Fitzgerald Decl., ¶ 17. As such, each infringing Ryobi GDO sale eliminates the likely word-of-mouth recommendation to the lost customer’s

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<sup>4</sup> *See* Rhyne Decl., ¶ 56-71 (explaining how CGI’s HD950WF, and connected or connectable garage door openers meets every claim element of the ’275 patent’s claims 1 and 5).

friends, families, and neighbors. This loss harms CGI in a way that is impossible to measure or compensate for with monetary damages. Fitzgerald Decl., ¶ 17.

TTI's infringement also harms CGI's position in the market for accessories related to garage door openers. Garage door openers are often purchased with transmitters or extension kits. Fitzgerald Decl., ¶ 16. CGI's top-selling Home Depot accessory (its universal GDO clicker remote) is not compatible with the Ryobi GDO, and CGI's revenues for this product (amounting to approximately [REDACTED] over the last three years) are at risk based on TTI's infringement. Fitzgerald Decl., ¶ 16; *see also* Stiteler Decl., ¶¶ 23-26.

Even if it weren't for the many harms addressed above, CGI would be irreparably harmed merely from losing its right to exclude TTI's infringing product from the market—a loss of rights that forces CGI *to compete against its own patented inventions*. *See Black & Decker Inc. v. Robert Bosch Tool Corp.*, No. 04 C 7955, 2006 WL 3446144, at \*3 (N.D. Ill. Nov. 29, 2006) (the “nature of the patent grant weighs against holding that monetary damages will always suffice to make the patentee whole”) (quoting *Reebok Int'l, Ltd. v. J. Baker, Inc.*, 32 F.3d 1552, 1557 (Fed. Cir. 1994)); *Apple II*, 809 F.3d at 650 (Reyna, J., concurring). The fact that CGI does not currently market a product that practices the '966 patent does not lessen this harm. “[A] party that does not practice the asserted patent may still receive an injunction when it sells a competing product.” *Trebro Mfg. v. FireFly Equip., LLC*, 748 F.3d 1159, 1171 (Fed. Cir. 2014) (noting that the fact that a competitor movant “does not *presently practice* the patent does not detract from its likely irreparable harm” (emphasis added)). This is particularly true here, where it was TTI's own actions that prevented CGI from successfully marketing products that practice the '966 patent. *See supra*, Section II.C.

Ryobi cannot argue that any of the aforementioned harms are not caused by their infringement as they themselves advertise the infringing features, the infringing ONE+ battery feature and wireless status monitoring, to sell their products. *See* Stiteler Decl., Exhibit D, p. 2, 4-5; *see Apple II*, 809 F.3d at 642 (nexus when “the patented features impact consumers’ decisions to purchase the accused devices”; patented features do not have to be the “exclusive or predominant reason why consumers” buy the infringing product).<sup>5</sup> TTI also ties the Ryobi GDO’s “advanced technology” to features like the Ryobi GDO’s infringing rechargeable battery and its smartphone app. Stiteler Decl., Exhibit D, p. 5.

Indeed, TTI has itself already admitted that the infringing Ryobi ONE+ battery backup feature drives sales of compatible products. *See* Stiteler Decl., Exhibit R, p. 11 (Techtronic Annual Report 2011) (ONE+ system drives sales with its “loyal following of end-users who keep coming back for the latest ONE+ System® product offerings”); Ex. Q, p. 20 (Techtronic Annual Report 2006) (ONE+ system “will drive future growth in our key retail partners across the globe”).<sup>6</sup>

Though “it is impossible to determine the portions of the market the patent owner would have secured but for the infringer or how much damage was done to the patent owner’s brand recognition or good will due to the infringement,”<sup>7</sup> here not only does TTI tout the infringing features, but third party garage door opener reviews are also already praising the infringing

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<sup>5</sup> *See also Apple Inc. v. Samsung Elecs. Co.*, 735 F.3d 1352, 1364 (Fed. Cir. 2013) (“*Apple I*”) (explaining that there are a “variety of ways” to show causal nexus, including “evidence that a patented feature is one of several features that cause consumers to make their purchasing decisions” or “that the inclusion of a patented feature makes a product significantly more desirable”); *id.* (It is not necessary to show that “one of the patented features is the sole reason consumers purchased [the infringing] products.”).

<sup>6</sup> The importance of the ’966 patent is further buttressed by the fact that TTI copied the battery backup feature for its infringing product from TTI’s prior dealings with CGI. *See supra*, at Section II.C; *see also* Stiteler Decl., Exhibit A (TTI’s abandoned attempt to patent CGI’s technology); *Apple*, 809 F.3d at 643 (considering evidence of copying in establishing a causal nexus).

<sup>7</sup> *Black & Decker Inc.*, 2006 WL 3446144, at \*4 (internal quotations omitted).

backup battery feature and the infringing status updates through the wireless app. Stiteler Decl., Exhibit F, pp. 4, 8-9, 13; Exhibit J, p. 2; Exhibit K, p. 2.

Indeed, online commenters and users of the Ryobi GDO are already focusing on the infringing features in the Ryobi GDO as key selling points for the product. These reviews frequently discuss the high value of the battery backup feature (and its interchangeability with Ryobi ONE+ batteries), showing that this feature “cause[s] consumers to make their purchasing decisions” and “makes [the] product significantly more desirable.” *Apple I*, 735 F.3d at 1364. For example, commentators call the battery backup feature “great – especially so if you already own Ryobi cordless tools” (Stiteler Decl., Exhibit K, p. 5); “a genius idea” (*id.*, Exhibit G, p. 2); and “awesome” (*id.*, Exhibit G, p. 3). In explaining why he wished to purchase the Ryobi GDO, another commenter wrote that “I’m a 18v Ryobi guy so that makes it even better for me. . . . the 18v battery backup seals the deal.” (*id.*, Exhibit J, p. 8); *see also id.*, Exhibit L, p. 5 (“I really like that battery backup and I’ve got a bunch of Ryobi batteries.”); *id.*, Exhibit G, p. 12 (“Great idea to make the battery backup not only replaceable, but . . . also a charger and . . . common with Ryobi power tools!”); *id.*, Exhibit I, p. 2 (“[T]he fact the battery backup is a Ryobi batter[y] it just makes things simple to deal with.”).

Commenters similarly value the infringing Ryobi GDO wireless status update feature. One described the ability to control your garage door from your phone as “(arguably) the biggest feature for developing a smart garage door opener.” *Id.*, Exhibit G, p. 13-14. Others stated: “the app is gonna be super useful!” (*id.*, Exhibit I, p. 7) and “That app seems really useful feature wise, I wish my garage doo[r] could tell me if it was left open.” (*id.*, Exhibit I, p. 9). Another commenter wrote that a smart app capable of monitoring the status of the door was “the most important feature[] for me.” *Id.*, Exhibit K, p. 7.



There is more than ample evidence to support a finding that CGI is likely to be irreparably harmed by TTI's infringement.

**C. The Equities Weigh Heavily in Favor of an Injunction**

The equities also weigh heavily in favor of a preliminary injunction. CGI has made substantial investments into R&D for its patented technology. Fitzgerald Decl., ¶¶ 5, 22. Such investments are strong factors favoring a preliminary injunction. *See MGM Well Servs., Inc. v. Mega Lift Sys., LLC*, No. CIV.A. H-05-1634, 2005 WL 1693152, at \*5 (S.D. Tex. July 19, 2005), *aff'd*, 264 F. App'x 900 (Fed. Cir. 2008) (finding equities favored patentee who had “invested substantial financial and other resources over the past few years to develop its patented [system] and to build a market for it”); *John Fluke Mfg. v. North America Soar*, 5 U.S.P.Q.2d 1657, 1662 (D.N.J. 1987) (finding equities favored plaintiff who had invested in R&D, manufacturing facilities, and workforce to produce and market its product). Moreover, CGI's business model over the past five decades has focused on providing high quality, safe, and innovative garage doors openers, Willmott Decl., ¶¶ 4-7, and today such products comprise approximately ██████ of CGI's business in the Americas. Fitzpatrick Decl., ¶ 7; *i4i Ltd. P'ship v. Microsoft Corp.*, 598 F.3d 831, 862–63 (Fed. Cir. 2010) (finding that balance of hardships favored patentee, where “the patented technology [was] central to [the patentee's] business,” while the infringing product was “only a small fraction of [the alleged infringer's] sizeable business”). Seeking to protect these established investments and minimize the harms mentioned, CGI has pushed to quickly file suit and move for a preliminary injunction.

TTI, on the other hand, has no comparable investment at stake. TTI is just entering the market and, instead of investing money into research and development, opted to copy CGI's patent technology. In fact, TTI did not invest in manufacturing, choosing instead to engage a manufacturer to copy CGI's innovations and then import those products from China into the

United States. *Tuf-Tite, Inc. v. Fed. Package Networks, Inc.*, No. 14-CV-2060, 2014 WL 6613116, at \*9 (N.D. Ill. Nov. 21, 2014) (noting that party’s recent entry to the market weighed against it); *Cornucopia Prods., LLC v. Dyson, Inc.*, No. CV 12-00234-PHX-NVW, 2012 WL 3094955, at \*10 (D. Ariz. July 27, 2012) (finding equities weighed in favor of patentee that had “invested substantial resources in developing its patented design and bringing its [product] to market,” while the alleged infringer had “slavishly copied [the patentee’s product], including the infringing design feature”). Additionally, TTI sells a diverse range of products—including drills, pressure washers, lawn mowers, table saws, pressure washers, blowers, etc.—and its viability will not be threatened if sales of its infringing garage door openers are enjoined. Stiteler Decl., Exhibit S, p. 3-5.; *i4i*, 598 F.3d at 862–63; *Garvey Corp. v. Barry-Wehmiller Design Grp., Inc.*, 365 F. Supp. 2d 893, 900 (N.D. Ill. 2005) (reasoning that equities weigh against an alleged infringer that “manufactures more than just [the infringing product] so a preliminary injunction is unlikely to devastate the company”).

Moreover, any hardship that TTI faces is self-inflicted. TTI entered this market with its eyes wide open, aware that it was improperly copying CGI’s inventions for its own gain. Nor can TTI allege that it will be harmed by an injunction—“[o]ne who elects to build a business on a product found to infringe cannot be heard to complain if an injunction against continuing infringement destroys the business so elected.” *Bosch*, 659 F.3d at 1156 (quoting *Windsurfing Int’l, Inc. v. AMF, Inc.*, 782 F.2d 995, 1003 n.12 (Fed. Cir. 1986)); *i4i*, 598 F.3d at 863 (“[N]either commercial success, nor sunk development costs, shield an infringer from injunctive relief. . . . [The infringer] is not entitled to continue infringing simply because it successfully exploited its infringement.”). This factor weighs heavily in CGI’s favor.

**D. The Public Interest Weighs Heavily in Favor of an Injunction**

The fourth and final factor—the public interest—also weighs heavily in favor of an injunction. As the Supreme Court has recognized, “[t]he patent laws promote . . . progress by offering a right of exclusion for a limited period as an incentive to inventors to risk the often enormous costs in terms of time, research, and development” needed to create a new product and bring it to the market. *Kewanee Oil Co. v. Bicron Corp.*, 416 U.S. 470, 480 (1974). The public’s interest in protecting property rights stems from “the importance of the patent system in encouraging innovation.” *Sanofi-Synthelabo v. Apotex, Inc.*, 470 F.3d 1368, 1383 (Fed. Cir. 2006). Indeed, the “encouragement of investment-based risk is the fundamental purpose of the patent grant, and is based directly on the right to exclude.” *Id.* (citation omitted). “As a result, the public interest nearly always weighs in favor of protecting property rights in the absence of countervailing factors.” *Apple II*, 809 F.3d at 647. These principles are particularly true here where CGI markets a product that embodies the ’275 patent and has attempted to market a product that embodies the ’966 patent.

In addition, and as outlined in the Willmott Decl., ¶¶ 8-17, CGI has long held itself out as an innovator in this industry, particularly in areas relating to GDO safety. Not granting CGI’s motion may in fact stymie further innovation of these products, innovation that has improved the quality and safety of products in use around the world on a day-to-day basis.

**IV. CONCLUSION**

For the reasons set forth above, this Court should enter a preliminary injunction barring TTI from infringing claims 9 and 14 of the ’966 patent and claims 1 and 5 of the ’275 patent.

Dated: June 10, 2016

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