

1 Tyler J. Woods (State Bar No. 232464)
twoods@trialnewport.com
2 Richard H. Hikida (State Bar No. 196149)
rhikida@trialnewport.com
3 Scott J. Ferrell (State Bar No. 202091)
sferrell@trialnewport.com
4 **NEWPORT TRIAL GROUP**
A Professional Corporation
5 4100 Newport Place, Suite 800
Newport Beach, CA 92660
6 Tel: (949) 706-6464
Fax: (949) 706-6469

7 Attorneys for Plaintiff

8
9 **UNITED STATES DISTRICT COURT**
10 **SOUTHERN DISTRICT OF CALIFORNIA**

11 THERMOLIFE INTERNATIONAL, LLC,
12 Plaintiff,
13 vs.
14 ISATORI, INC.; ISATORI
15 TECHNOLOGIES, INC.; and ISATORI
16 TECHNOLOGIES, LLC,
17 Defendants

Case No. '13CV0911 MMAJMA
**COMPLAINT FOR PATENT
INFRINGEMENT**
JURY TRIAL DEMANDED

1 Plaintiff Thermolife International, LLC (“Plaintiff”) hereby alleges for its
2 Complaint against iSatori, Inc.; iSatori Technologies, Inc.; and iSatori Technologies,
3 LLC (“Defendants”), on personal knowledge as to its own activities and on information
4 and belief as to the activities of others, as follows:

5 **I. THE PARTIES**

6 1. Plaintiff is a limited liability company organized and existing under the
7 laws of Arizona, with a place of business at 1811 Ocean Front Walk in Venice,
8 California, 90291.

9 2. Plaintiff is the exclusive licensee of the following United States Patents:

- 10 a. Patent No. 6,646,006, titled “Enhancement of Vascular Function By
11 Modulation of Endogenous Nitric Oxide Production or Activity”;
12 b. Patent No. 6,117,872, titled “Enhancement of Exercise Performance by
13 Augmenting Endogenous Nitric Oxide Production or Activity”;
14 c. Patent No. 5,891,459, titled “Enhancement of Vascular Function By
15 Modulation of Endogenous Nitric Oxide Production or Activity”; and
16 d. Patent No. 7,452,916, titled “Enhancement of Vascular Function By
17 Modulation of Endogenous Nitric Oxide Production or Activity.”

18 3. The above patents are owned by The Board of Trustees of the Leland
19 Stanford Junior University (“Stanford University”) and Plaintiff exclusively licenses
20 the patents from Stanford University.

21 4. The above patents are referred to herein as the “patents in suit.”

22 5. Plaintiff has been given the right by Stanford University to institute suit
23 with respect to infringement of the patents in suit, including this suit against
24 Defendants.

25 6. Defendants iSatori, Inc.; iSatori Technologies, Inc.; and iSatori
26 Technologies, LLC are companies under common ownership and control, organized
27 and existing under the laws of Colorado, with a principal place of business at 15000 W.
28 6th Avenue, Suite 202, in Golden, Colorado, 80401.

1 7. Defendants also do business as BioGenetic.

2 **II. JURISDICTION AND VENUE**

3 8. This is an action for patent infringement arising under the patent laws of
4 the United States, Title 35 of the United States Code. Accordingly, this Court has
5 subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1338, and 1367.

6 9. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391 and 1400.

7 10. This Court has personal jurisdiction over Defendants. By way of example
8 and without limitation, Defendants, directly or through intermediaries (including
9 distributors, retailers, and others), make, manufacture, ship, distribute, advertise,
10 market, offer for sale, and/or sell dietary supplement products that infringe on one or
11 more claims of the patents in suit (hereinafter the “accused products”), which include
12 without limitation products sold under the “PWR,” “HCG,” and “Morph GXR-3” brand
13 names, in the United States, the State of California, and the Southern District of
14 California.

15 11. By way of further example and without limitation, Defendants have
16 purposefully and voluntarily placed the accused products into the stream of commerce
17 with the expectation that they will be purchased in the Southern District of California,
18 and the products are actually purchased in the Southern District of California.

19 **III. THE DEFENDANT’S INFRINGEMENTS**

20 12. Defendants have committed the tort of patent infringement within the State
21 of California, and more particularly, within the Southern District of California, by
22 virtue of the fact that Defendants have formulated, made, manufactured, shipped,
23 distributed, advertised, offered for sale, and/or sold the accused products in this District,
24 and continue to do so.

25 **A. DIRECT INFRINGEMENTS**

26 13. Defendants’ employees, agents, representatives and other persons
27 sponsored by or who endorse Defendants and Defendants’ products in advertising and
28 marketing activities, have taken, used, and orally administered the accused products.

1 14. The accused products are formulated, made, manufactured, shipped,
2 distributed, advertised, offered for sale, and sold by Defendants to include certain
3 ingredients that, by virtue of their inclusion in the products, infringe one or more claims
4 of one or more of the patents in suit.

5 15. The accused products are formulated, made, manufactured, shipped,
6 distributed, advertised, offered for sale, and sold by Defendants to include specific
7 ingredients for certain purposes that, by virtue of their inclusion in the products for such
8 purposes, infringe one or more claims of one or more of the patents in suit, and as a
9 result, when Defendants' employees, agents, representatives and other persons
10 sponsored by or who endorse Defendants and Defendants' products in advertising and
11 marketing activities orally administer the accused products, they are practicing the
12 methods disclosed in those claims.

13 16. These infringing ingredients, and/or combinations thereof, include, without
14 limitation, L-Arginine, L-Arginine AKG, L-Arginine 2:1, Loquat Extract, Eriobotrya
15 Japonica, Maslinic Acid, L-Ornithine AKG, and L-Citrulline, as set forth on
16 Defendants' labels.

17 17. The purposes for which these ingredients are included in the accused
18 products are, without limitation, to enhance nitric oxide production, to improve nitric
19 oxide activity, to produce nitric oxide, to boost nitric oxide levels in the body, and to
20 enhance physical performance.

21 18. Defendants have encouraged and/or are aware of the fact that their
22 employees, agents, representatives and other persons sponsored by Defendants or who
23 endorse Defendants and Defendants' products in advertising and marketing activities
24 orally administer the accused products and practice the methods disclosed in one or
25 more claim of one or more of the patents in suit, and these employees, agents,
26 representatives and other persons sponsored by Defendants or who endorse Defendants
27 and Defendants' products in advertising and marketing activities are acting under
28 Defendants' direction and control when practicing those methods.

1 19. Therefore, Defendants are direct infringer of one or more claims of one or
2 more of the patents in suit, and Defendants practice the methods as set forth in one or
3 more claims of one or more of the patents in suit.

4 **B. INDIRECT INFRINGEMENTS**

5 20. End-users of Defendants' accused products are also direct infringers of one
6 or more claims of one or more of the patents in suit.

7 21. End-users of Defendants' accused products have taken, used, and orally
8 administered the accused products.

9 22. The accused products are formulated, made, manufactured, shipped,
10 distributed, advertised, offered for sale, and/or sold by Defendants to include certain
11 ingredients that, by virtue of their inclusion in the products, infringe one or more claims
12 of one or more of the patents in suit.

13 23. The accused products are formulated, made, manufactured, shipped,
14 distributed, advertised, offered for sale, and/or sold by Defendants to include specific
15 ingredients for certain purposes that, because of their inclusion in the products for such
16 purposes, infringe one or more claims of one or more of the patents in suit, and as a
17 result, when end-users of Defendants' accused products orally administer the accused
18 products, they are practicing the methods disclosed in those claims.

19 24. Defendants' labels and advertising for the accused products explain the
20 elements and essential elements of one or more of the methods disclosed in the patents
21 in suit, and those labels and advertising statements encourage, urge, and induce the
22 accused products' end-users to purchase and orally ingest the products to practice those
23 methods, and end-users do practice those methods.

24 25. Defendants have therefore specifically intended to cause these end-users to
25 directly infringe the claimed methods of these patents, and have in fact urged them to
26 do so.

27 26. The accused products are not suitable for non-infringing uses, and none of
28 Defendants' labels or advertisements for the accused products disclose any uses for the

1 products, nor for the compounds disclosed in the claimed methods of the patents in suit,
2 that do not infringe upon such methods.

3 27. The inclusion of the specific infringing compounds in the products is
4 material to practicing such methods.

5 28. Defendants have knowledge that the accused products are especially
6 adapted by end-users of the products for the practicing of such methods, and, indeed,
7 Defendants encourage, urge, and induce the accused products' end-users to purchase
8 and orally administer the accused products to practice such methods, and have done so
9 in the past.

10 29. Defendants have intentionally and knowingly induced, encouraged, and
11 urged end-users of the accused products to purchase and orally administer the accused
12 products for the purposes of practicing the claimed methods, by having them orally
13 ingest the compounds disclosed in such claims.

14 30. Defendants have knowledge of the fact that the accused products,
15 particularly as administered, infringe on one or more claims of the patents in suit.

16 31. Defendants have direct, firsthand knowledge of the patents in suit.

17 32. For example and without limitation, Defendants have had knowledge of
18 the patents in suit since November 2006, when an ongoing settlement of a patent
19 infringement case relating to at least some of the patents in suit against Herbalife, a
20 well-known company in Defendants' industry, was announced in press releases issued
21 in a highly publicized manner. Defendants' employees, agents, and representatives saw
22 the press releases and were aware of the settlement and thus the patents in suit.

23 33. By way of further example and without limitation, Defendants have sold
24 their products through retailers, including online retailers, and those retailers have sold
25 other companies' products whose labels and/or advertisements have been prominently
26 marked with one or more of the patents in suit, by patent number, including without
27 limitation the products manufactured and sold by Herbalife, Daily Wellness, and
28 Vitality Research Labs. Defendants' employees, agents, and representatives have seen

1 these labels and advertisements and, thus, Defendants have knowledge of the patents in
2 suit.

3 34. Defendants have brazenly and willfully decided to infringe the patents in
4 suit despite knowledge of the patents' existence and their knowledge of the accused
5 products' infringements of the patents.

6 35. At a minimum, and in the alternative, Plaintiff pleads that Defendants
7 willfully blinded themselves to the infringing nature of the accused products' sales.

8 36. Defendants have not ceased their own direct infringements, nor their
9 contributory infringements or inducements of infringements by end-users, despite their
10 knowledge of the patents in suit and their infringing activities with respect to the
11 patents in suit.

12 37. Plaintiff also believes Defendants, or one of them, are infringing on one or
13 more claims of United States Patent No. 5,428,070 and Patent No. 5,945,452, patents
14 which Defendants have had prior knowledge of and are also licensed exclusively to
15 Plaintiff by Stanford University, to include the right to sue for infringement, and
16 Plaintiff will seek to amend this Complaint once facts confirming that belief are
17 ascertained.

18 **IV. FIRST CAUSE OF ACTION**

19 **Infringement of U.S. Patent No. 6,646,006**

20 38. Plaintiff repeats and re-alleges the allegations of the foregoing paragraphs
21 of this Complaint as if fully set forth herein.

22 39. Defendants have in the past and still are literally and directly infringing or
23 directly infringing under the doctrine of equivalents one or more claims of United
24 States Patent No. 6,646,006 by making, using, selling, and offering for sale the accused
25 products, and will continue to do so unless enjoined by this Court.

26 40. In addition to the fact that Defendants make, use, sell, and offer for sale the
27 accused products, further examples of Defendants' direct infringement include, without
28 limitation, the fact that Defendants have encouraged and/or are aware of the fact that

1 their employees, agents, representatives and other persons sponsored by or who endorse
2 Defendants and Defendants' products in advertising and marketing activities orally
3 administer the accused products and practice the methods disclosed in one or more
4 claims of United States Patent No. 6,646,006, and these employees, agents,
5 representatives and other persons sponsored by or who endorse Defendants and
6 Defendants' products in advertising and marketing activities are acting under
7 Defendants' direction and control when practicing those methods.

8 41. Defendants have encouraged and are aware of these persons' oral
9 administration of the accused products for these purposes, these persons are acting
10 under Defendants' direction and control, and therefore Defendants are directly
11 practicing the methods disclosed in United States Patent No. 6,646,006.

12 42. End-users of Defendants' accused products are also direct infringers of one
13 or more claims of United States Patent No. 6,646,006.

14 43. End-users of Defendants' accused products have taken, used, and orally
15 administered the accused products.

16 44. The accused products are formulated, made, manufactured, shipped,
17 distributed, advertised, offered for sale, and sold by Defendants to include certain
18 ingredients that, by virtue of their inclusion in the products, infringe one or more claims
19 of United States Patent No. 6,646,006.

20 45. The accused products are formulated, made, manufactured, shipped,
21 distributed, advertised, offered for sale, and sold by Defendants to include specific
22 ingredients for purposes that, by their inclusion in the products for such purposes,
23 infringe one or more claims of United States Patent No. 6,646,006, and as a result,
24 when end-users of Defendants' accused products orally administer the accused
25 products, they are practicing the methods disclosed in one or more claims of that patent.

26 46. Defendants' labels and advertising for the accused products explain the
27 elements and essential elements of the methods disclosed in United States Patent No.
28 6,646,006, and those labels and advertising statements encourage, urge, and induce the

1 accused products' end-users to purchase and orally ingest the products to practice those
2 methods, and end-users do practice those methods.

3 47. Defendants have therefore specifically intended to cause these end-users to
4 directly infringe the claimed methods of United States Patent No. 6,646,006, and have
5 in fact urged them to do so.

6 48. The accused products are not suitable for non-infringing uses, and none of
7 Defendants' labels or advertisements for the accused products disclose any uses for the
8 products, nor for the compounds disclosed in the claimed methods, that do not infringe
9 upon such methods.

10 49. The inclusion of these specific infringing compounds in the products is
11 material to practicing such methods.

12 50. Defendants have knowledge that the accused products are especially
13 adapted by end-users of the products for the practicing of such methods, and, indeed,
14 Defendants encourage, urge, and induce the accused products' end-users to purchase
15 and orally administer the accused products to practice such methods, and have done so
16 in the past.

17 51. Defendants have intentionally and knowingly induced, encouraged, and
18 urged end-users of the accused products to purchase and orally administer the accused
19 products for the purposes disclosed in one or more claims of United States Patent No.
20 6,646,006, by having them orally ingest the compounds disclosed in such claims.

21 52. Defendants have knowledge of the fact that the accused products,
22 particularly as administered, infringe on one or more claims of United States Patent No.
23 6,646,006.

24 53. Defendants also have direct, firsthand knowledge of United States Patent
25 No. 6,646,006.

26 54. Defendants' activities have been without express or implied license by
27 Plaintiff.

1 under Defendants' direction and control, and therefore Defendants are directly
2 practicing the methods disclosed in United States Patent No. 5,891,459.

3 62. End-users of Defendants' accused products are also direct infringers of one
4 or more claims of United States Patent No. 5,891,459.

5 63. End-users of Defendants' accused products have taken, used, and orally
6 administered the accused products.

7 64. The accused products are formulated, made, manufactured, shipped,
8 distributed, advertised, offered for sale, and sold by Defendants to include certain
9 ingredients that, by virtue of their inclusion in the products, infringe one or more claims
10 of United States Patent No. 5,891,459.

11 65. The accused products are formulated, made, manufactured, shipped,
12 distributed, advertised, offered for sale, and sold by Defendants to include specific
13 ingredients for purposes that, by their inclusion in the products for such purposes,
14 infringe one or more claims of United States Patent No. 5,891,459, and as a result,
15 when end-users of Defendants' accused products orally administer the accused
16 products, they are practicing the methods disclosed in one or more claims of that patent.

17 66. Defendants' labels and advertising for the accused products explain the
18 elements and essential elements of the methods disclosed in United States Patent No.
19 5,891,459, and those labels and advertising statements encourage, urge, and induce the
20 accused products' end-users to purchase and orally ingest the products to practice those
21 methods, and end-users do practice those methods.

22 67. Defendants have therefore specifically intended to cause these end-users to
23 directly infringe the claimed methods of United States Patent No. 5,891,459, and have
24 in fact urged them to do so.

25 68. The accused products are not suitable for non-infringing uses, and none of
26 Defendants' labels or advertisements for the accused products disclose any uses for the
27 products, nor for the compounds disclosed in the claimed methods, that do not infringe
28 upon such methods.

1 69. The inclusion of these specific infringing compounds in the products is
2 material to practicing such methods.

3 70. Defendants have knowledge that the accused products are especially
4 adapted by end-users of the products for the practicing of such methods, and, indeed,
5 Defendants encourage, urge, and induce the accused products' end-users to purchase
6 and orally administer the accused products to practice such methods, and have done so
7 in the past.

8 71. Defendants have intentionally and knowingly induced, encouraged, and
9 urged end-users of the accused products to purchase and orally administer the accused
10 products for the purposes disclosed in one or more claims of United States Patent No.
11 5,891,459, by having them orally ingest the compounds disclosed in such claims.

12 72. Defendants have knowledge of the fact that the accused products,
13 particularly as administered, infringe on one or more claims of United States Patent No.
14 5,891,459.

15 73. Defendants also have direct, firsthand knowledge of United States Patent
16 No. 5,891,459.

17 74. Defendants' activities have been without express or implied license by
18 Plaintiff.

19 75. As a result of Defendants' acts of infringement, Plaintiff has suffered and
20 will continue to suffer damages in an amount to be proved at trial.

21 76. As a result of Defendants' acts of infringement, Plaintiff has been and will
22 continue to be irreparably harmed by Defendants' infringements, which will continue
23 unless Defendants are enjoined by this Court.

24 77. Defendants' past infringements and/or continuing infringements have been
25 deliberate and willful, and this case is therefore an exceptional case, which warrants an
26 award of treble damages and attorneys' fees in accordance with 35 U.S.C. § 285.

27 ///

28 ///

1 **VI. THIRD CAUSE OF ACTION**

2 **Infringement of U.S. Patent No. 7,452,916**

3 78. Plaintiff repeats and re-alleges the allegations of the foregoing paragraphs
4 of this Complaint as if fully set forth herein.

5 79. Defendants have in the past and still are literally and directly infringing or
6 directly infringing under the doctrine of equivalents one or more claims of United
7 States Patent No. 7,452,916 by making, using, selling, and offering for sale the accused
8 products, and will continue to do so unless enjoined by this Court.

9 80. In addition to the fact that Defendants make, use, sell, and offer for sale the
10 accused products, further examples of Defendants' direct infringement include, without
11 limitation, the fact that Defendants have encouraged and/or are aware of the fact that
12 their employees, agents, representatives and other persons sponsored by or who endorse
13 Defendants and Defendants' products in advertising and marketing activities orally
14 administer the accused products and practice the methods disclosed in one or more
15 claims of United States Patent No. 7,452,916, and these employees, agents,
16 representatives and other persons sponsored by or who endorse Defendants and
17 Defendants' products in advertising and marketing activities are acting under
18 Defendants' direction and control when practicing those methods.

19 81. Defendants have encouraged and are aware of these persons' oral
20 administration of the accused products for these purposes, these persons are acting
21 under Defendants' direction and control, and therefore Defendants are directly
22 practicing the methods disclosed in United States Patent No. 7,452,916.

23 82. End-users of Defendants' accused products are also direct infringers of one
24 or more claims of United States Patent No. 7,452,916.

25 83. End-users of Defendants' accused products have taken, used, and orally
26 administered the accused products.

27 84. The accused products are formulated, made, manufactured, shipped,
28 distributed, advertised, offered for sale, and sold by Defendants to include certain

1 ingredients that, by virtue of their inclusion in the products, infringe one or more claims
2 of United States Patent No. 7,452,916.

3 85. The accused products are formulated, made, manufactured, shipped,
4 distributed, advertised, offered for sale, and sold by Defendants to include specific
5 ingredients for purposes that, by their inclusion in the products for such purposes,
6 infringe one or more claims of United States Patent No. 7,452,916, and as a result,
7 when end-users of Defendants' accused products orally administer the accused
8 products, they are practicing the methods disclosed in one or more claims of that patent.

9 86. Defendants' labels and advertising for the accused products explain the
10 elements and essential elements of the methods disclosed in United States Patent No.
11 7,452,916, and those labels and advertising statements encourage, urge, and induce the
12 accused products' end-users to purchase and orally ingest the products to practice those
13 methods, and end-users do practice those methods.

14 87. Defendants have therefore specifically intended to cause these end-users to
15 directly infringe the claimed methods of United States Patent No. 7,452,916, and have
16 in fact urged them to do so.

17 88. The accused products are not suitable for non-infringing uses, and none of
18 Defendants' labels or advertisements for the accused products disclose any uses for the
19 products, nor for the compounds disclosed in the claimed methods, that do not infringe
20 upon such methods.

21 89. The inclusion of these specific infringing compounds in the products is
22 material to practicing such methods.

23 90. Defendants have knowledge that the accused products are especially
24 adapted by end-users of the products for the practicing of such methods, and, indeed,
25 Defendants encourage, urge, and induce the accused products' end-users to purchase
26 and orally administer the accused products to practice such methods, and have done so
27 in the past.

28

1 91. Defendants have intentionally and knowingly induced, encouraged, and
2 urged end-users of the accused products to purchase and orally administer the accused
3 products for the purposes disclosed in one or more claims of United States Patent No.
4 7,452,916, by having them orally ingest the compounds disclosed in such claims.

5 92. Defendants have knowledge of the fact that the accused products,
6 particularly as administered, infringe on one or more claims of United States Patent No.
7 7,452,916.

8 93. Defendants also have direct, firsthand knowledge of United States Patent
9 No. 7,452,916.

10 94. Defendants' activities have been without express or implied license by
11 Plaintiff.

12 95. As a result of Defendants' acts of infringement, Plaintiff has suffered and
13 will continue to suffer damages in an amount to be proved at trial.

14 96. As a result of Defendants' acts of infringement, Plaintiff has been and will
15 continue to be irreparably harmed by Defendants' infringements, which will continue
16 unless Defendants are enjoined by this Court.

17 97. Defendants' past infringements and/or continuing infringements have been
18 deliberate and willful, and this case is therefore an exceptional case, which warrants an
19 award of treble damages and attorneys' fees in accordance with 35 U.S.C. § 285.

20 **VII. FOURTH CAUSE OF ACTION**

21 **Infringement of U.S. Patent No. 6,117,872**

22 98. Plaintiff repeats and re-alleges the allegations of the foregoing paragraphs
23 of this Complaint as if fully set forth herein.

24 99. Defendants have in the past and still are literally and directly infringing or
25 directly infringing under the doctrine of equivalents one or more claims of United
26 States Patent No. 6,117,872 by making, using, selling, and offering for sale the accused
27 products, and will continue to do so unless enjoined by this Court.
28

1 100. In addition to the fact that Defendants make, use, sell, and offer for sale the
2 accused products, further examples of Defendants' direct infringement include, without
3 limitation, the fact that Defendants have encouraged and/or are aware of the fact that
4 their employees, agents, representatives and other persons sponsored by or who endorse
5 Defendants and Defendants' products in advertising and marketing activities orally
6 administer the accused products and practice the methods disclosed in one or more
7 claims of United States Patent No. 6,117,872, and these employees, agents,
8 representatives and other persons sponsored by or who endorse Defendants and
9 Defendants' products in advertising and marketing activities are acting under
10 Defendants' direction and control when practicing those methods.

11 101. Defendants have encouraged and are aware of these persons' oral
12 administration of the accused products for these purposes, these persons are acting
13 under Defendants' direction and control, and therefore Defendants are directly
14 practicing the methods disclosed in United States Patent No. 6,117,872.

15 102. End-users of Defendants' accused products are also direct infringers of one
16 or more claims of United States Patent No. 6,117,872.

17 103. End-users of Defendants' accused products have taken, used, and orally
18 administered the accused products.

19 104. The accused products are formulated, made, manufactured, shipped,
20 distributed, advertised, offered for sale, and sold by Defendants to include certain
21 ingredients that, by virtue of their inclusion in the products, infringe one or more claims
22 of United States Patent No. 6,117,872.

23 105. The accused products are formulated, made, manufactured, shipped,
24 distributed, advertised, offered for sale, and sold by Defendants to include specific
25 ingredients for purposes that, by their inclusion in the products for such purposes,
26 infringe one or more claims of United States Patent No. 6,117,872, and as a result,
27 when end-users of Defendants' accused products orally administer the accused
28 products, they are practicing the methods disclosed in one or more claims of that patent.

1 106. Defendants' labels and advertising for the accused products explain the
2 elements and essential elements of the methods disclosed in United States Patent No.
3 6,117,872, and those labels and advertising statements encourage, urge, and induce the
4 accused products' end-users to purchase and orally ingest the products to practice those
5 methods, and end-users do practice those methods.

6 107. Defendants have therefore specifically intended to cause these end-users to
7 directly infringe the claimed methods of United States Patent No. 6,117,872, and have
8 in fact urged them to do so.

9 108. The accused products are not suitable for non-infringing uses, and none of
10 Defendants' labels or advertisements for the accused products disclose any uses for the
11 products, nor for the compounds disclosed in the claimed methods, that do not infringe
12 upon such methods.

13 109. The inclusion of these specific infringing compounds in the products is
14 material to practicing such methods.

15 110. Defendants have knowledge that the accused products are especially
16 adapted by end-users of the products for the practicing of such methods, and, indeed,
17 Defendants encourage, urge, and induce the accused products' end-users to purchase
18 and orally administer the accused products to practice such methods, and have done so
19 in the past.

20 111. Defendants have intentionally and knowingly induced, encouraged, and
21 urged end-users of the accused products to purchase and orally administer the accused
22 products for the purposes disclosed in one or more claims of United States Patent No.
23 6,117,872, by having them orally ingest the compounds disclosed in such claims.

24 112. Defendants have knowledge of the fact that the accused products,
25 particularly as administered, infringe on one or more claims of United States Patent No.
26 6,117,872.

27 113. Defendants also have direct, firsthand knowledge of United States Patent
28 No. 6,117,872.

1 114. Defendants' activities have been without express or implied license by
2 Plaintiff.

3 115. As a result of Defendants' acts of infringement, Plaintiff has suffered and
4 will continue to suffer damages in an amount to be proved at trial.

5 116. As a result of Defendants' acts of infringement, Plaintiff has been and will
6 continue to be irreparably harmed by Defendants' infringements, which will continue
7 unless Defendants are enjoined by this Court.

8 117. Defendants' past infringements and/or continuing infringements have been
9 deliberate and willful, and this case is therefore an exceptional case, which warrants an
10 award of treble damages and attorneys' fees in accordance with 35 U.S.C. § 285.

11 **VIII. PRAYER FOR RELIEF**

12 WHEREFORE, Plaintiff prays for entry of judgment against Defendants as
13 follows:

14 1. A declaration that Defendants have infringed the patents in suit, under 35
15 U.S.C. §§ 271 *et seq.*;

16 3. That injunctions, preliminary and permanent, be issued by this Court
17 restraining Defendants, their respective officers, agents, servants, directors, and
18 employees, and all persons in active concert or participation with each, from directly or
19 indirectly infringing, or inducing or contributing to the infringement by others of, the
20 patents in suit;

21 4. That Defendants be required to provide to Plaintiff an accounting of all
22 gains, profits, and advantages derived by Defendants' infringement of the patents in
23 suit, and that Plaintiff be awarded damages adequate to compensate Plaintiff for the
24 wrongful infringing acts by Defendants, in accordance with 35 U.S.C. § 284;

25 5. That the damages awarded to Plaintiff with regard to the patents in suit be
26 increased up to three times, in view of Defendants' willful infringement, in accordance
27 with 35 U.S.C. § 284;

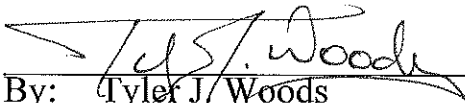
1 **DEMAND FOR JURY TRIAL**

2 Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiff hereby demands a
3 jury trial for all issues in this case that properly are subject to a jury trial.

4 Respectfully submitted,

5 NEWPORT TRIAL GROUP
6 A Professional Corporation

7
8 Dated: April 16, 2013

9 
10 By: Tyler J. Woods
11 Attorneys for Plaintiff
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28