

1 Tyler J. Woods (State Bar No. 232464)
twoods@trialnewport.com
2 Tu-Quyen Pham (State Bar No. 260864)
tpham@trialnewport.com
3 **NEWPORT TRIAL GROUP**
A Professional Corporation
4 4100 Newport Place, Suite 800
Newport Beach, CA 92660
5 Tel: (949) 706-6464
Fax: (949) 706-6469
6

7 **HIDEN, ROTT & OERTLE, LLP**
A Limited Liability Partnership
Including Professional Corporations
8 ERIC M. OVERHOLT, ESQ. (C.S.B. 248762)
eoverholt@hrollp.com
9 2635 Camino del Rio South, Suite 306
San Diego, California 92108
10 Telephone: (619) 296-5884
Facsimile: (619) 296-5171
11 *Attorneys for Plaintiff*

12
13 **UNITED STATES DISTRICT COURT**
14 **SOUTHERN DISTRICT OF CALIFORNIA**
15

16 **THERMOLIFE INTERNATIONAL, LLC**
17 Plaintiff,
18 vs.
19 **WORLD HEALTH PRODUCTS, LLC**
20 d/b/a GAT,
21 Defendant.
22

Case No. '13CV2441 AJB KSC
**COMPLAINT FOR PATENT
INFRINGEMENT**
JURY TRIAL DEMANDED

23 ///
24 ///
25 ///
26 ///
27 ///
28 ///

1 Plaintiff Thermolife International, LLC (“Plaintiff”) hereby alleges for its
2 Complaint against World Health Products, LLC d/b/a GAT (“Defendant”), on
3 personal knowledge as to its own activities and on information and belief as to the
4 activities of others, as follows:

5 **I. THE PARTIES**

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

9 2. Plaintiff is and was at all relevant times the exclusive licensee of the
10 following United States Patents:

11 a. Patent No. 6,646,006, titled “Enhancement of Vascular Function
12 By Modulation of Endogenous Nitric Oxide Production or
13 Activity”;

14 b. Patent No. 6,117,872, titled “Enhancement of Exercise
15 Performance by Augmenting Endogenous Nitric Oxide Production
16 or Activity”;

17 c. Patent No. 5,891,459, titled “Enhancement of Vascular Function
18 By Modulation of Endogenous Nitric Oxide Production or
19 Activity”; and

20 d. Patent No. 7,452,916, titled “Enhancement of Vascular Function
21 By Modulation of Endogenous Nitric Oxide Production or
22 Activity.”

23 3. The above patents are and were owned by The Board of Trustees of
24 the Leland Stanford Junior University (“Stanford University”) and Plaintiff
25 exclusively licenses and licensed the patents from Stanford University.

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

27 ///

28 ///

1 5. Plaintiff has been given the right by Stanford University to institute
2 suit with respect to past, current, and future infringement of the patents in suit,
3 including this suit against Defendant.

4 6. Defendant is a corporation organized and existing under the laws of
5 Connecticut with a principal place of business at 64 Sunnyside Avenue in
6 Stamford, Connecticut, 06902-7641.

7 **II. JURISDICTION AND VENUE**

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

11 8. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391 and
12 1400.

13 9. This Court has personal jurisdiction over Defendant. By way of
14 example and without limitation, Defendant, directly or through intermediaries
15 (including distributors, retailers, and others), makes, manufactures, ships,
16 distributes, advertises, markets, offers for sale, and/or sells dietary supplement
17 products that infringe on one or more claims of the patents in suit (hereinafter the
18 “accused products”), which include without limitation products sold under the
19 “Nitraflex,” “Sonic Pump,” “Jet Mass,” and “JetFuse NOX” brand names, in the
20 United States, the State of California, and the Southern District of California.

21 10. By way of further example and without limitation, Defendant has
22 purposefully and voluntarily placed the accused products into the stream of
23 commerce with the expectation that they will be purchased in the Southern District
24 of California, and the products are actually purchased in the Southern District of
25 California.

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

27 11. Defendant has committed the tort of patent infringement within the
28 State of California, and more particularly, within the Southern District of

1 California, by virtue of the fact that Defendant has formulated, made,
2 manufactured, shipped, distributed, advertised, offered for sale, and/or sold the
3 accused products in this District, and continues to do so.

4 **A. DIRECT INFRINGEMENTS**

5 12. Defendant's employees, agents, representatives and other persons
6 sponsored by or who endorse Defendant and Defendant's products in advertising
7 and marketing activities, have taken, used, and orally administered the accused
8 products.

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

13 14. The accused products are formulated, made, manufactured, shipped,
14 distributed, advertised, offered for sale, and sold by Defendant to include specific
15 ingredients for certain purposes that, by virtue of their inclusion in the products for
16 such purposes, infringe one or more claims of one or more of the patents in suit,
17 and as a result, when Defendant's employees, agents, representatives and other
18 persons sponsored by or who endorse Defendant and Defendant's products in
19 advertising and marketing activities orally administer the accused products, they are
20 practicing and they practiced the methods disclosed in those claims.

21 15. The purposes for which these ingredients are included in the accused
22 products are and were, without limitation, to enhance nitric oxide production, to
23 improve nitric oxide activity, to produce nitric oxide, to boost nitric oxide levels in
24 the body, and to enhance physical performance.

25 16. Defendant encouraged and/or is aware of the fact that its employees,
26 agents, representatives and other persons sponsored by Defendant or who endorse
27 Defendant and Defendant's products in advertising and marketing activities orally
28 administered and administer the accused products and practice and practiced the

1 methods disclosed in one or more claim of one or more of the patents in suit, and
2 these employees, agents, representatives and other persons sponsored by Defendant
3 or who endorse Defendant and Defendant's products in advertising and marketing
4 activities are and were acting under Defendant's direction and control when
5 practicing those methods.

6 17. Therefore, Defendant is and was a direct infringer of one or more
7 claims of one or more of the patents in suit, and Defendant practices and practiced
8 the methods as set forth in one or more claims of one or more of the patents in suit.

9 **B. INDIRECT INFRINGEMENTS**

10 18. End-users of Defendant's accused products were and are also direct
11 infringers of one or more claims of one or more of the patents in suit.

12 19. End-users of Defendant's accused products have taken, used, and
13 orally administered the accused products.

14 20. The accused products are and were formulated, made, manufactured,
15 shipped, distributed, advertised, offered for sale, and/or sold by Defendant to
16 include certain ingredients that, by virtue of their inclusion in the products, infringe
17 and infringed one or more claims of one or more of the patents in suit.

18 21. The accused products are and were formulated, made, manufactured,
19 shipped, distributed, advertised, offered for sale, and/or sold by Defendant to
20 include specific ingredients for certain purposes that, because of their inclusion in
21 the products for such purposes, infringe and infringed one or more claims of one or
22 more of the patents in suit, and as a result, when end-users of Defendant's accused
23 products orally administer and administered the accused products, they are and
24 were practicing the methods disclosed in those claims.

25 22. Defendant's labels and advertising for the accused products explain
26 and explained the elements and essential elements of one or more of the methods
27 disclosed in the patents in suit, and those labels and advertising statements
28 encourage, urge, and induce the accused products' end-users, and did so in the past,

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

3 23. Defendant has therefore specifically intended to cause these end-users
4 to directly infringe the claimed methods of these patents, and in fact urged them to
5 do so.

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

10 25. The inclusion of the specific infringing compounds in the products is
11 and was material to practicing such methods.

12 26. Defendant has and had knowledge that the accused products are and
13 were especially adapted by end-users of the products for the practicing of such
14 methods, and, indeed, Defendant encourages, urges, and induces the accused
15 products' end-users to purchase and orally administer the accused products to
16 practice such methods, and has done so in the past.

17 27. Defendant intentionally and knowingly induced, encouraged, and
18 urged end-users of the accused products to purchase and orally administer the
19 accused products for the purposes of practicing the claimed methods, by having
20 them orally ingest the compounds disclosed in such claims.

21 28. Defendant has and had knowledge of the fact that the accused
22 products, particularly as administered, infringe on one or more claims of the patents
23 in suit.

24 29. Defendant has and had direct, firsthand knowledge of the patents in
25 suit.

26 30. For example and without limitation, Plaintiff believes Defendant has
27 had knowledge of the patents in suit since November 2006, when an ongoing
28 settlement of a patent infringement case relating to at least some of the patents in

1 suit against Herbalife, a well-known company in Defendant's industry, was
2 announced in press releases issued in a highly publicized manner. Plaintiff believes
3 Defendant's employees, agents, and representatives saw the press releases and were
4 aware of the settlement and thus the patents in suit.

5 31. By way of further example and without limitation, Defendant sold its
6 products through retailers, including online retailers, and those retailers have sold
7 other companies' products whose labels and/or advertisements have been
8 prominently marked with one or more of the patents in suit, by patent number,
9 including without limitation, upon information and belief, the products
10 manufactured and sold by Herbalife, Daily Wellness, and Vitality Research Labs.
11 Defendant's employees, agents, and representatives have seen these labels and
12 advertisements and, thus, Defendant has and had direct knowledge of the patents in
13 suit.

14 32. By way of further example and without limitation, Defendant received
15 written notice of the patents in suit from Plaintiff in April 2013.

16 33. Defendant brazenly and willfully decided to infringe the patents in suit
17 despite knowledge of the patents' existence and its knowledge of the accused
18 products' infringements of the patents.

19 34. At a minimum, and in the alternative, Plaintiff pleads that Defendant
20 willfully blinded itself to the infringing nature of the accused products' sales.

21 35. Defendant did not cease its own direct infringement, nor its
22 contributory infringement or inducement of infringement by end-users, despite its
23 knowledge of the patents in suit and the end-users' infringing activities with respect
24 to the patents in suit.

25 **IV. FIRST CAUSE OF ACTION**

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

27 36. Plaintiff repeats and re-alleges the allegations of the foregoing
28 paragraphs of this Complaint as if fully set forth herein.

1 37. Defendant has in the past literally and directly infringed or directly
2 infringed under the doctrine of equivalents one or more claims of United States
3 Patent No. 6,646,006 by making, using, selling, and offering for sale the accused
4 products, or any one of those products.

5 38. In addition to the fact that Defendant makes, uses, sells, and offers for
6 sale the accused products, and did so in the past, further examples of Defendant's
7 direct infringements include, without limitation, the fact that Defendant encouraged
8 and/or is aware of the fact that its employees, agents, representatives and other
9 persons sponsored by or who endorse Defendant and Defendant's products in
10 advertising and marketing activities orally administer the accused products and
11 practice the methods disclosed in one or more claims of United States Patent No.
12 6,646,006, and these employees, agents, representatives and other persons
13 sponsored by or who endorse Defendant and Defendant's products in advertising
14 and marketing activities acted under Defendant's direction and control when
15 practicing those methods.

16 39. Defendant encouraged and was aware of these persons' oral
17 administration of the accused products for these purposes, these persons are acting
18 under Defendant's direction and control, and therefore Defendant directly practiced
19 the methods disclosed in United States Patent No. 6,646,006.

20 40. End-users of Defendant's accused products were also direct infringers
21 of one or more claims of United States Patent No. 6,646,006.

22 41. End-users of Defendant's accused products have taken, used, and
23 orally administered the accused products.

24 42. The accused products were formulated, made, manufactured, shipped,
25 distributed, advertised, offered for sale, and sold by Defendant to include certain
26 ingredients that, by virtue of their inclusion in the products, infringed one or more
27 claims of United States Patent No. 6,646,006.

28 ///

1 43. The accused products were formulated, made, manufactured, shipped,
2 distributed, advertised, offered for sale, and sold by Defendant to include specific
3 ingredients for purposes that, by their inclusion in the products for such purposes,
4 infringed one or more claims of United States Patent No. 6,646,006, and as a result,
5 when end-users of Defendant's accused products orally administered the accused
6 products, they were practicing the methods disclosed in one or more claims of that
7 patent.

8 44. Defendant's labels and advertising for the accused products explained
9 the elements and essential elements of the methods disclosed in United States
10 Patent No. 6,646,006, and those labels and advertising statements encouraged,
11 urged, and induced the accused products' end-users to purchase and orally ingest
12 the products to practice those methods, and end-users did practice those methods.

13 45. Defendant therefore specifically intended to cause these end-users to
14 directly infringe the claimed methods of United States Patent No. 6,646,006, and
15 had in fact urged them to do so.

16 46. The accused products were not suitable for non-infringing uses, and
17 none of Defendant's labels or advertisements for the accused products disclosed
18 any uses for the products, nor for the compounds disclosed in the claimed methods,
19 that did not infringe upon such methods.

20 47. The inclusion of these specific infringing compounds in the products
21 was material to practicing such methods.

22 48. Defendant had knowledge that the accused products were especially
23 adapted by end-users of the products for the practicing of such methods, and,
24 indeed, Defendant encouraged, urged, and induced the accused products' end-users
25 to purchase and orally administer the accused products to practice such methods.

26 49. Defendant intentionally and knowingly induced, encouraged, and
27 urged end-users of the accused products to purchase and orally administer the
28 accused products for the purposes disclosed in one or more claims of United States

1 Patent No. 6,646,006, by having them orally ingest the compounds disclosed in
2 such claims.

3 50. Defendant had knowledge of the fact that the accused products,
4 particularly as administered, infringed on one or more claims of United States
5 Patent No. 6,646,006.

6 51. Defendant also had direct, firsthand knowledge of United States Patent
7 No. 6,646,006 itself.

8 52. Defendant's activities were without express or implied license by
9 Plaintiff.

10 53. As a result of Defendant's acts of infringement, Plaintiff suffered and
11 will continue to suffer damages in an amount to be proved at trial.

12 54. Defendant's past infringements and/or continuing infringements have
13 been deliberate and willful, and this case is therefore an exceptional case, which
14 warrants an award of treble damages and attorneys' fees in accordance with 35
15 U.S.C. § 285.

16 V. SECOND CAUSE OF ACTION

17 **Infringement of U.S. Patent No. 5,891,459**

18 55. Plaintiff repeats and re-alleges the allegations of the foregoing
19 paragraphs of this Complaint as if fully set forth herein.

20 56. Defendant has in the past literally and directly infringed or directly
21 infringed under the doctrine of equivalents one or more claims of United States
22 Patent No. 5,891,459 by making, using, selling, and offering for sale the accused
23 products, or any one of those products.

24 57. In addition to the fact that Defendant makes, uses, sells, and offers for
25 sale the accused products, and did so in the past, further examples of Defendant's
26 direct infringements include, without limitation, the fact that Defendant encouraged
27 and/or is aware of the fact that its employees, agents, representatives and other
28 persons sponsored by or who endorse Defendant and Defendant's products in

1 advertising and marketing activities orally administer the accused products and
2 practice the methods disclosed in one or more claims of United States Patent No.
3 5,891,459, and these employees, agents, representatives and other persons
4 sponsored by or who endorse Defendant and Defendant's products in advertising
5 and marketing activities acted under Defendant's direction and control when
6 practicing those methods.

7 58. Defendant encouraged and was aware of these persons' oral
8 administration of the accused products for these purposes, these persons are acting
9 under Defendant's direction and control, and therefore Defendant directly practiced
10 the methods disclosed in United States Patent No. 5,891,459.

11 59. End-users of Defendant's accused products were also direct infringers
12 of one or more claims of United States Patent No. 5,891,459.

13 60. End-users of Defendant's accused products have taken, used, and
14 orally administered the accused products.

15 61. The accused products were formulated, made, manufactured, shipped,
16 distributed, advertised, offered for sale, and sold by Defendant to include certain
17 ingredients that, by virtue of their inclusion in the products, infringed one or more
18 claims of United States Patent No. 5,891,459.

19 62. The accused products were formulated, made, manufactured, shipped,
20 distributed, advertised, offered for sale, and sold by Defendant to include specific
21 ingredients for purposes that, by their inclusion in the products for such purposes,
22 infringed one or more claims of United States Patent No. 5,891,459, and as a result,
23 when end-users of Defendant's accused products orally administered the accused
24 products, they were practicing the methods disclosed in one or more claims of that
25 patent.

26 63. Defendant's labels and advertising for the accused products explained
27 the elements and essential elements of the methods disclosed in United States
28 Patent No. 5,891,459, and those labels and advertising statements encouraged,

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

3 64. Defendant therefore specifically intended to cause these end-users to
4 directly infringe the claimed methods of United States Patent No. 5,891,459, and
5 had in fact urged them to do so.

6 65. The accused products were not suitable for non-infringing uses, and
7 none of Defendant's labels or advertisements for the accused products disclosed
8 any uses for the products, nor for the compounds disclosed in the claimed methods,
9 that did not infringe upon such methods.

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

12 67. Defendant had knowledge that the accused products were especially
13 adapted by end-users of the products for the practicing of such methods, and,
14 indeed, Defendant encouraged, urged, and induced the accused products' end-users
15 to purchase and orally administer the accused products to practice such methods.

16 68. Defendant intentionally and knowingly induced, encouraged, and
17 urged end-users of the accused products to purchase and orally administer the
18 accused products for the purposes disclosed in one or more claims of United States
19 Patent No. 5,891,459, by having them orally ingest the compounds disclosed in
20 such claims.

21 69. Defendant had knowledge of the fact that the accused products,
22 particularly as administered, infringed on one or more claims of United States
23 Patent No. 5,891,459.

24 70. Defendant also had direct, firsthand knowledge of United States Patent
25 No. 5,891,459 itself.

26 71. Defendant's activities were without express or implied license by
27 Plaintiff.

28 ///

1 under Defendant's direction and control, and therefore Defendant directly practiced
2 the methods disclosed in United States Patent No. 7,452,916.

3 78. End-users of Defendant's accused products were also direct infringers
4 of one or more claims of United States Patent No. 7,452,916.

5 79. End-users of Defendant's accused products have taken, used, and
6 orally administered the accused products.

7 80. The accused products were formulated, made, manufactured, shipped,
8 distributed, advertised, offered for sale, and sold by Defendant to include certain
9 ingredients that, by virtue of their inclusion in the products, infringed one or more
10 claims of United States Patent No. 7,452,916.

11 81. The accused products were formulated, made, manufactured, shipped,
12 distributed, advertised, offered for sale, and sold by Defendant to include specific
13 ingredients for purposes that, by their inclusion in the products for such purposes,
14 infringed one or more claims of United States Patent No. 7,452,916, and as a result,
15 when end-users of Defendant's accused products orally administered the accused
16 products, they were practicing the methods disclosed in one or more claims of that
17 patent.

18 82. Defendant's labels and advertising for the accused products explained
19 the elements and essential elements of the methods disclosed in United States
20 Patent No. 7,452,916, and those labels and advertising statements encouraged,
21 urged, and induced the accused products' end-users to purchase and orally ingest
22 the products to practice those methods, and end-users did practice those methods.

23 83. Defendant therefore specifically intended to cause these end-users to
24 directly infringe the claimed methods of United States Patent No. 7,452,916, and
25 had in fact urged them to do so.

26 84. The accused products were not suitable for non-infringing uses, and
27 none of Defendant's labels or advertisements for the accused products disclosed
28

1 any uses for the products, nor for the compounds disclosed in the claimed methods,
2 that did not infringe upon such methods.

3 85. The inclusion of these specific infringing compounds in the products
4 was material to practicing such methods.

5 86. Defendant had knowledge that the accused products were especially
6 adapted by end-users of the products for the practicing of such methods, and,
7 indeed, Defendant encouraged, urged, and induced the accused products' end-users
8 to purchase and orally administer the accused products to practice such methods.

9 87. Defendant intentionally and knowingly induced, encouraged, and
10 urged end-users of the accused products to purchase and orally administer the
11 accused products for the purposes disclosed in one or more claims of United States
12 Patent No. 7,452,916, by having them orally ingest the compounds disclosed in
13 such claims.

14 88. Defendant had knowledge of the fact that the accused products,
15 particularly as administered, infringed on one or more claims of United States
16 Patent No. 7,452,916.

17 89. Defendant also had direct, firsthand knowledge of United States Patent
18 No. 7,452,916 itself.

19 90. Defendant's activities were without express or implied license by
20 Plaintiff.

21 91. As a result of Defendant's acts of infringement, Plaintiff suffered and
22 will continue to suffer damages in an amount to be proved at trial.

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

27 ///

28 ///

1 **VII. FOURTH CAUSE OF ACTION**

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

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

5 94. Defendant has in the past and still is literally and directly infringing or
6 directly infringing under the doctrine of equivalents one or more claims of United
7 States Patent No. 6,117,872 by making, using, selling, and offering for sale the
8 accused products, or any one of those products, and will continue to do so unless
9 enjoined by this Court.

10 95. In addition to the fact that Defendant makes, uses, sells, and offers for
11 sale the accused products, further examples of Defendant's direct infringements
12 include, without limitation, the fact that Defendant has encouraged and/or is aware
13 of the fact that its employees, agents, representatives and other persons sponsored
14 by or who endorse Defendant and Defendant's products in advertising and
15 marketing activities orally administer the accused products and practice the
16 methods disclosed in one or more claims of United States Patent No. 6,117,872,
17 and these employees, agents, representatives and other persons sponsored by or
18 who endorse Defendant and Defendant's products in advertising and marketing
19 activities are acting under Defendant's direction and control when practicing those
20 methods.

21 96. Defendant has encouraged and is aware of these persons' oral
22 administration of the accused products for these purposes, these persons are acting
23 under Defendant's direction and control, and therefore Defendant is directly
24 practicing the methods disclosed in United States Patent No. 6,117,872.

25 97. End-users of Defendant's accused products are also direct infringers of
26 one or more claims of United States Patent No. 6,117,872.

27 98. End-users of Defendant's accused products have taken, used, and
28 orally administered the accused products.

1 99. The accused products are formulated, made, manufactured, shipped,
2 distributed, advertised, offered for sale, and sold by Defendant to include certain
3 ingredients that, by virtue of their inclusion in the products, infringe one or more
4 claims of United States Patent No. 6,117,872.

5 100. The accused products is formulated, made, manufactured, shipped,
6 distributed, advertised, offered for sale, and sold by Defendant to include specific
7 ingredients for purposes that, by their inclusion in the products for such purposes,
8 infringe one or more claims of United States Patent No. 6,117,872, and as a result,
9 when end-users of Defendant's accused products orally administer the accused
10 products, they are practicing the methods disclosed in one or more claims of that
11 patent.

12 101. Defendant's labels and advertising for the accused products explain the
13 elements and essential elements of the methods disclosed in United States Patent
14 No. 6,117,872, and those labels and advertising statements encourage, urge, and
15 induce the accused products' end-users to purchase and orally ingest the products to
16 practice those methods, and end-users do practice those methods.

17 102. Defendant has therefore specifically intended to cause these end-users
18 to directly infringe the claimed methods of United States Patent No. 6,117,872, and
19 has in fact urged them to do so.

20 103. The accused products are not suitable for non-infringing uses, and
21 none of Defendant's labels or advertisements for the accused products disclose any
22 uses for the products, nor for the compounds disclosed in the claimed methods, that
23 do not infringe upon such methods.

24 104. The inclusion of these specific infringing compounds in the products is
25 material to practicing such methods.

26 105. Defendant has knowledge that the accused products are especially
27 adapted by end-users of the products for the practicing of such methods, and,
28 indeed, Defendant encourages, urges, and induces the accused products' end-users

1 to purchase and orally administer the accused products to practice such methods,
2 and have done so in the past.

3 106. Defendant has intentionally and knowingly induced, encouraged, and
4 urged end-users of the accused products to purchase and orally administer the
5 accused products for the purposes disclosed in one or more claims of United States
6 Patent No. 6,117,872, by having them orally ingest the compounds disclosed in
7 such claims.

8 107. Defendant has knowledge of the fact that the accused products,
9 particularly as administered, infringe on one or more claims of United States Patent
10 No. 6,117,872.

11 108. Defendant also has direct, firsthand knowledge of United States Patent
12 No. 6,117,872.

13 109. Defendant's activities have been without express or implied license by
14 Plaintiff.

15 110. As a result of Defendant's acts of infringement, Plaintiff has suffered
16 and will continue to suffer damages in an amount to be proved at trial.

17 111. As a result of Defendant's acts of infringement, Plaintiff has been and
18 will continue to be irreparably harmed by Defendant's infringements, which will
19 continue unless Defendant is enjoined by this Court.

20 112. Defendant's past infringements and/or continuing infringements have
21 been deliberate and willful, and this case is therefore an exceptional case, which
22 warrants an award of treble damages and attorneys' fees in accordance with 35
23 U.S.C. § 285.

24 **VIII. PRAYER FOR RELIEF**

25 WHEREFORE, Plaintiff prays for entry of judgment against Defendant as
26 follows:

27 1. A declaration that Defendant has infringed the patents in suit, under 35
28 U.S.C. §§ 271 *et seq.*;

1 2. That injunctions, preliminary and permanent, be issued by this Court
2 restraining Defendant, its officers, agents, servants, directors, and employees, and
3 all persons in active concert or participation with each, from directly or indirectly
4 infringing, or inducing or contributing to the infringement by others of, United
5 States Patent No. 6,117,872;

6 3. That Defendant be required to provide to Plaintiff an accounting of all
7 gains, profits, and advantages derived by Defendant's infringement of the patents in
8 suit, and that Plaintiff be awarded damages adequate to compensate Plaintiff for the
9 wrongful infringing acts by Defendant, in accordance with 35 U.S.C. § 284;

10 4. That the damages awarded to Plaintiff with regard to the patents in suit
11 be increased up to three times, in view of Defendant's willful infringement, in
12 accordance with 35 U.S.C. § 284;

13 5. That this case be declared to be exceptional in favor of Plaintiff under
14 35 U.S.C. § 285, and that Plaintiff be awarded its reasonable attorneys' fees and
15 other expenses incurred in connection with this action;

16 6. That Plaintiff be awarded its interest and costs of suit incurred in this
17 action;

18 7. Compensatory damages;

19 8. Punitive damages; and

20 9. That Plaintiff be awarded such other and further relief as this Court
21 may deem just and proper.

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

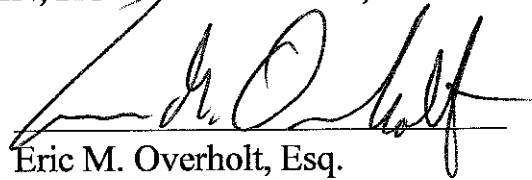
DEMAND FOR JURY TRIAL

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

DATED: October 9, 2013

HIDEN, ROTT & OERTLE, LLP

By:



Eric M. Overholt, Esq.
Attorneys for Plaintiff

HIDEN, ROTT & OERTLE, LLP

2635 Camino Del Rio South, Suite 306
San Diego, California 92108
TEL (619) 296-5884 FAX (619) 296-5171

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28