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17 HORUS VISION, LLC

18 UNITED STATES DISTRICT COURT
19 NORTHERN DISTRICT OF CALIFORNIA
20 SAN JOSE DIVISION

21 HORUS VISION, LLC, a California limited
22 liability company,

23 Plaintiff,

24 v.

25 APPLIED BALLISTICS, LLC, a Michigan
26 limited liability company, APPLIED
27 BALLISTICS, INC., an Indiana corporation,
28 and APPLIED BALLISTICS MEDIA, INC.,
an Indiana corporation,

Defendants.

Case No. 5:13-cv-05460-BLF-HRL

**FIRST AMENDED COMPLAINT FOR
PATENT INFRINGEMENT**

DEMAND FOR JURY TRIAL

23 COMES NOW Plaintiff Horus Vision, LLC (“Horus Vision”), by its undersigned
24 attorneys, and for its First Amended Complaint against Applied Ballistics, LLC, Applied
25 Ballistics, Inc., and Applied Ballistics Media, Inc. (collectively, “Defendants” or “Applied
26 Ballistics”), states and alleges as follows:
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1 **NATURE OF THE ACTION**

2 1. This is a civil action for patent infringement, injunctive relief, and damages arising
3 out of the infringement of United States Patent Number 7,937,878 (“the ’878 patent” and “the
4 patent-in-suit”). The patent-in-suit relates to target acquisition devices such as telescopic
5 gunsights, associated software systems and components for increasing shooting accuracy, and
6 methods of using the same. This action arises under the patent laws of the United States and is
7 based on an actual controversy between the parties with respect to the infringement of the above-
8 named patent. A true and accurate copy of the ’878 patent is attached hereto as EXHIBIT A.

9 **PARTIES**

10 2. Plaintiff Horus Vision is incorporated under the laws of the State of California and
11 has a principal place of business at 659 Huntington Avenue, San Bruno, California, 94066.

12 3. Upon information and belief, Defendant Applied Ballistics, LLC is incorporated
13 under the laws of the State of Michigan and has a principal place of business at 25 South Main
14 Street, Cedar Springs, Michigan 49319.

15 4. Upon information and belief, Defendant Applied Ballistics, Inc. is incorporated
16 under the laws of the State of Indiana and has a principal place of business at 310 Indianapolis
17 Rd., Bldg. E-4, Mooresville, IN 46158.

18 5. Upon information and belief, Defendant Applied Ballistics Media, Inc. is
19 incorporated under the laws of the State of Indiana and has a principal place of business at 310
20 Indianapolis Road, Bldg. E-4, Mooresville, IN 46158.

21 **JURISDICTION AND VENUE**

22 6. This is a civil action for patent infringement, injunctive relief, and damages arising
23 under the United States Patent Act, 35 U.S.C. §§ 1 *et seq.* Jurisdiction and venue are conferred
24 upon this Court pursuant to 28 U.S.C. §§ 1331, 1332, 1338(a), and 1391(b) and (c).

25 7. This Court has subject matter jurisdiction over the action pursuant to 28 U.S.C. §§
26 1331 and 1338(a).

27 8. This Court has personal jurisdiction over Defendants because, upon information
28 and belief, Defendants conduct business throughout the United States and in this District, have

1 engaged and continue to engage in infringing activities in this District, and have placed and
2 continue to place infringing products into the stream of commerce, with knowledge or
3 understanding that such products are sold in the State of California, including in this District.
4 Upon information and belief, Defendants purposefully avail themselves of the privilege of
5 conducting activities in California, thus invoking the benefits and protections of the laws of
6 California. The acts by Defendants have caused and continue to cause injury to Horus Vision
7 within this District.

8 9. Venue in this Court is proper under 28 U.S.C. § 1391 because Defendants conduct
9 business in this District, engage in infringing activities in this District, are subject to personal
10 jurisdiction in this District, and have had and continue to have substantial contacts with this
11 forum. In addition, venue is proper because Horus Vision's principal place of business is in San
12 Bruno, in this District, and Horus Vision has suffered and continues to suffer harm in this District.

13 **FACTS**

14 10. Horus Vision is a company engaged in the business of selling products in the fields
15 of ballistics, firearm scopes, reticles, and ballistics computer software, and is the owner by valid
16 assignment of the '878 patent, entitled "Apparatus and Method for Calculating Aiming Point
17 Information," which relates to the aforementioned fields, and which was duly and legally issued
18 on May 10, 2011. Horus Vision may enforce the '878 patent.

19 11. On information and belief, Defendants have developed, manufactured, imported,
20 used, offered to sell, and/or sold, and continue to develop, manufacture, use, offer to sell, and/or
21 sell, ballistics computer software intended for use with target acquisition devices under the name
22 APPLIED BALLISTICS, including, but not limited to, the APPLIED BALLISTICS MOBILE
23 APPLICATION for the Android mobile operating system, and the APPLIED BALLISTICS
24 SOFTWARE for the Nielsen-Kellerman KESTREL® 4500 Shooter's Weather Meter with
25 Applied Ballistics.

26 12. Defendants have had actual knowledge of the claims of the '878 patent since no
27 later than July 11, 2013, and on information and belief, since no later than July 1, 2013.

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1 13. On June 11, 2013, Horus Vision's corporate counsel sent a letter via Federal
2 Express to Mr. Bryan Litz of Applied Ballistics informing Applied Ballistics that its software,
3 specifically including the APPLIED BALLISTICS SOFTWARE for the Nielsen-Kellerman
4 KESTREL® 4500 Shooter's Weather Meter with Applied Ballistics, infringes Horus Vision
5 patents.

6 14. Horus Vision's corporate counsel sent a follow-up letter via electronic mail and
7 U.S. mail on July 1, 2013 to Mr. Bryan Litz listing specific patents, including the '878 patent, and
8 requesting that Applied Ballistics contact Horus Vision's corporate counsel to bring the Applied
9 Ballistics products, specifically including but not limited to the APPLIED BALLISTICS
10 SOFTWARE for the Nielsen-Kellerman KESTREL® 4500 Shooter's Weather Meter with
11 Applied Ballistics, into compliance with the patents.

12 15. A letter was sent from Applied Ballistics' patent counsel to Horus Vision's
13 corporate counsel via U.S. mail on July 11, 2013 acknowledging receipt of the letters of June 11,
14 2013 and July 1, 2013.

15 16. On September 6, 2013, Horus Vision's patent counsel sent a letter via electronic
16 mail to Applied Ballistics' patent counsel providing a copy of the '878 patent, documentary
17 evidence concerning operation of the APPLIED BALLISTICS MOBILE APPLICATION for the
18 Android mobile operating system, and the requested detailed claim chart analysis of Claim 1 of
19 the '878 patent.

20 17. Applied Ballistics' patent counsel sent a follow-up letter via electronic mail to
21 Horus Vision's patent counsel on September 6, 2013 acknowledging receipt of Horus Vision's
22 September 6, 2013 letter and claim chart, and stating that a response would follow in due course.

23 18. Correspondence between Horus Vision and Applied Ballistics continued, with a
24 letter from Horus Vision on September 30, 2013, a response from Applied Ballistics on October 4,
25 2013, and another letter from Horus Vision on October 7, 2013 requesting a substantive response
26 to Horus Vision's notice of infringement by October 21, 2013.

27 19. Horus Vision has received no response to its letter of October 7, 2013. Despite
28 having had actual knowledge of the claims of the '878 patent since no later than July 11, 2013,

1 Applied Ballistics has refused to acknowledge Horus Vision's claims, cease its infringing
2 activities, or compensate Horus Vision for damages caused by its infringement.

3 **FIRST CLAIM FOR RELIEF**

4 **(Infringement of the '878 patent)**

5 20. Horus Vision incorporates by reference the allegations of paragraphs 1 through 19
6 above, as if fully set forth herein.

7 21. On information and belief, Defendants have been infringing at least Claim 1 of
8 the '878 patent, and are still infringing the '878 patent, in violation of 35 U.S.C. § 271, by, at
9 least, their activities in connection with the aforementioned ballistics computer software. Such
10 software systems include, but are not limited to, the APPLIED BALLISTICS MOBILE
11 APPLICATION for the Android mobile operating system, and the APPLIED BALLISTICS
12 SOFTWARE for the Nielsen-Kellerman KESTREL® 4500 Shooter's Weather Meter with
13 Applied Ballistics. Defendants have infringed and continue to directly infringe one or more
14 claims of the '878 patent by importing, making, using, selling, and/or offering to sell in the
15 United States one or more ballistics computer software products, including but not limited to
16 those identified in this Complaint, in violation of 35 U.S.C. § 271.

17 22. On information and belief, Defendants have been inducing the infringement of at
18 least Claim 1 of the '878 patent, and are still inducing the infringement of the '878 patent, in
19 violation of 35 U.S.C. § 271, by, at least, their activities in connection with the aforementioned
20 ballistics computer software systems. Defendants have intentionally taken action that has actually
21 induced and continues to induce direct infringement by customers and end users in the United
22 States, have had actual knowledge of the claims of the '878 patent, and have known that the acts
23 they have caused and continue to cause infringe the '878 patent. These acts include, but are not
24 limited to, Applied Ballistics' promotion, offers to sell, and sales of Applied Ballistics' infringing
25 ballistics computer software products to customers and end users in the United States. Defendants
26 have induced infringement and continue to induce infringement of one or more claims of the '878
27 patent by importing, making, using, selling, and/or offering to sell in the United States one or
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1 more ballistics computer software products, including but not limited to those identified in this
2 Complaint, in violation of 35 U.S.C. § 271.

3 23. On information and belief, Defendants have been contributing to the infringement
4 of at least Claim 1 of the '878 patent, and are still contributing to the infringement of the '878
5 patent, in violation of 35 U.S.C. § 271, by, at least, their activities in connection with the
6 aforementioned ballistics computer software systems. Defendants have contributed to
7 infringement and continue to contribute to infringement of one or more claims of the '878 patent
8 by supplying an important and material component of infringing products to customers and end
9 users in the United States, including without limitation the products recited in this Complaint.
10 Such products are not staple articles or commodities of commerce suitable for substantial non-
11 infringing uses. Such products have no substantial use that is non-infringing because they have no
12 plausible use other than as part of a method for shooting a target that infringes at least one claim
13 of the '878 patent. Defendants have contributed to, and continue to contribute to, the infringement
14 of one or more claims of the '878 patent by importing, making, using, selling, and/or offering to
15 sell in the United States one or more ballistics computer software products, including but not
16 limited to those identified in this Complaint, in violation of 35 U.S.C. § 271.

17 24. Defendants' infringement of the '878 patent has been and continues to be willful
18 and deliberate.

19 25. Defendants' infringement of the '878 patent will continue unless enjoined by this
20 Court.

21 26. As a direct and proximate consequence of Defendants' infringement of the '878
22 patent, Horus Vision has suffered, is suffering, and unless enjoined by the Court, will continue to
23 suffer injury, for which Horus Vision is entitled to damages pursuant to 35 U.S.C. § 284 of an
24 amount to be proven at trial.

25 27. As a direct and proximate consequence of Defendants' infringement of the '878
26 patent, Horus Vision has suffered, is suffering, and unless enjoined by the Court, will continue to
27 suffer irreparable harm for which there is no adequate remedy at law, and for which Horus Vision
28 is entitled to injunctive relief pursuant to 35 U.S.C. § 283.

PRAYER FOR RELIEF

WHEREFORE, Horus Vision prays for judgment as follows:

A. That the claims of the '878 patent are valid and enforceable.

B. That Defendants be held to have infringed the patent-in-suit.

C. For the entry of an order preliminarily and permanently enjoining Defendants, its subsidiaries, affiliates, parents, successors, assigns, officers, agents, servants, employees, attorneys, and all persons acting in concert or in participation with them, or any of them, from infringing, contributing to the infringement of, and inducing infringement of the patent-in-suit, and specifically from directly or indirectly making, using, importing, selling, or offering for sale, any products embodying the inventions of the patent-in-suit during the life of the claims of the patent-in-suit, without the express written authority of Horus Vision.

D. That Defendants be directed to fully compensate Horus Vision for all damages attributable to Defendants' infringement of the patent-in-suit in an amount according to proof at trial, including, but not limited to, reasonable royalties and lost profits.

E. For an award of enhanced damages, pursuant to 35 U.S.C. § 284.

F. That Defendants be ordered to deliver to Horus Vision, for destruction at Horus Vision's option, all products that infringe the patent-in-suit.

G. That Defendants be required to account for all gains, profits, advantages, and unjust enrichment derived from their violations of law.

H. For an award of pre-judgment and post-judgment interest and costs pursuant to 35 U.S.C. § 284.

I. That Defendants be required to pay Horus Vision its costs of suit, including its attorneys' fees pursuant to 35 U.S.C. § 285.

J. That Horus Vision have such other, further, and different relief as the Court deems proper under the circumstances.

DEMAND FOR JURY TRIAL

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Horus Vision hereby demands a trial by jury of all issues triable of right by a jury in the above-captioned case.

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Dated: March 27, 2015

COOLEY LLP
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