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7
8 **UNITED STATES DISTRICT COURT**
9 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**
10 **SOUTHERN DIVISION**

11 INNERLITE, INC. dba ISOLITE
12 SYSTEMS,
a California corporation,

13 Plaintiff,

14 v.

15 ZIRC DENTAL PRODUCTS, INC., a
Minnesota corporation, BRIAN P.
16 BLACK, and BRIAN P. BLACK,
DDS, INC., a California corporation

17 Defendants.
18

Case No. CV13-07501-DOC (RNB)

**THIRD AMENDED AND
SUPPLEMENTAL COMPLAINT
FOR PATENT INFRINGEMENT**

DEMAND FOR JURY TRIAL

Judge: Hon. David O. Carter
Ctm: 9D

Pre-Trial Conf.: May 2, 2016
Trial: May 24, 2016

19
20 Plaintiff Innerlite, Inc. dba Isolite Systems (hereinafter referred to as
21 "Plaintiff" or "Isolite Systems"), by and through its undersigned attorneys, for its
22 Complaint against Defendants Zirc Dental Products, Inc., a Minnesota corporation
23 (hereinafter referred to as "Zirc"), Brian P. Black, an individual (hereinafter referred
24 to as "Black"), and Brian P. Black, DDS, Inc., a California corporation (hereinafter
25 referred to as "Black Dental Corp."), hereby alleges as follows in this third amended
26 and supplemental complaint to add claims based on events occurring during the
27 pendency of this action pursuant to this Court's Order, dated April 2, 2015 (Dkt.
28 #83) and Fed. R. Civ. P. 15:

1 **INTRODUCTION**

2 1. This is an action for patent infringement under 35 U.S.C. § 271, trade
3 dress infringement under Section 43(a) of the Lanham Act (15 U.S.C. § 1125(a)),
4 and violation of California Business and Professions Code Section 17200 *et seq.*

5 **PARTIES, JURISDICTION AND VENUE**

6 2. Plaintiff Isolite Systems is a corporation duly organized and existing
7 under the laws of the State of California, with its principal place of business located
8 in Santa Barbara, California.

9 3. On information and belief, Defendant Zirc is a corporation duly
10 organized and existing under the laws of the State of Minnesota, with its principal
11 place of business located in Buffalo, Minnesota.

12 4. On information and belief, Defendant Black is an individual who
13 resides in this judicial district in Mentone, California and is licensed to practice
14 dentistry in the State of California.

15 5. On information and belief, Defendant Black Dental Corp. is a
16 corporation duly organized and existing under the laws of the State of California
17 with a place of business located in this judicial district in Palm Desert, California.

18 6. On information and belief, Defendant Black practices dentistry
19 individually and/or as an officer and/or employee of Defendant Black Dental Corp.,
20 under a fictitious name known as “Desert Pearl Dentistry” in Palm Desert,
21 California. Defendants Black and Black Dental Corp. are hereinafter collectively
22 referred to as “the Black Defendants.”

23 7. This Court has subject matter jurisdiction over this action (a) pursuant
24 to 28 U.S.C. § 1331 in that it concerns federal questions, (b) pursuant to 28 U.S.C. §
25 1338 in that it concerns violations of the Patent Act (35 U.S.C. §1 *et seq.*), (c)
26 pursuant to 28 U.S.C. § 1338 and 15 U.S.C. § 1121 in that it concerns violations of
27 the Federal Lanham Act (15 U.S.C. § 1125(a)), and (d) as to state law claims
28 pursuant to 28 U.S.C. §1338(b) and 28 U.S.C. §1367(a) under the doctrine of

1 supplemental jurisdiction.

2 8. This Court has personal jurisdiction over (a) Defendant Zirc and the
3 Black Defendants in that acts complained of in this action took place in California,
4 including in this judicial district, as more fully described below, and (b) the Black
5 Defendants in that they reside in this judicial district.

6 9. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391(b)
7 and (c) and 1400(b) because, among other reasons, this Court has personal
8 jurisdiction over Defendant Zirc and the Black Defendants, and Defendant Zirc and
9 the Black Defendants have committed acts of infringement and/or other acts
10 complained of in this action in this judicial district.

11 **FACTUAL ALLEGATIONS**

12 **The Patents**

13 10. Plaintiff Isolite Systems is a family-owned company founded in or
14 around 2001 by brothers James A. Hirsch and Dr. Thomas R. Hirsch (collectively
15 sometimes referred to herein as “the Hirsch Brothers”) in Santa Barbara, California.

16 11. In or around 1998, The Hirsch Brothers invented a revolutionary new
17 dental device intended for use by dental professionals (i) to isolate the work area in a
18 patient’s mouth, (ii) to retract and protect the tongue and cheek, (iii) to evacuate
19 fluids and oral debris, and (iv) to prevent inadvertent aspiration of material. This
20 device is hereinafter sometimes referred to as “the Isolite Product”.

21 12. On November 17, 1998, the Hirsch Brothers filed a patent application
22 covering their invention that issued on February 8, 2000 as U.S. Patent No.
23 6,022,214 (hereinafter referred to as “the ‘214 patent”). The Hirsch Brothers
24 assigned the ‘214 patent to Plaintiff Isolite Systems.

25 13. For approximately ten years, Plaintiff Isolite Systems has manufactured,
26 distributed and sold a model of the Isolite Product currently known as “the Isolite
27 Dryfield illuminator system,” that includes an internal LED light source that
28 provides illumination throughout the oral cavity and is sold under the federally

1 registered trademark “ISOLITE”.

2 14. Since 2010, Plaintiff Isolite Systems has manufactured, distributed and
3 sold a model of the Isolite Product without the LED light source that is sold under
4 the federally registered trademark “ISODRY”, and is intended for use by dental
5 professionals who prefer to work with external lighting.

6 15. For the past decade, Plaintiff Isolite Systems has invested large sums of
7 money and countless hours of human resources to build the strong reputation and
8 valuable goodwill that it presently enjoys in its market niche, i.e. dental professionals
9 such as dentists, dental hygienists and dental assistants, as well as oral surgeons.

10 16. Plaintiff Isolite Systems is the owner by assignment of all right, title,
11 and interest in and to United States Patent No. 8,297,973 entitled “Intraoral Device”
12 (hereinafter referred to as “the ‘973 patent”), which was duly and legally issued by
13 the United States Patent and Trademark Office (“USPTO”) on October 30, 2012
14 naming James A. Hirsch and Thomas R. Hirsch as inventors. On February 5, 2013,
15 the USPTO issued a Certificate of Correction for the ‘973 patent. The ‘973 patent is
16 valid, enforceable, and currently in full force and effect. A true and accurate copy of
17 the ‘973 patent with the Certificate of Correction is attached hereto as Exhibit “A”
18 and incorporated herein by reference.

19 17. Plaintiff Isolite Systems is the owner by assignment of all right, title,
20 and interest in and to United States Patent No. 6,908,308 (“the ‘308 patent”) entitled
21 “Intraoral Device and Method of Using the Same” (hereinafter referred to as “the
22 ‘308 patent”), which was duly and legally issued by the USPTO on June 21, 2005,
23 naming James A. Hirsch and Thomas R. Hirsch as inventors. The ‘308 patent is
24 valid, enforceable, and currently in full force and effect. A true and accurate copy of
25 the ‘308 patent is attached hereto as Exhibit “B” and incorporated herein by
26 reference.

27 18. Plaintiff Isolite Systems is the owner by assignment of all right, title,
28 and interest in and to United States Patent No. 6,338,627 (“the ‘627 patent”) entitled

1 “Intraoral Device” (hereinafter referred to as “the ‘627 patent”), which was duly and
2 legally issued by the USPTO on January 15, 2002, naming James A. Hirsch and
3 Thomas R. Hirsch as inventors. The ‘627 patent is valid, enforceable, and currently
4 in full force and effect. A true and accurate copy of the ‘627 patent is attached
5 hereto as Exhibit “C” and incorporated herein by reference.

6 19. Plaintiff Isolite Systems is the owner by assignment of all right, title,
7 and interest in and to United States Patent No. D615,203 (the “D203 patent”), which
8 was duly and legally issued by the USPTO on May 4, 2010, for the ornamental
9 design of an intraoral device shown therein and naming James A. Hirsch and
10 Thomas R. Hirsch as inventors. The D203 patent is valid, enforceable and currently
11 in full force and effect. A true and accurate copy of the D203 patent is attached
12 hereto as Exhibit “D” and incorporated herein by reference.

13 **Defendant Black’s Imitation Product**

14 20. On information and belief, in 2006, Defendant Black was a member of
15 the faculty of the Loma Linda University School of Dentistry in Loma Linda,
16 California.

17 21. In Fall 2006, Defendant Black informed Parker Francis (“Mr. Francis”),
18 an employee of Plaintiff Isolite Systems that Defendant Black desired to receive
19 information about the Isolite Product.

20 22. On or about November 15, 2006, Defendant Black met with Plaintiff
21 Isolite Systems’ employees at the Malibu, California dental office of Dr. Thomas R.
22 Hirsch, an officer of Plaintiff Isolite Systems and co-inventor of the Isolite Product
23 (hereinafter referred to as “Dr. Hirsch”).

24 23. At the November 15, 2006 meeting, Defendant Black witnessed a
25 demonstration of the Isolite Product, and received from Plaintiff Isolite Systems
26 information about the design, manufacturing and operation of the Isolite Product.

27 24. On information and belief, Defendant Black informed Plaintiff Isolite
28 Systems that he was interested in convincing Loma Linda University School of

1 Dentistry to acquire the Isolite Product so that its dental students could be trained to
2 use it in the school's dental clinic.

3 25. Defendant Black arranged for Plaintiff Isolite Systems' Dr. Hirsch and
4 Mr. Francis to visit Loma Linda University School of Dentistry on November 17,
5 2006 and again on December 4, 2006 to give a demonstration of the Isolite Product
6 to the dental faculty.

7 26. On information and belief, at some point in time after Plaintiff Isolite
8 Systems' presentation and demonstration, Loma Linda University School of
9 Dentistry decided not to acquire the Isolite Product.

10 27. On information and belief, unbeknownst to Plaintiff Isolite Systems,
11 Defendant Black had used information that he received from Plaintiff Isolite Systems
12 about the Isolite Product to formulate a plan to develop an imitation product
13 (hereinafter referred to "Defendant Black's Imitation Product") to be sold to existing
14 and prospective customers of Plaintiff Isolite Systems.

15 28. On or about September 24, 2007, Mr. Francis forwarded to Plaintiff
16 Isolite Systems' management an e-mail that he received from Defendant Black
17 containing information about a company that Defendant Black referred to as "truly
18 formidable competition" that will be "going head to head with Isolite." The
19 September 24, 2007 Defendant Black e-mail contained a "product description" of a
20 "new dental product" and a representation that "we feel this product is far superior in
21 function and provides a larger working field compared to either a rubber dam or an
22 isolite device [sic]."

23 29. The next day, on September 25, 2007, Mr. Francis sent an e-mail to
24 Plaintiff Isolite Systems' management announcing his resignation from Isolite
25 Systems.

26 30. On information and belief, Defendant Black and Mr. Francis
27 subsequently began working together to develop, manufacture and sell Defendant
28 Black's Imitation Product with the intention of inducing existing and prospective

1 customers of Plaintiff Isolite Systems to purchase Defendant Black’s Imitation
2 Product in lieu of the Isolite Product.

3 31. On information and belief, in December, 2007, Defendant Black formed
4 a corporation organized and existing under the laws of the State of California by the
5 name of Edge Medical Technologies, Inc. for the purpose of carrying out Defendant
6 Black’s plan to develop, manufacture and sell Defendant Black’s Imitation Product.

7 32. On information and belief, sometime in 2009, Defendant Black
8 launched an intra-oral device constituting Defendant Black’s Imitation Product sold
9 under the trademark “Airbug” (hereinafter referred to as “Defendant Black’s
10 Airbug”).

11 33. Defendant Black’s Airbug was an imitation of the Isolite Product design
12 and features (excluding the LED light source) including, but not limited to, the
13 Airbug’s “tongue shield”, which copied the Isolite Product’s mouthpiece
14 component’s distinctive shape and color.

15 34. On information and belief, copies of certain pages from the former
16 active website controlled by Defendant Black and/or his corporation Edge Medical
17 Technologies, Inc. (found at <http://air-bug.sqserver.com>.) are attached hereto as
18 Exhibit “E” and incorporated herein by reference.

19 35. On information and belief, after Defendant Black launched Defendant
20 Black’s Airbug, one or more dental professionals have referred to Defendant Black’s
21 Airbug as an “Isolite knock off”.

22 36. On information and belief, sometime in 2010, Defendant Black’s
23 Airbug was no longer offered for sale by Defendant Black, Edge Medical
24 Technologies, Inc. or any other person or entity until the further developments
25 described below.

26 **The Launch of Defendant Zirc’s Mr. Thirsty**

27 37. According to paragraph 35 of Defendant Zirc’s original Answer, filed
28 October 29, 2013, Defendant Zirc alleged: “Zirc admits entering into a contract with

1 Dr. Black in 2012.” Such “contract”, entitled “Intellectual Property License and
2 Tangible Property Purchase Agreement”, dated January 11, 2012 (hereinafter
3 referred to as “the Black/Zirc Contract”), appears to have been signed by (a) Linda
4 Robasse, Chief Operating Officer of Defendant Zirc, and (b) Defendant Black,
5 purportedly as President of Joogatech, Inc., which indicated that it was “doing
6 business as airBUG [also referred to therein as “AIRBUG”].” A copy of the
7 Black/Zirc Contract is attached hereto as Exhibit “F” and incorporated herein by
8 reference.

9 38. On information and belief, Defendant Black provided instructions,
10 training, plans and/or other assistance to Defendant Zirc to enable Defendant Zirc to
11 make, use, sell and/or offer to sell Defendant Black’s Airbug.

12 39. For example, Article VII of the Black/Zirc Contract, entitled “Support
13 Obligations” provides in pertinent part as follows:

14 “AIRBUG agrees to consult with ZIRC without compensation
15 for a period of one (1) year following the execution of this
16 Agreement. Such consultation is limited to training by
AIRBUG personnel of ZIRC personnel on matters related
directly to the airBUG device and system....”

17 40. In addition, Article IV of the Black/Zirc Contract provides as follows:

18 “...Title to and ownership of all tooling, drawings, parts and
19 prototypes relating to the airBUG product, all airBUG
20 inventory (including completed and partially completed
21 airBUG products and components thereof) as reflected in the
Invoice attached hereto as Exhibit A and incorporated herein by
this reference shall be owned by ZIRC.”

22 Accordingly, on information and belief, Defendant Black and/or Joogatech, Inc. sold
23 to Defendant Zirc “tooling, drawing, parts and prototype relating to the airBUG
24 product,” as well as “all airBUG inventory (including completed and partially
25 completed airBUG products and components thereof)...” In addition, on
26 information and belief, such sale also included one or more molds applicable to the
27 airBUG product. Article VI of the Black/Zirc Contract provided for Defendant Zirc
28 to pay “the sum of seventy-five thousand dollars (\$75,000.00)...within five (5) days

1 of receipt by ZIRC of this executed Agreement. Further, ZIRC agrees to pay
2 AIRBUG a royalty amount equal to five percent (5%) of the gross receipts paid to
3 ZIRC...resulting from sales of the airBUG device or other devices, enhancements, or
4 improvements derived from the airBUG device....”

5 41. On information and belief, Defendant Zirc manufactures, distributes,
6 sells and/or offers to sell Defendant Black’s Airbug under a new mark known as
7 “Mr. Thirsty” (hereinafter referred to as “Zirc’s Mr. Thirsty”).

8 42. On information and belief, Defendant Black and/or Defendant Black
9 Dental Corp, advertises and promotes Zirc’s Mr. Thirsty on the website of Defendant
10 Black’s dental practice at www.desertpearldentistry.com by (a) asserting that “Dr.
11 Black invented, patented and sold an intraoral isolation device, Mr. Thirsty, used by
12 schools and clinics across the country,” and (b) displaying a video of Zirc’s Mr.
13 Thirsty with Zirc’s logo on the first frame. On information and belief, Defendant
14 Black Dental Corp. and/or Defendant Black does business under the fictitious name
15 “Desert Pearl Dentistry,” and the dental practice is located in this judicial district in
16 Palm Desert, California.

17 43. On information and belief, Defendant Black individually and/or on
18 behalf of Defendant Black Dental Corp. has been using and continues to use Zirc’s
19 Mr. Thirsty in Defendant Black’s “Desert Pearl Dentistry” dental practice.

20 44. On information and belief, Defendant Zirc distributes, offers for sale
21 and sells Zirc’s Mr. Thirsty directly via its website at www.zirc.com and through
22 numerous distributors and/or sales representatives all over the United States and
23 exports it outside of the United States.

24 45. The California Dental Association holds “CDA Presents conventions”
25 which its website at <http://www.cdapresents.com/Exhibitors.aspx> describes as being
26 “among the largest dental tradeshow in the United States.” The CDA Presents
27 convention in Anaheim, California took place from April 11-13, 2013 (hereinafter
28 referred to as “the 2013 CDA Anaheim Trade Show”). The CDA Presents

1 convention in San Francisco, California took place from August 15-17, 2013
2 (hereinafter referred to as “the 2013 CDA San Francisco Trade Show”).

3 46. On or about April 11-13, 2013, Defendant Zirc attended the 2013 CDA
4 Anaheim Trade Show at which Defendant Zirc advertised, promoted, demonstrated,
5 offered for sale and/or, on information and belief, sold Zirc’s Mr. Thirsty in this
6 judicial district in Anaheim, California.

7 47. On information and belief: (a) Defendant Zirc regularly markets,
8 distributes and sells Zirc’s Mr. Thirsty in California through a distributor known as
9 Pearson Dental pursuant to a distributorship agreement or other agreement to sell
10 Zirc’s Mr. Thirsty; (b) Pearson Dental has its headquarters in this judicial district in
11 Sylmar, California; (c) Pearson Dental was an exhibitor at both the 2013 CDA
12 Anaheim Trade Show and the 2013 CDA San Francisco Trade Show; and (d)
13 Pearson Dental was offering for sale Zirc’s Mr. Thirsty at its trade show booth at the
14 2013 CDA San Francisco Trade Show in that attendees could order Zirc’s Mr.
15 Thirsty from a Pearson Dental catalog and/or from Pearson Dental’s website.

16 48. On information and belief: (a) Defendant Zirc regularly markets,
17 distributes and sells Zirc’s Mr. Thirsty in California through a distributor known as
18 Benco Dental pursuant to a distributorship agreement or other agreement to sell
19 Zirc’s Mr. Thirsty; (b) Benco Dental has dental showrooms in this judicial district in
20 Costa Mesa, as well as in Fresno, Sacramento and San Diego, California; (c) Benco
21 Dental was an exhibitor at both the 2013 CDA Anaheim Trade Show and the 2013
22 CDA San Francisco Trade Show; and (d) Benco Dental was offering for sale Zirc’s
23 Mr. Thirsty at its trade show booth at the 2013 CDA San Francisco Trade Show in
24 that attendees could order Zirc’s Mr. Thirsty from a Benco Dental catalog and/or
25 from Benco Dental’s website.

26 49. On information and belief: (a) Defendant Zirc regularly markets,
27 distributes and sells Zirc’s Mr. Thirsty in California through a distributor known as
28 Patterson Dental pursuant to a distributorship agreement or other agreement to sell

1 Zirc's Mr. Thirsty; (b) Patterson Dental has offices throughout California including
2 in El Segundo, California in this judicial district; and (c) Patterson Dental was an
3 exhibitor at both the 2013 CDA Anaheim Trade Show and the 2013 CDA San
4 Francisco Trade Show.

5 50. On information and belief: (a) Defendant Zirc regularly markets,
6 distributes and sells Zirc's Mr. Thirsty in California through a distributor known as
7 Henry Schein Dental pursuant to a distributorship agreement or other agreement to
8 sell Zirc's Mr. Thirsty; (b) Henry Schein Dental has dental centers in this judicial
9 district in Orange and Los Angeles, as well as in San Francisco, San Jose, San Diego,
10 Fresno and Dublin, California; and (c) Henry Schein Dental was an exhibitor at both
11 the 2013 CDA Anaheim Trade Show and the 2013 CDA San Francisco Trade Show.

12 51. On information and belief, Defendant Zirc regularly markets, distributes
13 and sells Zirc's Mr. Thirsty in California through a distributor known as Tinman
14 Dental pursuant to a distributorship agreement or other agreement to sell Zirc's Mr.
15 Thirsty. On information and belief, Tinman Dental has offices in Redding,
16 California.

17 52. On information and belief, one or more dental professionals perceive
18 Zirc's Mr. Thirsty as a cheaper "Isolite knock-off".

19 **Defendant Zirc's Launch of Mr. Thirsty One Step**

20 53. During the pendency of this action, in or before March 2015, Defendant
21 Zirc commenced manufacturing, distributing, selling and/or offering to sell a new
22 product derived from the original Mr. Thirsty, that Defendant Zirc calls "mr.
23 thirsty® one-step" (hereinafter referred to as "Zirc's One-step"), which Plaintiff
24 Isolite Systems recently discovered was being advertised and promoted for sale on
25 Defendant Zirc's website at www.zirc.com. A true and accurate copy of a webpage
26 at www.zirc.com.mrthirsty/ showing Zirc's One-step is attached hereto as Exhibit
27 "G" and incorporated herein by reference.

28 54. On information and belief, Defendant Zirc distributes, sells and offers to

1 sell Defendant Zirc's One-step directly via its website and through numerous
2 distributors (including one or more of the distributors listed above with respect to
3 Mr. Thirsty) and/or sales representatives in California and all over the United States,
4 and exports it outside of the United States.

5 55. On information and belief, (a) prior to commencing manufacturing,
6 distributing, selling and/or offering to sell Defendant Zirc's One-step, and (b) prior
7 to the commencement of the instant action and service of the original complaint upon
8 Defendant Zirc, Defendant Zirc had knowledge of the existence of the '627 patent.

9 56. On information and belief, prior to its having commenced
10 manufacturing, distributing, selling and/or offering to sell Defendant Zirc's One-
11 step, Defendant Zirc acted despite an objectively high likelihood that its actions
12 constituted infringement of the valid '627 patent, and the objectively-defined risk of
13 infringement was either known or so obvious that it should have been known to
14 Defendant Zirc.

15 57. On information and belief, Defendant Zirc induces dental professionals
16 and others to use Defendant Zirc's One-step and distributors, sales representatives
17 and others to sell and/or offer to sell Defendant Zirc's One-step (a) with actual
18 knowledge that the use thereof as intended, sale and/or offer to sell constitutes
19 infringement of the '627 patent, or (b) with willful blindness in that Defendant Zirc
20 took deliberate action to avoid confirming a high probability that such conduct
21 constitutes infringement of the '627 patent.

22 58. On information and belief, (a) prior to commencing manufacturing,
23 distributing, selling and/or offering to sell Defendant Zirc's One-step, and (b) prior
24 to the filing of this Third Amended and Supplemental Complaint, Defendant Zirc
25 had knowledge of the existence of the '973 patent.

26 59. On information and belief, prior to its having commenced
27 manufacturing, distributing, selling and/or offering to sell Defendant Zirc's One-
28 step, Defendant Zirc acted despite an objectively high likelihood that its actions

1 constituted infringement of the valid '973 patent, and the objectively-defined risk of
2 infringement was either known or so obvious that it should have been known to
3 Defendant Zirc.

4 60. On information and belief, Defendant Zirc induces dental professionals
5 and others to use Defendant Zirc's One-step and distributors, sales representatives
6 and others to sell and/or offer to sell Defendant Zirc's One-step (a) with actual
7 knowledge that the use thereof as intended, sale and/or offer to sell constitutes
8 infringement of the '973 patent, or (b) with willful blindness in that Defendant Zirc
9 took deliberate action to avoid confirming a high probability that such conduct
10 constitutes infringement of the '973 patent.

11 61. On information and belief, (a) prior to commencing manufacturing,
12 distributing, selling and/or offering to sell Defendant Zirc's One-step, and (b) prior
13 to the filing of this Third Amended and Supplemental Complaint, Defendant Zirc
14 (and/or its counsel) had knowledge of the existence of the '308 patent.

15 62. On information and belief, prior to its having commenced
16 manufacturing, distributing, selling and/or offering to sell Defendant Zirc's One-
17 step, Defendant Zirc acted despite an objectively high likelihood that its actions
18 constituted infringement of the valid '308 patent, and the objectively-defined risk of
19 infringement was either known or so obvious that it should have been known to
20 Defendant Zirc.

21 63. On information and belief, Defendant Zirc induces dental professionals
22 and others to use Defendant Zirc's One-step and distributors, sales representatives
23 and others to sell and/or offer to sell Defendant Zirc's One-step (a) with actual
24 knowledge that the use thereof as intended, sale and/or offer to sell constitutes
25 infringement of the '308 patent, or (b) with willful blindness in that Defendant Zirc
26 took deliberate action to avoid confirming a high probability that that such conduct
27 constitutes infringement of the '308 patent.

28 64. On information and belief, (a) prior to commencing manufacturing,

1 distributing, selling and/or offering to sell Defendant Zirc's One-step, and (b) prior
2 to the filing of this Third Amended and Supplemental Complaint, Defendant Zirc
3 had knowledge of the existence of the D203 patent.

4 65. On information and belief, prior to its having commenced
5 manufacturing, distributing, selling and/or offering to sell Defendant Zirc's One-
6 step, Defendant Zirc acted despite an objectively high likelihood that its actions
7 constituted infringement of the valid D203 patent, and the objectively-defined risk of
8 infringement was either known or so obvious that it should have been known to
9 Defendant Zirc.

10 66. On information and belief, Defendant Zirc induces dental professionals
11 and others to use Defendant Zirc's One-step and distributors, sales representatives
12 and others to sell and/or offer to sell Defendant Zirc's One-step (a) with actual
13 knowledge that the use thereof as intended, sale and/or offer to sell constitutes
14 infringement of the D203 patent, or (b) with willful blindness in that Defendant Zirc
15 took deliberate action to avoid confirming a high probability that such conduct
16 constitutes infringement of the D203 patent.

17 67. Defendant Zirc's manufacture, distribution, sale and/or offers to sell
18 Zirc's Mr. Thirsty and Zirc's One-step have caused, continue to cause and will cause
19 Plaintiff Isolite Systems to lose numerous existing and prospective customers, and
20 therefore to suffer severe irreparable harm for which no adequate remedy at law
21 exists.

22 **FIRST COUNT**

23 **(Infringement of U.S. Patent No. 8,297,973 against Defendant Zirc)**

24 68. Plaintiff Isolite Systems repeats and realleges the allegations contained
25 in paragraphs 1 through 67 above and hereby incorporates them herein by reference.

26 69. This is a claim for patent infringement arising under 35 U.S.C. § 271.

27 70. Plaintiff Isolite Systems is the owner by assignment of all right, title,
28 and interest in and to United States Patent No. 8,297,973 entitled "Intraoral Device"

1 (hereinafter referred to as “the ‘973 patent”), which was duly and legally issued by
2 the United States Patent and Trademark Office (“USPTO”) on October 30, 2012
3 naming James A. Hirsch and Thomas R. Hirsch as inventors. On February 5, 2013,
4 the USPTO issued a Certificate of Correction for the ‘973 patent. The ‘973 patent is
5 valid, enforceable, and currently in full force and effect. A true and accurate copy of
6 the ‘973 patent with the Certificate of Correction is attached hereto as Exhibit “A”.

7 71. Defendant Zirc has committed infringement of the ‘973 patent in
8 violation of 35 U.S.C. § 271(a) by directly infringing (either literally or under the
9 doctrine of equivalents) by making, using, selling, and/or offering to sell Zirc’s Mr.
10 Thirsty in the United States, which is covered by at least one claim of the ‘973 patent
11 and therefore embodies the patented invention described in the ‘973 patent.

12 72. As a direct and proximate result of Defendant Zirc’s infringement of the
13 ‘973 patent, Defendant Zirc has derived and received gains, profits and advantages in
14 an amount not presently known to Plaintiff Isolite Systems.

15 73. As a further direct and proximate result of Defendant Zirc having
16 infringed and continuing to infringe the ‘973 patent, Plaintiff Isolite Systems has
17 suffered, and will continue to suffer, irreparable harm in one or more of the
18 following ways:

19 (a) Plaintiff Isolite System’s relationships with certain of its
20 customers and prospective customers will be permanently
21 and irrevocably damaged in that they will be induced to
22 purchase the infringing Zirc’s Mr. Thirsty and components
thereof from Defendant Zirc and/or its distributors and
sales representatives and may refrain from purchasing the
Isolite Product;

23 (b) Plaintiff Isolite Systems will lose existing customers as
24 well as prospective customers to Defendant Zirc (and/or its
25 distributors and sales representatives) and thereby
26 permanently and irrevocably lose a substantial share of the
market for the Isolite Product and components thereof to
Defendant Zirc and/or its distributors and sales
representatives;

27 (c) Plaintiff Isolite Systems will be forced to lower the
28 purchase price of the Isolite Product and components
thereof;

1 (d) Plaintiff Isolite Systems will lose a substantial and
2 inestimable amount of revenue and profits that will cause
3 the market value of Plaintiff Isolite Systems to permanently
4 diminish; and/or

5 (e) Plaintiff Isolite Systems will lose the value of the '973
6 patent in that ownership of the '973 patent gives Plaintiff
7 Isolite Systems the statutory and constitutionally protected
8 right to exclude others, especially competitors, from
9 making, using, offering to sell and/or selling embodiments
10 of the invention described in the '973 patent's claims.

11 74. Pursuant to 35 U.S.C. § 284, Plaintiff Isolite Systems is entitled to
12 damages for Defendant Zirc's infringing acts.

13 75. As a direct and proximate result of Defendant Zirc's infringing acts,
14 Plaintiff Isolite Systems continues to suffer great and irreparable harm as described
15 above, for which Plaintiff Isolite Systems has no adequate remedy at law, unless
16 Defendant Zirc is enjoined by this Court.

17 SECOND COUNT

18 (Infringement of U.S. Patent No. D615,203 Against Defendant Zirc)

19 76. Plaintiff Isolite Systems repeats and realleges the allegations contained
20 in paragraphs 1 through 67 above and hereby incorporates them herein by reference.

21 77. This is a claim for patent infringement arising under 35 U.S.C. § 271.

22 78. Plaintiff Isolite Systems is the owner by assignment of all right, title,
23 and interest in and to United States Patent No. D615,203 (the "D203 patent"), which
24 was duly and legally issued by the USPTO on May 4, 2010, for the ornamental
25 design of an intraoral device shown therein and naming James A. Hirsch and
26 Thomas R. Hirsch as inventors. The D203 patent is valid, enforceable and currently
27 in full force and effect. A true and accurate copy of the D203 patent is attached
28 hereto as Exhibit "D".

79. Defendant Zirc has committed infringement of the D203 patent in
violation of 35 U.S.C. § 271(a) by directly infringing by making, using, selling,
and/or offering to sell Zirc's Mr. Thirsty tongue shield component, which embodies

1 the patented invention described in the D203 patent.

2 80. As a direct and proximate result of Defendant Zirc's infringement of the
3 D203 patent, Defendant Zirc has derived and received gains, profits and advantages
4 in an amount not presently known to Plaintiff Isolite Systems.

5 81. As a further direct and proximate result of Defendant Zirc having
6 infringed and continuing to infringe the D203 patent, Plaintiff Isolite Systems has
7 suffered, and will continue to suffer, irreparable harm. in one or more of the
8 following ways:

9 (a) Plaintiff Isolite System's relationships with certain of its
10 customers and prospective customers will be permanently
11 and irrevocably damaged in that they will be induced to
12 purchase the infringing Zirc's Mr. Thirsty tongue shield
component from Defendant Zirc and/or its distributors and
sales representatives, and may refrain from purchasing the
Isolite Product;

13 (b) Plaintiff Isolite Systems will lose existing customers as
14 well as prospective customers to Defendant Zirc and/or its
15 distributors and sales representatives, and thereby
16 permanently and irrevocably lose a substantial share of the
market for the Isolite Product and components thereof to
Defendant Zirc and/or its distributors and sales
representatives;

17 (c) Plaintiff Isolite Systems will be forced to lower the
18 purchase price of the Isolite Product and components
thereof;

19 (d) Plaintiff Isolite Systems will lose a substantial and
20 inestimable amount of revenue and profits that will cause
21 the market value of Plaintiff Isolite Systems to
permanently diminish; and/or

22 (e) Plaintiff Isolite Systems will lose the value of the D203
23 patent in that ownership of the D203 patent gives Plaintiff
24 Isolite Systems the statutory and constitutionally protected
right to exclude others, especially competitors, from
making, using, offering to sell and/or selling embodiments
of the invention described in the D203 patent.

25 82. Pursuant to 35 U.S.C. § 284, Plaintiff Isolite Systems is entitled to
26 damages for Defendant Zirc's infringing acts.

27 83. Pursuant to 35 U.S.C. § 289, Plaintiff Isolite Systems is entitled to
28 Defendant Zirc's total profits from its infringement of the D203 patent.

1 84. As a direct and proximate result of Defendant Zirc's infringing acts,
2 Plaintiff Isolite Systems continues to suffer great and irreparable harm as described
3 above, for which Plaintiff Isolite Systems has no adequate remedy at law, unless
4 Defendant Zirc is enjoined by this Court.

5 **THIRD COUNT**

6 **(Infringement of U.S. Patent No. 8,297,973 against the Black Defendants)**

7 85. Plaintiff Isolite Systems repeats and realleges the allegations contained
8 in paragraphs 1 through 67 above and hereby incorporates them herein by reference.

9 86. This is a claim for patent infringement arising under 35 U.S.C. § 271.

10 87. On information and belief, Defendant Black and Defendant Black
11 Dental Corp. have committed infringement of the '973 patent in violation of 35
12 U.S.C. § 271(a) by directly infringing (either literally or under the doctrine of
13 equivalents) through Defendant Black's use of Zirc's Mr. Thirsty in the United
14 States in the dental practice known as "Desert Pearl Dentistry", which is covered by
15 at least one claim of the '973 patent and therefore embodies the patented invention
16 described in the '973 patent.

17 88. As a direct and proximate result of the above-described infringement of
18 the '973 patent, the Black Defendants have derived and received gains, profits and
19 advantages in an amount not presently known to Plaintiff Isolite Systems.

20 89. As a further direct and proximate result of the Black Defendants having
21 infringed and continuing to infringe the '973 patent, Plaintiff Isolite Systems has
22 suffered, and will continue to suffer, irreparable harm in one or more of the
23 following ways:

24 (a) Plaintiff Isolite Systems will lose existing customers as
25 well as prospective customers and thereby permanently
26 and irrevocably lose a substantial share of the market for
the Isolite Product and components thereof;

27 (b) Plaintiff Isolite Systems will lose a substantial and
28 inestimable amount of revenue and profits that will cause
the market value of Plaintiff Isolite Systems to
permanently diminish; and/or

1 (c) Plaintiff Isolite Systems will lose the value of the '973
2 patent in that ownership of the '973 patent gives Plaintiff
3 Isolite Systems the statutory and constitutionally protected
4 right to exclude others, especially competitors, from
5 making, using, offering to sell and/or selling embodiments
6 of the invention described in the '973 patent's claim.

7 90. Pursuant to 35 U.S.C. § 284, Plaintiff Isolite Systems is entitled to
8 damages for the infringing acts of the Black Defendants.

9 91. As a direct and proximate result of the infringing acts of the Black
10 Defendants, Plaintiff Isolite Systems continues to suffer great and irreparable harm
11 as described above, for which Plaintiff Isolite Systems has no adequate remedy at
12 law, unless the Black Defendants are enjoined by this Court.

13 **FOURTH COUNT**

14 **(Infringement of U.S. Patent No. D615,203 against the Black Defendants)**

15 92. Plaintiff Isolite Systems repeats and realleges the allegations contained
16 in paragraphs 1 through 67 above, and hereby incorporates them herein by reference.

17 93. This is a claim for patent infringement arising under 35 U.S.C. § 271.

18 94. On information and belief, Defendant Black and Defendant Black
19 Dental Corp. have committed infringement of the D203 patent in violation of 35
20 U.S.C. § 271(a) by directly infringing (either literally or under the doctrine of
21 equivalents) through Defendant Black's use of Zirc's Mr. Thirsty tongue shield
22 component in the United States in the dental practice known as "Desert Pearl
23 Dentistry," which embodies the patented invention described in the D203 patent.

24 95. On information and belief, Defendant Black has committed
25 infringement of the D203 patent in violation of 35 U.S.C. § 271(a) by directly
26 infringing (either literally or under the doctrine of equivalents) through Defendant
27 Black and/or Joogatech, Inc.'s sale of one or more units of the tongue shield
28 component of Defendant Black's Airbug to Defendant Zirc pursuant to the
Black/Zirc Contract. As set forth prior, Defendant Zirc manufactures, distributes,
sells and/or offers to sell Defendant Black's Airbug under the mark known as "Mr.

1 Thirsty.” On information and belief, the one or more units of the tongue shield
2 component of Defendant Black’s Airbug sold were identical to that depicted in
3 Exhibit “E” attached hereto and incorporated by reference herein, and were identical
4 to Zirc’s Mr. Thirsty (excluding the trademark). Even if such sale is deemed to have
5 been made only by Joogatech, Inc., Defendant Black is personally liable therefor
6 because, on information and belief, (i) Joogatech was dissolved pursuant to a
7 certificate of dissolution filed with the State of California on or about March 11,
8 2013, and (ii) Defendant Black was the sole or majority shareholder thereof.

9 96. As a direct and proximate result of the above-described infringement of
10 the D203 patent, the Black Defendants have derived and received gains, profits and
11 advantages in an amount not presently known to Plaintiff Isolite Systems.

12 97. As a further direct and proximate result of the Black Defendants having
13 infringed and continuing to infringe the D203 patent, Plaintiff Isolite Systems has
14 suffered, and will continue to suffer, irreparable harm in one or more of the
15 following ways:

- 16 (a) Plaintiff Isolite Systems will lose existing customers as
17 well as prospective customers and thereby permanently
18 and irrevocably lose a substantial share of the market for
the Isolite Product and components thereof;
- 19 (b) Plaintiff Isolite Systems will lose a substantial and
20 inestimable amount of revenue and profits that will cause
the market value of Plaintiff Isolite Systems to
permanently diminish; and/or
- 21 (c) Plaintiff Isolite Systems will lose the value of the D203
22 patent in that ownership of the D203 patent gives Plaintiff
23 Isolite Systems the statutory and constitutionally protected
24 right to exclude others, especially competitors, from
making, using, offering to sell and/or selling embodiments
of the invention described in the D203 patent’s claim.

25 98. Pursuant to 35 U.S.C. § 284, Plaintiff Isolite Systems is entitled to
26 damages for the infringing acts of the Black Defendants.

27 99. Pursuant to 35 U.S.C. § 289, Plaintiff Isolite Systems is entitled to the
28 total profits of the Black Defendants from infringement of the D203 patent.

1 100. As a direct and proximate result of the infringing acts of the Black
2 Defendants, Plaintiff Isolite Systems continues to suffer great and irreparable harm
3 as described above, for which Plaintiff Isolite Systems has no adequate remedy at
4 law, unless the Black Defendants are enjoined by this Court.

5 **FIFTH COUNT**

6 **(Trade Dress Infringement in Violation of**
7 **Section 43(a) of the Federal Lanham Act**
8 **[15 U.S.C. § 1125(a)] Against Defendant Zirc)**

9 101. Plaintiff Isolite Systems repeats and realleges the allegations contained
10 in paragraphs 1 through 67 above and hereby incorporates them herein by reference.

11 102. Plaintiff Isolite Systems owns a valid and protectable interest in the
12 product design trade dress of the Isolite Product, including but not limited to its
13 shape and color (“the Isolite Trade Dress”).

14 103. Plaintiff Isolite Systems adopted the Isolite Trade Dress and used it in
15 interstate commerce for the Isolite Product for over ten years.

16 104. As a result of Plaintiff Isolite Systems’ continuous, exclusive and
17 extensive promotion, advertising and sale of the Isolite Product incorporating the
18 Isolite Trade Dress in interstate commerce and the commercial success of the Isolite
19 Product, the Isolite Trade Dress has developed secondary meaning among dental
20 professionals as an identifier of the source of the Isolite Product.

21 105. On information and belief, Defendant Zirc knew of the Isolite Product
22 and the Isolite Trade Dress prior to Defendant Zirc’s use of the Isolite Trade Dress.

23 106. Defendant Zirc is using the Isolite Trade Dress in connection with the
24 Zirc’s Mr. Thirsty tongue shield component in that it incorporates the shape and
25 color of the Isolite Trade Dress without authorization from Plaintiff Isolite Systems.

26 107. Defendant Zirc has caused Zirc’s Mr. Thirsty’s tongue shield
27 components incorporating the Isolite Trade Dress to enter into interstate commerce.

28 108. Defendant Zirc’s unauthorized use of the Isolite Trade Dress is likely to
cause confusion, or to cause mistake, or to deceive as to the affiliation, connection or

1 association of Defendant Zirc with Plaintiff Isolite Systems and/or as to the origin,
2 sponsorship, or approval of Zirc's Mr. Thirsty and/or its tongue shields thereof by
3 Plaintiff Isolite Systems.

4 109. Defendant Zirc's acts as described above are in violation of 15 U.S.C. §
5 1125(a) in that Defendant Zirc has used in connection with goods or services trade
6 dress which is likely to cause confusion, and to cause mistake, and/or to deceive as to
7 the affiliation, connection or association of Defendant Zirc with Plaintiff Isolite
8 Systems and/or as to the origin, sponsorship, and approval of Defendant Zirc's
9 goods, services and commercial activities by Plaintiff Isolite Systems.

10 110. On information and belief, Defendant Zirc's above-described violations
11 of 15 U.S.C. § 1125(a) have been committed with the intent to cause confusion, to
12 cause mistake and/or to deceive.

13 111. As a direct and proximate result of Defendant Zirc's violation of 15
14 U.S.C. § 1125(a), Defendant Zirc has damaged and will continue to damage Plaintiff
15 Isolite Systems' business, goodwill and reputation, and has caused and is likely to
16 continue to cause lost sales and profits, as well as loss of exclusive ownership and
17 use of the Isolite Trade Dress, resulting in public confusion and damage to Plaintiff
18 Isolite Systems' reputation.

19 112. Defendant Zirc's actions as described above have caused and will
20 continue to cause irreparable harm to Plaintiff Isolite Systems and to consumers who
21 are or are likely to be confused by Defendant Zirc's violation of 15 U.S.C. § 1125(a),
22 unless Defendant Zirc is restrained and enjoined by this Court, and Plaintiff Isolite
23 Systems has no adequate remedy at law.

24 113. As a further direct and proximate result of Defendant Zirc's actions as
25 described above, Plaintiff Isolite Systems has been damaged and will continue to
26 sustain damage, and is entitled to receive compensation arising from its lost sales,
27 lost profits, and efforts necessary to minimize and/or prevent customer confusion, in
28 an amount to be proven at the time of trial.

1 114. In addition, Plaintiff Isolite Systems is entitled to recover Defendant
2 Zirc's profits in an amount to be proven at the time of trial.

3 115. Pursuant to 15 U.S.C. § 1116(a), Plaintiff Isolite Systems is further
4 entitled to injunctive relief to enjoin Defendant Zirc from any further violation of 15
5 U.S.C. § 1125(a), and to all other and further forms of relief this Court deems
6 appropriate.

7 116. The damages sustained by Plaintiff Isolite Systems as a result of the
8 conduct alleged herein should be trebled in accordance with 15 U.S.C. § 1117(a) due
9 to Defendant Zirc's willful violation of 15 U.S.C. § 1125(a).

10 117. Plaintiff Isolite Systems is entitled to a determination that this is an
11 exceptional case and to recover reasonable attorneys' fees for the necessity of
12 bringing this claim.

13 **SIXTH COUNT**

14 **(Direct Infringement of U.S. Patent No. 8,297,973 against Defendant Zirc)**

15 118. Plaintiff Isolite Systems repeats and realleges the allegations contained
16 in paragraphs 1 through 67 and 69 through 70 above and hereby incorporates them
17 herein by reference.

18 119. Defendant Zirc has committed infringement of the '973 patent in
19 violation of 35 U.S.C. § 271(a) by directly infringing (either literally or under the
20 doctrine of equivalents) by making, using, selling, and/or offering to sell Defendant
21 Zirc's One-step in the United States, which is covered by at least one claim of the
22 '973 patent and therefore embodies the patented invention described in the '973
23 patent.

24 120. On information and belief, (a) prior to making, using, selling, and/or
25 offering to sell Defendant Zirc's One-step in the United States, and (b) prior to the
26 filing of this Third Amended and Supplemental Complaint, Defendant Zirc had
27 knowledge of the existence of the '973 patent due at least to the filing and service of
28 the original complaint in October, 2013.

1 21. On information and belief, prior to making, using, selling, and/or
2 offering to sell Defendant Zirc's One-step in the United States, Defendant Zirc acted
3 despite an objectively high likelihood that its actions constituted infringement of the
4 valid '973 patent, and the objectively-defined risk of infringement was either known
5 or so obvious that it should have been known to Defendant Zirc. Accordingly,
6 Defendant Zirc has engaged in willful infringement of the '973 patent by actual
7 intent to infringe or objective recklessness.

8 22. As a direct and proximate result of Defendant Zirc's infringement of the
9 '973 patent, Defendant Zirc has derived and received gains, profits and advantages in
10 an amount not presently known to Plaintiff Isolite Systems.

11 23. As a further direct and proximate result of Defendant Zirc having
12 infringed and continuing to infringe the '973 patent, Plaintiff Isolite Systems has
13 suffered, and will continue to suffer, irreparable harm in one or more of the
14 following ways:

15 (a) Plaintiff Isolite System's relationships with certain of its
16 customers and prospective customers will be permanently
17 and irrevocably damaged in that they will be induced to
18 purchase the infringing Zirc's One-step and components
thereof from Defendant Zirc and/or its distributors and
sales representatives and may refrain from purchasing the
Isolite Product;

19 (b) Plaintiff Isolite Systems will lose existing customers as
20 well as prospective customers to Defendant Zirc (and/or its
21 distributors and sales representatives) and thereby
22 permanently and irrevocably lose a substantial share of the
market for the Isolite Product and components thereof to
Defendant Zirc and/or its distributors and sales
representatives;

23 (c) Plaintiff Isolite Systems will be forced to lower the
24 purchase price of the Isolite Product and components
thereof;

25 (d) Plaintiff Isolite Systems will lose a substantial and
26 inestimable amount of revenue and profits that will cause
27 the market value of Plaintiff Isolite Systems to permanently
diminish; and/or

28 (e) Plaintiff Isolite Systems will lose the value of the '973
patent in that ownership of the '973 patent gives Plaintiff

1 Isolite Systems the statutory and constitutionally protected
2 right to exclude others, especially competitors, from
3 making, using, offering to sell and/or selling embodiments
of the invention described in the '973 patent's claims.

4 124. Pursuant to 35 U.S.C. § 284, Plaintiff Isolite Systems is entitled to
5 damages for Defendant Zirc's infringing acts and for such damages to be trebled for
6 willful infringement.

7 125. Pursuant to 35 U.S.C. § 285, Plaintiff Isolite Systems is entitled to a
8 determination that this is an exceptional case and to recover reasonable attorneys'
9 fees for the necessity of bringing this claim.

10 126. As a direct and proximate result of Defendant Zirc's infringing acts,
11 Plaintiff Isolite Systems continues to suffer great and irreparable harm as described
12 above, for which Plaintiff Isolite Systems has no adequate remedy at law, unless
13 Defendant Zirc is enjoined by this Court.

14 **SEVENTH COUNT**

15 **(Inducing Infringement of U.S. Patent No. 8,297,973 against Defendant Zirc)**

16 127. Plaintiff Isolite Systems repeats and realleges the allegations contained
17 in paragraphs 1 through 67, 69 through 70 and 118 through 126 above and hereby
18 incorporates them herein by reference.

19 128. On information and belief, (a) prior to commencing manufacturing,
20 distributing, selling and/or offering to sell Defendant Zirc's One-step, and (b) prior
21 to the filing of this Third Amended and Supplemental Complaint, Defendant Zirc
22 had knowledge of the existence of the '973 patent due at least to the filing and
23 service of the original complaint in October, 2013.

24 129. Dental professionals and others who use Defendant Zirc's One-step are
25 committing infringement of the '973 patent in violation of 35 U.S.C. § 271(a) by
26 directly infringing (either literally or under the doctrine of equivalents) by using
27 Defendant Zirc's One-step in the United States, which is covered by at least one
28 claim of the '973 patent and therefore embodies the patented invention described in

1 the '973 patent.

2 130. On information and belief, Defendant Zirc induces dental professionals
3 and others to use Defendant Zirc's One-step (a) with actual knowledge that the use
4 thereof as intended constitutes infringement of the '973 patent, or (b) with willful
5 blindness in that Defendant Zirc took deliberate action to avoid confirming a high
6 probability that using Defendant Zirc's One-step as intended constitutes infringement
7 of the '973 patent.

8 131. Distributors, sales representatives and others who make, use, sell or
9 offer to sell Defendant Zirc's One-step are committing infringement of the '973
10 patent in violation of 35 U.S.C. § 271(a) by directly infringing (either literally or
11 under the doctrine of equivalents) by making, using, selling, and/or offering to sell
12 Defendant Zirc's One-step in the United States, which is covered by at least one
13 claim of the '973 patent and therefore embodies the patented invention described in
14 the '973 patent.

15 132. On information and belief, Defendant Zirc induces distributors and/or
16 sales representatives and others to sell and/or offer to sell Defendant Zirc's One-step
17 (a) with actual knowledge that such sale and/or offer to sell constitutes infringement
18 of the '973 patent, or (b) with willful blindness in that Defendant Zirc took deliberate
19 action to avoid confirming a high probability that selling and/or offering to sell
20 Defendant Zirc's One-step constitutes infringement of the '973 patent.

21 133. On information and belief, as a result of its above-described conduct,
22 Defendant Zirc has committed indirect infringement of the '973 patent in violation of
23 35 U.S.C. § 271(b) by actively inducing dental professionals, distributors, sales
24 representatives and others, who are Defendant Zirc's direct and indirect customers to
25 place into the stream of commerce and/or make, use, sell, and/or offer to sell,
26 Defendant Zirc's One-step, with actual knowledge or with willful blindness that
27 Defendant Zirc's One-step infringes the '973 patent. Further, Zirc provides detailed
28 specifications regarding the implementation, use and performance of Zirc's one-step,

1 as shown in Exhibit “G” attached hereto and incorporated herein by reference.

2 134. On information and belief, prior to inducing dental professionals,
3 distributors, sales representatives and others to make, use, sell and/or offer to sell
4 Defendant Zirc’s One-step in the United States, Defendant Zirc acted despite an
5 objectively high likelihood that its actions constituted infringement of the valid ‘973
6 patent, and the objectively-defined risk of infringement was either known or so
7 obvious that it should have been known to Defendant Zirc. Accordingly, Defendant
8 Zirc has engaged in willful infringement of the ‘973 patent by actual intent to induce
9 infringement or objective recklessness.

10 135. As a direct and proximate result of Defendant Zirc’s infringement of the
11 ‘973 patent, Defendant Zirc has derived and received gains, profits and advantages in
12 an amount not presently known to Plaintiff Isolite Systems.

13 136. As a further direct and proximate result of Defendant Zirc having
14 induced infringement and continuing to induce infringement of the ‘973 patent,
15 Plaintiff Isolite Systems has suffered, and will continue to suffer, irreparable harm in
16 one or more of the following ways:

- 17 (a) Plaintiff Isolite System’s relationships with certain of its
18 customers and prospective customers will be permanently
19 and irrevocably damaged in that they will be induced to
20 purchase the infringing Zirc’s One-step and components
21 thereof from Defendant Zirc and/or its distributors and
22 sales representatives and may refrain from purchasing the
23 Isolite Product;
- 24 (b) Plaintiff Isolite Systems will lose existing customers as
25 well as prospective customers to Defendant Zirc (and/or its
26 distributors and sales representatives) and thereby
27 permanently and irrevocably lose a substantial share of the
28 market for the Isolite Product and components thereof to
Defendant Zirc and/or its distributors and sales
representatives;
- (c) Plaintiff Isolite Systems will be forced to lower the
purchase price of the Isolite Product and components
thereof;
- (d) Plaintiff Isolite Systems will lose a substantial and
inestimable amount of revenue and profits that will cause
the market value of Plaintiff Isolite Systems to permanently

1 diminish; and/or

2 (e) Plaintiff Isolite Systems will lose the value of the ‘973
3 patent in that ownership of the ‘973 patent gives Plaintiff
4 Isolite Systems the statutory and constitutionally protected
5 right to exclude others, especially competitors, from
6 making, using, offering to sell and/or selling embodiments
7 of the invention described in the ‘973 patent’s claims.

8 137. Pursuant to 35 U.S.C. § 284, Plaintiff Isolite Systems is entitled to
9 damages for Defendant Zirc’s infringing acts and for such damages to be trebled for
10 willful infringement.

11 138. Pursuant to 35 U.S.C. § 285, Plaintiff Isolite Systems is entitled to a
12 determination that this is an exceptional case and to recover reasonable attorneys’
13 fees for the necessity of bringing this claim.

14 139. As a direct and proximate result of Defendant Zirc’s infringing acts,
15 Plaintiff Isolite Systems continues to suffer great and irreparable harm as described
16 above, for which Plaintiff Isolite Systems has no adequate remedy at law, unless
17 Defendant Zirc is enjoined by this Court.

18 **EIGHTH COUNT**

19 **(Direct Infringement of U.S. Patent No. 6,338,627 against Defendant Zirc)**

20 140. Plaintiff Isolite Systems repeats and realleges the allegations contained
21 in paragraphs 1 through 67 and hereby incorporates them herein by reference.

22 141. This is a claim for patent infringement arising under 35 U.S.C. § 271.

23 142. Plaintiff Isolite Systems is the owner by assignment of all right, title,
24 and interest in and to United States Patent No. 6,338,627 (“the ‘627 patent”) entitled
25 “Intraoral Device” (hereinafter referred to as “the ‘627 patent”), which was duly and
26 legally issued by the USPTO on January 15, 2002, naming James A. Hirsch and
27 Thomas R. Hirsch as inventors. The ‘627 patent is valid, enforceable, and currently
28 in full force and effect. A true and accurate copy of the ‘627 patent is attached
hereto as Exhibit “C” and incorporated herein by reference.

143. Defendant Zirc has committed infringement of the ‘627 patent in

1 violation of 35 U.S.C. § 271(a) by directly infringing (either literally or under the
2 doctrine of equivalents) by making, using, selling, and/or offering to sell Defendant
3 Zirc's One-step in the United States, which is covered by at least one claim of the
4 '627 patent and therefore embodies the patented invention described in the '627
5 patent.

6 144. On information and belief, (a) prior to commencing manufacturing,
7 distributing, selling and/or offering to sell Defendant Zirc's One-step, and (b) prior
8 to the commencement of the instant action and service of the original complaint upon
9 Defendant Zirc, Defendant Zirc had knowledge of the existence of the '627 patent.

10 145. On information and belief, prior to making, using, selling, and/or
11 offering to sell Defendant Zirc's One-step in the United States, Defendant Zirc acted
12 despite an objectively high likelihood that its actions constituted infringement of the
13 valid '627 patent, and the objectively-defined risk of infringement was either known
14 or so obvious that it should have been known to Defendant Zirc. Accordingly,
15 Defendant Zirc has engaged in willful infringement of the '627 patent by actual
16 intent to infringe or objective recklessness.

17 146. As a direct and proximate result of Defendant Zirc's infringement of the
18 '627 patent, Defendant Zirc has derived and received gains, profits and advantages in
19 an amount not presently known to Plaintiff Isolite Systems.

20 147. As a further direct and proximate result of Defendant Zirc having
21 infringed and continuing to infringe the '627 patent, Plaintiff Isolite Systems has
22 suffered, and will continue to suffer, irreparable harm in one or more of the
23 following ways:

24 (a) Plaintiff Isolite System's relationships with certain of its
25 customers and prospective customers will be permanently
26 and irrevocably damaged in that they will be induced to
27 purchase the infringing Zirc's One-step and components
thereof from Defendant Zirc and/or its distributors and
sales representatives and may refrain from purchasing the
Isolite Product;

28 (b) Plaintiff Isolite Systems will lose existing customers as

1 well as prospective customers to Defendant Zirc (and/or its
2 distributors and sales representatives) and thereby
3 permanently and irrevocably lose a substantial share of the
4 market for the Isolite Product and components thereof to
5 Defendant Zirc and/or its distributors and sales
6 representatives;

7 (c) Plaintiff Isolite Systems will be forced to lower the
8 purchase price of the Isolite Product and components
9 thereof;

10 (d) Plaintiff Isolite Systems will lose a substantial and
11 inestimable amount of revenue and profits that will cause
12 the market value of Plaintiff Isolite Systems to permanently
13 diminish; and/or

14 (e) Plaintiff Isolite Systems will lose the value of the '627
15 patent in that ownership of the '627 patent gives Plaintiff
16 Isolite Systems the statutory and constitutionally protected
17 right to exclude others, especially competitors, from
18 making, using, offering to sell and/or selling embodiments
19 of the invention described in the '627 patent's claims.

20 148. Pursuant to 35 U.S.C. § 284, Plaintiff Isolite Systems is entitled to
21 damages for Defendant Zirc's infringing acts and for such damages to be trebled for
22 willful infringement.

23 149. Pursuant to 35 U.S.C. § 285, Plaintiff Isolite Systems is entitled to a
24 determination that this is an exceptional case and to recover reasonable attorneys'
25 fees for the necessity of bringing this claim.

26 150. As a direct and proximate result of Defendant Zirc's infringing acts,
27 Plaintiff Isolite Systems continues to suffer great and irreparable harm as described
28 above, for which Plaintiff Isolite Systems has no adequate remedy at law, unless
29 Defendant Zirc is enjoined by this Court.

30 **NINTH COUNT**

31 **(Inducing Infringement of U.S. Patent No. 6,338,627 against Defendant Zirc)**

32 151. Plaintiff Isolite Systems repeats and realleges the allegations contained
33 in paragraphs 1 through 67 and 140 through 150 above and hereby incorporates them
34 herein by reference.

35 152. On information and belief, (a) prior to commencing manufacturing,

1 distributing, selling and/or offering to sell Defendant Zirc's One-step, and (b) prior
2 to the commencement of the instant action and service of the original complaint upon
3 Defendant Zirc, Defendant Zirc had knowledge of the existence of the '627 patent.

4 153. Dental professionals and others who use Defendant Zirc's One-step are
5 committing infringement of the '627 patent in violation of 35 U.S.C. § 271(a) by
6 directly infringing (either literally or under the doctrine of equivalents) by using
7 Defendant Zirc's One-step in the United States, which is covered by at least one
8 claim of the '627 patent and therefore embodies the patented invention described in
9 the '627 patent.

10 154. On information and belief, Defendant Zirc induces dental professionals
11 and others to use Defendant Zirc's One-step (a) with actual knowledge that the use
12 thereof as intended constitutes infringement of the '627 patent, or (b) with willful
13 blindness in that Defendant Zirc took deliberate action to avoid confirming a high
14 probability that using Defendant Zirc's One-step as intended constitutes infringement
15 of the '627 patent.

16 155. Distributors, sales representatives and others who make, use, sell or
17 offer to sell Defendant Zirc's One-step are committing infringement of the '627
18 patent in violation of 35 U.S.C. § 271(a) by directly infringing (either literally or
19 under the doctrine of equivalents) by making, using, selling, and/or offering to sell
20 Defendant Zirc's One-step in the United States, which is covered by at least one
21 claim of the '627 patent and therefore embodies the patented invention described in
22 the '627 patent.

23 156. On information and belief, Defendant Zirc induces distributors and/or
24 sales representatives and others to sell and/or offer to sell Defendant Zirc's One-step
25 (a) with actual knowledge that such sale and/or offer to sell constitutes infringement
26 of the '627 patent, or (b) with willful blindness in that Defendant Zirc took deliberate
27 action to avoid confirming a high probability that selling and/or offering to sell
28 Defendant Zirc's One-step constitutes infringement of the '627 patent.

1 157. On information and belief, as a result of its above-described conduct,
2 Defendant Zirc has committed indirect infringement of the ‘627 patent in violation of
3 35 U.S.C. § 271(b) by actively inducing dental professionals, distributors, sales
4 representatives and others, who are Defendant Zirc’s direct and indirect customers to
5 place into the stream of commerce and/or make, use, sell, and/or offer to sell,
6 Defendant Zirc’s One-step, with actual knowledge or with willful blindness that
7 Defendant Zirc’s One-step infringes the ‘627 patent. Further, Zirc provides detailed
8 specifications regarding the implementation, use and performance of Zirc’s one-step,
9 as shown in Exhibit “G” attached hereto and incorporated herein by reference.

10 158. On information and belief, prior to inducing dental professionals,
11 distributors, sales representatives and others to make, use, sell and/or offer to sell
12 Defendant Zirc’s One-step in the United States, Defendant Zirc acted despite an
13 objectively high likelihood that its actions constituted infringement of the valid ‘627
14 patent, and the objectively-defined risk of infringement was either known or so
15 obvious that it should have been known to Defendant Zirc. Accordingly, Defendant
16 Zirc has engaged in willful infringement of the ‘627 patent by actual intent to induce
17 infringement or objective recklessness.

18 159. As a direct and proximate result of Defendant Zirc’s infringement of the
19 ‘627 patent, Defendant Zirc has derived and received gains, profits and advantages in
20 an amount not presently known to Plaintiff Isolite Systems.

21 160. As a further direct and proximate result of Defendant Zirc having
22 induced infringement and continuing to induce infringement of the ‘627 patent,
23 Plaintiff Isolite Systems has suffered, and will continue to suffer, irreparable harm in
24 one or more of the following ways:

25 (a) Plaintiff Isolite System’s relationships with certain of its
26 customers and prospective customers will be permanently
27 and irrevocably damaged in that they will be induced to
28 purchase the infringing Zirc’s One-step and components
thereof from Defendant Zirc and/or its distributors and
sales representatives and may refrain from purchasing the
Isolite Product;

- 1 (b) Plaintiff Isolite Systems will lose existing customers as
2 well as prospective customers to Defendant Zirc (and/or its
3 distributors and sales representatives) and thereby
4 permanently and irrevocably lose a substantial share of the
5 market for the Isolite Product and components thereof to
6 Defendant Zirc and/or its distributors and sales
7 representatives;
- 8 (c) Plaintiff Isolite Systems will be forced to lower the
9 purchase price of the Isolite Product and components
10 thereof;
- 11 (d) Plaintiff Isolite Systems will lose a substantial and
12 inestimable amount of revenue and profits that will cause
13 the market value of Plaintiff Isolite Systems to permanently
14 diminish; and/or
- 15 (e) Plaintiff Isolite Systems will lose the value of the ‘627
16 patent in that ownership of the ‘627 patent gives Plaintiff
17 Isolite Systems the statutory and constitutionally protected
18 right to exclude others, especially competitors, from
19 making, using, offering to sell and/or selling embodiments
20 of the invention described in the ‘627 patent’s claims.

21 161. Pursuant to 35 U.S.C. § 284, Plaintiff Isolite Systems is entitled to
22 damages for Defendant Zirc’s infringing acts and for such damages to be trebled for
23 willful infringement.

24 162. Pursuant to 35 U.S.C. § 285, Plaintiff Isolite Systems is entitled to a
25 determination that this is an exceptional case and to recover reasonable attorneys’
26 fees for the necessity of bringing this claim.

27 163. As a direct and proximate result of Defendant Zirc’s infringing acts,
28 Plaintiff Isolite Systems continues to suffer great and irreparable harm as described
above, for which Plaintiff Isolite Systems has no adequate remedy at law, unless
Defendant Zirc is enjoined by this Court.

TENTH COUNT

(Direct Infringement of U.S. Patent No. 6,908,308 against Defendant Zirc)

164. Plaintiff Isolite Systems repeats and realleges the allegations contained
in paragraphs 1 through 67 and hereby incorporates them herein by reference.

165. This is a claim for patent infringement arising under 35 U.S.C. § 271.

1 166. Plaintiff Isolite Systems is the owner by assignment of all right, title,
2 and interest in and to United States Patent No. 6,908,308 (“the ‘308 patent”) entitled
3 “Intraoral Device and Method of Using the Same” (hereinafter referred to as “the
4 ‘308 patent”), which was duly and legally issued by the USPTO on June 21, 2005,
5 naming James A. Hirsch and Thomas R. Hirsch as inventors. The ‘308 patent is
6 valid, enforceable, and currently in full force and effect. A true and accurate copy of
7 the ‘308 patent is attached hereto as Exhibit “B” and incorporated herein by
8 reference.

9 167. Defendant Zirc has committed infringement of the ‘308 patent in
10 violation of 35 U.S.C. § 271(a) by directly infringing (either literally or under the
11 doctrine of equivalents) by making, using, selling, and/or offering to sell Defendant
12 Zirc’s One-step in the United States, which is covered by at least one claim of the
13 ‘308 patent and therefore embodies the patented invention described in the ‘308
14 patent.

15 168. On information and belief, (a) prior to making, using, selling, and/or
16 offering to sell Defendant Zirc’s One-step in the United States, and (b) prior to the
17 filing of this Third Amended and Supplemental Complaint, Defendant Zirc had
18 knowledge of the existence of the ‘308 patent due at least to Defendant Zirc’s
19 counsel having reviewed it in another action that had been pending in this Court.

20 169. On information and belief, prior to making, using, selling, and/or
21 offering to sell Defendant Zirc’s One-step in the United States, Defendant Zirc acted
22 despite an objectively high likelihood that its actions constituted infringement of the
23 valid ‘308 patent, and the objectively-defined risk of infringement was either known
24 or so obvious that it should have been known to Defendant Zirc. Accordingly,
25 Defendant Zirc has engaged in willful infringement of the ‘308 patent by actual
26 intent to infringe or objective recklessness.

27 170. As a direct and proximate result of Defendant Zirc’s infringement of the
28 ‘308 patent, Defendant Zirc has derived and received gains, profits and advantages in

1 an amount not presently known to Plaintiff Isolite Systems.

2 171. As a further direct and proximate result of Defendant Zirc having
3 infringed and continuing to infringe the '308 patent, Plaintiff Isolite Systems has
4 suffered, and will continue to suffer, irreparable harm in one or more of the
5 following ways:

6 (a) Plaintiff Isolite System's relationships with certain of its
7 customers and prospective customers will be permanently
8 and irrevocably damaged in that they will be induced to
9 purchase the infringing Zirc's One-step and components
thereof from Defendant Zirc and/or its distributors and
sales representatives and may refrain from purchasing the
Isolite Product;

10 (b) Plaintiff Isolite Systems will lose existing customers as
11 well as prospective customers to Defendant Zirc (and/or its
12 distributors and sales representatives) and thereby
13 permanently and irrevocably lose a substantial share of the
market for the Isolite Product and components thereof to
Defendant Zirc and/or its distributors and sales
representatives;

14 (c) Plaintiff Isolite Systems will be forced to lower the
15 purchase price of the Isolite Product and components
thereof;

16 (d) Plaintiff Isolite Systems will lose a substantial and
17 inestimable amount of revenue and profits that will cause
18 the market value of Plaintiff Isolite Systems to
permanently diminish; and/or

19 (e) Plaintiff Isolite Systems will lose the value of the '308
20 patent in that ownership of the '308 patent gives Plaintiff
21 Isolite Systems the statutory and constitutionally protected
right to exclude others, especially competitors, from
making, using, offering to sell and/or selling embodiments
of the invention described in the '308 patent's claims.

22
23 172. Pursuant to 35 U.S.C. § 284, Plaintiff Isolite Systems is entitled to
24 damages for Defendant Zirc's infringing acts and for such damages to be trebled for
25 willful infringement.

26 173. Pursuant to 35 U.S.C. § 285, Plaintiff Isolite Systems is entitled to a
27 determination that this is an exceptional case and to recover reasonable attorneys'
28 fees for the necessity of bringing this claim.

1 174. As a direct and proximate result of Defendant Zirc's infringing acts,
2 Plaintiff Isolite Systems continues to suffer great and irreparable harm as described
3 above, for which Plaintiff Isolite Systems has no adequate remedy at law, unless
4 Defendant Zirc is enjoined by this Court.

5 **ELEVENTH COUNT**

6 **(Inducing Infringement of U.S. Patent No. 6,908,308 against Defendant Zirc)**

7 175. Plaintiff Isolite Systems repeats and realleges the allegations contained
8 in paragraphs 1 through 67 and 164 through 174 above and hereby incorporates them
9 herein by reference.

10 176. On information and belief, (a) prior to making, using, selling, and/or
11 offering to sell Defendant Zirc's One-step in the United States, and (b) prior to the
12 filing of this Third Amended and Supplemental Complaint, Defendant Zirc had
13 knowledge of the existence of the '308 patent due at least to its counsel having
14 reviewed it in another action that had been pending before this Court.

15 177. Dental professionals and others who use Defendant Zirc's One-step are
16 committing infringement of the '308 patent in violation of 35 U.S.C. § 271(a) by
17 directly infringing (either literally or under the doctrine of equivalents) by using
18 Defendant Zirc's One-step in the United States, which is covered by at least one
19 claim of the '308 patent and therefore embodies the patented invention described in
20 the '308 patent.

21 178. On information and belief, Defendant Zirc induces dental professionals
22 and others to use Defendant Zirc's One-step (a) with actual knowledge that the use
23 thereof as intended constitutes infringement of the '308 patent, or (b) with willful
24 blindness in that Defendant Zirc took deliberate action to avoid confirming a high
25 probability that using Defendant Zirc's One-step as intended constitutes infringement
26 of the '308 patent.

27 179. Distributors, sales representatives and others who make, use, sell and/or
28 offer to sell Defendant Zirc's One-step are committing infringement of the '627

1 patent in violation of 35 U.S.C. § 271(a) by directly infringing (either literally or
2 under the doctrine of equivalents) by making, using, selling, and/or offering to sell
3 Defendant Zirc's One-step in the United States, which is covered by at least one
4 claim of the '308 patent and therefore embodies the patented invention described in
5 the '308 patent.

6 180. On information and belief, Defendant Zirc induces distributors and/or
7 sales representatives and others to sell and/or offer to sell Defendant Zirc's One-step
8 (a) with actual knowledge that such sale and/or offer to sell constitutes infringement
9 of the '308 patent, or (b) with willful blindness in that Defendant Zirc took deliberate
10 action to avoid confirming a high probability that selling and/or offering to sell
11 Defendant Zirc's One-step constitutes infringement of the '308 patent.

12 181. On information and belief, as a result of its above-described conduct,
13 Defendant Zirc has committed indirect infringement of the '308 patent in violation of
14 35 U.S.C. § 271(b) by actively inducing dental professionals, distributors, sales
15 representatives and others, who are Defendant Zirc's direct and indirect customers to
16 place into the stream of commerce and/or make, use, sell, and/or offer to sell,
17 Defendant Zirc's One-step, with actual knowledge or with willful blindness that
18 Defendant Zirc's One-step infringes the '308 patent. Further, Zirc provides detailed
19 specifications regarding the implementation, use and performance of Zirc's one-step,
20 as shown in Exhibit "G" attached hereto and incorporated herein by reference.

21 182. On information and belief, prior to inducing dental professionals,
22 distributors, sales representatives and others to make, use, sell and/or offer to sell
23 Defendant Zirc's One-step in the United States, Defendant Zirc acted despite an
24 objectively high likelihood that its actions constituted infringement of the valid '308
25 patent, and the objectively-defined risk of infringement was either known or so
26 obvious that it should have been known to Defendant Zirc. Accordingly, Defendant
27 Zirc has engaged in willful infringement of the '308 patent by actual intent to induce
28 infringement or objective recklessness.

1 183. As a direct and proximate result of Defendant Zirc's infringement of the
2 '308 patent, Defendant Zirc has derived and received gains, profits and advantages in
3 an amount not presently known to Plaintiff Isolite Systems.

4 184. As a further direct and proximate result of Defendant Zirc having
5 induced infringement and continuing to induce infringement of the '308 patent,
6 Plaintiff Isolite Systems has suffered, and will continue to suffer, irreparable harm in
7 one or more of the following ways:

- 8 (a) Plaintiff Isolite System's relationships with certain of its
9 customers and prospective customers will be permanently
10 and irrevocably damaged in that they will be induced to
11 purchase the infringing Zirc's One-step and components
thereof from Defendant Zirc and/or its distributors and
sales representatives and may refrain from purchasing the
Isolite Product;
- 12 (b) Plaintiff Isolite Systems will lose existing customers as
13 well as prospective customers to Defendant Zirc (and/or its
14 distributors and sales representatives) and thereby
15 permanently and irrevocably lose a substantial share of the
market for the Isolite Product and components thereof to
Defendant Zirc and/or its distributors and sales
representatives;
- 16 (c) Plaintiff Isolite Systems will be forced to lower the
17 purchase price of the Isolite Product and components
thereof;
- 18 (d) Plaintiff Isolite Systems will lose a substantial and
19 inestimable amount of revenue and profits that will cause
20 the market value of Plaintiff Isolite Systems to permanently
diminish; and/or
- 21 (e) Plaintiff Isolite Systems will lose the value of the '308
22 patent in that ownership of the '308 patent gives Plaintiff
23 Isolite Systems the statutory and constitutionally protected
right to exclude others, especially competitors, from
making, using, offering to sell and/or selling embodiments
of the invention described in the '308 patent's claims.

24 185. Pursuant to 35 U.S.C. § 284, Plaintiff Isolite Systems is entitled to
25 damages for Defendant Zirc's infringing acts and for such damages to be trebled for
26 willful infringement.

27 186. Pursuant to 35 U.S.C. § 285, Plaintiff Isolite Systems is entitled to a
28 determination that this is an exceptional case and to recover reasonable attorneys'

1 fees for the necessity of bringing this claim.

2 187. As a direct and proximate result of Defendant Zirc's infringing acts,
3 Plaintiff Isolite Systems continues to suffer great and irreparable harm as described
4 above, for which Plaintiff Isolite Systems has no adequate remedy at law, unless
5 Defendant Zirc is enjoined by this Court.

6 **TWELFTH COUNT**

7 **(Direct Infringement of U.S. Patent No. D615,203 against Defendant Zirc)**

8 188. Plaintiff Isolite Systems repeats and realleges the allegations contained
9 in paragraphs 1 through 67 and 77 through 78 and hereby incorporates them herein
10 by reference.

11 189. Defendant Zirc has committed infringement of the D203 patent in
12 violation of 35 U.S.C. § 271(a) by directly infringing (either literally or under the
13 doctrine of equivalents) by making, using, selling, and/or offering to sell Defendant
14 Zirc's One-step in the United States, which is covered by at least one claim of the
15 '308 patent and therefore embodies the patented invention described in the D203
16 patent.

17 190. On information and belief, (a) prior to making, using, selling, and/or
18 offering to sell Defendant Zirc's One-step in the United States, and (b) prior to the
19 filing of this Third Amended and Supplemental Complaint, Defendant Zirc had
20 knowledge of the existence of the D203 patent due at least to the filing and service of
21 the original complaint in October, 2013.

22 191. On information and belief, prior to making, using, selling, and/or
23 offering to sell Defendant Zirc's One-step in the United States, Defendant Zirc acted
24 despite an objectively high likelihood that its actions constituted infringement of the
25 valid D203 patent, and the objectively-defined risk of infringement was either known
26 or so obvious that it should have been known to Defendant Zirc. Accordingly,
27 Defendant Zirc has engaged in willful infringement of the D203 patent by actual
28 intent to infringe or objective recklessness.

1 192. As a direct and proximate result of Defendant Zirc's infringement of the
2 D203 patent, Defendant Zirc has derived and received gains, profits and advantages
3 in an amount not presently known to Plaintiff Isolite Systems.

4 193. As a further direct and proximate result of Defendant Zirc having
5 infringed and continuing to infringe the D203 patent, Plaintiff Isolite Systems has
6 suffered, and will continue to suffer, irreparable harm in one or more of the
7 following ways:

8 (a) Plaintiff Isolite System's relationships with certain of its
9 customers and prospective customers will be permanently
10 and irrevocably damaged in that they will be induced to
11 purchase the infringing Zirc's One-step and components
thereof from Defendant Zirc and/or its distributors and
sales representatives and may refrain from purchasing the
Isolite Product;

12 (b) Plaintiff Isolite Systems will lose existing customers as
13 well as prospective customers to Defendant Zirc (and/or its
14 distributors and sales representatives) and thereby
15 permanently and irrevocably lose a substantial share of the
market for the Isolite Product and components thereof to
Defendant Zirc and/or its distributors and sales
representatives;

16 (c) Plaintiff Isolite Systems will be forced to lower the
17 purchase price of the Isolite Product and components
thereof;

18 (d) Plaintiff Isolite Systems will lose a substantial and
19 inestimable amount of revenue and profits that will cause
20 the market value of Plaintiff Isolite Systems to
permanently diminish; and/or

21 (e) Plaintiff Isolite Systems will lose the value of the D203
22 patent in that ownership of the D203 patent gives Plaintiff
23 Isolite Systems the statutory and constitutionally protected
right to exclude others, especially competitors, from
making, using, offering to sell and/or selling embodiments
of the invention described in the D203 patent's claims.

24
25 194. Pursuant to 35 U.S.C. § 284, Plaintiff Isolite Systems is entitled to
26 damages for Defendant Zirc's infringing acts and for such damages to be trebled for
27 willful infringement. Pursuant to 35 U.S.C. § 289, Plaintiff Isolite Systems is entitled
28 to Defendant Zirc's total profits from its infringement of the D203 patent and for

1 such amounts to be trebled for willful infringement.

2 195. Pursuant to 35 U.S.C. § 285, Plaintiff Isolite Systems is entitled to a
3 determination that this is an exceptional case and to recover reasonable attorneys'
4 fees for the necessity of bringing this claim.

5 196. As a direct and proximate result of Defendant Zirc's infringing acts,
6 Plaintiff Isolite Systems continues to suffer great and irreparable harm as described
7 above, for which Plaintiff Isolite Systems has no adequate remedy at law, unless
8 Defendant Zirc is enjoined by this Court.

9 **THIRTEENTH COUNT**

10 **(Inducing Infringement of U.S. Patent No. D615,203 against Defendant Zirc)**

11 197. Plaintiff Isolite Systems repeats and realleges the allegations contained
12 in paragraphs 1 through 67, 77 through 78 and 188 through 196 above and hereby
13 incorporates them herein by reference.

14 198. On information and belief, (a) prior to commencing manufacturing,
15 distributing, selling and/or offering to sell Defendant Zirc's One-step, and (b) prior
16 to the filing of this Third Amended and Supplemental Complaint, Defendant Zirc
17 had knowledge of the existence of the D203 patent due at least to the filing and
18 service of the original complaint in October, 2013.

19 199. Dental professionals and others who use Defendant Zirc's One-step are
20 committing infringement of the D203 patent in violation of 35 U.S.C. § 271(a) by
21 directly infringing (either literally or under the doctrine of equivalents) by using
22 Defendant Zirc's One-step in the United States, which is covered by at least one
23 claim of the D203 patent and therefore embodies the patented invention described in
24 the D203 patent.

25 200. On information and belief, Defendant Zirc induces dental professionals
26 and others to use Defendant Zirc's One-step (a) with actual knowledge that the use
27 thereof as intended constitutes infringement of the D203 patent, or (b) with willful
28 blindness in that Defendant Zirc took deliberate action to avoid confirming a high

1 probability that using Defendant Zirc's One-step as intended constitutes infringement
2 of the D203 patent.

3 201. Distributors, sales representatives and others who make, use, sell and/or
4 offer to sell Defendant Zirc's One-step are committing infringement of the D203
5 patent in violation of 35 U.S.C. § 271(a) by directly infringing (either literally or
6 under the doctrine of equivalents) by making, using, selling, and/or offering to sell
7 Defendant Zirc's One-step in the United States, which is covered by at least one
8 claim of the D203 patent and therefore embodies the patented invention described in
9 the D203 patent.

10 202. On information and belief, Defendant Zirc induces distributors and/or
11 sales representatives and others to sell and/or offer to sell Defendant Zirc's One-step
12 (a) with actual knowledge that such sale and/or offer to sell constitutes infringement
13 of the D203 patent, or (b) with willful blindness in that Defendant Zirc took
14 deliberate action to avoid confirming a high probability that selling and/or offering to
15 sell Defendant Zirc's One-step constitutes infringement of the D203 patent.

16 203. On information and belief, as a result of its above-described conduct,
17 Defendant Zirc has committed indirect infringement of the D203 patent in violation
18 of 35 U.S.C. § 271(b) by actively inducing dental professionals, distributors, sales
19 representatives and others, who are Defendant Zirc's direct and indirect customers to
20 place into the stream of commerce and/or make, use, sell, and/or offer to sell,
21 Defendant Zirc's One-step, with actual knowledge or with willful blindness that
22 Defendant Zirc's One-step infringes the D203 patent. Further, Zirc provides detailed
23 specifications regarding the implementation, use and performance of Zirc's one-step,
24 as shown in Exhibit "G" attached hereto and incorporated herein by reference.

25 204. On information and belief, prior to making, using, selling, and/or
26 offering to sell Defendant Zirc's One-step in the United States, Defendant Zirc acted
27 despite an objectively high likelihood that its actions constituted infringement of the
28 valid D203 patent, and the objectively-defined risk of infringement was either known

1 or so obvious that it should have been known to Defendant Zirc. Accordingly,
2 Defendant Zirc has engaged in willful infringement of the D203 patent by actual
3 intent to induce infringement or objective recklessness.

4 205. As a direct and proximate result of Defendant Zirc's infringement of the
5 D203 patent, Defendant Zirc has derived and received gains, profits and advantages
6 in an amount not presently known to Plaintiff Isolite Systems.

7 206. As a further direct and proximate result of Defendant Zirc having
8 induced infringement and continuing to induce infringement of the D203 patent,
9 Plaintiff Isolite Systems has suffered, and will continue to suffer, irreparable harm in
10 one or more of the following ways:

- 11 (a) Plaintiff Isolite System's relationships with certain of its
12 customers and prospective customers will be permanently
13 and irrevocably damaged in that they will be induced to
14 purchase the infringing Zirc's One-step and components
thereof from Defendant Zirc and/or its distributors and
sales representatives and may refrain from purchasing the
Isolite Product;
- 15 (b) Plaintiff Isolite Systems will lose existing customers as
16 well as prospective customers to Defendant Zirc (and/or its
17 distributors and sales representatives) and thereby
18 permanently and irrevocably lose a substantial share of the
market for the Isolite Product and components thereof to
Defendant Zirc and/or its distributors and sales
representatives;
- 19 (c) Plaintiff Isolite Systems will be forced to lower the
20 purchase price of the Isolite Product and components
thereof;
- 21 (d) Plaintiff Isolite Systems will lose a substantial and
22 inestimable amount of revenue and profits that will cause
23 the market value of Plaintiff Isolite Systems to
permanently diminish; and/or
- 24 (e) Plaintiff Isolite Systems will lose the value of the D203
25 patent in that ownership of the D203 patent gives Plaintiff
26 Isolite Systems the statutory and constitutionally protected
right to exclude others, especially competitors, from
making, using, offering to sell and/or selling embodiments
of the invention described in the D203 patent's claims.

27
28 207. Pursuant to 35 U.S.C. § 284, Plaintiff Isolite Systems is entitled to

1 damages for Defendant Zirc's infringing acts and for such damages to be trebled for
2 willful infringement. Pursuant to 35 U.S.C. § 289, Plaintiff Isolite Systems is
3 entitled to Defendant Zirc's total profits from its infringement of the D203 patent and
4 for such amounts to be trebled for willful infringement.

5 208. Pursuant to 35 U.S.C. § 285, Plaintiff Isolite Systems is entitled to a
6 determination that this is an exceptional case and to recover reasonable attorneys'
7 fees for the necessity of bringing this claim.

8 209. As a direct and proximate result of Defendant Zirc's infringing acts,
9 Plaintiff Isolite Systems continues to suffer great and irreparable harm as described
10 above, for which Plaintiff Isolite Systems has no adequate remedy at law, unless
11 Defendant Zirc is enjoined by this Court.

12 **FOURTEENTH COUNT**

13 **(Trade Dress Infringement in Violation of**
14 **Section 43(a) of the Federal Lanham Act**
[15 U.S.C. § 1125(a)] Against Defendant Zirc

15 210. Plaintiff Isolite Systems repeats and realleges the allegations contained
16 in paragraphs 1 through 67 above and hereby incorporates them herein by reference.

17 211. Plaintiff Isolite Systems owns a valid and protectable interest in the
18 product design trade dress of the Isolite Product, including but not limited to its
19 shape ("the Isolite Shape Trade Dress").

20 212. Plaintiff Isolite Systems adopted the Isolite Shape Trade Dress and used
21 it in interstate commerce for the Isolite Product for over ten years.

22 213. As a result of Plaintiff Isolite Systems' continuous, exclusive and
23 extensive promotion, advertising and sale of the Isolite Product incorporating the
24 Isolite Shape Trade Dress in interstate commerce and the commercial success of the
25 Isolite Product, the Isolite Shape Trade Dress has developed secondary meaning
26 among dental professionals as an identifier of the source of the Isolite Product.

27 214. On information and belief, Defendant Zirc knew of the Isolite Product
28 and the Isolite Shape Trade Dress prior to Defendant Zirc's use of the Isolite Shape

1 Trade Dress.

2 215. Defendant Zirc is using the Isolite Shape Trade Dress in connection
3 with the Zirc's One-step mouthpiece component in that it incorporates the shape of
4 the Isolite Shape Trade Dress without authorization from Plaintiff Isolite Systems.

5 216. Defendant Zirc has caused Zirc's One-step's mouthpiece incorporating
6 the Isolite Shape Trade Dress to enter into interstate commerce.

7 217. Defendant Zirc's unauthorized use of the Isolite Shape Trade Dress is
8 likely to cause confusion, or to cause mistake, or to deceive as to the affiliation,
9 connection or association of Defendant Zirc with Plaintiff Isolite Systems and/or as
10 to the origin, sponsorship, or approval of Zirc's One-step by Plaintiff Isolite Systems.

11 218. Defendant Zirc's acts as described above are in violation of 15 U.S.C. §
12 1125(a) in that Defendant Zirc has used in connection with goods or services trade
13 dress which is likely to cause confusion, and to cause mistake, and/or to deceive as to
14 the affiliation, connection or association of Defendant Zirc with Plaintiff Isolite
15 Systems and/or as to the origin, sponsorship, and approval of Defendant Zirc's
16 goods, services and commercial activities by Plaintiff Isolite Systems.

17 219. On information and belief, Defendant Zirc's above-described violations
18 of 15 U.S.C. § 1125(a) have been committed with the intent to cause confusion, to
19 cause mistake and/or to deceive.

20 220. As a direct and proximate result of Defendant Zirc's violation of 15
21 U.S.C. § 1125(a), Defendant Zirc has damaged and will continue to damage Plaintiff
22 Isolite Systems' business, goodwill and reputation, and has caused and is likely to
23 continue to cause lost sales and profits, as well as loss of exclusive ownership and
24 use of the Isolite Shape Trade Dress, resulting in public confusion and damage to
25 Plaintiff Isolite Systems' reputation.

26 221. Defendant Zirc's actions as described above have caused and will
27 continue to cause irreparable harm to Plaintiff Isolite Systems and to consumers who
28 are or are likely to be confused by Defendant Zirc's violation of 15 U.S.C. § 1125(a),

1 unless Defendant Zirc is restrained and enjoined by this Court, and Plaintiff Isolite
2 Systems has no adequate remedy at law.

3 222. As a further direct and proximate result of Defendant Zirc's actions as
4 described above, Plaintiff Isolite Systems has been damaged and will continue to
5 sustain damage, and is entitled to receive compensation arising from its lost sales,
6 lost profits, and efforts necessary to minimize and/or prevent customer confusion, in
7 an amount to be proven at the time of trial.

8 223. In addition, Plaintiff Isolite Systems is entitled to recover Defendant
9 Zirc's profits in an amount to be proven at the time of trial.

10 224. Pursuant to 15 U.S.C. § 1116(a), Plaintiff Isolite Systems is further
11 entitled to injunctive relief to enjoin Defendant Zirc from any further violation of 15
12 U.S.C. § 1125(a), and to all other and further forms of relief this Court deems
13 appropriate.

14 225. The damages sustained by Plaintiff Isolite Systems as a result of the
15 conduct alleged herein should be trebled in accordance with 15 U.S.C. § 1117(a) due
16 to Defendant Zirc's willful violation of 15 U.S.C. § 1125(a).

17 226. Plaintiff Isolite Systems is entitled to a determination that this is an
18 exceptional case and to recover reasonable attorneys' fees for the necessity of
19 bringing this claim.

20 **FIFTEENTH COUNT**

21 **(Unfair Competition in Violation of Cal. Bus. & Prof. Code §17200 et seq.**
22 **Against Defendant Zirc)**

23 227. Plaintiff Isolite Systems repeats and realleges the allegations contained
24 in paragraphs 1 through 67, 101 through 117, and 210 through 226 above and hereby
25 incorporates them herein by reference.

26 228. Defendant Zirc's actions as described above constitute unlawful, unfair
27 and/or fraudulent business acts or practices and unfair competition in violation of
28 Cal. Bus. & Prof. Code §17200.

1 229. As a direct and proximate result of Defendant Zirc’s conduct, Plaintiff
2 Isolite Systems has suffered an injury in fact, including without limitation, damages
3 in an amount to be proven at trial, loss of money or property, and diminution in the
4 value of its trade dress and goodwill associated therewith, as well as diminution in its
5 market value. Accordingly, Plaintiff Isolite Systems has standing to assert this claim
6 pursuant to Cal. Bus. & Prof. Code §17204.

7 230. Defendant Zirc’s actions have caused, and will continue to cause
8 Plaintiff Isolite Systems to suffer irreparable harm unless enjoined by this Court
9 pursuant to Cal. Bus. & Prof. Code §17203.

10 231. In addition, Plaintiff Isolite Systems is entitled to an order that
11 Defendant Zirc disgorge all profits wrongfully obtained as a result of its unfair
12 competition, and an order that Defendant Zirc pay restitution to Plaintiff Isolite
13 Systems in an amount to be proven at trial.

14 232. Plaintiff Isolite Systems is entitled to recover reasonable attorneys’ fees
15 for the necessity of bringing this claim.

16 **PRAYER FOR RELIEF**

17 **WHEREFORE**, Plaintiff Isolite Systems prays for the following relief:

- 18 1. An Order adjudging Defendant Zirc to have infringed the ‘973 patent
19 and the D203 patent under 35 U.S.C. § 271(a) with respect to Defendant Zirc’s Mr.
20 Thirsty and components;
- 21 2. An Order adjudging Defendant Black and Defendant Black Dental
22 Corp. to have infringed the ‘973 patent and the D203 patent under 35 U.S.C. §
23 271(a);
- 24 3. An Order adjudging Defendant Zirc to have infringed the ‘973 patent,
25 the ‘627 patent, the ‘308 patent and the D203 patent under 35 U.S.C. § 271(a) with
26 respect to Defendant Zirc’s One-step, and that such infringement was willful;
- 27 4. An Order adjudging Defendant Zirc to have induced infringement of the
28 ‘973 patent, the ‘627 patent, the ‘308 patent and the D203 patent under 35 U.S.C. §

1 271(b) with respect to Defendant Zirc’s One-step, and that such infringement was
2 willful;

3 5. Pursuant to 35 U.S.C. § 283:

4 (a) a preliminary and permanent injunction enjoining Defendant Zirc
5 and its directors, officers, agents, servants, employees,
6 representatives, successors and assigns, and all persons and
7 entities in active concert or participation with Defendant Zirc,
8 from directly infringing and/or indirectly infringing by
9 inducement or otherwise the ‘973 patent, the D203 patent, the
10 ‘627 Patent and the ‘308 Patent by making, using, selling and/or
11 offering to sell Defendant Zirc’s Mr. Thirsty and/or Zirc’s One-
12 step and/or inducing others to do so or otherwise;

13 (b) an Order directing Defendant Zirc to destroy all infringing
14 Defendant Zirc’s Mr. Thirsty and Defendant Zirc’s One-step
15 dental devices and all components thereof in their possession,
16 custody or control of Defendant Zirc and to file a declaration with
17 the Court within thirty (30) days of such order that Defendant
18 Zirc have complied with same;

19 6. Pursuant to 35 U.S.C. § 283:

20 (a) a preliminary and permanent injunction enjoining Defendant
21 Black and Defendant Black Dental Corp., and their directors,
22 officers, agents, servants, employees, representatives, successors
23 and assigns, and all persons and entities in active concert or
24 participation with them, from infringing the ‘973 patent and the
25 D203 patent;

26 (b) an Order directing Defendant Black and Defendant Black Dental
27 Corp. to destroy all infringing Zirc’s Mr. Thirsty dental devices
28 and all components thereof in their possession, custody or control

1 and to file a declaration with the Court within thirty (30) days of
2 such order that each has complied with same;

3 7. Pursuant to 35 U.S.C. § 284, damages adequate to compensate Plaintiff
4 Isolite Systems for Defendant Zirc's infringement, but in no event less than a
5 reasonable royalty for the use made of the inventions contained in the '973 patent,
6 and the D203 patent by Defendant Zirc with respect to Defendant Zirc's Mr. Thirsty;

7 8. Pursuant to 35 U.S.C. § 289, an Order that Defendant Zirc account for
8 all gains, profits, and advantages derived by Defendant Zirc's infringement of the
9 D203 patent with respect to Defendant Zirc's Mr. Thirsty;

10 9. Pursuant to 35 U.S.C. § 284, damages adequate to compensate Plaintiff
11 Isolite Systems for the Black Defendants' infringement, but in no event less than a
12 reasonable royalty for the use made of the invention contained in the '973 patent and
13 the D203 patent;

14 10. Pursuant to 35 U.S.C. § 289, an Order that the Black Defendants
15 account for all gains, profits, and advantages derived from infringement of the D203
16 patent;

17 11. Pursuant to 35 U.S.C. § 284, damages adequate to compensate Plaintiff
18 Isolite Systems for Defendant Zirc's infringement, but in no event less than a
19 reasonable royalty for the use made of the invention contained in the '973 patent, the
20 '627 patent, the '308 patent, and the D203 patent, with respect to Defendant Zirc's
21 One-step;

22 12. Pursuant to 35 U.S.C. § 284, an Order trebling the aforesaid damages
23 and/or exemplary damages because of Defendant Zirc's willful infringement of the
24 '973 patent, the '627 patent, the '308 patent, and the D203 patent with respect to
25 Defendant Zirc's One-step;

26 13. Pursuant to 35 U.S.C. § 289, an Order that Defendant Zirc account for
27 all gains, profits, and advantages derived from infringement of the D203 patent with
28 respect to Defendant Zirc's One-step, and an Order trebling the aforesaid amounts

1 because of Defendant Zirc's willful infringement of the D203 patent;

2 14. Pursuant to 35 U.S.C. § 285, an Order adjudging this case to be an
3 exceptional case and awarding attorneys' fees and costs to Plaintiff Isolite Systems;

4 15. For Defendant Zirc's violation of 15 U.S.C. § 1125(a), a preliminary
5 and permanent injunction enjoining Defendant Zirc, and its directors, officers,
6 employees, agents, servants, representatives and attorneys, and all persons in active
7 concert or participation with them, from infringing the trade dress of Plaintiff Isolite
8 Systems, including the Isolite Trade Dress and the Isolite Shape Trade Dress;

9 16. For Defendant Zirc's violations of 15 U.S.C. § 1125(a), an Order:

10 (a) directing Defendant Zirc to destroy all of Zirc's Mr. Thirsty
11 tongue shield components and Zirc's One-step devices that are
12 infringing the Isolite Trade Dress and/or the Isolite Shape Trade
13 Dress, as well as any plates, molds and/or other means of making
14 same, in the possession, custody or control of Defendant Zirc;
15 and

16 (b) directing Defendant Zirc to file a declaration with the Court
17 within thirty (30) days of such order that Defendant Zirc has
18 complied with same;

19 17. For Defendant Zirc's violations of 15 U.S.C. § 1125(a):

20 (a) Compensatory damages, including lost profits and goodwill;
21 (b) Disgorgement of Defendant Zirc's profits; and
22 (c) an Order declaring that Defendant Zirc's violation of 15 U.S.C. §
23 1125(a) be deemed to be willful, that this is an exceptional case,
24 and that Plaintiff Isolite Systems is entitled to treble and/or
25 enhanced damages and reasonable attorneys' fees and costs;

26 18. For Defendant Zirc's violation of Cal. Bus. & Prof. Code §17200, a
27 preliminary and permanent injunction enjoining Defendant Zirc, and its directors,
28 officers, employees, agents, servants, representatives and attorneys, and all persons

1 in active concert or participation with them, (a) from infringing any trade dress of
2 Plaintiff Isolite Systems, including the Isolite Trade Dress and the Isolite Shape
3 Trade Dress, and/or (b) from any further violations of Cal. Bus. & Prof. Code
4 §17200;

5 19. For Defendant Zirc’s violation of Cal. Bus. & Prof. Code §17200, an
6 Order:

7 (a) directing Defendant Zirc to destroy all of Zirc’s Mr. Thirsty
8 tongue shield components and Zirc’s One-step devices that
9 infringe the Isolite Trade Dress and/or the Isolite Shape Trade
10 Dress, as well as any plates, molds and/or other means of making
11 same, in the possession, custody or control of Defendant Zirc;
12 and

13 (b) directing Defendant Zirc to file a declaration with the Court
14 within thirty (30) days of such order that Defendant Zirc has
15 complied with same;

16 20. For Defendant Zirc’s violation of Cal. Bus. & Prof. Code §17200:

- 17 (a) Compensatory damages, including for lost profits and goodwill;
- 18 (b) Disgorgement of Defendant Zirc’s profits;
- 19 (c) Restitution in an amount to be proven at trial;
- 20 (d) Exemplary or punitive damages; and
- 21 (e) Reasonable attorneys’ fees and costs;

22 21. An award of pre-judgment and post-judgment interest;

23 22. Costs of this action, including reasonable attorneys’ fees; and

24 23. Such other and further relief as this court deems just and proper.

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