IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

HEAR-WEAR TECHNOLOGIES, LLC, PLAINTIFF, v. OTICON, INC.; AMERICAN HEARING SYSTEMS INC., d/b/a INTERTON-USA; INTERTON, INC.; INTERTON HORGERATE GMBH; GN HEARING CARE CORPORATION; AND GN STORE NORD A/S DEFENDANTS.	§ § § § § § § § § § § § § § §	CIVIL ACTION NO. 07-CV-212-CVE-FHM JURY DEMANDED

FIRST AMENDED COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff Hear-Wear Technologies, LLC ("Hear-Wear") files its First Amended Complaint for Patent Infringement against Oticon, Inc., American Hearing Systems, Inc., doing business as Interton-USA, Interton, Inc., Interton Horgerate GmbH, GN Hearing Care Corporation, and GN Store Nord A/S (collectively "Defendants") and shows the Court as follows:

THE PARTIES

1. Hear-Wear is a corporation duly organized and existing under the laws of the state of Oklahoma, having a principal place of business at 2488 East 81st Street, Tulsa, Oklahoma 74137.

2. Defendant Oticon, Inc. ("Oticon") is a corporation duly organized and existing under the laws of the state of California, having a principal place of business at 580 Howard Avenue, Somerset, New Jersey 08873. Oticon has made an appearance in this case.

3. Defendant American Hearing Systems Inc., doing business as Interton-USA, is a corporation duly organized and existing under the laws of the state of Minnesota, having a principal place of business at 161 Cheshire Lane, Suite 500, Minneapolis, Minnesota. Defendant American Hearing Systems Inc., doing business as Interton-USA, has made an appearance in this case.

4. Defendant Interton, Inc. is a corporation duly organized and existing under the laws of the state of Minnesota, having a principal place of business at 161 Cheshire Lane, Suite 500, Minneapolis, Minnesota 55441. Defendant Interton, Inc. has made an appearance in this case.

5. Defendant Interton Horgerate GmbH is a company duly organized and existing under the laws of Germany, having a principal place of business at Am Dannekamp 15, D-51469 Bergisch Gladbach, Germany. Defendant Interton Horgerate GmbH has made an appearance in this case.

6. Defendants American Hearing Systems Inc., doing business as Interton-USA, Interton, Inc., and Interton Horgerate GmbH are collectively referred to herein as the "Interton Defendants."

7. Defendant GN Hearing Care Corporation ("GN") is a corporation duly organized and existing under the laws of the state of California, having a principal place of business at 8001 E. Bloomington Fwy. Bloomington, MN 55420. Defendant GN Hearing Care Corporation has made an appearance in this case.

8. Defendant GN Store Nord A/S is a company duly organized and existing under the laws of Denmark, having a principal place of business at Lautrupbjerg 7, P.O. Box 99, DK-2750 Ballerup, Denmark. Defendant GN Store Nord A/S has made an appearance in this case.

9. Defendants GN Hearing Care Corporation and GN Store Nord A/S are collectively referred to herein as the "GN Resound Defendants."

JURISDICTION

10. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a) because this action arises under the patent laws of the United States, including 35 U.S.C. § 271 *et seq*.

11. This Court has personal jurisdiction over each of the Defendants because each appeared in this action without objecting to the Court's assertion of personal jurisdiction.

12. This Court also has personal jurisdiction over each of the Defendants because each has directly, or indirectly through their agents, committed acts within Oklahoma and this judicial district giving rise to this action and each of the Defendants has established minimum contacts with the forum such that the exercise of jurisdiction over each of the Defendants would not offend traditional notions of fair play and substantial justice.

VENUE

13. Hear-Wear does business and has an office in Tulsa, Oklahoma, in this district. Each of the Defendants has directly, or indirectly through their agents, committed acts within this judicial district giving rise to this action and does business in this district, including advertising and/or providing goods and services to their respective customers in this district. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391(b) (c), and 1400(b).

THE HEAR-WEAR PATENTS

14. On February 25, 1997, United States Patent No. 5,606,621 (the "'621 Patent") was duly and legally issued for an invention entitled "Hybrid Behind-the-Ear and Completely-in-

Canal Hearing Aid." Hear-Wear was assigned the '621 Patent and Hear-Wear continues to hold all rights and interest in the '621 Patent. A true and correct copy of the '621 Patent is attached hereto as Exhibit 1.

15. On April 12, 2011, the United States Patent and Trademark Office issued a first Ex Parte Reexamination Certificate for the '621 Patent, confirming the patentability of claims 1-3. This Reexamination Certificate also added new claim 4 which the United States Patent and Trademark Office determined to be patentable. A true and correct copy of the first '621 Patent Reexamination Certificate is attached hereto as Exhibit 2.

16. On July 10, 2012, the United States Patent and Trademark Office issued a second Ex Parte Reexamination Certificate for the '621 Patent, confirming the patentability of claims 1-4. A true and correct copy of the second '621 Patent Reexamination Certificate is attached hereto as Exhibit 3.

17. On November 21, 2006, United States Patent No. 7,139,404 (the "'404 Patent") was duly and legally issued for an invention entitled "BTE/CIC Auditory Device and Modular Connector System Therefor." Hear-Wear was assigned the '404 Patent and Hear-Wear continues to hold all rights and interest in the '404 Patent. A true and correct copy of the '404 Patent is attached hereto as Exhibit 4.

18. On February 7, 2012, the United States Patent and Trademark Office issued an Ex Parte Reexamination Certificate for the '404 Patent, confirming the patentability of claims 31-45 A true and correct copy of the '404 Patent Ex Parte Reexamination Certificate is attached hereto as Exhibit 5.

19. On October 26, 2012, the United States Patent and Trademark Office issued an Inter Partes Reexamination Certificate for the '404 Patent, confirming the patentability of claims

31-45 A true and correct copy of the '404 Patent Inter Partes Reexamination Certificate is attached hereto as Exhibit 6.

20. The '621 Patent and '404 Patent are collectively referred to herein as the "Hear-Wear Patents."

DEFENDANTS' PRE-SUIT KNOWLEDGE OF THE PATENTS

21. Hear-Wear's patents have been widely known and followed in the hearing aid industry, and upon information and belief, were known to Oticon and the GN Resound Defendants prior to the filing of this suit.

22. Advertisements by Hear-Wear and/or its affiliates in trade journals prior to the filing of this suit identified Hear-Wear's patents, and SeboTek products were marked to identify applicable Hear-Wear patents prior to the filing of this suit. Hear-Wear's prior suits against Vivatone and Lotus over the '621 Patent were also widely reported in the trade journals that Oticon and the GN Resound Defendants are believed to follow.

23. In March 2006, Oticon CEO Niels Jacobsen was asked during an investor briefing about the "SeboTek" patents and patent applications. Mr. Jacobsen reported that Oticon was well aware of SeboTek's patents and patent applications and had studied them.

24. SeboTek is an affiliate of Hear-Wear Technologies, LLC. Mr. Jacobsen's March 2006 reference to the "SeboTek" patents and patent applications was a reference to Hear-Wear's patents and patent applications, including the '621 Patent and the '404 Patent.

Then, in or about October 2006, Mike Worning, Vice President of Global Sales for Oticon, introduced Jim and Mike Feeley at a trade meeting as the inventors of the receiver-in-the-ear technology.

COUNT I: INFRINGEMENT OF U.S. PATENT NO. 5,606,621

25. Oticon has infringed and continues to infringe the '621 Patent. The infringing acts include, but are not limited to, the manufacture, use, sale, importation, and/or offer for sale of products and services related to hybrid behind-the-ear and completely-in-canal hearing aids and related methods for providing and/or assembling hearing aid components.

26. Oticon's infringing products and services include at least the Alta2, Nera2, Ria2, Alta2 Tinnitus, Nera2 Tinnitus, Ria2 Tinnitus, Alta, Acto, Agil, Ino, Intiga, Nera, Ria, Sensei, Delta, Dual, Epoq, Hit, Vigo, and hearing aids or other auditory devices which Oticon makes, uses, sells, offers for sale, or imports into the United States that include a behind the ear component and a receiver in the ear canal, or which are materially similar to that employed in these devices (collectively, the "Oticon Accused Instrumentalities").

27. Through these acts, Oticon is liable for infringement of the '621 Patent pursuant to 35 U.S.C. § 271(a).

28. Oticon has and continues to contribute to infringement under 35 U.S.C. § 271(c) by selling, offering to sell, and/or importing infringing hearing devices and/or components constituting a material part thereof, including at least behind the ear components, receiver in the ear canal components, and/or connection wires. On information and belief, Oticon has done so knowing these items were especially made for use in infringing the '621 Patent, and has had knowledge of such infringement and knowledge of the '621 Patent since at least April 16, 2007, the date when this action was filed. On information and belief, these components are not staple articles of commerce and have no substantial non-infringing uses. These items are used by third parties including distributors, retailers, dispensers, audiologists, hearing specialists, doctors, and/or end users to make, use, and/or sell infringing products, which actions comprise acts of

direct infringement under 35 U.S.C. § 271(a).

29. Oticon has also induced and continues to induce infringement of the '621 Patent under 35 U.S.C. § 271(b), by inducing and encouraging third parties, including distributors, retailers, dispensers, audiologists, hearing specialists, doctors, and/or end users to make, use, and/or sell, infringing products, which actions comprise acts of direct infringement under 35 U.S.C. § 271(a). Such acts of inducement include at least providing information such as product datasheets, user guides, patient brochures, and informational videos to distributors, retailers, dispensers, audiologists, hearing specialists, doctors, and/or end users. Oticon's acts of inducement further include providing dispenser referrals, product warranty information, and other customer support services to end users of the infringing hearing aid devices, and providing infringing hearing aid devices and/or behind the ear components, receiver in the ear canal components, and/or connection wires used in practicing the inventions of the '621 Patent.

30. Oticon has further known of this infringement and the existence of the '621 Patent since at least April 16, 2007, the date when this suit was filed. Oticon sold and/or offered for sale the Oticon Accused Instrumentalities, and continues to do so, specifically intending to actively encourage third parties to make, use, and/or sell the Oticon Accused Instrumentalities within the United States in a manner that Oticon knows to be infringing.

31. Oticon has infringed and continues to infringe the '621 Patent in violation of 35 U.S.C. §§ 271(a), 271(b), and/or 271(c).

32. The Interton Defendants have infringed and continue to infringe the '621 Patent. The infringing acts include, but are not limited to, the manufacture, use, sale, importation, and/or offer for sale of products and services related to hybrid behind-the-ear and completely-in-canal hearing aids and related methods for providing and/or assembling hearing aid components.

33. The Interton Defendants' infringing products and services include at least the Avio1, Avio3, Avio5, Cosmo, Crisp, Scope, Shape, Step, Share1.3, and hearing aids or other auditory devices the Interton Defendants make, use, sell, offer for sale, or import into the United States that include a behind the ear component and a receiver in the ear canal, or which are materially similar to that employed in these devices (collectively the "Interton Accused Instrumentalities").

34. Through these acts, the Interton Defendants are liable for infringement of the '621 Patent pursuant to 35 U.S.C. § 271(a).

35. The Interton Defendants have and continue to contribute to infringement under 35 U.S.C. § 271(c) by selling, offering to sell, and/or importing infringing hearing devices and/or components constituting a material part thereof, including at least behind the ear components, receiver in the ear canal components, and/or connection wires. On information and belief, the Interton Defendants have done so knowing these items were especially made for use in infringing the '621 Patent, and have had knowledge of such infringement and knowledge of the '621 Patent since at least April 16, 2007, the date when this suit was filed. On information and belief, these components are not staple articles of commerce and have no substantial non-infringing uses. These items are used by third parties including distributors, retailers, dispensers, audiologists, hearing specialists, doctors, and/or end users to sell, make, and/or use infringing products, which actions comprise acts of direct infringement under 35 U.S.C. § 271(a).

36. The Interton Defendants have also induced and continue to induce infringement of the '621 Patent under 35 U.S.C. § 271(b), by inducing and encouraging third parties, including distributors, retailers, dispensers, audiologists, hearing specialists, doctors, and/or end users to sell, make, and/or use infringing products, which actions comprise acts of direct infringement

under 35 U.S.C. § 271(a). Such acts of inducement include at least providing information such as product datasheets, user guides, patient brochures, and informational videos to distributors, retailers, dispensers, audiologists, hearing specialists, doctors, and/or end users. The Interton Defendants' acts of inducement further include providing dispenser referrals, product warranty information, and other customer support services to end users of the infringing hearing aid devices, and providing infringing hearing aid devices and/or, behind the ear components, receiver in the ear canal components, and/or connection wires used in practicing the inventions of the '621 Patent.

37. The Interton Defendants have known of this infringement and the existence of the '621 Patent since at least April 16, 2007, the date when this suit was filed. The Interton Defendants sold and/or offered for sale the Interton Accused Instrumentalities, and continue to do so, specifically intending to actively encourage third parties to make, use, and/or sell the Interton Accused Instrumentalities within the United States in a manner that the Interton Defendants know to be infringing.

38. The Interton Defendants have infringed and continue to infringe the '621 Patent in violation of 35 U.S.C. §§ 271(a), 271(b), and/or 271(c).

39. The GN Resound Defendants have infringed and continue to infringe the '621 Patent. The infringing acts include, but are not limited to, the manufacture, use, sale, importation, and/or offer for sale of products and services related to hybrid behind-the-ear and completely-in-canal hearing aids and related methods for providing and/or assembling hearing aid components.

40. The GN Resound Defendants' infringing products and services include at least the Alera, Alera TS, Dot, Dot^2, LiNX^2, LiNX, LiNX TS, Live, Live TS, Pulse, Vea, Verso, Verso

TS, and hearing aids or other auditory devices the GN Resound Defendants make, use, sell, offer for sale, or import into the United States that include a behind the ear component and a receiver in the ear canal or which are materially similar to that employed in these devices (collectively, the "GN Resound Accused Instrumentalities").

41. Through these acts, the GN Resound Defendants are liable for infringement of the '621 Patent pursuant to 35 U.S.C. § 271(a).

42. The GN Resound Defendants have and continue to contribute to infringement under 35 U.S.C. § 271(c) by selling, offering to sell, and/or importing infringing hearing devices and/or components constituting a material part thereof, including at least behind the ear components, receiver in the ear canal components, and/or connection wires. On information and belief, the GN Resound Defendants have done so knowing these items were especially made for use in infringing the '621 Patent, and have had knowledge of such infringement and knowledge of the '621 Patent since at least April 16, 2007, the date when this suit was filed. On information and belief, these components are not staple articles of commerce and have no substantial non-infringing uses. These items are used by third parties including distributors, retailers, dispensers, audiologists, hearing specialists, doctors, and/or end users to sell, make, and/or use infringing products, which actions comprise acts of direct infringement under 35 U.S.C. § 271(a).

43. The GN Resound Defendants have also induced and continue to induce infringement of the '621 Patent under 35 U.S.C. § 271(b), by inducing and encouraging third parties, including distributors, retailers, dispensers, audiologists, hearing specialists, doctors, and/or end users to sell, make, and/or use infringing products, which actions comprise acts of direct infringement under 35 U.S.C. § 271(a). Such acts of inducement include at least providing information such as product datasheets, user guides, patient brochures, and informational videos

to distributors, retailers, dispensers, audiologists, hearing specialists, doctors, and/or end users. The GN Resound Defendants' acts of inducement further include providing dispenser referrals, product warranty information, and other customer support services to end users of the infringing hearing aid devices, and providing infringing hearing aid devices and/or behind the ear components, receiver in the ear canal components, and/or connection wires used in practicing the inventions of the '621 Patent.

44. The GN Resound Defendants have known of this infringement and the existence of the '621 Patent since at least April 16, 2007, the date when this suit was filed. The GN Resound Defendants sold and/or offered for sale the GN Resound Accused Instrumentalities, and continue to do so, specifically intending to actively encourage third parties to make, use, and/or sell the GN Resound Accused Instrumentalities within the United States in a manner that the GN Resound Defendants know to be infringing.

45. The GN Resound Defendants have infringed and continue to infringe the '621 Patent in violation of 35 U.S.C. §§ 271(a), 271(b), and/or 271(c).

46. Each of the Defendants' acts of infringement has caused damage to Hear-Wear, and Hear-Wear is entitled to recover from each Defendant the damages sustained by Hear-Wear as a result of their individual wrongful acts in an amount subject to proof at trial. Each of the Defendants' infringement of Hear-Wear's exclusive rights under the '621 Patent will continue to damage Hear-Wear's business, causing irreparable harm, for which there is no adequate remedy at law, unless it is enjoined by this Court.Upon information and belief, Defendants' infringement of the '621 Patent is willful and deliberate, entitling Hear-Wear to increased damages under 35 U.S.C. § 284 and to attorneys' fees and costs incurred in prosecuting this action under 35 U.S.C. § 285. Defendants have had knowledge of the '621 Patent since at least April 16, 2007, the date

when this action was filed. Defendants have acted and continue to act despite an objectively high likelihood that their actions constitute infringement of valid patents, and knew or should have known of that objectively high risk at least as of April 16, 2007.

COUNT II: INFRINGEMENT OF U.S. PATENT NO. 7,139,404

47. Oticon has infringed and continues to infringe the '404 Patent. The infringing acts include, but are not limited to, the manufacture, use, sale, importation, and/or offer for sale of products and services related to hybrid behind-the-ear and completely-in-canal hearing aids and related methods for providing and/or assembling hearing aid components.

48. Oticon's infringing products and services include at least the Oticon Accused Instrumentalities.

49. Through these acts, Oticon is liable for infringement of the '404 Patent pursuant to 35 U.S.C. § 271(a).

50. Oticon has and continues to contribute to infringement under 35 U.S.C. § 271(c) by selling, offering to sell, and/or importing infringing hearing devices and/or components constituting a material part thereof, including at least behind the ear components, receiver in the ear canal components, and/or connection wires. On information and belief, Oticon has done so knowing these items were especially made for use in infringing the '404 Patent, and has had knowledge of such infringement and knowledge of the '404 Patent since at least April 16, 2007, the date when this suit was filed. On information and belief, these components are not staple articles of commerce and have no substantial non-infringing uses. These items are used by third parties including distributors, retailers, dispensers, audiologists, hearing specialists, doctors, and/or end users to sell, make, and/or use infringing products, which actions comprise acts of direct infringement under 35 U.S.C. § 271(a).

51. Oticon has also induced and continues to induce infringement of the ‘404 Patent under 35 U.S.C. § 271(b), by inducing and encouraging third parties, including distributors, retailers, dispensers, audiologists, hearing specialists, doctors, and/or end users to sell, make, and/or use infringing products, which actions comprise acts of direct infringement under 35 U.S.C. § 271(a). Such acts of inducement include at least providing information such as product datasheets, user guides, patient brochures, and informational videos to distributors, retailers, dispensers, audiologists, hearing specialists, doctors, and/or end users. Oticon’s acts of inducement further include providing dispenser referrals, product warranty information, and other customer support services to end users of the infringing hearing aid devices, and providing infringing hearing aid devices and/or behind the ear components, receiver in the ear canal components, and/or connection wires used in practicing the inventions of the ‘404 Patent.

52. Oticon has known of this infringement and the existence of the ‘404 Patent since at least April 16, 2007, the date when this suit was filed. Oticon sold and/or offered for sale the Oticon Accused Instrumentalities, and continues to do so, specifically intending to actively encourage third parties to make, use, and/or sell the Oticon Accused Instrumentalities within the United States in a manner that Oticon knows to be infringing.

53. Oticon has infringed and continues to infringe the ‘404 Patent in violation of 35 U.S.C. §§ 271(a), 271(b), and/or 271(c).

54. The Interton Defendants have has infringed and continue to infringe the ‘404 Patent. The infringing acts include, but are not limited to, the manufacture, use, sale, importation, and/or offer for sale of products and services related to hybrid behind-the-ear and completely-in-canal hearing aids and related methods for providing and/or assembling hearing aid components.

55. The Interton Defendants' infringing products and services include at least the Interton Accused Instrumentalities.

56. Through these acts, the Interton Defendants are liable for infringement of the '404 Patent pursuant to 35 U.S.C. § 271(a).

57. The Interton Defendants have and continue to contribute to infringement under 35 U.S.C. § 271(c) by selling, offering to sell, and/or importing infringing hearing devices and/or components constituting a material part thereof, including at least behind the ear components, receiver in the ear canal components, and/or connection wires. On information and belief, the Interton Defendants have done so knowing these items were especially made for use in infringing the '404 Patent, and has had knowledge of such infringement and knowledge of the '404 Patent since at least April 16, 2007, the date when this suit was filed. On information and belief, these components are not staple articles of commerce and have no substantial non-infringing uses. These items are used by third parties including distributors, retailers, dispensers, audiologists, hearing specialists, doctors, and/or end users to sell, make, and/or use infringing products, which actions comprise acts of direct infringement under 35 U.S.C. § 271(a).

58. The Interton Defendants have also induced and continue to induce infringement of the '404 Patent under 35 U.S.C. § 271(b), by inducing and encouraging third parties, including distributors, retailers, dispensers, audiologists, hearing specialists, doctors, and/or end users to sell, make, and/or use infringing products, which actions comprise acts of direct infringement under 35 U.S.C. § 271(a). Such acts of inducement include at least providing information such as product datasheets, user guides, patient brochures, and informational videos to distributors, retailers, dispensers, audiologists, hearing specialists, doctors, and/or end users. The Interton Defendants' acts of inducement further include providing dispenser referrals, product warranty

information, and other customer support services to end users of the infringing hearing aid devices, and providing infringing hearing aid devices and/or behind the ear components, receiver in the ear canal components, and/or connection wires used in practicing the inventions of the '404 Patent.

59. The Interton Defendants have known of this infringement and the existence of the '404 Patent since at least April 16, 2007, the date when this suit was filed. The Interton Defendants sold and/or offered for sale the Interton Accused Instrumentalities, and continue to do so, specifically intending to actively encourage third parties to make, use, and/or sell the Interton Accused Instrumentalities within the United States in a manner that the Interton Defendants know to be infringing.

60. The Interton Defendants have infringed and continue to infringe the '404 Patent in violation of 35 U.S.C. §§ 271(a), 271(b), and/or 271(c).

61. The GN Resound Defendants have infringed and continue to infringe the '404 Patent. The infringing acts include, but are not limited to, the manufacture, use, sale, importation, and/or offer for sale of products and services related to hybrid behind-the-ear and completely-in-canal hearing aids and related methods for providing and/or assembling hearing aid components.

62. The GN Resound Defendants' infringing products and services include at least the GN Resound Accused Instrumentalities.

63. Through these acts, the GN Resound Defendants are liable for infringement of the '404 Patent pursuant to 35 U.S.C. § 271(a).

64. The GN Resound Defendants have and continue to contribute to infringement under 35 U.S.C. § 271(c) by selling, offering to sell, and/or importing infringing hearing devices

and/or components constituting a material part thereof, including at least behind the ear components, receiver in the ear canal components, and/or connection wires. On information and belief, the GN Resound Defendants have done so knowing these items were especially made for use in infringing the '404 Patent, and have had knowledge of such infringement and knowledge of the '404 Patent since at least April 16, 2007, the date when this suit was filed. On information and belief, these components are not staple articles of commerce and have no substantial non-infringing uses. These items are used by third parties including distributors, retailers, dispensers, audiologists, hearing specialists, doctors, and/or end users to sell, make, and/or use infringing products, which actions comprise acts of direct infringement under 35 U.S.C. § 271(a).

65. The GN Resound Defendants have also induced and continue to induce infringement of the '404 Patent under 35 U.S.C. § 271(b), by inducing and encouraging third parties, including distributors, retailers, dispensers, audiologists, hearing specialists, doctors, and/or end users to sell, make, and/or use infringing products, which actions comprise acts of direct infringement under 35 U.S.C. § 271(a). Such acts of inducement include at least providing information such as product datasheets, user guides, patient brochures, and informational videos to distributors, retailers, dispensers, audiologists, hearing specialists, doctors, and/or end users. The GN Resound Defendants' acts of inducement further include providing dispenser referrals, product warranty information, and other customer support services to end users of the infringing hearing aid devices, and providing infringing hearing aid devices and/or behind the ear components, receiver in the ear canal components, and/or connection wires used in practicing the inventions of the '404 Patent.

66. The GN Resound Defendants have known of this infringement and the existence of the '404 Patent since at least April 16, 2007, the date when this suit was filed. The GN

Resound Defendants sold and/or offered for sale the GN Resound Accused Instrumentalities, and continue to do so, specifically intending to actively encourage third parties to make, use, and/or sell the GN Resound Accused Instrumentalities within the United States in a manner that the GN Resound Defendants know to be infringing.

67. The GN Resound Defendants have infringed and continue to infringe the '404 Patent in violation of 35 U.S.C. §§ 271(a), 271(b), and/or 271(c).

68. Each of the Defendants' acts of infringement has caused damage to Hear-Wear, and Hear-Wear is entitled to recover from each Defendant the damages sustained by Hear-Wear as a result of their individual wrongful acts in an amount subject to proof at trial. Each of the Defendants' infringement of Hear-Wear's exclusive rights under the '404 Patent will continue to damage Hear-Wear's business, causing irreparable harm, for which there is no adequate remedy at law, unless it is enjoined by this Court.

69. Upon information and belief, Defendants' infringement of the '404 Patent is willful and deliberate, entitling Hear-Wear to increased damages under 35 U.S.C. § 284 and to attorneys' fees and costs incurred in prosecuting this action under 35 U.S.C. § 285. Defendants have had knowledge of the '404 Patent since at least April 16, 2007, the date when this suit was filed. Defendants have acted and continue to act despite an objectively high likelihood that their actions constitute infringement of valid patents, and knew or should have known of that objectively high risk at least as of April 16, 2007.

JURY DEMAND

70. Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiff Hear-Wear demands a trial by jury to the full extent permitted by the United States and Oklahoma Constitutions.

PRAYER FOR RELIEF

WHEREFORE, Hear-Wear prays for judgment and seeks relief against each of the Defendants as follows:

(a) For judgment that the '621 Patent has been and continues to be infringed by each Defendant in violation of 35 U.S.C. §§ 271(a), 271(b), and/or 271(c);

(b) For judgment that the '404 Patent has been and continues to be infringed by each Defendant in violation of 35 U.S.C. §§ 271(a), 271(b), and/or 271(c);

(c) Judgment that each Defendant's infringement is willful;

(d) For an accounting of all damages sustained by Hear-Wear as the result of the acts of infringement by each Defendant;

(e) For damages adequate to compensate for Defendants' infringement, but in no event less than a reasonable royalty;

(f) For preliminary and permanent injunctions enjoining the aforesaid acts of infringement by each Defendant, their officers, agents, servants, employees, subsidiaries and those persons acting in concert with them, including related individuals and entities, customers, representatives, OEMS, dealers, and distributors;

(g) For actual damages together with prejudgment interest;

(h) For enhanced damages pursuant to 35 U.S.C. § 284;

(i) For an award of attorneys' fees pursuant to 35 U.S.C. § 285 or as otherwise permitted by law;

(j) For all costs of suit; and,

(k) For such other and further relief, at law or in equity, as the Court finds just and proper.

Respectfully submitted,

/s/ Jeff Richardson

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COUNSEL FOR PLAINTIFF
HEAR-WEAR TECHNOLOGIES, LLC

CERTIFICATE OF SERVICE

I certify that on September 14, 2015, I electronically transmitted the foregoing document to the Clerk of the Court using the ECF System for filing. Based on the electronic records currently on file, the Clerk of the Court should transmit a Notice of Electronic Filing to all counsel of record, including the following ECF registrants:

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/s/ Jeff Richardson
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