

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

MIRACON TECHNOLOGIES, LLC	§	
	§	
Plaintiff,	§	
	§	Civil Action No. 2:15-CV-00015-RWS
vs.	§	
	§	JURY TRIAL DEMANDED
CRH, PLC,	§	
OLDCASTLE, INC.,	§	
OLDCASTLE MATERIALS, INC.,	§	
STAKER & PARSON COMPANIES d/b/a	§	
JACK B. PARSON COMPANIES,	§	
LONNIE JAMES GRAY	§	
DOUGLAS BEDINGFIELD	§	
	§	
Defendants.	§	

**PLAINTIFF'S FIRST AMENDED COMPLAINT AND
REQUEST FOR INJUNCTION**

INTRODUCTION

1. Miracon Technologies, LLC is a small Texas company with big potential based on the novel technology it has developed over the years. Husband and wife team Charles and Martha Welker founded Miracon in 1999. The Welkers have devoted significant time, sweat, and financial resources to developing a unique state-of-the-art air entrainment system that unequivocally enhances the quality of concrete.

2. For more than two years, Miracon dedicated itself to developing, testing, and refining its innovative air-entrained concrete technology. Miracon patented its invention through the United States Patent No. 6,153,005 (“the ‘005 Patent”) and developed a number of trade secrets related thereto. Miracon asserts priority date of reduction to practice at least as early as June 3, 1998.

3. Still in the technology's infancy, Miracon was approached by Staker & Parson Companies d/b/a Jack B. Parson Companies ("Staker & Parson"), which was very interested in Miracon and its technology.

4. Upon information and belief, CRH, plc is the parent company of Oldcastle, Inc., which is the parent company of Oldcastle Materials, Inc., which is the parent company of Staker & Parson (collectively, the "Oldcastle Defendants"). Miracon entered into contracts (including license and supply agreements) with Staker & Parson imposing confidentiality obligations on Staker & Parson and others, including the Oldcastle Defendants. In return, Miracon understood and it was lead to believe that the Oldcastle Defendants would help Miracon to obtain a broad market presence through the national network of the Oldcastle Defendants.

5. To achieve this goal, Charles Welker ("Welker") worked closely with Staker & Parson employees Lonnie Gray ("Gray") and Doug Bedingfield ("Bedingfield") for a number of years and shared confidential and proprietary information with both individuals, as well as other Staker & Parson employees. Continuous testing and refinement of the chemical formulations, technology, and products showed promising results. The Oldcastle Defendants repeatedly requested confidential information from Miracon, which Miracon provided. Miracon was asked to present the benefits of Miracon's technology and products within the network of the Oldcastle Defendants. Miracon continued sharing confidential information into 2007. Miracon did not know why, but the same year Staker & Parson quit ordering Miracon's chemical formulation and the relationship essentially dropped off.

6. Then in October of 2014, Welker discovered that Gray and Staker & Parson had filed several patent applications and had actually obtained four patents (the "Gray Patents") on the same technology covered by Miracon's '005 Patent. In fact the Gray Patents copied (or incorporated by reference) entire segments of the '005 Patent. Defendant Gray, the technician who had learned Miracon's trade secrets through his work with Welker, was credited as the sole

inventor. Miracon also later found out that the Oldcastle Defendants were selling products practicing the Gray Patents to persons under contract with Miracon and to Miracon's prospective customers. Defendants' actions effectively cut Miracon out of the very markets in which Defendant promised to help promote and distribute Miracon's products and technology.

7. Miracon had placed its trust and confidence in the Defendants to safeguard Miracon's technology and to not cause harm to Miracon. By improperly using and disclosing Miracon's trade secrets and confidential information, Defendants breached not only this trust and confidence, but they also breached their contractual and legal obligations to Miracon. Defendants' actions have resulted in significant injury to Miracon. For this reason, as more fully explained below, Miracon has brought this action to recover for patent infringement, breach of contract, and Defendants' tortious conduct. Miracon seeks damages and injunctive relief.

8. Among other things described below, Miracon also seeks declaratory judgment with respect to all United States Patents issued to the sole inventor Lonnie James Gray (the "Gray Patents") (1) enjoining Defendants from the unauthorized practice of the '005 Patent, (2) finding that the Gray Patents are each obvious improvements upon the '005 Patent, (3) finding that, as a matter of law, the Gray Patents cannot be practiced without practicing the '005 Patent, and (4) enjoining Defendants from practicing the Gray Patents. Miracon seeks to correct inventorship of the Gray Patents to name Charles Welker as the sole or a joint inventor of these patents.

Miracon alleges as follows:

THE PARTIES

9. Miracon is the exclusive licensee of the '005 Patent. Miracon is a Texas limited liability company organized and existing under the laws of the State of Texas, having a principal place of business at 401 S. Sherman Street, Suite 101, Richardson, Texas 75081.

10. Upon information and belief, Defendant CRH, plc. (“CRH”) individually and as parent company of Oldcastle, Inc., Oldcastle Materials, Inc., and Staker & Parson Companies d/b/a/ Jack B. Parson Companies, is an Irish company having its principal place of business at Belgard Castle, Clondalkin, Dublin 22, Ireland. CRH has been served.

11. Upon information and belief, at all times material hereto, Defendant CRH, was and is the owner and/or parent company of Oldcastle, Inc., Oldcastle Materials, Inc., and Staker & Parson Companies d/b/a/ Jack B. Parson Companies.

12. Defendant CRH, individually and/or by and through its agents, servants, workers, employees, contractors, sub-contractors, affiliates, subsidiaries, and/or divisions, was and is engaged in substantial business within the Unites States, particularly within Texas, having significant design, manufacturing, shipping and/or sales of its products, including, but not limited to, precast and prestressed cement construction and building products, to vendors and/or end users in Texas, which continue to this date.

13. Defendant Oldcastle, Inc. (“Oldcastle”) individually, as a division and/or subsidiary of CRH and as parent company of Oldcastle Materials, Inc. and Staker & Parson Companies d/b/a/ Jack B. Parson Companies is registered as a Delaware corporation having a principal place of business at 900 Ashwood Pkwy., Suite 600, Atlanta, GA 30338. Oldcastle does business in the State of Texas and has been served with process.

14. Defendant Oldcastle, individually and/or by and through its agents, servants, workers, employees, contractors, sub-contractors, parent companies, affiliates, subsidiaries, and/or divisions, was and is engaged in substantial business within the Unites States, particularly within Texas, having significant design, manufacturing, shipping and/or sales of its products, including, but not limited to, precast and prestressed cement construction and building products, to vendors and/or end users in Texas, which continue to this date.

15. Defendant Oldcastle Materials, Inc. (“OMI”) individually, as a division and/or subsidiary of Oldcastle and CRH and as parent company of Staker & Parson Companies d/b/a/ Jack B. Parson Companies is registered as a Delaware corporation having a principal place of business at 900 Ashwood Pkwy., Suite 600, Atlanta, GA 30338. OMI is engaged in substantial business within the United States and throughout the State of Texas. OMI has been served with process.

16. Defendant OMI, individually and/or by and through its agents, servants, workers, employees, contractors, sub-contractors, parent companies, affiliates, subsidiaries, and/or divisions, was and is engaged in substantial business within the United States, particularly within Texas, having significant design, manufacturing, shipping and/or sales of its products, including, but not limited to, precast and prestressed cement construction and building products, to vendors and/or end users in Texas, which continue to this date.

17. Defendant Staker & Parson Companies, doing business as Jack B. Parson Companies (“Staker & Parson”), is a subsidiary of OMI, Oldcastle and CRH. Staker & Parson also signed May 31, 2005 License and Supply Agreement with Miracon indicating that Staker & Parson does or did business as Idaho Concrete. Staker & Parson is the assignee of the Gray Patents, including but not limited to the United States Patent Nos. 7,621,995, 7,670,426, 8,167,997, and 8,871,021. It is registered as a Utah corporation having a principal place of business at 2350 South 1900 West, Ogden, UT 84401. Staker & Parson has been served with process.

18. Upon information and belief, Defendant Gray is an employee of Staker & Parson. Gray has been served with process.

19. Upon information and belief, Defendant Bedingfield is an employee of Staker & Parson. Bedingfield has been served with process.

JURISDICTION AND VENUE

20. This is an action for patent infringement in violation of the Patent Act of the United States, 35 U.S.C. §1 *et seq.*

21. The Court has original and exclusive subject matter jurisdiction over the patent infringement claims for relief under 28 U.S.C. §§ 1331 and 1338(a).

22. In the alternative, this Court has jurisdiction pursuant to 28 U.S.C. §1332 because of the existing diversity of citizenship between the parties and because the matter in controversy exceeds the sum of seventy-five thousand dollars (\$75,000), exclusive of interest and costs. The Court's jurisdiction is also proper under 28 U.S.C. §§ 2201 and 2202.

23. Defendant CRH is subject to personal jurisdiction in this District by virtue of, *inter alia*, the fact that (i) it conducts business activity within the State of Texas and in this District through (a) bidding on and undertaking construction projects within Texas and in this District, (b) leveraging its products, operations, and distribution networks within Texas and in this District, (c) collaborating with building material companies, dealers and distributors located within Texas and in the Eastern District of Texas that further market, promote and sell the infringing products; (ii) has had and persists in having continuous and systematic affiliations and contacts with the State of Texas, including this District, that render it essentially at home in the forum; and (iii) has committed acts of patent infringement in the State of Texas, including in this District.

24. CRH claims to be the leading integrated building materials company in the United States with presence in all 50 states while operating as Oldcastle. CRH further claims that its structure in the United States and its strong local management teams ensure a focused approach to local markets, including within the State of Texas.

25. Defendants Oldcastle and OMI are subject to personal jurisdiction in this District by virtue of, *inter alia*, the fact that (i) they each conduct business activities within the State of

Texas and in this District through (a) offering their broad product portfolio within the State of Texas and in this District, (b) offering services and operations to projects within the State of Texas and in this District, (c) collaborating with building material companies that further sell and distribute the infringing products thorough the State of Texas and in this District; (ii) have had and persist in having continuous and systematic affiliations and contacts with the State of Texas, including this District that render each of them essentially at home in the forum; and (iii) have committed acts of patent infringement in the State of Texas, including in this District. Furthermore, OMI advertises itself as the Number 2 ready mix producer in the United States and the leading vertically integrated supplier of aggregates, asphalt, ready-mix concrete, and construction and paving services in the United States.

26. Defendants Gray and Bedingfield are subject to personal jurisdiction in this District by virtue of, *inter alia*, the fact that (i) they have personally participated in the tortious acts committed against Miracon within the State of Texas and in this District; and (ii) they have directed their conduct toward Texas.

27. During the 2003-2007 business with Miracon, Defendants Gray and Bedingfield, as representatives of Staker & Parson, repeatedly instigated and directed substantive communication to Miracon in Texas, including email, telephone, and fax communications. Gray and Bedingfield were asking Miracon to perform a variety of tests, and they required Miracon to develop variations of Miracon's chemical formulations that were job-specific and benefited the Oldcastle company network. The testing and analysis conducted within Texas and performed at Gray's, Bedingfield's, and Staker & Parson's requests were integrally connected with additional testing performed at Staker & Parson, Oldcastle, and OMI facilities. Additionally, the reports exchanged between Miracon in Texas and Defendants Gray and Bedingfield in Utah often contained detailed discussions with respect to Miracon's trade secrets and confidential/proprietary information and technology. During these exchanges, Miracon disclosed

from Texas the “know how” aspects of Miracon’s technology, and Miracon educated Staker & Parson, Oldcastle, and OMI employees in how to commercially benefit from Miracon’s trade secrets and confidential/proprietary information and technology. Furthermore, such detailed communication played a critical role in Miracon entering into various agreements with Defendants.

28. Furthermore, Defendant Gray, along with Defendant Bedingfield and a group of Staker & Parson employees, came to the 2007 National Ready Mixed Concrete Association (“NRMCA”) Technology Forum Conference held in Dallas, Texas to pursue and persuade Miracon to provide its latest improved formula in exchange of promises of a revived and/or continued business relationship with the Oldcastle Defendants. Staker & Parson’s representatives, including Bedingfield, talked in person with Welker in Texas and corresponded thereafter. Defendants requested a sample of Miracon’s improved formula to begin testing at their Utah facility. Staker & Parson, Gray, and Bedingfield sought Miracon’s most recent trade secrets and Confidential Information. On or about July 19, 2007 Gray specifically asked Miracon for 5 gallon pails of Miracon’s new formula for testing to begin. Miracon sent the sample; however, it was never notified of the results of the testing.

29. Upon information and belief, Staker & Parson and its employees, representatives, and agents (including Gray and Bedingfield) acted as the agents of CRH, Oldcastle, and OMI.

30. Venue is proper in this Court under 28 U.S.C. §§ 1391 as well as 28 U.S.C. §1400(b).

31. Furthermore, Defendant Staker & Parson has consented to venue in the Eastern District of Texas pursuant to the License Agreement between Miracon and Staker & Parson dated January 15, 2004, the License and Supply Agreement between Miracon and Staker & Parson effective July 30, 2004, and the License and Supply Agreement between Miracon and Staker & Parson d/b/a Idaho Concrete dated May 31, 2005. By virtue of the “successor”

provisions in these agreements, Gray and Bedingfield, as employees of Staker & Parson, are bound under these agreements and the forum selection clauses contained therein. To the extent that CRH, Oldcastle, or OMI are shareholders of Staker & Parson, they are also bound under the forum selection clauses contained under these agreements.

BACKGROUND

A. Miracon's Air Entrainment Technology

32. Miracon restates and re-alleges each of the allegations set forth herein and incorporates them herein.

33. Miracon's proprietary technology is comprised of Miracon Chemical Formulation, machines, and software. As used herein, Miracon Chemical Formulation or "MCF" means the Miracon EC 2315 concentrate, a proprietary chemical formulation, which has been referred to as "Miracon" or "ECC," or "ECM" or Tough Air®, and/or any solution, foamed product, surfactant, and/or resultant product produced therefrom, and/or any version thereof. As a result of these inventions, the concrete manufactured using Miracon's technology is more stable, with tested potential for new markets and ground-breaking applications.

34. The concrete industry is known for being risk-averse. Concrete, for the most part, must perform to a high level, or failures will occur. These failures could potentially cause an increase in costs or even injuries and/or death. Thus, the industry, understanding the definite and objective product performance requirements, is justifiably risk-averse.

35. Because of the risk-averse nature of the concrete industry, its producers and their customers, Miracon has spent years working on research and development to validate the effectiveness of the MCF and to develop new machinery for its ease of use, including the Miracon Machine Systems to better utilize or optimize the MCF.

36. Concrete is typically composed of water, hydraulic cement, supplementary cementitious materials, and aggregates. To modify the properties of fresh or hardened concrete, a

variety of chemical admixtures may be added to concrete mixtures, included air entraining admixtures. Air entraining admixtures provide important benefits of entrained air in both freshly mixed and hardened concrete and can improve the durability of concrete exposed to cycles of freezing and thawing and deicer chemicals.

37. The conventional methods of making concrete have proven to be unpredictable and not controllable. The commercially available compositions are not sufficiently stable in cementitious media and the results are often not consistent.

38. The technology developed by Miracon is unique because, unlike its competitors, it offers a product that solves the many problems related to entrainment of air, while being accessible and very cost effective.

39. Miracon's innovative product inhibits the factors that contribute to making the entrainment of air a very difficult process with an unpredictable end product. Among other advantages, the technology pioneered by Miracon reduces the effects of water damage, ice damage, thermal conductivity and permeability and it improves the slump, the water tightness and the workability of fresh concrete while eliminating or reducing bleeding.

40. Miracon was the first company to offer a product providing concrete compositions of tailorable and predictable densities, strengths, and other properties that do not have accelerated, unusual, or undesirable characteristics associated with the concrete compositions of the prior art.

41. Unlike other chemical-based products, which are only used in certain applications, the MCF provides benefits across a broad spectrum of applications in the concrete industry. For example, the MCF can be used in the typical air-entrained mixes, non-air mixes, grout mixes, structural lightweight mixes, non-structural lightweight mixes, geotechnical fill/CLSM mixes, shotcrete mixes, and pre-cast mixes, among others.

42. On April 16, 1999, a detailed patent application, Application Serial No. 09/293,613, was filed with the United States Patent and Trademark Office (“PTO”) describing Miracon’s product and methodology.

43. On November 28, 2000, after full and fair examination, the PTO issued United States Patent No. 6,153,005 titled “Foamed Concrete Composition and Process” (“the ‘005 Patent”), a copy of which is attached as **Exhibit A**.

44. The ‘005 Patent discusses fluorochemical foam stabilizers used to yield foams that are exceptionally stable in cementitious media. Such stabilized foams are useful as novel ultra-lightweight foam aggregates in concrete compositions of tailorable density or strength. The ‘005 Patent also describes methods of making concrete compositions including these foam aggregates.

45. The ‘005 Patent is valid and enforceable.

B. The Relationship Between Miracon and Defendants

46. Miracon restates and re-alleges each of the allegations set forth herein and incorporates them herein.

47. After significant technological advances, Miracon made a commitment to use its proprietary and confidential information to develop and commercialize the world’s first mechanically produced preformed air entrainment system, for production of concrete.

48. In 2003, Miracon, still a young company looking to launch its technology in the concrete industry, participated in the World of Concrete show where it was approached by two representatives of Staker & Parson, Lonnie Gray and Rod Higley (“Higley”).

49. Miracon saw great value in working with a larger, reputable concrete producer, Staker & Parson, and ultimately with CRH, Oldcastle, and OMI due to their national reach and industry presence.

50. Defendant Staker & Parson is a subsidiary of Oldcastle and together claim to be North America's largest manufacturer of building products and the largest supplier of precast and ready-mixed concrete, as well as construction and paving services in the United States.

51. On or about January 15, 2004, the parties entered into a Letter of Intent between Staker & Parson and Miracon (the "Letter of Intent"). Among other things, the purpose of the Letter of Intent was for the parties to enter into a proprietary relationship within the geography that was covered by Staker & Parson. Generally, the Letter of Intent set forth certain limitations regarding Miracon's actions for the ready mix market in specific geographies, testing information, technical support, and hardware provisions. Certain cooperation efforts and purchasing commitments were required of Staker & Parson.

52. Also on or about January 15, 2004, Miracon and Staker & Parson executed the Miracon Technologies, Inc. License Agreement (the "License Agreement"). Pursuant to the same, Staker & Parson became a non-exclusive Licensee of the right to use Miracon's technology.

53. On or about July 30, 2004, Miracon and Staker & Parson entered into a non-exclusive License and Supply Agreement (the "Supply Agreement").

54. The License Agreement and the Supply Agreement limit Defendant Staker & Parson's ability to use Miracon's confidential information. Moreover, the License Agreement and Supply Agreement make clear that Miracon retained all proprietary and intellectual property rights including all patent rights. Staker & Parson also agreed to various restrictions relating to reverse engineering, decompiling, disassembling, or copying Miracon's technology.

55. Defendant Staker & Parson, corporately and as to all individuals of its agents, officers, directors, shareholders, and employees, further agreed to safeguard all confidential information from unauthorized use or disclosure to third parties.

56. On or about July 30, 2004, a Distribution Agreement between Miracon and Staker & Parson Companies (the “Distribution Agreement”) was also entered into by the two parties.

57. This document was finalized by Scott Parson, former President of Staker & Parson, current President of Oldcastle Mountain West Division, and executive of CRH.

58. John Parson, the brother of Scott Parson, was consulted prior to the execution of the agreements described herein. John Parson is also a former President of the Staker-Parson Group, current President and Chief Operating Officer of Oldcastle West, and an established executive of CRH.

59. Among the purposes of the Distribution Agreement was for the parties to enter into a proprietary relationship and a mutually-exclusive relationship.

60. Scott Parson negotiated the Distribution Agreement on behalf of the Oldcastle companies and proposed the introduction of a provision that allowed the parties to agree to develop a first-right-of-refusal on behalf of the Oldcastle companies, inserting the following language that became part of the agreement: “4) The parties agree to develop a first-right-of-refusal agreement in behalf of Oldcastle companies prior to Miracon being sold to Oldcastle's competitors prior to January 1, 2005.”

61. As part of the agreements described above, Miracon agreed to disclose certain of its confidential and proprietary information, including its trade secrets (the “Miracon Confidential Information”) to Staker & Parson.

62. The Miracon Confidential Information included, but was not limited to the MCF and Miracon Machine Systems, and certain technical “know how” in the use of the MCF and Miracon Machine Systems.

63. The “know how” provided, among other things, insights into the MCF and Miracon Machine Systems necessary to commercially exploit Miracon’s technology.

64. Miracon agreed to make these disclosures because it believed, at the time, that Staker & Parson had a legitimate and good-faith interest in working with Miracon to develop concrete products that were based on and/or utilized Miracon's technology including, but not limited to the MCF, Miracon Machine Systems, and Confidential Information.

65. Pursuant to the Distribution Agreement, Miracon agreed to certain limitations about sales to other ready-mixed concrete companies, and Staker & Parson agreed to engage in actions that would increase the use of Miracon product for all high-air and lightweight concrete mixes throughout its network of locations and affiliates.

66. The License Agreement and Supply Agreement limited Staker & Parson's ability to use the Miracon Confidential Information. Moreover, the License Agreement and Supply Agreement make clear that Miracon retained all proprietary and intellectual property rights, including all patent rights.

67. Staker & Parson also agreed to various restrictions including but not limited to reverse engineering, decompiling, disassembling, or copying Miracon's technology.

68. On or about May 31, 2005 Miracon and Staker & Parson d/b/a Idaho Concrete entered into a non-exclusive License and Supply Agreement (the "2005 License and Supply Agreement").

69. The 2005 License and Supply Agreement encompassed very similar provisions and the same restriction on parties as the Supply Agreement executed with Staker & Parson on July 30, 2004. In fact, Scott Parson negotiated the 2005 License and Supply Agreement on behalf of Staker Parson Co d/b/a Idaho Concrete while allowing Idaho Concrete President, John Grunenwald ("Grunenwald") to execute same.

70. The agreements described herein formed the backdrop against Miracon's relationship and dealings with Defendants.

C. Defendants' Infringing, Tortious, and Unlawful Conduct

1. Defendants Build a Relationship with Miracon to Gain Access to Miracon's Trade Secrets and Confidential/Proprietary Technology

71. Miracon restates and re-alleges each of the allegations set forth herein and incorporates them herein.

72. Defendants Staker & Parson, Oldcastle, OMI, and CRH represent and operate within a network of companies performing and/or providing concrete construction related services and/or materials.

73. Defendants Staker & Parson, Oldcastle, OMI, and CRH share employees, officers, directors and/or team leads, who provide services or have responsibilities for numerous corporate entities working to further the corporate ambitions and goals of CRH, Oldcastle, and OMI. Upon information and belief, the parent companies exercise control over their subsidiaries.

74. Over the course of several years, Miracon worked with numerous CRH, Oldcastle, and OMI representatives who had repeated interactions with Miracon personnel, and who, upon information and belief, had participated in the testing, marketing, and evaluation and comparison of Miracon's trade secrets and proprietary information. Miracon does not recall all of the specific names of persons, but recalls that individuals from Oldcastle, CRH, and OMI introduced themselves as principals of the Oldcastle Defendants and listened to and obtained confidential information and trade secrets from Miracon and communicated with Miracon.

75. In 2005 Scott Parson facilitated for Miracon to make a presentation with respect to its technology in front of Oldcastle and OMI representatives at an Oldcastle RMC Best Practice Meeting. Weeks after such presentation and upon continued positive reviews of Miracon's technology by the Oldcastle family, Scott Parson organized an entire day of presentations and lab tests of Miracon's product at one of Staker & Parson's main laboratories in Utah.

76. Various communications, information, and feedback were provided to and from Oldcastle and OMI employees and various representatives concerning the Miracon technology and Defendants' business alliance with Miracon.

77. From the inception of the relationship with Staker & Parson, and during the years of collaboration with the Defendants, Miracon understood that Staker & Parson would offer access to the Oldcastle, OMI, and CRH network. In fact, Scott Parson indicated at one point that the goal was to switch from their usual admixtures to using Miracon Chemical Formulation in their mixes.

78. Miracon was encouraged, particularly by Gray, Bedingfield and Scott Parson to convey its confidential information and trade secrets to the Defendants. Such trade secrets would have never become known but for the position of trust and confidence that was gained by Defendants following the execution of the identified Agreements.

79. Gray and Staker & Parson then used Miracon's Confidential Information and trade secrets to secure patents for Defendants' benefit.

80. A large scale launch of a new air entrainment product for the production of concrete requires numerous laboratory and on site demonstrations, testing and implementation of quality control programs.

81. Miracon's formal collaboration with Staker & Parson and its parent companies started with on-site testing at Staker & Parson's main laboratory and testing facility in Salt Lake City, Utah in mid 2003, and it continued with on-site work at various laboratories and plants through early 2007. Throughout this time, Miracon's president, Mr. Charles Welker, worked with executives of these companies as well as with numerous employees and team leads. Welker's main contact was with the Defendant Gray.

82. Upon information and belief, in the beginning of his work relationship with Welker in 2003, Gray was employed by Staker & Parson and was assigned in the technical services department.

83. Upon information and belief, prior to his employment with Staker & Parson, Gray was employed as a truck driver and he had limited experience in the field of precast and ready-mixed concrete. Before his collaboration with Welker, Gray had little to no experience with air entrainment products.

84. During 2003 and the early months of 2004, Gray was solely an observer and a facilitator of Welker's demonstrations to Staker & Parson. Gray's function was to prepare the concrete plants and the research centers prior to testing. After the execution of the License Agreement and Supply Agreement, Gray was assigned to work very closely with Welker.

85. On or about April 2004, Gray became intensively involved in all testing and demonstrations concerning the Miracon technology at various Staker & Parson research facilities and concrete plants in Utah, including but not limited to California Avenue, Point South, Spanish Fork, and Park City. Gray worked side-by-side with Welker to understand the product and the methodology pioneered by Miracon.

86. At the end of his education process, which was marked on or about April 2005, Gray became very familiar with the Miracon product, its various applications, and the critical steps of the methodology used by Miracon.

87. Beginning in or about 2004, Welker had various communications with another representative of Staker & Parson, Douglas Bedingfield ("Bedingfield"). Bedingfield was employed by Staker & Parson where he held the title of Quality Control Manager.

88. Despite great reviews and impressive performance of the Miracon technology, Bedingfield showed reluctance in recommending and promoting the Miracon product.

89. Upon information and belief, Bedingfield sabotaged several of Miracon's testing either by not providing the complete details of the field and laboratory batches or by other similar methods.

90. Upon information and belief, there were numerous instances where Bedingfield would cite Miracon at fault for what was later proved to be issues with the materials provided by Staker & Parson. Such accusations would delay and derail Miracon's testing as well as result in additional work for Welker and Gray who would have to reveal the real issues with the failed testing.

91. Specifically, in or about 2006, several tests were designed and conducted of the Miracon product. Bedingfield's faulty design of the testing led to poor results and to Bedingfield's desired conclusion that the Miracon product is too expensive and therefore could not be utilized. One such faulty testing was discussed on or about April 13, 2006 in a meeting attended by Scott Parson, Bedingfield, Gray, Higley, and Welker, among others. Upon information and belief, the meeting ended with instruction that Gray and Welker would be consulted with respect to testing procedure.

92. In his position as Quality Control Manager, Bedingfield was responsible for providing a safe and secure area for Miracon's trade secrets and Confidential Information to be stored and tested, which he failed to do, thereby potentially allowing them to be tampered with and/or stolen. Upon information and belief, Bedingfield allowed Miracon trade secrets and confidential and proprietary information to be tampered with, stolen, and/or disclosed to third parties.

93. Upon information and belief, Bedingfield was motivated in his actions by his reported close affiliation with Craig Nelson ("Nelson"), representative for W. R. Grace, who had been selling to Staker & Parson various admixture products used with the conventional methods of producing concrete. Upon information and belief, and during the timeframe of 2004 through

2006, Nelson offered various kickbacks to Bedingfield, such as trips and golf clubs, in return for his business and loyalty to the W. R. Grace products.

94. On two separate occasions, Bedingfield requested Welker to compensate Nelson if Miracon wanted to enter the concrete market. One occasion was in or around 2004 in Bedingfield's office located at Staker & Parson's Beck Street Laboratory in Salt Lake City, Utah. Defendant Gray was also present for this meeting where Bedingfield informed Welker that he was very concerned with Miracon's success, and that Nelson would suffer significantly due to Miracon's replacing W.R. Grace air entraining products. Another occasion occurred in or around 2006 at a lunch meeting between Welker and Bedingfield. During the lunch, Bedingfield again requested that Miracon compensate Nelson. Miracon did not entertain the suggestions and would not consider such compensation.

95. Bedingfield's poor testing reports addressing Miracon's product intensified during 2005. Specifically, during the spring and summer months of 2005, Bedingfield refused to recommend Miracon and stated that the product was allegedly too expensive to survive the market.

96. Notably, the tests made on the Miracon product not designed by Bedingfield, such as those performed in 2003 and throughout 2004, showed great performance results of the Miracon product.

97. Upon information and belief, Bedingfield misappropriated Miracon's trade secrets by wrongfully copying Miracon's trade secrets and reverse engineering Miracon's products, despite his contractual obligations and legal duty to maintain the secrecy of and limit the use of such information.

98. Upon information and belief, Bedingfield further misappropriated Miracon's trade secrets by wrongfully disclosing Miracon's trade secrets to third-parties, despite knowledge that he was legally and contractually obligated to refrain from such conduct. Bedingfield's conduct

was, upon information shown through discovery, known by the Oldcastle executives who, during one of their monthly meetings had reportedly discussed “concerns of the admixture suppliers getting hold of Miracon’s technology.”

99. Finally, on or about the Spring of 2005, after having gained the intricate knowledge of Miracon’s products and technology while working with Welker, Gray, Bedingfield, and the other Defendants, upon information and belief, were able to copy Miracon’s product and put it through commercial production of the foamed admixture, selling the product to Miracon’s competition notwithstanding Miracon patent rights and in total violation of the License Agreement, the Supply Agreement and the 2005 License and Supply Agreement.

100. Upon information and belief, the last shipment of the chemical ordered by Staker & Parson was in or about April 2007 to Four Corners Materials (“4 Corners”) in Farmington, New Mexico, one of Oldcastle’s subsidiary’s under Staker & Parson management.

101. Staker & Parson and its representative, including Bedingfield and Gray, approached Miracon about obtaining Miracon’s improved formula of MCF in Texas in 2007. On or about July 26, 2007, trusting Bedingfield’s and Gray’s statements of a revived relationship between the parties, Miracon, relying on such promises, shipped a 5 gallon pail of the improved MCF Defendants had requested. Unfortunately, rather than continuing or reviving the relationship, Defendants continued building their data on Miracon and bolstering their patent portfolio as well as their product-line while following their conduct of deceit and misappropriation.

102. At some point, the Oldcastle Defendants began replacing MCF with the infringing products. Upon information and belief, Defendant Gray’s brother, Jeff Gray, formed a company named Synergia, LLC (“Synergia”). Upon information and belief, Synergia was formed for the sole purpose to become the exclusive distributor to the Oldcastle Defendants for at least one of the infringing products labeled as CarbonKnight. Upon information and belief, the Oldcastle

Defendants, with Defendant Gray's aid, entered into agreement(s) with Synergia to reserve Synergia as their exclusive distributor.

103. CarbonKnight includes the product F-500 manufactured by Hazard Control Technologies ("HCT"). Thus, the Oldcastle Defendants replaced MCF – which was a formulation derived from fire-fighting foams – with another – F-500. Staker & Parson acknowledges that mixes using this substitute chemical formulation practices the '021 Gray Patent. Upon information and belief, the Oldcastle Defendants knew Staker & Parson (and others acting in concert with Staker & Parson) had been using a product containing a fluorosurfactant to replace Miracon; however, the Oldcastle Defendants now deny that their non-MCF formulations ever contained fluorosurfactants.

2. *While exploiting the relationship with Miracon, Staker & Parson and Gray Obtain the Gray Patents*

104. Miracon restates and re-alleges each of the allegations set forth herein and incorporates them herein.

105. Miracon was providing Staker & Parson, Gray, Bedingfield, and representatives, officers, and agents of Defendants confidential and proprietary information and trade secrets. Miracon was working hand in hand with Defendants to develop better products. Behind Miracon's back, however, Staker & Parson was seeking to claim and protect Miracon's innovative technology as its own for the benefit of itself, as well as Oldcastle, OMI, and CRH. Indeed, against the backdrop of the relationship described above, Gray and Scott Parson were improperly obtaining patents to sidestep the agreements with Miracon and to enable Defendants to cut Miracon out of the marketplace. Discovery has shown that Scott Parson himself contacted the patent law office of Workman Nydegger and, after discussions with their attorneys at least by July 18, 2005 began the process of obtaining patents predicated on Miracon's technology, confidential information, and trade secrets.

106. The Oldcastle Defendants' relationship with Workman Nydegger has continued over the years and the work performed includes the filing and prosecution of the U.S. and foreign Gray patent applications. Scott Parson remained in close contact with the Oldcastle Defendants' patent attorneys and, upon information and belief, he became their main contact despite the inventorship being offered to the Defendant Gray, who was the only named inventor on the applications based on Miracon technology.

107. Upon information and belief, on September 9, 2005, with knowledge of the '005 Patent, Gray filed with the PTO the provisional patent application Serial No. 60/715,458 ("the '458 application") entitled "Concrete Mixtures Having Aqueous Foam Admixtures."

108. The '458 application disclosed and claimed the subject matter related to Miracon's air entrainment system for cementing or concreting, including Miracon's fluorochemical surfactant. Such information had been already disclosed in the '005 Patent and was demonstrated by Welker through the business relationship between Miracon and the Defendants.

109. On December 19, 2005, the '458 application was converted into the non-provisional U.S. patent applications: Serial No. 11/305,959 ("the '959 application") entitled "Concrete Mixtures Incorporating High Carbon Pozzolans and Foam Admixtures", Serial No. 11/305,960 ("the '960 application") entitled "Concrete Mixtures Having High Flowability," and Serial No. 11/311,490 ("the '490 application") entitled "Concrete Mixtures Having Aqueous Foam Admixtures."

110. On or about December 12, 2005, Gray assigned the '959, the '960, and the '490 applications to Staker & Parson.

111. On February 5, 2010, Gray filed with the PTO the non-provisional U.S. patent application Serial No. 12/701,398 ("the '398 application") entitled "Concrete Mixtures Having

Stabilized Foam Admixture.” The ‘398 application is a continuation-in-part of the ‘490 application and it claims priority from the ‘458 application.

112. On or about February 5, 2010, Gray assigned the ‘398 application to Staker & Parson.

113. On March 8, 2011, Gray filed with the PTO the provisional U.S. patent application Serial No. 61/450,614 (“the ‘614 application”) entitled “Concrete Mixtures Including Carbon Encapsulating Admixture.”

114. On March 8, 2012, Gray filed with the PTO the non-provisional U.S. patent application Serial No. 13/415,824 (“the ‘824 application”) entitled “Concrete Mixtures Including Carbon Encapsulating Admixture.” The ‘824 application claims priority from the ‘614 application.

115. On or about March 8, 2012, Gray assigned the ‘824 application to Staker & Parson.

116. On March 8, 2012, Gray filed International Patent Application Serial No. PCT/US2012/028379 (“the ‘379 application”) entitled “Concrete Mixtures Including Carbon Encapsulating Admixture.” The ‘379 application claims priority from the ‘614 application and it carries an International Publication Number WO 2012/122433 A3 dated September 13, 2012.

117. The ‘379 application lists as inventor Defendant Gray and as Applicants Defendants Staker & Parson and Gray. Hansen of Workman Nydegger is listed as Agent. Such application is currently listed as abandoned.

118. The PTO Examiner, Paul Marcantoni (“Marcantoni”), examined all U. S. applications filed by Gray. The ‘959 application was rejected by examiner Marcantoni for being unpatentable over the ‘005 Patent under 35 U.S.C. § 103(a).

119. On or about August 27, 2009, the ‘959 application was abandoned after Gray’s failure to file a reply to Marcantoni’s rejection.

120. Next, examiner Marcantoni rejected the '960 application under 35 U.S.C. § 103(a) as being unpatentable over the '005 Patent. On May 27, 2009 Marcantoni conducted a telephonic interview with Staker & Parson's counsel, Mr. Andrew S. Hansen ("Hansen"), during which he was advised that Gray's application differed from the '005 Patent because of a particular order of mixing ingredients classified by Hansen as critical in achieving the aims of the claimed invention.

121. Despite the fact that no single claim in the '960 application is a method claim, Marcantoni, without further research and trusting the candor of Staker & Parson's counsel, allowed the issuance of United States Patent No. 7,621,995 ("the '995 patent"). A true and correct copy of the '995 patent is attached hereto as **Exhibit B**.

122. Similarly, the '490 application was rejected by examiner Marcantoni under 35 U.S.C. § 102(b) as anticipated by or, in the alternative, under 35 U.S.C. § 103(a) as obvious over the '005 Patent. Following the May 27, 2009 interview with Hansen, Marcantoni allowed the issuance of United States Patent No. 7,670,426 ("the '426 patent") dated March 2, 2010. A true and correct copy of the '426 patent is attached hereto as **Exhibit C**.

123. Continuing the review of Gray's applications, Marcantoni listed the '005 Patent as prior art in the prosecution of the '398 application. Nevertheless, he allowed the issuance of the United States Patent No. 8,167,997 ("the '997 patent") dated May 1, 2012 without further examination. A true and correct copy of the '997 patent is attached hereto as **Exhibit D**.

124. Finally, upon very limited examination, Marcantoni allowed the '824 application. Despite its relevancy as prior art, the '005 Patent was not disclosed within this application.

125. The United States Patent No. 8,871,021 ("the '021 patent") was issued on October 8, 2014, a true and correct copy of which is attached hereto as **Exhibit E**.

126. As set forth in the foregoing allegations and in Exhibits B-E, the Gray Patents are all based on Miracon's '005 Patent.

127. Thus, all the Gray Patents are invalid as unpatentable over '005 Patent. Even if Gray's invention would be considered as novel, the Gray Patents are obvious improvements upon the '005 Patent and, therefore, the Gray Patents cannot be practiced without infringing the '005 Patent.

128. Upon information and belief, Defendants, and each one of them independently, is practicing and/or advertising the Gray Patents by at least making, using, selling, and offering for sale air entraining products, cellular air products, and air technology to be used as a lightweight composite in precast/prestressed and ready-mix concrete based on Miracon's technology. Therefore, each Defendant is practicing the '005 Patent literally and/or under the doctrine of equivalents.

129. Moreover, Hansen was aware of material information relating to issued '021 Patent years prior to filing the '614 provisional application. Upon information and belief, since 2008 Hansen knew of Oldcastle Defendants' infringing product, CarbonKnight, and its offer for sale by Staker & Parson, he also knew that such product has contained, upon information and belief, fluorosurfactant. Hansen failed to disclose such material information and he, once again, failed to uphold his ethical duty to USPTO.

130. Staker & Parson, acting through Hansen, also failed to properly credit Charles Welker with inventorship of the Gray Patents. Upon information and belief, Hansen and Staker & Parson had an intent to deceive the USPTO. Such inequitable conduct and fraud on the USPTO make the Gray Patents invalid, or at a minimum, require correction of inventorship.

131. Defendants are not authorized to practice the '005 Patent.

3. *Having unlawfully used and taken what they wanted from Miracon, Defendants substantially harmed Miracon*

132. Miracon restates and re-alleges each of the allegations set forth herein and incorporates them herein.

133. Miracon learned of the Gray Patents in or about October 2014, while performing searches in advance of its filing of a non-provisional patent application.

134. Oldcastle Defendants utilized and disclosed Miracon's trade secrets, confidential information and inventions in their efforts to appropriate Miracon's technology, develop a patent portfolio, and segregate Miracon from the major players in the construction industry. The Oldcastle Defendants have substantially benefited from their access, through Gray, to and use of Miracon's confidential and proprietary technology, because they did not have to "re-invent the wheel." They stole Miracon's know-how, confidential information and invention and are using such information to develop competing products.

135. The Oldcastle Defendants along with Gray and Bedingfield misappropriated confidential and proprietary information belonging to Miracon. They have benefited, and will benefit, from this misappropriation.

136. The Oldcastle Defendants did not have to spend the millions of dollars and years of research and development that they otherwise would have had to spend. Unless stopped, the Oldcastle Defendants will continue to use such information and continue to obtain significant financial benefit at the detriment of Miracon.

137. Through their actions, the Oldcastle Defendants gained an unfair competitive advantage in the industry and can develop improvements without paying for the technology pioneered by and misappropriated from Miracon.

138. Through breaches of the agreements at issue, tortious conduct, and patent infringement, the Oldcastle Defendants successfully eliminated Miracon from its competition pool and denied Miracon the ability to sell and/or license the Miracon technology without significant barriers/encumbrances to others.

139. Specifically, Miracon has lost contracts and/or the opportunity to conduct business with at least four third-parties.

140. Although Miracon had a license agreement with a customer in Utah and had begun supplying that customer with its product with respect to a major project located in Utah County, Utah, Oldcastle approached Miracon's customer to propose and negotiate the replacement of the Miracon product with their infringing product.

141. Since June 2011, the Oldcastle Defendants eliminated Miracon from the lucrative multi-million dollar project and began supplying Miracon's customer with its mix designs practiced under the '021 Gray Patent that included ingredients such as CarbonKnight and Micro-AE in their concrete products.

142. Miracon was not able to continue this business opportunity. Miracon was damaged, including but not limited to lost profits. The Oldcastle Defendants, on the other hand, profited from the business they took from Miracon.

143. Moreover, upon information and belief, years after the break of the relationship with Miracon, Defendants continued to sell to Formco the ProFlo/WIN3 line of products developed with Miracon's assistance while replacing the MCF with infringing product.

144. Miracon was not able to continue its contract with the customer or to pursue further business opportunity. Miracon was damaged, including but not limited to lost profits. The Oldcastle Defendants, on the other hand, profited from the business they took from Miracon.

145. Furthermore, Defendants' competing line of products, which was, upon information and belief, fast tracked and developed because of Defendants' stealing and fraud that they perpetrated upon Miracon, has been advertised, marketed, and sold in direct competition to Miracon.

146. Upon information and belief, another prospective Miracon customer, "T.M." was interested in working with Miracon's product in 2011 while also contracting with Staker & Parson for various services. Defendant Gray and Staker & Parson employee Lou Nicoletti provided Miracon with a sample of T.M.'s ingredients for testing with MCF. The sample

shipped from Staker & Parson appeared to be tampered with as Miracon was not able to conclude its testing or to provide a complete report to T.M. Miracon was not able to pursue this business opportunity. Miracon was damaged, including but not limited to lost profits.

147. In or about September 2014, prospective Miracon customer and developer “R.S.” began communication with Miracon and Staker & Parson. Nicoletti, of Staker & Parson, informed R.S. that “upper management” did not intend to work on the same project with Miracon. Consequently, Miracon’s negotiations with R.S. ended, and Miracon was not able to secure a contract with R.S.

148. Miracon was not able to pursue this business opportunity. Miracon was damaged, including but not limited to lost profits. The Oldcastle Defendants, on the other hand, profited from the business they took from Miracon.

149. Defendants have made negative, disparaging, and false statements about Miracon and its products to a company in Colorado and another in Iowa. Such statements were made to dissuade these two companies from using Miracon or its products or from entering into business relations with Miracon.

150. These examples are simply the tip of the iceberg. Defendants and/or their affiliates, parents, and subsidiaries have been spreading doubt and suspicion within the industry in regards to Miracon’s products and services in an effort to ruin Miracon’s reputation and to profit at Miracon’s expense.

151. This behavior opened a world of opportunities for Staker & Parson, Oldcastle, and OMI, including selling and/or licensing Miracon technology to other users of concrete compositions in total violation of Miracon patent and licensing rights. Thus, despite Scott Parson’s and others assurances that the Oldcastle Defendants wanted to use MCF in their mixes, the Oldcastle Defendants have sought to deny Miracon any market presence.

152. Miracon has suffered damages as a result of Defendants' conduct, including but not limited to lost profits, lost goodwill, loss of reputation, and lost royalties. Additionally, Miracon has been irreparably injured and is entitled to seek injunctive relief, in addition to all other legal and equitable remedies.

COUNT I
INFRINGEMENT OF UNITED STATES PATENT NO. 6,153,005
(Infringing Defendants)

153. Miracon restates and re-alleges each of the allegations set forth herein and incorporates them herein.

154. Miracon is the exclusive licensee and has standing to enforce the '005 Patent.

155. In violation of 35 U.S.C. § 271, CRH, Oldcastle, OMI, and Staker & Parson (the "Infringing Defendants"), have infringed and, if not enjoined, will continue to infringe the '005 Patent by (1) manufacturing, using, marketing, selling, offering for sale, and/or importing, without authority, products and services that are covered by one or more claims of the '005 Patent, literally and/or under the doctrine of equivalents, in violation of 35 U.S.C. § 271(a); and/or (2) inducing infringement of one or more claims of the '005 Patent, in violation of 35 U.S.C. § 271(b). In particular, Infringing Defendants infringe one or more claims of the '005 Patent directly and indirectly, literally and/or under the doctrine of equivalents, and by inducement by (1) manufacturing, using, marketing of, selling, and/or offering for sale air entrainment products based on Miracon technology; and (2) using method and process claimed in the '005 Patent.

156. The Infringing Defendants directly infringe one or more claims of the '005 Patent at least by making, using, selling, and offering for sell air entraining products, cellular air products, air technology to be used as a lightweight composite in precast and ready-mix concrete based on Miracon's technology.

157. Specifically, the Infringing Defendants have made, used, sold, offered for sale and/or distributed a number of infringing products in the United States. For example there are at least eight products that practice the '995 Patent, the '426 Patent, and/or the '997 Patent and sixty-six products that practice the '021 Patent, which necessarily means all of those products infringe the '005 Patent. These products are based on Miracon's technology and practiced under the trade names WIN3® and ProFlo, and likely other names presently unknown to Miracon. These products are sold to customers and potential customers that include, for example, companies in the construction industry in the United States and particularly in the State of Texas, in addition to individual customers in the United States and this District.

158. The Infringing Defendants market and sell their air entraining products and ready-mix concrete based on Miracon's technology to customers and potential customers that include, for example, companies in the construction industry throughout the United States and in the State of Texas, in addition to individual customers in the United States. For example, at least one of the Staker & Parson's infringing products was sold to a customer in Utah and was used to replace Miracon's product, resulting in a loss of business to Miracon.

159. The Infringing Defendants indirectly infringe one or more claims of the '005 Patent at least because they have had knowledge of the '005 Patent and have induced others to infringe the '005 Patent.

160. The Infringing Defendants had knowledge of the '005 Patent since at least the beginning of their collaboration with Miracon in 2004.

161. The Infringing Defendants have and continue to indirectly infringe one or more claims of the '005 Patent by inducing others (e.g., customers and end-users) to directly infringe the '005 Patent in this District and elsewhere in the United States in violation of the 35 U.S.C. § 271(b).

162. Through their website, sales personnel, and advertising, the Infringing Defendants have been marketing and promoting and continue to market and promote the use of their air entraining products, precast and ready-mix concrete based on Miracon's technology, which infringe the '005 Patent when they are used as the Oldcastle Defendants intend by their customers and end-users. The Infringing Defendants further instructed their customers and end-users how to use such products in a manner that infringes the '005 Patent claims.

163. The Infringing Defendants have been contributorily infringing the '005 Patent in violation of the 35 U.S.C. § 271 through, among other things providing air-entraining products for performing the method claims of the '005 Patent; instructing and encouraging users of these products to perform the method claims of the '005 Patent, encouraging their parent companies, subsidiaries, affiliates, and business partners to make, use, sell, import, and offer to sell the infringing products or components thereof.

164. The Infringing Defendants do not have a license or permission to use the claimed subject matter in the '005 Patent.

165. Miracon has been injured and has been caused significant financial damage as a direct and proximate result of the Infringing Defendants' infringement of the '005 Patent.

166. Unless enjoined by this Court, Infringing Defendants will continue to infringe the '005 Patent, and thus cause irreparable injury and damage to Miracon.

167. Miracon is entitled to recover from Infringing Defendants the damages sustained by Miracon as a result of the Infringing Defendants' wrongful acts in an amount subject to proof at trial.

168. Miracon has been irreparably injured and is entitled to seek injunctive relief, in addition to all other legal and equitable remedies.

COUNT II
INFRINGEMENT OF UNITED STATES PATENT NO. 6,153,005
BY PRACTICE OF THE GRAY PATENTS
(Infringing Defendants)

169. Miracon restates and re-alleges each of the allegations set forth herein and incorporates them herein.

170. Miracon is the exclusive licensee and has standing to enforce the '005 Patent.

171. The '005 Patent was duly and legally issued by the USPTO and it is valid and enforceable.

172. Each of the Gray Patents are based on Miracon's pioneer '005 Patent. To the extent any and all of the claims of the Gray Patents are novel and patentable, such invention is unpatentable as an obvious improvement upon the '005 Patent.

173. Because the Gray Patents are mere improvement patents based on Miracon's '005 Patent, as a matter of law, CRH, Oldcastle, OMI, and Staker & Parson (the "Infringing Defendants"), cannot practice the Gray Patents without practicing the '005 Patent. Thus, the Infringing Defendants cannot manufacture, use, market of, sell, and/or offer for sale of air entrainment products that practice the claims of any of the Gray Patents without also manufacturing, using, marketing, selling, and/or offering for sale of air entrainment products that practice at least one of the claims of the '005 Patent.

174. Further, Infringing Defendants cannot use any method or process claimed in the Gray Patents without also using at least one method or process claimed in the '005 Patent.

175. Infringing Defendants are not authorized to practice the '005 Patent.

176. Infringing Defendants directly infringe one or more claims of the '005 Patent at least by making, using, selling, and offering for sale air entraining products, cellular air products, air technology to be used as a lightweight composite in precast and ready-mix concrete that practice the Gray Patents; and using method and process claimed in the Gray Patents.

177. Infringing Defendants indirectly infringe one or more claims of the '005 Patent at least because they have knowledge of the '005 Patent and have induced others to infringe the '005 Patent by practicing the Gray Patents.

178. Infringing Defendants contributorily infringe one or more claims of the '005 Patent at least by providing air-entraining products for performing the method claims of the '005 Patent and by instructing and encouraging users of these products to perform the method claims of the '005 Patent, encouraging its business partners to make, use, sell, import, and offer to sell the infringing products or components thereof. As described in Count I, there are at least eight products that practice the '995 Patent, the '426 Patent, and/or the '997 Patent and sixty-six products that practice the '021 Patent, which means they all necessarily infringe on the '005 Patent. These products are based on Miracon's technology and practiced under the trade names WIN3® and ProFlo, and likely other names presently unknown to Miracon. For example, one of the products Staker & Parson identified as practicing the '021 Patent was sold to a customer in Utah and was used to replace Miracon's product, resulting in a loss of business to Miracon.

179. Miracon has been injured and has been caused significant financial damage as a direct and proximate result of these Defendants' infringement of the '005 Patent.

180. The Infringing Defendants have caused and will continue to cause irreparable injury and damage to Miracon as a result of its direct, indirect, and /or contributory infringement of the '005 Patent by practicing the Gray Patents. Miracon will suffer further irreparable injury, for which there is no adequate remedy at law, unless and until the Infringing Defendants are enjoined from infringing the '005 Patent and from practicing the Gray Patents.

181. Miracon is entitled to injunctive relief under 35 U.S.C. §283.

182. Miracon is entitled to recover from the Infringing Defendants the damages sustained by Miracon as a result of Infringing Defendants' wrongful acts in an amount subject to proof at trial under 35 U.S.C. §284.

183. This is an exceptional case warranting an award of attorney's fees to Miracon under 35 U.S.C. §285.

EXCEPTIONAL CASE

184. Miracon restates and re-alleges each of the allegations set forth herein and incorporates them herein.

185. The Infringing Defendants have willfully and deliberately infringed, induced others to infringe, and/or contributed to the infringement of the '005 Patent with full knowledge and wanton disregard of Miracon's rights thereunder, rendering this an "exceptional" case within the meaning of 35 U.S.C. § 285.

186. Miracon has incurred attorneys' fees, costs, and expenses in the prosecution of this action. Pursuant to 35 U.S.C. § 285, Miracon is entitled to recover its reasonable and necessary fees and expenses.

COUNT III
BREACH OF CONTRACT
THE LICENSE AGREEMENT
(All Defendants)

187. Miracon restates and re-alleges each of the allegations set forth herein and incorporates them herein.

188. The License Agreement is a contract that existed between Miracon and Staker & Parson. The License Agreement created duties. Defendant Staker & Parson breached material duties under the License Agreement, and Miracon suffered damages as a result.

189. Because Staker & Parson makes, uses, imports, sells, and/or offers for sale products that embody one or more claims patented within the '005 Patent, the termination provisions of the License Agreement are invoked.

190. Staker & Parson is liable to Miracon for material breaches of the License Agreement, including, but not limited to, misappropriating Miracon's proprietary and patented processes, by reverse engineering, disassembling, breaking down by chemical analysis, and

copying Miracon's Products as described in Section 12 of the Licensing Agreement and by failing to keep secret Miracon's confidential information and failing to obligate their employees to treat as secret such confidential information. Staker & Parson's employees, officers, agents, and representatives (including Gray and Bedingfield) are bound by the confidentiality provisions in the License Agreement. Also, upon information and belief, the Oldcastle Defendants structured themselves and operated in a manner through which Staker & Parson was the agent and/or alter ego of the Oldcastle Defendants. Accordingly, the Oldcastle Defendants are liable for Staker & Parson's breaches of contract.

191. The foregoing breaches of contract constitute material breaches that have caused irreparable injury and substantial damages to Miracon. Miracon is entitled to a judgment against Defendants for injunctive relief, general and special damages (including but not limited to lost profits and lost royalties), costs, and attorney fees caused by their breaches of License Agreement.

192. All conditions precedent have been satisfied by Miracon.

COUNT IV
BREACH OF CONTRACT
THE SUPPLY AGREEMENT
(All Defendants)

193. Miracon restates and re-alleges each of the allegations set forth herein and incorporates them herein.

194. The Supply Agreement is a contract that existed between Miracon and Staker & Parson. The Supply Agreement created duties. Defendant Staker & Parson breached material duties under the Supply Agreement, and Miracon suffered damages as a result.

195. The Supply Agreement constitutes a contract between Miracon and Staker & Parson.

196. Because Staker & Parson makes, uses, imports, sells, and/or offers for sale products that embody one or more claims patented within the '005 Patent, the termination provisions of the Supply Agreement are invoked.

197. Staker & Parson is liable to Miracon for material breaches of the Supply Agreement, including but not limited to failing to keep secret Miracon's confidential information and failing to obligate their employees to treat as secret such confidential information and by misappropriating Miracon's proprietary and intellectual property including all patent rights in and to all designs, engineering details, formulae and other similar data and confidential information relating to the Products as described in Section 1 of the Supply Agreement as well as by reverse engineering, disassembling, breaking down, and copying Miracon's Products or permitting any of the foregoing to occur.

198. Staker & Parson's employees, officers, agents, and representatives (including Gray and Bedingfield) fall within the definition of "user" under the Supply Agreement and are bound by the confidentiality provisions in the Supply Agreement. Bedingfield and Gray are also bound by the Supply Agreement in that the Supply Agreement is binding on the officers, directors, shareholders, and employees of Staker & Parson. Upon information and belief, Oldcastle, OMI, and/or CRH is a shareholder of Staker & Parson and bound by the Supply Agreement. Also, upon information and belief, the Oldcastle Defendants structured themselves and operated in a manner through which Staker & Parson was the agent and/or alter ego of the Oldcastle Defendants. Accordingly, the Oldcastle Defendants are liable for the breaches of contract of Staker & Parson.

199. The foregoing breaches of contract constitute material breaches that have caused irreparable injury and substantial damages to Miracon. Miracon is entitled to a judgment against Defendants for injunctive relief, general and special damages (including but not limited to lost profits and lost royalties), costs, and attorney fees caused by the breach of contract.

200. All conditions precedent have been satisfied by Miracon.

COUNT V
BREACH OF CONTRACT
THE 2005 LICENSE AND SUPPLY AGREEMENT
(All Defendants)

201. Miracon restates and re-alleges each of the allegations set forth herein and incorporates them herein.

202. The 2005 License and Supply Agreement is a contract that existed between Miracon and Staker & Parson d/b/a Idaho Concrete. The 2005 License and Supply Agreement created duties. Defendant Staker & Parson d/b/a Idaho Concrete breached material duties under the 2005 License and Supply Agreement, and Miracon suffered damages as a result.

203. The 2005 License and Supply Agreement constitutes a contract between Miracon and Staker & Parson d/b/a Idaho Concrete.

204. Because Staker & Parson d/b/a Idaho Concrete makes, uses, imports, sells, and/or offers for sale products that embody one or more claims patented within the '005 Patent, the termination provisions of the Supply Agreement are invoked.

205. Staker & Parson d/b/a Idaho Concrete is liable to Miracon for material breaches of the Supply Agreement, including but not limited to failing to keep secret Miracon's confidential information and failing to obligate their employees to treat as secret such confidential information and by misappropriating Miracon's proprietary and intellectual property including all patent rights in and to all designs, engineering details, formulae and other similar data and confidential information relating to the Products as described in Section 1 of the 2005 License and Supply Agreement as well as by reverse engineering, disassembling, breaking down, and copying Miracon's Products or permitting any of the foregoing to occur.

206. Staker & Parson's employees, officers, agents, and representatives (including Gray and Bedingfield) fall within the definition of "user" under the 2005 License and Supply Agreement and are bound by the confidentiality provisions in the Supply Agreement.

Bedingfield and Gray are also bound by the 2005 License and Supply Agreement in that the 2005 License and Supply Agreement is binding on the officers, directors, shareholders, and employees of Staker & Parson. Upon information and belief, Oldcastle, OMI, and/or CRH is a shareholder of Staker & Parson and bound by the Supply Agreement. Also, upon information and belief, the Oldcastle Defendants structured themselves and operated in a manner through which Staker & Parson was the agent and/or alter ego of the Oldcastle Defendants. Accordingly, the Oldcastle Defendants are liable for the breaches of contract of Staker & Parson.

207. The foregoing breaches of contract constitute material breaches that have caused irreparable injury and substantial damages to Miracon. Miracon is entitled to a judgment against Staker & Parson d/b/a Idaho Concrete for injunctive relief, general and special damages (including but not limited to lost profits and lost royalties), costs, and attorney fees caused by the breach of contract. The other Defendants are also liable through participation or vicarious liability for breach of the 2005 License and Supply Agreement as more fully set forth below.

208. All conditions precedent have been satisfied by Miracon.

ATTORNEY'S FEES UNDER TEXAS CIVIL PRACTICE & REMEDIES CODE 38

209. Miracon restates and re-alleges each of the allegations set forth herein and incorporates them herein.

210. Section 38.001 of the Texas Civil Practice & Remedies Code provides that “a person may recover reasonable attorney’s fees from an individual or corporation, in addition to the amount of a valid claim and costs, if the claim is for ... (8) an oral or written contract.”

211. It is necessary for Miracon to be represented by attorney to pursue the remedies sought in this complaint. The parties breaching the contracts at issue are liable for Miracon’s attorney’s fees in the prosecution of this action. Demand and presentment of a claim for attorney’s fees is hereby made.

ATTORNEY'S FEES UNDER THE CONTRACTS AT ISSUE

212. Miracon restates and re-alleges each of the allegations set forth herein and incorporates them herein.

213. Miracon also asserts its rights to recover attorney's fees under the terms of the January 15, 2004 License Agreement, the July 21, 2004 License and Supply Agreement, and the May 31, 2005 License and Supply Agreement.

COUNT VI
MISAPPROPRIATION OF TRADE SECRETS
(All Defendants)

214. Miracon restates and re-alleges each of the allegations set forth herein and incorporates them herein.

215. Miracon's product and technology in the formulae, process, designs, engineering details, schematics, drawings, specifications, and know-how, constitute trade secrets as defined by the Texas Uniform Trade Secrets Act. TEX. CIV. PRAC. & REM. CODE §134A.002(6).

216. Miracon's product and technology derive independent economic value from not being generally known to the public or to Miracon's competitors in that competitors do not know how to replicate the Miracon's unique product and methodology. Additionally, the technology is of great value to Miracon because Miracon expended significant time and resources in researching and developing its revolutionary technology, giving Miracon a competitive edge and lending to its profits. Any competitor who improperly acquired information about how to produce, develop, and use Miracon's product and technology would gain an unfair competitive advantage in that they would not be required to expend the significant time and resources necessary to develop this trade secret information.

217. The technology developed by Miracon is not readily ascertainable by proper means by others in the construction industry, but rather it is the product of Miracon's independent research and development.

218. Defendants misappropriated and disclosed Miracon's trade secrets that they acquired under circumstances giving rise to a duty to maintain their secrecy and limit their use.

219. Miracon took reasonable efforts to maintain the secrecy of the above described trade secrets by executing the License Agreement, the Supply Agreement, and the 2005 License and Supply Agreement. Pursuant to these agreements Defendants were not granted any rights in the trade secrets owned by Miracon. In fact, Defendants were restricted from reverse engineering, disassembling, breaking down or copying Miracon's products and methodology or permit any of the foregoing to occur.

220. Pursuant to the same agreements, Defendants were under the obligation to limit the dissemination of Miracon's proprietary and intellectual property to select employees who have agreed to be bound by the terms of the agreements.

221. Defendant Gray worked side by side with Miracon personnel and he received both verbal and written instructions, including various mix designs from Miracon.

222. Using such information, Gray misappropriated Miracon's trade secrets by wrongfully copying Miracon's information, despite his contractual obligations and legal duty to maintain the secrecy of and limit the use of such information. Gray's conduct was wrongful because at the time he reverse engineered Miracon's product and used Miracon's trade secrets, Gray knew that he was legally and contractually obligated to refrain from using this information.

223. Gray further misappropriated Miracon's trade secrets by wrongfully disclosing and claiming Miracon's trade secrets as his own inventive ideas in various patent applications, despite his contractual obligations and legal duty to maintain the secrecy of and limit the use of such information.

224. Bedingfield misappropriated Miracon's trade secrets through his collaboration with Nelson and W. R. Grace.

225. Randy Lake, CEO of CRH, in the Fall/Winter 2013 edition of OMI's newsletter "Connections" references an article written by Scott Parson promoting one of Defendants' infringing products, CarbonKnight. This article states that Defendant Gray "worked to develop and patent CarbonKnight" and that other Oldcastle companies are "economiz[ing] their concrete mixes using CarbonKnight..."

226. Defendants jointly and severally misappropriated Miracon's trade secrets by using Miracon's trade secrets they acquired from Gray to directly compete with Miracon and to benefit from selling the Miracon technology. Their conduct was wrongful because they knew or had reason to know at the time they used the trade secrets of the strict obligation to maintain the secrecy of and limit the use of Miracon's trade secrets.

227. In light of Defendants' continued use and disclosure of Miracon's trade secrets, Miracon has no adequate remedy at law to prevent Defendants from continuing to misappropriate the trade secrets. Therefore, Miracon is entitled to injunctive relief, enjoining the above mentioned defendants from using, disclosing, or disseminating any trade secrets belonging to Miracon.

228. As a result of the misappropriation of Miracon's trade secrets, Miracon lost customers orders, its relationships with other customers were adversely affected, and Miracon's reputation and goodwill as the exclusive developer of the product and technology was damaged. Thus, Miracon is entitled to actual damages caused by the use and continued use of its trade secrets by Defendants. Miracon lost profits due to Defendants' misappropriation of Miracon's trade secrets.

229. As a proximate result of their misappropriation of Miracon's trade secrets, Defendants have been unjustly enriched in an amount subject to proof at the time of trial.

230. Additionally, Miracon is entitled to profits and/or royalties on any profits received by Defendants from their misuse of Miracon's trade secrets.

231. Defendants misappropriated Miracon's trade secrets willfully and maliciously within the meaning of the Texas Uniform Trade Secrets Act in that they deliberately used this information with the intent to injure Miracon's business and enhance their own business relationships.

232. They acted with malice, and deliberately caused and intended to cause great economic harm to Miracon with full knowledge of the wrongfulness of their conduct.

233. The conduct as alleged above was carried out by Defendants with a willful and conscious disregard of Miracon's rights.

234. Therefore, Miracon should be awarded exemplary damages sufficient to punish Defendants for engaging in this conduct and to deter similar conduct on their part in the future. TEX. CIV. PRAC. & REM. CODE §134A.004(b).

235. Due to Defendants' willful and malicious misappropriation of Miracon's trade secrets, Miracon is entitled to recover its reasonable attorneys' fees and costs pursuant to the Texas Uniform Trade Secrets Act. TEX. CIV. PRAC. & REM. CODE §134A.005.

COUNT VII
MISAPPROPRIATION OF TRADE SECRETS
COMMON LAW
(All Defendants)

236. Miracon restates and re-alleges each of the allegations set forth herein and incorporates them herein.

237. Miracon possessed valuable trade secrets in its product and technology. Defendants misappropriated Miracon's trade secrets. The misappropriation caused injury for which Miracon seeks to recover damages.

238. Miracon's product and technology derive independent economic value from not being generally known to the public or to Miracon's competitors in that competitors do not know how to replicate the Miracon's unique product and methodology. Additionally, the technology is of great value to Miracon because Miracon expended significant time and resources in

researching and developing its revolutionary technology, giving Miracon a competitive edge and lending to its profits. Any competitor who improperly acquired information about how to produce, develop, and use Miracon's product and technology would gain an unfair competitive advantage in that they would not be required to expend the significant time and resources necessary to develop this trade secret information.

239. The technology developed by Miracon is not readily ascertainable by proper means by others in the construction industry, but rather it is the product of Miracon's independent research and development.

240. Defendants misappropriated and disclosed Miracon's trade secrets that they acquired under circumstances giving rise to a duty to maintain their secrecy and limit their use.

241. Miracon took reasonable efforts to maintain the secrecy of the above described trade secrets by executing the License Agreement, the Supply Agreement, and the 2005 License and Supply Agreement. Pursuant to these agreements Defendants were not granted any rights in the trade secrets owned by Miracon. In fact, Defendants were restricted from reverse engineering, disassembling, breaking down or copying Miracon's products and methodology or permit any of the foregoing to occur.

242. Pursuant to the same agreements, Defendants were under the obligation to limit the dissemination of Miracon's proprietary and intellectual property to select employees who have agreed to be bound by the terms of the agreements.

243. Gray misappropriated Miracon's trade secrets by wrongfully copying Miracon's information, despite his contractual obligations and legal duty to maintain the secrecy of and limit the use of such information. Gray's conduct was wrongful because at the time he reverse engineered Miracon's product and used Miracon's trade secrets, Gray knew that he was legally and contractually obligated to refrain from using this information.

244. Gray further misappropriated Miracon's trade secrets by wrongfully disclosing and claiming Miracon's trade secrets as his own inventive ideas in various patent applications, despite his contractual obligations and legal duty to maintain the secrecy of and limit the use of such information.

245. Bedingfield misappropriated Miracon's trade secrets through his collaboration with Nelson and W. R. Grace.

246. Defendants jointly and severally misappropriated Miracon's trade secrets by using Miracon's trade secrets they acquired from Gray to directly compete with Miracon and to benefit from selling the Miracon technology.

247. Their conduct was wrongful because they knew or had reason to know at the time they used the trade secrets of the strict obligation to maintain the secrecy of and limit the use of Miracon's trade secrets.

248. In light of Defendants' continued use and disclosure of Miracon's trade secrets, Miracon has no adequate remedy at law to prevent Defendants from continuing to misappropriate the trade secrets. Therefore, Miracon is entitled to injunctive relief, enjoining the above mentioned defendants from using, disclosing, or disseminating any trade secrets belonging to Miracon.

249. As a result of the misappropriation of Miracon's trade secrets, Miracon lost customers orders, its relationships with other customers were adversely affected, and Miracon's reputation and goodwill as the exclusive developer of the product and technology was damaged. Thus, Miracon is entitled to actual damages caused by the use and continued use of its trade secrets by Defendants. Miracon lost profits due to Defendants' misappropriation of Miracon's trade secrets.

250. As a proximate result of their misappropriation of Miracon's trade secrets, Defendants have been unjustly enriched in an amount subject to proof at the time of trial. Miracon is entitled to such amount.

251. Miracon is entitled to profits and/or royalties on any profits received by Defendants from their misuse of Miracon's trade secrets.

252. Additionally, Miracon is entitled to the development costs Defendants avoided by the misappropriation and to the amount that a reasonably prudent investor would have paid for the Miracon trade secrets.

253. Defendants misappropriated Miracon's trade secrets willfully and maliciously in that they deliberately used this information with the intent to injure Miracon's business and enhance their own business relationships. They acted with malice, and deliberately caused and intended to cause great economic harm to Miracon with full knowledge of the wrongfulness of their conduct. The conduct as alleged above was carried on by Defendants with malice, fraud, and a willful and conscious disregard of Miracon's rights. Therefore, Miracon should be awarded exemplary damages. Miracon is further entitled to injunctive relief.

COUNT VIII
CONVERSION
(All Defendants)

254. Miracon restates and re-alleges each of the allegations set forth herein and incorporates them herein. Miracon specifically reasserts the recitations contained in its counts for statutory and common law misappropriation of trade secrets.

255. Miracon owned, possessed, or had the right to immediate possession of its trade secrets and confidential information, which was Miracon's personal property.

256. Defendants wrongfully exercised dominion and control over Miracon's trade secrets and confidential information, resulting in damages to Miracon.

257. Defendants' converted Miracon's trade secrets and confidential information willfully and maliciously in that Defendants deliberately used this information with the intent to injure Miracon's business and enhance their own business relationships. They acted with malice, and deliberately caused and intended to cause great economic harm to Miracon with full knowledge of the wrongfulness of their conduct. The conduct as alleged above was carried on by Defendants with malice, fraud, and a willful and conscious disregard of Miracon's rights. Therefore, Miracon should be awarded exemplary damages. Miracon is further entitled to injunctive relief.

COUNT IX
THEFT OF PROPERTY
(All Defendants)

258. Miracon restates and re-alleges each of the allegations set forth herein and incorporates them herein. Miracon specifically reasserts the recitations contained in its counts for statutory and common law misappropriation of trade secrets.

259. Miracon had a possessory right to its property, i.e., its trade secrets and confidential information. Defendants unlawfully appropriated and/or stole Miracon's trade secrets and confidential information by taking such without Miracon's effective consent. Defendants appropriated and/or stole Miracon's trade secrets and confidential information with the intent to deprive Miracon of its trade secrets and confidential information. Defendants knowingly stole Miracon's trade secrets and confidential information, copied articles representing Miracon's trade secrets, and/or communicated Miracon's trade secrets and/or confidential information to others in the Oldcastle network and to third persons. Such theft constitutes a violation of section 31.005 of the Texas Penal Code. Miracon sustained damages as a result of the theft. In connection with this cause of action, Miracon seeks to recover its reasonable and necessary attorneys' fees under section 134.005 of the Civil Practice and Remedies Code.

COUNT X
BUSINESS DISPARAGEMENT
(All Defendants)

260. Miracon restates and re-alleges each of the allegations set forth herein and incorporates them herein.

261. Defendants published disparaging words about Miracon's economic interests. Specifically, Defendants used words to cast doubt on the quality of Miracon's products and technology and Defendants intended the words they used to cast doubt or used words such that third parties reasonably understood the words to cast doubt.

262. The words were false.

263. Defendants published the words with malice in that Defendants (1) knew the statements in question were false, (2) acted with reckless disregard for whether the statements were true, (3) acted with ill will, or (4) intended to interfere with Miracon's economic interest. Defendants published the words without privilege.

264. Defendants' publications caused special damages to Miracon, including but not limited to loss of profits under the contract with the Utah customer described herein. Miracon had a contract with a customer in Utah that it lost after one or more of the Defendants spoke with that customer. Moreover, Defendants were in negotiations with at least three other potential customers when one or more Defendants spoke falsities about Miracon and its products to dissuade those potential customers from using or buying Miracon's products. Moreover, due to Defendants' disparaging words, Miracon lost business with at least the customers described herein, as well as likely other potential customers. Upon information and belief, Defendants' statements were widespread and resulted in further lost profits, loss of Miracon's goodwill and reputation, and improper profits/gain to Defendants.

COUNT XI
TORTIOUS INTERFERENCE WITH EXISTING CONTRACTS
(Gray)

265. Miracon restates and re-alleges each of the allegations set forth herein and incorporates them herein.

266. Miracon had valid contracts, including the Supply Agreement, the License Agreement, and the 2005 License and Supply Agreement. Defendant willfully and deliberately interfered with those contracts. Upon information and belief, Gray was acting to serve his own interest to benefit himself to the exclusion of the parties to the contracts. The interference proximately caused Miracon's injury. Miracon incurred actual damage or loss.

267. Upon information and belief, Gray was aware of the contractual and legal obligations of Staker & Parson.

268. Gray intentionally and wrongfully lent substantial assistance to Staker & Parson in breaching the contracts with Miracon.

269. Miracon has suffered and is continuing to suffer damages and/or losses as a result of same.

COUNT XII
TORTIOUS INTERFERENCE WITH EXISTING CONTRACTS
(Bedingfield)

270. Miracon restates and re-alleges each of the allegations set forth herein and incorporates them herein.

271. Miracon had valid contracts, including the Supply Agreement, the License Agreement, and the 2005 License and Supply Agreement. Defendant willfully and deliberately interfered with those contracts. Upon information and belief, Bedingfield was acting to serve his own interest to benefit himself to the exclusion of the parties to the contracts. The interference proximately caused Miracon's injury. Miracon incurred actual damage or loss.

272. Miracon has fully performed all of its obligations under the License Agreement, the Supply Agreement, and the 2005 License and Supply Agreement with Staker & Parson Defendant Bedingfield, not a party to these Agreements, willfully and intentionally interfered with such Agreements having knowledge of their existence and obligations.

273. Bedingfield intentionally interfered with these Agreements by sabotaging Miracon's testing, drafting poor testing reports of Miracon's performance, and providing negative reviews concerning Miracon's product and technology, all to drive Miracon out of the construction market.

274. Furthermore, Bedingfield willfully and intentionally interfered with these Agreements by utilizing and misappropriating Miracon's trade secrets and other confidential and proprietary information for the purpose of continuing his collaboration with Nelson and W.R. Grace for valuable kickback and to secure the construction market independently from Miracon.

275. This tortious interference was a proximate cause of the injury to Miracon.

276. Miracon has suffered and is continuing to suffer damages and/or losses as a result of same.

COUNT XIII
TORTIOUS INTERFERENCE WITH EXISTING CONTRACTS
(All Defendants)

277. Miracon restates and re-alleges each of the allegations set forth herein and incorporates them herein.

278. Gray and Staker & Parson obtained the Gray Patents through fraud on the USPTO and inequitable conduct described herein. Then, with those fraudulently obtained patents, Staker & Parson, in concert with the other Defendants, went in to the marketplace and in bad faith unfairly and egregiously made, promoted, distributed, used, and sold products practiced under the Gray Patents, specifically touting them over Miracon's products, despite agreements and

independent legal duties prohibiting such tortious and wrongful conduct. Such conduct interfered with Miracon's contracts with third-parties.

279. Miracon had valid contracts with customers, including but not limited to a license agreement with a customer in Utah on a large scale, multimillion dollar project. Defendants willfully and deliberately interfered with such contracts by encouraging those customers to switch from using Miracon's products to using Defendants' products. The interference proximately caused Miracon's injury, including lost profits and loss of goodwill. With respect to the project in Utah, Miracon lost sales and profits as a result of the customer switching to use of Defendants' products in lieu of Miracon's products.

280. Miracon has suffered and is continuing to suffer damages and/or loses as a result of same.

COUNT XIV
UNJUST ENRICHMENT/MONEY HAD AND RECEIVED
(All Defendants)

281. Miracon restates and re-alleges each of the allegations set forth herein and incorporates them herein.

282. Defendants have been unjustly enriched by, among other things, their misappropriation of invention, trade secrets and confidential information properly belonging to Miracon and the other tortious conduct alleged herein. Such invention, trade secrets and confidential information has been of significant benefit to Defendants and the circumstances are such that it would be unjust for the Defendants to retain the benefits conferred upon them by continuing to use and enjoin Miracon's invention, trade secrets and confidential information. Additionally, Lonnie Gray was unjustly enriched in one or more of the following ways: (1) promotion within Staker & Parson; (2) publicity within the industry based on credit given to him for inventions he did not invent and any financial gain related thereto; and (3) any financial gain from the relationship with his brother Jeff Gray's company Synergia, LLC being the exclusive

distributor of CarbonKnight. Upon information and belief, Staker & Parson licensed at least one or more of the Gray Patents. Therefore, Defendants have been unjustly enriched from benefits, growth, additional funding, and increased value in the Oldcastle Defendants in relation to the licensing rights, royalties, right to future payments, and other benefits attendant or related to the licensing, assignment, and ownership of the Gray Patents. To the extent that Defendants now hold money derived from their tortious and unlawful conduct that belongs in equity and good conscience to Miracon, Miracon seeks such money, which was had and received by Defendants.

283. Defendants have obtained a benefit from another by fraud and/or the taking of an undue advantage of Miracon. Defendants, who have received benefits unjustly and wrongfully, should make restitution for those benefits they have received. Defendants have wrongfully secured benefits or have passively received such benefits that would be unconscionable to retain.

284. Staker & Parson is making, selling, and/or distributing products that practice the Gray Patents. Miracon is aware of at least one instance in which it was supplying a third party with product practicing the '005 Patent. But due to the tortious conduct of one or more of the Defendants, that third party began buying a product practiced under the '021 Patent. Upon information and belief, Staker & Parson made, sold, supplied, and distributed such product in this instance, and in other instances, for profit and received money that belongs to Miracon in equity and good conscience. Upon information and belief, the other Defendants who control Staker & Parson or have a financial stake in Staker & Parson likewise hold money that belong to Miracon in equity and good conscience.

COUNT XV
DECLARATORY JUDGMENT OF INVALIDITY
OF THE GRAY PATENTS
(CRH, Oldcastle, OMI, and Staker & Parson)

285. Miracon restates and re-alleges each of the allegations set forth herein and incorporates them herein.

286. A case or controversy exists between Staker & Parson and Miracon concerning the invalidity of the Gray Patents which requires a declaration of rights by this Court. Furthermore, an actual controversy exists within this Court's jurisdiction as to the correct inventorship of the subject matter described and claimed in the Gray Patents.

287. The Gray Patents are invalid for failure to meet the requirements of patentability under 35 U.S.C. § 102 and § 103.

288. Furthermore, the Gray Patents are invalid for lack of disclosure of proper inventorship information. Specifically, Staker & Parson failed to credit Charles Welker as the sole or, in the alternative joint inventor of the Gray Patents. Charles Welker is the sole inventor or, in the alternative, a joint inventor of the subject matter described and claimed in the Gray Patents.

289. Finally, the Gray Patents are invalid because of the fraud on the PTO as described herein.

290. Miracon is entitled to a declaratory judgment that the Gray Patents are invalid.

COUNT XVI
DECLARATORY JUDGMENT OF UNENFORCEABILITY
OF THE GRAY PATENTS
(CRH, Oldcastle, OMI, and Staker & Parson)

291. Miracon restates and re-alleges each of the allegations set forth herein and incorporates them herein.

292. A case or controversy exists between Staker & Parson and Miracon concerning the unenforceability of the Gray Patents, which requires a declaration of rights by this Court. Furthermore, an actual controversy exists within this Court's jurisdiction as to the correct inventorship of the subject matter described and claimed in the Gray Patents.

293. The Gray Patents are unenforceable due to inequitable conduct. The public has interest of assuring that patents are not granted by fraud on PTO. During the prosecution of the applications for these patents, individuals owing a duty of candor to the PTO, including the

inventor of the patents, his assignees, and the attorney prosecuting the patents, mischaracterized the '005 Patent and failed to disclose the confidential relationship between Defendants and Miracon. Staker & Parson and its representative, Hansen, owed a duty of candor to the Examiner Marcantoni. Upon information and belief, the statements made by Hansen during the May 27, 2009 interview with Marcantoni advising the PTO of the difference from prior art was false. Furthermore, Hansen's statement was erroneously applied to the '960 application (the '995 Patent) disclosing a product instead of the alleged method claim.

294. Staker & Parson's failure to disclose the existing connection between the Parties and Hansen's false statements to the Examiner were to intentionally mislead and deceive the PTO. Hansen, Defendant Gray, and Staker & Parson also failed to credit Charles Welker as the sole inventor or a joint inventor of any of the Gray Patents.

295. Upon information and belief, Examiner Marcantoni applied to all other Gray's patent applications the same or similar reasoning as guided by Hansen on May 27, 2009, thus allowing them to issue. As such, the Gray Patents are unenforceable due to inequitable conduct.

296. Miracon is entitled to a declaratory judgment that the Gray Patents are unenforceable.

COUNT XVII
CORRECTION OF INVENTORSHIP

297. Miracon restates and re-alleges each of the allegations set forth herein and incorporates them herein.

298. Charles Welker is the sole inventor or, in the alternative, a co-inventor, as the case may be, of the subject matter disclosed and claimed in the Gray Patents (U.S. Patent Nos. 7,621,995, 7,670,426, 8,167,997, and 8,871,021).

299. This Court is authorized by 35 U.S.C. § 256 to order correction of the Gray Patents so as to name omitted inventors on notice and hearing of all parties concerned and should order correction of records of inventorship of those patents, as requested herein.

300. The failure of Charles Welker to be identified the sole inventor or a joint inventor on the Gray Patents occurred without deception or fraud by him.

301. Miracon has been assigned Mr. Welker's financial and pecuniary rights in and to the inventions disclosed in all Gray Patents.

302. The Gray Patents must be corrected pursuant to 35 USC §256 to name Charles Welker as the sole inventor or, in the alternative, a co-inventor.

303. Moreover, Miracon owns or, in the alternative, jointly owns the Gray Patents and maintains sole or, in the alternative, joint equitable title to the Gray Patents.

304. Miracon has been harmed by the failure to properly credit inventorship and to recognize Miracon's ownership in the Gray Patents. Such harm includes damage to its and Mr. Welker's reputation, loss of goodwill, lost royalties, lost profits, and damages caused by Defendants obtaining and practicing patents that they should not have obtained and should not practice.

COUNT XVIII
DECLARATORY RELIEF
THAT PRACTICING THE GRAY PATENTS INFRINGES
THE UNITED STATES PATENT NO. 6,153,005
(Infringing Defendants)

305. Miracon restates and re-alleges each of the allegations set forth herein and incorporates them herein.

306. Each of the Gray Patents are based on the pioneer '005 Patent. To the extent any and all of the claims of the Gray Patents are inventive and patentable, such invention is an obvious improvement upon the '005 Patent.

307. Because the Gray Patents are mere improvement patents based on the '005 Patent, as a matter of law, no individual or entity can practice the Gray Patents without practicing the '005 Patent. Thus, an entity cannot manufacture, use, market, sell, and/or offer to sell air entrainment products that practice the claims of any of the Gray Patents without also

manufacturing, using, marketing, selling, and/or offering for sale air entrainment products that practice at least one of the claims of the '005 Patent. Further, an entity cannot use any method or process claimed in Gray Patents without also using at least one method or process claimed in the '005 Patent.

308. The Infringing Defendants have caused and will continue to cause irreparable injury and damage to Miracon as a result of their direct, indirect, and /or contributory infringement of the '005 Patent by practicing the Gray Patents. Miracon will suffer further irreparable injury, for which there is no adequate remedy at law, unless and until the Infringing Defendants are enjoined from infringing the '005 Patent and from practicing the Gray Patents.

309. Miracon has been damaged as a result of the Infringing Defendants' direct, indirect, and /or contributory infringement of the '005 Patent.

310. Miracon is entitled to a preliminary and permanent injunction enjoining the Infringing Defendants from infringing the '005 Patent and a finding that an entity or individual that practices the Gray Patents practices the '005 Patent.

311. The Infringing Defendants have caused and will continue to cause irreparable injury and damage to Miracon as a result of their direct, indirect, and /or contributory infringement of the '005 Patent by practicing the Gray Patents.

312. Miracon will suffer further irreparable injury, for which there is no adequate remedy at law, unless and until Infringing Defendants are enjoined from infringing the '005 Patent and from practicing the Gray Patents.

313. Miracon is entitled to injunctive relief under 35 U.S.C. §283.

314. Miracon seeks Declaratory Relief that an entity or individual that practices the Gray Patents practices the '005 Patent.

COUNT XIX
DECLARATORY JUDGMENT OF UNCONSCIONABILITY
OF THE ARBITRATION CLAUSES

315. Miracon restates and re-alleges each of the allegations set forth herein and incorporates them herein.

316. The License Agreement, Supply Agreement, and 2005 License and Supply Agreement contain arbitration clauses, and Staker & Parson has invoked those clauses in connection with the License Agreement and Supply Agreement. Notwithstanding that the arbitration clauses are not enforceable and do not cover the claims pleaded herein, including but not limited to the inventorship claim under 35 U.S.C. § 256, Miracon seeks a declaration that the arbitration clauses are unconscionable for two reasons. First, these provisions are unconscionable and unenforceable because arbitration of this dispute would be prohibitively expensive. Second, all three of the arbitration clauses contain fee shifting provisions. Such provisions are unconscionable in that fee shifting would not occur were this action to stay in this Court.

317. Miracon seeks declaration that the arbitration clauses, in whole or in part, are unconscionable and, therefore, unenforceable.

COUNT XX
FRAUD AND FRAUDULENT INDUCEMENT
(All Defendants)

318. Miracon restates and re-alleges each of the allegations set forth herein and incorporates them herein.

319. Defendants made representations to Miracon. The representations were material. The representations were false. When Defendants made the representations, Defendants either knew the representations were false or made the representations with the intent that Miracon act on them. Defendants made the representations with the intent that Miracon act on them. Miracon relied on the representations. The representations caused Miracon injury.

320. Defendants have committed fraud against Miracon by engaging in conduct that reasonably caused Miracon to enter into the License Agreement, Supply Agreement, and 2005 License and Supply Agreement and to divulge proprietary and intellectual property information capable of revolutionizing the construction industry.

321. Defendants have committed fraud on Miracon by making false representation of facts, or making a false promise that Miracon's intellectual property would be kept secret and not misused by Defendants.

322. Specifically, prior to January 2004, Defendants promised Miracon, during numerous conversations between the parties' executives at Salt Lake City, Utah, that all testing information would remain mutually confidential.

323. Defendants made the representation or promise to induce Miracon to enter into the License Agreement, Supply Agreement, and 2005 License and Supply Agreement.

324. Specifically, starting in January 2004, Defendants promised to Miracon, on numerous occasions, that Miracon would be able to enter the ready-mix and precast market. On or about July 30, 2004, during communications with Miracon, Staker & Parson promised Miracon that Defendants would utilize Miracon in all of their concrete that had an 8% or higher air composition as well as in all of their lightweight concrete. In addition, Staker & Parson requested that Miracon not make any further effort to develop the ready mix market within the geography covered by Defendants.

325. Upon information and belief, during conversations with Miracon throughout 2003, 2004, and 2005 at various Staker & Parson locations and operation sites, Gray stated that his role was that of a facilitator and that he would keep Miracon's information secret.

326. Furthermore, throughout 2004 and 2005, Miracon was routinely requested in meetings and written correspondence with executives of Defendants that Miracon provide technical support during the parties' collaboration. Again, in 2007, Bedingfield, Gray, and other

agents/representatives of Staker & Parson came to Texas and led Miracon to believe that the relationship would be revived/continued and requested that Miracon provide them with the most recent formulation of the MCF.

327. Defendants made the representation or promise with the intention that Miracon rely on such representation or promise.

328. Miracon was ignorant of the falsity of the representation or promise and had a reasonable right to rely and actually did rely on the representation.

329. Miracon has been injured by its reasonable reliance on that representation or promise.

330. Miracon reasonably relied on the conduct of Defendants and their principals and agents, and Miracon made significant disclosures in relation to Miracon's proprietary information and intellectual property. In addition, Miracon made significant financial investments during its collaboration with Defendants.

331. Miracon would not have disclosed its proprietary information and intellectual property had it known that Defendants would steal and assert ownership of it and try to gain financial benefits by segregating Miracon within the construction community throughout the United States.

332. Miracon has been greatly damaged as a result of Defendants' fraudulent conduct, including but not limited to lost profits and lost royalties.

COUNT XXI
FRAUD BY NONDISCLOSURE
(All Defendants)

333. Miracon restates and re-alleges each of the allegations set forth herein and incorporates them herein.

334. Defendants concealed from or failed to disclose certain facts to Miracon. For example, Defendants did not inform Miracon of any efforts to reverse engineer MCF.

Defendants did not inform Miracon of the misappropriation of Miracon's trade secrets and/or confidential information and technology. Defendants concealed and/or failed to disclose that they had obtained patents that did not give Welker credit for inventorship. Defendants concealed and/or failed to disclose that they did not intend to carry through with the sale, promotion, and use of MCF but instead wanted to copy MCF to sell Defendants' own formulation and mixes to the exclusion of Miracon.

335. Furthermore, Defendants' concealment of material and substantial facts defrauded Miracon because those concealed facts were material to the protection of Miracon's confidential information and trade secrets and inventorship rights and were particularly within Defendants' knowledge. Defendants knew that Miracon trusted and relied on their candor, honesty, and contractual obligations to protect Miracon's technology, trade secrets, and patent rights. Defendants knew that Miracon was acting on the assumption that Defendants would not interfere with, or attempt to defeat or destroy Miracon's rights by the means, acts, and omissions alleged herein, all of which was as much a fraud as if the existence of such facts, acts, and omissions were expressly denied, or the reverse of it expressly stated.

336. Defendants had a duty to disclose facts regarding their surreptitious conduct to Miracon. The facts were material. Defendants knew that Miracon was ignorant of the facts and Miracon did not have an equal opportunity to discover the facts. Defendants were deliberately silent when they had a duty to speak. By failing to disclose the facts underlying their relationship, Defendants intended to induce Miracon to take some action or refrain from acting. Notably, Defendants intended that Miracon and Welker keep providing trade secrets, confidential information, know how, and other sensitive business information to Defendants that Defendants would and did then exploit to Miracon's detriment. Miracon relied on Defendants' nondisclosure and continue providing such information to Defendants. Miracon was injured as a

result of acting without the knowledge of the undisclosed facts, including but not limited to losing specific projects and customers.

337. Miracon has been greatly damaged as a result of Defendants' fraudulent conduct, including but not limited to lost profits and lost royalties.

COUNT XXII
TORTIOUS INTERFERENCE WITH PROSPECTIVE RELATIONS
(All Defendants)

338. Miracon restates and re-alleges each of the allegations set forth herein and incorporates them herein.

339. Gray and Staker & Parson obtained the Gray Patents through fraud on the USPTO and inequitable conduct described herein. Then, with those fraudulently obtained patents, Staker & Parson, in concert with the other Defendants, went in to the marketplace and in bad faith unfairly and egregiously made, promoted, distributed, used, and sold products practiced under the Gray Patents, specifically touting them over Miracon's products, despite agreements and independent legal duties prohibiting such tortious and wrongful conduct. Such conduct interfered with Miracon's contracts.

340. There was a reasonable probability that Miracon would have entered into one or more business relationships with third parties. In fact, as detailed above, Miracon was negotiating with multiple customers who were interested in Miracon's products. Defendants intentionally interfered with those relationships by disparaging Miracon and Miracon's products and touting Defendants' competing products over Miracon's – competing products that would not have existed but for Miracon. Defendants' conduct was independently tortious or unlawful. The interference proximately caused Miracon's injury. Miracon suffered actual damage or loss as a result.

341. At all relevant times, Defendants knew of Miracon's prospective business relations with various clients and customers throughout the United States based upon Miracon's ability to provide their customers with unique technology and high quality service.

342. There was a reasonable probability that Miracon would have entered into further business dealings with these customers.

343. Defendants, knowingly, willfully, and intentionally interfered with and disrupted Miracon's prospective business relations by among other things, engaging in misappropriation of trade secrets, conversion, civil theft, business disparagement, and fraud.

344. Upon information and belief, during their collaboration with Miracon, Defendants did not intend to honor the License Agreement, Supply Agreement, or 2005 License and Supply Agreement with Miracon or to develop, promote, and maximize the use of the Miracon product. Rather, Defendants desired to steal or otherwise misappropriate Miracon's technology.

345. Upon information and belief, Defendants intentionally interfered with Miracon's prospective business relations with various clients and customers_in order to gain the know-how of Miracon's revolutionary technology and then to steal Miracon's clientele.

346. Upon information and belief, and as more fully detailed above, beginning with December 2006, Defendants had approached various Miracon's prospective business partners discouraging them to enter into business relations with Miracon.

347. Defendants have engaged in these wrongful acts for the sole purpose of injuring Miracon so that Miracon will be eliminated from all areas served by Defendants.

348. Defendants knew that in taking the actions described above they would interfere with the business interests of Miracon.

349. Miracon was damaged as a proximate result of the conduct described above, including but not limited to lost profits, loss of goodwill and reputation, and lost royalties.

350. Defendants, in doing the acts herein alleged, acted with fraud and/or malice, entitling Miracon to an award of exemplary damages.

EXEMPLARY DAMAGES

351. Miracon restates and re-alleges each of the allegations set forth herein and incorporates them herein.

352. Exemplary damages are warranted for Defendants' tortious conduct under chapter 41 of the Texas Civil Practice and Remedies Code based on Defendants' fraud and malicious conduct. Furthermore, the exemplary damages cap found in chapter 41 of the Civil Practice and Remedies Code does not apply because Defendants' conduct was committed knowingly and/or intentionally and violates chapter 31.05 of the Texas Penal Code.

**PARTICIPATORY AND JOINT LIABILITY
CONSPIRACY**

353. Miracon restates and re-alleges each of the allegations set forth herein and incorporates them herein.

354. Defendants were members of a combination of two or more persons. The object of the combination was to accomplish either an unlawful purpose or a lawful purpose by unlawful means. The members had a meeting of the minds on the object or course of action. One or more of the members committed an unlawful, overt act to further the object or course of action. Miracon suffered injury as a result of the wrongful act(s).

355. As alleged above, one or more Defendants committed an underlying tort, such as conversion, civil theft, statutory and/or common trade secret misappropriation, business disparagement, fraud, tortious interference with contract, and/or tortious interference with prospective business relations. To the extent that any of the Defendants did not actually commit the underlying torts, upon information and belief, those Defendants conspired with the actor(s) committing those underlying torts.

356. Upon information and belief, Gray and Bedingfield were not the only associates of Defendants who collaborated with Nelson and other representatives of W. R. Grace in order to misappropriate Miracon's trade secrets and further secure their market independently from Miracon.

357. Upon information and belief, most such actions were taken by the Oldcastle Defendants between the 2004-2006 time frame, at different locations in Utah (such as Salt Lake City, Park City, Spanish Fork, Murray, Ogden, Lehi, and St. George), at locations in Idaho (such as Nampa and Eagle) and at locations in New Mexico (such as Farmington and Albuquerque).

358. Defendants had a meeting of the minds and embarked upon an agreed course of action to commit the torts described above. Specifically, Defendants conspired to steal Miracon's ground-breaking technology and segregate Miracon, thus eliminating Miracon as a competitor in their market.

359. Defendants' conduct is unlawful as set forth herein and was accompanied by complete disregard of Miracon's rights.

360. Miracon has been damaged as a result of Defendants' illegal and unlawful conspiracy and is entitled to compensatory and exemplary damages as a result thereof.

AIDING AND ABETTING

361. Miracon restates and re-alleges each of the allegations set forth herein and incorporates them herein.

362. Staker & Parson, Gray, and/or Bedingfield committed one or more torts described above. The other Defendants had knowledge of Staker & Parson's, Gray's, and/or Bedingfield's tortious conduct. The other Defendants had the intent to assist Staker & Parson, Gray, and/or Bedingfield in committing the torts. The other Defendants gave Staker & Parson, Gray, and/or Bedingfield assistance or encouragement. The other Defendants' assistance or encouragement

was a substantial factor in causing the underlying torts of Staker & Parson, Gray, and/or Bedingfield.

363. Additionally, Staker & Parson's, Gray's, or Bedingfield's activity accomplished one or more torts described above. The other Defendants provided substantial assistance to Staker & Parson, Gray, and/or Bedingfield in accomplishing the tortious result. The other Defendants' own conduct, separate from the conduct of Staker & Parson, Gray, or Bedingfield breached a duty to Miracon. The other Defendants' participation was a substantial factor in causing the underlying torts.

RESPONDEAT SUPERIOR

364. Miracon restates and re-alleges each of the allegations set forth herein and incorporates them herein.

365. Upon information and belief, Scott Parson, Lonnie Gray, and Doug Bedingfield are employees of Staker & Parson. Under the doctrine of respondeat superior, Staker & Parson, or the correct employer, is liable for the torts (alleged herein) of its employees acting while in the scope of employment even though the employer did not personally commit the torts.

VICARIOUS LIABILITY

366. Miracon restates and re-alleges each of the allegations set forth herein and incorporates them herein.

367. Upon information and belief, Scott Parson, Lonnie Gray, Doug Bedingfield, and/or other individuals were the agents of the Oldcastle Defendants.

368. Upon information and belief, the Oldcastle Defendants intentionally conferred authority on Scott Parson, Lonnie Gray, Doug Bedingfield, and/or other individuals and intentionally allowed such agents to believe they had authority, or through lack of due care, allowed these agents to believe they had authority.

369. Accordingly, these persons, acting within the scope of their agency executed contracts (in the case of Scott Parson) and/or committed torts. As such, the Oldcastle Defendants are vicariously liable for the acts of their agents.

VICE PRINCIPAL

370. Miracon restates and re-alleges each of the allegations set forth herein and incorporates them herein.

371. Scott Parson executed contracts, and Scott and John Parson committed tortious conduct described above, such as fraud, misappropriation of trade secrets, tortious interference with existing contracts and prospective relations. The Oldcastle Defendants are corporate entities. Upon information and belief, Scott Parson and/or John Parson were one of the following with respect to one or more of the Oldcastle Defendants: (1) a corporate officer of one or more of the Oldcastle Defendants; 2) a person with authority to employ, direct, and discharge the defendant's employees; (3) a person engaged in the performance of nondelegable or absolute duties of the defendant; or (4) a person to whom the defendant delegated the management of all or part of its business. As such, the Oldcastle Defendants are liable for the acts of their vice principals, such as Scott Parson and/or John Parson.

RATIFICATION

372. Miracon restates and re-alleges each of the allegations set forth herein and incorporates them herein.

373. Defendants have not answered in this lawsuit, and it is unclear from discovery whether Defendants allege that any of the acts of its agents were outside the scope of the agents' authority – as far as signing contracts or conducting business/dealing with Miracon. However, because Defendants adopted or confirmed all of the acts of their agents, Defendants are vicariously liable for any acts of its agents that are outside the scope of the agent's authority.

PIERCING THE CORPORATE VEIL – AND ALTER EGO

374. Miracon restates and re-alleges each of the allegations set forth herein and incorporates them herein.

375. The Oldcastle Defendants have not provided documents or discovery regarding their corporate form. Upon information and belief, the Oldcastle Defendants' corporate form should be disregarded because (1) the form was used as a sham to perpetuate a fraud; (2) the corporation was organized and operated as a mere tool or business conduit of another; (3) the form was used to achieve or perpetuate a monopoly. Upon information and belief, Staker & Parson operated as the alter ego of Oldcastle, OMI, and/or CRH, or vice versa. Additionally, with respect to the contract claims, the defendant caused the corporation to be used for the purpose of perpetrating an actual fraud and perpetrated an actual fraud on Miracon primarily for the defendant's direct personal benefit.

RESERVATION OF RIGHT TO AMEND AS TO CRH, OMI, OLDCASTLE, AND STAKER & PARSON OR OTHER CORPORATE ENTITIES

376. Miracon restates and re-alleges each of the allegations set forth herein and incorporates them herein.

377. Defendants' corporate structure, organization, and interrelatedness are not fully known to Plaintiff. In response to the Discovery Order, Defendants have not disclosed any additional parties or potential parties. Moreover, Defendants have not produced documents revealing their corporate relationship or their corporate structure or any information sufficient to enable Plaintiff to clearly identify who or what entities may be responsible for the infringing, tortious, and wrongful conduct described herein and all of the specific details about those entities, who have kept their conduct a secret. Until such time as those documents and that information is provided and produced, Plaintiff reserves the right to seek leave to join additional parties and to plead further as to the Defendants named herein.

DISCOVERY RULE AND FRAUDULENT CONCEALMENT

378. Miracon restates and re-alleges each of the allegations set forth above and incorporates them herein.

379. Defendants have not filed answers in this action. While Plaintiff maintains that it is Defendants' sole burden to prove all elements to any affirmative defense of limitations (which has not yet been pleaded), in an abundance of caution, Plaintiff affirmatively pleads the following defenses to any potential limitations argument. The discovery rule and the fraudulent concealment doctrine apply to this case and have tolled the running of limitations until at least October of 2014. The injuries complained of herein were inherently undiscoverable and objectively verifiable.

380. Moreover, upon information and belief, Defendants had actual knowledge of their wrongdoing. Defendants concealed their wrongs by making representations or remaining silent when having a duty to speak. Defendants had a fixed purpose to conceal their wrongdoings. Miracon reasonably relied on Defendants' representations and/or silence.

381. In fact, it was not before October of 2014 when Plaintiff learned of the Gray Patents that Plaintiff was put on actual or constructive notice of Defendants' breach of contract, statutory claims, infringing conduct, and tortious conduct. Accordingly, the limitations period was tolled until at least this date, and thus, the claims asserted herein are timely.

UNCLEAN HANDS

382. Miracon restates and re-alleges each of the allegations set forth above and incorporates them herein.

383. Defendants have not filed answers in this action. To the extent Defendants seek to rely on equitable defenses, such as laches, such equitable defenses are barred because Defendants have unclean hands. Miracon has acted fairly and without fraud or deceit as to the controversy at issue. In contrast, as shown more fully above, Defendants have acted inequitably,

in bad faith, and fraudulently. Defendants' misconduct occurred in a manner that prevented Miracon from knowing or learning sooner of Defendants' misconduct and prevented Miracon from bringing suit sooner. Therefore, Defendants cannot avail themselves of equitable remedies or defenses, such as laches.

DEMAND FOR TRIAL BY JURY

Miracon, specifically requests a trial by jury on all issues so triable, pursuant to Rule 38 of the Federal Rules of Civil Procedure.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Miracon respectfully request that judgment be entered in its favor and against Defendants and that the Court grant the following relief to Plaintiff:

1. Judgment that Defendants have infringed the '005 Patent;
2. That the Court award general and special damages of at least \$40,000,000 to Miracon for Defendants' breach of contracts, tortious conduct, and infringing activities, which include but are not limited to Miracon's lost profits, lost customers and prospective business opportunities, lost sales, harmed reputation, loss of goodwill, restitution, disgorgement of Defendants' profits, a reasonable royalty, and/or diminution in value of Miracon's technology and trade secrets;
3. Judgment that each of the Gray Patents is an obvious improvement patent based upon the '005 Patent;
4. Judgment that any entity that practices one or more claims of any of the Gray Patents, without Miracon's authority to practice the '005 Patent, infringes directly, indirectly, or contributorily at least one of the claims of the '005 Patent;
5. Judgment that this case is exceptional;
6. That this Court award Miracon increased damages in an amount not less than three times the amount of damages found by the jury or assessed by this Court, for Defendants willful infringement pursuant to 35 U.S.C. § 285;

7. That the Court enter a preliminary and thereafter a permanent injunction against Defendants, their officers, directors, agents, servants, employees, parent companies, affiliates, subsidiaries, divisions, branches, attorneys, representatives, and all others acting in concert or privity with them, from direct infringement of the '005 Patent;

8. That the Court enter a preliminary and thereafter a permanent injunction against Defendants, their officers, directors, agents, servants, employees, parent companies, affiliates, subsidiaries, divisions, branches, attorneys, representatives, and all others acting in concert or privity with them, from directly infringing the '005 Patent, by manufacturing, using, marketing, selling, offering for sale, and/or importing, without Miracon's authority to practice the '005 Patent, products and services that are covered by one or more claims of any of the Gray Patents, literally and/or under the doctrine of equivalents;

9. That the Court enter a preliminary and thereafter a permanent injunction against Defendants, their officers, directors, agents, servants, employees, parent companies, affiliates, subsidiaries, divisions, branches, attorneys, representatives, and all others acting in concert or privity with them, from active inducements of infringement and/or contributory infringements of the '005 Patent by inducing and/or contributing to third parties' manufacturing, using, marketing, selling, offering for sale, and/or importing, without Miracon's authority to practice the '005 Patent, products and services that are covered by one or more claims of any of the Gray Patents, literally and/or under the doctrines of equivalents;

10. That the Court enter a preliminary and thereafter a permanent injunction against Defendants' active inducements of infringement and/or contributory infringements of the '005 Patent by others;

11. That this Court enter an order directing Defendants to deliver to Miracon, and serve upon Miracon's counsel, within thirty (30) days after entry of the order of injunction, a report setting forth the manner and form in which Defendants have complied with the injunction;

12. Judgment that the Defendants breached the License Agreement;

13. Judgment that the Defendants breached the Supply Agreement;

14. Judgment that the Defendants breached the 2005 License and Supply Agreement;

15. That the Court award damages to Miracon to which it is entitled, including, but not limited to, the full amount of actual damages caused by breach of the License Agreement, Supply Agreement, and 2005 License and Supply Agreement;

16. Judgment that if the License Agreement has terminated, one or more claims of the '005 Patent has been infringed, either literally or under the doctrine of equivalents, by the Defendants;

17. Judgment that if the Supply Agreement has terminated, one or more claims of the '005 Patent has been infringed, either literally or under the doctrine of equivalents, by the Defendants;

18. Judgment that if the 2005 License and Supply Agreement has terminated, one or more claims of the '005 Patent has been infringed, either literally or under the doctrine of equivalents, by the Defendants;

19. Judgment that Defendants intentionally interfered with the existing contracts and/or prospective business relations and award Miracon its damages suffered;

20. Judgment that the Defendants misappropriated, converted, or stole Miracon's trade secrets pursuant to statute or common law and award Miracon its damages suffered;

21. Judgment that Defendants were unjustly enriched at Miracon's expense and award Miracon the amount of Defendants' unjust enrichment;

22. Judgment that the claims of the United States Patent No. 7,621,995, No. 7,670,426, No. 8,167,997 and No. 8,871,021 are invalid;

23. Judgment that the claims of the United States Patent No. 7,621,995, No. 7,670,426, No. 8,167,997 and No. 8,871,021 are unenforceable;

24. Judgment imposing a constructive trust over the titles to and rights in United States Patent No. 7,621,995, No. 7,670,426, No. 8,167,997 and No. 8,871,021, and over the benefits unjustly received by Defendants in relation to these patents;

25. Judgment that Defendants committed fraud and award Miracon its damages suffered;

26. Judgment that Defendants disparaged Miracon and award Miracon its damages suffered;

27. Judgment that Defendants committed civil theft or converted Miracon's property and award Miracon its damages suffered (or return of the property if feasible for conversion);

28. Judgment that Charles Welker is the sole or, in the alternative, a joint inventor of United States Patent No. 7,621,995, No. 7,670,426, No. 8,167,997 and No. 8,871,021.

29. Judgment that any Defendants who did not directly commit the underlying breach of contract or tort are vicariously liable for the acts of other Defendants described herein or share in liability and the damages owed to Miracon based on the theories pleaded herein;

30. Judgment that the arbitration clauses in the License Agreement, the Supply Agreement, and the 2005 License and Supply Agreement are unconscionable and otherwise unenforceable;

31. That this Court award pre-judgment and post-judgment interest;

32. That this Court award exemplary damages that are not capped by section 41 of the Texas Civil Practice and Remedies Code;

33. That this Court award Miracon's costs and attorney fees incurred in this action; and

34. That this Court award such further and other relief and the Court may deem just and proper.

Date: October 21, 2015

Respectfully submitted,

/Katarzyna Brozynski/

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CERTIFICATE OF SERVICE

The undersigned certifies that on October 21, 2015, the foregoing document was filed electronically in compliance with Local Rule CV-5(a), and thereby served on all counsel who are deemed to have consented to electronic service, per Local Rule CV-5(a)(3).

/s/ Katarzyna Brozynski
Katarzyna Brozynski