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7 Attorneys for Plaintiffs,
THE REGENTS OF THE
8 UNIVERSITY OF CALIFORNIA and
SONOSIM, INC.

9
10 **UNITED STATES DISTRICT COURT**
11 **CENTRAL DISTRICT OF CALIFORNIA**

12
13 THE REGENTS OF THE
UNIVERSITY OF CALIFORNIA, and
14 SONOSIM, INC., a California
corporation

15 Plaintiff,

16 vs.

17
18 MEDAPHOR LIMITED, a U.K. limited
19 liability company, and MEDAPHOR
20 NORTH AMERICA, Inc., a Delaware
corporation, and DOES 1-10, inclusive,

21 Defendants.

Case No. 16-CV-2847-GW(MRWx)

**FIRST AMENDED COMPLAINT
FOR PATENT INFRINGEMENT**

[DEMAND FOR JURY TRIAL]

22
23
24 For its complaint, The Regents of the University of California and SonoSim,
25 Inc. (hereinafter collectively referred to as “Plaintiffs”) allege as follows:
26

27 **I. PARTIES**

28 1. Plaintiff The Regents of the University of California (“UC”) is a public

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1 entity existing under the laws of the state of California.

2 2. SonoSim, Inc. (“SonoSim”) is a corporation organized under the laws
3 of the State of California and having a principal place of business at 1738 Berkeley
4 Street, Santa Monica, California. SonoSim offers for sale and sells ultrasound
5 training systems, among other products.

6 3. Upon information and belief, Defendant MedaPhor Limited is believed
7 to be a limited liability company organized under the laws of the United Kingdom
8 and having a place of business in Cardiff, England.

9 4. Defendant MedaPhor North America, Inc. is believed to be a Delaware
10 corporation having a principal place of business at 4370 La Jolla Village Drive,
11 Suite 400, San Diego, California.

12 5. A website was established by Stuart Gall for MedaPhor Limited and
13 MedaPhor North America, Inc at www.medaphor.com. The home page and the
14 company page state that MedaPhor has headquarters in Cardiff, UK and San Diego,
15 California with Stuart Gall as the CEO. The web page
16 <http://www.medaphor.com/contact/>, shows both MedaPhor Limited and MedaPhor
17 North America, Inc. as contacts. True and correct copies of webpages from
18 www.medaphor.com is attached as Exhibit 1.

19 6. It is believed that MedaPhor Limited and MedaPhor North America,
20 Inc. are run by the same corporate officer and share the same website. Therefore,
21 MedaPhor North America, Inc. is believed to be a wholly owned subsidiary of
22 MedaPhor Limited. As such, MedaPhor Limited and MedaPhor North America,
23 Inc. are one in the same, operating as a single unit.

24 7. The true names and capacities, whether individual, corporate or otherwise of
25 Defendants Does 1-10 inclusive, are unknown to Plaintiffs, which therefore sue
26 them by such fictitious names. Plaintiffs will seek leave to amend this complaint to
27 allege their true names and capacities when they have been ascertained. Plaintiffs
28 are informed and believe and thereon allege that each of the fictitiously named

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1 Defendants is responsible in some manner for the occurrences herein alleged and
2 that Plaintiffs’ damages as herein alleged were proximately caused by those
3 Defendants. At all times herein mentioned, Defendants Does 1-10 inclusive were
4 the agents, servants, or employees of their co-defendants, and in doing the things
5 hereinafter alleged were acting within the course and scope of their authority as
6 those agents, servants, or employees, and with the permission and consent of their
7 co-defendants (hereinafter, collectively with the named defendants, “the
8 Defendants”). Defendants MedaPhor Limited, MedaPhor North America, Inc., and
9 Does 1-10 are hereinafter referred to as “Defendants.”
10

11 **II. JURISDICTION AND VENUE**

12 8. This Court has subject matter jurisdiction over this action pursuant to
13 28 U.S.C. § 1331 and § 1338(a) since the patent infringement claims arise under the
14 Patent Act, and in particular, 35 U.S.C. §§ 271 and 281.

15 9. This Court has personal jurisdiction over MedaPhor in that MedaPhor
16 resides in this judicial district as a corporation registered with the State of
17 California to conduct business within this State. Additionally, MedaPhor has
18 committed and continues to commit acts of infringement in violation of 35 U.S.C. §
19 271 in this judicial district, and places infringing products into the stream of
20 commerce, with the knowledge and understanding that such products are used,
21 offered to be sold, and/or sold in the State of California, including in this judicial
22 district with the purpose of practicing the asserted patent.

23 10. Venue is proper in this judicial district as to the Defendants pursuant to
24 28 U.S.C. § 1391(b)(1) in that MedaPhor resides in this judicial district, because it
25 has a regular and established place of business in this judicial district, and/or a
26 substantial portion of the acts and omissions giving rise to the asserted claims
27 occurred in this judicial district.
28

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1 fully enforceable against the Defendants.

2 17. On June 9, 2011 UC executed an exclusive license agreement
3 (“Exclusive License Agreement) granting SonoSim an exclusive license to make,
4 have made, use, sell, offer for sale and import products disclosed and claimed in the
5 patents and patent applications identified in the June 9, 2011 Exclusive License
6 Agreement (“Licensed Products”), to practice the licensed methods disclosed and
7 claimed in the patents and patent applications identified in the June 9, 2011
8 Exclusive License Agreement (“Licensed Methods”), and the right to enforce the
9 patents.

10 18. The June 9, 2011 Exclusive License Agreement identified U.S.
11 Provisional Application No. 60/631,488; PCT/US05/43155; U.S. Patent
12 Application No. 11/720,515 and any continuation and divisional applications
13 thereof. The ‘404 patent is a continuation of U.S. Patent Application No.
14 11/720,515; and is therefore, covered by the Exclusive License Agreement of June
15 9, 2011. SonoSim is, therefore, an exclusive licensee of the ‘404 patent.

16 19. SonoSim has learned, through firsthand knowledge as well as by
17 reference to certain advertising, that MedaPhor places and/or has placed on its
18 website that Defendant MedaPhor is making, using, offering for sale, and selling
19 ultrasound training systems that infringe the ‘404 patent (the “accused products”).

20 20. Upon close inspection of the instructional material, along with the
21 content and images provided by MedaPhor through its website advertising, it is
22 evident that the accused products infringe the ‘404 patent.

23 21. Specifically, SonoSim reproduces below claim 3 as representative of
24 the ‘404 patent claims and compares it to the accused product.

25 3. A medical procedure training system for simulating ultrasound imaging and ultrasound-
26 guided medical procedures, the system comprising:
27 a control device;
28 two graphical interfaces connected to the control device, wherein a first graphical
interface displays a three-dimensional model and a second graphical interface displays a
digital video, the digital video comprising actual images previously recorded by

1 scanning a live subject as well as simulated images, the actual images including a
2 depiction of a muscle layer, the simulated images being modified actual images, the
3 simulated images removing the depiction of the muscle layer from the actual images;
4 and
5 a user input device connected to the control device, the user input device comprising a
6 motion sensor, the motion sensor detecting a position of the input device and a pointing
7 direction of the input device,
8 wherein the graphical interface displays dynamic actual and simulated images
9 corresponding to signals provided by the user input device, the signals corresponding to
10 a spatial orientation of the user input device as determined from a position of the input
11 device and a pointing direction of the input device, and
12 wherein the system is configured to simulate ultrasound imaging and ultrasound-guided
13 medical procedures through system feedback.

14 22. As shown above, claim 3 of the '404 patent first recites (in its
15 preamble) a “medical procedure training system for simulating ultrasound imaging
16 and ultrasound-guided medical procedures.” As shown at, among other times, 7
17 seconds into the video produced and made available by MedaPhor at
18 <http://www.medaphor.com/scantrainer/scantutor/> (“the ScanTutor instructional
19 video”), the accused product is shown as an ultrasound training system for
20 simulating ultrasound imaging and ultrasound-guided medical procedures. This
21 element of claim 3 of the '404 patent, therefore, literally reads on the accused
22 product.

23 23. Next, claim 3 recites, “a control device.” As shown at, among other
24 times, 1 minute and 53 seconds into the ScanTutor instructional video, the Scan
25 Tutor employs a control device substantially in the form of a simulated ultrasound
26 probe. This element of claim 3 of the '404 patent, therefore, literally reads on the
27 accused product.

28 24. Next, claim 3 recites, “two graphical interfaces connected to the
control device, wherein a first graphical interface displays a three-dimensional
model and a second graphical interface displays a digital video, the digital video
comprising actual images previously recorded by scanning a live subject as well as
simulated images, the actual images including a depiction of a muscle layer, the

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1 simulated images being modified actual images, the simulated images removing the
2 depiction of the muscle layer from the actual images.” As shown at, among other
3 times, 1 minute and 8 seconds into the ScanTutor instructional video, the accused
4 product likewise has two graphical interfaces connected to the control device. The
5 first graphical interface displays a three-dimensional model. The second displays a
6 digital video. The digital video appears to comprise actual images previously
7 recorded by scanning a live subject as well as simulated images. The actual images
8 include a depiction of a muscle layer; whereas the simulated images reflect
9 modified actual images in which the muscle layer has been removed. These
10 elements of claim 3 of the ‘404 patent, therefore, literally read on the accused
11 product.

12 25. Next, claim 3 recites, “a user input device connected to the control
13 device, the user input device comprising a motion sensor, the motion sensor
14 detecting a position of the input device and a pointing direction of the input
15 device.” As shown at, among other times, 2 minutes and 3 seconds into the
16 ScanTutor instructional video, the accused product has a user input device
17 connected to the control device. The user input device appears to comprise a
18 motion sensor for sensing a position and pointing direction of the input device.
19 These elements of claim 3 of the ‘404 patent, therefore, literally read on the accused
20 product.

21 26. Next, claim 3 recites, “wherein the graphical interface displays
22 dynamic actual and simulated images corresponding to signals provided by the user
23 input device, the signals corresponding to a spatial orientation of the user input
24 device as determined from a position of the input device and a pointing direction of
25 the input device.” As shown at, among other times, 1 minute and continuing for
26 roughly 30 seconds in the ScanTutor instructional video, the Scan Tutor’s graphical
27 interface displays dynamic actual and simulated images that correspond to signals
28 provided by the user input device that correspond to a spatial orientation of the user

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1 input device determined from the position and pointing direction of the input
2 device. These elements of claim 3 of the ‘404 patent, therefore, literally read on the
3 accused product.

4 27. Lastly, claim 3 recites, “wherein the system is configured to simulate
5 ultrasound imaging and ultrasound-guided medical procedures through system
6 feedback.” As shown at, among other times, 20 seconds into the ScanTutor
7 instructional video, the Scan Tutor system is configured to simulate ultrasound
8 imaging and ultrasound-guided medical procedures through system feedback.
9 MedaPhor’s ABOG video likewise discusses its haptic feedback feature at roughly
10 20 seconds in. These elements of claim 3 of the ‘404 patent, therefore, literally
11 read on the accused product.

12 28. The foregoing is an example only, and is disclosed without waiving
13 any right to assert any other claim of the ‘404 patent either directly or indirectly, to
14 assert claim 3 of the ‘404 patent on other grounds, or infringement as to any other
15 product or functionality by MedaPhor.

16 29. Plaintiffs have not licensed or otherwise authorized any Defendants (or
17 its dealers, customers, affiliates, or the like) to make, use, sell, or offer to sell the
18 accused product or any systems that fall within the scope of any of the claims of the
19 ‘404 patent.

20 30. Upon information and belief, MedaPhor sells and/or leases the accused
21 products to various customers and companies, which then use the accused product
22 in precisely the manner and configuration as covered by the ‘404 patent. In
23 addition, MedaPhor purchased Plaintiffs’ product in 2013, claiming that it wanted
24 to evaluate SonoSim’s flagship system for potential use as part of MedaPhor’s
25 ultrasound courses in the UK. Instead, it launched a competing system, never
26 proposing any joint project as it had suggested.

27 31. Indeed, its new Scan Tutor function has progressively come closer and
28 closer to Plaintiffs’ patented system over these years, demonstrating the willfulness

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1 of MedaPhor’s infringing conduct. MedaPhor changed the names of its modules to
2 match Plaintiffs’ naming conventions, adding the terms “Core Skills” and
3 "Advanced Skills” to match SonoSim Module naming conventions. Also,
4 MedaPhor copied Plaintiffs’ educational module format, Plaintiffs’ “virtual expert
5 master scan” feature, Plaintiffs’ “probe guide” feature, Plaintiffs’ virtual
6 guide/instructor feature, and even the same red-to-green probe color change to
7 signify successful image acquisition feature and design.

8 32. MedaPhor’s infringement of the ‘404 patent, therefore, is willful and
9 direct, and also is indirect, actively inducing others to infringe and selling in the
10 marketplace a product that does not have any substantial non-infringing uses.

11
12 **IV. COUNT I – DIRECT PATENT INFRINGEMENT**
13 **(35 U.S.C. § 271(a))**

14 33. Plaintiffs hereby repeat and incorporate herein the allegations set forth
15 in paragraphs 1 through 32 above.

16 34. This claim is against Defendants for patent infringement under 35
17 U.S.C. §§ 101 *et seq.*, including specifically, § 271(a).

18 35. The ‘404 patent (see, **Exhibit 2** attached hereto) has at all relevant
19 times subsequent to its issue date been fully enforceable and is now fully
20 enforceable.

21 36. The making, using, importing, offering to sell, and/or selling of the
22 accused products by Defendants, and/or contributing to and/or inducing the
23 infringing activities of others, has been without authority or license from Plaintiffs
24 and is in violation of Plaintiffs’ rights under the ‘404 patent, thereby infringing the
25 ‘404 patent.

26 37. Upon information and belief, Plaintiffs allege that Defendants’
27 foregoing infringing acts have been with full knowledge of Plaintiff’s rights and
28 interests, thereby constituting willful patent infringement.

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1 38. Plaintiffs have been damaged by Defendants’ acts as alleged in this
2 complaint, and Defendants have improperly profited thereby. Defendants are
3 therefore liable for money damages pursuant to 35 U.S.C. § 284 to Plaintiffs from
4 at least as early as January 19, 2016. Plaintiffs are entitled to a complete
5 accounting of all revenue derived by Defendants from the unlawful conduct alleged
6 herein in order to determine the full amount of money damages which Plaintiffs
7 have suffered due to Defendants’ acts of infringement, with Plaintiffs being entitled
8 to damages adequate to fully compensate it for the infringements.

9 39. The harm to Plaintiffs arising from Defendants’ acts of infringement of
10 Plaintiff’s ‘404 patent is not fully compensable by money damages. Rather,
11 Plaintiffs have suffered and continue to suffer irreparable harm which has no
12 adequate remedy at law and which will continue unless Defendants’ conduct is
13 enjoined. Defendants must therefore be enjoined and deterred from any further
14 violations of Plaintiffs’ rights in the ‘404 patent through a permanent injunction.

15 40. Defendants should also be required to pay Plaintiffs’ attorneys’ fees,
16 expenses, and costs for their willful and blatant disregard of Plaintiffs’ patent rights.

17 **V. COUNT II – INDUCED PATENT INFRINGEMENT**
18 **(35 U.S.C. § 271(b))**

19 41. Plaintiffs hereby repeat and incorporate herein the allegations set forth
20 in paragraphs 1 through 40 above.

21 42. This claim is against Defendants for induced patent infringement under
22 35 U.S.C. §§ 101 *et seq.*, and specifically, § 271(b).

23 43. Upon information and belief, subsequent to notice of the ‘404 patent,
24 Defendants have infringed the ‘404 patent by inducing others and continue to
25 induce others to make, use, offer for sale, and/or sell the accused products, which
26 come within the scope of at least one claim of the ‘404 patent, including through
27 Defendants’ use and advertisement of the accused product.

28 44. As shown in the ScanTutor instructional video, discussed above,

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1 MedaPhor advertises the accused products by showing how to perform the
2 infringing ScanTutor features.

3 45. And, as shown in the video, the separate elements that make up claim
4 3, among others, of the ‘404 patent are packaged together as a single accused
5 product including all of the necessary aspects for fully practicing the method claims
6 of the ‘404 patent.

7 46. By providing all the parts and means for full performance of the
8 method claims in the accused product and by displaying in advertisements,
9 including on its website, how to use the accused product to perform each of the
10 infringing steps, MedaPhor, directly induces others, including its customers, to use
11 the accused product.

12 47. Upon information and belief, Defendants have been so inducing others
13 with full knowledge of the ‘404 patent, thereby constituting willful patent
14 infringement.

15 48. Plaintiffs have been damaged by Defendants’ acts of induced
16 infringement as alleged herein, and Plaintiffs are therefore entitled to damages
17 adequate to fully compensate them for the inducement of patent infringement.

18 49. The harm to Plaintiffs arising from Defendants’ induced infringement
19 of the ‘404 patent is not fully compensable by money damages. Rather, Plaintiffs
20 have suffered and continue to suffer irreparable harm which has no adequate
21 remedy at law and which will continue unless Defendants’ conduct is enjoined.

22 50. Plaintiffs are, therefore, also entitled to a preliminary injunction, to be
23 made permanent on entry of the judgment, preventing Defendants from further acts
24 of inducing infringement.

25
26 **VI. COUNT III – CONTRIBUTORY PATENT INFRINGEMENT**
27 **(35 U.S.C. § 271(c))**

28 51. Plaintiffs hereby repeat and incorporate herein the allegations set forth

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1 in paragraphs 1 through 50 above.

2 52. This claim is against Defendants for contributory patent infringement
3 under 35 U.S.C. §§ 101 *et seq.*, including specifically, § 271(c). Upon information
4 and belief, subsequent to its actual notice of the ‘404 patent, Defendants have
5 contributed to the infringement of the ‘404 patent by others by making, using,
6 importing, offering to sell, and/or selling, and continuing to make, use, import, offer
7 to sell and/or sell all of the necessary parts of the accused products as a single
8 package.

9 53. As shown in the ScanTutor video, above, the ScanTutor package
10 contains, *inter alia*, each and every element of the device claims as well as each and
11 every step of the method claims.

12 54. The only imaginable use of this combination of features listed above
13 and shown to be contained in the ScanTutor, including through MedaPhor’s own
14 instructional video, is to practice at least claims 1 and 2 of the ‘404 patent.

15 55. Upon information and belief, SonoSim alleges that Defendants’
16 foregoing contributorily infringing acts have been with full knowledge of Plaintiffs’
17 rights and interests, thereby constituting willful patent infringement.

18 56. Plaintiffs have been damaged by Defendants’ contributory acts of
19 infringement as alleged in this complaint, and Plaintiffs are entitled to a complete
20 accounting of all revenue derived by Defendants from the unlawful conduct alleged
21 herein in order to determine the full amount of money damages which Plaintiffs
22 have suffered due to Defendants’ acts of infringement, with Plaintiffs being entitled
23 to damages adequate to fully compensate them for the contributory infringements.

24 57. The harm to Plaintiffs arising from Defendants’ contributory acts of
25 infringement of the ‘404 patent is not fully compensable by money damages.
26 Rather, Plaintiffs have suffered and continue to suffer irreparable harm which has
27 no adequate remedy at law and which will continue unless Defendants’ conduct is
28 enjoined.

1 58. Plaintiffs are therefore also entitled to a preliminary injunction, to be
2 made permanent on entry of the judgment, preventing Defendants from further acts
3 of contributory infringement.

4 **VII. PRAYER FOR RELIEF**

5 WHEREFORE, Plaintiffs demand judgment against Defendants, jointly and
6 severally, as follows:

7 A. A finding that Defendants have directly infringed the '404 patent.

8 B. A finding that Defendants have induced infringement of the '404
9 patent.

10 C. A finding that Defendants have committed contributory infringement
11 of the '404 patent.

12 D. For an order preliminarily and permanently enjoining Defendant, and
13 its officers, directors, agents, servants, attorneys, affiliates, and employees and all
14 other persons acting in concert with it from committing any further acts of
15 infringement (direct or indirect), including but not limited to, manufacturing, using,
16 importing, offering to sell, and selling the accused product (or products colorably
17 similar thereto), or aiding or abetting or assisting others in such infringing
18 activities;

19 E. For an order seizing and impounding all infringing products and all
20 manufacturing supplies in Defendants' possession or control;

21 F. For an order directing Defendants to file with this Court and to serve
22 on Plaintiffs within thirty (30) days after service on Defendants of the injunction
23 granted herein, or such extended period as the Court may direct, a report in writing,
24 under oath, setting forth in detail the manner and form in which Defendants have
25 complied with and are continuing to comply with the injunction and order of this
26 Court;

27 G. For a judgment to be entered for Plaintiffs against Defendants
28 awarding damages adequate to fully compensate Plaintiffs for the infringement;

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1 H. For a judgment awarding to Plaintiffs pre-judgment and post-judgment
2 interest until the award is fully paid;

3 I. For a judgment that Defendants have willfully and deliberately
4 infringed Plaintiffs' patent rights, such that it is determined that this is an
5 exceptional case entitling Plaintiffs to enhanced damages under the Patent Laws of
6 the United States;

7 J. For an award to Plaintiffs of costs, expenses, and attorneys' fees,
8 incurred in bringing this action under the Patent Laws of the United States; and,

9 K. For such other and further relief as this Court may deem just and
10 equitable under the circumstances.

11
12 Respectfully submitted:
13 CISLO & THOMAS LLP

14
15 Dated: June 22, 2016

16 By: /s/Daniel M. Cislo
17 Daniel M. Cislo, Esq.
18 Kelly W. Cunningham, Esq.
19 C. Wook Pak, Esq.

20 Attorneys for Plaintiffs,
21 THE REGENTS OF THE
22 UNIVERSITY OF CALIFORNIA,
23 and SONOSIM, INC.

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DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a trial by jury on all issues raised by the Complaint so triable.

Respectfully submitted:

CISLO & THOMAS LLP

Dated: June 22, 2016

By: /s/Daniel M. Cislo
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SONOSIM, INC.