

J. Christopher Carraway, OSB No. 961723  
Email: [chris.carraway@klarquist.com](mailto:chris.carraway@klarquist.com)  
Todd M. Siegel, OSB No. 001049  
Email: [todd.siegel@klarquist.com](mailto:todd.siegel@klarquist.com)  
KLARQUIST SPARKMAN, LLP  
121 S.W. Salmon Street, Suite 1600  
Portland, Oregon 97204  
Telephone: (503) 595-5300

*Attorneys for Plaintiff*  
BAXTER AUTO PARTS, INC.

UNITED STATES DISTRICT COURT  
DISTRICT OF OREGON  
PORTLAND DIVISION

**BAXTER AUTO PARTS, INC.**,  
an Oregon corporation,

Plaintiff,

v.

**LANDMARK TECHNOLOGY, LLC**, a  
California limited liability company,

Defendant.

Civil Case No.: 3:18-cv-0629

**COMPLAINT FOR DECLARATORY  
JUDGMENT AND FOR VIOLATIONS  
OF THE OREGON UNFAIR  
TRADE PRACTICES ACT**

**DEMAND FOR JURY TRIAL**

Plaintiff, Baxter Auto Parts, Inc. (“Baxter”), by its attorneys and for its Complaint against Defendant Landmark Technology, LLC (“Landmark”), hereby alleges, upon knowledge as to its own actions and on information and belief as to all other matters, as follows:

**INTRODUCTION**

1. Landmark is a non-practicing entity demanding payment of \$65,000 from Baxter for alleged patent infringement of United States Patent No. 6,289,319 (“the ’319 patent”). Landmark has a long history of sending letters demanding similar royalties from potential targets and then filing lawsuits if the target refuses to pay the demand. Baxter brings this action seeking

a declaration that the '319 patent is invalid, a declaration that Baxter has not infringed and does not infringe any valid and enforceable claim of the '319 patent, a declaration that Landmark's damages are limited based on its failure to comply with the provisions of 35 U.S.C. § 287, a declaration that Landmark cannot enforce the '319 patent, and a judgment that Landmark's demand letters constitute a bad faith assertion of infringement, which is a violation of the Oregon Unlawful Trade Practices Act.

### **THE PARTIES**

2. Baxter is a corporation organized under the laws of the State of Oregon, with its principal place of business at 9444 North Whitaker Road, Portland, Oregon 97217.

3. Baxter is a retail chain of auto parts stores with 38 locations in Washington, Oregon and California. The company was started in 1936 by Ray Baxter and his wife, Wilma. It is currently owned and operated by the third generation of the Baxter family.

4. On information and belief, Landmark is a Delaware limited liability company having its principal place of business at 329 Laurel Street, San Diego, California 92102.

### **JURIDICTION AND VENUE**

5. This Court has original and exclusive subject matter jurisdiction over these claims pursuant to 28 U.S.C. § 1338 because the Complaint states claims arising under an Act of Congress relating to patents, 35 U.S.C. § 271.

6. This Complaint also arises under the Federal Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.* based on Landmark's accusations towards Baxter for patent infringement and its pattern of actual litigation concerning the '319 patent, thereby giving rise to an actual case or controversy under 28 U.S.C. §§ 2201 and 2202.

7. This Court has personal jurisdiction over Landmark. Upon information and belief, Landmark conducts substantial business in this judicial District, including regularly doing or soliciting business, engaging in other persistent courses of conduct, such as sending letters to Oregon companies alleging infringement of the '319 patent and demanding payment of royalties, and seeking and deriving substantial revenue from individuals and entities in Oregon.

8. Landmark has purposefully directed its activities at residents of Oregon. Landmark sent a letter alleging that Baxter has infringed the '319 patent and demanding payment of royalties, with an implied threat that Landmark will use the courts in Oregon or elsewhere to enforce Landmark's alleged patent rights if no royalty is paid. On information and belief, Landmark sent letters to numerous other companies, including other companies based in Oregon, asserting infringement of the '319 patent and demanding payment of money. Thus, Landmark has sufficient minimum contacts with the State of Oregon to satisfy the Oregon long-arm statute (ORCP 4) and Constitutional due process requirements.

9. Venue is proper pursuant to 28 U.S.C. § 1391 because a substantial part of the events or omissions giving rise to the claims herein occurred in this judicial district.

### **FACTUAL BACKGROUND**

#### **General Background**

10. Upon information and belief, Landmark does not make, use, or sell any products or services of its own, but is solely in the business of patent licensing through the threat of litigation—this pattern of behavior is indicative of entities commonly referred to as “patent trolls.”

11. Upon information and belief, Landmark's sole business activity involves sending letters accusing companies of patent infringement, threatening litigation, and demanding

payment of a license fee, and then suing those companies for patent infringement who do not pay.

12. Landmark consistently follows through on threats against companies who refuse to pay the license fee sought by Landmark's demand letters, as evidenced by the mountain of litigation stemming from the '319 patent alone. *See e.g., Landmark Technology LLC v. Gensco, Inc.*, WAWD-3-17-cv-05872 (filed Oct. 24, 2017); *Landmark Technology, LLC v. Anthony-Thomas Candy Co.*, OHSD-2-17-cv-00908 (filed Oct. 19, 2017); *Landmark Technology, LLC v. Totally Chocolate, LLC*, WAWD-2-17-cv-01396 (filed Sept. 15, 2017); *Landmark Technology, LLC v. Jones Soda Co. et al.*, WAWD-2-17-cv-00978 (filed June 28, 2017); *Landmark Technology, LLC v. Launchpad, Inc.*, CASD-3-17-cv-00892 (filed May 3, 2017); *Landmark Technology, LLC v. GourmetGiftBaskets.com, Inc.*, CASD-3-17-cv-00851 (filed April 26, 2017).

13. On information and belief, Landmark has filed over eighty lawsuits against various companies asserting infringement of the '319 patent and patents related to the '319 patent. In addition, on information and belief, over a dozen declaratory judgment lawsuits have been filed against Landmark based on Landmark's threatening letters regarding the '319 patent.

14. Landmark swiftly settles all lawsuits; none of the lawsuits involving the '319 patent has made it as far as claim construction.

15. A review of the record shows that very few defendants sued by Landmark ever file an Answer. Most cases appear to be resolved prior to the Answer filing deadline.

16. Likewise, a review of the record shows that in most declaratory judgment lawsuits filed against Landmark, the cases appear to be resolved prior to the Answer filing deadline.

17. Landmark appears to systematically and quickly settle litigation prior to any potentially damaging rulings, thereby preserving its ability to extract license fees from other companies moving forward.

18. Upon information and belief, these settlements are made quickly and confidentially to prevent future targets from learning of the baselessness of Landmark's claims and to prevent any party from pursuing to judgment the invalidity of the '319 patent.

19. Landmark also appears routinely to demand a royalty of less than \$100,000, far less than the cost of defending against a patent infringement lawsuit or litigating a declaratory judgment action. On information and belief, Landmark's demand is made without much consideration of the size of the targeted company or the amount of use of its accused product, service, or technology. Landmark's royalty demand for far less than the cost of litigation appears designed to encourage targets to pay the royalty instead of defending against baseless infringement claims or seeking a judgment of invalidity of the '319 patent.

20. Similar fact patterns to the one present here, where a party's business model involves filing numerous patent infringement suits, demanding a royalty far less than the cost of defense, and leveraging the high cost of litigation to extract settlements, and where the patentee has no intention of testing the merits of their claims, have been found "exceptional" under 35 U.S.C. § 285 and support an award of fees and costs, especially under the lower standard for awarding fees articulated in *Octane Fitness, LLC v. ICON Health & Fitness, Inc.*, 134 S. Ct. 1749 (2014). *See, e.g., SFA Sys., LLC v. Newegg Inc.*, 793 F.3d 1344, 1350 (Fed. Cir. 2015) (finding that a pattern of litigation abuses characterized by the repeated filing of patent infringement actions for the sole purpose of forcing settlements, with no intention of testing the merits of one's claims, is relevant to a district court's exceptional case determination under 35

U.S.C. § 285); *Rothschild Connected Devices Innovations, LLC v. Guardian Prot. Servs., Inc.*, 858 F.3d 1383, 1390 (Fed. Cir. 2017) (finding that patent owners pattern of litigation practices and willful ignorance of invalidating circumstances could warrant an award of fees under 35 U.S.C. § 285); *Shipping and Transit LLC v. Hall Enters., Inc.*, CACD-2-16-cv-06535 (finding pattern of filing serial litigation and voluntarily dismissing cases prior to judgment on validity justifies award of attorney fees under 35 U.S.C. § 285).

21. Landmark’s tactic of filing serial litigation and voluntarily dismissing cases prior to judgment on validity, combined with the baseless nature of its demands, renders this case exceptional so as to justify award of attorney fees under 35 U.S.C. § 285.

#### **Landmark’s Threatening Letters**

22. On or about February 16, 2017, Landmark sent a letter to Mr. Ray Baxter, of Baxter Auto Parts, asserting that Baxter infringes the ’319 patent, claiming that “specific functionalities implemented by Baxter Auto Parts using their servers and devices interfaced to Baxter Auto Parts’ web servers constitutes use of the technology taught within the meaning of Claim 1 of the ’319 patent.” A copy of the letter as received is attached as Exhibit B to this Complaint.

23. Prior to the letter, Baxter had never heard of Landmark or the ’319 patent.

24. The letter does not include an element-by-element explanation of how Baxter is supposed to infringe claim 1, or any other claim of the ’319 patent, nor does the letter include any other type of analysis or description of how Baxter’s products, services, or technology is believed to infringe. Instead, the letter simply includes a link to the “cart” page of Baxter’s website: <https://www.baxterautoparts.com/cart>.

25. The letter concludes by offering Baxter a “non-exclusive license to its ’319 patent, for \$65,000.” This offer, Landmark is quick to point out, will be withdrawn in the event of litigation, in order to discourage Baxter from defending itself. The letter requested a response within 15 days.

26. Nowhere in the letter did Landmark indicate that the offer was negotiable. Upon information and belief, this tactic is designed to extract a payment from letter recipients, knowing that the payment would be significantly less expensive than defending against even a baseless patent infringement case.

27. The letter fails to indicate whether Landmark is the owner or assignee of the ’319 patent. A review of the U.S. Patent and Trademark Office (“PTO”) assignment database does not indicate any assignments have been made of the ’319 patent, making Landmark’s claim to have “exclusive rights” unsubstantiated.

28. The letter also makes a number of misleading statements regarding the prominence of the ’319 patent.

29. On March 16, 2018, Landmark’s attorney sent a follow-up letter to Mr. Baxter, stating that Landmark had not received a response to the first letter and stating that the “current amount of a non-exclusive license to Landmark’s ’319 patent expires on April 16, 2018.”

30. The follow-up letter does not mention any Baxter accused product, service, or technology, nor does it include any analysis of how Landmark contends that Baxter is alleged to infringe the ’319 patent.

### **The '319 Patent**

31. The original patent application to which the '319 patent claims priority, was filed by Lawrence B. Lockwood ("Lockwood") over 33 years ago, in 1984. A "continuation-in-part" patent application was filed in 1986, based in part on the original patent application filed in 1984.

32. This continuation-in-part patent application was rejected by the PTO in 1988 and subsequently abandoned.

33. Between 1988 and 1993, Lockwood filed additional patent applications stemming from the eventually rejected and abandoned 1988 continuation-in-part. These additional applications filed between 1988 and 1993 were likewise rejected and abandoned.

34. On November 30, 1994, Lockwood filed another patent application, U.S. App. No. 08/347,270 ("the '270 application"), which used essentially the same specification as the previously rejected and abandoned applications. The '270 application was titled "Automatic Loan Processing Terminal System."

35. In 1995, Lockwood filed an amendment to the '270 application changing the title of the application to "Automatic Business and Financial Transaction Processing System," deleting certain claims and adding other claims in response to the Examiner's rejection.

36. In response to these amendments, the Examiner again rejected the application under 35 U.S.C. § 112, and under 35 U.S.C. § 103 for being unpatentable due to being an obvious combination of prior art.

37. Lockwood appealed the Examiner's final rejection to the PTO's Board of Patent Appeals and Interferences. During the appeal, Lockwood argued that the claims required "forward chaining" in order to overcome various combinations of prior art. Lockwood further argued that his invention had the ability to dynamically interact with a user at the terminal.



38. On September 27, 2000, the Board reversed the examiner's rejection at least partially because "the examiner has failed to establish a prima facie case of obviousness with regard to claimed subject matter." BPAI Decision on Appeal, Appeal No. 1997-2678, Sep. 27, 2000, pp. 7-8.

39. On September 11, 2001, the '319 patent, entitled "Automatic Business and Financial Transaction Processing System" issued. A copy of the '319 patent is attached as Exhibit A to this Complaint.

40. The '319 patent is ostensibly directed to an automatic data processing system for processing business and financial transactions between entities from remote sites.

41. Post issuance, the '319 patent has been through two Ex Parte Reexaminations. Certificates for the Ex Parte Reexaminations issued on July 17, 2007, and January 9, 2013, respectively.

42. On information and belief, in one such reexamination, Lockwood was forced to amend and add new dependent claims. In view of the narrower claims, the Examiner eventually relented and a Reexamination certificate issued on in 2007.

43. On information and belief, in another reexamination, filed on September 14, 2012, the Patent Office only allowed the claims to survive reexamination based on a narrow interpretation of the patent, such that the claims require the use of "forward chaining."

44. Because the '319 patent claims require "forward chaining," it cannot claim priority to May 24, 1984, as that original ancestral application fails to disclose or teach forward chaining. Instead, the '319 patent can only claim priority to, at the very earliest, the continuation-in-part application filed on January 24, 1986.

45. The '319 patent contains a single independent claim, which reads as follows:

1. An automatic data processing system for processing business and financial transactions between entities from remote sites which comprises:

a central processor programmed and connected to process a variety of inquiries and orders transmitted from said remote sites;

said central processor including:

**means for** receiving information about said transactions from said remote sites;

**means for** retrievably storing said information;

at least one terminal at each of said remote sites including a data processor and operational sequencing lists of program instructions;

**means for** remotely linking said terminal to said central processor and for transmitting data back and forth between said central processor and said terminal;

said terminal further comprising **means for** dispensing information and services for at least one of said entities including:

a video screen;

**means for** holding operational data including programing, informing, and inquiring sequences of data;

**means for** manually entering information;

**means for** storing information, inquiries and orders for said transactions entered by one of said entities via said **means for** manually entering information, and data received through and from said central processor;

on-line **means for** transmitting said information, inquiries, and orders to said central processor;

on-line **means for** receiving data comprising operator-selected information and orders from said central processor via said linking means;

**means for** outputting said informing and inquiring sequences on said video screen in accordance with preset routines and in response to data entered through said **means for** entering information;

**means for** controlling said **means for** storing, **means for** outputting, and **means for** transmitting, including **means for** fetching additional inquiring sequences in

response to a plurality of said data entered through said **means for** entering and in response to information received from said central processor;

said informing sequences including directions for operating said terminal, and for presenting interrelated segments of said operational data describing a plurality of transaction operations;

said programming sequences including **means for** interactively controlling the operation of said video screen, data receiving and transmitting **means**; and for selectively retrieving said data from said **means for** storing;

said **means for** storing comprising **means for** retaining said operational sequencing list and **means** responsive to the status of the various **means for** controlling their operation;  
said central processor further including:

**means responsive to** data received from one of said terminals for immediately transmitting selected stored information to said terminal; and

**means responsive to** an order received from a terminal for updating data in said **means for** storing;

whereby said system can be used by said entities, each using one of said terminals to exchange information, and to respond to inquiries and orders instantaneously and over a period of time.

'319 patent, claim 1 (emphasis added).

46. In order to infringe the claims of the '319 patent, irrespective of validity, one must at the very least practice every limitation of claim 1.

47. Further, the accused system must include every limitation as argued by Lockwood in prosecution, including prosecution of the Reexaminations.

48. Further still, the accused system must include every limitation as construed by Landmark in other litigation. For example, in prior litigation, Landmark has argued for a narrow claim scope to forestall an invalidity ruling. *E.g., Tatcha LLC v. Landmark Technology, LLC.*, NDCA-3-16-cv-04831, ECF No. 40.

49. Finally, the claims contain a large number of means-plus-function limitations (such as those in paragraph 51 above in bold). Under 35 U.S.C. § 112(f)/(6) these means-plus-function limitations are construed to cover the function recited in the claim limitation using structure recited in the patent specification for performing that function, and structural equivalents. If the patent specification fails to recite structure for performing the function claimed for any one of these means-plus-function limitations, the claim is invalid for indefiniteness under 35 U.S.C. § 112(b)/(2). The sparse specification of the '319 patent fails to provide the required structure of the various "means" recited in claim 1. This is exacerbated by the narrow and specific scope that Landmark repeatedly described the '319 patent to have, a specificity not found anywhere in the specification.

**Baxter Does Not Infringe Any Valid and Enforceable Claim of the '319 Patent**

50. Baxter does not infringe Claim 1, or any other valid claim of the '319 patent, for at least the following reasons:

- Claim 1 is invalid under 35 U.S.C. § 101 for claiming an abstract idea;
- Claim 1 is invalid under 35 U.S.C. § 112;
- Baxter's services or website do not practice every limitation of Claim 1.

51. Upon information and belief, Landmark failed to undergo any type of infringement analysis prior to sending its demand letter.

52. As noted previously, the letter does not include an element-by-element description, or any other type of analysis of Baxter's product, services, or technology believed to infringe and instead simply includes a link to Baxter's website.

53. Upon information and belief, Landmark never used Baxter’s website in a way that would allow Landmark to identify whether the website meets each and every limitation of claim 1.

54. Upon information and belief, Landmark did not perform any due diligence of Baxter’s systems or services to form a reasonable belief that the website meets each and every limitation of claim 1 prior to writing to Baxter threatening legal action and demanding payment of \$65,000.

**COUNT I – DECLARATION OF INVALIDITY OF U.S. PATENT 6,289,319**

55. Baxter restates and incorporates by reference the allegations in paragraphs 1 through 54 of this Complaint as if fully set forth herein.

56. Landmark claims to have “exclusive rights” to the ’391 patent.

57. Landmark demanded that Baxter take a license to the ’319 patent within 15 days. Landmark then stated that its demand “expires on April 16, 2018,” implying a threat of suit at that point if the demand is not paid.

58. Landmark is in the business of threatening litigation and following through on that threat specifically with respect to the ’319 patent. A review of Landmark’s record demonstrates a consistent and readily apparent pattern of litigation, creating a reasonable fear that Baxter was Landmark’s next target if the demand was not paid.

59. The claims of the ’319 patent are invalid under at least 35 U.S.C. §§ 101 and 112.

60. The claims of the ’319 patent do not constitute patentable subject matter pursuant to 35 U.S.C. § 101, and therefore are an invalid or ineligible patent on an abstract idea. The ’319 patent claims the abstract idea of automated data processing of business transactions. Nothing in the claims “transform the nature of the claims” into patent eligible subject matter. *Mayo*

*Collaborative Services v. Prometheus Labs., Inc.*, 566 U.S. 66 (2012). Furthermore, “[t]he mere visitation of a generic computer cannot transform a patent-ineligible abstract idea into a patent-eligible invention.” *Alice Corp. v. CLS Bank Int’l*, 134 S. Ct. 2347 (2014).

61. The claims of the ’319 patent are also invalid as indefinite under 35 U.S.C. § 112(b)/(2) because the specification fails to provide any structure for the numerous means-plus-function elements recited in the claims.

62. Landmark systematically ends disputes prior to any judgment against the ’319 patent can be entered. Without a judgment, Landmark is free to continue aggressively enforcing the invalid ’319 patent.

63. This tactic of filing serial litigation and voluntarily dismissing cases prior to judgment on validity renders this case exceptional so as to justify award to Baxter of its attorney fees under 35 U.S.C. § 285. *See SFA Sys., LLC v. Newegg Inc.*, 793 F.3d 1344, 1350 (Fed. Cir. 2015) (finding that a pattern of litigation abuses characterized by the repeated filing of patent infringement actions for the sole purpose of forcing settlements, with no intention of testing the merits of one's claims, is relevant to a district court's exceptional case determination under 35 U.S.C. § 285); *Rothschild Connected Devices Innovations, LLC v. Guardian Prot. Servs., Inc.*, 858 F.3d 1383, 1390 (Fed. Cir. 2017) (finding that patent owners pattern of litigation practices and willful ignorance of invalidating circumstances could warrant an award of fees under 35 U.S.C. § 285); *Shipping and Transit LLC v. Hall Enters., Inc.*, CACD-2-16-cv-06535 (finding pattern of filing serial litigation and voluntarily dismissing cases prior to judgment on validity justifies award of attorney fees under 35 U.S.C. § 285).

64. Based on Landmark’s letter, the imminent threat of litigation for patent infringement, a consistent pattern of carrying out its threat, and other characteristics typical of a

patent troll, as well as Baxter's denial of infringement, an actual case or controversy exists as to whether Baxter infringes any valid claim of the '319 patent.

65. Baxter is entitled to a declaration that the claims of the '319 patent are invalid.

**COUNT II - DECLARATION OF NON-INFRINGEMENT OF U.S. PATENT 6,289,319**

66. Baxter restates and incorporates by reference the allegations in paragraphs 1 through 65 of this Complaint as if fully set forth herein.

67. Landmark claims to have exclusive rights to the '391 patent.

68. Landmark has demanded that Baxter take a license to the '319 patent within 15 days, with the implication that, otherwise, Baxter will face the same type of lawsuit that Landmark has filed against dozens and dozens of other targets who refused to pay the demand.

69. Landmark is in the business of threatening litigation and following through on that threat specifically with respect to the '319 patent. A review of Landmark's record demonstrates a consistent and readily apparent pattern of litigation.

70. Landmark failed to conduct any due diligence prior to demanding \$65,000 from Baxter.

71. Landmark has made numerous limiting admissions regarding the scope of the claims of the '319 patent during its prosecution and in subsequent litigation proceedings.

72. De minimis pre-demand research would have established that under the plain language of the claim, under the narrow construction that would be required by 35 U.S.C. § 112 (f)/(6) of all the means-plus-function limitations in the claims, and under the much narrower reading argued by the Lockwood and Landmark to the PTO and in litigation, Baxter's system, product, and technology do not infringe any valid and enforceable claim of the '319 patent.

73. Based on Landmark's history of vexatious litigation, Landmark never intends to establish the merits of its infringement accusation. This is grounds for fees under 35 U.S.C. § 285 as an exceptional case. *See* ¶ 63 above.

74. Baxter has not infringed and does not infringe any valid and enforceable claim of the '319 patent.

75. Additionally, Baxter is not liable for any induced, contributory, divided, or other indirect infringement of any valid and enforceable claim of the '319 patent. Neither Baxter, nor its customers who access its website, nor anyone associated with Baxter, utilize every element of any claim in the '319 patent as is required for infringement.

76. Based on Landmark's letter and accusation of patent infringement, especially in light of its pattern of litigation, and Baxter's denial of infringement, a substantial, immediate, and real controversy exists between Baxter and Landmark regarding whether Baxter directly or indirectly infringes or has infringed the '319 patent. A judicial declaration is necessary to determine the parties' respective rights regarding the '319 patent.

77. Baxter seeks a judgment declaring that Baxter does not directly or indirectly infringe any claim of the '319 patent.

**COUNT III – DECLARATORY JUDGMENT THAT LANDMARK TECHNOLOGY HAS FAILED TO COMPLY WITH 35 U.S.C. § 287**

78. Baxter restates and incorporates by reference the allegation in paragraphs 1 through 77 of this Complaint as if fully stated herein.

79. Landmark contends it has licensed its patents, including the '319 patent, to over 200 companies across various industries. Exhibit B, at 1.



80. Pursuant to 35 U.S.C. § 287(a), a patentee must mark goods covered by the patent with the patent number. Under this statute, a patentee must also ensure that any licensees mark licensed products covered by the patent with the patent number.

81. Under 35 U.S.C. § 287(a), because of Landmark's failure to mark, "no damages shall be recovered by the patentee in any action for infringement, except on proof that the infringer was notified of the infringement and continued to infringe thereafter, in which event damages may be recovered only for infringement occurring after such notice."

82. On information and belief, Landmark has not marked its products, or caused any licensee to mark its products with the '319 patent number.

83. Based on Landmark's letter and accusation of patent infringement, especially in light of its pattern of litigation, and Baxter's denial of infringement, a substantial, immediate, and real controversy exists between Baxter and Landmark.

84. Baxter is entitled to a declaration that Landmark may not recover damages prior to February 16, 2018, when Landmark first notified Baxter of its allegations of infringement.

**COUNT IV – DECLARATION THAT LANDMARK  
LACKS THE RIGHT TO ASSERT THE '319 PATENT**

85. Baxter restates and incorporates by reference the allegation in paragraphs 1 through 84 of this Complaint as if fully stated herein.

86. The demand letter alleges that Landmark "has exclusive rights" to various patents and infers a right to sublicense the '319 patent. ("Landmark is currently offering Baxter Auto Parts a non-exclusive license to the '319 patent").

87. Landmark has not asserted that it owns the '319 patent nor that it has the exclusive right to enforce the '319 patent.

88. A review of PTO records do not show that Landmark has been assigned the '319 patent, and no assignment has been recorded.

89. The '319 patent states that is owned by Lawrence B. Lockwood. Exhibit A, at 1.

90. On information and belief, Landmark does not own and cannot enforce any rights in the '319 patent.

91. Based on Landmark's letter and accusation of patent infringement, especially in light of its pattern of litigation, and Baxter's denial of infringement, a substantial, immediate, and real controversy exists between Baxter and Landmark.

92. A judicial declaration that Landmark lacks the right to assert the '319 patent is necessary and appropriate so that Baxter may ascertain its rights regarding the '319 patent and to prevent further injury to Baxter

**COUNT V – VIOLATIONS OF THE OREGON UNFAIR  
TRADE PRACTICES ACT DUE TO BAD FAITH  
ASSERTIONS OF PATENT INFRINGEMENT, ORS §§ 646.608, 646A.810**

93. Baxter restates and incorporates by references the allegations in paragraphs 1 through 98 of this Complaint as if fully stated herein

94. Landmark sent letters to Baxter accusing Baxter of infringement of the '319 patent and demanding the payment of \$65,000.

95. Landmark's letters to Baxter failed to provide any copies of the '319 patent.

96. Landmark's letters to Baxter demanded the payment of \$65,000 without stating whether or not Landmark owns or has the exclusive right to enforce the '319 patent.

97. Landmark's letters to Baxter required a response within fifteen days, an unreasonably short period of time.

98. Landmark's letters to Baxter lacked a statement of facts, together with an explanation or a description of the facts that would enable a reasonable person to understand the basis of Landmark's claim.

99. Landmark's letters to Baxter identify a Baxter webpage without explaining in any way how that webpage supposedly meets the limitations of any claim of the '319 patent.

100. Based on a review of Landmark's letters to Baxter, on information and belief, Landmark appears to have failed to compare the functionality of any Baxter product, service, or technology, including the cited Baxter webpage, to any claim of the '319 patent. Baxter is not aware of any attempt by Landmark or its lawyers to use the cited webpage to test whether it would meet every element of any claim of the '319 patent. The letters from Landmark to Baxter contain no evidence that Landmark conducted any analysis comparing the claims in the '319 patent to any Baxter product, service, or technology.

101. Landmark's letters to Baxter demanded the payment of \$65,000 through deceptive and misleading information regarding the enforceability of a patent that is invalid under at least 35 U.S.C. §§ 101 and 112.

102. Landmark's letters to Baxter demanded the payment of \$65,000 through deceptive and misleading information regarding the enforceability and importance of the '319 patent as a "pioneer patent," when no court or government agency has ever declared the '319 patent to be a pioneer patent nor a patent of any unusual value.

103. Landmark knew or should have known that the allegations contained in the letters to Baxter were without merit.

104. Landmark's actions sending its letters to Baxter constitute bad faith assertions of patent infringement pursuant to ORS § 646A.810, which constitutes a violation of the Oregon Unfair Trade Practices Act, ORS § 646.608.

105. Landmark should be enjoined from further actions threatening Baxter with an infringement action regarding the '319 patent.

106. Landmark's actions sending its letters to Baxter were egregious and justify an award to Baxter of punitive damages and attorney fees.

### **JURY DEMAND**

Under Rule 38 of the Federal Rules of Civil Procedure, Plaintiff demands a trial by jury on all issues so triable.

### **PRAYER FOR RELIEF**

Wherefore, Plaintiff Baxter Auto Parts, Inc. prays for the following relief:

- A. A declaration that the '319 patent is invalid for failure to comply with the requirements of 35 U.S.C., including at least §§ 101 and 112;
- B. A declaration that Baxter's products, services, and technology do not infringe any valid and enforceable claim of the '319 patent;
- C. A declaration that Landmark has not complied with 35 U.S.C. § 287;
- D. A declaration that Landmark lacks the right to enforce the '319 patent;
- E. A declaration that Baxter is the prevailing party and this case as exceptional, and an award to Baxter of its reasonable attorney fees, pursuant to 35 U.S.C. § 285;
- F. A judgment that Landmark's conduct constituted violations of the Oregon Unlawful Trade Practices Act, ORS §§ 646.608 and 646A.810, and as a remedy for those

violations, an injunction against future allegations of infringement by Landmark and an award to Baxter of punitive damages and attorney fees;

G. An award to Baxter of all damages caused by Defendant's unlawful acts, including punitive damages and pre-and post-judgment interest, as provided by law;

H. An order that landmark pay all fees, expenses and costs associated with this action; and

I. An award of such other and further relief as this Court deems just and proper.

DATED: April 13, 2018

Respectfully submitted,

By: *s/ J. Christopher Carraway*  
J. Christopher Carraway, OSB No. 961723  
Email: [chris.carraway@klarquist.com](mailto:chris.carraway@klarquist.com)  
Todd M. Siegel, OSB No. 001049  
Email: [todd.siegel@klarquist.com](mailto:todd.siegel@klarquist.com)  
KLARQUIST SPARKMAN, LLP  
121 S.W. Salmon Street, Suite 1600  
Portland, Oregon 97204  
Telephone: (503) 595-5300

*Attorneys for Plaintiff*  
BAXTER AUTO PARTS, INC.