

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

NORIX GROUP, INC.,

Plaintiff,

v.

CORRECTIONAL TECHNOLOGIES, INC.,  
d/b/a CORTECH USA, and VDL  
INDUSTRIES, LLC, d/b/a AMERICAN  
SHAMROCK,

Defendants.

Case No. 17-cv-07914

Honorable John Robert Blakey

**JURY TRIAL DEMANDED**

**SECOND AMENDED COMPLAINT FOR PATENT INFRINGEMENT,  
FALSE MARKING, AND FALSE ADVERTISING**

Plaintiff Norix Group, Inc. (“Norix”), for its First Amended Complaint against defendants Correctional Technologies, Inc. d/b/a Cortech USA (“Cortech”) and VDL Industries, LLC d/b/a American Shamrock (“American Shamrock”), states as follows:

**I. NATURE OF THE ACTION**

1. This is an action for patent infringement in violation of 35 U.S.C. § 271, false marking in violation of 35 U.S.C. § 292, and false advertising in violation of the Lanham Act, 15 U.S.C. § 1125, and in violation of related Illinois laws. Norix brings this action to stop defendants from making, offering to sell, and selling intensive use beds that infringe United States Patent No. 9,661,933. Norix also seeks to put an end to defendants’ practice of falsely representing in their advertisements to prospective customers—including government agencies, hospitals, and schools—that its products are patented or are covered by pending patent applications when in fact they are not. Norix seeks injunctive relief as well as compensation, enhanced damages, and attorney’s fees for defendants’ willful infringement and deceptive trade practices.

## **II. PARTIES**

2. Plaintiff Norix is an Illinois corporation with its principal place of business in West Chicago, Illinois. Founded in 1983, Norix is a leading designer, manufacturer, and distributor of furniture and other products for use in health care applications in demanding environments such as behavioral health institutions and correctional institutions. Norix also offers furniture for use in numerous health care environments and in other environments where safety, security, and durability are high priorities, such as for public seating, transportation, camps and parks, college dorms, fire and police stations, emergency shelters, and military barracks. Norix employs 72 people in the Chicago area and sells its products nationwide.

3. Defendant Cortech is incorporated in the State of Illinois and has a regular and established place of business in Willowbrook, Illinois. Upon information and belief, Cortech is wholly owned and solely operated by Joseph R. Claffy. Prior to January 2008, Claffy, through Cortech, was a sales representative for Norix. After the sales representative agreement terminated, Cortech began to compete directly against Norix.

4. Defendant American Shamrock is incorporated in the State of Illinois and has a regular and established place of business in Willowbrook, Illinois. Upon information and belief, American Shamrock is owned and operated by Joseph R. Claffy, who also owns and operates Cortech. In its advertisements, Cortech represents that certain of its products, including Cortech's intensive use furniture, are manufactured by American Shamrock.

## **III. JURISDICTION AND VENUE**

5. This action arises under the patent laws of the United States, 35 U.S.C. § 271 *et seq.*, and under the Lanham Act, 15 U.S.C. § 1125. This Court has subject matter jurisdiction under 28 U.S.C. § 1331 and 1338. This Court also has supplemental subject matter jurisdiction under 28 U.S.C. § 1367 with respect to related claims brought under Illinois law.

6. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b)-(c) and 1400(b), because defendants are incorporated in the State of Illinois and have regular and established places of business in this judicial district, and because a substantial part of the acts or omissions giving rise to the claims, including defendants' acts of infringement, have occurred in this judicial district.

#### **IV. FACTUAL BACKGROUND**

##### **A. Norix pioneered the use of molded furniture for intensive use applications.**

7. On October 5, 2007, Norix filed application No. 11/868,308 with the United States Patent and Trademark Office ("USPTO"), which would lead to U.S. Patent No. 9,661,933 B2 (the "'933 Patent"), titled "Intensive Use Bed."

8. Norix sought to fill a long-felt need in the furniture industry for a viable alternative to existing furniture made from steel, wood, or fiberglass for use in demanding environments such as prisons, jails, detention centers, and psychiatric facilities. In such environments, traditional furniture made from wood and metal was susceptible to damage by the user and from exposure to bodily fluids, was not sufficiently safe for the user, allowed for the concealment of contraband, and was relatively difficult to secure to the floor or walls. Furniture made from fiberglass in response to some of these problems was difficult to manufacture, and it cracked and splintered under direct force.

9. The molded plastic furniture that Norix's employees invented, including the intensive use bed claimed in the '933 Patent, solved the problems with the furniture formerly used in institutional settings. For example, Norix's molded plastic furniture is more resistant to damage by the user and damage by bodily fluids. It is also more durable, easier to clean, lighter, easier to attach to the floor or wall, and relatively easier to manufacture. Further, the invention enabled more aesthetically pleasing designs for furniture for use in these settings.

10. On July 20, 2011, Norix filed application No. 13/186,853 with the USPTO, which claimed the benefit of the filing date of Norix's 2007 application.

11. On August 30, 2011, the USPTO issued United States Patent No. 8,007,059 (the "'059 Patent") from the 2007 application. The '059 Patent remains valid and enforceable today.

12. On April 19, 2012, Norix filed application No. 13/450,508, which claimed the benefit of the filing date of both of Norix's previous applications.

13. The '933 Patent was duly and legally issued by the USPTO from the 2012 application on May 30, 2017.

14. Norix's significant investment in research and development in molded plastic furniture led to success in the marketplace. Norix is the market leader for such furniture for behavioral health and correctional institutions, as well in numerous other settings.

**B. Norix's '933 Patent Claims an Innovative Intensive Use Bed.**

15. Norix is the current assignee, and the sole and exclusive owner of all rights, title and interest in the '933 Patent.

16. A true and correct copy of the '933 Patent is attached as Exhibit A.

17. The first independent claim of the '933 Patent, Claim 1, states as follows:

1. An intensive use bed comprising:

a molded outer shell having a top surface, bottom surface, a pair of end walls, a first side wall and a second side wall, a support surface on the top surface, a ridge surrounding the perimeter of the support surface;

a means for attaching the bed to a mounting surface in one of the first or second side wall; and

a storage compartment within the perimeter of the support surface, the storage compartment having a storage opening in one of the first or second side walls, and a floor spaced from the top surface, the storage compartment, the storage compartment between the top

surface and the bottom surface, the storage compartment integrally molded in the outer shell to form an enclosed space.

18. The second independent claim of the '933 Patent, Claim 12, states as follows:

12. An intensive use bed mounted on a floor comprising:

a hollow molded non-penetrable outer shell for resisting penetration by fluids having a top surface, bottom surface, a pair of end walls, a first side wall and a second side wall, a support surface on the top surface, a ridge surrounding the perimeter of the support surface, the bottom surface on the floor;

a mounting hole in the bottom surface, a fastener in the mounting hole, the fastener extending through the bottom surface, the fastener attached to the floor; and

a storage compartment within the perimeter of the support surface, the storage compartment under the support surface having a storage opening in a wall, a top on the top surface and a storage cavity floor, the storage compartment integrally molded in the outer shell, the storage compartment further comprise a sloping storage cavity floor opening into one of the walls and disposed between the top surface and the bottom surface.

19. The third independent claim of the '933 Patent, Claim 15, states as follows:

15. An intensive use bed mounted on a floor comprising:

a hollow molded outer shell having an interior, top surface, bottom surface, a pair of end walls, a first side wall and a second side wall, a support surface on the top surface, a ridge surrounding the perimeter of the support surface, the bottom surface spaced from the top surface and on the floor, a plurality of openings formed in the bottom surface, a mounting hole in the bottom surface, a fastener in the mounting hole, the fastener extending through the bottom surface, the fastener attached to the floor; and

a storage compartment within the perimeter of the support surface, the support surface over the storage compartment being a non-penetrable outer shell for resisting penetration by fluids the storage compartment having a single storage opening and a storage cavity floor, the storage opening formed in one of the walls, the storage cavity floor between the top surface and the bottom surface.

20. The '933 Patent claims a molded plastic intensive use bed with an integrated storage compartment that solves numerous problems with existing intensive use beds, such as the

susceptibility of existing beds to damage from the user, the ability to hide contraband in them, the difficulty of attaching such beds to the floor or walls, the difficulty of cleaning such beds, and their excessive weight, difficulty of manufacture, and cost.

21. Norix's patents on intensive use furniture, including the '933 Patent, reflect the innovative nature of Norix's products and the exclusive rights that Norix has earned to make, use, offer to sell, and sell its inventions. Norix's patents protect its rights in the marketplace for institutional furniture, in which contracts are often awarded through competitive bidding and in which customers often require bidders to certify that their products do not infringe other's intellectual property and to indemnify the customer against claims of patent infringement.

**C. Cortech and American Shamrock have falsely represented that their own products are subject to pending patent applications.**

22. Upon information and belief, Joseph R. Claffy is the sole owner of Cortech and American Shamrock and manages all their day-to-day operations.

23. For more than ten years prior to 2008, Claffy sold Norix's products under a sales representative agreement between Cortech and Norix.

24. On January 4, 2008, Cortech's sales representative agreement with Norix terminated.

25. Just months after the sales representative contract terminated, Cortech began to compete against Norix with respect to products that Cortech formerly sold for Norix.

26. From at least 2011 to the present, Cortech has represented in its advertisements that products it sells are "100% American Made by American Shamrock."

27. From at least 2011 to the present, Cortech and American Shamrock have repeatedly and continuously represented in their advertising that their products and the process to produce them are subject to "multiple design and utility patents pending," or other words to that effect.

28. As two of many examples, Cortech and American Shamrock make several representations that their products are subject to “multiple design and utility patents pending” in Cortech’s Product Catalog from March 2011, a true and correct copy of which is attached as Exhibit B, and in Cortech’s Product Catalog from September 2017, a true and correct copy of which is attached as Exhibit C.

29. As years have passed, Cortech’s and American Shamrock’s continuing representations that its products are subject to pending patents have been revealed to be false.

30. The products that Cortech and American Shamrock have sold in competition with Norix and have falsely represented are subject to pending patents include: property storage boxes; stackable and non-stackable chairs; intensive use beds, bunks, shelves, nightstands, and desks; tables; and structured seating (collectively, the “Falsely Marked Products”). A list of the Falsely Marked Products is attached as Exhibit D.

31. For two of the Falsely Marked Products, specifically the “Barracuda Box” and the “EZ Bunk”, Claffy filed applications that purportedly covered the products. The application relating to the Barracuda Box was rejected by the USPTO and abandoned by Claffy effective January 18, 2011. A patent issued from the application relating to the “EZ Bunk,” but it expired on July 17, 2016 due to failure to pay the maintenance fee. Nevertheless, Cortech and American Shamrock have continued to represent that those products are subject to pending patents after the application was abandoned and the patent expired.

32. For the remainder of the Falsely Marked Products, there are no published applications or patents on record with the USPTO. Upon information and belief, Claffy never filed a patent application covering several of the Falsely Marked Products, and neither Cortech nor American Shamrock had rights to any such patent application at any time.

**1. The Barracuda Box.**

33. For example, on October 30, 2008, Claffy filed a patent application relating to its property storage box called the “Barracuda Box”, which was published on May 6, 2010.

34. On January 18, 2011, Claffy abandoned its application after it was rejected by the USPTO.

35. Upon information and belief, the Barracuda Box was not covered by any patent application from 2011 to the present. No patents have issued from such applications, and no such applications have been published, from 2011 to the present.

36. Notwithstanding that Claffy abandoned its patent application relating to the Barracuda Box in January 2011, Cortech and American Shamrock have represented that their property storage boxes have “multiple design and utility patents pending,” from 2011 through at least June 2017.

37. For example, with respect to the Barracuda Box, Cortech has repeatedly represented that it has “multiple design and utility patents pending”:

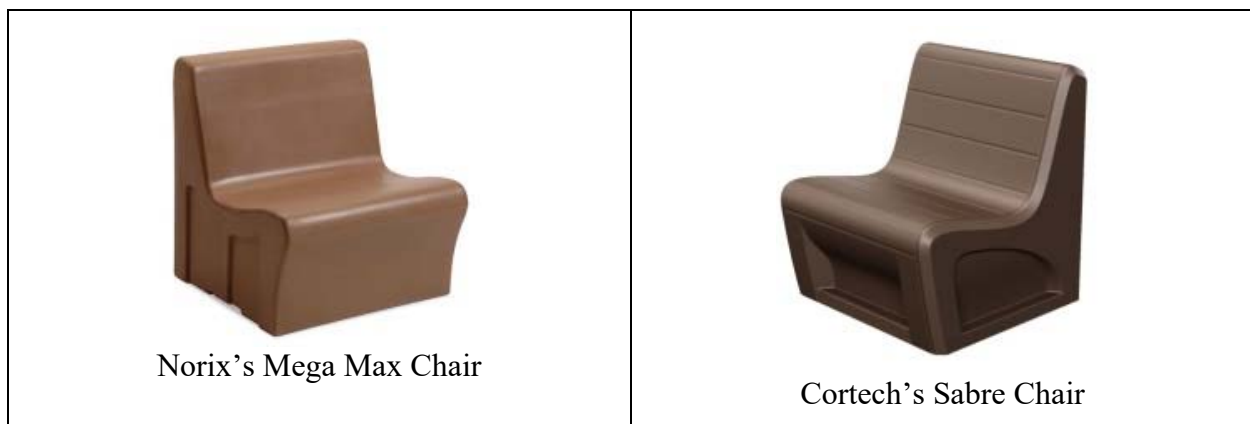
- a) A true and correct copy of Cortech’s 2013 Product Catalog is attached as Exhibit E. Under the description of the Barracuda Box, Cortech and American Shamrock represent that “The Barracuda Box and the manufacturing process to produce them has multiple design and utility patents pending.”;
- b) A true and correct copy of Cortech’s advertisement in the May / June 2017 issue of Correctional News is attached as Exhibit F. In it, Cortech and American Shamrock represent that “The Master Box™ and The Barracuda Box and the manufacturing process to produce them, have multiple design and utility patents pending.”
- c) In Cortech’s 2017 Product Catalog, under the description of the Barracuda Box, Cortech and American Shamrock represent that “The Barracuda Box and the manufacturing process to produce them has multiple design and utility patents pending.”



38. Upon information and belief, Cortech's representations that its property storage boxes and the manufacturing process to produce them are subject to multiple pending design and utility patents pending are false, at least from 2011 to the present.

**2. The Sabre Chair.**

39. As a second example, Cortech introduced the "Sabre Chair" in October 2010 to compete with Norix's Mega Max Chair, which Norix has sold since at least February 2000. Below are images of Norix's Mega Max Chair and Cortech's Sabre Chair:



40. Neither Claffy nor Cortech nor American Shamrock are associated with any published application or patent covering Cortech's Sabre Chair.

41. Nevertheless, since at least 2010, Cortech has represented that the Sabre Chair is subject to "multiple patents pending." For example, a true and correct copy of Cortech's 2010 brochures for the Sabre Chair and the Razorback Chair are attached as Exhibit G and state that both the Sabre Chair and the Razorback Chair are subject to "multiple patents pending." In Cortech's 2017 Product Catalog, Cortech and American Shamrock state that "The Sabre Chair and the manufacturing process to produce them has [sic] multiple design and utility patents pending."

**3. The Endurance Series.**

42. As a third example, Cortech and American Shamrock also have made false representations of pending patent applications with respect to the intensive use furniture that it sells in competition with Norix.

43. In January 2012, Cortech introduced a line of molded plastic intensive use furniture called the “Endurance Series.”

44. As part of the Endurance Series introduced in 2012, Cortech introduced the “Endurance Bed,” a molded plastic intensive use bed with storage compartments.

45. In February 2014, Cortech introduced the “Endurance Bed 2.0” as part of its Endurance Series.

46. In addition to beds, Cortech’s endurance line includes intensive use shelves, nightstands and desks.

47. In its advertisements, Cortech represents that its Endurance Series is “100% American Made by American Shamrock.”

48. In the advertisements, Cortech and American Shamrock have represented that the Endurance Series, including the Endurance Bed and the Endurance Bed 2.0, were subject to “multiple design and utility patents pending.” For example:

- a) In its 2013 Product Catalog, under the description of the Endurance Bed, Cortech and American Shamrock represented that “The Endurance Series Extreme-Use Furniture and the manufacturing process to produce them has multiple design and utility patents pending.”
- b) On Cortech’s product specification sheet for the Endurance Bed, Cortech and American Shamrock represented that “The Endurance Bed and the manufacturing process to produce them has multiple design and utility patents pending.” A true and correct copy of Cortech’s Endurance Bed specification sheet, downloaded from Cortech’s website on July 14, 2014, is attached as Exhibit H.

- c) In its 2017 Product Catalog, under the description of the Endurance Bed and the Endurance Bed 2.0, Cortech and American Shamrock represented that “The Endurance Series Extreme-Use Furniture and the manufacturing process to produce them has multiple design and utility patents pending.”
- d) On Cortech’s product specification sheet for the Endurance Bed 2.0, Cortech and American Shamrock represented that “The Endurance Bed 2.0 and the manufacturing process to produce them has multiple design and utility patents pending.” A true and correct copy of Cortech’s Endurance Bed 2.0 specification sheet, downloaded from Cortech’s website on July 14, 2014, is attached as Exhibit I.

49. In fact, the products in Cortech’s Endurance Series are identical or similar in appearance and function to Norix products.

50. Neither Claffy nor Cortech nor American Shamrock owns any patent relating to the Endurance Bed, the Endurance Bed 2.0 or any other product in the Endurance Series, or the manufacturing process used to produce them.

51. Neither Claffy nor Cortech nor American Shamrock is associated with any published patent application relating to the Endurance Bed, the Endurance Bed 2.0, any other product in the Endurance Series, or the manufacturing process used to produce them.

52. Based on correspondence with Cortech’s counsel, there are also no unpublished applications relating to the Endurance Bed, the Endurance Bed 2.0, any other product in the Endurance Series, or the manufacturing process used to produce them.

53. Specifically, on June 29, 2017, counsel for Norix sent a letter to counsel for Cortech requesting copies of the applications corresponding to Cortech’s “multiple design and utility patents pending” for the Endurance Bed and the Endurance Bed 2.0.

54. Counsel for Cortech has not provided any copies of the “multiple design and utility patents pending.” On July 18, 2017, counsel for Cortech sent a letter to counsel for Norix stated that “Cortech also has taken action to remove any expired patent pending notices on all of its

products and publications, and we wish to thank you for bringing this matter to our attention.” A true and correct copy of the July 18, 2017 letter is attached as Exhibit J.

55. On July 31, 2017, counsel for Norix sent a letter to counsel for Cortech stating, “Your assertion that we brought the expired patent notices to your attention is also not well taken. You gave no indication by your last communication that these statements were based in fact on patent applications filed.” A true and correct copy of the July 31, 2017 letter is attached as Exhibit K.

56. Counsel for Cortech never responded to the July 31, 2017 letter.

57. Based on all the foregoing, Cortech’s and American Shamrock’s many representations that the Endurance Series and all the other Falsely Marked Products and the manufacturing process to produce them have multiple design and utility patents pending are false.

**D. By making, offering for sale, and selling the Endurance Bed and the Endurance Bed 2.0, and by inducing others to do so, defendants infringe the ’933 Patent.**

58. From at least 2012 to the present, Cortech has offered for sale and sold the Endurance Bed.

59. From at least October 2013 to the present, Cortech has offered for sale and sold the Endurance Bed 2.0.

60. In addition to offering the Endurance Bed and the Endurance Bed 2.0 for sale directly, Cortech has entered into agreements with third-party distributors under which the distributors offer the Endurance Bed and the Endurance Bed 2.0 for sale.

61. In its advertisements, Cortech has represented that American Shamrock has manufactured the Endurance Bed and the Endurance Bed 2.0 at all times during which Cortech has offered the models for sale.

62. The Endurance Bed and the Endurance Bed 2.0 have all the elements of Claim 1, as shown, for example, in the annotated product description attached as Exhibit L.

- a) The Endurance Bed and the Endurance Bed 2.0 are intensive use beds.
- b) The Endurance Bed and the Endurance Bed 2.0 have a molded outer shell having a top surface, bottom surface, a pair of end walls, a first side wall and a second side wall, a support surface on the top surface, and a ridge surrounding the perimeter of the support surface.
- c) The Endurance Bed and the Endurance Bed 2.0 have a means for attaching the bed to a mounting surface in one of the first or second side wall.
- d) The Endurance Bed and the Endurance Bed 2.0 have a storage compartment within the perimeter of the support surface, the storage compartment having a storage opening in one of the first or second side walls, and a floor spaced from the top surface, the storage compartment between the top surface and the bottom surface, the storage compartment integrally molded in the outer shell to form an enclosed space.

63. The Endurance Bed and the Endurance Bed 2.0 have all the elements of Claim 12, as shown, for example, in the annotated product description attached as Exhibit M.

- a) The Endurance Bed and the Endurance Bed 2.0 are intensive use beds mounted on the floor.
- b) The Endurance Bed and the Endurance Bed 2.0 have a hollow molded non-penetrable outer shell for resisting penetration by fluids having a top surface, bottom surface, a pair of end walls, a first side wall and a second side wall, a support surface on the top surface, a ridge surrounding the perimeter of the support surface, and the bottom surface on the floor.
- c) The Endurance Bed and the Endurance Bed 2.0 have a mounting hole in the bottom surface, a fastener in the mounting hole, the fastener extending through the bottom surface, the fastener attached to the floor.
- d) The Endurance Bed and the Endurance Bed 2.0 have a storage compartment within the perimeter of the support surface, the storage compartment under the support surface having a storage opening in a wall, a top on the top surface and a storage cavity floor, the storage compartment integrally molded in the outer shell, the storage compartment further comprising a sloping storage cavity floor opening into one of the walls and disposed between the top surface and the bottom surface.

64. The Endurance Bed and the Endurance Bed 2.0 have all the elements of Claim 15, as shown, for example, in the annotated product description attached as Exhibit N.

- a) The Endurance Bed and the Endurance Bed 2.0 are intensive use beds mounted on the floor.
- b) The Endurance Bed and the Endurance Bed 2.0 have a hollow molded outer shell having an interior, top surface, bottom surface, a pair of end walls, a first side wall and a second side wall, a support surface on the top surface, a ridge surrounding the perimeter of the support surface, the bottom surface spaced from the top surface and on the floor, a plurality of openings formed in the bottom surface, a mounting hole in the bottom surface, and a fastener in the mounting hole, the fastener extending through the bottom surface, the fastener attached to the floor.
- c) The Endurance Bed and the Endurance Bed 2.0 have a storage compartment within the perimeter of the support surface, the support surface over the storage compartment being a non-penetrable outer shell for resisting penetration by fluids the storage compartment having a single storage opening and a storage cavity floor, the storage opening formed in one of the walls, the storage cavity floor between the top surface and the bottom surface.

65. Accordingly, Cortech and American Shamrock have infringed at least Claim 1, Claim 12, and Claim 15 of the '993 Patent.

**E. Defendants' infringement is willful.**

66. On May 30, 2017, counsel for Norix sent a letter to Joseph Claffy notifying Cortech of the '933 Patent and Cortech's infringement. A true and correct copy of the May 30, 2017 letter is attached as Exhibit O.

67. In response to the May 30, 2017 letter and additional correspondence, counsel for Cortech denied infringement and requested an element-by-element analysis of infringement.

68. On July 31, 2017, counsel for Norix provided an element-by-element analysis of infringement, including Exhibits L, M., and N to this First Amended Complaint.

69. Counsel for Cortech did not respond to counsel for Norix's July 31, 2017 letter or Norix's element-by-element infringement analysis.

70. Cortech and American Shamrock continue to infringe the '933 patent by making, offering for sale, and selling the Endurance Bed and the Endurance Bed 2.0, by inducing others to do the same, and/or by contributing to infringement by others.

**F. The ongoing harm caused by defendants' infringement and false statements.**

71. Defendants' infringement has caused and is continuing to cause damage and irreparable injury to Norix, and Norix will continue to suffer damage and irreparable injury unless and until that infringement is enjoined by this Court.

72. In addition, defendants' false advertising that the Falsely Marked Products are subject to multiple pending patents has caused competitive injury to Norix, and to the extent that defendants' false advertising continues Norix will continue to suffer such injury.

73. Defendants' misrepresentations that the Falsely Marked Products are subject to pending patents affects the decision-making process of Cortech's and Norix's prospective customers, many of whom are government agencies, hospitals, not-for-profit entities, and schools.

74. For example, competitive bidding procedures for intensive use furniture and for other products for use in institutional settings often require bidders to represent that their products do not infringe others' patents, and they often require bidders to indemnify the customer against future allegations of infringement.

75. Customers and bidders alike are less likely to choose an alternative to a product that is marked as "patent pending" to avoid the uncertainty and potential cost associated with patent litigation.

76. Because Cortech competes directly with Norix, each sale of Cortech's products obtained by defendants' false representations is likely to be a lost sale to Norix.

77. Contrary to Cortech's counsel's representations, the false representations relating to the Falsely Marked Products are continuing. Accordingly, competitive injury to Norix will continue to occur unless and until this Court puts an end to defendants' deceptive practices.

**COUNT I**  
**INFRINGEMENT OF THE '933 PATENT**  
**IN VIOLATION OF 35 U.S.C. § 271**

78. Norix incorporates and re-alleges Paragraphs 1 through 77 of this First Amended Complaint as if fully set forth herein.

79. The USPTO duly and legally issued the '933 Patent on May 30, 2017.

80. Norix is the current assignee, and the sole and exclusive owner of all rights, title and interest in the '933 Patent.

81. The Endurance Bed and the Endurance Bed 2.0 include all of the elements of at least Claim 1, Claim 12, and Claim 15 of the '933 Patent.

82. During the term of the '933 Patent and after receiving notice of the '933 Patent, Cortech has displayed at trade shows, offered for sale, and sold the Endurance Bed and the Endurance Bed 2.0.

83. Knowing of the '933 Patent and of the infringement by the Endurance Bed and the Endurance Bed 2.0, Cortech nevertheless has entered into or has continued to perform under agreements with third-party distributors under which the distributors offer to sell and sell the Endurance Bed and the Endurance Bed 2.0.

84. Upon information and belief, American Shamrock has manufactured the Endurance Bed and the Endurance Bed 2.0 at all times during which Cortech has offered the models for sale.



85. Cortech and American Shamrock therefore have been, are currently, and unless enjoined, will continue to infringe, contribute to the infringement of, and/or induce others to infringe one or more claims of the '933 Patent.

86. In taking the acts herein alleged to constitute induced infringement, defendants knew or should have known that its acts would result in the actual infringement by one or more of the defendants, Cortech's distributors, or customers of one or more of the claims of the '993 Patent, and defendants thereby intended such infringement. Defendants' acts did, in fact, induce such infringement of one or more claims of the '993 Patent.

87. With respect to the acts herein alleged to constitute contributory infringement, defendants knew that the products identified herein as having been supplied by defendants were especially made or especially adapted for use in an infringing combination, and that such specific products and/or components thereof were not staple articles or commodities of commerce suitable for substantial non-infringing use.

88. Defendants have willfully infringed and continue to willfully infringe one or more claims of the '993 Patent despite their knowledge of the '993 Patent and despite an objectively high likelihood that the manufacture and sale of the Endurance Bed and the Endurance Bed 2.0 would directly and indirectly infringe one or more claims of the '993 Patent.

89. As a direct and proximate consequence of defendants' infringement of the '993 Patent, Norix has suffered and will continue to suffer irreparable injury and damages, in an amount that an award of money would never be adequate to fully remedy, for which Norix is entitled to relief. Norix seeks compensatory damages, exemplary damages, and attorney's fees, as well as injunctive relief against further infringement.

**COUNT II**  
**FALSE MARKING IN VIOLATION OF 35 U.S.C. § 292**

90. Norix incorporates and re-alleges Paragraphs 1 through 77 of this First Amended Complaint as if fully set forth herein.

91. From at least 2011 to the present, defendants have used words “patent pending” or other words importing that an application for patent has been made with respect to the Falsely Marked Products in product catalogs, product specification sheets, advertisements in trade journals, and other advertising materials.

92. For example, defendants have used words “patent pending” or other words importing that an application for patent has been made with respect to the Falsely Marked Products in the following product catalogs, product specification sheets, and advertisements:

- a) Cortech’s Product Catalog from March 2011, attached as Exhibit B;
- b) Cortech’s Product Catalog from September 2017, attached as Exhibit C;
- c) Cortech’s 2013 Product Catalog, attached as Exhibit E;
- d) Cortech’s advertisement in the May / June 2017 issue of Correctional News, attached as Exhibit F.
- e) Cortech’s 2010 brochure for the Sabre Chair, attached as Exhibit G;
- f) Cortech’s Endurance Bed specification sheet, attached as Exhibit H; and
- g) Cortech’s Endurance Bed 2.0 specification sheet, attached as Exhibit I.

93. In fact, at the time of defendants’ use of such words, no application relating to the referenced products had been made, or, if made, no such application was pending.

94. Defendants used such words for the purpose of deceiving the public and to obtain an unlawful competitive advantage over Norix.

95. Norix has suffered competitive injury as a direct and proximate result of Defendants’ false marking.

96. The competitive injuries that Norix has suffered include disadvantages in Norix's ability to compete with Defendants caused by defendant's unfair competition, as well as lost sales due to Defendants' unfair competition.

97. Norix and Defendants are direct competitors in the market for intensive use furniture for health care and other commercial institutional applications:

- a. Defendants' advertising of the Falsely Marked Products is directed to the same potential customers in the market for intensive use furniture to which Norix offers its competing products.
- b. Some of Defendants' Falsely Marked Products are so similar in appearance to Norix's products that customers at times have confused Defendants' products for Norix's products and vice versa.
- c. It is routine for Norix and either Cortech or a third party selling Cortech's products to submit competing bids or offers to sell comparable products to the same potential customers.

98. Defendants' false marking confers an unfair competitive advantage to Defendants over Norix for at least the following reasons:

- a. Each of Defendants' Falsely Marked Products corresponds to a similar product offered by Norix, and Defendants' false marking differentiates Defendants' products from Norix's by falsely claiming exclusive features and falsely implying a higher level of quality.
- b. Norix, unlike Defendants, lawfully applied for and obtained valid patents covering certain of its products that compete with Defendants' Falsely Marked Products while Defendants falsely claimed to be doing so.

Defendants' false marking has allowed Defendants to obtain the advantages of having pending patents without investing in research and development or incurring the costs necessary to prosecute patent applications.

99. Norix has lost sales to Defendants with respect to the Falsely Marked Products while Defendants have falsely advertised those products as being subject to multiple patents pending. It is reasonable to infer that at least some of those lost sales were proximately caused by Defendants' false marking due to the unfair competitive advantages that Defendants have enjoyed due to their false marking.

100. In addition, it is reasonable to infer that at least some of Norix's lost sales to Defendants were proximately caused by Defendants' false marking because customers have stated the importance to them of avoiding potential liability due to infringing patents by requiring bidders to warrant that the products they offer do not infringe any patents and/or to indemnify them against claims of patent infringement brought by third parties. Discovery in this lawsuit to date has revealed that such terms are present in at least one actual lost sale to Defendants that was made before Defendants purportedly began to remove the false markings from their advertisements.

101. The importance of the competitive advantages obtained by Defendants through false marking is further demonstrated by Defendants' decision to prominently display false patent marking in their catalogs, in their print advertising, and on their website for at least seven years, and by the fact that Defendants did not even purport to remove the false patent marking from their advertising until after Norix challenged the veracity of the false marking in mid-2017.

102. Moreover, Defendants have admitted that assertions of patent rights in the market in which Defendants and Norix compete confer a competitive advantage to the asserting party by

filing counterclaims against Norix alleging the same. Defendants have counterclaimed based on the allegation that “Norix and its patent counsel have continued to assert the ‘933 patent against Cortech, its customers, and the marketplace as being valid and infringed.” Defendants erroneously contend that Norix’s assertion of its own patent rights (which, unlike Defendants’ false marking, is based on the existence of an issued patent entitled to a presumption of validity) constitutes tortious interference with actual and prospective business relationships, violates the Lanham Act and the Illinois Consumer Fraud and Deceptive Trade Practices Act, and violates antitrust law.

103. For all the foregoing reasons, Norix has suffered and will continue to suffer a competitive injury until defendants’ conduct is stopped. Norix seeks damages adequate to compensate for its competitive injury.

**COUNT III  
FALSE ADVERTISING IN VIOLATION  
OF THE LANHAM ACT, 15 U.S.C. § 1125**

104. Norix incorporates and re-alleges Paragraphs 1 through 77 of this First Amended Complaint as if fully set forth herein.

105. From at least 2011 to the present, in product catalogs, product specification sheets, advertisements in trade journals, and other advertising materials, defendants have made false statements of fact that the Falsely Marked Products are covered by multiple pending patent applications.

106. In fact, at the time of defendants’ representations, no application relating to the referenced products had been made, or, if made, no such application was pending.

107. For example, defendants have falsely represented that the Falsely Marked Products were subject to pending patent applications in the following product catalogs, product specification sheets, and advertisements:

- a) Cortech's Product Catalog from March 2011, attached as Exhibit B;
- b) Cortech's Product Catalog from September 2017, attached as Exhibit C;
- c) Cortech's 2013 Product Catalog, attached as Exhibit E;
- d) Cortech's advertisement in the May / June 2017 issue of Correctional News, attached as Exhibit F.
- e) Cortech's 2010 brochure for the Sabre Chair, attached as Exhibit G;
- f) Cortech's Endurance Bed specification sheet, attached as Exhibit H; and
- g) Cortech's Endurance Bed 2.0 specification sheet, attached as Exhibit I.

108. Defendants' false statements actually deceived, or had the tendency to deceive, a substantial segment of defendants' and Norix's potential customers.

109. Defendants' false statements are material to the purchasing decisions of defendants' and Norix's potential customers.

110. Defendants used their false statements in interstate commerce, for example by bidding on contracts outside of Illinois and by causing the advertisements to be published in nationally distributed trade journals and over the Internet.

111. As defendants' competitor, Norix has been injured and will continue being injured as a result of Cortech's false statements.

112. Norix seeks compensatory damages, profits wrongfully obtained, exemplary damages, and attorney's fees, as well as injunctive relief against further false advertisement.

**COUNT IV  
VIOLATION OF THE ILLINOIS CONSUMER FRAUD  
AND DECEPTIVE TRADE PRACTICES ACT, 815 ILCS 505/2**

113. Norix incorporates and re-alleges Paragraphs 1 through 77 of this First Amended Complaint as if fully set forth herein.

114. From at least 2011 to the present, in product catalogs, product specification sheets, advertisements in trade journals, and other advertising materials, defendants have made false statements of fact that the Falsely Marked Products are covered by multiple pending patent applications.

115. For example, defendants have falsely represented that the Falsely Marked Products were subject to pending patent applications in the following product catalogs, product specification sheets, and advertisements:

- a) Cortech's Product Catalog from March 2011, attached as Exhibit B;
- b) Cortech's Product Catalog from September 2017, attached as Exhibit C;
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- d) Cortech's advertisement in the May / June 2017 issue of Correctional News, attached as Exhibit F.
- e) Cortech's 2010 brochure for the Sabre Chair, attached as Exhibit G;
- f) Cortech's Endurance Bed specification sheet, attached as Exhibit H; and
- g) Cortech's Endurance Bed 2.0 specification sheet, attached as Exhibit I.

116. In fact, at the time of defendants' false representations, no application relating to the referenced products had been made, or, if made, no such application was pending.

117. Defendants' false statements constitute deceptive or unfair acts or practices under Illinois law.

118. Defendants intended that defendants' and Norix's prospective customers, as well as Norix itself, would be deceived by the false statements.

119. As defendants' competitor, Norix has been injured and is likely to continue being injured as a proximate cause of defendants' false statements. Norix seeks compensatory damages, as well as injunctive relief against further deceptive trade practices.

**COUNT V**  
**VIOLATION OF THE ILLINOIS UNIFORM**  
**DECEPTIVE TRADE PRACTICES ACT, 815 ILCS 510**

120. Norix incorporates and re-alleges Paragraphs 1 through 77 of this First Amended Complaint as if fully set forth herein.

121. From at least 2011 to the present, in product catalogs, product specification sheets, advertisements in trade journals, and other advertising materials, defendants have made false statements of fact that the Falsely Marked Products are covered by multiple pending patent applications.

122. For example, defendants have falsely represented that the Falsely Marked Products were subject to pending patent applications in the following product catalogs, product specification sheets, and advertisements:

- a) Cortech's Product Catalog from March 2011, attached as Exhibit B;
- b) Cortech's Product Catalog from September 2017, attached as Exhibit C;
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- e) Cortech's 2010 brochure for the Sabre Chair, attached as Exhibit G;
- f) Cortech's Endurance Bed specification sheet, attached as Exhibit H; and
- g) Cortech's Endurance Bed 2.0 specification sheet, attached as Exhibit I.

123. In fact, at the time of defendants' false representations, no application relating to the referenced products had been made, or, if made, no such application was pending.

124. Defendants' false statements constitute deceptive trade practices under Illinois law.

125. Norix is likely to continue being injured as a proximate cause of defendants' false statements. Norix seeks injunctive relief against further deceptive trade practices.



**V. REQUEST FOR RELIEF**

Norix respectfully requests that the Court enter judgment against defendants as follows:

- A. That defendants have infringed the '993 Patent;
- B. That defendants' infringement of the '993 Patent has been willful;
- C. An injunction against further infringement of the '993 Patent;
- D. An award of damages adequate to compensate Norix for defendants' infringement of the '993 Patent, including pre-judgment interest and costs;
- E. An award of all other damages permitted by 35 U.S.C. § 284;
- F. A determination that this is an exceptional case within the meaning of 35 U.S.C. § 285 and an award to Norix of its costs and reasonable attorneys' fees incurred in this action;
- G. An injunction against further false marking, false advertisement, and deceptive trade practices by defendants;
- H. An award of damages adequate to compensate Norix for defendants' false marking and false advertisement;
- I. Exemplary damages for defendants' false advertisement;
- J. Defendants' profits from their false advertisement; and
- K. Such other relief as this Court deems just and proper.

**PLAINTIFF DEMANDS A TRIAL BY JURY ON ALL CLAIMS SO TRIABLE.**

Date: April 25, 2018

Respectfully submitted,

**NORIX GROUP, INC.**

By: /s/ Daniel I. Konieczny

One of Its Attorneys

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**CERTIFICATE OF SERVICE**

I hereby certify that on April 25, 2018, I electronically filed the foregoing document with the Clerk of Court using the CM/ECF system, which will send notification of such filing to all attorneys of record below:

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