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INC.
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8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
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11 ALTAIR INSTRUMENTS, INC., a
12 California corporation,
13 Plaintiff,
14 vs.
15 QVC, INC., a Delaware corporation;
16 HOMEDICS USA, LLC, a Michigan
Limited Liability Company; and DOES 1
17 through 10,
18 Defendants.

Case No. 2:18-cv-5799
**COMPLAINT FOR PATENT
INFRINGEMENT**
DEMAND FOR JURY TRIAL

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20 Plaintiff ALTAIR INSTRUMENTS, INC. (“Altair”) as its Complaint against
21 defendants QVC, INC. (“QVC”), HOMEDICS USA, LLC (“Homedics”) and Does
22 1 through 10, inclusive (collectively, “defendants”) alleges as follows:

23 **JURISDICTION AND VENUE**

24 1. This is an action for patent infringement arising under the Patent Laws
25 of the United States, Title 35, United States Code. This Court has jurisdiction over
26 the subject matter of this action pursuant to 28 U.S.C. § 1338(a) (action arising
27 under an Act of Congress relating to patents) and 28 U.S.C. § 1331 (federal
28 question).

1 hereinbelow, and are liable to Altair for the damages and relief sought herein.

2 8. Altair alleges on information and belief that, in performing the acts and
3 omissions alleged herein, and at all times relevant hereto, each of the defendants
4 was the agent and employee of each of the other defendants and was at all times
5 acting within the course and scope of such agency and employment with the
6 knowledge and approval of each of the other defendants.

7 **GENERAL ALLEGATIONS**

8 9. On June 5, 2001, United States Patent No. 6,241,739, entitled
9 “Microdermabrasion Device And Method Of Treating The Skin Surface” (“the ‘739
10 patent”), was duly and legally issued by the United States Patent and Trademark
11 Office (the “USPTO”).

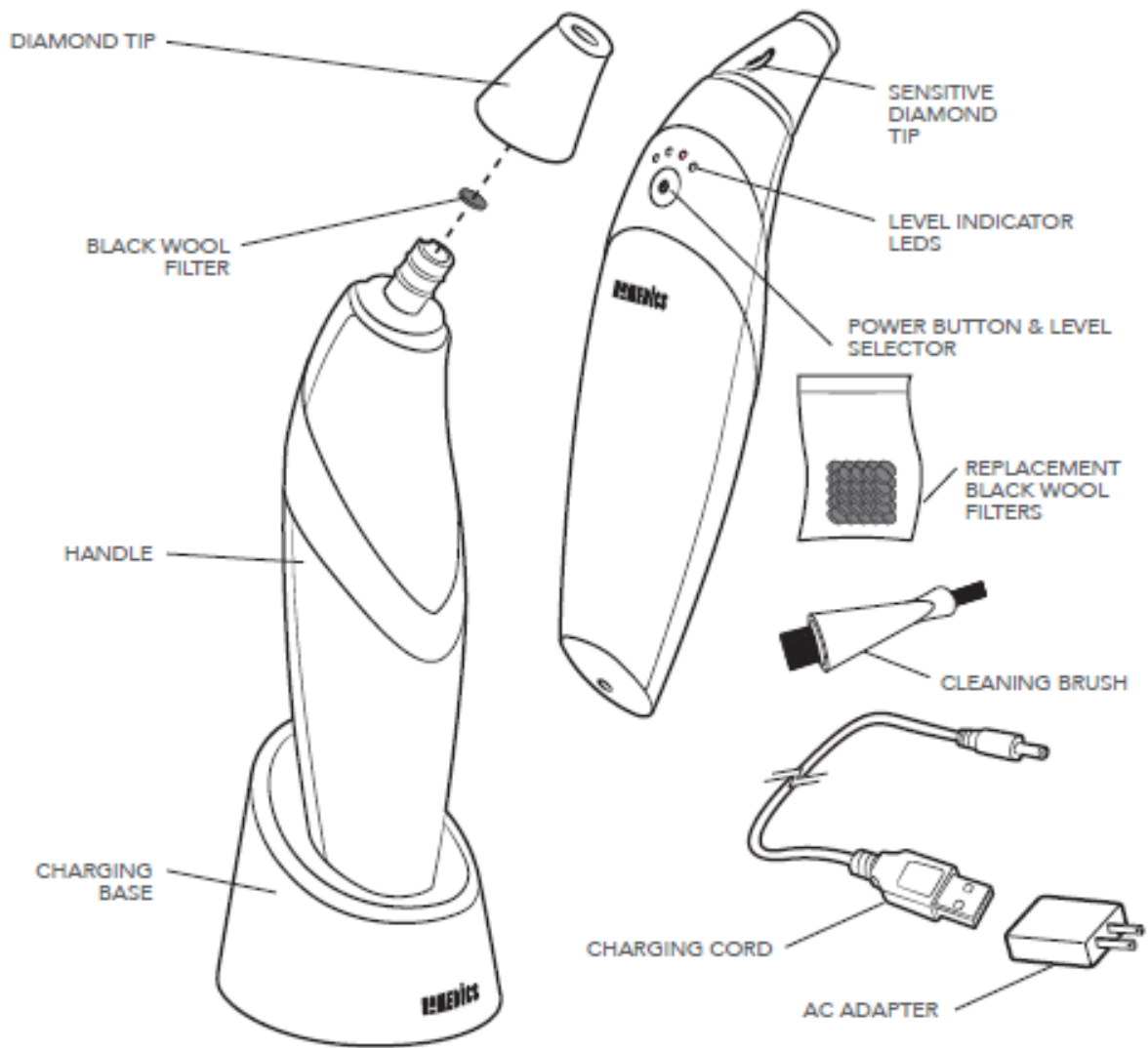
12 10. By assignment, Altair is the owner of all rights, title and interest in and
13 to the ‘739 patent, including all rights to recover for any and all past infringement
14 thereof. A true and correct copy of the ‘739 patent, with Reexamination
15 Certificates, is attached hereto as **Exhibit “A.”**

16 11. Altair has given notice to the public of its patent by marking its own
17 products and product literature with the ‘739 patent in conformity with 35 U.S.C.
18 § 287(a). QVC has had actual notice of the ‘739 patent since at least August 12,
19 2016, at which time it was served with the Complaint for Patent infringement in the
20 case entitled *Altair Instruments, Inc. v. Trophy Skin, Inc., et al.*, United States
21 District Court, Central District of California, Case No. CV16-5734 R (PLAx) (the
22 “Trophy Skin case”). QVC was named as a defendant in the Trophy Skin case
23 because it was selling certain Trophy Skin microdermabrasion devices, which Altair
24 alleged infringed several claims of the ‘739 patent. The Trophy Skin case settled
25 after Trophy Skin took a license to the ‘739 patent. The devices in the Trophy Skin
26 case are very similar to the devices that are the subject of this case. QVC started
27 selling, and continues to sell the devices that are the subject of this action knowing
28 that they infringe a valid patent, or by turning a blind eye to the fact of such

1 infringement.

2 **SUMMARY OF DEFENDANTS' INFRINGING ACTS**

3 12. Defendants make, use, sell, offer to sell and/or import a
4 microdermabrasion device called "Radiance." Images of the device and the
5 component parts thereof are shown below.



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26 13. The Radiance includes all of the elements of several claims of the '739
27 patent. For example, the chart below addresses how every element of **claim 1** of the
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1 '739 patent is met by the Radiance device:

2 **CLAIM 1**

<p>3 A device for removing the epidermis 4 without damaging the dermis of the skin 5 in a microdermabrasion procedure 6 comprising:</p>	<p>The Radiance is used to remove the epidermis without damaging the dermis in a microdermabrasion procedure.</p>
<p>7 a source of a vacuum, and</p>	<p>The Radiance includes a source of vacuum.</p>
<p>8 a tube with a treatment tip thereon for 9 removing cells comprising the 10 epidermis layer of the skin surface being 11 treated,</p>	<p>The “diamond tip” shown above constitutes a tube with a treatment tip thereon for removing cells comprising the epidermis layer. Other structures also meet the definition of “tube” in the '739 patent, and they also have a treatment tip thereon.</p>
<p>12 the treatment tip having an abrasive 13 material permanently attached to an 14 operating end thereof to provide a 15 treatment delivery surface,</p>	<p>The treatment tip has an abrasive material permanently attached to an operating end thereof to provide a treatment delivery surface.</p>
<p>16 the treatment delivery surface having an 17 orientation fixed in regard to an axis 18 extending longitudinally through the 19 tube,</p>	<p>The treatment delivery surface has an orientation fixed in regard to an axis extending longitudinally through the tube.</p>
<p>20 the tube being attached to the source of 21 vacuum so that a lumen through the tube 22 has a reduced pressure therein which is 23 less than the ambient pressure surrounding the tube,</p>	<p>The tube is attached to the source of vacuum so that a lumen through the tube has a reduced pressure therein which is less than the ambient pressure surrounding the tube.</p>
<p>24 the treatment delivery surface having 25 one or more openings therein for 26 continuously applying the reduced 27 pressure within the tube through 28 substantially all said one or more openings to a skin surface,</p>	<p>The treatment delivery surface has an opening to allow for continuously applying the reduced pressure within the tube through the opening to a skin surface.</p>

<p>1 said continuously applied vacuum 2 causing the skin being treated to have an 3 increased area of contact with the 4 abrasive material permanently attached to the treatment tip,</p>	<p>The continuously applied vacuum causes the skin being treated to have an increased area of contact with the abrasive material permanently attached to the treatment tip.</p>
<p>5 the vacuum also functioning to collect 6 epidermis cells of the skin surface being 7 treated.</p>	<p>The vacuum also functions to collect epidermis cells of the skin surface being treated.</p>

8 14. The Radiance also infringes claims 2, 3, 5, 6, 8, 9, 10, 12, 13, 14, 16,
9 17 and 18 of the ‘739 patent. Altair contends that the Radiance infringes at least the
10 claims discussed above. Altair reserves its right to assert infringement of additional
11 claims. Altair contends that the Radiance infringes the claims identified above
12 literally. However, to the extent any of the elements of any of the claims are not
13 met literally, Altair reserves its right to assert infringement under the doctrine of
14 equivalents.

15 15. The District Court in *Altair Instruments, Inc. v. Kelley West*
16 *Enterprises, LLC., et al.*, United States District Court, Central District of California,
17 Case No. CV15-8115-R (the “Kelley West case”) held that a device that is very
18 similar to the Radiance literally infringes claims 1, 2, 3, 5, 6, 8, 9, 10, 12, 13, 14, 16,
19 17 and 18 of the ‘739 patent. (Kelley West case, Docket # 92.) The District Court
20 also confirmed the validity of the ‘739 patent. (Kelley West case, Docket # 92.)
21 The United States Court of Appeals for the Federal Circuit upheld both of those
22 rulings. *Altair Instruments, Inc. v. Kelley West Enterprises, LLC*, 711 Fed.Appx.
23 643 (Fed. Cir. 2018).

24 **CLAIM FOR RELIEF**

25 **(Infringement of the ‘739 Patent)**

26 16. Altair realleges each and every allegation set forth in paragraphs 1
27 through 15 above, and incorporates them herein.

28 17. Defendants make, use, sell, offer to sell, and/or import into the United

1 States, including in this judicial district, one or more microdermabrasion devices,
2 including one known as “Radiance” (the “Accused Devices”) which contain each
3 and every element of at least the claims identified above.

4 18. Defendants’ sale of the Accused Devices directly infringes at least
5 claims 1, 2, 3, 5, 6, 8, 9, 10, 16, 17 and 18 of the ‘739 patent. Users of the Accused
6 Devices, including defendants, also infringe the above-referenced claims as well as
7 the method claims, i.e., claims 12, 13 and 14.

8 19. Defendants are also liable for inducing infringement. Defendants are
9 and have been aware of the ‘739 patent, and provide the Accused Devices with
10 instructions for use knowing that such use constitutes infringement of the ‘739
11 patent. Defendants are also liable for contributory infringement because the
12 Accused Devices constitute an apparatus for use in practicing the claims of the ‘739
13 patent, defendants know such use constitutes infringement of the ‘739 patent and
14 the Accused Devices constitute a material part of the inventions and are not a staple
15 article or commodity of commerce suitable for substantial noninfringing use.

16 20. On information and belief defendants infringement will continue unless
17 enjoined by this Court. As stated above, QVC has had actual knowledge of the ‘739
18 patent since at least August 12, 2016 when it was served with the Complaint and a
19 copy of the ‘739 patent in the Trophy Skin case. Despite this, QVC began selling
20 and continues to sell the Accused Devices.

21 21. Defendants’ infringement of the ‘739 patent has been and will continue
22 to be willful, wanton and deliberate with full knowledge and awareness of Altair’s
23 patent rights, unless enjoined by this Court.

24 22. Altair has been damaged in an amount to be determined at trial, but
25 which is no less than a reasonable royalty, and has been irreparably injured by
26 defendants’ infringing activities. Altair will continue to be so damaged and
27 irreparably injured unless such infringing activities are enjoined by this Court.
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PRAYER

WHEREFORE, Altair prays for the following relief:

a. Preliminary and permanent injunctions pursuant to 35 U.S.C. § 283 enjoining and restraining Defendants, their officers, directors, agents, employees, successors and assigns, and all those acting in privity or concert with Defendants or any of them, from further infringement of the ‘739 patent;

b. A judgment by the Court that Defendants have infringed and are infringing the ‘739 patent;

c. An award of damages for infringement of the ‘739 patent, together with prejudgment interest and costs, said damages to be trebled by reason of the intentional and willful nature of defendants’ infringement, as provided by 35 U.S.C. § 284;

d. An award of Altair’s reasonable attorneys’ fees pursuant to 35 U.S.C. § 285 in that this is an exceptional case;

e. Altair’s costs of suit herein; and

f. For such other and further relief as this Court deems just and proper.

Dated: July 2, 2018

RUTAN & TUCKER, LLP
RONALD P. OINES
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By: /s/ Ronald P. Oines
Ronald P. Oines
Attorneys for Plaintiff ALTAIR
INSTRUMENTS, INC.

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DEMAND FOR JURY TRIAL

Altair hereby demands a trial by jury.

Dated: July 2, 2018

RUTAN & TUCKER, LLP
RONALD P. OINES
BENJAMIN DEMING

By: /s/ Ronald P. Oines
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