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UNITED STATES DISTRICT COURT WESTERN DISTRICT OF LOUISIANA SHREVEPORT DIVISION

SHERWOOD SENSING SOLUTIONS LLC,

Plaintiff,

vs.

FRYMASTER, L.L.C.,

Defendant.

CASE NO. 5:19-cv-01351

JUDGE FOOTE

MAGISTRATE JUDGE HORNSBY

JURY TRIAL DEMANDED

FIRST AMENDED COMPLAINT

Plaintiff SHERWOOD SENSING SOLUTIONS LLC files this First Amended Complaint against Defendant FRYMASTER, L.L.C., alleging as follows:

I. THE PARTIES

1. SHERWOOD SENSING SOLUTIONS LLC ("Plaintiff" or "SHERWOOD") is a limited liability company organized and existing under the laws of the State of California, with a principal place of business at 4 Park Plaza, Suite 550, Irvine, CA 92614.

2. Defendant FRYMASTER, L.L.C. ("Frymaster") is a limited liability company organized under the laws of Louisiana with a principal place of business at 8700 Line Avenue, Shreveport, Louisiana 71106. Frymaster is an industry leader in the manufacturing of commercial fryers, fryer filtration equipment (built-in and portable), foodservice equipment computers, waterbath rethermalizers and pasta cookers. Frymaster may be served with process by serving its registered agent for service of process, Corporation Service Company, at 501 Louisiana Avenue, Baton Rouge, LA 70802.

II. JURISDICTION AND VENUE

3. This is an action for infringement of a United States patent. Federal question jurisdiction is conferred to this Court over such action under <u>28 U.S.C. §§ 1331</u> and <u>1338(a)</u>.

4. Defendant is subject to this Court's specific and general personal jurisdiction due at least to its substantial business in this district including: (a) at least a portion of the acts of infringement have occurred in this District; and (b) regularly conducting and soliciting business directly related to the accused infringing products, and deriving not insubstantial revenue from goods and services sold in this district to residents of this District.

5. Frymaster maintains its principal place of business at 8700 Line Avenue, Shreveport, LA 71106 within the Western District of Louisiana.

6. Defendant designs, develops, makes, sells, and/or offers to sell products at its Shreveport facility in this District which form the bases for the claims of the patent infringement made herein.

7. Defendant has also engaged in acts in this District that constitute willful infringement as set forth in greater detail in Paragraphs 22 through 46.

8. For these reasons, personal jurisdiction exists and venue is proper in this Court under 28 U.S.C. §§ 1391(b) and (c) and 28 U.S.C. § 1400(b), respectively.

III. BACKGROUND AND FACTS

A. The Asserted Patent

9. Sherwood brings this action to seek relief arising out of Frymaster's infringement of U.S. Patent No. 10,285,539 ("the '539 Patent" or "Asserted Patent").

10. On May 14, 2019, the '539 Patent was duly and legally issued for "Frying System and Method." As of the filing of this Complaint, the '539 Patent remains in force. A true and correct copy of the '539 Patent is attached as Exhibit A to this Complaint and made a part hereof.

11. Sherwood is the owner of all rights and title in and to the '539 Patent which have been assigned to Sherwood by N.F.T. - Food, Ltd. ("NFT"), including the rights to enforce and prosecute an action for infringement of the '539 Patent and to collect damages for all relevant times against infringers of the '539 Patent. Accordingly, Sherwood possesses the exclusive right and standing to prosecute the present action for infringement of the '539 Patent by Defendant.

B. NFT Develops an Innovative Fryer

12. The Asserted Patent is generally directed to a cooking system to fry food items in a cooking tank through the use of a cooking oil delivery system.

13. NFT is an Israeli company that was focused on the development of products for commercial kitchens, using innovative technologies to improve the cooking process. NFT noted a shift in the fast-food industry shortly after the movie "Super Size Me" was released in May 2004, as consumers became increasingly concerned about the links between physical health and consumption of fast food. As a result, efforts were taken to use healthier and higher quality oils for frying that did not contain trans fats (trans-fatty acids), which were more expensive than conventional frying oils which contained trans fats.

14. Deep fryers have remained relatively unchanged for a number of years. Conventionally, fryers involved heating cooking oil and then immersing food items within the oil. During the frying process, oil penetrates the surface of the food. Once the food is removed from the oil efforts are taken to remove the oil adhered to the surface, either by shaking the food or

subjecting it to a hot air-jet. Nevertheless, oil remains in the food, which adds to the caloric content of the food items and also reduces the amount of oil left in the fryer.

15. The process of immersing food items in the oil deteriorates the quality and appearance of the oil due to constant oxidation of the oil by air and hydrolysis from interaction with moisture contained in the food. Moreover, as oil is absorbed into the food, the ratio of the amount of oil to foreign substances is reduced. Food particulate, seasoning, and cleaners can accumulate and polymerize within the oil to form polar compounds, which can break down the oil and further promote oxidation and hydrolysis. Effectively, the longer the same cooking oil is used, the quality and taste of the fried food worsens and may be spoiled by degraded oil.

16. With this in mind, in 2004, NFT developed a prototype and filed for patent protection for an innovative fryer to provide a new, healthier method to produce fried food in fast-food kitchens that also saved on costs.

17. One of the features in NFT's fryer was an optional and adjustable feature that produced food items (e.g. French fries) with substantially less absorbed cooking oil, which resulted in a correspondingly lower fat percentage in the food. This allowed the NFT fryer to use less oil during each cooking cycle and produce healthier food products.

18. Even more importantly, the core technology of the NFT innovative fryer was an oil management system which maintained oil quality by regulating the amount of oil in in the frying tank. As oil is absorbed by the food or evaporated during the cooking process, the oil management system would pump new cooking oil to the tank, such that the flow of new oil entering the tank would continually replace the lost oil and maintain an optimal cooking oil level in the frying tank. Continuously maintaining the oil at an optimal cooking level provided for a more even cook of the

fried food product. Moreover, by only adding small amounts of oil as needed, the cooking oil lasted for a significantly longer time at a higher level of quality.

19. Other features of the NFT fryer included the use of a smaller frying tank which cooked the same quantity of food product (e.g., 3 lbs of French fries) in a smaller amount of oil in the same amount of time, and a built-in filtration system which automatically removed food particulate and fatty acids from the oil without human intervention. These features further contributed to reducing the consumption and degradation of oil.

20. NFT recognized that a fryer that consumes less oil is a cost-saving measure for businesses. For example, by enabling the cooking oil to be used longer, it would decrease the number of times the cooking oil of a commercial fryer in a large fast-food restaurant (e.g. McDonald's) would need to be replaced. Over time, this would result in less oil being used, which would in turn provide significant savings on costs for cooking oil and for labor costs for draining and refilling the oil. Thus, in addition to the health benefits, NFT's fryer would be enticing to businesses due to the cost savings that it could provide. These oil savings can initially be used to offset the capital expenditure in purchasing the fryer and for higher oil costs associated with non-trans fat oils, and the fryer can then continue to provide additional oil and labor cost savings for the remainder of its useful life.

C. McDonald's Introduces NFT to Frymaster

21. In an effort to publicize its new fryer, NFT reached out to the fast-food industry to market the fryer's benefits. In early 2005, NFT's agents contacted Jerry Sus, then employed as McDonald's Director of Development and Technology in Worldwide Restaurant Innovation. The parties discussed testing NFT's new fryer in Israel for potential use in McDonald's restaurants. It was NFT's intent to demonstrate proof of concept to McDonald's at that time.

22. By late July 2005, Mr. Sus referred NFT to one of McDonald's fryer manufacturers, Frymaster, by and through its then controlling member, Enodis Corporation ("Enodis"). NFT understood that Enodis/Frymaster would be running tests on NFT's prototype fryer on behalf of McDonald's.

23. On September 1, 2005, NFT and Enodis/Frymaster signed a non-disclosure agreement ("NDA") to govern the discussions involving NFT's prototype. A true and correct copy of the NDA is attached as Exhibit B to this Complaint and made a part hereof. Enodis was subsequently acquired by The Manitowoc Company in 2008, which then spun off Manitowoc Foodservice, Inc. in 2016, and which then changed its name to Welbilt, Inc. in 2017. Upon information and belief, Welbilt has assumed the rights and obligations of Enodis under the NDA, and Frymaster was at all relevant times bound by the NDA as a subsidiary thereof.

24. In October 2005, after attempts to arrange for a test of the prototype in Israel were delayed, the decision was made for NFT to bring a prototype of its fryer to Frymaster's laboratories in Shreveport, Louisiana.

25. In advance of the test of the prototype at Frymaster, NFT's agent Ron Lapid stated in e-mail:

I want to stress again, that this is a prototype which shows – in our opinion – proof of concept ... and the prototype will need Frymaster's specialist know-how to incorporate the concepts into a fryer McDonald's can install in its restaurants.

26. Charles Milton Hutchinson, Frymaster's Vice-President of Engineering and Quality Assurance, informed NFT by email that regarding the test of NFT's prototype:

If McDonald's does not endorse the product, we will not be able to proceed. If however, you want us to assess the mechanics of your fryer first, we can on the November 10^{th} date you requested.

27. Mr. Lapid responded by email:

There was never any intention that McDonald's Israel were going to <u>endorse</u> the product – they were only going to <u>supply</u> us product so that we could be confident that the results we achieve with McDonald's product is as good as other results we have obtained ... Although we would have preferred to also test McDonald's potatoes and oil here in Israel, McDonald's Israel have not given us product, and in light of our increased confidence following recent tests, we have decided not to wait.

As I understand, Jerry Sus of McDonald's requested Enodis to run the tests on its behalf, so I assume the tests will look at the prototype from both the technological innovation point of view and the effect it has on the McFry.

(emphasis in original).

28. Mr. Hutchinson responded by email again:

We are not authorized/certified or qualified to assess food quality on behalf of McDonald's. I saw your email inviting McDonald's staff to be present. I hope they accept because without its involvement, we can only assess the performance of the appliance and identify manufacturing and/or perceived reliability challenges. Unfortunately, we do not have food scientists on staff. We can collect samples of oil and forward to industry experts for analysis to determine accumulations of contaminants that would affect oil life, although this is a lengthy and expensive process. We should be able to weigh uncooked and cooked fries to determine water loss and oil absorption, but that is a far way from passing sensor panel tests, etc. This is why we HAD hoped for an endorsement from McDonald's Israel BEFORE this expensive step. We will not embrace this invention without its further involvement, but will gladly spend a couple of days with you here if you feel it helps your progress.

(emphasis in original).

29. Pursuant to the NDA and at the request of Frymaster, NFT sent to Frymaster and

Enodis a copy of the PCT patent application to which the '539 Patent claims priority, as well as a

PowerPoint presentation outlining the features of NFT's fryer, photographs and drawings of NFT's

prototype, and other confidential material related to technical details of the prototype not disclosed

in the patent application.

30. In preparation for the meeting, Mr. Hutchinson then e-mailed NFT to request:

Could you send me the patent documents again. I reviewed them in detail not too long ago, but due to a new anomaly in our email system which sometimes automatically removes attachments as emails are forwarded, I've

lost that data. This time, I'll detach the attachment, save it to a hard drive, and not lose it again. Thanks.

(emphasis in original).

D. NFT Tests Its Fryer Prototype at Frymaster's Shreveport Facility

31. On November 16, 2005, NFT and Frymaster began testing the prototype in the laboratory in Frymaster's Shreveport facility. Present for Frymaster were: Mr. Hutchinson, Gene Baugh (President of Frymaster), Mary Lynn Raley (Frymaster's Director of Field Marketing – McDonald's); Brenda Fried Humphreys (Frymaster's Vice President of Marketing), Jeffrey Jones (Frymaster's Director of Quality); Vincent Martinez /9Frymaster's Manager Sales Engineering – McDonald's), and other Frymaster engineering and laboratory personnel. In addition, a Frymaster's consultant was present for the testing to assess the quality of French fries produced by the prototype who was a former McDonald's employee. Tests with the prototype were conducted over two days, with a third day of review.



NFT and Frymaster employees testing prototype in Shreveport, LA

32. Mr. Lapid presented a PowerPoint presentation of the technological innovations and benefits for the NFT prototype as compared to other standard fryers, including, *inter alia*:

(a) Lowering the amount of oil in the fried product;

- (b) Using smaller frying tank with less oil to cook the same amount of fried product in the same amount of time as in standard fryers;
- (c) Continuously replacing the quantity of oil absorbed during the cook cycle with fresh oil to minimize the amount of oil used and reduce amount of energy to heat oil;
- (d) Extending oil life by cycling oil through filters built-in within the fryer;
- (e) Oil cost savings as a result of using less oil;
- (f) Improved worker safety from not having direct contact with hot oil; and
- (g) Increased worker efficiency and savings in labor costs from reduced need for manual oil filtering and/or refilling.

33. During the test, Frymaster's employees expressed its admiration of the technological innovation of the NFT fryer. A Frymaster employee stated that they had not developed new frying technology for a long time, and mainly focused on improving the digital controls system of the fryers, including automatic leveling of lift baskets. A Frymaster employee even claimed they could not believe they had not come up with the innovations before. The main concerns with the prototype expressed by Frymaster employees were the taste, color, and texture of the fries in accordance with McDonald's standards.

34. Frymaster took samples oil samples from the prototype during testing to determine the fat and water content in the oil.

35. The prototype remained at Frymaster's laboratory to allow them to run additional tests and prepare a report. The prototype was picked up by a courier for deliver to Israel on December 19, 2005.

36. On December 12, 2005, McDonald's (and therefore Frymaster) determined that, despite the "interesting technology" it would not be collaborating with NFT alleging "the product coming from the unit did not meet McDonalds Mac Fry Gold Standard in taste or salt retention."

Frymaster never returned NFT's patent documents or indicated whether such documents were destroyed.

E. Frymaster and Hutchinson File Its Own Patent Based on NFT's Innovations

37. Despite Frymaster's unwillingness to collaborate further with NFT, Frymaster filed a patent application on March 19, 2007 (15 months after the NFT prototype departed Frymaster's laboratory) for which Mr. Hutchinson was listed as one of the named inventors. This patent application ultimately issued as U.S. Patent No. 8,627,763 ("the '763 Patent"), which is entitled "Automatic Top-Off for Deep Fat Fryers." A true and correct copy of the '763 Patent is attached as Exhibit C to this Complaint and made a part hereof. The '763 Patent incorporates features presented to Frymaster by NFT in 2005. In particular, the '763 Patent disclosed an automatic topoff system with a pump for automatically maintaining the fryer pots of a deep fryer with oil at an optimal level without operator intervention and a pump for filtering used cooking oil.

38. Frymaster had also begun developing a new fryer for a McDonald's program called the Low Oil Volume ("LOV") Fryer, for which the objective was to develop equipment that provides better tasting food while improving worker efficiency and using less cooking oil and energy. The LOV Fryer included enhancements disclosed to Frymaster by NFT, and subsequently disclosed in Frymaster's '763 Patent, including an Automatic Top-Off ("ATO") feature, an automatic filtration feature, and a smaller frying tank. The functionality of the ATO feature was described as: "the fryer automatically maintains an optimal oil level with a reservoir in the cabinet." The functionality of the automatic filtration feature was described as: "the fryer performs hands-free filtering at prescribed cook cycle counts or at prescribe times." Frymaster explained that "the combination of a low-volume fry vat and oil automatically kept at a[n] optimal level, reduc[es] oil usage," which resulted in oil savings. 39. Frymaster also offered for sale to the general market a version of the LOV fryer called the Protector, which also "has the LOV's auto top-off feature and the on-board oil reservoir, the smaller fry vat and the oil savings associated with the smaller vat and the top-off feature."

40. Frymaster subsequently began marketing and selling a new line of fryers referred to as "Oil Conserving Fryers" ("OCF"), including the FilterQuick, OCF30, and 1814 models, which are newer versions incorporating the features of the LOV and Protector fryers. Frymaster continues to tout the cost-saving measures of the OCF fryers, including the fact that these fryers use significantly less oil as a result of the Automatic Top-Off feature and result in savings on oil costs.

"Oil life is maximized with auto top-off (ATO) because the smaller frypot maintains a favorable ratio of fresh to used oil. Less oil to fill and longer times between fills saves operators well over 40% on their oil costs." (https://www.frymaster.com/asset/?id=etatr®ions=us&prefLang=en)

"With Frymaster's revolutionary, new Oil Attendant[™] technology, oil life can be maximized up to 4 weeks or more, according to independent research."

(https://www.frymaster.com/asset/?id=zadkm®ions=us&prefLang=en)

"Auto top-off (ATO) keeps oil fresher longer. No more heavy top-off jugs to lift or oil to pour into a hot frypot. The Oil Attendant® auto top-off (ATO) feature continually measures the oil level in the frypot and replenishes oil as needed. Refilling automatically keeps oil at optimal levels."

(https://www.frymaster.com/asset/?id=tlqmdr®ions=us&prefLang=en)

41. In summary, Frymaster took advantage of the information contained in NFT's then-

pending patent application and in information that it obtained confidentially from NFT to develop

its own new fryers.

42. On or around October 15, 2019, Sherwood's counsel put Frymaster on notice of the

claims in this suit by delivering a copy of the Original Complaint to its corporate office. At a

minimum, on or around October 15, 2019, Frymaster was aware of the '539 Patent. Since October 15, 2019, Frymaster continues to make, use, sell, offer for sale, and/or import products and services which directly infringe one or more claims of the Asserted Patent. Frymaster had knowledge of this litigation and the Asserted Patent on or before October 18, 2019, because it contacted Sherwood's counsel regarding this matter.

F. The Accused Products

43. Defendant has and continues to make, use, sell, offer for sale, and/or import products and services which directly infringe one or more claims of the Asserted Patent.

44. More particularly, Defendant makes, uses, sells, offers for sale, and/or import its OCF lines of fryers which include at least the following known accused product lines: FilterQuick series (FQG30U, FQE30U), OCF30 series (OCF30-ATOG, OCF30-ATOE) and 1814 with FilterQuick series (1814EA, 1814EG). Defendant markets and sells the accused OCF Fryers to customers throughout the United States and worldwide, including at least Burger King, Cracker Barrel, Arby's, and Applebee's, and other larger fast food restaurant chains.

45. Defendant makes, uses, sells, offers for sale, and/or import a line of fryers known as the LOV Fryer series (BIELA, BIGLA) exclusively for McDonald's. Defendant sells the accused LOV products to McDonald's for use at its stores throughout the United States and worldwide.

46. The accused OCF and LOV lines of fryers are collectively referred to the "Accused Products."

COUNT I

PATENT INFRINGEMENT

U.S. Patent No. 10,285,539

47. Sherwood repeats and re-alleges all preceding paragraphs of this Complaint, as though fully set forth herein.

48. The '539 Patent discloses and claims a frying system method that allows for the a cooking oil delivery system comprising of a vat with a substantially hollow inner chamber for holding cooking oil and a pump, which when activated delivers cooking oil from the vat to the interior chamber in an amount that exceeds the drainage of cooking oil from the same chamber so as to raise the cooking oil to continuously maintain a desired cooking level in the chamber.

49. Defendant, without authority, consent, right, or license, has and continues to make, use, sell, offer for sale, and/or import the Accused Products, which comprise each of the components and the functionality of the system claimed in at least claim 1 of the '539 Patent.

50. Each of the Accused Products includes a frying tank with an interior chamber to receive food times, a gas or electric heater for heating the cooking oil in the frying tank, a jib which is a vat that holds fresh cooking oil, and an Oil Attendant ATO feature. A representative example of the Accused Products is shown below.

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(http://fm-xweb.frymaster.com/service/udocs/Manuals/819-7052%20APR%2017.pdf)

Frying Tank:



Gas Fryer Frypot

Electric Fryer Frypot

(https://www.frymaster.com/asset/?id=zadkm®ions=us&prefLang=en)

Heating Elements:

For gas models, "[h]eating is supplied by a pair of infrared burner assemblies mounted on each side of the frypot."

(http://fm-xweb.frymaster.com/service/udocs/ Training%20Modules/Frymaster%20Touchscreen %20Fryers_Web2/story_content/external_files/Fil terQuick%20Gas%20Ops%20Manuals.pdf) "Electric fryers have a heating element in the interior of the frypot that is immersed in the oil."

(https://www.manitowocice.com/asset/?id= hlzxww®ions=us&prefLang=en)

51. The ATO includes a controller which activates a pump when the oil level falls

below a fill level sensor in the tank and turns off the pump when the oil level satisfies the sensor.

The pump delivers fresh cooking oil to the frying tank from the jib located inside the fryer cabinet or from a bulk oil system. The ATO is used to automatically replenish oil that is absorbed during the cooking cycle and continuously maintain a desired cooking oil level.





1.18 ATO (Automatic Top-off) and Filtration Service Procedures

The automatic top-off system is activated when the oil level falls below the top sensor in the front of the frypot. The signal is sent to the FIB (Filter Interface Board) which sends a signal to the VIB (Valve Interface Board) to engage the return actuator to the frypot and turn on the ATO pump. The pump draws oil from the JIB (Jug In Box) through the rear return manifold into the rear of the frypot. Once the oil level has satisfied the sensor, the pump turns off and the actuator closes.

(http://fm-xweb.frymaster.com/service/udocs/Manuals/819-7443%20JAN%2018.pdf)

3.4 Oil Attendant® Automatic Top-Off

When the Oil Attendant[®] top-off oil system is in place on the fryer, oil is continually topped off in the frypots from a reservoir in the cabinet. The reservoir holds up to a 35 pound box of oil. In a typical operation this will last approximately two days before changing. Components of the system are annotated at the right (see Figure 1).

(http://fm-xweb.frymaster.com/service/udocs/Manuals/819-7052%20APR%2017.pdf)



(https://www.youtube.com/watch?v= OaiAzEjQaMA)



(https://www.frymaster.com/Videos) (OCF30 Operation Guide-13: Jib Replacement)

52. Defendant therefore directly infringes, either literally or under the doctrine of equivalents, at least Claim 1 of the '539 Patent. Sherwood expressly reserves the right to assert additional claims of the '539 Patent against Defendant.

53. Sherwood has been damaged as a result of Defendant's infringing conduct. Defendant is, thus, liable to Sherwood in an amount that adequately compensates for its infringement, which, by law, cannot be less than a reasonable royalty, together with interest and costs as fixed by this Court under <u>35 U.S.C. § 284</u>.

54. Upon information and belief, Defendant either has actual knowledge of the '539 Patent, its parent applications, and Sherwood's infringement claims presented herein. Defendant intentionally copied and incorporated features into the Accused Products which were disclosed and claimed in the '539 Patent and its parent applications and which were disclosed to Defendant by NFT pursuant to the NDA.

55. Defendant has had knowledge of Sherwood's allegations of copying its fryer technology as a result of a lawsuit filed by NFT in Israel in 2012 prior to issuance of NFT's patents, which was dismissed in 2014 because the Israeli court found that it did not have jurisdiction to rule on the case. As a result of related litigation and Frymaster's prior dealings with NFT –

including recent of confidential patent information from NT – regarding the underlying fryer technology, on information and belief Defendant monitored the NFT patent applications and/or patents issuance and therefore had notice of the of the '539 Patent's issuance, but continued to make, use, sell, offer for sale, and/or import products and services related to claims in the related patents.

56. At a minimum, Defendant's infringement of the '539 Patent has been willful since the filing of this Complaint and its receipt of the Complaint on or around October 15, 2019 because it continues make, use, sell, offer for sale, and/or import products and services despite its knowledge of the Asserted Patent in this Lawsuit and its deliberate copying of the ideas and designs previously shared in confidence by NFT. Moreover, Defendant likely had knowledge of its infringement since the issuance of the '539 Patent on May 14, 2019, based on its prior communications and contact with NFT regarding related patents, prototypes, patent applications, and prior related litigation in Israel. Therefore, Sherwood is further entitled to enhanced damages under <u>35 U.S.C. § 284</u>.

IV. JURY DEMAND

57. Plaintiff hereby requests a trial by jury pursuant to Rule 38 of the Federal Rules of Civil Procedure.

V. PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that the Court find in its favor and against Defendant, and that the Court grant Plaintiff the following relief:

a. Judgment that one or more claims of the Asserted Patent have been directly infringed, either literally or under the doctrine of equivalents, by Defendant;

b. Judgment that Defendant account for and pay to Plaintiff all damages to and costs incurred by Plaintiff because of Defendant's infringing activities and other conduct complained of herein, including enhanced damages as permitted by <u>35 U.S.C. § 284</u>;

c. That Plaintiff be granted pre-judgment and post-judgment interest on the damages caused by Defendant's infringing activities and other conduct complained of herein;

d. Judgment that Defendant's infringement is willful from the time Defendant became aware of the infringing nature of the products and services and that the Court award treble damages for the period of willful infringement pursuant to <u>35 U.S.C. § 284</u>;

e. That the Court declare this an exceptional case and award Plaintiff its reasonable attorney's fees and costs in accordance with <u>35 U.S.C. § 285;</u> and

f. That Defendant, its officers, agents, servants and employees, and those persons in active concert and participation, be permanently enjoined from infringement of one or more claims of the Asserted Patents or, in the alternative, if the Court finds that an injunction is not warranted, Plaintiff requests an award of post judgment royalty to compensate for future infringement; and

g. That Plaintiff be granted such other and further relief as the Court may deem just and proper under the circumstances.

Dated: January 30, 2020

Respectfully submitted,

/s/ John C. Nickelson

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