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INC.
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9 UNITED STATES DISTRICT COURT
10 CENTRAL DISTRICT OF CALIFORNIA
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12 ALTAIR INSTRUMENTS, INC., a
California corporation,

13 Plaintiff,

14 vs.
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16 TELEBRANDS CORP., a New Jersey
corporation; WALMART, INC., a
17 Delaware corporation; and DOES 1
through 10,

18 Defendants.
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Case No. 2:19-cv-08967 SJO(JCx)

**FIRST AMENDED COMPLAINT
FOR PATENT INFRINGEMENT**

DEMAND FOR JURY TRIAL

20 Plaintiff ALTAIR INSTRUMENTS, INC. (“Altair”) as its First Amended
21 Complaint against defendants TELEBRANDS CORP. (“Telebrands”), WALMART,
22 INC. (“Walmart”) and Does 1 through 10, inclusive (collectively, “defendants”)
23 alleges as follows:

24 **JURISDICTION AND VENUE**

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

1 in some manner responsible for the acts described in this Complaint and the damage
2 resulting therefrom.

3 7. Altair alleges on information and belief that each of the defendants
4 named herein as Does 1 through 10, inclusive, performed, participated in, or abetted
5 in some manner, the acts alleged herein, proximately caused the damages alleged
6 hereinbelow, and are liable to Altair for the damages and relief sought herein.

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

12 **GENERAL ALLEGATIONS**

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

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

21 11. Altair has given notice to the public of its patent by marking its own
22 products and product literature with the ‘739 patent in conformity with 35 U.S.C.
23 § 287(a).

24 **SUMMARY OF DEFENDANTS’ INFRINGING ACTS AND WILLFULNESS**

25 12. Defendants make, use, sell, offer to sell and/or import devices that
26 infringe several claims of the ‘739 patent. In particular, Defendants’
27 “Dermasuction” device (the “Dermasuction”) shown below infringes several claims.
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13. Defendants emphasize the benefits of the abrasive tip in marketing materials. For example, Defendants state that the abrasive tip “is perfect to exfoliate dead skin for spa-like skin rejuvenation.”

14. The chart below addresses how every element of **claim 1** of the ‘739 patent is met by the Dermasuction:

CLAIM 1

A device for removing the epidermis without damaging the dermis of the skin in a microdermabrasion procedure comprising:	The Dermasuction is used to remove the epidermis without damaging the dermis in a microdermabrasion procedure.
a source of a vacuum, and	The Dermasuction includes a source of vacuum.
a tube with a treatment tip thereon for removing cells comprising the epidermis layer of the skin surface being treated,	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.
the treatment tip having an abrasive material permanently attached to an	The treatment tip has an abrasive material permanently attached to an

1	operating end thereof to provide a	operating end thereof to provide a
2	treatment delivery surface,	treatment delivery surface.
3	the treatment delivery surface having an	The treatment delivery surface has an
4	orientation fixed in regard to an axis	orientation fixed in regard to an axis
5	extending longitudinally through the	extending longitudinally through the
6	tube,	tube.
7	the tube being attached to the source of	The tube is attached to the source of
8	vacuum so that a lumen through the tube	vacuum so that a lumen through the
9	has a reduced pressure therein which is	tube has a reduced pressure therein
10	less than the ambient pressure	which is less than the ambient pressure
11	surrounding the tube,	surrounding the tube.
12	the treatment delivery surface having	The treatment delivery surface has an
13	one or more openings therein for	opening to allow for continuously
14	continuously applying the reduced	applying the reduced pressure within the
15	pressure within the tube through	tube through the opening to a skin
16	substantially all said one or more	surface.
17	openings to a skin surface,	
18	said continuously applied vacuum	The continuously applied vacuum
19	causing the skin being treated to have an	causes the skin being treated to have an
20	increased area of contact with the	increased area of contact with the
21	abrasive material permanently attached	abrasive material permanently attached
22	to the treatment tip,	to the treatment tip.
23	the vacuum also functioning to collect	The vacuum also functions to collect
24	epidermis cells of the skin surface being	epidermis cells of the skin surface being
25	treated.	treated.

21 15. The Dermasuction also infringes claims 2, 3, 5, 6, 8, 9, 10, 12, 13, 14,
 22 16, 17 and 18 of the '739 patent. Altair contends that the Dermasuction infringes at
 23 least the claims discussed above. Altair reserves its right to assert infringement of
 24 additional claims. Altair contends that the Dermasuction infringes the claims
 25 identified above literally. However, to the extent any of the elements of any of the
 26 claims are not met literally, Altair reserves its right to assert infringement under the
 27 doctrine of equivalents.

28 16. Altair's '739 patent has survived two reexamination proceedings.

1 Thus, the ‘739 patent has been thoroughly vetted by the USPTO three times. The
2 ‘739 patent has also survived validity challenges in several United States District
3 Court actions.

4 17. Due to rampant infringement of its ‘739 patent, Altair has filed more
5 than 25 lawsuits for infringement of the ‘739 patent. Those cases have been
6 resolved with the defendants either agreeing to stop selling infringing devices or to
7 pay a substantial royalty pursuant to a license to the ‘739 patent.

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

17 19. On October 10, 2018, counsel for Altair sent a letter to Telebrands
18 informing them of the ‘739 patent and enclosing a copy of the patent with the letter.
19 Altair further informed Telebrands that the Dermasuction device infringes the ‘739
20 patent and demanded that Telebrands immediately cease such infringement. Despite
21 Defendants’ knowledge of the ‘739 patent and the fact that the Dermasuction device
22 infringes the ‘739 patent, Telebrands continued and continues to sell the
23 Dermasuction device. Telebrands’ infringement is willful.

24 20. Defendant Walmart has sold several hundred thousand of the infringing
25 Dermasuction devices in its stores and online on www.walmart.com or other
26 websites owned and operated by Walmart. As such, Walmart is liable for
27 infringement of the ‘7389 patent.

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1 **CLAIM FOR RELIEF**

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

3 21. Altair realleges each and every allegation set forth in paragraphs 1
4 through 20 above, and incorporates them herein.

5 22. Defendants make, use, sell, offer to sell, and/or import into the United
6 States, including in this judicial district, one or more microdermabrasion devices,
7 including the Dermasuction which contains each and every element of at least one
8 claim of the ‘739 patent. Defendants’ sale of the Dermasuction directly infringes at
9 least claims 1, 2, 3, 5, 6, 8, 9, 10, 16, 17 and 18 of the ‘739 patent. Users of the
10 Dermasuction also infringe the above-referenced claims as well as the method
11 claims, i.e., claims 12, 13 and 14.

12 23. On information and belief Defendants’ infringement will continue
13 unless enjoined by this Court. Altair has been damaged in an amount to be
14 determined at trial, but which is no less than a reasonable royalty, and has been
15 irreparably injured by Defendants’ infringing activities. Altair will continue to be so
16 damaged and irreparably injured unless such infringing activities are enjoined by
17 this Court.

18 **PRAYER**

19 WHEREFORE, Altair prays for the following relief:

20 a. Preliminary and permanent injunctions pursuant to
21 35 U.S.C. § 283 enjoining and restraining Defendants, their officers,
22 directors, agents, employees, successors and assigns, and all those
23 acting in privity or concert with Defendants or any of them, from
24 further infringement of the ‘739 patent;

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

27 c. An award of damages for infringement of the
28 ‘739 patent, together with prejudgment interest and costs;

- 1 d. A finding that this is an exceptional case and Altair is
- 2 entitled to treble damages and its attorneys' fees;
- 3 e. Altair's costs of suit herein; and
- 4 f. For such other and further relief as this Court deems just
- 5 and proper.

6 Dated: December 5, 2019

RUTAN & TUCKER, LLP
RONALD P. OINES
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9 By: /s/ Ronald P. Oines
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DEMAND FOR JURY TRIAL

Altair hereby demands a trial by jury.

Dated: December 5, 2019

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