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Jergens, Inc

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

JERGENS, INC.

*Plaintiff,*

v.

5TH AXIS, INC.,  
CHRISTOPHER TAYLOR,  
STEPHEN GRANGETTO, *and*  
ADAM LANE,

*Defendants.*

Case No. 3:20-cv-02377-CAB-BLM

**SECOND AMENDED COMPLAINT  
FOR**

- (1) PATENT INFRINGEMENT**
- (2) CORRECTION OF  
INVENTORSHIP**
- (3) BREACH OF NON-DISCLOSURE  
AGREEMENT**
- (4) BREACH OF THE IMPLIED  
COVENANT OF GOOD FAITH  
AND FAIR DEALING**
- (5) TRADE SECRET  
MISAPPROPRIATION**

Jury Trial Demanded

1 Plaintiff Jergens, Inc. (“Jergens”), by and through its attorneys, files this complaint  
2 for patent infringement, correction of inventorship, breach of contract, breach of the  
3 implied covenant of good faith and fair dealing and trade secret misappropriation against  
4 Defendants 5th Axis, Inc. (“5th Axis”), Christopher Taylor. Stephen Grangetto, and  
5 Adam Lane (collectively “Defendants”).

## 6 **PARTIES**

7 1. Plaintiff Jergens is a corporation organized and existing under the laws of  
8 the State of Ohio having a principal place of business at 15700 South Waterloo Road,  
9 Cleveland, Ohio 44110.

10 2. Defendant 5th Axis is a corporation organized and existing under the laws of  
11 the State of California having a principal place of business at 7140 Engineer Road, San  
12 Diego, California 92111.

13 3. On information and belief, Christopher Taylor is the Co-Chief Executive  
14 Officer of 5th Axis, resides in San Diego County, and has a place of business at 7140  
15 Engineer Road, San Diego, California 92111.

16 4. On information and belief, Stephen Grangetto is the Co-Chief Executive  
17 Officer of 5th Axis, resides in San Diego County, and has a place of business at 7140  
18 Engineer Road, San Diego, California 92111.

19 5. On information and belief, Adam Lane is an engineer at 5th Axis, resides in  
20 San Diego County, and has a place of business at 7140 Engineer Road, San Diego,  
21 California 92111.

## 22 **JURISDICTION AND VENUE**

23 6. This is an action arising under the United States patent laws, 35 U.S.C. §§  
24 101 et seq. (including Sections 271 and 256); and for breach of contract, breach of the  
25 implied covenant of good faith and fair dealing, and violations of the Ohio Uniform  
26 Trade Secrets Act, Ohio Revised Code §1333.61 et seq.

27 7. This Court has subject matter jurisdiction over the patent claims under 28  
28 U.S.C. §§ 1331, 1338(a), 2201, and 2202.

1           8.     The Court has supplemental subject matter jurisdiction over the remaining  
2 claims, as well as diversity jurisdiction under 28 U.S.C. §§ 1332 over the remaining  
3 claims, because the plaintiff and defendants are diverse, and the amount in controversy  
4 exceeds \$75,000.00,

5           9.     This Court has personal jurisdiction over Defendants because Defendants all  
6 either reside in, or have their principal place of business in, this District. On information  
7 and belief, the accused infringing products are also used, offered for sale, and sold in this  
8 District.

9           10.    Venue is proper under 28 U.S.C. §§ 1391(b), 1391(c), and 1400(b) because  
10 Defendants either reside in, or have their principal place of business in, this District. On  
11 information and belief, the accused infringing products are used, offered for sale, and  
12 sold in this District.

### 13                                   **PATENTS-IN-SUIT**

#### 14                                   **U.S. Patent No. 8,708,323**

15           11.    On April 29, 2014, the United States Patent Office issued U.S. Patent No.  
16 8,708,323 (“’323 Patent”) to inventors Ted Hoyt, Terry Schron, Bob Rubenstahl, Joseph  
17 Russel Cousins, and Darel R. Taylor. The ’323 Patent bears the title “Mounting System.”  
18 A true and accurate copy of the ’323 Patent is attached as **Exhibit 1**.

19           12.    Plaintiff Jergens is the owner and assignee of all rights, title, and interest in  
20 the ’323 Patent, and holds the right to sue and recover damages for infringement thereof,  
21 including current and past infringement.

#### 22                                   **U.S. Patent No. 10,603,750**

23           13.    On March 31, 2020, the United States Patent Office issued U.S. Patent No.  
24 10,603,750 (“’750 Patent”) to Darel R. Taylor, Terry Schron, and Edward Conaway. The  
25 ’750 Patent bears the title “Mounting System with Self-Aligning CAM System.” A true  
26 and accurate copy of the ’323 Patent is attached as **Exhibit 2**.

27           14.    Plaintiff Jergens is the owner and assignee of all rights, title, and interest in  
28 the ’750 Patent, and holds the right to sue and recover damages for infringement thereof,

1 including current and past infringement.

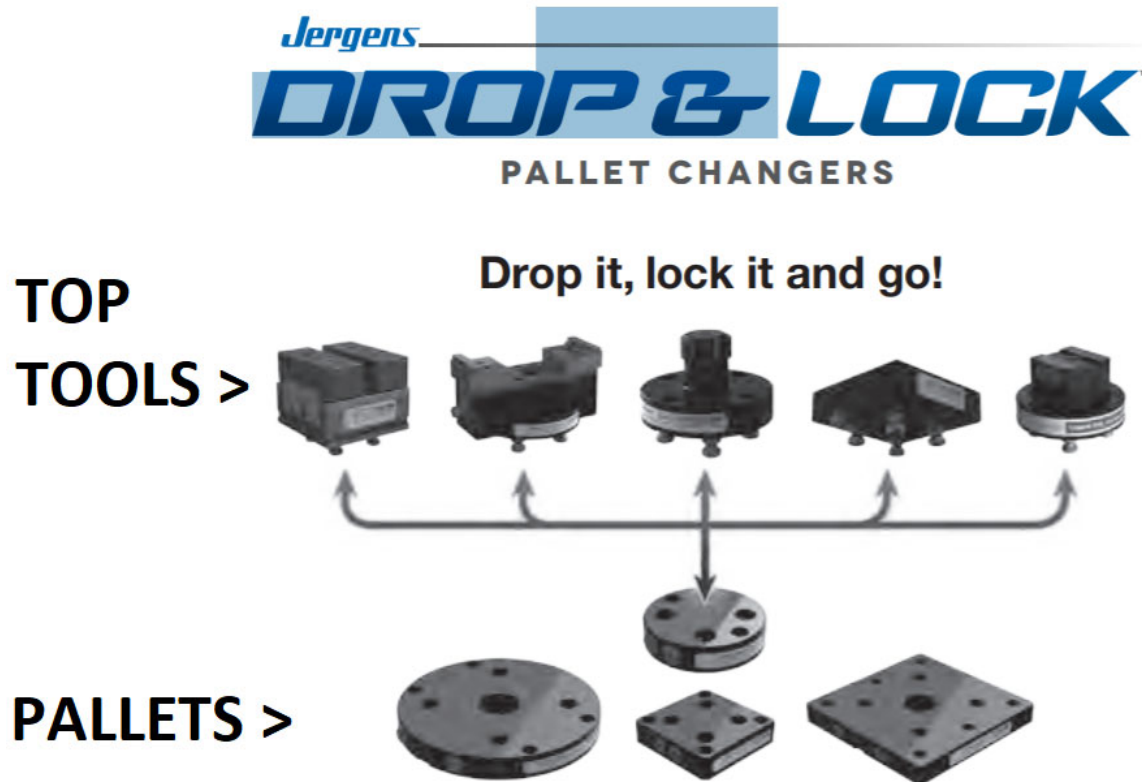
## 2 **BACKGROUND**

### 3 **Part I: Jergens Innovates In The Design Of Pallets**

4 15. Founded during wartime in Cleveland, Ohio in 1942, Jergens is a major  
5 manufacturer of standard tooling components and manufacturing equipment, including  
6 workholding tools, specialty fasteners, and hoist rings. Jergens proudly makes the vast  
7 majority of what it sells on site at its Cleveland campus, ensuring high quality and  
8 workmanship.

9 16. The present case concerns the design of a class of workholding tools  
10 generally referred to as “pallets.” Pallets are often used in machining equipment as a  
11 base to hold down another tool such as a clamp, which class of tools are often referred to  
12 a “top tools.” For example, a clamp may hold a piece of metal that is being precisely cut  
13 within a machine, and that clamp in turn is firmly held in place by the pallet, with the  
14 pallet in turn secured to the main base of the machine. Pallets are made of metal and  
15 often shaped as generally flat square-bodied units, though they can also assume many  
16 other shapes to meet particular work-holding needs.

17 17. As an example, below are images of several Jergens pallets and how they  
18 engage other workholding equipment. As can be seen, the top tools have studs projected  
19 from underneath them, and the pallets have holes that receive the studs. Once the studs  
20 are inserted, a mechanism within the pallet engages the studs to securely lock them in  
21 place inside the pallet, thereby tightly holding the top tool onto the pallet. This case  
22 concerns the design and configuration of that locking mechanism within the pallet that  
23 holds the studs.

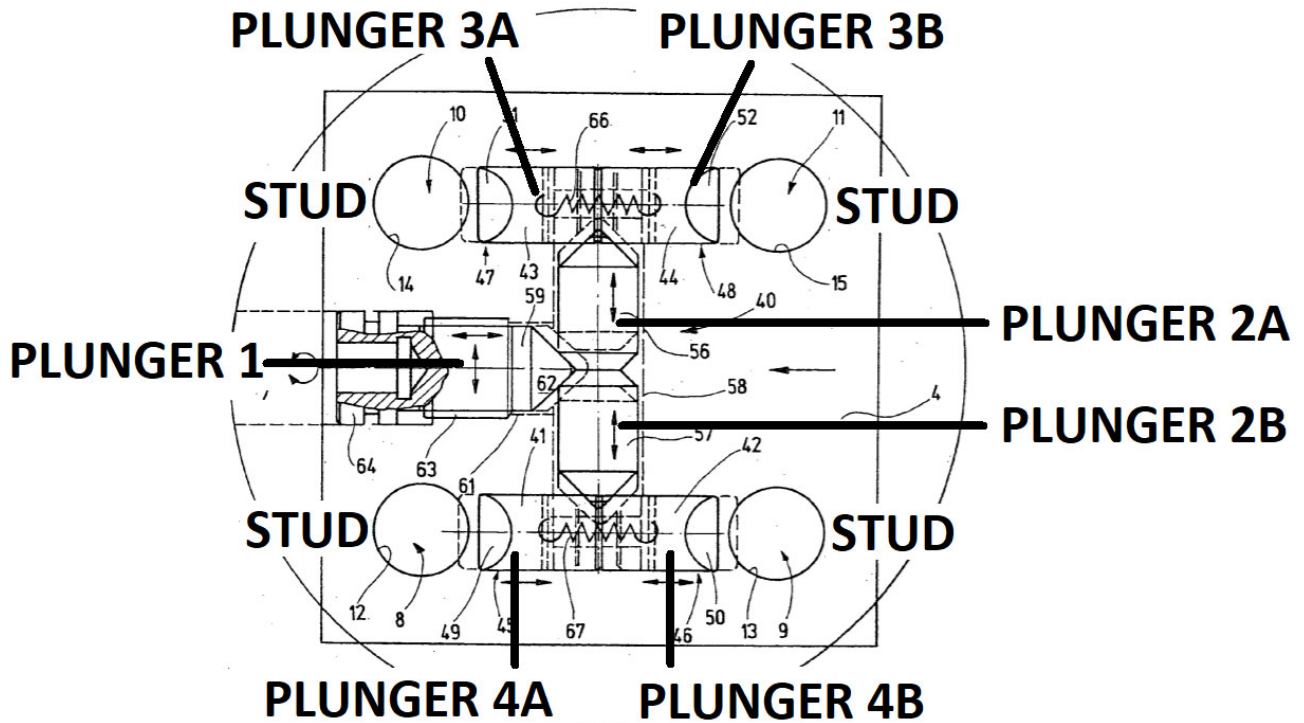


Drop & Lock™ Pallet Changers provide the fastest, most accurate changeover of adaptors and top tooling. Quick change is made possible by pull studs and just two turns of a hex wrench as an alternative to traditional set screws.

18. As of at least the early 2000s, there was increased demand for a pallet that would allow fast change out of top tools, so that the top tool (for example, a vise) could be quickly and easily swapped out for a different top tool during the machining process.

19. A German company called LANG Technik GmbH (“LANG”) is generally considered to have sold the first widely-used fast-change workholding pallets.

20. On information and belief, the basic mechanism within the LANG pallet for holding top tool studs is comprised of a series of small plungers at right angles to one another that are pressed against each other until the heads of the last set of plungers in the chain press axially into grooves in the studs. A series of springs push the plunger heads away from the studs once it is desired to remove the top tool. A diagram from LANG U.S. Patent Application No. 10/495,076 is shown below.



21. Several years after LANG introduced its pallets, Jergens undertook to develop a new and novel improvement to the stud holding mechanism within the pallet. Jergens believed that the LANG design could not hold down the studs with sufficient force, that the plungers within the LANG devise were at too much risk of becoming jammed if the springs could not exert enough force to release them, and that the “chain of plungers” design was generally less efficient than it could be.

22. Jergens’s innovation was to replace the chain of plungers concept with a straight plunger rod passing through a channel in the pallet and engaging the studs laterally along their sides. The plunger could be screwed in and out of the pallet, and when screwed in, would engage the studs with sloped lateral projections that would hold the studs in place.

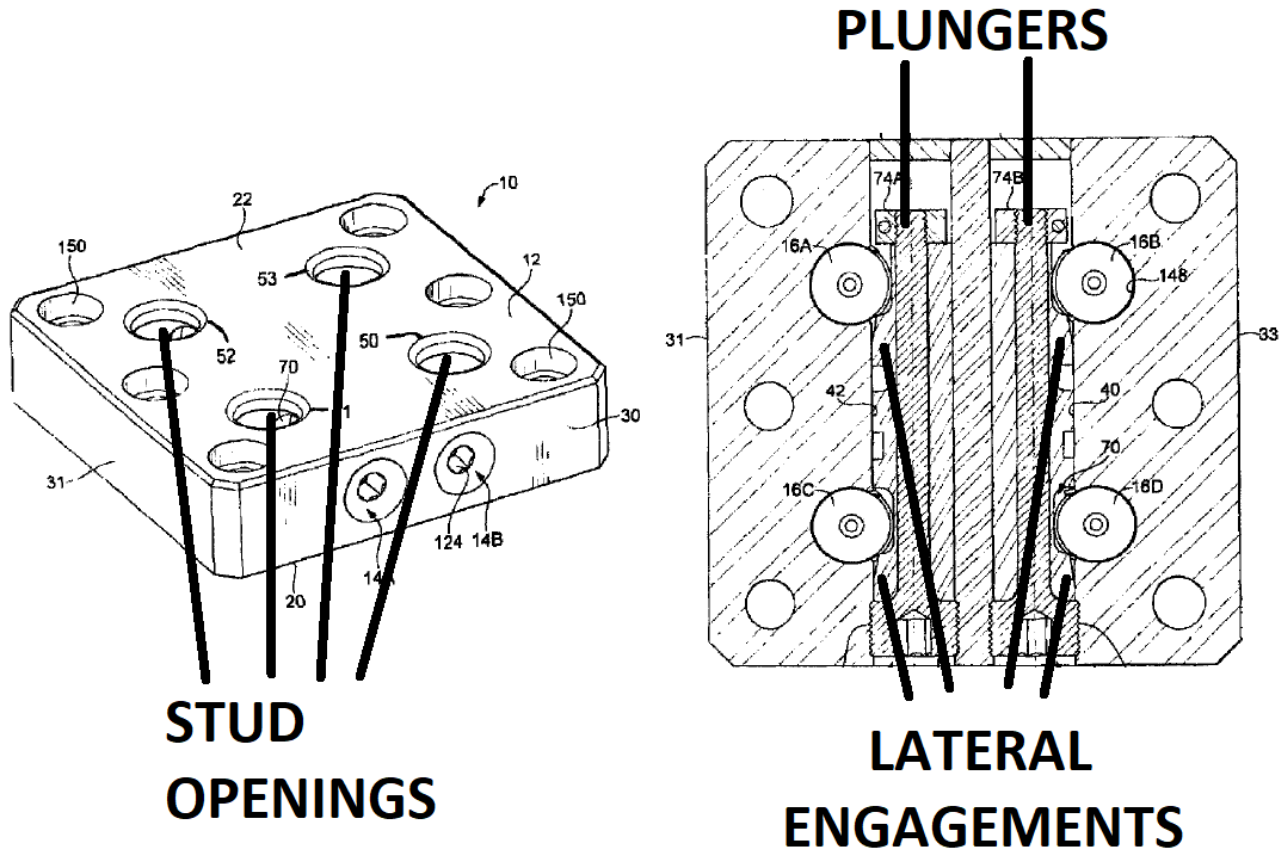
23. Upon information and belief, the Jergens design results in an increase in holding strength, reliability, and ease of operation in comparison to the LANG design.

24. Jergens filed a patent application on its lateral plunger engagement innovation on September 7, 2011, and that application was granted on April 29, 2014 as



the '323 Patent.

25. Figures from the '323 Patent are shown below demonstrating the operation of the lateral plunger engagement mechanism.



26. Jergens began commercializing pallets using its lateral plunger engagement mechanism under the brand name Drop & Lock® and continues to sell these pallets today.

27. Following the lateral plunger engagement innovation, Jergens continued to develop new ideas for possible improvements. One of these ideas was to have separate plungers on opposite sides of the pallet connected by a single screw that could be used to pull the opposing plungers toward one another within the pallet to laterally engage separate studs inserted at either side of the pallet. By turning the screw at one end, the operator could engage both studs via this “sandwiching” effect. The drawing together of the opposing plungers could be achieved in several ways, including for example by

1 threading the screw in opposite directions at either end, so that it would cause the  
2 plungers to move in opposite directions along its length. The foregoing design is  
3 sometimes referred to herein as the “opposing plunger design.”

4 28. Another innovation that Jergens developed was the idea of allowing the  
5 plungers to “float” within their channels in the pallet. The advantage of giving the  
6 plungers some play was to allow each plunger to engage its corresponding stud with  
7 equal force in the event that one of the studs was not aligned precisely with another stud.  
8 Without allowing for such self-alignment, one plunger might end up pressing on a stud  
9 with notably more force than another plunger.

10 29. Another innovation that Jergens developed was the idea of having “oblong  
11 plungers” that could be constrained within the pallet so as to prevent the plungers from  
12 rotating within the pallet when the screw turned.

13 30. By giving the opposing plunger design the ability to float, Jergens had  
14 invented a new and convenient way to achieve strong and evenly distributed holding  
15 forces across more than one stud by turning a single screw.

## 16 **Part II: Jergens Partners With 5th Axis**

17 31. In the midst of Jergens’s pallet innovations, Jergens sought out a  
18 manufacturing partner, and particularly one that had expertise in making top tools for use  
19 with so-called five axis manufacturing.

20 32. Five axis manufacturing is a machining technique wherein the item being  
21 machined is rotated in multiple directions to allow the machining tool to reach and cut  
22 multiple sides of it.

23 33. Although Jergens had significant expertise in manufacturing pallets, Jergens  
24 did not make five axis top tools.

25 34. Terry Schron of Jergens had become acquainted with the managers of San  
26 Diego-based 5th Axis: Christopher Taylor and Stephen Grangetto.

27 35. In early 2016, Mr. Schron reached out to 5th Axis about a possible  
28 opportunity for collaboration.



1           36. At that time, 5th Axis manufactured five axis top tools for use with LANG  
2 pallets, but 5th Axis did not manufacture pallets.

3           37. Upon information and belief, because 5th Axis did not manufacture pallets  
4 and relied on LANG pallets to work with its equipment, 5th Axis had no expertise with  
5 designing or manufacturing pallets.

6           38. Seeing a potential opportunity, Jergens sought to partner with 5th Axis  
7 according to the following straightforward business plan: Jergens would make pallets for  
8 5th Axis, and 5th Axis would make five axis top tools for Jergens. Both parties  
9 understood this to be the purpose of their proposed collaboration.

10          39. On February 18, 2016, 5th Axis entered into a **Non-Disclosure Agreement**  
11 with Jergens (referred to hereinafter as the “**NDA**”). A copy of the NDA is attached  
12 hereto as **Exhibit 3**.

13          40. The document is entitled “5th Axis Inc. Nondisclosure Agreement” and is  
14 executed by Mr. Christopher Taylor for 5th Axis, and by Mr. Terry Schron for Jergens.

15          41. The NDA covers “Jergens CAD drawings covering Fixture Pro® and other  
16 related products,” as well as more generally “oral, written and electronically embodied  
17 information.”

18          42. The NDA is “subject to the Laws of the State of Ohio, for all purposes  
19 including, but not limited to, determining the validity of this Agreement, the meaning of  
20 its provisions, and the rights, obligations and remedies of the parties.”

21          43. The NDA was clearly understood by the parties – both in its execution and  
22 as demonstrated by contemporaneous and subsequent course of conduct and  
23 communications between the parties – to enable their proposed business partnership, and  
24 to allow Jergens to freely provide an array of different confidential and proprietary  
25 information to 5th Axis for purposes of that proposed partnership.

26          44. On August 10, 2016, the parties entered into a “**Mutual Manufacturing**  
27 **Agreement**” in which they memorialized their proposed business partnership, *i.e.*, that  
28 Jergens would make the pallets, and 5th Axis would make the five axis top tools. A copy

1 of the Mutual Manufacturing Agreement is attached as **Exhibit 4**.

2 45. The Mutual Manufacturing Agreement memorialized that it did not license  
3 any intellectual property, that the parties desired to protect each other's confidential  
4 information, and that the parties further agreed that they would work toward  
5 supplementing their agreement at a later date to spell out the details of those mutually  
6 agreed terms in greater specificity (though the relationship ultimately ended before  
7 further agreements were signed).

8 46. In view of the execution of the NDA and the Mutual Manufacturing  
9 Agreement, Jergens understood and expected that 5th Axis had committed to being a  
10 business partner, that 5th Axis was obliged to not misuse or misappropriate any  
11 confidential and proprietary information learned in the course of the business partnership,  
12 and that 5th Axis would not attempt to take advantage of any of Jergens's confidential  
13 information for its own benefit and to the detriment of Jergens.

14 47. It was also apparent from the circumstances and conversations surrounding  
15 the NDA and the Mutual Manufacturing Agreement that pallet design and manufacturing  
16 was going to be the province of Jergens, and as such, Jergens's innovations in pallet  
17 design belonged to Jergens, and were Jergens's confidential information.

18 48. At various points in or around September 2016, Jergens made confidential  
19 disclosures to 5th Axis concerning Jergens's anticipated new pallet design. As one  
20 example, Jergens informed 5th Axis that it intended to design a pallet with floating  
21 opposing plungers pulled together by a central screw, and explained that the concept  
22 would be similar to the design of a different product on the market called a Techni-Grip  
23 (which employed a vise-like structure for a different kind of application than a pallet).

24 49. On December 6, 2016, Terry Schron and Darel Taylor of Jergens traveled to  
25 5th Axis's San Diego facility to meet with Christopher Taylor and Steve Grangetto  
26 regarding the companies' business partnership. Mr. Lane may have also been present for  
27 the meeting, or part of it, but in any event, on information and belief, was informed of the  
28 meeting later by Messrs. Christopher Taylor and Steve Grangetto.

50. At that December 6, 2016 meeting, the Jergens team discussed with the 5th Axis team Jergens's new concept for the floating opposing plunger design. It was at either or both of this meeting and another meeting in or around March 28, 2017 that the Jergens team came with a physical model of a proposed pallet with floating opposing plungers within it, and indicated that it was a proprietary new design being developed by Jergens. The Jergens team advised the 5th Axis team that Jergens planned to develop a version of the new pallet that could be commercialized and sold to 5th Axis under the parties' agreements.

51. Photographs of the model that Jergens showed to 5th Axis are set forth below, and the model is still maintained at Jergens.



52. While at the meeting, the Jergens team disassembled the model and showed the internal structure of it to the 5th Axis team.

53. While at the December 6, 2016 meeting, the Jergens team otherwise described the proposed new floating opposing plunger design in detail, and informed the 5th Axis team that the design could also be configured with one plunger head on each opposing side of the pallet connected by a single screw that could be turned to draw the plunger heads closer together like a vise. The Jergens team drew a picture of this configuration for the 5th Axis team to see.

1           54. During the December 6, 2016 meeting, the Jergens team also disclosed  
2 various methods for causing the opposing plungers to be drawn together, including by  
3 having a single screw with opposite threading on either side.

4           55. The parties had subsequent phone calls wherein Jergens again confidentially  
5 disclosed the foregoing design ideas to 5th Axis.

6           56. A further meeting was conducted between the parties in San Diego on or  
7 around March 28, 2017 wherein the Jergens team repeated its disclosures of the floating  
8 opposing plunger design, including the concept of a single oblong plunger head on each  
9 side of the pallet.

10          57. All the foregoing confidential disclosures were made pursuant the NDA  
11 between the parties.

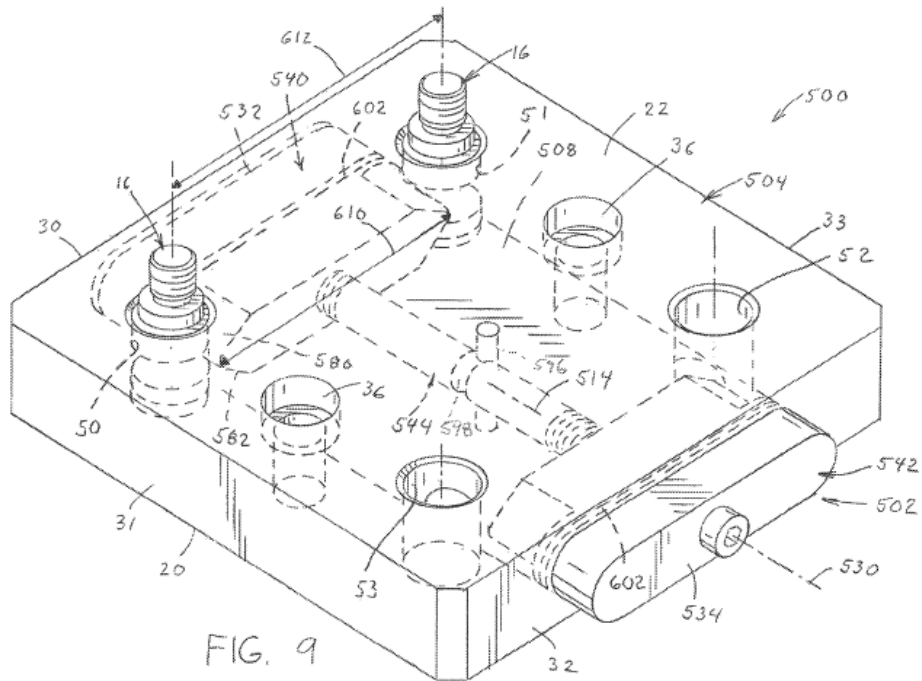
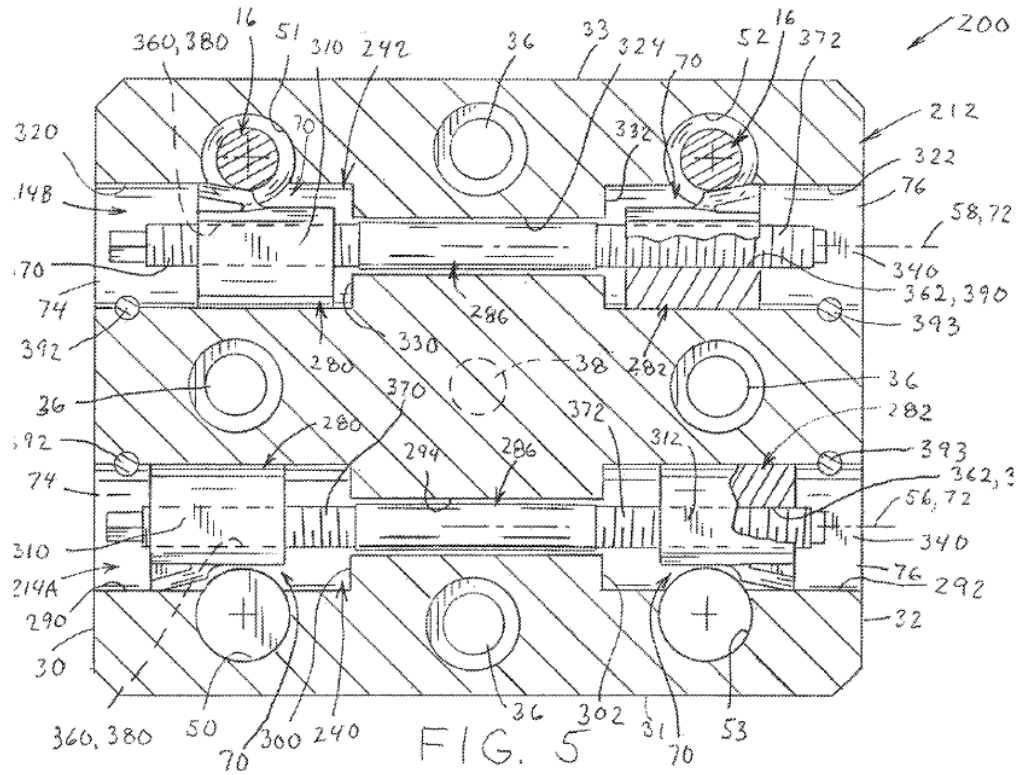
12          58. Furthermore, the parties also understood that the disclosure of this critical  
13 new design idea was confidential in view of the statements made by the Jergens team, the  
14 circumstances and context within which the disclosures took place, and including without  
15 limitation in light of the Mutual Manufacturing Agreement.

16          59. Subsequently, on April 4, 2017, Jergens filed a patent application on its new  
17 floating opposing plunger innovation and the various confidential design concepts that  
18 were disclosed by Jergens during the prior discussions with 5th Axis.

19          60. Jergens deliberately asked the Patent Office to not publish the patent  
20 application publicly unless and until it issued as a granted patent.

21          61. The '750 Patent ultimately did issue on March 31, 2020, which was the first  
22 point at which its contents became public.

23          62. Drawings from the '750 Patent are shown below demonstrating Jergens's  
24 innovative design concepts, which could be implemented in a variety of embodiments, all  
25 of which incorporate the concept of floating opposing plungers that can be drawn  
26 together like a vise by turning a screw at one end.  
27  
28





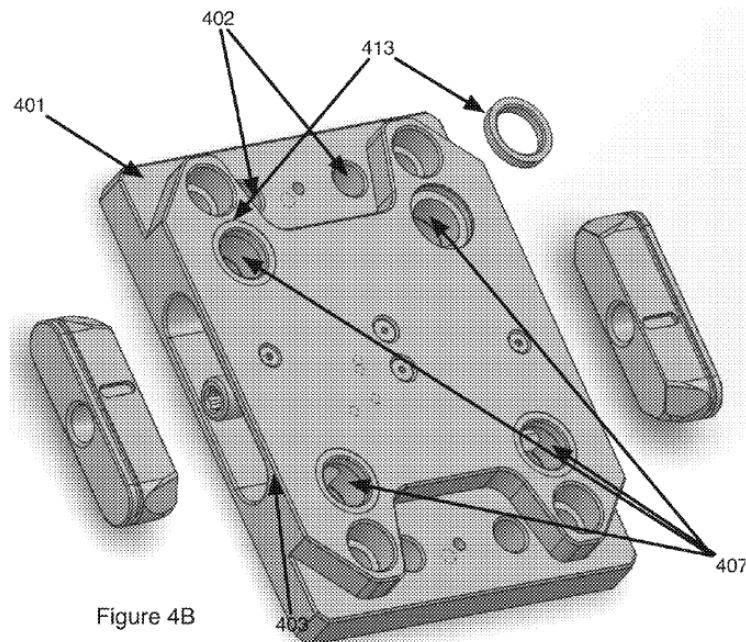
### Part III: 5th Axis Misappropriates Jergens's Designs And Technology

63. Unbeknownst to Jergens, 5th Axis had undertaken plans to breach the NDA and abandon the Mutual Manufacturing Agreement by manufacturing its own pallets implementing the floating opposing plunger design that 5th Axis had learned about from Jergens at the December 6, 2016 meeting.

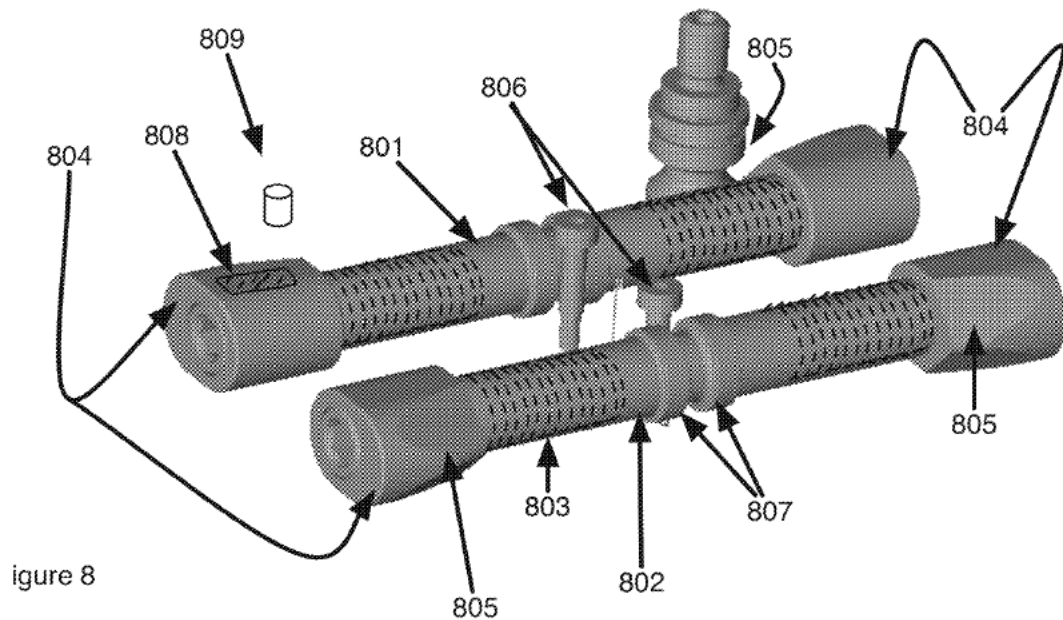
64. Also unbeknownst to Jergens, 5th Axis purported to file its own patent application for the opposing plunger design. On June 8, 2017 – four months after Jergens had filed its patent application – 5th Axis filed a patent application generally covering Jergens's opposing plunger design.

65. The Patent Office granted 5th Axis U.S. Patent No. 9,902,033 ("033 Patent") on February 27, 2018. Thus, although 5th Axis's application had been filed later than Jergens's application, the 5th Axis '033 Patent ended up issuing sooner than Jergens's '750 Patent. This also resulted in the 5th Axis '033 Patent issuing before the publication of Jergens's '750 Patent, such that the '750 Patent application was not considered during the examination of the 5th Axis patent application.

66. A copy of the '033 Patent is attached as **Exhibit 5**. Below are images from the '033 Patent showing the opposing plunger design.







67. In mid-2017, 5th Axis also began manufacturing and selling a pallet of its own under the brand name “RockLock.”

68. The RockLock pallets incorporate both the lateral plunger engagement concept claimed in the ’323 Patent, and the floating opposing plunger design later claimed in the ’750 Patent (as well as configurations disclosed in the ’033 Patent).

69. In August 2017, Jergens sent 5th Axis a cease and desist letter, and informed 5th Axis that it was infringing on the Jergens ’323 Patent (the ’750 Patent not having yet issued). 5th Axis denied infringement and terminated the Mutual Manufacturing Agreement.

70. In fact, 5th Axis went so far as to say that it would accuse Jergens of infringing the 5th Axis pallet patent.

71. Despite 5th Axis’s response, the parties attempted during the ensuing months to resolve their differences, though they were ultimately unable to do so. During this time, Jergens also warned 5th Axis that its earlier-filed patent application would likely be granted on the floating opposing plunger design, superseding 5th Axis’s own ’033 Patent, and being unquestionably infringed by the 5th Axis RockLock product.

72. Circumstances have now changed with the passage of time. First, the Patent Office granted the '750 Patent on March 31, 2020, cementing Jergens's intellectual property rights, and making it all the more clear that 5th Axis was and is infringing on them.

73. Additionally, 5th Axis's infringement has now led to even more lost sales of Jergens's existing pallet products.

74. Furthermore, Jergens intends to soon begin manufacturing its own pallets incorporating the floating opposing plunger design that is claimed in the '750 Patent. Though that manufacturing has not yet begun, at such time that it does, the Jergens pallets will come into competition with 5th Axis's infringing RockLock pallets. Thus, Jergens seeks to enforce its intellectual property rights to clear a path before its important new product launch.

75. As it stands today, 5th Axis continues to infringe on both Jergens's '323 Patent and '750 Patent.

76. 5th Axis's misuse of Jergens's confidential and proprietary information, as well as misappropriation and infringement of Jergens's intellectual property has resulted in lost sales and other monetary and non-monetary injuries to Jergens.

## COUNT I

### INFRINGEMENT OF U.S. PATENT NO. 8,708,323

77. Jergens incorporates the preceding paragraphs as if set forth fully herein.

78. Jergens asserts this claim under 35 U.S.C. § 271(a) for infringement of the '323 Patent against 5th Axis, Mr. Taylor, and Mr. Grangetto.

79. 5th Axis directly infringes – either literally, or under the doctrine of equivalents – at least Claim 1 of the '323 Patent, which is directed to using a straight plunger with side projections to laterally engage the side of a stud (in contrast to the LANG pallets that used a “chain of plungers” engaging each other at right angles).

80. The 5th Axis RockLock pallets utilize the lateral plunger engagement design by causing one or more plungers with side projections to engage the sides of studs within

1 the pallets.

2 81. To the extent that any asserted claims of the '323 Patent are construed to  
3 require the involvement of a non-party customer to practice all of the limitations of the  
4 claims, then 5th Axis, Mr. Taylor, and Mr. Grangetto are liable for induced infringement.  
5 5th Axis, Mr. Taylor, and Mr. Grangetto all had explicit prior notice of the '323 Patent  
6 and the fact that it was being infringed by the RockLock, but despite that knowledge  
7 supplied RockLocks to its customers knowing that they would be used in an infringing  
8 manner and specifically intending that they be. The RockLocks have no non-infringing  
9 use, and 5th Axis, Mr. Taylor, and Mr. Grangetto otherwise supplied instructions and  
10 information to customers as to how the RockLocks should be used, which use they knew  
11 to be infringing.

12 82. To the extent that any asserted claims of the '323 Patent are construed to  
13 require the involvement of a non-party customer to practice all of the physical  
14 components set forth in the claims, then 5th Axis, Mr. Taylor, and Mr. Grangetto are  
15 liable for contributory infringement. 5th Axis, Mr. Taylor, and Mr. Grangetto all had  
16 explicit prior notice of the '323 Patent and the fact that it was being infringed by the  
17 RockLock, but despite that knowledge supplied RockLocks to its customers knowing that  
18 they would be used in an infringing manner and specifically intending that they be. The  
19 RockLocks have no non-infringing use, and 5th Axis, Mr. Taylor, and Mr. Grangetto  
20 otherwise supplied instructions and information to customers as to how the RockLocks  
21 should be used, which use they knew to be infringing.

22 83. 5th Axis's infringement has been willful given that it has continued despite  
23 Jergens having provided 5th Axis with notice of infringement.

24 84. On information and belief, 5th Axis is a closely held company whose actions  
25 with respect to adopting the infringing design, marketing, and selling it are all closely  
26 controlled by at least Messrs. Christopher Taylor and Steve Grangetto. Thus, Messrs.  
27 Taylor and Grangetto bear individual liability for their acts of patent infringement.

28 85. Defendants' sale of infringing products has caused Jergens to lose sales and

suffer irreparable harms in the marketplace. These harms have increased with the passage of time.

86. Defendants are entitled to monetary and injunctive relief.

## COUNT II

### INFRINGEMENT OF U.S. PATENT NO. 10,603,750

87. Jergens incorporates the preceding paragraphs as if set forth fully herein.

88. Jergens asserts this claim under 35 U.S.C. § 271(a) for infringement of the '750 Patent against 5th Axis, Mr. Taylor, and Mr. Grangetto.

89. 5th Axis directly infringes – either literally, or under the doctrine of equivalents – at least Claim 1 of the '750 Patent, which is directed to using floating opposing plungers to laterally engage the sides of adjacent studs within a pallet.

90. The 5th Axis RockLock pallets utilize the foregoing patented design.

91. Upon information and belief, 5th Axis was aware of the '750 Patent at the time of, or shortly after, its issuance in view of the parties' discussions about that pending application and Jergens's explicit warning that it would be issued and supersede the '033 Patent, as well as cover the RockLock design.

92. To the extent that any asserted claims of the '750 Patent are construed to require the involvement of a non-party customer to practice all of the limitations of the claims, then 5th Axis, Mr. Taylor, and Mr. Grangetto are liable for induced infringement. 5th Axis, Mr. Taylor, and Mr. Grangetto knew of the '750 Patent and the fact that it was being infringed by the RockLock, but despite that knowledge supplied RockLocks to its customers knowing that they would be used in an infringing manner and specifically intending that they be. The RockLocks have no non-infringing use, and 5th Axis, Mr. Taylor, and Mr. Grangetto otherwise supplied instructions and information to customers as to how the RockLocks should be used, which use they knew to be infringing.

93. To the extent that any asserted claims of the '323 Patent are construed to require the involvement of a non-party customer to practice all of the physical components set forth in the claims, then 5th Axis, Mr. Taylor, and Mr. Grangetto are

1 liable for contributory infringement. 5th Axis, Mr. Taylor, and Mr. Grangetto knew of  
2 the '750 Patent and the fact that it was being infringed by the RockLock, but despite that  
3 knowledge supplied RockLocks to its customers knowing that they would be used in an  
4 infringing manner and specifically intending that they be. The RockLocks have no non-  
5 infringing use, and 5th Axis, Mr. Taylor, and Mr. Grangetto otherwise supplied  
6 instructions and information to customers as to how the RockLocks should be used,  
7 which use they knew to be infringing.

8 94. 5th Axis's infringement has been willful given that it has continued despite  
9 5th Axis's knowledge of infringement.

10 95. On information and belief, 5th Axis is a closely held company whose actions  
11 with respect to adopting the infringing design, marketing, and selling it are all closely  
12 controlled by at least Messrs. Christopher Taylor and Steve Grangetto. Thus, Messrs.  
13 Taylor and Grangetto bear individual liability for their acts of patent infringement.

14 96. Defendants' sale of infringing products has caused Jergens to lose sales and  
15 suffer irreparable harms in the marketplace. These harms have increased with the  
16 passage of time.

17 97. Although Jergens does not yet manufacture or sell a commercial  
18 embodiment of the '750 Patent, Defendants' infringement of that patent has resulted in  
19 Jergens losing sales of its competing Drop & Lock® pallets.

20 98. Defendants are entitled to monetary and injunctive relief.

### 21 **COUNT III**

#### 22 **CORRECTION OF INVENTORSHIP OF U.S. PATENT NO. 9,902,033**

23 99. Jergens incorporates the preceding paragraphs as if set forth fully herein.

24 100. Jergens brings this claim against Messrs. Christopher Taylor, Stephen  
25 Grangetto, and Adam Lane for correction of inventorship under 35 U.S.C. § 256 with  
26 respect to the '033 Patent.

27 101. To the extent that Messrs. Christopher Taylor, Stephen Grangetto, and Adam  
28 Lane have assigned their ownership interest in the '033 Patent to 5th Axis, then Jergens

1 asserts this claim against 5th Axis.

2 102. The core concepts claimed in the '033 Patent were in fact conceived by  
3 Messrs. Terry Schron and Darel Taylor, who have assigned their ownership rights in that  
4 intellectual property to Jergens.

5 103. Inventorship of the '033 Patent should be corrected to name Messrs. Terry  
6 Schron and Darel Taylor as inventors.

7 104. To the extent it were determined that any additional and distinct inventive  
8 aspects are present in the '033 Patent, then Messrs. Terry Schron and Darel Taylor would  
9 at a minimum be co-inventors.

#### 10 **COUNT IV**

#### 11 **BREACH OF NON-DISCLOSURE AGREEMENT**

12 105. Jergens incorporates the preceding paragraphs as if set forth fully herein.

13 106. Jergens brings this claim for breach of the February 18, 2016 NDA against  
14 5th Axis.

15 107. The NDA prohibited 5th Axis from using Jergens confidential and  
16 proprietary information for any purpose other than evaluation of the parties' proposed  
17 business venture.

18 108. Pursuant to the NDA, Jergens confidentially disclosed to 5th Axis the new  
19 idea for the opposing plunger design – including its various subsidiary elements and  
20 optional embodiments, such as opposite-ly threaded screws, and oblong plungers.

21 109. 5th Axis understood the disclosure of the opposing plunger design to be a  
22 confidential one pursuant to the NDA.

23 110. 5th Axis breached the parties' agreements by using Jergens's confidential  
24 and proprietary information to file a patent application and manufacture and sell a line of  
25 competing products.

26 111. Jergens has been damaged by 5th Axis's breaches in that they led to the  
27 dissolution of the business partnership, the filing and publication of a patent that  
28 incorrectly identifies 5th Axis as the originator of Jergens's valuable intellectual property,



1 lost sales, and other pecuniary and intangible losses.

2 112. Jergens seeks monetary damages and any other relief available under law.

3 **COUNT V**

4 **BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR**  
5 **DEALING – NON-DISCLOSURE AGREEMENT**

6 113. Jergens incorporates the preceding paragraphs as if set forth fully herein.

7 114. Jergens brings this claim for breach of the implied covenant of good faith  
8 and fair dealing against 5th Axis.

9 115. In view of the circumstances surrounding the parties' relationship, and their  
10 course of conduct and communications both before and after the signing of the NDA, as  
11 well as the terms of the NDA itself, it is clear that the NDA carried with it an implied  
12 covenant that 5th Axis would not misuse confidential and proprietary information learned  
13 from Jergens.

14 116. Jergens did all, or substantially all of what the NDA required it to do, or it  
15 otherwise was excused from having to do those things.

16 117. All conditions required for 5th Axis's performance under the NDA occurred.

17 118. By misappropriating the idea and design for the floating opposing plungers –  
18 including its various subsidiary elements and optional embodiments, such as opposite-ly  
19 threaded screws, and oblong plungers – 5th Axis breached the covenant of good faith and  
20 fair dealing that was implicit in the NDA.

21 119. Jergens has been damaged by these breaches in that they led to the  
22 dissolution of the business partnership, the filing and publication of a patent that  
23 incorrectly identifies 5th Axis as the originator of Jergens's valuable intellectual property,  
24 lost sales, and other pecuniary and intangible losses.

25 120. Jergens seeks monetary damages and injunctive relief.  
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**COUNT VI**

**VIOLATION OF OHIO UNIFORM TRADE SECRETS ACT**

**OHIO REVISED CODE § 1333.61 et seq.**

121. Jergens incorporates the preceding paragraphs as if set forth fully herein.

122. Jergens brings this claim for violation of the Ohio Uniform Trade Secrets Act, Ohio Revised Code §1333.61 et seq. against 5th Axis.

123. In 2016, Jergens developed new and non-public innovations in the field of pallet design that constituted the company's trade secrets at that time. Those innovations included the opposing floating plunger design and its various subsidiary elements and optional embodiments, including opposite-ly thread screws, and oblong plungers. Jergens exercised care to keep these important non-public innovations secret, because their public disclosure would work a clear competitive disadvantage to Jergens.

124. The NDA imposed on 5th Axis and Mr. Christopher Taylor an obligation of confidentiality with respect to Jergens trade secret information such as the foregoing.

125. On December 6, 2016, Jergens made a confidential disclosure of its trade secret design ideas to 5th Axis and Mr. Christopher Taylor pursuant to the NDA.

126. In violation of the NDA, 5th Axis misappropriated Jergens's trade secret design ideas and clandestinely incorporated them into its new RockLock product, which was placed in competition with Jergens's pallets, and resulted in the public dissemination of Jergens's trade secrets.

127. Jergens has been injured as a result of the foregoing trade secret misappropriation in the form of at least lost sales, and loss of first-to-market advantage, as well as other injuries.

128. Jergens is entitled to monetary remedies and equitable injunctive relief, including but not limited to relief sufficient to compensate Jergens for its losses during such time as the trade secrets should otherwise have been in effect (a time prior to when the '750 Patent issued), to fairly account for 5th Axis's ill-gotten head start in the marketplace, to require 5th Axis to formally acknowledge that Messrs. Terry Schron and

1 Darel Taylor conceived of the idea for the floating opposing plunger design and its  
2 associated elements, and to otherwise restrain 5th Axis from purporting to assert its ill-  
3 gotten '033 Patent against Jergens.

4 129. Because the NDA is “subject to the Laws of the State of Ohio, for all  
5 purposes including, but not limited to, determining the validity of this Agreement, the  
6 meaning of its provisions, and the rights, obligations and remedies of the parties,” and  
7 because Jergens’s assertion of trade secret misappropriation here is made predicate on the  
8 NDA as pertaining to the rights, obligations, and remedies of the parties, Ohio law  
9 applies to the trade secrets claim.  
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**PRAYER FOR RELIEF**

WHEREFORE, Jergens respectfully requests that the Court enter judgment as follows:

- a) finding 5th Axis and Messrs. Christopher Taylor and Stephan Grangetto liable for willfully infringing Jergens's '323 and '750 Patents, and awarding treble damages, and injunctive relief;
- b) correcting inventorship on the '033 Patent;
- c) finding that 5th Axis breached the NDA, and awarding all relief available under the law;
- d) finding that 5th Axis breached the implied covenant of good faith and fair dealing, and awarding all relief available under the law;
- e) finding that 5th Axis has violated the Ohio Uniform Trade Secrets Act, R.C. §1333.61 et seq., and all relief as available by statute;
- f) declaring that this an exceptional case and awarding Jergens attorneys' fees;
- g) awarding Jergens pre-judgment and post-judgment interest; and
- h) granting Jergens such other and further relief as the Court may deem just and proper under the circumstances.

DATED: May 3, 2021

FOLEY & LARDNER LLP

By: /s/ Jean-Paul Ciardullo

Jean-Paul Ciardullo

Jaikaran Singh

*Attorneys for Plaintiff,*

JERGENS, INC.

**DEMAND FOR JURY TRIAL**

Under Rule 38 of the Federal Rules of Civil Procedure, Jergens requests a trial by jury of any issues so triable by right.

DATED: May 3, 2021

FOLEY & LARDNER LLP

By: /s/ Jean-Paul Ciardullo

Jean-Paul Ciardullo

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