

Hua Chen (SBN 241831)
huachen@scienbizippc.com
Calvin Chai (SBN 253389)
calvinchai@scienbizippc.com
ScienBiziP, P.C.
550 S. Hope Street, Suite 2825
Los Angeles, California 90071
Telephone: (213) 426-1771
Facsimile: (213) 426-1788

Attorneys for Plaintiff
Medcursor Inc.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Case No. 2:21-cv-02843-AB-AFM

Medcursor Inc.

Plaintiff,

v.

Shenzhen KLM Internet Trading Co.,
Ltd., URPOWER INC,
and Yuqin Peng.

Defendants.

**FIRST AMENDED COMPLAINT
FOR DAMAGE AND FOR
DECLARATORY JUDGMENT**

- 1. Declaratory Judgment of
Invalidity of the D431 Patent**
- 2. Declaratory Judgment of
Unenforceability of the D431
Patent**
- 3. Violation of Section 1 of the
Sherman Act**
- 4. Patent Misuse**
- 5. Unfair Competition**

DEMAND FOR JURY TRIAL

Plaintiff, Medcursor, Inc. (hereinafter “Medcursor” or “Plaintiff”), for its First Amended Complaint against Defendants Shenzhen KLM Internet Trading Co., Ltd. (“Shenzhen KLM”), URPOWER INC. (“URPOWER”), and Ms. Yuqin Peng (herein referred to collectively as “KLM” or “Defendants”) to the best of its knowledge, information and belief, and through its attorneys, alleges as follows:

NATURE OF ACTION

1. This is an action for declaratory judgment of invalidity, patent misuse, and unenforceability of U.S. Patent Number D837,431 (the “D431 Patent”), as well as findings of antitrust violations and unfair competition under California law.

Plaintiff brings this action as a result of Defendants’ unlawful, fraudulent, and unfair business practices.

2. A true and correct copy of the D431 Patent is attached as Exhibit 1.

THE PARTIES

3. Plaintiff Medcursor, Inc. (“Medcursor”) is a corporation formed under the laws of the state of Nevada.

4. Medcursor is an Amazon seller. Medcursor maintains a storefront with Amazon. Medcursor’s Amazon Seller ID is A3B7JLWSN147J7. Medcursor sells a variety of products including massager, solar light, USB charger, power adapter, etc. Amazon.com is the primary sales channel through which Medcursor sells its products.

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3 5. On information and belief, Defendant Shenzhen KLM Internet Trading
4 Co., Ltd. is a company organized and existing under the laws of the People's
5 Republic of China. On information and belief, Shenzhen KLM's principal place of
6 business is Room 508, Jingyun Building, Xixiang Street, Bao'an District, Shenzhen,
7 China 518000.

8 6. On information and belief, Shenzhen KLM is an Amazon seller.
9 Shenzhen KLM maintains a storefront with Amazon under the alias COCO-VISION.
10 Shenzhen KLM's Amazon Seller ID is A2ZDDMQJ755ULA. Shenzhen KLM sells a
11 variety of products including health and personal care products, home and garden
12 products, and pet supplies.

13 7. Defendant URPOWER INC. is a company incorporated under the laws
14 of California. On information and belief, URPOWER's principal place of business
15 is 14839 Proctor Ave. Ste. D, La Puente, CA 91746. On information and belief,
16 URPOWER is Shenzhen KLM's subsidiary and acted as Shenzhen KLM's agent for
17 the U.S. market.

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19 8. On information and belief, URPOWER uses Shenzhen KLM to sell
20 URPOWER brand products on Amazon.com. URPOWER sells a variety of products
21 under the URPOWER brand through Shenzhen KLM. The products include health
22 and personal care products, home and garden products, and pet supplies.

9. On information and belief, Defendant Ms. Yuqin Peng is a citizen of the People's Republic of China. Ms. Peng is the owner and general manager of Shenzhen KLM.

10. Ms. Peng is the owner and general manager of URPOWER. On information and belief, Ms. Peng is the incorporator of URPOWER. Ms. Peng is the CEO of URPOWER. Ms. Peng is the secretary of URPOWER. Ms. Peng is the chief financial officer of URPOWER. Ms. Peng is the designated agent for receiving service on behalf of URPOWER.

11. Ms. Peng, Shenzhen KLM, and URPOWER are in active concert with each other to effect products sales on Amazon.com. Ms. Peng, Shenzhen KLM, and URPOWER are in active concert with each other to enforce the D431 Patent against Defendants' competitors.

JURISDICTION AND VENUE

12. This action arises under the patent laws of the United States, including but not limited to 35 U.S.C. §102 and 37 C.F.R. §1.56.

13. This action further arises under the antitrust laws of the United States, including but not limited to §1 of the Sherman Act (15 U.S.C. §1) and §§4, 16 of the Clayton Act (15 U.S.C. §§15, 26).

14. Plaintiff seeks relief under the Federal Declaratory Judgment Act. Plaintiff has standing because Defendants filed in the past claims of patent infringement to Amazon which resulted in the removal of Plaintiff's Amazon

product listings. Plaintiff has recently re-filed claims of patent infringement to Amazon which has resulted in the removal of Plaintiff's Amazon product listings. Product delisting from Amazon has stopped Plaintiff's product sales on Amazon and caused significant financial loss. Defendants' actions thereby give rise to a case of actual controversy under 28 U.S.C. §§ 2201 et. seq.

15. This Court has subject matter jurisdiction over these claims pursuant to 28 U.S.C. §§ 1331, 1337, 1338, 2201 and 2202.

16. The Court also has supplemental jurisdiction pursuant to 28 U.S.C. §1367 over Plaintiff's state law claims, including violation of the California Unfair Competition Laws. *California Business and Professions Code* §17200.

17. The Court has personal jurisdiction over Shenzhen KLM because it has made substantial and continuous sales to California consumers, and because URPOWER acts as its agent for conducting business in California.

18. This Court has personal jurisdiction over URPOWER because it is incorporated in California, has a principal place of business in California, and maintains substantial and continuous business operations in California.

19. This Court has personal jurisdiction over Ms. Peng because she has chosen to incorporate a company in California, named herself as an agent to receive service on behalf of the California company, and has otherwise maintained substantial and continuous business ties with California.

20. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b)-(d) and 1400(b) because a substantial part of the acts or events giving rise to the claims herein occurred and/or will arise in this judicial district.

**FACTS REGARDING THE D431 PATENT FILE HISTORY,
INVENTORSHIP, AND PRIOR COMMERCIAL SALE**

21. The D431 Patent is a design patent. It is entitled “LED Spot Light.” The patent discloses an ornamental design of a solar powered lighting device. The design comprises a lamp holder portion, a solar panel portion, and a stake.

22. Ms. Peng through her agent filed U.S. patent application number 29/615362 on August 29, 2017 (the “29/615362 Application”). The application matured into the D431 Patent, which was issued on January 1, 2019.

23. Ms. Yuqin Peng is the named inventor on the 29/615362 Application. Ms. Peng executed, on or about August 29, 2017, a sworn declaration and represented to USPTO under penalty of perjury that she is the sole inventor.

24. On information and belief, Ms. Peng has hold herself out as the owner of IP rights pertaining to the D431 Patent.

25. The D431 Patent was subjected to a third party *ex parte* reexamination request filed in 2019 (the “2019 *Ex Parte* Reexamination”). Third party requestor Finy Products Inc. submitted the *ex parte* reexamination request on or about April 16, 2019.

26. On information and belief, Ms. Peng executed, on or about May 23, 2020, a sworn declaration and submitted it to the USPTO in connection with the 2019 *Ex Parte* Reexamination proceeding. In her declaration, Ms. Peng reaffirmed to the USPTO that she is the sole inventor of the D431 Patent.

27. Ms. Peng is not the true inventor of the D431 Patent.

28. Ms. Peng through her company Shenzhen KLM purchased products implementing the design disclosed in the D431 Patent from a third party manufacturer Zhongshan Yinghao Solar Technology Co. LTD (“Yinghao Solar”).

29. Mr. Qiang Zhuo is the principal of Yinghao Solar. Mr. Zhuo is the true inventor of the D431 Patent.

30. On June 11, 2015, Mr. Zhuo filed two design patent applications to the Chinese National Intellectual Property Administration (commonly known as the Chinese Patent Office). The two applications have respective application numbers 201530199081.8 and 201530199065.9.

31. Application Number 201530199081.8 matured into a patent issued on November 25, 2015, having a patent number CN 303469680S (the “CN`680 Patent”). The CN`680 Patent pertains to the design of the lamp holder portion of a solar powered lighting device. Mr. Zhuo is the named inventor for the CN`680 Patent. Copies of the CN`680 Patent certificate, the issued patent, and an English translation thereof available from the Chinese Patent Office website, are attached as Exhibit 2.

32. Application Number 201530199065.9 matured into a patent issued on November 25, 2015, having a patent number CN 303466064S (the “CN’064 Patent”). The CN’064 Patent pertains to the design of the solar panel portion of a solar powered lighting device. Mr. Zhuo is the named inventor for the CN’064 Patent. Copies of the CN’064 Patent certificate, the issued patent, and an English translation thereof available from the Chinese Patent Office website, are attached as Exhibit 3.

33. Third party requestor Finy Products Inc. cited both the CN’680 Patent and the CN’064 Patent as prior art references in its *ex parte* reexamination request.

34. On information and belief, Mr. Zhuo conceived the designs disclosed in the D431 Patent on or about May 2015. Mr. Zhuo reduced the designs to prototypes on or about the same time. The new product was referenced as a YH0502C model by Yinghao Solar (hereinafter the “YH0502C LED Spot Light”). The product is also called a LED spot light. The YH0502C LED Spot Light embodies the invention disclosed in the D431 Patent.

35. On information and belief, Yinghao Solar started mass manufacturing the YH0502C LED Spot Light products in July 2015. Yinghao Solar started selling the products as early as July 2015.

36. Yinghao Solar offered the YH0502C LED Spot Light for sale on www.1688.com. For example, Yinghao Solar received a customer order for the YH0502C LED Spot Light on or about July 23, 2015. Exhibit 17. Yinghao Solar received another customer order for the YH0502C LED Spot Light on or about July

29, 2015. Exhibit 18. Yinghao Solar fulfilled these customer orders shortly afterwards. The www.1688.com website is an online trading platform serving mostly the Chinese domestic market. Based on information and belief, www.alibaba.com is the international version of the www.1688.com.

37. As another example, Yinghao Solar received another customer order for the YH0502C Spot Light on or about November 2015 through the www.alibaba.com trading platform. Exhibit 19. The customer was Oreala, LLC. Oreala was based in U.S. Yinghao Solar fulfilled the customer order shortly afterwards. Exhibit 20.

38. Yinghao Solar has been selling and shipping the YH0502C Spot Light products to Defendant Shenzhen KLM for Shenzhen KLM to resell under Defendants' URPOWER brand.

39. Yinghao Solar has been selling and shipping the YH0502C Spot Light products to Plaintiff Medcursor for Medcursor to resell under Medcursor's Nekteck brand.

40. The YH0502C Spot Light products were sold under the Nekteck brand on Amazon.com to U.S. market as early as May 2016. Exhibit 21.

41. Yinghao Solar also manufactured and sold the YH0502C LED Spot Light products to other Amazon sellers under these sellers' respective brands.

42. Shenzhen KLM does not design and has not designed the YH0502C LED Spot Light product. Shenzhen KLM does not manufacture and has not manufactured the YH0502C LED Spot Light product.

43. Yinghao Solar has entered into multiple purchase agreements with Shenzhen KLM to supply the YH0502C LED Spot Light products. Yinghao Solar sold the YH0502C LED Spot Light products to Shenzhen KLM as early as September 2015.

44. As one example, on or about September 22, 2015, Yinghao Solar sold and shipped about 640 units of the YH0502C LED Spot Light products to Shenzhen KLM. A copy of Yinghao Solar's shipping order with a certified translation is attached as Exhibit 22.

45. As another example, on or about December 10, 2015, Yinghao Solar entered into a purchase agreement with Shenzhen KLM to sell YH0502C LED Spot Light products. The purchase agreement contains an image of the YH0502C LED Spot Light. A copy of the purchase agreement along with a certified translation is attached as Exhibit 23. The image shows the YH0502C LED Spot Light comprising of a lamp holder, a solar panel, and a stake. The image matches the design disclosed in the D431 Patent.

46. As another example, on or about March 15, 2016, Yinghao Solar entered into a purchase agreement with Shenzhen KLM to sell YH0502C LED Spot Light products. The purchase agreement contains images of the YH0502C LED Spot Light. A copy of the purchase agreement along with a certified translation is attached as Exhibit 24. The images show the YH0502C LED Spot Light comprising

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2 of a lamp holder, a solar panel, and a stake. The images match the design disclosed
3 in the D431 Patent.
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5 47. As another example, on or about April 13th, 2016, Yinghao Solar
6 entered into a purchase agreement with Shenzhen KLM to sell YH0502C LED Spot
7 Light products. The purchase agreement contains an image of the YH0502C LED
8 Spot Light. A copy of the purchase agreement along with a certified translation is
9 attached as Exhibit 4. The image shows the YH0502C LED Spot Light comprising
10 of a lamp holder, a solar panel, and a stake. The image matches the design disclosed
11 in the D431 Patent.

12 48. As another example, on or about April 25th, 2017, Yinghao Solar
13 entered into another purchase agreement with Shenzhen KLM to sell YH0502C LED
14 Spot Light products. The purchase agreement contains an image of the YH0502C
15 LED Spot Light. The purchase agreement specifies the product is to bear a
16 URPOWER logo. A copy of the purchase agreement is attached as Exhibit 5. The
17 image shows the YH0502C LED Spot Light comprising of a lamp holder, a solar
18 panel, and a stake. The image matches the design disclosed in the D431 Patent.
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20 49. Defendant Shenzhen KLM sells YH0502C LED Spot Light in the
21 United States on Amazon.com. The products are marketed under the URPOWER
22 brand. On information and belief, the YH0502C LED Spot Light products were sold
23 into U.S. as early as September 2015. Exhibits 6-7. The invention disclosed in the
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D431 Patent is therefore on sale in U.S. by the named inventor since at least September 2015.

50. The YH0502C LED Spot Light products is listed in Yinghao Solar's 2016 annual product catalogue. Exhibit 25. Yinghao Solar distributed the product catalogue to its customers and at trade shows in early 2016.

51. On August 28th, 2017, Defendant Shenzhen KLM requested that Yinghao Solar provide the design drawings for the invention disclosed in the D431 Patent. Shenzhen KLM needed these drawings for filing the 29/615362 Application. Exhibit 8. One design drawing file Yinghao provided to Shenzhen KLM is attached hereto as Exhibit 9.

52. Ms. Yuqin Peng through her agent filed on August 29 the 29/615362 Application. On information and belief, Ms. Peng used the design drawings obtained from Yinghao Solar for the application.

FACTS REGARDING DEFENDANTS' ANTICOMPETITIVE ACTS

53. Defendants utilize the threat of filing Amazon patent infringement claims under the D431 Patent ("Amazon Patent Claim") as a scheme to control selling price on Amazon for the YH0502C LED Spot Light products. On information and belief, Defendants actively monitor the Amazon marketplace. Defendants file Amazon Patent Claims against any Amazon seller who sells the YH0502C LED Spot Light products at a more competitive price. Defendants coerce the Amazon sellers into signing up price fixing agreements by promising to retract its

Amazon Patent Claims which would allow the Amazon sellers to reactivate their product listings. Defendants actively enforce the terms of the price fixing agreements using threats of renewed filing of the Amazon Patent Claims.

54. On or about late August and early September of year 2019, Defendants filed Amazon Patent Claims against Nekteck brand products available on Amazon.com bearing the following Amazon Standard Identification Numbers (ASIN): B07VL454ZM, B01E6RZZ70, B07NNZ45FN, B01I8YP9DM, and B0194CC822. The claims asserted LED Spot Light sold under these ASIN numbers infringed the D431 Patent. The affected products are the YH0502C LED Spot Light that Plaintiff Medcursor procured from Yinghao Solar and sold on Amazon. Defendants' Amazon Patent Claim resulted in the removal of these product listings from Amazon.com. Exhibit 10.

55. During September 2019, Defendants through Yinghao Solar demanded that Plaintiff Medcursor enter into a price fixing arrangement for the YH0502C LED Spot Light products. Defendants made it clear that they would not retract the Amazon Patent Claim against Medcursor's listings unless Medcursor executed a price fixing agreement. Medcursor was left with no choice. On or about September 24, 2019, Medcursor, through its Nekteck brand, entered into a price fixing agreement with Defendants (the "Medcursor Price Fixing Agreement"). Exhibit 11.

56. The Medcursor Price Fixing Agreement provides that neither Defendants nor Medcursor may sell the YH0502C LED Spot Light products on

Amazon.com for less than \$25.99 for a 2-unit package, or \$46.99 for a 4-unit package.

57. While Defendants and Medcursor were negotiating and executing the Medcursor Price Fixing Agreement in September, Defendants' Amazon Patent Claim resulted in the complete deactivation of Medcursor's Amazon selling account on October 11, 2019. Exhibit 12. Medcursor was not able to sell any products on Amazon.com while its seller account was deactivated. Amazon reinstated Medcursor's selling account on or about October 12, 2019 after an account review, and due to Defendants' retraction of the Amazon Patent Claim.

58. On information and belief, Defendants refiled Amazon Patent Claims in March 2021 against the same ASIN products that Medcursor was selling under the Nekteck brand, presumably due to Medcursor's violation of the Medcursor Price Fixing Agreement. On information and belief, the refiled Amazon Patent Claims are directed at the Nekteck brand products bearing ASIN numbers B07VL454ZM, B01E6RZZ70, B07NNZ45FN, B01I8YP9DM, and B0194CC822. The refiled claims resulted in the removal of these ASIN product listings from Amazon.com. Copies of sample emails showing the delisting of products are attached as Exhibits 13-15.

59. On information and belief, Defendants have entered into similar price fixing agreements with other Amazon sellers who purchased YH0502C LED Spot

Light products from Yinghao Solar and sold the products on Amazon.com. Exhibit 16.

60. As result of Defendants' baseless allegations and anticompetitive behaviors, Medcursor has suffered tremendously in lost profits as result of being barred from selling products on Amazon.com and incurred unnecessary legal expenses through Defendants' acts.

COUNT I

Declaratory Judgment of Invalidity of the D431 Patent

61. Plaintiff realleges all of the foregoing paragraphs as if set forth specifically herein.

62. The D431 Patent is invalid under the Patent Laws of the United States of American, 35 U.S.C. §1 et seq., including but not limited to §§ 102, 103, and 112.

63. The D431 Patent is invalid because the claimed invention has been on sale and available to the public before its effective filing date and hence does not satisfy the novelty requirement of 35 U.S.C. §102(a).

64. The D431 Patent is invalid because the claimed invention has been on sale and available to the public at least one year prior to its effective filing date and hence does not satisfy the requirement of 35 U.S.C. §102(b).

65. The D431 Patent is invalid under 35 U.S.C §103 because the claimed invention is obvious in light of Chinese Patent disclosures, namely the CN'680 Patent and the CN'064 Patent.

66. Plaintiff seeks a declaration that the D431 Patent is invalid.

COUNT II

Declaratory Judgment of Unenforceability of the D431 Patent

67. Plaintiff realleges all of the foregoing paragraphs as if set forth specifically herein.

68. An applicant owes a duty of candor and good faith in dealing with the United States Patent Office. This includes a duty to disclose to the Patent Office all information known to the applicant to be material to patentability of an application.

69. Defendants knew at all times that Ms. Peng is not the inventor of the D431 Patent. Ms. Peng's company, Shenzhen KLM, specifically requested product design drawings from Yinghao Solar for use in the 29/615362 Application. Defendants submitted concurrently a declaration identifying Ms. Peng as the sole inventor of the D431 Patent. Defendants made a false declaration and made so knowingly. Information about inventorship is material. Defendants made misrepresentations to the Patent Office that is material to patentability of the D431 Patent.

70. Ms. Peng executed and submitted to the USPTO a second declaration on or about May 23, 2019 in connection with the 2019 *Ex Parte* Reexamination proceeding. Defendants reaffirmed in the second declaration that Ms. Peng is the sole inventor of the D431 Patent.

71. Defendants knew at all times that Ms. Peng is not the inventor of the D431 Patent. Defendants understood if they had disclosed to the USPTO that Mr. Qiang Zhuo was the true inventor of the D431 Patent, coupled with the fact that Mr. Zhuo is the named inventor for the two Chinese prior art references cited in the *ex parte* reexamination requests – the CN`680 Patent and the CN`064 Patent, the D431 Patent would not have survived the reexamination proceeding. Defendants acted with an intent to deceive the Patent Office.

72. On information and belief, Defendants sold the YH0502C LED Spot Light products in U.S. at least one year before the effective filing date of the D431 patent. Defendants were further aware that Yinghao Solar sold the YH0502C LED Spot Light products to other buyers as early as 2015.

73. Information about pre-filing product sales by the applicant is material to patentability of the D431 Patent. Defendants did not disclose their sale of the YH0502C LED Spot Light products to the Patent Office during the prosecution of the 29/615362 Application. Defendants did not disclose to the USPTO Yinghao Solar's sale of the YH0502C LED Spot Light products to other buyers during the prosecution of the 29/615362 Application. Defendants thus withheld information from the Patent Office that is material to patentability of the D431 Patent.

74. Based on information and belief, Defendants were aware that if they had disclosed during the prosecution of the 29/615362 Application the prior commercial sale of the YH0502C LED Spot Light products including sale by Defendants or sale

by Yinghao Solar to other buyers, the Patent Office would not have granted issuance of the D431 Patent. Defendants knowingly withheld material information from the Patent Office with the intent to deceive.

75. Based on information and belief, Defendants were aware that if they had disclosed during the 2019 *Ex Parte* Reexamination proceeding the prior commercial sale of the YH0502C LED Spot Light products including sale by Defendants or sale by Yinghao Solar to other buyers, the D431 Patent would not have survived the reexamination proceeding. Defendants knowingly withheld material information from the Patent Office with the intent to deceive.

76. On information and belief, Defendants were aware that Mr. Qiang Zhuo obtained two Chinese patents covering aspects of the designs disclosed in the D431 Patent. On information and belief, Defendants were aware that Mr. Zhuo obtained his Chinese patents in November 2015. On information and belief, Defendants were aware that Mr. Zhuo's Chinese patents would constitute prior art references that are material to the patentability of the invention disclosed in the D431 Patent. On information and belief, Defendants knowingly withheld such material information from the Patent Office. Defendants acted with an intent to deceive the Patent Office.

77. Defendants breached their duty to the Patent Office. Defendants have committed inequitable conduct in connection with the prosecution of the 29/615362 Application. Defendants have committed further inequitable conduct during the

2019 *Ex Parte* Reexamination proceeding. Therefore, Plaintiff seeks a declaration that the D431 Patent is unenforceable due to fraud.

COUNT III

Violation of Section 1 of The Sherman Act

78. Plaintiff realleges all of the foregoing paragraphs as if set forth specifically herein.

79. Defendants have implemented a price fixing scheme to ensure no seller on Amazon is selling the YH0502C LED Spot Light products under a minimum price.

80. To implement the price fixing scheme, Defendants actively monitor the Amazon marketplace to identify any competitive pricing. Defendants file a patent claim to Amazon based on the fraudulently obtained D431 Patent to cause product delisting. Defendants coerce other Amazon sellers including Medcursor into executing price fixing agreements. Defendants enforce the price fixing agreements through continued monitoring and renewed threats of filing patent claims with Amazon.

81. Both Defendants and Medcursor sell LED spot light products on Amazon.com throughout the United States. Defendants and Medcursor are competitors. They are engaged in, and their activities substantially affect, interstate commerce.

82. Because the D431 Patent is fraudulently obtained, and further because the D431 Patent is invalid due to pre-filing commercial sale activities, Defendants' price fixing scheme is a *per se* illegal horizontal price-fixing arrangement in violation of Section 1 of the Sherman Act (15 U.S.C. § 1).

83. Defendants' price fixing scheme further violates Section 1 of the Sherman Act because it has unreasonably reduced competition in the relevant markets by depriving customers of the benefits of competition among Plaintiff, Defendants, and other Amazon sellers with respect to the YH0502C LED Spot Light products.

84. Plaintiff Medcursor's business is injured by Defendants' antitrust behavior. Defendants' unreasonable restraint on price competition has prevented Medcursor from making more sales at reduced prices. Moreover, Defendants' unlawful use of a fraudulently obtained patent unreasonably restrains Medcursor's abilities to make sales. Amazon's removal of Medcursor's listings and at one time the deactivation of Medcursor's Amazon Seller Account have caused, and continue to cause, Medcursor to lose substantial sales.

85. Medcursor is entitled to recover threefold the damages it has sustained, and the cost of this lawsuit, including a reasonable attorney's fee.

COUNT V

Patent Misuse

86. Plaintiff realleges all of the foregoing paragraphs as if set forth specifically herein.

87. Defendants have misused their patent rights by threatening to prevent Plaintiff Medcursor and other Amazon sellers from selling their products on Amazon.com based upon the invalid and fraudulently obtained D431 Patent. Defendants have misused their patent rights when they use the threat of patent infringement claim to coerce Plaintiff and other Amazon sellers into price fixing agreement which constitutes a *per se* violation of the antitrust laws.

88. Plaintiff Medcursor's business is injured as a result of Defendants' patent misuse. Defendants' unlawful use of their patent rights diminished Medcursor's abilities to make sales. The price restriction Defendants imposed has prevented Medcursor from making more sales at reduced prices. Amazon's removal of Medcursor's listings and at one time the deactivation of Medcursor's Amazon Seller Account have caused, and continue to cause, Medcursor to lose substantial sales.

89. Medcursor is entitled to recover threefold the damages it has sustained, and the cost of this lawsuit, including a reasonable attorney's fee.

COUNT IV

Unfair Competition Under California Law

90. Plaintiff realleges all of the foregoing paragraphs as if set forth specifically herein.

91. Defendants' conducts amount to unfair competition under Section 17200 et. seq., of the California Business & Professions Code, which prohibits any unlawful, unfair, or fraudulent business act or practice.

92. Defendants have engaged in unfair competition by fraudulently obtaining the D431 Patent, and by asserting the invalid and fraudulently obtained D431 Patent against Medcursor, and by coercing Medcursor and other Amazon sellers into price fixing agreements.

93. Plaintiff Medcursor's business is injured due to Defendants' unfair competition acts. Defendants' acts diminished Medcursor's abilities to make sales. The price restriction Defendants imposed has prevented Medcursor from making more sales at reduced prices. Amazon's removal of Medcursor's listings and at one time the deactivation of Medcursor's Amazon Seller Account have caused, and continue to cause, Medcursor to lose substantial sales.

PRAYER FOR RELIEF

Wherefore, Medcursor respectfully requests that a judgment be entered in its favor and against Defendants as follows:

A. That judgment be entered in favor of Plaintiff and against Defendants declaring the D431 Patent is invalid;

B. That judgment be entered in favor of Plaintiff and against Defendants declaring the D431 Patent is unenforceable;

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- 3 C. That judgment be entered permanently enjoining and restraining
- 4 Defendants, its officers, agents, servants, employees, and attorneys, and all
- 5 others acting for, on behalf of, or in active concert with any of them, from
- 6 alleging or suggesting that Medcursor's products infringe the D431 Patent;
- 7 D. That judgment be entered requiring Defendants to retract or withdraw its
- 8 Amazon complaints and allow Medcursor to sell its delisted products on
- 9 Amazon;
- 10 E. That judgment be entered declaring that this case is exceptional in favor of
- 11 Plaintiff under 35 U.S.C §285, and award Medcursor the cost of this
- 12 lawsuit, including a reasonable attorney's fee;
- 13 F. That judgment be entered declaring that Defendants engaged in patent
- 14 misuse, and award threefold the damages Medcursor has sustained, plus the
- 15 cost of this lawsuit, including a reasonable attorney's fee;
- 16 G. That judgment be entered declaring that Defendants violated the unfair
- 17 competition laws of California and enter appropriate permanent injunctions;
- 18 H. That judgment be entered declaring that Defendants violated antitrust laws,
- 19 and award threefold the damages Medcursor has sustained, plus three fold
- 20 the cost of this lawsuit, including a reasonable attorney's fee; and
- 21 I. That the Court find Defendants are jointly and severally liable for any and
- 22 all judgments above;
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J. All other relief to which Plaintiff may be entitled at law or equity,
including punitive damages.

Date: May 26, 2021

By: /s/ Hua Chen

Hua Chen

ScienBiziP, P.C.

Attorney for Plaintiff Medcursor Inc.

DEMAND FOR JURY TRIAL

Plaintiff Medcursor Inc. respectfully demands a trial by jury in this action pursuant to Local Rule 38-1.

Date: May 26, 2021

By: /s/ Hua Chen

Hua Chen

ScienBiziP, P.C.

Attorney for Plaintiff Medcursor Inc.