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Of Attorneys for Plaintiffs

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON**

HIDEKI ELECTRONICS, INC.,

Case No. 04CV-01862-BR

Plaintiff,

SECOND AMENDED COMPLAINT
(Declaratory Judgment; Misuse of Patent,
Inequitable Conduct)

v.

**LACROSSE TECHNOLOGY, LTD., and
RICHMOND HOLDINGS IP, LLC,**

(Jury Trial Requested)

Defendants.

Plaintiff alleges as follows:

PARTIES

1.

Plaintiff Hideki Electronics, Inc. ("Hideki") is an Oregon Corporation, having a principal place of business at 7865 SW Mohawk St., Tualatin, Oregon, 97062.

2.

Defendant LaCrosse Technology, Ltd., aka LaCrosse Technologies, Ltd. ("LaCrosse"), is an active Minnesota Corporation, having an address of 1116 S. Oak Street, La Crescent, Minnesota, 55947. Defendant Richmond Holdings IP, LLC ("Richmond") is an active Virginia limited liability company, having an address of 536 Granite Ave., Richmond, Virginia, 23226. LaCrosse and Richmond are collectively referred to as "Defendants."

3.

Richmond claims to be the named assignee of U.S. Patent No. 6,076,044, which was issued on June 13, 2000, and which expired on June 13, 2004 ("The 044 Patent"). Richmond claims to be the named assignee of (i) U.S. Patent No. 5,978,738 issued November 2, 1999 ("The 738 Patent"), and (ii) U.S. Patent No. 6,597,990, which was issued on June 22, 2003 ("The 990 Patent"). Hereinafter, The 044 Patent, The 738 Patent, and The 990 Patent are collectively referred to as "The Patents".

JURISDICTION AND VENUE

4.

Hideki seeks a judgment declaring that it does not infringe The Patents or alternatively that The Patents are invalid, unenforceable and/or have been misused. Federal question jurisdiction is proper under 35 U.S.C. § 271 and 28 U.S.C. §§ 1331, 1338, 2201, and 2202.

5.

Venue is proper in this District under 28 U.S.C. § 1391(b)(2) and 1400(b).

FIRST CLAIM FOR RELIEF (Declaratory Judgment)

6.

Defendants have claimed, have asserted an action (now dismissed), and continue to claim, that Hideki has violated and continues to violate Defendants' rights arising out of one or more of The Patents. Upon information and belief, Defendants have and do claim that Hideki's weather stations and 433MHz remote transmitters, Model Nos. TE529W, 529ELW, TE21, TE21EL, TE 33, and TE33EL (hereinafter collectively, the "Accused Products") infringe one or

1 more of The Patents. Upon information and belief, Defendants have, or have threatened to sue
2 Hideki unless such alleged infringement is abated.

3 7.

4 Hideki disagrees with Defendants' infringement claims and contends that the Accused
5 Products do not infringe any of The Patents, even if the Patents are valid. As a result, an actual
6 and justiciable controversy exists.

7 8.

8 Hideki is entitled to a Declaratory Judgment that the Accused Products do not infringe
9 any of The Patents.

10 **SECOND CLAIM FOR RELIEF**
11 (Misuse of Patent – Count I)

12 9.

13 The allegations of THE FIRST CLAIM are incorporated herein by this reference.

14 10.

15 Richmond, and its parent company, LaCrosse, knew at all relevant times, from
16 LaCrosse's own prior litigation with the original owner and inventor of The Patents, Anthony
17 Brown, that The Patents were invalid, and that products like LaCrosse's (then) and The Accused
18 Products (now) do not reasonably fall within the scope of The Patents.

19 12.

20 With knowledge that The Patents were invalid or unenforceable and that the Patents
21 granted did not reasonably cover the Accused Products, Richmond sued Hideki in the United
22 States District Court for the Eastern District of Virginia for infringement of the '044 and '738
23 patents, in 2005 ("the Virginia litigation").

13.

With knowledge that The Patents were invalid or unenforceable and that the Patents granted did not reasonably cover the Accused Products, Richmond also initiated an investigation against Hideki and others before the International Trade Commission for infringement of the '044 and '738 patents, in 2005 ("the ITC Investigation").

14.

Richmond and its lawyers failed to conduct a reasonable pre-filing inspection of the Accused Products, and had no objectively reasonable basis for filing the Virginia Litigation or the ITC Investigation. Defendants worked in concert to file the Virginia litigation and the ITC Investigation in a bad faith attempt to extend defendants' commercial advantage beyond what was reasonably within the Patent grants, by subjecting Hideki to expensive unfounded litigation unless Hideki purchased a "license" from defendants to manufacture its non-infringing products.

15.

LaCrosse and Richmond have knowingly caused burdensome and unnecessary expense to Hideki, and have interfered with the sale and marketing of products beyond what was reasonably within the Patents granted, causing damage to Hideki.

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THIRD CLAIM FOR RELIEF

(Misuse of Patent– Count II)

16.

The allegations of THE FIRST CLAIM and THE SECOND CLAIM are incorporated herein by this reference.

17.

Richmond sued Hideki in the Virginia litigation and initiated the ITC Investigation based upon The ‘044 Patent.

18.

Prior to filing the Virginia Litigation and initiating the ITC Investigation Richmond had a duty to conduct a reasonable investigation to determine the status of The ‘044 patent.

19.

At the time that the ‘044 Patent was transferred from Brown to LaCrosse or Richmond, the ‘044 Patent had lapsed and was of no force or effect.

20.

At the time the Virginia litigation was filed, The ‘044 Patent had lapsed and was of no force or effect.

21.

At the time the ITC Investigation was initiated, The ‘044 Patent had lapsed and was of no force or effect.

22.

Richmond and its law firm, Banner & Witcoff Ltd. (“Banner & Witcoff”), knew or should have known that the ‘044 Patent had lapsed and was of no force or effect, because

1 Richmond had a duty to determine the status before initiating an action, Banner & Witcoff was
 2 the agent registered with the Patent and Trademark Office to receive notice of the lapse, Banner
 3 & Witcoff represented the owner of the '044 patent (Brown) at the time of lapse, and Banner &
 4 Witcoff represented Richmond in the ITC Investigation.

5 23.

6 Richmond and Banner & Witcoff, misused The '044 Patent by filing the Virginia
 7 Litigation and initiating the ITC Investigation without an objectively reasonable basis that
 8 Richmond's claims of infringement were reasonably within the patent grant, which had expired.
 9 Rather, Richmond filed and initiated the Virginia Litigation and ITC Investigation to extend its
 10 competitive advantage beyond the reasonable scope of the '044 patent grant, which had expired,
 11 causing damage.

12 **FOURTH CLAIM FOR RELIEF**
 13 (Inequitable Conduct)

14 24.

15 The allegations of THE FIRST CLAIM, THE SECOND CLAIM, and THE THIRD
 16 CLAIM are incorporated herein by this reference.

17 25.

18 On or about August 2, 2005, Richmond caused to be filed with the United States Patent
 19 and Trademark Office a petition ("the Petition") to reinstate the '044 Patent on the basis that the
 20 '044 Patent had lapsed due to unintentional failure of the patent owner to pay the statutorily
 21 required maintenance fee when due. Reinstatement of a lapsed patent may be granted at any
 22 time within a six month "grace" period, by payment of the patent maintenance fee. Within 24
 23

1 months after the grace period, reinstatement may be granted “if the delay is shown to the
2 satisfaction of the Director to have been unintentional”

3 26.

4 The lapse occurred and the patent expired while the ‘044 patent was owned by Anthony
5 Brown.

6 27.

7 Upon information and belief, the patent owner Anthony Brown had been informed by his
8 counsel, Banner & Witcoff, that a maintenance fee was due in order to keep the ‘044 Patent in
9 force.

10 28.

11 Upon information and belief, prior to the ‘044 Patent having lapsed, Banner & Witcoff,
12 received a Maintenance Fee Reminder from the United States Patent and Trademark Office
13 advising that the maintenance fee for the ‘044 Patent had not been paid.

14 29.

15 Upon information and belief, Banner & Witcoff, forwarded the Maintenance Fee
16 Reminder from the United States Patent and Trademark Office to Brown.

17 30.

18 Upon information and belief, the United States Patent and Trademark Office forwarded
19 to Banner & Witcoff a Notice of Patent Expiration after the ‘044 Patent had lapsed for failure to
20 pay the maintenance fee when due.

21 ////

22 ////

23 ////

1 31.

2 Upon information and belief, Banner & Witcoff forwarded the Notice of Patent
3 Expiration from the United States Patent and Trademark Office to Brown, and Brown knowingly
4 allowed the '044 patent to lapse.

5 32.

6 At all times here pertinent, the law firm of Banner & Witcoff, was designated to received
7 communications to Brown and his assignees from the United States Patent and Trademark Office
8 regarding fees due for the '044 Patent. Banner & Witcoff also represented Richmond in the ITC
9 Investigation, when the lapse was disclosed.

10 33.

11 Richmond's petition to the Patent and Trademark Office, asserting that the lapse was
12 "unintentional," was signed by the sole employee of Richmond, and not Anthony Brown. On
13 information and belief, the Richmond employee was without personal knowledge of the facts
14 regarding Brown's failure to pay the maintenance fee when due, and it was false and misleading
15 to state as much. The statements in the Petition about the failure to pay the maintenance fee
16 were hearsay, made without personal knowledge as to the material question before the Director:
17 "Did the owner, Anthony Brown, allow the patent to lapse knowingly, or unintentionally, before
18 assigning it to LaCrosse or Richmond."

19 34.

20 Upon information and belief, the hearsay statements in the Petition were made without
21 reasonable investigation and without personal knowledge for the purpose of misleading the
22 United States Patent and Trademark Office into believing that the lapse was "unintentional" by
23

1 Brown when it was not, or when Richmond did not know Brown's intent, so that Richmond
2 could reinstate the '044 patent.

3 35.

4 The '044 Patent was reinstated based upon the material and misleading statements
5 intentionally made in Richmond's petition.

6 **FIFTH CLAIM FOR RELIEF**
7 (Invalidity)

8 36.

9 The allegations of THE FIRST CLAIM, THE SECOND CLAIM, and THE THIRD
10 CLAIM are incorporated herein by this reference.

11 37.

12 The Patents are invalid and therefore cannot be infringed for failure of the patents to
13 comply with one or more of 35 U.S.C. §§ 102, 103 and/or 112.

14 * * * *

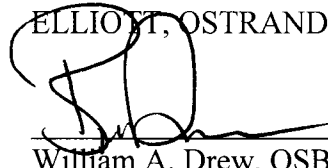
15 WHEREFORE, Hideki requests that:

- 16 1. An order, judgment, and decree be granted declaring that Defendants are without
17 right or authority to threaten or to maintain suit against Hideki or any of its affiliated
18 companies for alleged infringement of U.S. Patent Nos. 6,076,044, 5,978,738, or
19 6,597,990 and that The Patents are not infringed by Hideki.
- 20 2. An order, judgment and decree be granted declaring U.S. Patent Nos. 6,076,044,
21 5,978,738, and 6,597,990 invalid.
- 22 3. An order, judgment and decree be entered declaring that Defendants have misused
23 The Patents by filing the Virginia Litigation and initiating the ITC Investigation.

- 1 4. An order, judgment and decree be entered declaring that RIPH has committed
- 2 inequitable conduct through reinstatement of the '044 Patent.
- 3 5. An order, judgment and decree be entered declaring the case exceptional under 35
- 4 U.S.C. § 285 and awarding to Hideki its costs, including attorney fees, incurred
- 5 herein, in the Virginia litigation, and in the ITC Investigation.
- 6 6. Prejudgment interest on all damages from the date damages were incurred; and
- 7 7. For such other and further relief as to this Court may deem proper

8 Dated this 6th day of January, 2006.

9 ELLIOTT, OSTRANDER & PRESTON, P.C.

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CERTIFICATE OF SERVICE

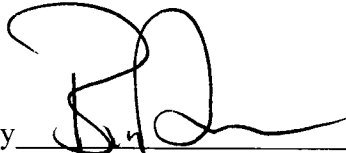
I certify that I served the foregoing **SECOND AMENDED COMPLAINT** on the following attorneys on January 6, 2006, by faxing and mailing a true and correct copy thereof, addressed to said attorneys at the addresses shown below:

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