

Bradley M. Ganz, OSB 94076
mail@ganzlaw.com
Ganz Law, P.C.
P.O. Box 2200
163 SE 2nd Avenue
Hillsboro, OR 97124
(503) 844-9009
Facsimile (503) 296-2172

Attorneys for Plaintiff
Robert M. Lyden

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
Portland Division

Robert M. Lyden,
an individual,

No. CV10-1249BR

Plaintiff,

**THIRD AMENDED COMPLAINT
FOR PATENT INFRINGEMENT**

v.

Adidas America, Inc., a Delaware corporation, **DEMAND FOR JURY TRIAL**
Adidas AG, a German entity,
Adidas International Marketing B.V., a Dutch entity,

Defendants.

For his third amended complaint against Adidas America, Inc., Adidas AG, and Adidas International Marketing B.V., (collectively “Adidas”), plaintiff Robert M. Lyden (“Lyden”) alleges as follows:

THE PARTIES

1. Robert M. Lyden is a private individual having a residence at 18261 S.W. Fallatin Loop, Aloha, Oregon 97007.
2. On information and belief, Adidas America, Inc. is a Delaware corporation with a principal place of business at 5055 N. Greeley Ave., Portland, Oregon 97217, in the United States.
3. On information and belief, Adidas AG is a joint stock company organized and existing under the laws of the Federal Republic of Germany with a principal place of business at Adi-Dassler-Strasse 1-2, 91074, Herzogenaurach, Germany.
4. On information and belief, Adidas International Marketing B.V. is a limited liability company that operates as a subsidiary of Adidas AG with a principal place of business at Atlas Complex, Africa Building, Hoogoorddreef 9a, 1101 BA Amsterdam Z-O, The Netherlands.
5. On information and belief, Adidas AG is the parent company to Adidas America, Inc. and Adidas International Marketing B.V. and substantially controls the relevant acts of these and other Adidas entities. In particular, Adidas AG controls the material decisions relating to research, development, and introduction of product lines into the United States marketplace, including over the product line known as the TUNIT soccer shoe and components.

6. On information and belief, during all relevant times, Adidas AG has had and continues to have substantial, systematic and continuing business operations in the United States, and in particular, using as a place of business at least the headquarters of Adidas America, Inc. in Portland, Oregon.
7. On information and belief, Adidas AG and Adidas International Marketing B.V. officers, directors and executive management personnel have regularly traveled to Portland and Oregon and some have been stationed for extended periods of time at offices of Adidas America, Inc., in Portland, Oregon, during the period of infringement complained of herein.
8. On information and belief, Adidas AG has used its and Adidas America, Inc.'s staff and facilities in Portland, Oregon, to design, develop, and test the TUNIT soccer shoe and components thereof.
9. Adidas AG has been and presently is a plaintiff in intellectual property suits filed and pending in the district courts of the United States, including the District of Oregon.
10. Adidas International Marketing B.V. holds intellectual property rights in its own name, including the Adidas patents identified below. On information and belief, Adidas International Marketing B.V. directly or indirectly licenses those rights, including the rights to the Adidas patents identified herein to other Adidas AG group companies, including to Adidas America.
11. Adidas International Marketing B.V. has at relevant times managed the procurement, maintenance, licensing and/or enforcement of its intellectual property rights via facilities and personnel located in Portland, Oregon and such activities have been

directed at benefitting Adidas America and its market in Oregon and the United States overall.

12. On information and belief, Adidas International B.V. has continuous and systematic activities in the United States and particularly in Portland, Oregon. It regularly provides legal advice and assistance to Adidas America, including advice relating to the Lyden Patents identified here since before the present suit through to the present.

13. On information and belief, Adidas International B.V. controls actions of Adidas staff located at facilities in Portland, Oregon, including via an individual named Sara Vanderhoff stationed at Adidas America, who reports to legal counsel for Adidas International B.V. and Adidas AG.

14. On information and belief, Adidas in-house counsel for Adidas International B. V. and Adidas AG, including an individual named Mr. Tim Behean believed to be working for at least Adidas International Marketing B. V., have made repeated trips to the United States, and particularly to Portland, Oregon, from at least year 2000 to present to attend to matters related to the acquisition, procurement, licensing and/or enforcement of intellectual property rights for Adidas International Marketing B.V., Adidas America, Inc., and/or Adidas AG.

15. On information and belief, an individual, Bernd Wahler, has made repeated trips to the United States in his role and responsibility as an officer of Adidas AG or other Adidas AG controlled entity, including to market, sell and otherwise promote the TUNIT soccer shoes discussed below.

16. On information and belief, and before Plaintiff Lyden's original complaint in this matter, Bernd Wahler and Tim Behean, in-house counsel for Adidas International

Marketing B.V., coordinated with in-house legal counsel for Adidas International Marketing B.V. concerning a possible licensing deal or settlement with Plaintiff Lyden concerning the Lyden patents, and the relevant negotiations took place at least in part in Portland, Oregon.

17. On information and belief, in various other matters, in-house legal counsel working for Adidas International Marketing B.V. and business people individuals working for Adidas AG and/or Adidas America have negotiated various matters related to intellectual property in whole or part in Portland, Oregon.

18. On information and belief, in various other matters, in-house legal counsel working for Adidas AG and business people working for Adidas AG and/or Adidas America have negotiated various matters related to intellectual property in whole or part in Portland, Oregon.

19. On information and belief, the control over the relevant business affairs and operations of Adidas AG and/or Adidas International Marketing B.V., and Adidas America, Inc., have been so blurred, intertwined, and indistinct that these entities may be regarded as a single entity or actor under control of Adidas AG.

JURISDICTION AND VENUE

20. Plaintiff realleges and incorporates all of the factual allegations of the preceding paragraphs.

21. This action arises under the patent laws of the United States, Title 35 of the United States Code. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1338 (a), 2201 and 2202.

22. Venue is proper in this district under 28 U.S.C. §§ 1391(b), 1391(c) and 1400(b).

On information and belief, each Defendant has transacted business in this district and has committed, aided, abetted, and/or induced acts of patent infringement in this district.

23. Defendants are subject to personal jurisdiction in this Court because Defendants conduct substantial business in this forum including: (i) regularly doing or soliciting business, engaging in other persistent courses of conduct, and /or deriving substantial revenue from goods and services provided to individuals in Oregon and in this Judicial District; and (ii) committing acts of patent infringement and/or contributing to or inducing acts of patent infringement by others in this Judicial District (and elsewhere in Oregon and the United States).

BACKGROUND FACTS

24. The Plaintiff, Robert M. Lyden (“Lyden”) has a history as an athlete, coach educator, and innovator. Lyden authored a 464 page book entitled "Distance Running," published in 2003.

25. After receiving dual Masters’ Degrees in History and Public Administration from the University of Minnesota in 1982 and 1988, and also being certified as an educator to teach and coach K-12, he went on to coach and advise a member of two U.S. Olympic teams in Track & Field. Lyden’s coaching endeavors also included a consultancy in the United Arab Emirates, where he was part of a team that established a 160 kilometer World Record in endurance horse riding in January, 2000. Lyden is a named inventor on forty-eight issued U.S. Patents, and has two pending

patent applications, spanning twenty-five years of innovation.

26. Lyden worked for Nike, Inc. between 1990-1998 as an employee and consultant.

He is a named inventor on eighteen Nike patents, and then contributed to research and development of numerous commercially successful Nike products.

27. Lyden has since worked independently as an inventor and consultant. In this regard, Lyden recognized that conventional articles of footwear were being designed to meet the average metrics of hypothetical users, and not the specific needs or tastes real and individual people. Lyden recognized that athletic footwear were not being provided in such a manner as to permit substantial customization in order to best meet the needs and desires of individual wearers. He also recognized that the product life cycle of conventional articles footwear were relatively short and wasteful in that an entire article of footwear often needed to be discarded when one component had worn out even if the other components were still perfectly good.

28. Based on the foregoing and other considerations, Lyden conceived of novel modular, customizable footwear structures, and methods of conducting business including making and selling custom articles of footwear that overcome conventional footwear disadvantages.

29. To protect his inventions, as provided under the U.S. Constitution and the federal law, Lyden filed his initial patent application related to modular, customizable footwear on March 10, 2000.

30. Validating the inventiveness of his concepts, the U.S. Patent and Trademark Office awarded Lyden six U.S. Patents, four of which are the subject of this Complaint, namely, U.S. Patents Nos. 7,752,775, 7,107,235, 7,016,867, and

6,601,042 (hereinafter collectively referred to as the “Lyden Patents”). All these patents relate to modular, customizable footwear.

Adidas’ Willful Infringement

31. In September, 2004, Lyden was concluding a settlement with Adidas concerning certain apparel-related patents owned by Lyden that he believed Adidas infringed. He was also concerned that Adidas might engage in infringing, unlicensed usage of the footwear patents that are the subject of this complaint. In the interest of avoiding further claims against Adidas, Lyden notified in-house counsel for Adidas AG, Mr. Tim Behean, of Lyden’s U.S. Patent Nos. 6,449,878, U.S. 6,601,042 and then pending U.S. patent application serial number 10/152,402 which later matured as U.S. 7,016,867, as well as then pending U.S. patent application serial number 10/279,626 which was later granted as U.S. 7,107,235. Lyden had previously discussed the pending patent applications associated with U.S. 6,449,878 and U.S. 6,601,042 with Adidas back in 2000 and 2001. However, Adidas’ counsel responded that Adidas would not be pursuing, and had no interest, in the subject matter of the patents.
32. On information and belief, Adidas’s counsel, Tim Behean, is not a licensed or registered patent agent or patent attorney of the United States or any other country and was not competent to render legal opinion regarding infringement of the Lyden Patents.
33. In early 2005, Adidas America, Inc.’s former CEO and worldwide creative director of Adidas AG, Mr. Peter Moore, visited Lyden at his home in Aloha, Oregon, and tested several prototype walking and running shoes. Lyden provided Moore with a copy of his business plan and also copies of his patents relating to athletic footwear

and the sporting goods industry for review and presentation to the then acting CEO of Adidas America, Inc. Moore later reported back to Lyden that Adidas was not interested in purchasing or licensing Lyden's intellectual property.

34. On November 24, 2004, Lyden's work on footwear was featured in the article entitled

"If The Shoe Fits" which was published in the Willamette Week newspaper. In

January 2005, Lyden was featured in the "SIJ Profile" article in the Sustainable Industries Journal.

35. On February 11, 2005, Lyden's work on customized footwear was featured in the

article entitled, "Dressed for Innovation" in the Portland Business Journal. In the

article, former Adidas America's CEO Moore makes favorable comments about

Lyden's prototype shoes that he had viewed and tested. The article also shows that

Lyden was then seeking investors for his start up company Q Branch, Inc.

36. In November 2005, approximately fourteen months after being told by Adidas AG's

counsel that the company had no interest in his Patents, and nearly five years after the

earliest filing date for the Lyden Patents, Lyden learned that Adidas was attempting to

patent the same or similar subject matter to what was disclosed in the Lyden Patents

that Lyden previously offered to sell or license to Adidas. The patent application of

concern was U.S. patent application serial number 11/064,439 (the '439 application"),

now U.S. 7,406,781, filed February 23, 2005, nearly five years after Lyden's initial

patent application. Adidas patent efforts have not ceased and it is continuing to try to

patent the subject matter of the '439 application via pending U.S. application serial

number 12/769,825, now U.S. 7,730,637, and still pending U.S. patent application

serial number 12/164,654. As long as Adidas has such pending applications co-

pending, Lyden is at risk that Adidas will improperly patent subject matter that conflicts and interferes with the claimed subject matter of the Lyden Patents.

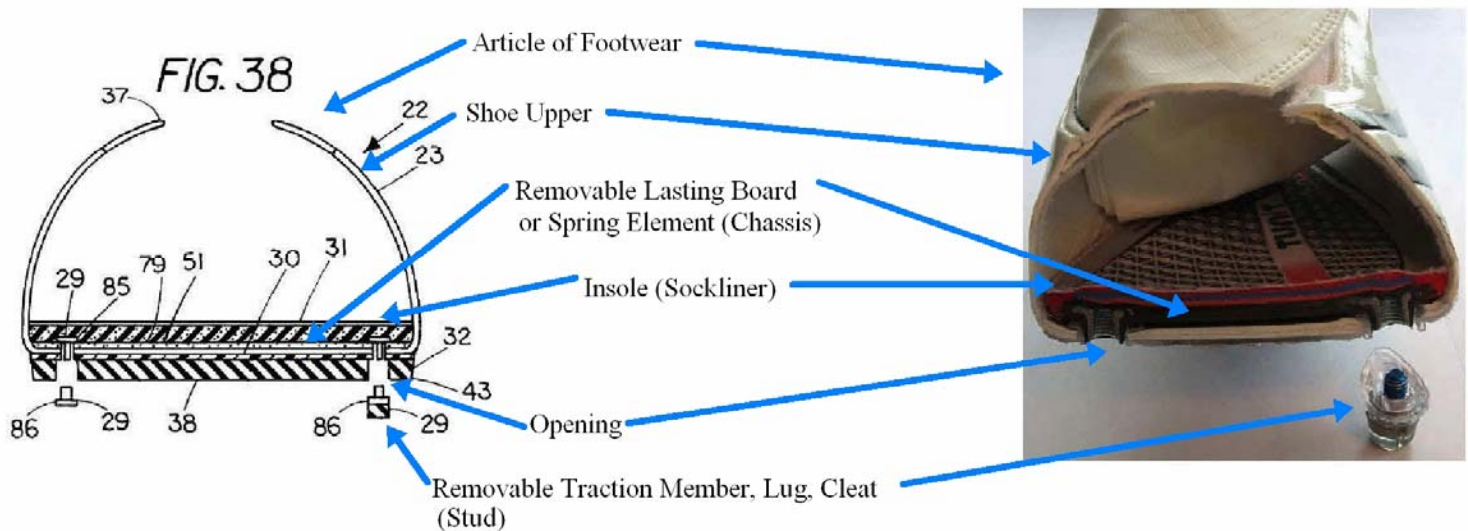
37. After discovering Adidas' patent application, Lyden again called Adidas' counsel and reminded him of the previously issued Lyden patents and also Lyden's previously filed and pending patent applications that included essentially the same subject matter. Lyden notified Adidas that he had previously filed for patents that disclosed the essential features that Adidas later filed for and attempted to claim. Lyden once again offered to license or sell his intellectual property to Adidas AG and submitted his draft business plan and intellectual property portfolio for consideration. However Adidas AG's counsel communicated that Adidas had no interest in purchasing or licensing Lyden's intellectual property.

33. In 2006, Lyden learned that Adidas was commercializing and selling the "TUNIT" soccer shoe and accessories in the United States. The TUNIT soccer shoe corresponded to subject matter of Adidas' '439 patent application.

34. The Adidas TUNIT soccer shoe has a striking similarity to the subject matter in the Lyden Patents. For example, Figure 38 in Lyden's patents is a cross-section of one of his inventive shoes. It maps one-to-one, in all material respects, to a cross-section of Adidas' model +F50.7 TUNIT soccer shoe, as demonstrated below:

Figure 38—Plaintiff Lyden’s Patents

Adidas +F50.7 TUNIT Soccer shoe



35. In April 2008, Mikal Peveto of Cinque Creative Resource, and then also a former employee of Adidas AG, presented Lyden’s intellectual property portfolio to Adidas AG’s Chief Marketing Officer (“CMO”) in charge of global footwear marketing, Bernd Wahler, and offered to license or sell Lyden’s intellectual property to Adidas AG. Peveto also met personally with Adidas America Inc.’s President, Patrik Nilsson, to present Lyden’s patent portfolio and discuss business opportunities.
36. On information and belief, CMO Wahler leads Adidas’ Sports Performance Division, which includes the adidas Innovation Team (a.I.T), Product Design, Product Marketing and Retail Functions, and is responsible for controlling product launches and marketing, including the TUNIT product, in the United States. CMO Wahler expressed interest in Lyden’s IP:

“This looks interesting, no question. The normal contact for these ideas is of course aiT. . . . I am also very interested personally, but, I would invite ait to the meeting anyway, and you could see them in PDX.”

(4/10/08 Email from Wahler to Peveto, Attached as Exhibit A.)

He also knew or should have known that the Lyden Patents were infringed by the TUNIT. For example, in an e-mail dated, April 14, 2008, CMO Wahler was told:

“On the work front, I have no issue meeting with aIT, but wanted to run this by the highest levels first. I like Al and Steve very much and have a good history with them, but this is a bit sensitive because IP inside the Lyden patents blocks most, if not all, of the claims on their TUNIT technology. While this might make for a sensitive conversation I am sure we can work past this—besides, they’re probably already aware of this. My biggest concern is the IP ending up in the hands of a competitor who will then own some key technologies that adidas has already launched and is planning to evolve. But no one has stepped up yet, so maybe that concern is for not. Give me the word again and I’ll contact Al directly to arrange a meeting.”

(4/10/08 Email from Peveto to Wahler, Attached as Exhibit A.)

37. In 2008-2009, Lyden spoke and corresponded directly with Adidas’ CMO Wahler regarding the infringing TUNIT product and offered to sell or license his intellectual property, but Adidas declined to acquire rights to Lyden’s patents.
38. Beginning in 2005 and then continuing until 2010, and with explicit knowledge of Lyden’s patents covering the same subject matter, Adidas heavily marketed in the United States and globally the “revolutionary” technology of the TUNIT during several World and Euro Cups.
39. On information and belief, CMO Wahler directed and/or controlled the use, sales and marketing of infringing TUNIT products and actively and knowingly assisted with infringement of the Lyden Patents in the United States. Given his personal knowledge of the Lyden Patents covering the same subject matter, and Lyden’s communication to Wahler, CMO Wahler knew or should have known his actions would induce or contribute to actual infringement.

Adidas’ Intimate Familiarity With the Lyden Patents

40. After discovering that Adidas was attempting to patent the same subject matter that

Lyden had previously offered to sell or license to Adidas, Lyden called and directed Adidas' counsel to specific drawing figures and disclosures that were material prior art including drawing Figure 38, Attached as Exhibit B. Lyden and Adidas' counsel spoke and corresponded in detail about material prior art disclosed in Lyden's previously filed patents and patent applications. CMO Wahler was repeatedly copied or involved in these discussions. Adidas did not provide or share this detailed material information with the Examiner during the prosecution of U.S. Serial No. 11/064,439.

41. During the prosecution of these patents, Adidas was required to disclose to the Patent Office all material prior art pursuant to 35 U.S.C. §111, 37 C.F.R. § 1.56 and established case law.
42. Lyden filed two Protests against Adidas' pending U.S. patent application serial number 11/064,439. Adidas made the cited prior art patents contained in Lyden's two Protests of record, but did not themselves make the two Protest documents of record in the case. The U.S. Patent Office only made the Second Protest of record in the case. The patent Examiner did eventually recite and use the Lyden '235 patent under 35 U.S.C. 102(e) as a prior art reference to reject some of the broad claims which were being sought by Adidas for essentially the same footwear structures as Lyden. See Examiner's Office Action mailed on 1/11/08, attached as Exhibit C. The U.S. Patent Office issued the Adidas patent application serial number 11/064,439 as U.S. 7,406,781 on August 5, 2008. However, this was not the end of Adidas' efforts to gain allowance of broader claims.
43. On June 30, 2008, Adidas filed a Continuation Application U.S. patent application

serial number 12/164,654, which matured into U.S. 7,730,637. Once again, Adidas did not cite Lyden's two previous Protests in the parent case in the Information Disclosure Statement(s) to the Examiner. Upon noticing this new Continuation Application, Lyden submitted a third Protest citing material prior art and requested that Adidas make this protest of record. See 5/18/2010 Letter to Adidas' Counsel attached as Exhibit D, although for inexplicable reasons, Adidas did not enter the third Protest into the case, and the Examiner did not consider it. See Decision On Protest, attached as Exhibit E.

44. Adidas had knowledge and possession, but intentionally omitted the existence of information from the Lyden protest materials that was non-cumulative to prior art already of record and material to the patentability of the claims it submitted to the U.S. Patent Office. As a result of Adidas' intentional and knowing failure to disclose material prior art information to the Examiner, the U.S. Patent Office issued U.S. Patent No. 7,730,637 to Adidas on June 8, 2010 with claims that are not believed to be valid over the Lyden Patents. Adidas' '781 and '637 patents are believed to be unenforceable and invalid because

they were filed over four years after Lyden filed for U.S. 6,601,042 on May 17, 2000 which was granted on July 29, 2003; and over a year after Lyden's patent application serial number 10/152,402 which was later granted as U.S. 7,016,867 was published as US 2003/0051372 A1 on March 20, 2003; and, also over a year after Lyden's patent application serial number 10/279,626 which was later granted as U.S. 7,107,235 was published as US 2003/0069807 A1 on April 10, 2003. All of these Lyden patents and

patent applications had included relevant prior art disclosures in the drawing figures and their specifications.

46. Notwithstanding Adidas' failure to properly disclose the Lyden Patents, upon information and belief, Adidas became even more knowledgeable about the scope and significance of the Lyden Patents relative to the TUNIT soccer shoe line, but continued on an intentional or callously reckless course of infringement.

Adidas' Direct Infringement

47. Adidas has directly infringed by making, using, and selling TUNIT footwear products and/or by using methods that are covered by one or more of the patent claims of Lyden's '775, '235, '867, and '042 patents at their own Adidas retail stores in Oregon and elsewhere in the United States. For example, Adidas retail employees have sold, instructed, demonstrated, performed, and/or assisted customers to make and use infringing TUNIT footwear products at least at the former Adidas Retail Outlet Store located at 5020 N.E. Martin Luther King Blvd., Portland, Oregon 97211 and the Adidas Factory Outlet Store located at 450 N.W. 257th Ave., Suite 450, Troutdale, Oregon 97060. Further, Adidas has directly infringed by providing TUNIT soccer shoes to their promotional athletes for use in the United States and by customizing TUNIT shoes for such athletes.

48. Adidas has also directly infringed by using their websites, including <http://www.shopadidas.com> and www.adidas.com, to offer for sale and sell TUNIT footwear products in Oregon and the United States that are covered by one or more of the Lyden '775, '235, '867, and '042 patents' claims. On information and belief,

Adidas' websites serve Adidas America, Inc. here in Oregon and the United States, and also the parent company Adidas AG.

Adidas' Induced and Contributory Infringement

49. Adidas has with knowledge of the Lyden Patents induced and contributed to infringement by retailers, customers, sponsored teams, promotional athletes, and sales personnel by supplying product and components and instructing them via training, advertising, marketing materials and/or product instructions to make, use, offer for sale, and / or sell TUNIT footwear products and components in Oregon and elsewhere in the United States that are covered by one or more of the Lyden '775, '235, '867, and '042 patents' claims. See sample instructions from the side of a TUNIT soccer shoe box attached as Exhibit F; TUNIT advertisement entitled "Adidas +50 TUNIT" at the following link:

<http://www.youtube.com/watch?v=pDQIUBF1YWg>.
50. On behalf of and as agents for Adidas, promotional athletes demonstrate how to customize infringing TUNIT products in a feature entitled "F50 TUNit players on stage" which can be found by following the link:

<http://www.youtube.com/watch?v=dhkLqVGIw5w> . Adidas intended the demonstration to reach and it does reach retailers and consumers in the United States. Retailers, consumers and others each perform these demonstrated steps to make soccer shoes that directly infringe one or more claims in the Lyden patents.
51. On behalf of and as employees or agents for Adidas, representatives of Adidas AG, namely, Roland Rommler, Category Manager, Football Footwear and Andres Konrads, Product Manager, Football Footwear instruct customers to customize the

Adidas TUNIT soccer shoes in a two-part series provided by a U.S. company based in Hillsborough, North Carolina, namely Eurosport / Sport Endeavors, Inc., having the commercial website: www.soccer.com. See “Expert’s Tech Guide with adidas – Tunit (part 01)” at: <http://www.youtube.com/watch?v=pfXQPmqVOvU> , and “Expert’s Tech Guide with adidas - Tunit (part 02) at:

<http://www.youtube.com/watch?v=D0gMpj4ZMKs>. Adidas intended the instructions to reach and they do reach retailers and consumers in the United States.

52. Adidas has sold infringing TUNIT products to retail distributors in Portland, Oregon and elsewhere in the United States. For example, infringing TUNIT products have been sold by large retail accounts such as Foot Locker, Inc., Dick’s Sporting Goods, Inc., and the Finish Line, Inc, but also by small specialty soccer stores including Tursi’s Soccer Supply located at 3122 S.W. 87th Ave., Portland, OR 97225, and the Far Post Soccer Supply located at 825 S.W. 14th Ave, Portland, OR 97205. The components of the products sold, include shoe uppers, spring elements, lasting boards, or chassis, and sole components including detachable cleats that are meant to be constructed into a custom shoe and are configured to work together. They are not staple articles, and they are believed to be unsuitable for use in any other shoes other than the accused infringing shoes, which are covered by the method and apparatus claims of the Lyden Patents.

FIRST CLAIM FOR RELIEF

(Infringement of U.S. Patent No. 7,752,775)

53. Plaintiff realleges and incorporates all of the factual allegations of the preceding

paragraphs.

54. Lyden is the owner of United States Patent No. 7,752,775 (“the ‘775 patent”) entitled “Footwear With Removable Lasting Board And Cleats.” The ‘775 patent was issued on July 13, 2010.

55. Since its issuance on July 13, 2010, Defendants Adidas have been and now are directly infringing the ‘775 patent in Oregon, in this judicial district, and elsewhere in the United States by, among other things, manufacturing, using, selling, importing and /or offering for sale footwear and footwear components that infringe one or more claims of the ‘775 patent, to the injury of Lyden. Exemplar infringing articles of the Adidas TUNIT soccer shoes manufactured, sold and /or offered for sale by Defendants, are shown in Exhibit G.

56. Adidas has been and is actively inducing infringement and has contributed to infringement of the ‘775 patent by retailers, customers, sponsored teams, promotional athletes, and sales personnel by their making, using, selling, and offering for sale TUNIT soccer shoes and their related footwear components constituting a material part of the invention of ‘775 patent knowing the same to be especially made for use in an infringement of such patent, and not a staple article of commerce suitable for a non-infringing use. Defendants are thus jointly and severally liable for infringement of the ‘775 patent pursuant to 35 U.S.C. § 271.

57. On information and belief, CMO Wahler directed and/or controlled the sales and marketing of infringing TUNIT products and actively and knowingly assisted with the infringement. Given his personal knowledge of the Lyden ‘775 patent covering the same subject matter and Lyden’s communications to Wahler, CMO Wahler knew

and intended his actions would induce or contribute to actual infringement, and his knowledge and actions are imputable to Adidas America, as well as the other Adidas Defendants.

58. Adidas directly and indirectly infringes (e.g., by contributory and inducement)

Claims 1-23 of the Lyden '775 patent. For example, TUNIT soccer shoes comprise, as recited in Claim 1 of the Lyden '775 patent:

1. An article of footwear comprising: an upper comprising a superior side, an inferior side, an anterior side, a posterior side, a medial side, a lateral side, an exterior, and an interior, said upper comprising a plurality of openings in said inferior side; a lasting board releasably disposed in the interior of said upper said lasting board comprising a plurality of projections configured to at least partially extend into the plurality of openings in the inferior side of said upper; and a plurality of detachable cleats releasably attached to the lasting board through the plurality of openings in the inferior side of said upper.

59. Adidas also directly infringes Claim 23, for example, because Adidas alone, or with an agent acting on its behalf, performs the following steps in making TUNIT soccer shoes:

23. A method of making an article of footwear, comprising:
selecting a first footwear component comprising an upper from a plurality of alternate uppers, each of said alternate uppers comprising a superior side, an inferior side, an anterior side, a

posterior side, a medial side, a lateral side, an exterior, and an interior, said inferior side of each of said alternate uppers comprising a plastic material and a plurality of non-annular openings; selecting a second footwear component comprising a lasting board from a plurality of alternate lasting boards which are capable of being releasably secured within the interior of said upper and which are configured to extend substantially between the anterior side and the posterior side of said upper, said lasting board comprising a plurality of projections configured to at least partially extend into the plurality of openings in the inferior side of said upper, providing a first means for fastening to a plurality of detachable cleats on said lasting board, and positioning said lasting board in the interior of said upper; selecting a third footwear component comprising a plurality of detachable cleats for use from a plurality of alternate detachable cleats each including a second means for fastening to said lasting board; and releasably securing at least the first, the second, and the third footwear components to each other with the use of the first means for fastening of said lasting board and the second means for fastening of said detachable cleats, releasably securing said detachable cleats to said lasting board through the plurality of openings in the inferior side of said upper, releasably securing a portion of said inferior side of said upper between said lasting board and said plurality of secured detachable

cleats; and, selecting a fourth footwear component comprising an insole from a plurality of alternative insoles and positioning the selected insole in the interior of said upper.

60. Adidas, with knowledge of the Lyden '775 patent, performs, or through an agent acting on its behalf, controls or directs each step of the patented method by manufacturing, supplying and distributing components and instructing retailers, sponsored teams, promotional athletes, customers, and/or sales personnel how to customize infringing TUNIT products that practice each step of Lyden's patented method. In particular, based on such acts of Adidas, retailers and others directly infringe Claim 23, for example, because each alone, or with an agent acting on its behalf, performs the following steps in making TUNIT soccer shoes:

23. A method of making an article of footwear, comprising:
 selecting a first footwear component comprising an upper from a plurality of alternate uppers, each of said alternate uppers comprising a superior side, an inferior side, an anterior side, a posterior side, a medial side, a lateral side, an exterior, and an interior, said inferior side of each of said alternate uppers comprising a plastic material and a plurality of non-annular openings; selecting a second footwear component comprising a lasting board from a plurality of alternate lasting boards which are capable of being releasably secured within the interior of said upper and which are configured to extend substantially between the anterior side and the posterior side of said upper, said lasting board

comprising a plurality of projections configured to at least partially extend into the plurality of openings in the inferior side of said upper, providing a first means for fastening to a plurality of detachable cleats on said lasting board, and positioning said lasting board in the interior of said upper; selecting a third footwear component comprising a plurality of detachable cleats for use from a plurality of alternate detachable cleats each including a second means for fastening to said lasting board; and releasably securing at least the first, the second, and the third footwear components to each other with the use of the first means for fastening of said lasting board and the second means for fastening of said detachable cleats, releasably securing said detachable cleats to said lasting board through the plurality of openings in the inferior side of said upper, releasably securing a portion of said inferior side of said upper between said lasting board and said plurality of secured detachable cleats; and, selecting a fourth footwear component comprising an insole from a plurality of alternative insoles and positioning the selected insole in the interior of said upper.

61. Upon information and belief, at least after Defendants have had actual notice of the ‘775 patent and over Lyden’s continued objections, the Defendants have willfully infringed, and knowingly induced infringing acts with the specific intent to induce another’s infringement.

62. Defendants continue to willfully infringe the '775 patent without justification.
63. Defendants infringement has damaged or impaired the value of the '775 patent.
64. As a result of the above Defendants' infringement of the '775 patent, Lyden has suffered monetary damages that are compensable under 35 U.S.C. § 284 in an amount not yet determined but believed to be in excess of five million dollars (\$5,000,000.00), and Lyden will continue to suffer such monetary damages in the future unless Defendants' infringing activities are permanently enjoined by this Court.
65. Unless permanent injunctions are issued enjoining these Defendants and their agents, servants, employees, representatives, affiliates, and all others acting on their behalf from infringing the '775 patent, Lyden will be greatly and irreparably harmed.
66. This case presents exceptional circumstances within the meaning of 35 U.S.C. § 285 and Lyden is thus entitled to an award of his reasonable attorneys' fees.

SECOND CLAIM FOR RELIEF

(Infringement of U.S. Patent No. 7,107,235)

67. Plaintiff realleges and incorporates all of the factual allegations of the preceding paragraphs.
68. Lyden is the owner of United States Patent No. 7,107,235 ("the '235 patent") entitled Method of Conducting Business Including Making And Selling A Custom Article of Footwear." The '235 patent was issued on September 12, 2006.
69. Since its issuance on September 12, 2006, Defendants Adidas have been and now are

directly infringing the '235 patent in Oregon, in this judicial district, and elsewhere in the United States by, among other things, manufacturing, using, selling, importing and /or offering for sale footwear and footwear components that infringe one or more claims of the '235 patent, to the injury of Lyden. Exemplar infringing articles of the Adidas TUNIT soccer shoes that practice each step of Lyden's patented method, and are manufactured, sold and /or offered for sale by Defendants, are shown in Exhibit G.

70. Adidas has directly infringed by making, using, selling and offering for sale TUNIT products that infringe at least one claim of the '235 patent at their own retail stores. Adidas has also directly infringed by using their website <http://www.shopadidas.com> and www.adidas.com to sell or offer for sale TUNIT products that practice Lyden's patented method.
71. Adidas has been and is actively inducing infringement of the '235 patent and has contributed to infringement by retailers, customers, sponsored teams, promotional athletes, and sales personnel by their making, using, selling and offering for sale TUNIT soccer shoes and their related footwear components constituting a material part of the invention of the '235 patent knowing the same to be especially made for use in an infringement of such patent, and not a staple article of commerce suitable for a non-infringing act. Adidas instructs via training, advertising, marketing materials and/or product instructions to make, use, sell, or offer for sale TUNIT products that infringe one or more claims of the '235 patent. Defendants are thus jointly and severally liable for infringement of the '235 patent pursuant to 35 U.S.C. § 271.

72. On information and belief, CMO Wahler directed and/or controlled the sales and marketing of infringing TUNIT products and actively and knowingly assisted with the infringement. Given his personal knowledge of the Lyden Patents covering the same subject matter and Lyden's communications to Wahler, CMO Wahler knew and intended his actions would induce or contribute to actual infringement, and his knowledge and actions are imputable to Adidas America, as well as the other Adidas Defendants

73. Adidas directly and indirectly infringes (e.g., by contributory and inducement) at least Claims 1, 2-4, 6, 8-20, 23-30, 36, 39, 41, 44, 46, 49-64, 67-69 and 70-75 of the '235 patent. For example, Adidas directly infringes Claim 1 because Adidas alone, or with an agent acting on its behalf, performs the following steps in making TUNIT soccer shoes:

1. A method of conducting business including making and selling a custom article of footwear comprising the steps of:
 - collecting data relating to an individual;
 - creating from said collected data information and intelligence for making said custom article of footwear for said individual;
 - providing a plurality of footwear components, and a plurality of variations of a plurality of said footwear components, a plurality of said footwear components including fastening means;
 - selecting from the plurality of footwear components sufficient footwear components for making said custom article of footwear having an anterior side, a posterior side, a medial side, a lateral side, and comprising at least

an upper, a sole, and cushioning means affixable together in functional relation by said fastening means;

providing said information and intelligence and said sufficient footwear components to a physical location at which said custom article of custom footwear can be made;

securing a plurality of said sufficient footwear components in functional relation with said fastening means and completing the assembly for making said custom article of footwear; and,

causing said custom article of footwear to be delivered to a designated address.

Adidas, with knowledge of the Lyden '235 patent, performs, or through an agent acting on its behalf, controls or directs each step of the patented method by manufacturing, supplying and distributing components and instructing retailers, sponsored teams, promotional athletes, customers, and/or sales personnel how to customize infringing TUNIT products that practice each step of Lyden's patented method. In particular, based on such acts of Adidas, retailers and others directly infringe Claim 1, for example, because each alone, or with an agent acting on its behalf, performs the following steps in making TUNIT soccer shoes:

1. A method of conducting business including making and selling a custom article of footwear comprising the steps of:
 - collecting data relating to an individual;

creating from said collected data information and intelligence for making said custom article of footwear for said individual;

providing a plurality of footwear components, and a plurality of variations of a plurality of said footwear components, a plurality of said footwear components including fastening means;

selecting from the plurality of footwear components sufficient footwear components for making said custom article of footwear having an anterior side, a posterior side, a medial side, a lateral side, and comprising at least an upper, a sole, and cushioning means affixable together in functional relation by said fastening means;

providing said information and intelligence and said sufficient footwear components to a physical location at which said custom article of custom footwear can be made;

securing a plurality of said sufficient footwear components in functional relation with said fastening means and completing the assembly for making said custom article of footwear; and,

causing said custom article of footwear to be delivered to a designated address.

74. Upon information and belief, at least after Defendants have had actual notice of the ‘235 patent and over Lyden’s continued objections, the Defendants have willfully infringed, and knowingly induced infringing acts with the specific intent to induce

another's infringement. Defendants continue to willfully infringe the '235 patent without justification.

75. Defendants' infringement has damaged or impaired the value of the '235 patent.

76. As a result of the above Defendants' infringement of the '235 patent, Lyden has suffered monetary damages that are compensable under 35 U.S.C. § 284 in an amount not yet determined but believed to be in excess of five million dollars (\$5,000,000.00), and Lyden will continue to suffer such monetary damages in the future unless Defendants' infringing activities are permanently enjoined by this Court.

77. Unless permanent injunctions are issued enjoining these Defendants and their agents, servants, employees, representatives, affiliates, and all others acting on their behalf from infringing the '235 patent, Lyden will be greatly and irreparably harmed.

78. This case presents exceptional circumstances within the meaning of 35 U.S.C. § 285 and Lyden is thus entitled to an award of his reasonable attorneys' fees.

THIRD CLAIM FOR RELIEF

(Infringement of U.S. Patent No. 7,016,867)

79. Plaintiff realleges and hereby incorporates by reference herein all of the factual allegations of the preceding paragraphs in their entirety.

80. Lyden is the owner of United States Patent No. 7,016,867 ("the '867 patent") entitled "Method Of Conducting Business Including Making and Selling A Custom Article Of Footwear." The '867 patent was issued on March 21, 2006.

81. Since its issuance on March 21, 2006, Defendants Adidas have been and now are

directly infringing the '867 patent in Oregon, in this judicial district, and elsewhere in the United States by, among other things, manufacturing, using, selling, importing and /or offering for sale TUNIT soccer shoes and related components that practice one or claims of the '867 patent, to the injury of Lyden. Exemplar infringing articles of the Adidas TUNIT soccer shoes that practice each step of Lyden's patented method and are manufactured, sold and /or offered for sale by Defendants, are shown in Exhibit G.

82. Adidas has been and is actively inducing infringement of the '867 patent and has contributed to infringement by retailers, customers, sponsored teams, promotional athletes, and sales personnel by making, using, selling and offering for sale TUNIT products constituting a material part of the invention of the '867 patent knowing the same to be especially made for use in an infringement of such patent, and not a staple article of commerce suitable for a substantial non-infringing use. Defendants are thus jointly and severally liable for infringement of the '867 patent pursuant to 35 U.S.C. § 271.

83. On information and belief, CMO Wahler directed and/or controlled the sales and marketing of infringing TUNIT products and actively and knowingly assisted with the infringement. Given his personal knowledge of the '867 patent covering the same subject matter and Lyden's communications to Wahler, CMO Wahler knew and intended his actions would induce or contribute to actual infringement, and his knowledge and actions are imputable to Adidas America, as well as the other Adidas Defendants.

84. Adidas directly and indirectly infringes (e.g., by contributory and inducement) at

least Claims 1, 2-4, 6-8, 11-13, 17-21, 25, 27-28, 30-31, 33-35, 38-39, 55, 65-67, 70-81 and 88 of the '867 patent. For example, directly infringes Claim 1 because Adidas alone, or with an agent acting on its behalf, performs the following steps in making TUNIT soccer shoes:

1. A method of conducting business including making and selling a custom article of footwear comprising the steps of:
 - a) Collecting data relating to an individual;
 - b) Creating from said collected data information and intelligence for making said custom article of footwear for said individual;
 - c) Providing a plurality of footwear components, and a plurality of variations of said footwear components, and including at least one fastening component;
 - d) Selecting from the plurality of footwear components sufficient footwear components for making said custom article of footwear having an anterior side, a posterior side, a medial side, a lateral side, a longitudinal axis, and a transverse axis, comprising an upper, a sole, said at least one fastening component, and cushioning means, said cushioning means adapted to be affixed in functional relation by said at least one fastening component (to) said upper and said sole;

- e) Providing said information and intelligence further comprising said selections to a physical location at which said custom article of custom footwear can be made;
- f) Removably securing a plurality of said selected sufficient footwear components in functional relation with said at least one fastening component and completing the assembly for making said custom article of footwear; and,
- g) Causing said custom article of footwear to be delivered to a designated address.

Adidas, with knowledge of the Lyden '867 patent, performs, or through an agent acting on its behalf, controls or directs each step of the patented method by manufacturing, supplying and distributing components and instructing retailers, sponsored teams, promotional athletes, customers, and/or sales personnel how to customize infringing TUNIT products that practice each step of Lyden's patented method. In particular, based on such acts of Adidas, retailers and others directly infringe Claim 1, for example, because each alone, or with an agent acting on its behalf, performs the following steps in making TUNIT soccer shoes:

1. A method of conducting business including making and selling a custom article of footwear comprising the steps of:
 - a) Collecting data relating to an individual;

- b) Creating from said collected data information and intelligence for making said custom article of footwear for said individual;
- c) Providing a plurality of footwear components, and a plurality of variations of said footwear components, and including at least one fastening component;
- d) Selecting from the plurality of footwear components sufficient footwear components for making said custom article of footwear having an anterior side, a posterior side, a medial side, a lateral side, a longitudinal axis, and a transverse axis, comprising an upper, a sole, said at least one fastening component, and cushioning means, said cushioning means adapted to be affixed in functional relation by said at least one fastening component (to) said upper and said sole;
- e) Providing said information and intelligence further comprising said selections to a physical location at which said custom article of custom footwear can be made;
- f) Removably securing a plurality of said selected sufficient footwear components in functional relation with said at least one fastening component and completing the assembly for making said custom article of footwear; and,
- g) Causing said custom article of footwear to be delivered to a designated address.

85. Upon information and belief, at least after Defendants have had actual notice of the ‘867 patent and over Lyden’s continued objections, the Defendants have willfully infringed, and knowingly induced infringing acts with the specific intent to induce another’s infringement. Defendants continue to willfully infringe the ‘867 patent without justification.
86. Defendants’ infringement has damaged or impaired the value of the ‘867 patent.
87. As a result of the above Defendants’ infringement of the ‘867 patent, Lyden has suffered monetary damages that are compensable under 35 U.S.C. § 284 in an amount not yet determined but believed to be in excess of five million dollars (\$5,000,000.00), and Lyden will continue to suffer such monetary damages in the future unless Defendants’ infringing activities are permanently enjoined by this Court.
88. Unless permanent injunctions are issued enjoining these Defendants and their agents, servants, employees, representatives, affiliates, and all others acting on their behalf from infringing the ‘867 patent, Lyden will be greatly and irreparably harmed.
89. This case presents exceptional circumstances within the meaning of 35 U.S.C. § 285 and Lyden is thus entitled to an award of his reasonable attorneys’ fees.

FOURTH CLAIM FOR RELIEF

(Infringement of U.S. Patent No. 6,601,042)

90. Plaintiff realleges and incorporates all of the factual allegations of the preceding paragraphs.

91. Lyden is the owner of United States Patent No. 6,601,042 (“the ‘042 patent”) entitled “Customized Article of Footwear and Method of Conducting Retail and Internet Business”. The ‘042 patent was issued on July 29, 2003.
92. Since its issuance on July 29, 2003, Defendants Adidas have been and now are directly infringing the ‘042 patent in Oregon, in this judicial district, and elsewhere in the United States by, among other things, manufacturing, using, selling, importing and /or offering for sale footwear and footwear components that infringe one or more claims of the ‘042 patent, to the injury of Lyden. Exemplar infringing articles of the Adidas TUNIT soccer shoes that practice each step of Lyden’s patented method and are manufactured, sold and /or offered for sale by Defendants are shown in Exhibit G.
93. Adidas has been and is actively inducing infringement of the ‘042 patent and has contributed to infringement by retailers, customers, sponsored teams, promotional athletes, and sales personnel by making, using, selling and offering for sale TUNIT products constituting a material part of the invention of the ‘042 patent knowing the same to be especially made for use in an infringement of such patent, and not a staple article of commerce suitable for a substantial non-infringing use. Defendants are thus jointly and severally liable for infringement of the ‘042 patent pursuant to 35 U.S.C. § 271.
94. On information and belief, CMO Wahler directed and/or controlled the sales and marketing of infringing TUNIT products and actively and knowingly assisted with the infringement. Given his personal knowledge of the ‘042 patent covering the same subject matter and Lyden’s communications to Wahler, CMO Wahler knew

and intended his actions would induce or contribute to actual infringement, and his knowledge and actions are imputable to Adidas America, as well as the other Adidas Defendants.

95. Adidas directly and indirectly infringes (e.g., by contributory and inducement) at least Claim 20. For example, Adidas directly infringes Claim 20 because Adidas alone, or with an agent acting on its behalf, performs the following steps in making TUNIT soccer shoes:

20. A method of conducting business including making and selling a custom article of footwear comprising the steps of: a) collecting data relating to an individual's preferences and the anatomical features and measurements of said individual's foot; b) creating information and intelligence for making said article of footwear for said individual; c) providing said information and intelligence to a physical location at which said article of footwear can be made; d) providing a plurality of footwear components, and a plurality of variations of each footwear component, said footwear components comprising footwear uppers, footwear spring elements, at least one mechanical fastener and footwear soles which are capable of being assembled to form said custom article of footwear using said at least one mechanical fastener, and each of the components being selectively interchangeable and being removable and replaceable; e) selecting a plurality of footwear components from the provided sources including at least an upper, a spring element, at least one

mechanical fastener, and a sole which can be selectively removed and replaced; f) removably securing said plurality of footwear components including said upper, said spring element, and said sole in functional relation with the at least one selected mechanical fastener, thereby making said custom article of footwear; and, g) causing said custom article of footwear to be delivered to a designated address.

Adidas, with knowledge of the Lyden '042 patent, performs, or through an agent acting on its behalf, controls or directs each step of the patented method by manufacturing, supplying and distributing components and instructing retailers, sponsored teams, promotional athletes, customers, and/or sales personnel how to customize infringing TUNIT products that practice each step of Lyden's patented method. In particular, based on such acts of Adidas, retailers and others directly infringe Claim 20, for example, because each alone, or with an agent acting on its behalf, performs the following steps in making TUNIT soccer shoes:

20. A method of conducting business including making and selling a custom article of footwear comprising the steps of: a) collecting data relating to an individual's preferences and the anatomical features and measurements of said individual's foot; b) creating information and intelligence for making said article of footwear for said individual; c) providing said information and intelligence to a physical location at which said article of footwear can be

made; d) providing a plurality of footwear components, and a plurality of variations of each footwear component, said footwear components comprising footwear uppers, footwear spring elements, at least one mechanical fastener and footwear soles which are capable of being assembled to form said custom article of footwear using said at least one mechanical fastener, and each of the components being selectively interchangeable and being removable and replaceable; e) selecting a plurality of footwear components from the provided sources including at least an upper, a spring element, at least one mechanical fastener, and a sole which can be selectively removed and replaced; f) removably securing said plurality of footwear components including said upper, said spring element, and said sole in functional relation with the at least one selected mechanical fastener, thereby making said custom article of footwear; and, g) causing said custom article of footwear to be delivered to a designated address.

96. Upon information and belief, at least after Defendants have had actual notice of the '042 patent and over Lyden's continued objections, the Defendants have willfully infringed, and knowingly induced infringing acts with the specific intent to induce another's infringement. Defendants continue to willfully infringe the '042 patent without justification.
97. Defendants' infringement has damaged or impaired the value of the '042 patent.

98. As a result of the above Defendants' infringement of the '042 patent, Lyden has suffered monetary damages that are compensable under 35 U.S.C. § 284 in an amount not yet determined but believed to be in excess of five million dollars (\$5,000,000.00), and Lyden will continue to suffer such monetary damages in the future unless Defendants' infringing activities are permanently enjoined by this Court.
99. Unless permanent injunctions are issued enjoining these Defendants and their agents, servants, employees, representatives, affiliates, and all others acting on their behalf from infringing the '042 patent, Lyden will be greatly and irreparably harmed. 103. This case presents exceptional circumstances within the meaning of 35 U.S.C. § 285 and Lyden is thus entitled to an award of his reasonable attorneys' fees.

PRAYER FOR RELIEF

WHEREFORE, Lyden request that this Court enter:

- 1) A judgment in favor of Lyden that Defendants have infringed, directly and indirectly, by way of inducing and/or contributing to the infringement of the '775, '235, '867, and/or '042 patents;
- 2) A permanent injunction, enjoining the Defendants and their officers, directors, agents, servants, affiliates, employees, divisions, branches subsidiaries, parents, and all others acting in concert or privity with any of them from infringement, including the infringement of, or contributing to the infringement of the '775, '235, '867, and '042 patents;

- 3) A judgment and order requiring Defendants to pay Lyden his damages, costs, expenses, and prejudgment and post-judgment interest for Defendants' infringement of the '775, '235, '867, and '042 patents as provided under U.S.C. § 284; An accounting for damages resulting from Defendants' infringement and contributing infringement and the trebling of such damages because of the knowing, willful and wanton nature of Defendants conduct.
- 4) An award to Lyden for enhanced damages resulting from the knowing, deliberate, and willful nature of the Defendants' prohibited conduct with notice being made at least as early as the respective dates of issuance of the '775, '235, '867, and '042 patents, as provided under 35 U.S.C. § 284;
- 5) A judgment and order disgorging Defendants of all profits unjustly earned because of its conversion in an amount to be determined by the trier of fact and to be increased as provided by applicable law due to Defendants knowing, deliberate, and willful violation of the law;
- 6) A judgment and order finding that this is an exceptional case within the meaning of 35 U.S.C. § 285 and awarding to Lyden his reasonable attorneys' fees;
- 7) For such other and further relief as the Court deems just and proper.

JURY TRIAL DEMAND

Plaintiff demands a trial by jury of all matters that are triable by a jury

DATED:_____.

By: /s/ Bradley M. Ganz
Bradley M. Ganz, OSB 94076
mail@ganzlaw.com
Ganz Law, P.C.
P.O. Box 2200
163 SE 2nd Avenue
Hillsboro, OR 97124
(503) 844-9009
Facsimile (503) 296-2172

Attorneys for Plaintiff
Robert M. Lyden