IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

EMKINETICS, INC., Plaintiff, v. CALA HEALTH, INC., Defendant.	C.A. No. _____ JURY TRIAL DEMANDED

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff EMKinetics, Inc., ("EMKinetics") files this Complaint for Patent Infringement against Defendant Cala Health, Inc. ("Cala Health" or "Defendant") and alleges as follows:

THE PARTIES

1. Plaintiff EMKinetics is a Delaware corporation with its principal place of business located at 101 Mississippi Street, San Francisco, California 94107.

2. Defendant Cala Health is a Delaware corporation with its principal place of business located at 1800 Gateway Drive, Suite 300, San Mateo, California 94404.

JURISDICTION AND VENUE

3. This patent infringement action arises under the U.S. Patent Act, 35 U.S.C. §§ 100 *et seq.*

4. This Court has subject matter jurisdiction over EMKinetic's patent infringement claims under the U.S. Patent Act pursuant to 28 U.S.C. § 1331 (federal question) and 28 U.S.C. § 1338(a) (patent).

5. This Court has personal jurisdiction over Cala Health because Cala Health is subject

to general and specific jurisdiction in the State of Delaware. Upon information and belief, Cala Health was organized and established under the laws of the State of Delaware, is domiciled in the State of Delaware, and maintains an agent for service of process in the State of Delaware.

6. Venue is proper in this District pursuant to 28 U.S.C. § 1400(b) at least because Cala Health resides within the State of Delaware within the meaning of 28 U.S.C. § 1400(b).

THE ASSERTED PATENTS

7. U.S. Patent No. 10,786,669 (the "'669 Patent"), entitled "Method and Apparatus for Transdermal Stimulation Over the Palmar and Plantar Surfaces," was duly and legally issued by the U.S. Patent and Trademark Office on September 29, 2020. EMKinetics is the owner by assignment of all right, title, and interest in and to the '669 Patent, including the right to recover for any and all infringement thereof. The '669 Patent is valid and enforceable. A true and correct copy of the '669 Patent is attached as **Exhibit A**.

8. U.S. Patent No. 11,628,300 (the "'300 Patent"), entitled "Method and Apparatus for Transdermal Stimulation Over the Palmar and Plantar Surfaces," was duly and legally issued by the U.S. Patent and Trademark Office on April 18, 2023. EMKinetics is the owner by assignment of all right, title, and interest in and to the '300 Patent, including the right to recover for any and all infringement thereof. The '300 Patent is valid and enforceable. A true and correct copy of the '300 Patent is attached as **Exhibit B**.

9. The '669 and '300 Patents (collectively, the "Asserted Patents") relate generally to energy emitting apparatuses and methods for providing a medical therapy.

10. Claim 1 of the '669 Patent, for example, recites a method for providing transdermal electrical stimulation therapy to a subject for treating tremors comprising: positioning a stimulator electrode over a skin surface overlying a target nerve or tissue which extends through a hand of

the subject; delivering electrical stimulation via a pulse generator transdermally through the skin surface and to the target nerve or tissue to stimulate the target nerve or tissue so that tremors experienced by the subject are mitigated; and detecting a motion from the subject via at least one sensor positioned on the subject.

11. Claim 7 of the ’300 Patent, for example, recites an apparatus for treating tremor in a subject, comprising: an applicator configured for application to a region of the subject; an electrode located along the applicator so as to contact a skin surface of the subject when the applicator is worn by the subject; a controller in communication with the electrode; and a sensor positionable on the subject and in communication with the controller, wherein the controller transmits via the electrode an electrical stimulation having an adjustable frequency through the skin surface and into a target nerve underlying the skin surface, wherein the sensor detects a motion of the subject and provides a feedback signal to the controller so as to mitigate the tremor by adjusting or optimizing the electrical stimulation.

COUNT I
INFRINGEMENT OF THE ’669 PATENT

12. EMKinetics incorporates by reference the allegations set forth in Paragraphs 1-11 as though fully set forth herein.

13. Cala Health has infringed, is infringing, and unless enjoined will continue to infringe at least Claim 1 of the ’669 Patent in violation of at least 35 U.S.C. § 271.

14. Cala Health and its users have directly infringed, are directly infringing, and unless enjoined will continue to directly infringe Claim 1 of the ’669 Patent in violation of 35 U.S.C. § 271(a) by performing the patented method recited in Claim 1 of the ’669 Patent without the authorization of EMKinetics, the owner of the ’669 Patent. Cala Health and its users directly infringe Claim 1 of the ’669 Patent at least by using the Trio and kIQ products (collectively, the

"Accused Products") to perform the recited method for providing transdermal electrical stimulation therapy to a subject for treating tremors.

15. Claim 1 of the '669 Patent recites "[a] method for providing transdermal electrical stimulation therapy to a subject for treating tremors."

16. Cala Health has described the Trio as follows: "Cala Trio is a small, lightweight, wrist-worn stimulator device designed to aid in essential tremor symptom relief by applying Transcutaneous Afferent Patterned Stimulation (TAPS) to the median and radial nerves of a patient's wrist. The Cala Trio system includes three main components: (1) a rechargeable stimulator, (2) a wrist-worn electrode band, and (3) a base station that charges the device." (Cala Health, 510(k) Summary / 510(k): Device Modification [K203288], p. 2, Oct. 4, 2021).

17. Cala Health has described the kIQ as follows: "Cala kIQ is a small, lightweight, wrist-worn stimulator device designed to aid in the relief of hand tremors by applying a calibrated Transcutaneous Afferent Patterned Stimulation (TAPS) to the median and radial nerves of a patient's wrist…. Cala kIQ is comprised of the following components: Stimulator: Contains sensors, electronics, and firmware for delivering TAPS therapy and provides user interface; Band: Contains multi-use, conductive electrodes spaced at intervals to align with targeted nerves and attachment points for Cala kIQ Stimulator; Base Station: Provides charging function and contains an indicator light to alert the user to operating conditions." (Cala Health, 510(k) Summary [K222237], Pt. IV, July 22, 2022).

18. Claim 1 of the '699 Patent further recites "positioning a stimulator electrode over a skin surface overlying a target nerve or tissue which extends through a hand of the subject."

19. Cala Health has described the Trio as including a "[w]rist-worn band with three 4.84 cm^2 electrodes embedded in the band." (Cala Health, 510(k) Summary / 510(k): Device

Modification [K203288], p. 4, Oct. 4, 2021). Cala Health has explained that the Trio includes at least one electrode positioned over a smooth skin surface (inner wrist) overlying a target nerve or tissue which extends through a hand of the subject:

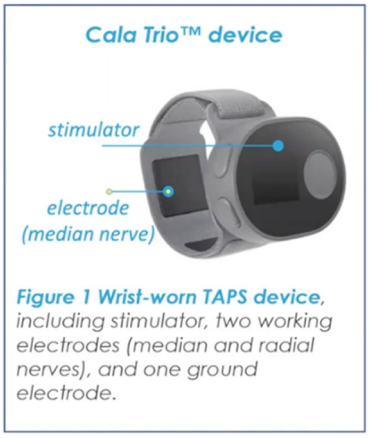
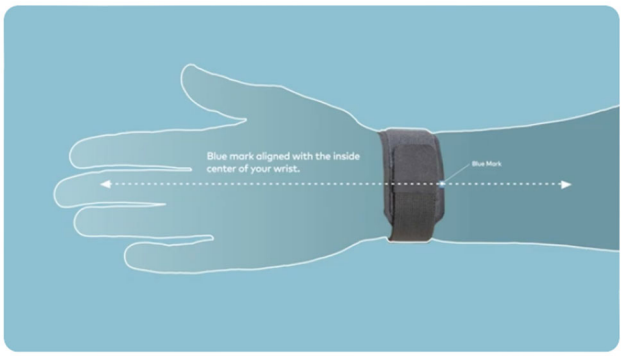


Figure 1 Wrist-worn TAPS device, including stimulator, two working electrodes (median and radial nerves), and one ground electrode.

(Cala Health, Telemedicine, Essential Tremor and Cala Trio: A Panel Discussion, Mar. 5, 2021).



(Cala Health, Getting Started with Cala Trio, Apr. 2, 2021).

20. Cala Health has described the kIQ as including "2 common electrodes paired with 2 active electrodes." (Cala Health, 510(k) Summary [K222237], Tbl. 1, July 22, 2022). Cala Health has stated that the kIQ band "[c]ontains multi-use, conductive electrodes spaced at intervals to align with targeted nerves and attachment points for Cala kIQ Stimulator." (Cala Health, 510(k) Summary [K222237], Pt. IV, July 22, 2022). Cala Health has published photos of the kIQ including at least one electrode positioned over a smooth skin surface (inner wrist) overlying a target nerve or tissue which extends through a hand of the subject:

(Cala Health, The Cala kIQ System Transcutaneous Afferent Patterned Stimulation (TAPS) Therapy, p. 1, 2023).

21. Claim 1 of the ’699 Patent further recites “delivering electrical stimulation via a pulse generator transdermally through the skin surface and to the target nerve or tissue to stimulate the target nerve or tissue so that tremors experienced by the subject are mitigated.”

22. Cala Health has described the design and operation of Trio as follows: “To deliver therapy, the stimulator is attached to the wrist band, which includes integrated electrodes placed at appropriate intervals around the inner diameter of the band to properly target the median and radial nerves. (Cala Health, 510(k) Summary / 510(k): Device Modification [K203288], p. 4, Oct. 4, 2021). According to Cala Health, the “[p]ulse [d]uration” on the Trio is 650 microseconds. (*Id.*).

23. Cala Health has described the design and operation of kIQ as follows: “The Cala kIQ Stimulator is attached to the Cala kIQ band, which includes embedded electrodes placed at appropriate intervals to properly target the median and radial nerves.” (Cala Health, 510(k) Summary [K222237], Pt. IV, July 22, 2022). According to Cala Health, the “[p]ulse [d]uration” on the kIQ is 650 microseconds. (Cala Health, 510(k) Summary [K222237], Tbl. 1, July 22, 2022).

24. Claim 1 of the ’669 Patent further recites “detecting a motion from the subject via at least one sensor positioned on the subject.”

25. Cala Health has described the Trio as including “[d]evice sensors (triaxial

accelerometer) measure tremor motion." (Cala Health, 510(k) Summary / 510(k): Device Modification [K203288], p. 6, Oct. 4, 2021).

26. Cala Health has stated that the kIQ stimulator as "[c]ontains sensors, electronics, and firmware for delivering TAPS therapy and provides user interface." (Cala Health, 510(k) Summary [K222237], Pt. IV, July 22, 2022). Cala Health has further stated regarding the kIQ that, "[d]uring device setup, the patient performs a postural hold, during which the onboard sensors measure the tremor frequency which is then used to customize the TAPS output pattern to deliver therapy to the median and radial nerves at the appropriate, patient-specific, optimal stimulation frequency." (*Id.*).

27. Cala Health has with specific intent actively induced, is actively inducing, and unless enjoined will continue to actively induce infringement of Claim 1 of the '669 Patent in violation of 35 U.S.C. § 271(b). Upon information and belief, Cala Health actively encouraged, actively encourages, and unless enjoined will continue to actively encourage its users to use the Accused Products in a manner that infringes Claim 1 of the '669 Patent. For example and without limitation, Cala Health promotes and markets the Accused Products to its users as having the capability to perform the patented method. Cala Health also provides users of the Accused Products with detailed instructions (*see, e.g.*, https://calahealth.com/help-center/cala-kiq-system-support/; https://calahealth.com/help-center/how-does-cala-trio-work/; https://calahealth.com/terms/indications-for-use/) on how to perform the patented method. Upon information and belief, Cala Health learned of the existence of the '669 Patent no later than September 29, 2020, via licensing discussions among the parties that commenced in 2020 and, since at least such time, has known that the acts it has induced users to perform constitute infringement of Claim 1 of the '669 Patent. Upon information and belief, Cala Health's active encouragement and inducement of its users to

infringe Claim 1 of the ’669 Patent has actually caused such users to infringe Claim 1 of the ’669 Patent. Cala Health is therefore liable to EMKinetics as an infringer pursuant to 35 U.S.C. § 271(b).

28. Cala Health has with specific intent contributed, is contributing, and unless enjoined will continue to contribute to the infringement of Claim 1 of the ’669 Patent in violation of 35 U.S.C. § 271(c). Cala Health has offered to sell and has sold, is offering to sell and is selling, and unless enjoined will continue to offer to sell and to sell within the United States and/or has imported, is importing, and unless enjoined will continue to import into the United States an apparatus (*e.g.*, the Accused Products) for use in practicing the method recited in Claim 1 of the ’669 Patent, constituting a material part of the claimed invention. Upon information and belief, Cala Health learned of the existence of the ’669 Patent no later than September 29, 2020, and, since at least such time, has known the Accused Products to be especially made or especially adapted for use in an infringement of Claim 1 of the ’669 Patent. The Accused Products are not staple articles or commodities of commerce suitable for substantial noninfringing use. Cala Health is therefore liable to EMKinetics as a contributory infringer pursuant to 35 U.S.C. § 271(c).

29. Thus, Cala Health has injured EMKinetics and is liable to Cala Health for directly and/or indirectly infringing one or more claims of the ’669 Patent, whether literally or under the doctrine of equivalents, including without limitation Claim 1 of the ’669 Patent.

30. As a result of Cala Health’s infringement of the ’669 Patent, EMKinetics has suffered and will continue to suffer monetary damages and seeks recovery, in an amount to be proven at trial, adequate to compensate EMKinetics for Cala Health’s infringement but in no event less than a reasonable royalty with interests and costs.

31. As a further result of Cala Health’s infringement of the ’669 Patent, EMKinetics has suffered irreparable harm and will continue to suffer irreparable harm for which there is no

adequate remedy at law, unless enjoined by the Court.

32. Upon information and belief, Cala Health has had and continues to have the specific intent to infringe Claim 1 of the ’669 Patent through its deliberate and intentional infringement or, alternatively, through its willfully blind disregard of the ’669 Patent by knowing there was a high probability of infringement but taking deliberate actions to avoid confirming that infringement. Upon information and belief, Cala Health learned of the existence of the ’669 Patent no later than September 29, 2020, and, since at least such time, has deliberately, intentionally, and willfully infringed the ’669 Patent. Accordingly, Cala Health’s infringement of the ’669 Patent has been and continues to be deliberate, intentional, and willful, and this action is therefore an exceptional case warranting an award of enhanced damages and attorneys’ fees and costs pursuant to 35 U.S.C. §§ 284 and 285.

33. EMKinetics has not, during the term of the ’669 Patent, commercially practiced the ‘669 patent in the U.S. and therefore was under no duty to mark any products with the ’669 Patent under 35 U.S.C. § 287.

COUNT II
INFRINGEMENT OF THE ’300 PATENT

34. EMKinetics incorporates by reference the allegations set forth in Paragraphs 1-33 as though fully set forth herein.

35. Cala Health has infringed, is infringing, and unless enjoined will continue to infringe at least Claim 7 of the ’300 Patent in violation of at least 35 U.S.C. § 271.

36. Cala Health and its users have directly infringed, are directly infringing, and unless enjoined will continue to directly infringe Claim 7 of the ’300 Patent in violation of 35 U.S.C. § 271(a) by making, using, offering to sell, and/or selling within the United States and/or importing into the United States the Accused Products, which are covered by at least Claim 7 of the ’300

Patent, without the authorization of EMKinetics, the owner of the ’300 Patent.

37. Claim 7 of the ’300 Patent recite “[a]n apparatus for treating tremor in a subject.”

38. Cala Health has described the Trio as follows: “Cala Trio is a small, lightweight, wrist-worn stimulator device designed to aid in essential tremor symptom relief by applying Transcutaneous Afferent Patterned Stimulation (TAPS) to the median and radial nerves of a patient’s wrist.” (Cala Health, 510(k) Summary / 510(k): Device Modification [K203288], p. 2, Oct. 4, 2021).

39. Cala Health has described the kIQ as follows: “Cala kIQ is a small, lightweight, wrist-worn stimulator device designed to aid in the relief of hand tremors by applying a calibrated Transcutaneous Afferent Patterned Stimulation (TAPS) to the median and radial nerves of a patient’s wrist.” (Cala Health, 510(k) Summary [K222237], Pt. IV, July 22, 2022).

40. Claim 7 of the ’300 Patent further recites “an applicator configured for application to a region of the subject.”

41. Cala Health has described the Trio as follows: “The Cala Trio system includes … a wrist-worn electrode band….” (Cala Health, 510(k) Summary / 510(k): Device Modification [K203288], p. 2, Oct. 4, 2021).

42. Cala Health has described the kIQ as follows: “Cala kIQ is comprised of the following components: … Band: Contains multi-use, conductive electrodes spaced at intervals to align with targeted nerves and attachment points for Cala kIQ Stimulator….” (Cala Health, 510(k) Summary [K222237], Pt. IV, July 22, 2022).

43. Claim 7 of the ’300 Patent further recites “an electrode located along the applicator so as to contact a skin surface of the subject when the applicator is worn by the subject.”

44. Cala Health has described the Trio as including a “[w]rist-worn band with three

4.84 cm^2 electrodes embedded in the band." (Cala Health, 510(k) Summary / 510(k): Device Modification [K203288], p. 4, Oct. 4, 2021). Cala Health has explained that the Trio includes at least one electrode positioned over a smooth skin surface (inner wrist) overlying a target nerve or tissue which extends through a hand of the subject:

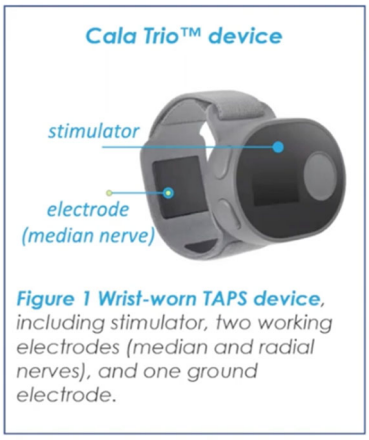
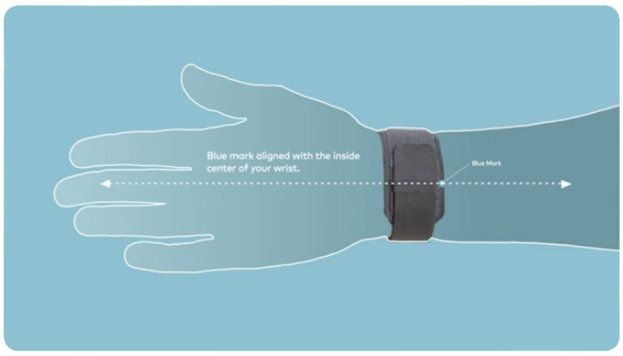


Figure 1 Wrist-worn TAPS device, including stimulator, two working electrodes (median and radial nerves), and one ground electrode.

(Cala Health, Telemedicine, Essential Tremor and Cala Trio: A Panel Discussion, Mar. 5, 2021).



(Cala Health, Getting Started with Cala Trio, Apr. 2, 2021).

45. Cala Health has described the kIQ as including "2 common electrodes paired with 2 active electrodes." (Cala Health, 510(k) Summary [K222237], Tbl. 1, July 22, 2022). Cala Health has stated that the kIQ band "[c]ontains multi-use, conductive electrodes spaced at intervals to align with targeted nerves and attachment points for Cala kIQ Stimulator." (Cala Health, 510(k) Summary [K222237], Pt. IV, July 22, 2022). Cala Health has published photos of the kIQ including at least one electrode positioned over a smooth skin surface (inner wrist) overlying a target nerve or tissue which extends through a hand of the subject:

(Cala Health, The Cala kIQ System Transcutaneous Afferent Patterned Stimulation (TAPS) Therapy, p. 1, 2023).

46. Claim 7 of the '300 Patent further recites "a controller in communication with the electrode."

47. Cala Health has described the Trio as follows: "The Cala Trio system includes … a rechargeable stimulator…. The stimulator component contains the electronics for delivering TAPS to the patient's wrist." (Cala Health, 510(k) Summary / 510(k): Device Modification [K203288], p. 2, Oct. 4, 2021). Cala Health has described the design and operation of Trio as follows: "To deliver therapy, the stimulator is attached to the wrist band, which includes integrated electrodes placed at appropriate intervals around the inner diameter of the band to properly target the median and radial nerves. (Cala Health, 510(k) Summary / 510(k): Device Modification [K203288], p. 4, Oct. 4, 2021).

48. Cala Health has described the kIQ as follows: "Cala kIQ is comprised of the following components: Stimulator: Contains sensors, electronics, and firmware for delivering TAPS therapy and provides user interface…." (Cala Health, 510(k) Summary [K222237], Pt. IV, July 22, 2022). Cala Health has described the design and operation of kIQ as follows: "The Cala kIQ Stimulator is attached to the Cala kIQ band, which includes embedded electrodes placed at appropriate intervals to properly target the median and radial nerves." (Cala Health, 510(k)

Summary [K222237], Pt. IV, July 22, 2022).

49. Claim 7 of the ’300 Patent further recites “a sensor positionable on the subject and in communication with the controller, wherein the controller transmits via the electrode an electrical stimulation having an adjustable frequency through the skin surface and into a target nerve underlying the skin surface."

50. Cala Health has described the Trio as including “[d]evice sensors (triaxial accelerometer) measure tremor motion.” (Cala Health, 510(k) Summary / 510(k): Device Modification [K203288], p. 6, Oct. 4, 2021). The Trio includes a “[s]timulator with on-board motion sensors that is detachable from wristband.” (Cala Health, 510(k) Summary / 510(k): Device Modification [K203288], p. 4, Oct. 4, 2021). Cala Health has stated that the predicate device for the Cala Trio is the Cala ONE, and that the two devices have the “[s]ame” intended use of “[d]elivery of transcutaneous afferent patterned stimulation (TAPS) for hand tremors in essential tremor patients.” (Cala Health, 510(k) Summary / 510(k): Device Modification [K203288], p. 3, Oct. 4, 2021). Cala Health has described the stimulation pattern for the Cala ONE as follows: “The Cala ONE stimulation pattern … is tremor-customized (based on the patient’s measured tremor frequency) and is delivered transcutaneously to the median and radial nerves of a patient’s wrist.” (Cala Health, De Novo Classification Request for Cala ONE [DEN170028],” p. 2, May 17, 2017).

51. Cala Health has stated that the kIQ stimulator “[c]ontains sensors, electronics, and firmware for delivering TAPS therapy and provides user interface.” (Cala Health, 510(k) Summary [K222237], Pt. IV, July 22, 2022). Cala Health has further stated regarding the kIQ that, “[d]uring device setup, the patient performs a postural hold, during which the onboard sensors measure the tremor frequency which is then used to customize the TAPS output pattern to deliver therapy to the median and radial nerves at the appropriate, patient-specific, optimal stimulation frequency.”

(*Id.*).

52. Claim 7 of the '300 Patent further recites "wherein the sensor detects a motion of the subject and provides a feedback signal to the controller so as to mitigate the tremor by adjusting or optimizing the electrical stimulation."

53. Cala Health has stated that, "[d]uring stimulator setup, Cala Trio learns about your tremor and personalizes therapy according to its characteristics." (Cala Health, Trio Patient Guide, p. 14, Aug. 2019). As previously explained, upon information and belief, Cala Trio learns about the patient's tremor using at least one sensor to detect motion and provides this information to the stimulator so as to adjust or optimize the electrical stimulation.

54. Cala Health has stated, regarding kIQ, that "[t]he TAPS output pattern is calibrated to the individual patient's tremor frequency. During device setup, the patient performs a postural hold, during which the onboard sensors measure the tremor frequency which is then used to customize the TAPS output pattern to deliver therapy to the median and radial nerves at the appropriate, patient-specific, optimal stimulation frequency." (Cala Health, 510(k) Summary [K222237], Pt. IV, July 22, 2022). Cala Health as further stated that kIQ "delivers therapy that is individualized to your tremor signature …. The Cala kIQ device senses your hand tremor signature pattern. Your therapy is then delivered noninvasively through the wrist to counteract your tremor." (Cala Health, Meet Cala kIQ, June 12, 2023).

55. Cala Health has with specific intent actively induced, is actively inducing, and unless enjoined will continue to actively induce infringement of Claim 7 of the '300 Patent in violation of 35 U.S.C. § 271(b). Upon information and belief, Cala Health actively encouraged, actively encourages, and unless enjoined will continue to actively encourage its users to use the Accused Products, which are covered by at least Claim 7 of the '300 Patent. For example and

without limitation, Cala Health provides users of the Accused Products with detailed instructions (*see, e.g.*, https://calahealth.com/help-center/cala-kiq-system-support/; https://calahealth.com/help-center/how-does-cala-trio-work/; https://calahealth.com/terms/indications-for-use/) on how to use such products. Upon information and belief, Cala Health learned of the existence of the '300 Patent no later than April 18, 2023, via licensing discussions among the parties that commenced in 2020 and, since at least such time, has known that the acts it has induced users to perform constitute infringement of Claim 7 of the '300 Patent. Upon information and belief, Cala Health's active encouragement and inducement of its users to infringe Claim 7 of the '300 Patent has actually caused such users to infringe Claim 7 of the '300 Patent. Cala Health is therefore liable to EMKinetics as an infringer pursuant to 35 U.S.C. § 271(b).

56. Cala Health has with specific intent contributed, is contributing, and unless enjoined will continue to contribute to the infringement of Claim 7 of the '300 Patent in violation of 35 U.S.C. § 271(c). Cala Health has offered to sell and has sold, is offering to sell and is selling, and unless enjoined will continue to offer to sell and to sell within the United States and/or has imported, is importing, and unless enjoined will continue to import into the United States a component of a patented machine, manufacture, combination or composition (*e.g.*, the Accused Products), constituting a material part of the claimed invention. Upon information and belief, Cala Health learned of the existence of the '300 Patent no later than April 18, 2023, and, since at least such time, has known the Accused Products to be especially made or especially adapted for use in an infringement of Claim 7 of the '300 Patent. The Accused Products are not staple articles or commodities of commerce suitable for substantial noninfringing use. Cala Health is therefore liable to EMKinetics as a contributory infringer pursuant to 35 U.S.C. § 271(c).

57. Thus, Cala Health has injured EMKinetics and is liable to Cala Health for directly

and/or indirectly infringing one or more claims of the ’300 Patent, whether literally or under the doctrine of equivalents, including without limitation Claim 7 of the ’300 Patent.

58. As a result of Cala Health’s infringement of the ’300 Patent, EMKinetics has suffered and will continue to suffer monetary damages and seeks recovery, in an amount to be proven at trial, adequate to compensate EMKinetics for Cala Health’s infringement but in no event less than a reasonable royalty with interests and costs.

59. As a further result of Cala Health’s infringement of the ’300 Patent, EMKinetics has suffered irreparable harm and will continue to suffer irreparable harm for which there is no adequate remedy at law, unless enjoined by the Court.

60. Upon information and belief, Cala Health has had and continues to have the specific intent to infringe Claim 7 of the ’300 Patent through its deliberate and intentional infringement or, alternatively, through its willfully blind disregard of the ’300 Patent by knowing there was a high probability of infringement but taking deliberate actions to avoid confirming that infringement. Upon information and belief, Cala Health learned of the existence of the ’300 Patent no later than April 18, 2023, and, since at least such time, has deliberately, intentionally, and willfully infringed the ’300 Patent. Accordingly, Cala Health’s infringement of the ’300 Patent has been and continues to be deliberate, intentional, and willful, and this action is therefore an exceptional case warranting an award of enhanced damages and attorneys’ fees and costs pursuant to 35 U.S.C. §§ 284 and 285.

61. EMKinetics has not, during the term of the ’300 Patent, commercially practiced the ‘300 patent in the U.S. and therefore was under no duty to mark any products with the ’300 Patent under 35 U.S.C. § 287.

PRAYER FOR RELIEF

WHEREFORE, EMKinetics respectfully requests that this Court enter judgment against Defendant Cala Health, as follows:

A. Adjudging that Defendant has directly and/or indirectly infringed the Asserted Patents literally and/or under the doctrine of equivalents, in violation of 35 U.S.C. § 271(a)-(c);

B. An award of damages to be paid by Defendant after a full accounting adequate to compensate EMKinetics for Defendant's past infringement and any continuing or future infringement up until the date such judgment is entered, and in no event less than a reasonable royalty, including interest, costs, and disbursements pursuant to 35 U.S.C. § 284 and, if necessary to adequately compensate EMKinetics for Defendant's infringement, an accounting of all infringing sales including, but not limited to, those sales not presented at trial;

C. Awarding EMKinetics all damages, including treble damages, based on any infringement found to be willful or otherwise egregious, pursuant to 35 U.S.C. § 284;

D. Ordering Defendant to continue to pay royalties to EMKinetics for infringement of the Asserted Patents on a going-forward basis;

E. Pursuant to 35 U.S.C. § 283, permanently enjoining Defendant, its officers, agents, servants, employees, attorneys, instrumentalities, and those persons in privity, active concert, or participation with them, from further acts of direct and/or indirect infringement of the Asserted Patents, including the manufacture, use, sale, offer for sale, and importation of the Accused Products;

F. Adjudging that this case be exceptional under 35 U.S.C. § 285 and awarding enhanced damages, including costs and attorneys' fees, to EMKinetics;

G. Awarding EMKinetics pre-judgment and post-judgment interest at the maximum

rate permitted by law on its damages; and

H. Granting EMKinetics such further relief as this Court deems just and proper under the circumstances.

DEMAND FOR JURY TRIAL

EMKinetics demands a trial by jury on all claims and issues so triable.

Dated: February 23, 2024

Respectfully submitted,

FARNAN LLP

/s/ Michael J. Farnan

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Michael J. Farnan (Bar No. 5165)
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