

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

TOSOH CORPORATION

Plaintiff,

vs.

DENTAL DIRECKT GMBH

Defendant.

CIVIL ACTION NO. 2:24-CV-138

**COMPLAINT FOR PATENT
INFRINGEMENT**

JURY TRIAL DEMANDED

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff Tosoh Corporation (“**Tosoh**” or “**Plaintiff**”), by way of this Complaint against Dental Direkt GmbH (“**Dental Direkt**” or “**Defendant**”), alleges as follows:

THE PARTIES

1. Tosoh is a corporation organized under the laws of Japan with a principal place of business located at 3-8-2, Shiba, Minato-ku, Tokyo 105-8623 Japan.

2. Tosoh Corporation was established in 1935 and is the parent company of a chemical and specialty products and materials group that comprises over 100 companies worldwide and a workforce of more than 12,000 people. Tosoh is listed on the Prime Market of the Tokyo Stock Exchange. Since its formation, Tosoh has built balanced product lines of commodity chemicals for industry and specialty products and materials for high technology and various niche markets. Tosoh’s principal markets include the chemical and petrochemical, construction, automotive, consumer electronics, information technology, bioscience, and environmental markets.

3. Tosoh has been an innovator in the development of yttria-stabilized zirconia powder and is the world leader in zirconia powder production. Yttria is the common name for Yttrium oxide (Y_2O_3). Yttria-stabilized zirconia is a ceramic in which the cubic and/or tetragonal crystal structure of zirconium dioxide is made stable at room temperature by an addition of yttria. Tosoh's novel yttria-stabilized zirconia powders yield dental restorations with the natural look and feel of real teeth with realistic translucency and the capability of precise shading to match existing teeth and/or dental works.

4. On information and belief, Defendant is a German corporation with a principal place of business at Industriezentrum 106– 108, 32139 Spenge, Germany.

JURISDICTION AND VENUE

5. This action arises under the patent laws of the United States; Title 35 of the United States Code. The jurisdiction of this Court is proper under Title 35 U.S.C. § 271, *et seq.* and 28 U.S.C. §§ 1331 and 1338.

6. Defendant is a foreign corporation with no regular place of business in the United States. Defendant sells its products in the United States with the intent and understanding that its products will be available for purchase throughout the United States without limitation. In 2022, Defendant entered into an exclusive distributorship to facilitate and ensure “the United States and Canada will have access to the most expansive and advance [sic] zirconia portfolio in the market today, combined with accelerated distribution time and superb customer service.” (Exhibit 3). Thus, Defendant has taken affirmative steps to ensure its products would be offered for sale and available for purchase throughout, *inter alia*, the United States, the State of Texas and this Judicial District.

7. This Court has personal jurisdiction over Defendant, as Defendant has committed acts of patent infringement in the United States, the State of Texas, and the Eastern District of Texas. Defendant has sufficient minimum contacts with the forum as a result of its business within Texas and this District. On information and belief, Defendant—directly or through intermediaries including distributors, retailers, and others—sells, offers for sale, distributes, advertises, and markets products, yttria-stabilized zirconia products that infringe the Asserted Patents, throughout Texas and this District. Defendant acts in concert with others to purposefully and voluntarily place the infringing products in a distribution chain that foreseeably leads to infringing products being offered for sale, sold, and used in Texas and this District as part of the ordinary stream of commerce. Defendant has done so with the expectation that infringing products have been, and will continue to be, purchased in Texas and this District and that such purchases be part of the ordinary stream of commerce throughout Texas and this District, which conduct has led to foreseeable harm and injury to Tosoh.

8. Defendant has established minimum contacts with this forum and has availed itself of the benefits of this forum. Accordingly, the exercise of personal jurisdiction over Defendant does not offend traditional notions of fair play and substantial justice.

9. Alternatively, to the extent that Defendant is not subject to jurisdiction in any state court of general jurisdiction, this Court may exercise jurisdiction over Defendant pursuant to Rule 4(k)(2) of Federal Rules of Civil Procedure. Tosoh's claims arise under federal law, and Defendant has sufficient contacts with the United States as a whole, including by selling, offering for sale, distributing, importing, and/or marketing infringing products into the United States with the intent and effect that the Accused Instrumentalities (defined below) will be available for sale throughout

the United States, such that this Court's exercise of jurisdiction over Defendant satisfies due process.

10. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(c). Defendant is a foreign corporation and may be sued in any judicial district, including this District.

NATURE OF THE ACTION

11. Tosoh is the owner of all rights, title and interest in United States Patent Nos. 9,249,056 B2 (**"the '056 Patent"**) and 9,309,157 B2 (**"the '157 Patent"**)(collectively **"the Asserted Patents"**).

12. A copy of the '056 Patent is submitted herewith as Exhibit 1.

13. A copy of the '157 Patent is submitted herewith as Exhibit 2.

14. Defendant has designed, manufactured, imported, marketed, distributed, promoted, sold and/or offered for sale infringing certain zirconia products in the United States and/or causing such products to be sold in the United States, which products when used as instructed/intended infringe one or more claims of the Asserted Patents.

15. On information and belief, Defendant actively induces and/or contributes to the infringement of one or more claims of the '056 Patent, including at least Claim 1, by using, selling, offering for sale and/or importing certain zirconia products for use in dental applications (**"the '056 Accused Products"**). The '056 Accused Products include, but are not limited to, Defendant's DDBioZX² (A₂) and Nacera Pearl Shaded A₂ products. Claim charts demonstrating how each and every element of Claim 1 of the '056 Patent is met by the '056 Accused Products when used as intended and instructed by the Defendant are submitted herewith as Exhibits 4 and 5.

16. On information and belief, Defendant actively induces and/or contributes to the infringement of one or more claims of the '157 Patent, including at least Claim 1, by using, selling,

offering for sale and/or importing certain zirconia products for use in dental applications, (“**the ‘157 Accused Products’**”). The ‘157 Accused Products include, but are not limited to, Defendant’s DDBioZX² (white), DDcubeONE (white), and Nacera Pearl 1 products. Claim charts demonstrating how each and every element of Claim 1 of the ‘157 Patent is met by the ‘157 Accused Products when used as intended and instructed by the Defendant are submitted herewith as Exhibits 6, 7, and 8.

17. The ‘056 Accused Products and the ‘157 Accused Products are referred to collectively hereinafter as the “**Accused Instrumentalities.**”

18. On information and belief, Defendant manufactures the Accused Instrumentalities outside of the United States and imports and/or causes them to be imported into the United States, thereby placing the Accused Instrumentalities into the stream of United States commerce with the intent that such products will be, *inter alia*, used, offered for sale, and sold throughout the United States including within Texas and this Judicial District.

19. On information and belief, prior to December 2022, the Accused Instrumentalities were sold by Defendant directly from its location in Germany, Doceram Medical Ceramics GmbH (“Doceram”) located in Dortmund, Germany, and/or Nacera US, Inc. (“Nacera”) located in Freehold, New Jersey.

20. On information and belief, Nacera no longer exists as an ongoing business entity.

21. On information and belief, Nacera’s interests were wholly acquired by the Defendant.

22. On information and belief, Doceram no longer exists as an ongoing business entity.

23. On information and belief, Doceram’s interests were wholly acquired by Defendant.

24. On information and belief, Defendant entered into an agreement with VITA North America, Inc. (“VITA”) in or around December 2022, whereby VITA became the exclusive distributor of Defendant’s products within at least the United States.

THE ASSERTED PATENTS

25. The ‘056 Patent is entitled “COLORED TRANSLUCENT ZIRCONIA SINTERED BODY AND ITS USE.” (Exhibit 1).

26. The ‘056 Patent lawfully issued on February 2, 2016.

27. The ‘056 Patent discloses, *inter alia*, novel zirconia sintered bodies having not only high strength but also excellent aesthetic properties. These include, *inter alia*, colored translucent zirconia sintered bodies, having aesthetic properties equivalent to those of natural teeth and, therefore, are particularly suitable for dental applications such as an artificial tooth material or the like, and as an orthodontic bracket.

28. The ‘056 Patent claims, *inter alia*, a novel colored translucent zirconia sintered body, comprising at least one iron compound selected from the group consisting of iron chloride, iron nitrate, iron oxide and iron oxide hydroxide, yttria in the amount of from 2 to 4 mol %, and alumina in the amount of 0 wt % to less than 0.25 wt %, wherein the colored translucent zirconia sintered body has a lightness L^* of from 51 to 80 in $L^*a^*b^*$ color system, and has a relative density of at least 99.80%.

29. The “entire and exclusive right, title, and interest” in and to the ‘056 Patent was assigned to Tosoh on January 28, 2014. Tosoh, therefore, owns all rights in the ‘056 Patent, including the right to enforce the claims of the ‘056 Patent against any and all infringers. (Exhibit 1).

30. The '157 Patent is entitled "TRANSLUCENT ZIRCONIA SINTERED BODY, PROCESS FOR PRODUCING THE SAME, AND USE OF THE SAME." (Exhibit 2).

31. The '157 Patent lawfully issued on April 12, 2016.

32. The '157 Patent discloses, *inter alia*, novel zirconia sintered bodies having not only high strength but also excellent aesthetic properties. These include, *inter alia*, translucent zirconia sintered bodies, having aesthetic properties equivalent to those of natural teeth and, therefore, are particularly suitable for dental applications such as denture material and as an orthodontic bracket.

33. The '157 Patent claims, *inter alia*, a novel translucent zirconia sintered body characterized by comprising zirconia which contains 2-4 mol % yttria as a stabilizer and has an alumina content of lower than 0.1 wt %, and by having a relative density of 99.8% or higher and a total light transmittance, as measured at a thickness of 1.0 mm, of 35% or higher; wherein relative density means the value obtained by measuring an actual density ρ by the Archimedes method, determining a theoretical density ρ_0 using the following equation (2), and converting these density values to the proportion (ρ/ρ_0) times 100(%), and in equation (2), the theoretical density of alumina and the theoretical density of zirconia containing 3 mol % yttria were taken as 3.987 (g/cm³) and 6.0956 (g/cm³), respectively, $\rho_0=100/[(X/3.987)+(100-X)/6.0956]$, with X being alumina content (% by weight).

34. The "entire and exclusive right, title, and interest" in and to the '157 Patent was assigned to Tosoh on September 28, 2010. Tosoh, therefore, owns all rights in the '157 Patent, including the right to enforce the claims of the '157 Patent against any and all infringers. (Exhibit 2).

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COUNT I

(Willful Infringement of the '056 Patent)

35. Defendant has been and now is indirectly infringing by way of inducing infringement and/or contributing to the infringement of the '056 Patent in the State of Texas, in this Judicial District, and elsewhere in the United States by using, causing to be used, offering to sell, causing to be offered for sale, selling, importing and/or causing to be imported the '056 Accused Products, including but not limited to Defendant's DDBioZX² (A₂) and Nacera Pearl Shaded A2 products, for use in dental applications. Thus, Defendant is liable for infringement of the '056 Patent pursuant to 35 U.S.C. § 271 (b) and/or (c).

36. On information and belief, Defendant indirectly infringes the Asserted Patents in violation of 27 U.S.C. § 271(b) by actively inducing its direct and indirect customers, including its exclusive distributor VITA and customers throughout the United States to which the '056 Accused Products are sold, to directly infringe one or more claims of the '056 Patent, including at least Claim 1 thereof, in violation of 35 U.S.C. § 271(a). Such infringing products include, *inter alia*, Defendant's DDBioZX² (A₂) and Nacera Pearl Shaded A2 products.

37. Representative claim charts are submitted herewith as Exhibits 4 and 5, which claim charts are incorporated as if recited in full herein, demonstrate that the Defendant's DDBioZX² (A₂) and Nacera Pearl Shaded A2 products meet each and every limitation when used as intended and instructed by the Defendant and therefore infringe one or more claims of the '056 Patent, including at least Claim 1 thereof.

38. The '056 Accused Products, including but not limited to Defendant's DDBioZX² (A₂) and Nacera Pearl Shaded A2 products, are especially designed and intended for use and promoted by Defendant for use in the production of colored translucent zirconia sintered bodies.

39. Sintered bodies prepared from the '056 Accused Products, including but not limited to Defendant's DDBioZX² (A₂) and Nacera Pearl Shaded A2 products, comprise at least one iron compound selected from the group consisting of iron chloride, iron nitrate, iron oxide and iron oxide hydroxide.

40. Sintered bodies prepared from the '056 Accused Products, including but not limited to Defendant's DDBioZX² (A₂) and Nacera Pearl Shaded A2 products, comprise yttria in the amount of from 2 to 4 mol %.

41. Sintered bodies prepared from the '056 Accused Products, including but not limited to Defendant's DDBioZX² (A₂) and Nacera Pearl Shaded A2 products, comprise alumina in the amount of 0 wt % to less than 0.25 wt %.

42. Sintered bodies prepared from the '056 Accused Products, including but not limited to Defendant's DDBioZX² (A₂) and Nacera Pearl Shaded A2 products, have a lightness L* of from 51 to 80 in L*a*b*color system.

43. Sintered bodies prepared from the '056 Accused Products, including but not limited to Defendant's DDBioZX² (A₂) and Nacera Pearl Shaded A2 products, have a relative density of at least 99.80%.

44. Defendant has intended and is aware that direct and indirect customers throughout the United States directly infringe the '056 Patent in violation of 35 U.S.C. § 271(a) when said customers use the '056 Accused Products as intended and instructed by Defendant and Defendant has actively induced such infringement in violation of 35 U.S.C. § 271(b).

45. On information and belief, Defendant has engaged in affirmative acts to actively induce others' direct infringement by promoting, marketing and selling the '056 Accused Products, including but not limited to Defendant's DDBioZX² (A₂) and Nacera Pearl Shaded A2 products,

which utilize the patented technology of the '056 Patent for use in dental applications with the knowledge and specific intent that such products will be imported into, used, offered for sale, and/or sold in the United States. Defendant encourages the use of the '056 Accused Products by, *inter alia*, advertising and promoting such use on its website. (Exhibit 17).

46. On information and belief, Defendant provides technical assistance to its direct and indirect customers to assist them in using the '056 Accused Products for their intended infringing purpose(s). Thus, Defendant actively induces its direct and indirect customers' infringing conduct knowing that its direct and indirect customers' infringing products will be made, used, imported, offered for sale, and/or sold in the United States.

47. On information and belief, Defendant also indirectly infringes the Asserted Patents in violation of 35 U.S.C. § 271(c), by contributing to the direct infringement of one or more claims, including at least Claim 1 of the Asserted Patents.

48. Defendant has been and now is contributing to the infringement of one or more claims of the '056 Patent, including at least Claim 1, in violation of 35 U.S.C. § 271(c), by manufacturing, using, selling, offering to sell, importing, causing to be imported and/or instructing others how to use products that are knowingly made especially for infringing use and have no substantial non-infringing uses. Such infringing products include, *inter alia*, the '056 Accused Products including but not limited to Defendant's DDBioZX² (A₂) and Nacera Pearl Shaded A2 products.

49. On information and belief, the '056 Accused Products, including but not limited to Defendant's DDBioZX² (A₂) and Nacera Pearl Shaded A2 products, are, *inter alia*, components of a patented machine, manufacture, combination or composition.

50. The '056 Accused Products, including but not limited to Defendant's DDBioZX² (A₂) and Nacera Pearl Shaded A2 products, are especially made and/or especially adapted for use in the infringement of the Asserted Patents.

51. On information and belief, Defendant knows and understands that the '056 Accused Products, including but not limited to Defendant's DDBioZX² (A₂) and Nacera Pearl Shaded A2 products, are especially made and/or especially adapted for use by its direct and/or indirect customers in a manner that directly infringes one or more claims of the Asserted Patents under 35 U.S.C. § 271(a).

52. The '056 Accused Products, including but not limited to Defendant's DDBioZX² (A₂) and Nacera Pearl Shaded A2 products, are not staple articles of commerce.

53. On information and belief, Defendant knows and understands that the '056 Accused Products, including but not limited to Defendant's DDBioZX² (A₂) and Nacera Pearl Shaded A2 products, are not staple articles of commerce.

54. The '056 Accused Products, including but not limited to Defendant's DDBioZX² (A₂) and Nacera Pearl Shaded A2 products, are not suitable for substantial non-infringing use.

55. On information and belief, Defendant knows and understands that the '056 Accused Products, including but not limited to Defendant's DDBioZX² (A₂) and Nacera Pearl Shaded A2 products, are not suitable for substantial non-infringing use.

56. Defendant has intended and is aware that direct and indirect customers throughout the United States, including the State of Texas and this Judicial District, directly infringe the '056 Patent in violation of 35 U.S.C. § 271(a) when said customers use the '056 Accused Products, including but not limited to Defendant's DDBioZX² (A₂) and Nacera Pearl Shaded A2 products,

as intended and instructed by Defendant and has knowingly contributed such infringement in violation of 35 U.S.C. § 271(c).

57. Defendant had knowledge of the '056 Patent, and that its DDBioZX² (A₂) and Nacera Pearl Shaded A2 products infringe at least Claim 1 thereof, since at least as early as February 2022.

58. On information and belief, one or more direct and/or indirect customers of Defendant have directly infringed the '056 Patent by making, using, importing, offering to sell and/or selling infringing products that incorporate the '056 Accused Products in the United States.

59. On information and belief, Defendant knows that the activities by its direct and indirect customers directly infringes the '056 Patent or is willfully blind to such infringement of the '056 Patent.

60. On information and belief, end users of the '056 Accused Products have directly infringed the '056 Patent by using these products in the United States. Defendant knows that such activity by Defendant's direct and indirect customers, directly infringes the '056 Patent or is willfully blind to such infringement of the '056 Patent.

61. Defendant has knowingly and actively aided and abetted, actively induced and contributed to the direct infringement of the '056 Patent by offering for sale and selling the '056 Accused Products to third parties such that those third parties or their customers will use, offer for sale, sell and/or import in the United States in a manner that results in the infringement the '056 Patent.

62. On information and belief, Defendant possessed the specific intent to encourage and actively induce the direct infringement of the '056 Patent by its direct and indirect customers. For example, with full knowledge of the '056 Patent, Defendant has intentionally and knowingly

encouraged the direct infringement of the ‘056 Patent by its direct and indirect customers by performing the activities set forth above, including establishing the exclusive distributorship to facilitate the nationwide distribution of the ‘056 Accused Products. Furthermore, Defendant has continued to market and sell the ‘056 Accused Products, in the hopes of encouraging third parties to purchase and use the ‘056 Accused Products, notwithstanding Defendant’s knowledge of the ‘056 Patent and knowledge of the direct and indirect infringement of the ‘056 Patent.

63. On information and belief, such infringing activity by Defendant’s direct and indirect customers has willfully occurred and continues to willfully occur throughout the United States, including Texas and this Judicial District.

64. As a result, by actively inducing and/or contributing to the direct infringement by its customers, Defendant has been and still is willfully infringing one or more claims of the ‘056 Patent under 35 U.S.C. § 271 (b) and/or (c).

65. Pursuant to 35 U.S.C. § 284, Tosoh is entitled to damages adequate to compensate for the infringement, but in no event less than a reasonable royalty for the use made of the invention by the infringer, together with interest and costs as fixed by the court.

66. Defendant has continued its infringing activities after receiving notice of the ‘056 Patent and its infringement thereof, thereby rendering such infringement willful and entitling Tosoh to recover enhanced (treble) damages in accordance with 35 U.S.C. § 284.

67. Pursuant to 35 U.S.C. § 283, Tosoh is entitled to an injunction in accordance with the principles of equity to prevent the violation of its patent rights. Unless enjoined, Defendant will continue to infringe the ‘056 Patent, and Tosoh will suffer irreparable injury as a direct and proximate result of Defendant’s infringing conduct.

COUNT II

(Willful Infringement of the ‘157 Patent)

68. Defendant has been and now is indirectly infringing by way of inducing infringement and/or contributing to the infringement of the ‘157 Patent in the State of Texas, in this Judicial District, and elsewhere in the United States by using, causing to be used, offering to sell, causing to be offered for sale, selling, importing and/or causing to be imported the ‘157 Accused Products for use in dental applications. Thus, Defendant is liable for infringement of the ‘157 Patent pursuant to 35 U.S.C. § 271 (b) and/or (c).

69. On information and belief, Defendant indirectly infringes the Asserted Patents in violation of 27 U.S.C. § 271(b) by actively inducing its direct and indirect customers, including its exclusive distributor VITA and customers throughout the United States to which the ‘157 Accused Products are sold, to directly infringe one or more claims of the ‘157 Patent, including at least Claim 1 thereof, in violation of 35 U.S.C. § 271(a). Such infringing products include, *inter alia*, Defendant’s DDBioZX² (white), DDcubeONE (white), and Nacera Pearl 1 products.

70. Representative claim charts are submitted herewith as Exhibits 6, 7 and 8, which claim charts are incorporated as if recited in full herein, demonstrate that the Defendant’s DDBioZX² (white), DDcubeONE (white), and Nacera Pearl 1 products, meet each and every limitation when used as intended and instructed by the Defendant and therefore infringe one or more claims of the ‘157 Patent, including at least Claim 1 thereof.

71. The ‘157 Accused Products, including but not limited to Defendant’s DDBioZX² (white), DDcubeONE (white), and Nacera Pearl 1 products, are especially designed and intended for use and promoted by Defendant for use in the production of translucent zirconia sintered bodies characterized by comprising zirconia.

72. Sintered bodies prepared from the '157 Accused Products, including but not limited to Defendant's DDBioZX² (white), DDcubeONE (white), and Nacera Pearl 1 products, comprise 2-4 mol % yttria as a stabilizer.

73. Sintered bodies prepared from the '157 Accused Products, including but not limited to Defendant's DDBioZX² (white), DDcubeONE (white), and Nacera Pearl 1 products, comprise an alumina content of lower than 0.1 wt %.

74. Sintered bodies prepared from the '157 Accused Products, including but not limited to Defendant's DDBioZX² (white), DDcubeONE (white), and Nacera Pearl 1 products, have a relative density of 99.8% or higher, wherein relative density means the value obtained by measuring an actual density ρ by the Archimedes method, determining a theoretical density ρ_0 using the following equation (2), and converting these density values to the proportion (ρ/ρ_0) times 100(%), and in equation (2), the theoretical density of alumina and the theoretical density of zirconia containing 3 mol% yttria were taken as 3.987 (g/cm³) and 6.0956 (g/cm³), respectively, $\rho_0 = 100 / [(X/3.987) + (100-X)/6.0956]$ and X is the alumina content (% by weight).

75. Sintered bodies prepared from the '157 Accused Products, including but not limited to Defendant's DDBioZX² (white), DDcubeONE (white), and Nacera Pearl 1 products, have a total light transmittance, as measured at a thickness of 1.0 mm, of 35% or higher.

76. Defendant has intended and is aware that direct and indirect customers throughout the United States directly infringe the '157 Patent in violation of 35 U.S.C. § 271(a) when said customers use the '157 Accused Products as intended and instructed by Defendant and Defendant has actively induced such infringement in violation of 35 U.S.C. § 271(b).

77. On information and belief, Defendant has engaged in affirmative acts to actively induce others' direct infringement by promoting, marketing and selling the '157 Accused Products,

including but not limited to Defendant's DDBioZX² (white), DDcubeONE (white), and Nacera Pearl 1 products, which utilize the patented technology of the '157 Patent for use in dental applications with the knowledge and specific intent that such products will be imported into, used, offered for sale, and/or sold in the United States. Defendant encourages the use of '157 Accused Products by, *inter alia*, advertising and promoting such use on its website. (Exhibit 17).

78. On information and belief, Defendant provides technical assistance to its direct and indirect customers to assist them in using the '157 Accused Products for their intended infringing purpose(s). Thus, Defendant actively induces its direct and indirect customers' infringing conduct knowing that its direct and indirect customers' infringing products will be made, used, imported, offered for sale, and/or sold in the United States.

79. On information and belief, Defendant also indirectly infringes the Asserted Patents in violation of 35 U.S.C. § 271(c), by contributing to the direct infringement of one or more claims, including at least Claim 1 of the Asserted Patents.

80. Defendant has been and now is contributing to the infringement of one or more claims of the '157 Patent, including at least Claim 1, in violation of 35 U.S.C. § 271(c), by manufacturing, using, selling, offering to sell, importing, causing to be imported and/or instructing others how to use products that are knowingly made especially for infringing use and have no substantial non-infringing uses. Such infringing products include, *inter alia*, the '157 Accused Products including but not limited to Defendant's Defendant's DDBioZX² (white), DDcubeONE (white), and Nacera Pearl 1 products.

81. On information and belief, the '157 Accused Products, including but not limited to Defendant's DDBioZX² (white), DDcubeONE (white), and Nacera Pearl 1 products, are, *inter alia*, components of a patented machine, manufacture, combination or composition.

82. The '157 Accused Products, including but not limited to Defendant's DDBioZX² (white), DDcubeONE (white), and Nacera Pearl 1 products, are especially made and/or especially adapted for use in the infringement of the Asserted Patents.

83. On information and belief, Defendant knows and understands that the '157 Accused Products, including but not limited to Defendant's DDBioZX² (white), DDcubeONE (white), and Nacera Pearl 1 products, are especially made and/or especially adapted for use by its direct and/or indirect customers in a manner that directly infringes one or more claims of the Asserted Patents under 35 U.S.C. § 271(a).

84. The '157 Accused Products, including but not limited to Defendant's DDBioZX² (white), DDcubeONE (white), and Nacera Pearl 1 products, are not staple articles of commerce.

85. On information and belief, Defendant knows and understands that the '157 Accused Products, including but not limited to Defendant's DDBioZX² (white), DDcubeONE (white), and Nacera Pearl 1 products, are not staple articles of commerce.

86. The '157 Accused Products, including but not limited to Defendant's DDBioZX² (white), DDcubeONE (white), and Nacera Pearl 1 products, are not suitable for substantial non-infringing use.

87. On information and belief, Defendant knows and understands that the '157 Accused Products, including but not limited to Defendant's DDBioZX² (white), DDcubeONE (white), and Nacera Pearl 1 products, are not suitable for substantial non-infringing use.

88. Defendant has intended and is aware that direct and indirect customers throughout the United States, including the State of Texas and this Judicial District, directly infringe the '056 Patent in violation of 35 U.S.C. § 271(a) when said customers use the '157 Accused Products, including but not limited to DDBioZX² (white), DDcubeONE (white), and Nacera Pearl 1

products, as intended and instructed by Defendant and has knowingly contributed such infringement in violation of 35 U.S.C. § 271(c).

89. Defendant had knowledge of the ‘157 Patent, and that its DDBioZX² (white), DDcubeONE (white), and Nacera Pearl 1 products infringe at least Claim 1 thereof, since at least as early as February 2022.

90. On information and belief, one or more direct and/or indirect customers of Defendant have directly infringed the ‘157 Patent by making, using, importing, offering to sell and/or selling infringing products that incorporate the ‘157 Accused Products in the United States.

91. On information and belief, Defendant knows that the activities by its direct and indirect customers directly infringes the ‘157 Patent or is willfully blind to such infringement of the ‘157 Patent.

92. On information and belief, end users of the ‘157 Accused Products have directly infringed the ‘157 Patent by using these products in the United States. Defendant knows that such activity by Defendant’s direct and indirect customers, directly infringes the ‘157 Patent or is willfully blind to such infringement of the ‘157 Patent.

93. Defendant has knowingly and actively aided and abetted, actively induced and contributed to the direct infringement of the ‘157 Patent by offering for sale and selling the ‘157 Accused Products to third parties such that those third parties or their customers will use, offer for sale, sell and/or import in the United States in a manner that results in the infringement the ‘157 Patent.

94. On information and belief, Defendant possessed the specific intent to actively induce and encourage the direct infringement of the ‘157 Patent by its direct and indirect customers. For example, with full knowledge of the ‘157 Patent, Defendant has intentionally and

knowingly encouraged the direct infringement of the ‘157 Patent by its direct and indirect customers by performing the activities set forth above, including establishing the exclusive distributorship to facilitate the nationwide distribution of the ‘157 Accused Products. Furthermore, Defendant has continued to market and sell the ‘157 Accused Products, in the hopes of encouraging third parties to purchase and use the ‘157 Accused Products, notwithstanding Defendant’s knowledge of the ‘157 Patent and knowledge of the direct and indirect infringement of the ‘157 Patent.

95. On information and belief, such infringing activity by Defendant’s direct and indirect customers has willfully occurred and continues to willfully occur throughout the United States, including Texas and this Judicial District.

96. As a result, by actively inducing and/or contributing to the direct infringement by its customers, Defendant has been and still is willfully infringing one or more claims of the ‘157 Patent under 35 U.S.C. § 271 (b) and/or (c).

97. Pursuant to 35 U.S.C. § 284, Tosoh is entitled to damages adequate to compensate for the infringement, but in no event less than a reasonable royalty for the use made of the invention by the infringer, together with interest and costs as fixed by the court.

98. Defendant has continued its infringing activities after receiving notice of the ‘157 Patent and its infringement thereof, thereby rendering such infringement willful and entitling Tosoh to recover enhanced (treble) damages in accordance with 35 U.S.C. § 284.

99. Pursuant to 35 U.S.C. § 283, Tosoh is entitled to an injunction in accordance with the principles of equity to prevent the violation of its patent rights. Unless enjoined, Defendant will continue to infringe the ‘157 Patent, and Tosoh will suffer irreparable injury as a direct and proximate result of Defendant’s infringing conduct.

PRAYER FOR RELIEF

100. WHEREFORE, Tosoh respectfully prays for judgment in favor of Tosoh and against Defendant, including at least the following relief:

- (i) judicial determination and declaration that Defendant has infringed one or more claims of the '056 Patent in violation of 35 U.S.C. § 271 (b);
- (ii) judicial determination and declaration that Defendant has infringed one or more claims of the '056 Patent in violation of 35 U.S.C. § 271 (c);
- (iii) judicial determination and declaration that Defendant has directly and/or indirectly infringed one or more claims of the '157 Patent in violation of 35 U.S.C. § 271 (b);
- (iv) judicial determination and declaration that Defendant has directly and/or indirectly infringed one or more claims of the '157 Patent in violation of 35 U.S.C. § 271 (c);
- (v) judicial determination and declaration that Defendant's infringement of the '056 Patent is willful;
- (vi) judicial determination and declaration that Defendant's infringement of the '157 Patent is willful;
- (vii) an award of damages resulting from the Defendant's infringement;
- (viii) trebling of such damages because of the willful, knowing, and deliberate nature of said infringement;
- (ix) permanent injunctive relief against further infringement of the Asserted Patents by Defendant, its officers, directors, shareholders, agents, servants, employees, and all other entities and individuals acting in concert with the enjoined entities or on their behalf;

- (x) a declaration that this is an exceptional case under 35 U.S.C. § 285, and an award of its attorneys' fees and costs in this action;
- (xi) an award of prejudgment and post-judgment interest; and
- (xii) such other and further relief as this Court may deem just and proper under the circumstances of this case.

DEMAND FOR JURY TRIAL

In accordance with Fed. R. Civ. P. 38(b), Plaintiff demands a trial by jury of all issues so triable.

Dated: February 26, 2024

By: /s/ Melissa R. Smith

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