

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

ONTEL PRODUCTS CORPORATION,

Plaintiff,

v.

**EQUITY BRANDS LLC d/b/a MY HOME
PRODUCTS, W. APPLIANCE CO. LLC,
and Michael JEMAL.**

Defendants.

CIVIL ACTION NO. 1:24-cv-2373

JURY TRIAL REQUESTED

**FIRST AMENDED COMPLAINT FOR
PATENT INFRINGEMENT AND OTHER RELIEF**

Plaintiff Ontel Products Corporation (“Ontel”), by its undersigned attorneys, files this First Amended Complaint against Equity Brands LLC d/b/a My Home Products (“Equity Brands”), W. Appliance Co., LLC (“W. Appliance”), and Michael Jemal (“Jemal”) (collectively, “Defendants”). In support, Ontel alleges as follows:

I. INTRODUCTION AND REQUESTED RELIEF

1. This case arises out of the unauthorized use and infringement of Ontel’s utility patent for its popular and best-selling evaporative air-cooling product, offered under the ARCTIC AIR[®] ULTRA trademark, the ARCTIC AIR PURE CHILL[®] trademark, and ARCTIC AIR ADVANCED[®] trademark (hereinafter, “Arctic Air[®] Products”).

2. In violation of federal law and in order to capitalize on the clear success of the Arctic Air[®] Products, Defendant W. Appliance is manufacturing, importing, promoting, offering to sell and selling a clearly infringing version of Ontel’s Arctic Air[®] Products under the name Black + Decker Desktop Air Cooler (“Accused Air Cooler”).

3. Additionally, Defendant Jemal acting on behalf of Defendant Equity Brands, under the guise of evaluating a potential business acquisition with Ontel, executed a non-disclosure agreement (“NDA”) with Ontel. Subsequently, Defendants Jemal and Equity Brands received full access to Ontel’s confidential product information, intellectual property portfolio, manufacturing partners, pricing structure, profitability, customers and proposed customers and overall growth, marketing, manufacturing, and future development strategy for the Arctic Air Products. Defendant Equity Brands then terminated its interest in the potential business transaction and wrongly shared and utilized Ontel’s confidential information with Defendant W. Appliance, another company also established by Defendant Jemal, to introduce infringing Accused Air Cooler to the same channels of trade as Ontel sells its products.

4. Under the NDA, “[i]n the event of litigation relating to this agreement, if a court of competent jurisdiction renders a final, non-appealable judgment against a party hereto, such non-prevailing party shall be liable and pay to the prevailing party its reasonable legal fees and expenses incurred in connection with such litigation, including any appeals therefrom.”

5. Defendants’ conduct is directly harming Ontel and consumers, as the competing product copies, diminishes the value of, and misappropriates Ontel’s valuable patent rights. Defendant W. Appliance’s competing product is likely to create a false impression, and/or to deceive consumers into believing that Defendant’s product, which is of far inferior quality, is derived from Ontel when there is no connection or association between the infringing product and Ontel. The harm to Ontel and the general public will continue unless Defendants’ conduct is enjoined by this Court.

6. Upon information and belief, Defendants infringement is blatant, intentional and willful. Namely, Defendant Equity Brands and Defendant Jemal, armed with Ontel’s confidential

product information, development information, and its commercially and competitively sensitive pricing, manufacturing, and marketing information, shared the information with Defendant W. Appliance so that it could create and now sell a competing and infringing product at a lower cost to Ontel's customers.

II. PARTIES, JURISDICTION, AND VENUE

7. Plaintiff Ontel is a corporation organized under the laws of the State of New Jersey, having a principal place of business at 21 Law Drive, Fairfield, New Jersey 07004.

8. Upon information and belief, Defendant Equity Brands is a corporation organized under the laws of the State of Delaware, having a principal place of business at 1356 Broadway, 6th floor, New York, NY 10018.

9. Upon information and belief, Defendant W. Appliance is a limited liability corporation organized under the laws of the State of New York, having a principal place of business at 1356 Broadway, 6th floor, New York, NY 10018.

10. Upon information and belief, Defendant Jemal is an individual who resides and operates businesses in New York at the addresses of Defendant Equity Brands and Defendant W. Appliance provided above.

11. Jurisdiction and venue are proper in this Court as Defendant Equity Brands and Defendant W. Appliance have principal places of business in this District and as such Defendants purposefully direct their activities toward and avails themselves of the privileges offered by the United States, and more particularly this District. Defendant W. Appliance also advertises and sells its products to consumers in the United States, and particularly within this jurisdiction, including via ecommerce platforms for retailers with retail stores in this District.

12. This Court has subject matter jurisdiction by virtue of the fact that this is a civil action under the laws of the United States, namely under the Patent Act, 35 U.S.C. § 1 *et seq.* Thus, this Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1338.

13. This Court also has pendent subject matter jurisdiction over all remaining claims in accordance with 28 U.S.C. § 1367 as they arise out of the same underlying factual allegations.

14. Venue is proper in this District pursuant to 28 U.S.C. § 1391 and 1400(b) because Defendant resides in this District as it has a place of business in New York, NY.

III. FACTS COMMON TO ALL CLAIMS FOR RELIEF

A. Ontel's Arctic Air® Products

15. For more than 20 years, Ontel has developed, marketed, and distributed some of the most innovative consumer products on the market, including popular toys, top-selling kitchen utensils, and ground-breaking household items. Ontel's products are sold in nearly every major retail chain in the United States, and in more than 30 countries worldwide.

16. Among the products developed and/or distributed by Ontel are the Arctic Air®, Arctic Air® Ultra, Arctic Air® Tower, Arctic Air Freedom®, Arctic Air Smart Chill®, Arctic Air® Pocket Chill, Arctic Air® Grip Go™, Arctic Air® Advanced, Arctic Air Chill Zone™, and Arctic Air Pure Chill® (collectively, the "Arctic Air® Product Lines"). The Arctic Air® Product Lines are personal evaporative air coolers that cool the air adjacent to the products.

17. Ontel sold the first product from its Arctic Air® Product Lines in the United States at least as early as February 2018, and, since then, expanded its use of the brand to include at least eight additional products that are part of the Arctic Air® Product Lines.

18. The Arctic Air® Product Lines have become some of Ontel's best-selling and known product lines in the U.S. and worldwide. Indeed, the Arctic Air® brand has been

consistently ranked number one on Amazon.com¹, and products in the Arctic Air® Product Lines, have, at many times as recently as during the summer of 2023, held top 10 spots on Amazon.com in the Portable Air Conditioners category.²

19. The commercial success of the Arctic Air® Product Lines began with the launch of the original Arctic Air® evaporative air cooler. Further research and development refined the Arctic Air® evaporative air cooler, resulting in Ontel's launch of additional Arctic Air® Products, including the Arctic Air® Ultra product. (A true and accurate copy of images of the Arctic Air® Ultra product is attached hereto as Exhibit A and incorporated herein by reference.) An exemplary image showing the Arctic Air® Ultra product is depicted below:



(See Exhibit A.)

20. An additional Arctic Air® Product is the Arctic Air® Advanced product. (A true and accurate copy of images of the Arctic Air® Advanced product is attached hereto as Exhibit B and incorporated herein by reference.) An exemplary image showing the Arctic Air® Advanced product is depicted below:

¹ In the “portable air conditioner” category, including from 06/01/22 to 08/31/22 and 6/15/23 to 6/21/23 in the U.S. and in the “Mini Evaporative Air Coolers” category from 7/4/23 to 7/27/23.

² As of March 15, 2024, the Arctic Air Pure Chill® is currently ranked number two in the Portable Air Conditioners category on Amazon.com and has been consistently ranked in the top 10 across Amazon.com since 2018.



(See Exhibit B.)

21. Another Arctic Air® Product is the Arctic Air Pure Chill® product. The Arctic Air Pure Chill® product is often referred to as the “Pure Chill” when marketed to consumers. For example, when Ontel’s customers seek to purchase or have questions regarding the Arctic Air Pure Chill® product, customers can go to www.purechilloffer.com and www.purechillfaq.com, respectively. Accordingly, the Arctic Air Pure Chill® product is also known to its customer-base by the shortened “Pure Chill” name. (A true and accurate copy of images of the Arctic Air Pure Chill® product are attached hereto as Exhibit C and incorporated herein by reference.) An exemplary image showing the Arctic Air Pure Chill® product is depicted below:



(See Exhibit C.)

22. Ontel's products, including the Arctic Air® Products, are available for purchase at many large retail stores, including Walmart Inc., Bed Bath & Beyond, and Target Corp., and are also available for purchase online, including through Ontel's website as well as through many authorized sellers.

23. Ontel's Arctic Air® Product Lines are known to consumers throughout the United States to represent genuine, high-quality goods and are associated with Ontel. Ontel owns the goodwill associated with its intellectual property rights and has invested significant time and resources securing and protecting these rights worldwide.

24. To that end, Ontel has purchased digital and television media for its Arctic Air® brand, valued in excess of \$35 million (\$35,000,000), and as a result, the Arctic Air® brand is one of the best-selling brands in Ontel's portfolio, having generated more than \$270 million (\$270,000,000) in sales.

25. Unfortunately, because of this success, the products in the Arctic Air® Product Lines are frequently copied and Ontel is forced to expend significant resources combatting infringing products, as infringers like Defendant try to capitalize on Ontel's success.

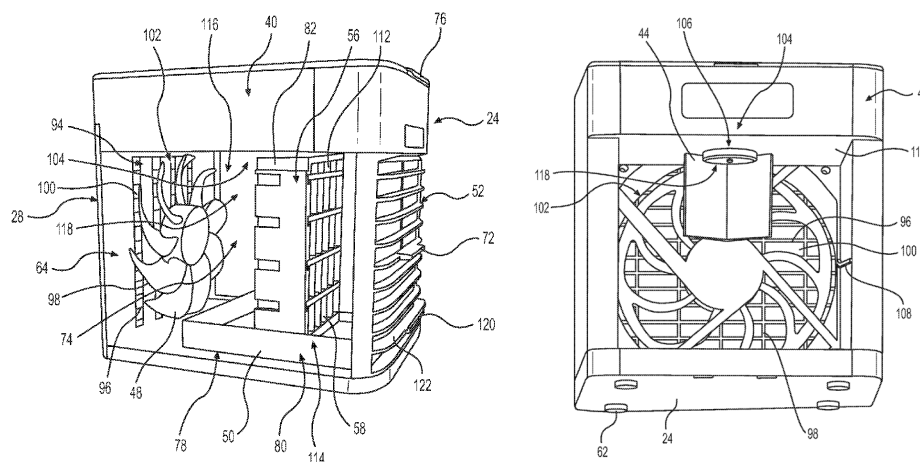
B. Ontel's Arctic Air® Patent

26. As stated above, Ontel's Arctic Air® Products are the result of significant and novel product features for which Ontel sought and obtained protection from the United States Patent and Trademark Office. Specifically, Ontel has received protection through the issuance of both design and utility patents covering the Arctic Air® Products.

27. Specifically, Ontel owns U.S. Patent No. 10,712,029 (the "Arctic Air® Patent") by assignment. (Arctic Air® Patent, attached hereto as Exhibit D and incorporated herein by reference.)

28. The Arctic Air® Patent was filed on January 3, 2019, and issued on July 14, 2020.

29. The Arctic Air® Patent protects functional features of a personal air cooler as described and depicted in the patent, including the system for receiving water, delivering it to air entering the device to cool it and then emitting the cooler air, and as excerpted below:



(FIGS. 5 and 7 of the Arctic Air® Patent, *see* Exhibit D.)

C. Ontel's Potential Sale of the Arctic Air Product Lines

30. In 2022, Ontel began confidentially exploring a potential sale of the entire Arctic Air business, including the Arctic Air Product Lines and various intellectual property rights related to same, including design and utility patents, trademarks and copyrights ("Arctic Air Business").

31. After considering various options and firms, Ontel retained the private equity firm Perella Weinberg Partners ("Perella") to assist it with finding a potential buyer.

32. Perella began the process of looking for suitable and interested partners for the potential acquisition of the Arctic Air Business.

33. Perella identified multiple potential buyers who, upon providing a written indication of interest satisfactory to Ontel, would be invited to come visit Ontel at its Fairfield, New Jersey headquarters, meet its management team, review confidential prototypes, and receive confidential, competitively-sensitive information on the Arctic Air Business.

34. As part of the process, Ontel and Perella prepared a confidential presentation with extensive information on the Arctic Air Business (“Arctic Air Presentation”) including sales and channels, competitive landscape strategy, pricing strategy, intellectual property filing and protection strategy, future planning, detailed financial information, and advertising and marketing strategy that would be presented to potential buyers to help educate them and be used to help ultimately sell the Arctic Air Business.

35. Before receiving any information about the Arctic Air Business, including viewing the Arctic Air Presentation, Ontel required all potential buyers to execute a non-disclosure agreement obligating them to keep any information shared by Ontel confidential and not use it for any other purpose.

D. Equity Brands Received Commercially Sensitive Information From Ontel.

36. One of the potential partners that Perella identified that showed interest in the acquisition of the Arctic Air Business was Trilantic Capital Partners (“Trilantic”).

37. On September 13, 2022, Ontel received a non-binding indication of interest from Trilantic indicating that it, “in partnership with Equity Brands,” was interested in the “compelling opportunity to acquire a leading consumer brand with considerable runway for further expansion.”

38. Upon information and belief, Equity Brands is a consumer products company that manages a portfolio of internally-developed, licensed and distributed brands across a wide range

of houseware and home appliance categories. (Equity Brands website attached as Exhibit E and incorporated by reference herein.)

39. Ontel invited Trilantic to come to Ontel's Fairfield, NJ headquarters for a meeting on November 1, 2022 to discuss the potential acquisition.

40. Trilantic informed Ontel that Michael Jemal (Founder and CEO of Equity Brands) ("Jemal") would be attending and reiterated that Equity Brands would be evaluating the opportunity with respect to the Arctic Air Business as a combination with Trilantic. (E-mail correspondence between Trilantic and Ontel attached as Exhibit F and incorporated by reference herein.)

41. On October 31, 2022, Ontel requested an executed NDA from Equity Brands since Ontel was not aware of the intent of Equity Brands or its role in advance of Jemal attending the meeting.

42. While, upon information and belief, Trilantic believed the NDA it had executed with Ontel permitted Defendant to view any Ontel confidential material as a "representative" of Trilantic, Jemal signed a joinder of Trilantic's NDA obligating him and Equity Brands to keep any information received from Ontel confidential and "not use [it] for any purpose other than in connection with evaluating" a potential acquisition of the Arctic Air Business. (Confidentiality Agreement with reference to Joinder Agreement attached as Exhibit G and incorporated by reference herein.)

43. On November 1, 2022, Ontel held a confidential meeting at its Fairfield, NJ headquarters for Trilantic whose attendees included Lee Nussbaum, Mike Qu, Matt Blossom and Jemal on behalf of Equity Brands.

44. During the meeting, Ontel went through the Arctic Air Presentation to educate Trilantic and Equity Brands on the Arctic Air Business so it could evaluate the potential acquisition of same.

45. During the meeting Ontel presented and discussed significant confidential, competitively sensitive information, including Ontel's intellectual property portfolio (registered and pending) and confidential projects under development (including pending patents), brand protection strategy, key selling propositions, confidential future product lines, sales strategies and projections, confidential manufacturing partners, confidential costing/pricing, and marketing programs. Key selling propositions and targeted pitches for important Ontel distributors were shared, along with privileged information relating to prototypes, line extensions and buyers.

46. Jemal was particularly vocal during the meeting. He took photographs of various Arctic Air® prototypes, had detailed questions about the Arctic Air® patents and the corresponding patent markings, and was given access to confidential unreleased information, specifically around costing and manufacturing of the Arctic Air®.

47. The next day—November 2, 2022—Trilantic requested access to Ontel's Virtual Data room for Jemal. As a belt and suspenders, especially as Jemal was particularly vocal during the meeting on November 1, 2022, Ontel requested that Jemal sign the standard NDA Trilantic signed.

48. On November 4, 2022, Jemal again reaffirmed his confidentiality by signing the Confidentiality Agreement with Ontel Products Corp. (Exhibit G.)

49. Ontel then permitted Jemal and Equity Brands unfettered access to the data room.

50. On or around November 21, 2022, Ontel received notice Trilantic was no longer interested in acquiring the Arctic Air Business, including in combination with Equity Brands.

G. Defendants' Infringement

51. Upon information and belief, Defendant Equity Brands terminated its relationship with the intent of utilizing the confidential information it obtained from Ontel regarding the Arctic Air Business to copy some of Ontel's best-selling products.

52. Upon information and belief, Defendant Jemal shared Ontel's confidential information, which was provided under the NDA to Defendant Equity Brands, with his other company, Defendant W. Appliance.

53. Defendant W. Appliance introduced the Accused Air Cooler in 2023 and photographs of the product and packaging are shown below.



54. Given the origins of Defendant W. Appliance's product it has sought to hide its association with the Accused Air Cooler.

55. For example, while Defendant W. Appliance sells other air conditioner products on its website that are branded as Black + Decker under license, it does not include the Accused Air Cooler on its website.

56. Also, inside the packaging of the Accused Air Cooler is an Instruction Manual which identifies the supplier of the product as Defendant W. Appliance having an address of 1356 Broadway, New York, NY 10018. (Exhibit H.)

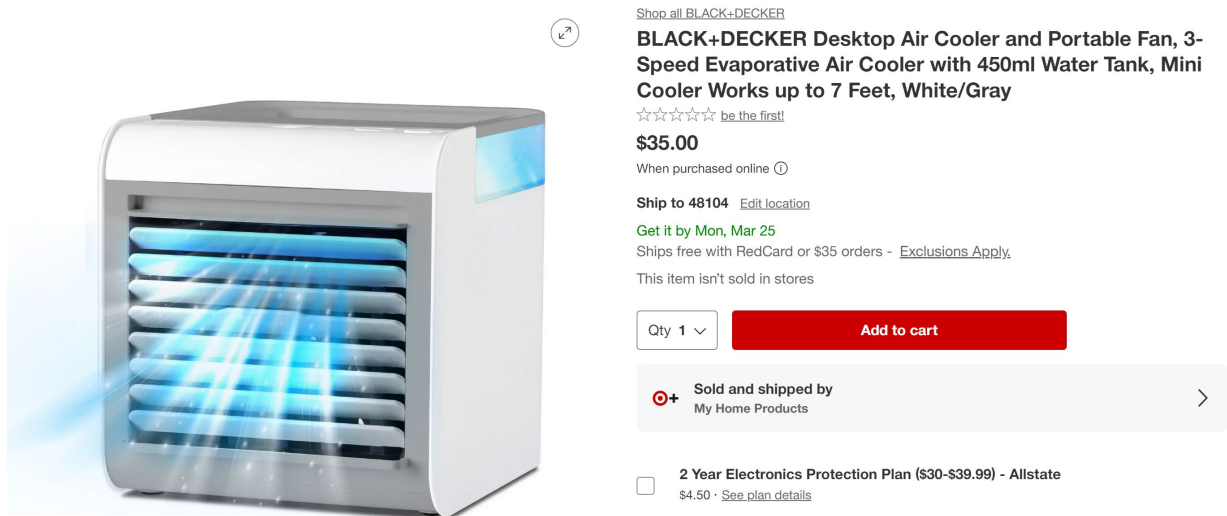
57. The address for Defendant W. Appliance is the same as the address as that for Defendant Equity Brands.

58. Further, the instruction manual indicates that repair, replacement or warranty questions should be directed to Defendant W. Appliance. However, the warranty card that also comes with the Accused Product directs consumers to the following for support: equity brands: “equitybrands.onsitesupport.io”. (Exhibit I.)

59. Defendant Equity Brands’ website affirms that Defendant W. Appliance was founded by Defendant Jemal in 2012 and, along with other entities, has been combined into Defendant Equity Brands. (Exhibit J.)

60. The Accused Air Cooler is offered for sale and available for purchase at various e-commerce retail stores where Ontel sells the Arctic Air Products, including at Walmart, Target, and Bed Bath and Beyond.

61. As to Target, the Accused Air Cooler is available for purchase from My Home Products.



62. The listing for the Accused Product identifies My Home Products as having a business name of Machaneh Yisrael LLC with an address that is the same as Defendant Equity Brands.

Partner Information

If you would like to reach out the the partner you can contact them via email at swestervelt@equitybrands.com or via phone at (855) 855-0294
Please note that Target Plus purchases must be returned to Target online or in-store.

Legal Business Name: Machaneh Yisrael LLC



Headquarters:
1356 Broadway, 6th Floor
New York, NY 10018
US




63. The contact information also provides a contact address of swestervelt@equitybrands.com.




64. Upon information and belief, My Home Products is a fictitious name for Defendant Equity Brands.

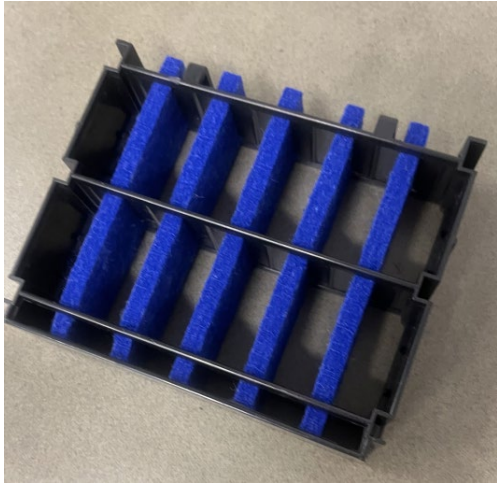
65. Similarly, the listing for the Accused Air Cooler on Walmart.com identified My Home Products as the supplier, which again is identified as having an address of 1356 Broadway, 6th Floor, New York, NY 10018.

66. On February 7, 2024, the Accused Air Cooler was purchased from an Amazon listing for same. Photographs of the Accused Air Cooler are depicted below. (True and accurate copies of pictures of the Accused Air Cooler are attached hereto as Exhibit K and incorporated herein by reference)

| Product View | Defendants Accused Air Cooler |
|-----------------------|-------------------------------------------------------------------------------------|
| Top Front Perspective |  |
| Front View |  |

| Product View | Defendants Accused Air Cooler |
|-----------------|--------------------------------------------------------------------------------------|
| Left Side View |  |
| Right Side View |  |
| Back View |  |

| Product View | Defendants Accused Air Cooler |
|-------------------------------------|--------------------------------------------------------------------------------------|
| Top View |  |
| Bottom View |  |
| Front with Grill and Filter removed |  |

| Product View | Defendants Accused Air Cooler |
|--------------|------------------------------------------------------------------------------------|
| Filter |  |

(See Exhibit K.)

67. The Accused Air Cooler, as shown above, looks and functions in a manner that infringes Ontel's Arctic Air® Patent.

68. Upon information and belief, Defendant W. Appliance's manufacturing, importing, advertising, offering for sale and selling of the Accused Air Cooler infringes Ontel's Arctic Air® Patent.

69. Accordingly, Defendant W. Appliance is directly liable for its own infringement. Defendant W. Appliance is also indirectly liable for contributing and inducing infringement.

COUNT I: PATENT INFRINGEMENT
(Infringement of the Arctic Air® Patent by W. Appliance)

70. Ontel incorporates all preceding paragraphs of this Complaint as if fully set forth herein.

71. Upon information and belief, Defendants—including Defendant W. Appliance—had and have knowledge of Ontel's Arctic Air® Patent as of the date that Defendant W. Appliance first offered for sale or sold the Accused Air Cooler.

72. Defendants—including Defendant W. Appliance—had actual notice of Ontel’s Arctic Air® Patent at least as early as the November 1, 2022 presentation from Ontel regarding its Arctic Air® Product Line, which included an explanation of Ontel’s patent rights.

73. Ontel marks the Arctic Air® Products as patented pursuant to 35 U.S.C. § 287.

74. Defendant W. Appliance is directly infringing or inducing infringement of Ontel’s Arctic Air® Patent by making, using, offering to sell, selling, or importing into the United States the Accused Air Cooler with knowledge and with the intent that third parties will use the Accused Air Cooler.

75. Upon information and belief, with knowledge of Ontel’s Arctic Air® Patent, Defendant W. Appliance willfully infringed and induced infringement of Ontel’s Arctic Air® Patent.

76. Defendant W. Appliance’s listed Accused Air Cooler infringes on Ontel’s Arctic Air® Patent.

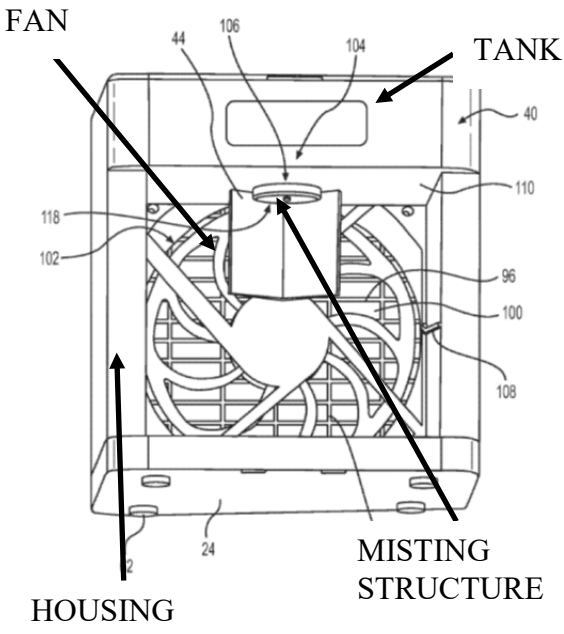
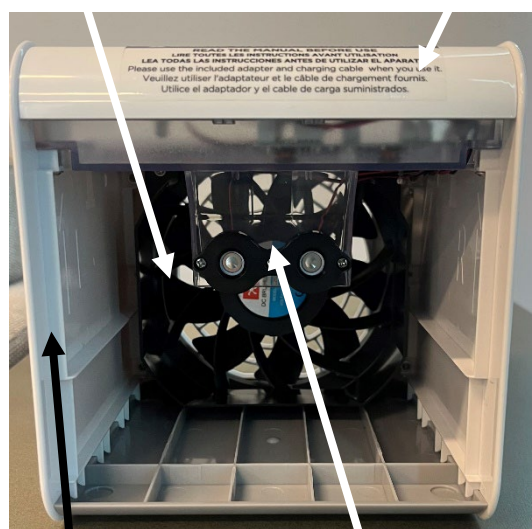
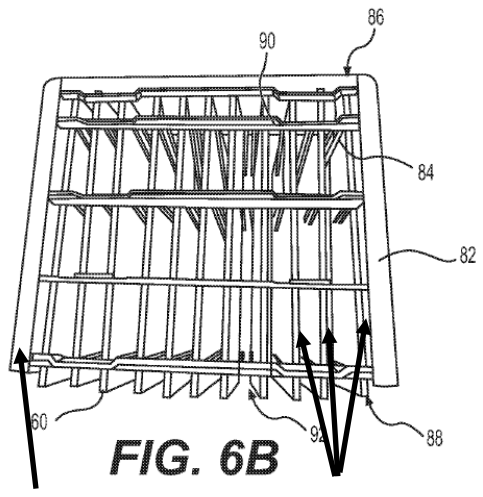
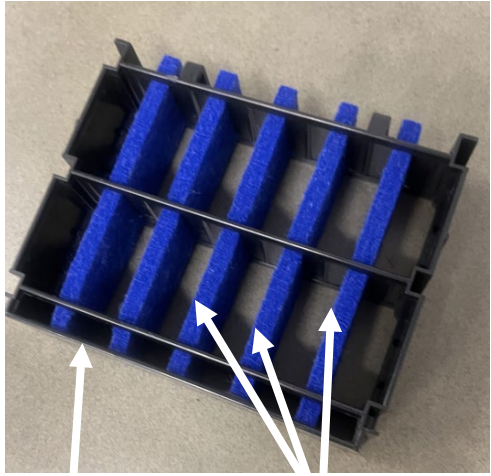
77. Defendant W. Appliance is infringing on Ontel’s Arctic Air® Patent by manufacturing, importing, marketing, advertising, offering for sale, and/or selling the Accused Air Cooler with knowledge and the intent that third parties will use those products.

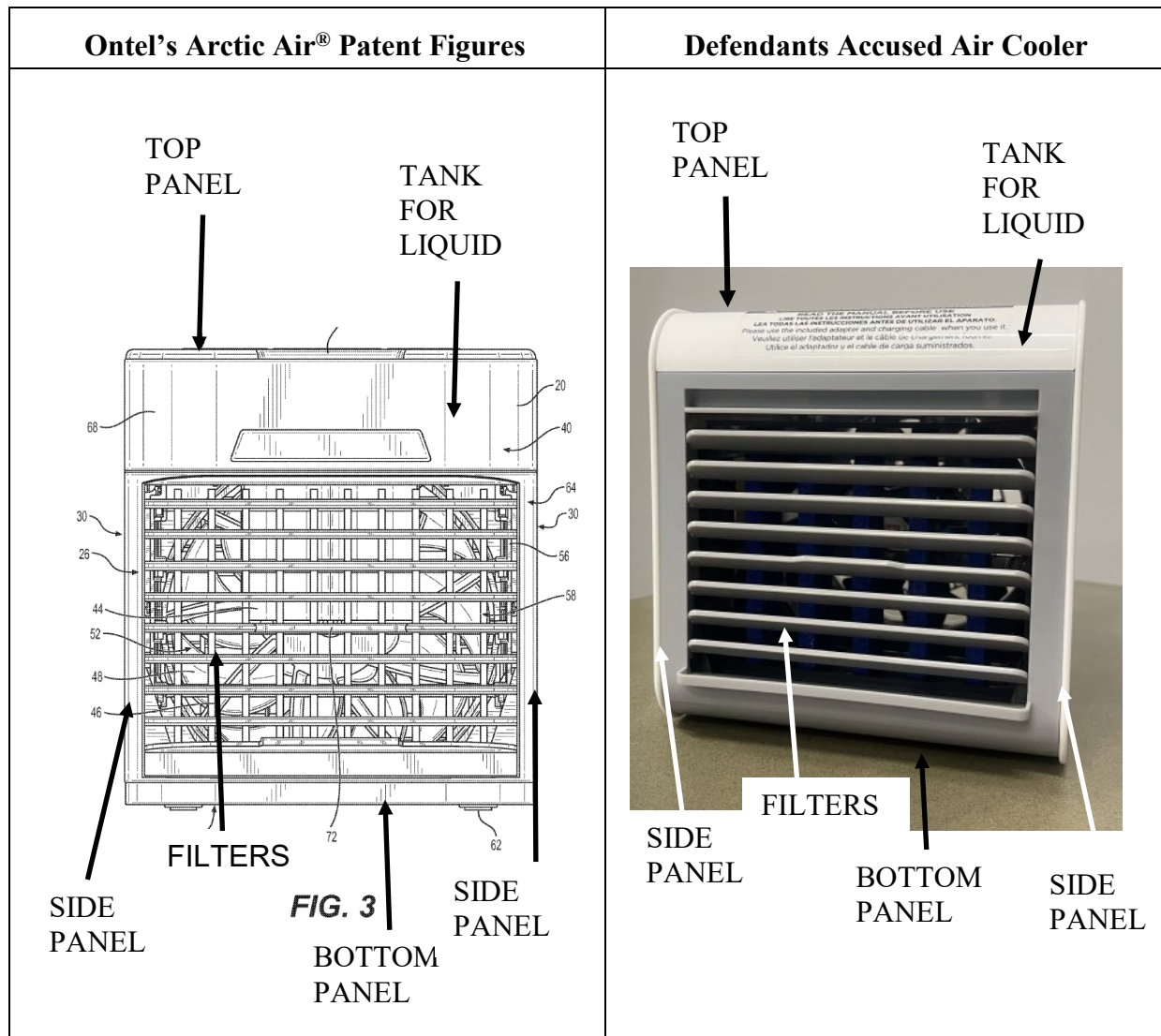
78. Defendant W. Appliance infringing, either literally or under the doctrine of equivalents, one or more claims of the Arctic Air® Patent, including but not limited to independent claims 1 and 16 of the Arctic Air® Patent.

79. Specifically, independent claim 1 of the Arctic Air® Patent states, in part, “an evaporative air cooler for cooling ambient air, comprising: a housing with a top panel, a bottom panel, and side panels defining an interior of the evaporative air cooler . . . a tank positioned adjacent to the top panel and at least one of the side panels, wherein the tank is configured to

receive, store, and release liquid; a misting structure comprising a mister . . . a filter structure with a plurality of filters . . . and a fan configured to draw the ambient air into the evaporative air cooler, wherein the ambient air is cooled by at least one of the mist and the filter structure, and wherein the fan directs the ambient air through the filter structure and out of the evaporative air cooler.” (See Exhibit D.)

80. Defendant W. Appliance’s Accused Air Cooler, like Claim 1 of the Arctic Air® Patent, similarly features “an evaporative air cooler for cooling ambient air, comprising: a housing with a top panel, a bottom panel, and side panels defining an interior of the evaporative air cooler . . . a tank positioned adjacent to the top panel and at least one of the side panels, wherein the tank is configured to receive, store, and release liquid; a misting structure comprising a mister . . . a filter structure with a plurality of filters . . . and a fan configured to draw the ambient air into the evaporative air cooler, wherein the ambient air is cooled by at least one of the mist and the filter structure, and wherein the fan directs the ambient air through the filter structure and out of the evaporative air cooler,” which is demonstrated above. (See Exhibit D.)

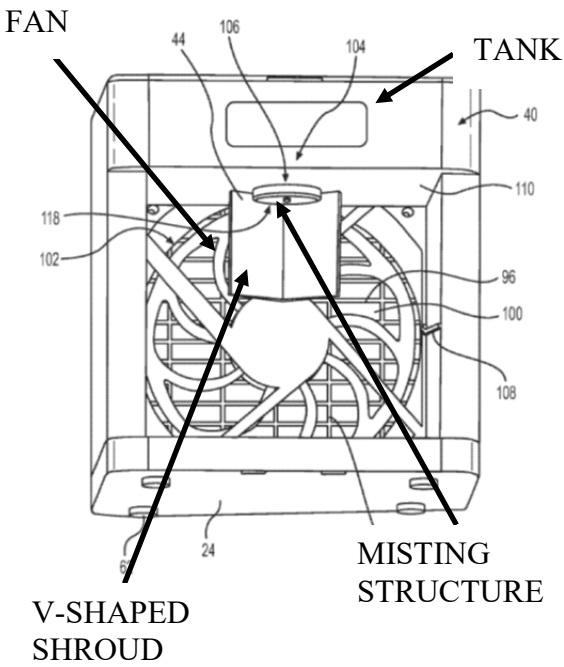
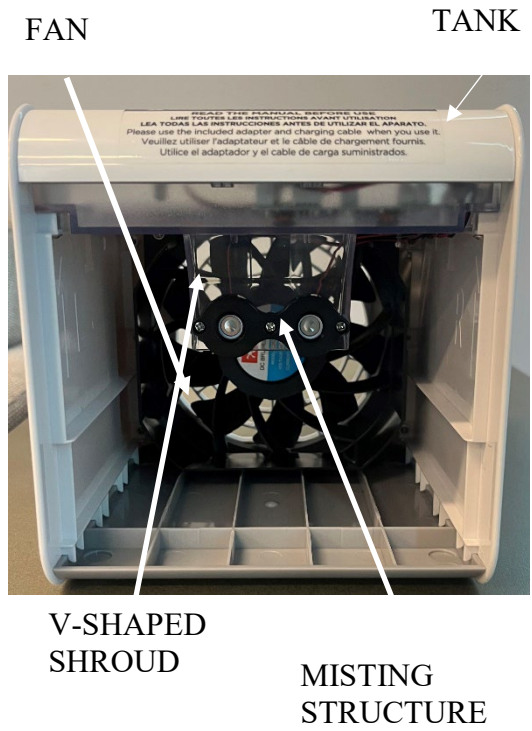
| Ontel's Arctic Air® Patent Figures | Defendants Accused Air Cooler |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|  <p>A technical drawing of the Arctic Air device. It shows a rectangular housing with a fan at the back and a misting structure in the center. A tank is located at the top. Various parts are labeled with numbers: 2, 24, 40, 44, 96, 100, 102, 104, 106, 108, 110, 118. Arrows point from the labels 'FAN', 'TANK', 'MISTING STRUCTURE', and 'HOUSING' to their respective parts in the drawing.</p> |  <p>A photograph of the accused air cooler. It is a white plastic unit with a fan visible through a transparent window. A tank is on top. Arrows point from the labels 'FAN', 'TANK', 'HOUSING', and 'MISTING STRUCTURE' to the corresponding parts in the photograph.</p> |
|  <p>A technical drawing of the filter structure, labeled 'FIG. 6B'. It shows a rectangular frame with multiple horizontal bars. Arrows point from the labels 'Filter Structure' and 'Plurality of Filters' to the structure. Various parts are labeled with numbers: 60, 82, 84, 86, 88, 90, 92.</p> |  <p>A photograph of the filter structure. It is a black plastic frame containing several blue rectangular filters. Arrows point from the labels 'Filter Structure' and 'Plurality of Filters' to the structure.</p> |



81. Relatedly, independent claim 16 of the Arctic Air® Patent states, in part, “an evaporative air cooler for cooling ambient air, comprising a housing . . . a tank . . . a misting structure . . . a filter . . . a fan . . . and a v-shaped shroud positioned underneath the tank and configured to direct the mist toward the filter structure.” (See Exhibit D).

82. Likewise, the Accused Air Cooler also features an evaporative air cooler for cooling ambient air, comprising “a housing . . . a tank . . . a misting structure . . . a filter . . . a fan . . . and

a v-shaped shroud positioned underneath the tank and configured to direct the mist toward the filter structure,” which is shown above. (See Exhibit K.)

| Ontel's Arctic Air® Patent Figure | Defendant's Accused Air Cooler |
|------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------|
|  |  |
| FILTER STRUCTURE REMOVED FOR ILLUSTRATIVE PURPOSES | |

83. Defendant W. Appliance's infringement was undertaken without permission or license to use Ontel's Arctic Air® Patent and was willful.

84. Ontel has been damaged as a result of Defendant W. Appliance's infringement as described herein.

85. Ontel is entitled to and claims all damages allowable by law including adequate compensation for the infringement, costs, interest, attorney fees, and Defendant W. Appliance's profits (for which Ontel demands an equitable accounting).

86. Ontel further seeks a declaration by the Court that it is entitled to three times the amount of damages found or assessed pursuant to 35 U.S.C. § 284 due to Defendant W. Appliance's willful infringement.

COUNT II: BREACH OF CONTRACT
(Breach of Contract by Equity Brands and Jemal)

87. Ontel incorporates all preceding paragraphs of this Complaint as if set fully forth herein.

88. At least as early as October 31, 2022, Ontel and Equity Brands entered into a Non-Disclosure Agreement ("NDA"), signed by Jemal, wherein Equity Brands agreed to keep confidential any and all proprietary information provided by Ontel during discussions regarding a potential business acquisition related to Ontel's Arctic Air® Products.

89. The NDA specifically prohibited Equity Brands from using any confidential information obtained during these discussions for any purpose other than evaluating the potential business acquisition of the Arctic Air® Product Lines.

90. Despite these explicit contractual obligations, Equity Brands, through its actions and the actions of its representatives, including but not limited to Jemal, used the confidential and proprietary information obtained from Ontel under the guise of the NDA to develop, manufacture, and market a directly competing product, the Black + Decker Desktop Air Cooler, also known as the Accused Air Cooler.

91. Equity Brands and Jemal's actions as described above constitute a material breach of the NDA.

92. Ontel performed all conditions, covenants, and promises required on its part to be performed in accordance with the terms and conditions of the NDA.

93. As a direct and proximate result of Equity Brands and Jemal's breach of the NDA, Ontel has suffered significant damages, including but not limited to the loss of trade secrets, competitive advantage, market share, and goodwill, all to Ontel's detriment and Equity Brands, W. Appliance, and Jemal's unjust enrichment.

94. Ontel is entitled to recover damages from Equity Brands and Jemal for the breach of the NDA, including but not limited to compensatory damages, punitive damages, attorneys' fees, costs of suit, and any other relief the Court deems just and proper.

COUNT III: UNFAIR COMPETITION
(Violation of New York Common Law by Defendants)

95. Ontel incorporates all preceding paragraphs of this Complaint as if set fully forth herein.

96. Defendant W. Appliance and Ontel sell competing evaporative air-cooling products.

97. Defendants have engaged in trade and commerce in New York as described above.

98. Defendants willfully and knowingly engaged in unfair acts or practices and unfair methods of competition.

99. Defendants willfully and knowingly engaged in unfair acts or practices and unfair methods of competition.

100. Equity Brands and Jemal committed acts of misappropriation through actions including but not limited to the execution of a non-disclosure agreement (NDA) under the pretense of evaluating a potential business acquisition with Ontel, which allowed them unauthorized access to Ontel's confidential and proprietary information about the Arctic Air® Products.

101. During the meeting on November 1, 2022, at Ontel's headquarters, Equity Brands, through its representative Jemal, was presented with confidential information under the belief of a

potential acquisition. This information included, but was not limited to, Ontel's confidential, competitively sensitive product specifications, manufacturing partners, pricing structure, and the overall expansion strategy for the Arctic Air® Products.

102. Subsequent to these discussions and under the guise of due diligence, Equity Brands terminated its interest in the potential business transaction. Utilizing the confidential information obtained under the NDA, Equity Brands and Jemal enabled W. Appliance to introduce a competing product, the Accused Air Cooler, directly infringing on Ontel's utility patents associated with the Arctic Air® Products.

103. Ontel's decision to share detailed information regarding the Arctic Air® Products, including confidential financials, marketing strategies, and product specifications, was predicated on the good faith expectation that Equity Brands was a potential acquirer and not a competitor.

104. Specifically, during the confidential meeting, prototypes and future product plans were discussed and shared with Equity Brands' representative Jemal, including detailed discussions around the patents protecting the Arctic Air® Products, showcasing Ontel's reliance on the protective measures of the NDA.

105. The information shared with Equity Brands and Jemal was intended for the sole purpose of facilitating a potential acquisition and was not meant to enable or assist Equity Brands in creating a directly competing product.

106. Ontel would not have provided such sensitive and proprietary information had it known Equity Brands' true intent was to supply this information to Jemal's other company, W. Appliance, so that W. Appliance could use this information to enter the market as a direct competitor with an infringing product.

107. Equity Brands misrepresented its intentions through its actions and the execution of the NDA, leading Ontel to believe in a genuine interest in acquiring the Arctic Air® Product Lines, while planning to utilize the confidential information so that W. Appliance could launch a competing product.

108. Upon information and belief, at the time of receiving the confidential and proprietary information about the Arctic Air® Products, Equity Brands had already decided to use this information with W. Appliance to develop and introduce a competing product.

109. The introduction of the Accused Air Cooler, a direct copy and competitor to the Arctic Air® Products, was facilitated by the unauthorized and wrongful use of Ontel's proprietary information obtained through deceptive means.

110. In these actions, Equity Brands and Jemal not only breached the NDA but also engaged in unfair competition with W. Appliance, directly infringing upon Ontel's patents and misappropriating trade secrets and confidential business information for its own benefit—undercutting Ontel's price with retailers and selling the Accused Air Cooler directly to retail partners Ontel introduced to Equity Brand that sell the Arctic Air Products.

111. The launch of the Accused Air Cooler by Defendants, utilizing confidential information obtained from Ontel, constitutes a willful and deliberate infringement of Ontel's intellectual property rights.

112. Defendants' actions have caused significant harm to Ontel, not only through direct competition but also by undermining Ontel's investment in its intellectual property, damaging its market position for the Arctic Air® Products.

113. Equity Brands and Jemal were fully aware of the confidentiality of the information shared and the competitive advantage it could gain by misappropriating this information, demonstrating a clear intent to harm Ontel's business.

114. Despite the protective measures in place, including the NDA, Defendants deliberately chose to exploit the information provided by Ontel for their own competitive gain, in violation of federal law and the trust placed by Ontel in the confidentiality of the discussions.

115. Through these actions, Defendants have not only infringed upon Ontel's patent but also engaged in deceptive practices, directly impacting Ontel's business operations and its competitive edge in the market.

116. Defendants' infringement and misappropriation have caused, and unless enjoined, will continue to cause irreparable harm to Ontel, necessitating relief from this Court to prevent further damage.

117. Ontel relied upon the confidentiality and integrity of the discussions and information shared with Equity Brands, which was egregiously violated, resulting in significant harm and disadvantage to Ontel's business.

118. Defendants' conduct has caused, and continues to cause irreparable injury to Ontel, including to Ontel's reputation and goodwill. Ontel has no adequate remedy at law. Unless such unauthorized use is enjoined, Ontel will continue to be irreparably harmed.

119. Defendants' conduct, as described above, has been willful, wanton, reckless, and in total disregard of Ontel's rights.

120. By reason of Defendants' misconduct, Ontel has suffered, and will continue to suffer, monetary damages and loss of goodwill.

COUNT IV: UNJUST ENRICHMENT
(Violation by Defendants)

61. Ontel incorporates all preceding paragraphs of this Complaint as if set forth in full herein.

62. As detailed above, Ontel expended considerable time and resources in creating, developing, and maintaining Ontel's intellectual property and the goodwill associated with its Arctic Air® Product Line. The undertaking required considerable research, time, expenses, strategic planning, and evaluation of market and economic trends, new technologies, innovations, and their impact on the personal evaporative cooling device industry.

63. But for Defendants misappropriation of Ontel's intellectual property, Defendants would have had to expend considerable time and expense in independent research, development, marketing, and advertising of its Accused Air Cooler, an evaporative air-cooler, in order to enter the relevant market and directly compete with Ontel.

64. Defendant has been unjustly enriched by retaining this benefit without providing Ontel any compensation. As a result of Defendants' wrongful acts, Ontel has suffered and will continue to suffer significant commercial, monetary, and reputational damages, among others.

PRAYER FOR RELIEF

WHEREFORE, Ontel respectfully requests that this Honorable Court:

(A) Enter judgment against Defendants finding:

- (i) Defendant W. Appliance has knowingly and willfully engaged in actions to interfere with and infringe Ontel's Arctic Air® Patent, including the advertising, marketing, sale, attempted sale, distribution and/or importation of the Accused Air Cooler; and continued operation of the infringing website, and any similar sites;

- (ii) Defendant Equity Brands and Defendant Jemal breached the Non-Disclosure Agreement with Ontel;
 - (iii) Defendants have engaged in willful and intentional unfair competition in violation of New York common law; and
 - (iv) Defendants have been unjustly enriched in violation of New York common law;
- (B) Issue a temporary restraining order and preliminary and permanent injunctions prohibiting Defendants and each of their agents, servants, employees, attorneys, and any other persons who are in active concert or participation with them from:
 - (i) Engaging in further actions to interfere with Ontel's Arctic Air® Patent, including the advertising, marketing, sale, attempted sale, distribution and/or importation of the Accused Air Cooler or similar infringing products; and
 - (ii) Continuing to operate the infringing website, and any similar site;
- (C) Require Defendant W. Appliance to account for profits and hold such profits in a constructive trust for Ontel;
- (D) Award Ontel an amount equal to adequate compensation for Defendant W. Appliance's patent infringement, multiplied by three pursuant to 35 U.S.C. § 284;
- (E) Declare the case exceptional pursuant to 35 U.S.C. § 285 and award Ontel its enhanced damages;
- (F) Award Ontel the costs associated with bringing this action;
- (G) Award Ontel interest and reasonable attorneys' fees pursuant to the provisions of the Non-Disclosure Agreement entered into by the parties; and

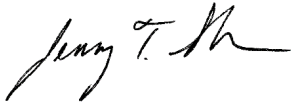
(G) An award of any further relief that this Court deems just and proper.

JURY DEMAND

Plaintiff Ontel Products Corporation hereby demands a trial by jury of all issues so triable.

Dated: March 28, 2024

Respectfully submitted,

By: 

Jenny T. Slocum (JS0213)
New York State Bar No. 4390092
DICKINSON WRIGHT PLLC
1825 Eye Street N.W., Suite 900
Washington, DC 20006
Telephone: (202)659-6927
Facsimile: (844)670-6009
JSlocum@dickinson-wright.com

Kristen E. Hudson
Texas State Bar No. 24120442
Jordan E. Garsson
Texas State Bar No. 24131326
DICKINSON WRIGHT PLLC
607 W. 3rd Street, Suite 2500
Austin, Texas 78701
Telephone: (512) 770-4200
Facsimile: (844)670-6009
KHudson@dickinson-wright.com
JGarsson@dickinson-wright.com

John S. Artz
Michigan State Bar No. P48578
DICKINSON WRIGHT PLLC
350 S Main St, Suite 300
Ann Arbor, MI 48104
Telephone: (734) 623-7075
JSArtz@dickinson-wright.com

Attorneys for Plaintiff