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*Attorneys for Plaintiff InMode Ltd.*

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

InMode Ltd.

Plaintiff,

v.

BTL Industries, Inc. d/b/a BTL  
Aesthetics

Defendant.

Case No. 2:23-CV-8583-JWH-RAO

Hon. John W. Holcomb

**PLAINTIFF INMODE LTD.'S  
FIRST AMENDED COMPLAINT  
FOR PATENT INFRINGEMENT**

**JURY TRIAL DEMANDED**

1 Plaintiff InMode Ltd. (“InMode” or “Plaintiff”) files this First Amended  
2 Complaint for patent infringement against BTL Industries, Inc. d/b/a BTL Aesthetics  
3 (“BTL” or “Defendant”) alleging, based on its own knowledge as to itself and its  
4 own actions, and based on information and belief as to all other matters, as follows:

5 1. This is a civil action arising under the patent laws of the United States,  
6 35 U.S.C. § 1 *et seq.*, including specifically 35 U.S.C. § 271, based on BTL’s  
7 infringement of at least Claims 1, 33, 35 and 41 of U.S. Patent No. 8,961,511 (the  
8 “’511 Patent”).

9 **THE PARTIES**

10 2. Plaintiff InMode is a corporation organized under the laws of Israel,  
11 having its principal place of business at Tavor Building Shaar Yokneam, P.O. Box  
12 533, Yokneam 2069206, Israel.

13 3. InMode is the owner by assignment to all right, title, and interest in and  
14 to the ’511 Patent, including the right to bring suit for past infringement and collect  
15 damages for past infringement.

16 4. InMode is an innovative developer, manufacturer, and marketer of  
17 aesthetic and medical technologies and solutions. InMode has incorporated its  
18 medically accepted, minimally- and non-invasive radiofrequency technologies into  
19 a comprehensive line of products for plastic surgery, gynecology, dermatology, and  
20 ophthalmology.

21 5. Upon information and belief, Defendant BTL is a Delaware  
22 corporation, having its principal place of business located at 362 Elm Street, Suite  
23 5, Marlborough, Massachusetts 01752.

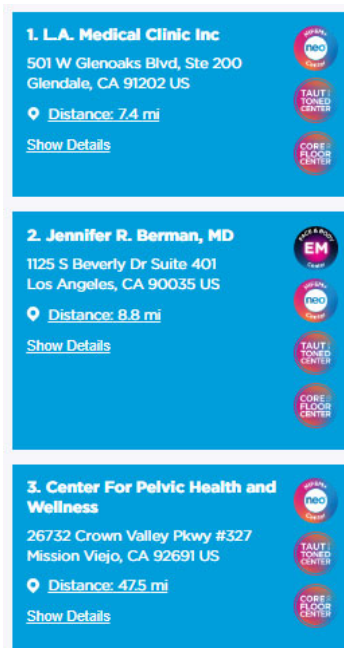
24 6. Upon information and belief, BTL has, as its registered agent in the  
25 State of Delaware, Valis Group Inc., located at 501 Silverside Road, Suite 105,  
26 Wilmington, Delaware 19809.

## JURISDICTION AND VENUE

7. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a) because the claims herein arise under the patent law of the United States, 35 U.S.C. § 1 *et seq.*, including 35 U.S.C. § 271.

8. This Court has personal jurisdiction over BTL in this action because BTL has committed acts of patent infringement within the State of California and within this District through, for example, using, selling and/or offering for sale BTL's UltraFemme 360 products (as part of both the UltraFemme 360 Platform and the Exilis Ultra 360 Platform) or EmFemme 360 products (as part of both the EmFemme Platform and the Exion Platform, which comprises the EmFemme 360 product along with other products and services) (the "Accused Products") to third-parties to provide vaginal rejuvenation treatment services in this District. In addition, BTL provides demonstrations and training utilizing the Accused Products and corresponding methods of treatment that infringe claims of the '511 Patent in this District.

9. According to BTL's website, a search for healthcare providers in this District offering vaginal rejuvenation treatment utilizing the Accused Products and corresponding methods of treatment include at least the following:



1 *See Find a Provider Near Me*, BODY BY BTL, [https://bodybybtl.com/find-a-](https://bodybybtl.com/find-a-provider/)  
 2 [provider/](https://bodybybtl.com/find-a-provider/) (last visited Sept. 30, 2023).

3 10. BTL regularly transacts business in the State of California and within  
 4 this District. For example, upon information and belief, BTL owns and operates a  
 5 brick-and-mortar storefront—The Body Boutique LAX—located at 216 North  
 6 Canon Drive, Beverly Hills, California 90210. *See Body Boutique*, BODY BY BTL,  
 7 <https://bodybybtl.com/body-boutique/> (last visited Sept. 30, 2023)<sup>1</sup>; *see also* Exs. 1,  
 8 2, 3, 4.

9 11. Upon opening its brick-and-mortar storefront in Beverly Hills,  
 10 California a “first-of-its-kind location,” Scott Mills, BTL’s Vice President of Sales,  
 11 was quoted as saying “[h]aving a physical location that will house product and offer  
 12 training and education will be an innovative resource to the industry. This tool will  
 13 be invaluable in continuing to deepen the relationships with our partners.” *See BTL*  
 14 *Aesthetics Launches First Of Its Kind, Stand-Alone Brick And Mortar Location*, PR  
 15 Newswire, [https://www.prnewswire.com/news-releases/btl-aesthetics-launches-](https://www.prnewswire.com/news-releases/btl-aesthetics-launches-first-of-its-kind-stand-alone-brick-and-mortar-location-301283903.html)  
 16 [first-of-its-kind-stand-alone-brick-and-mortar-location-301283903.html](https://www.prnewswire.com/news-releases/btl-aesthetics-launches-first-of-its-kind-stand-alone-brick-and-mortar-location-301283903.html) (last  
 17 visited May 18, 2024) (“Body Boutique Launch”).

18 12. Upon opening the Beverly Hills storefront, John Ferris, BTL’s Vice  
 19 President of US Marketing, was quoted saying the storefront “covers every  
 20 touchpoint from education to final sale.” *Id.* Mr. Ferris further explained “[a] brick  
 21 and mortar piece [like the Beverly Hills Body Boutique] was so important as it offers  
 22 us more opportunities to have valuable facetime with those who are part of the larger  
 23 BTL community.” *Id.*

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24  
 25  
 26 <sup>1</sup> Since the filing of the original complaint, BTL has removed this page, but it is still accessible  
 27 through the Internet Archive.  
 28 <https://web.archive.org/web/20231210054835/https://bodybybtl.com/body-boutique/>.

1           13. Upon information and belief, BTL only has two Body Boutiques, the  
2 Beverly Hills location and one in New York City. *Id.* BTL does not operate a brick-  
3 and-mortar storefront in Massachusetts. *Id.*

4           14. The Beverly Hills Body Boutique “act[s] as an immersive storefront  
5 offering medical aesthetic professionals a one-stop shop. BTL representatives will  
6 be onsite to provide hands-on education and training, show product demonstrations,  
7 as well as well BTL devices [including the Accused Products]. These unique  
8 storefronts allow for direct interaction between BTL professionals and the medical  
9 aesthetics community.” *Id.*

10           15. The Beverly Hills Body Boutique also provides “an opportunity for  
11 doctors to have a larger space to connect with patients, peers, and VIPs which is  
12 typically challenging in smaller clinic settings.” *Id.* BTL regularly hosts  
13 demonstrations and trainings in its Beverly Hills Body Boutique, with a BTL  
14 employee physically present for these events.

15           16. Upon further information and belief, BTL regularly provides  
16 demonstrations and training for healthcare professionals, including treatments using  
17 the Accused Products that infringe the claims of the ’511 Patent at the Beverly Hills  
18 Body Boutique and throughout this District at health professionals’ offices and  
19 conferences. *Id.*; *see also* D.I. 45-3; D.I. 45-6.

20           17. Upon further information and belief, BTL also regularly negotiates the  
21 sale of the Accused Products with third party health professionals at the Beverly  
22 Hills Body Boutique and throughout this district at health professionals’ offices,  
23 conferences, and other events. *See* Body Boutique Launch; *see also* Ex. 5 at ¶ 9; D.I.  
24 45-2 at 98:19-99:5.

25           18. In addition, BTL induces and contributes to infringement of the ’511  
26 Patent by numerous third-party healthcare providers in this District.

27           19. BTL engages in other persistent courses of conduct and derives  
28 substantial revenue from products and/or services provided in the State of California

1 and in this District, and has purposefully established substantial, systematic, and  
2 continuous contacts within this District. For example, BTL has purposefully availed  
3 itself of the jurisdiction of this Court in the following pending cases: *BTL Indus.,*  
4 *Inc. v. Beauty by Izzy*, Case No. 23-cv-01105 (June 9, 2023); *BTL Indus., Inc. v.*  
5 *Shape Body Sculpt*, Case No. 23-cv-04420 (June 6, 2023); *BTL Indus., Inc. v.*  
6 *Juventas*, Case No. 23-cv-04436 (June 6, 2023); *BTL Indus., Inc. v. LA Curves Body*  
7 *Sculpting, LLC*, Case No. 23-cv-03497 (May 8, 2023); *BTL Indus., Inc. v. Beauty*  
8 *Works OC, LLC*, Case No. 23-cv-00654 (Apr. 14, 2023); and *BTL Indus., Inc. v.*  
9 *Munera Esthetics, Inc.*, Case No. 23-cv-00269 (Jan. 13, 2023). Thus, BTL should  
10 reasonably expect to be sued in this District.

11 20. BTL continues to grow its presence in this District, further cementing  
12 its ties to this District. For example, according to BTL's website, BTL has more  
13 than ten authorized BTL Providers in the Los Angeles area, alone. *See Find a*  
14 *Provider Near Me*, BODY BY BTL, <https://bodybybtl.com/find-a-provider/> (last  
15 visited May 30, 2024).

16 21. Upon information and belief, BTL transacts with, partners with,  
17 advertises to, and provides demonstrations and clinical trainings utilizing the  
18 Accused Products and corresponding methods of treatment with significantly more  
19 third parties within this District than other parts of the country, including but not  
20 limited to the District of Massachusetts. *Compare* Exs. 6 (Beverly Hills), 7  
21 (Downtown Los Angeles), 8 (Santa Ana), 9 (Irvine), with Ex. 10 (Boston) (showing  
22 providers in this District are at least 10-100 times more densely concentrated than  
23 the District of Massachusetts).

24 22. Upon information and belief, BTL has sold significantly more products  
25 in this District than other parts of the country, including but not limited to the District  
26 of Massachusetts. Upon information and belief, BTL has more prospective  
27 customers in this District than in the District of Massachusetts. *See* Ex. 11; *see also*  
28

1 D.I. 45-4. Upon information and belief, some of BTL’s prospective customers in  
2 this District already offer services using InMode’s devices. *Compare id. with* Ex. 12.

3 23. The Court’s exercise of jurisdiction over BTL will not offend  
4 traditional notions of fair play and substantial justice.

5 24. A significant portion of BTL’s business is located in this District.

6 25. BTL has operated a business location in this District through its Body  
7 Boutique and sales representatives based in California.

8 26. Through its Body Boutique, BTL has marketed its aesthetic medical  
9 products, including the Accused Products, to third parties in this District.

10 27. As evidenced by the numerous providers within this District, there are  
11 ongoing business relationships between BTL and third parties within this District.  
12 Upon information and belief, the Accused Products, include “consumables” which  
13 must be periodically reordered for providers to continue using and offering the  
14 Accused Products. *See, e.g.,* D.I. 45-8 to 45-10.

15 28. Upon information and belief, these business relationships include  
16 demonstrations and clinical trainings of BTL products including the Accused  
17 Products as well as BTL’s EMFest, “[a] one-day festival of curated lifestyle  
18 experiences,” which included “complementary demos” of BTL’s wellness  
19 technologies and occurred within this District. *BTL Presents EMFest*, BTL,  
20 <https://www.emfest.com/> (last visited May 30, 2024).

21 29. Upon information and belief, because there are more third-party health  
22 providers that use the Accused Products throughout this District—requiring both  
23 prior and continuous infringing acts—and there are more prospective third-party  
24 health providers that BTL targets with its promotions, demonstrations, and clinical  
25 trainings utilizing the Accused Products and corresponding methods of treatment,  
26 BTL has more sales associates in and dedicated to sales within this District. *See* Exs.  
27 13 and 14.



30. Separate from the parties, multiple relevant third parties reside or offer services in this District. For example, BTL cites to an article entitled “Designer Vaginas” by Debra Ollivier in support of its patent invalidity arguments. Ex. 15. The article discusses treatments performed by “Dr. David Matlock and his Laser Vaginal Rejuvenation clinic in Los Angeles.” Ex. 16 ([https://www.salon.com/2000/11/14/vagina\\_3/](https://www.salon.com/2000/11/14/vagina_3/)). Dr. David Matlock’s office is located in this District at 9201 Sunset Boulevard, Suite 406, Los Angeles, CA. In addition, Dr. Red Alinsod, a defendant in the prior litigation involving the ’511 Patent, is a BTL provider and may have information relevant to infringement and validity in this case. Dr. Red Alinsod is located in this District at Alinsod Institute & Wei Aesthetic Institute, 16300 San Canyon, Suite 800, Irvine, CA 92618.

31. In addition, the lead inventors on two other patents that BTL relies on for its invalidity arguments are located in the State of California. For example, Frank Ingle, lead inventor on U.S. Pat. No. 6,216,704, resides in Palo Alto, California. Ex. 17 (<https://www.linkedin.com/in/frank-ingle-461abb91/>). In addition, Oren Mosher, lead inventor on U.S. Pat. Pub. No. 2004/0193238, resides in Castro Valley, California. Ex. 18 (<https://www.linkedin.com/in/oren-mosher-0702606/>).

32. Upon information and belief, BTL has numerous former sales associates with information regarding sales, promotions, demonstrations, and clinical trainings utilizing the Accused Products and corresponding methods of treatment in this district. *See* Ex. 13.

33. Venue in the Central District of California is proper pursuant to 28 U.S.C. §§ 1391(b), (c), and 1400.

34. BTL’s Beverly Hills Body Boutique is a regular and established place of business.

35. BTL’s Beverly Hills Body Boutique is a physical place of business within this District.



1           36. BTL's Beverly Hills Body Boutique provides a permanently fixed  
2 location for regularly providing demonstrations and training for healthcare  
3 professionals, including treatments using the Accused Products that infringe the  
4 claims of the '511 Patent within this District.

5           37. BTL's Beverly Hills Body Boutique provides a physical location from  
6 which BTL's business is carried out in the form of regular sales, promotions,  
7 demonstrations and training for healthcare professionals, including treatments using  
8 the Accused Products that infringe the claims of the '511 Patent within this District.

9           38. Upon information and belief, BTL's Beverly Hills Body Boutique is  
10 owned and operated by BTL for the purpose of regular sales, promotions,  
11 demonstrations, and training for healthcare professionals, including treatments using  
12 the Accused Products that infringe the claims of the '511 Patent within this District.

13           39. BTL has committed acts of infringement within this judicial District,  
14 giving rise to this action by *inter alia*, selling, offering for sale, and using the  
15 Accused Products and corresponding methods of treatment utilizing the Accused  
16 Products in this judicial District.

17           40. BTL continues to conduct business in this judicial District, including  
18 by committing one or more acts of making, using, selling, importing, and/or offering  
19 for sale the Accused Products and corresponding methods of treatment.

20           41. This District is the most convenient venue because physical products  
21 are located within this District, relevant documents are available electronically, and  
22 numerous third-party witnesses—with information not available from other  
23 sources—are located in this District.

24                           **INMODE'S LEGACY OF INNOVATION**

25           42. Since 2008, InMode has been an innovative and revolutionary  
26 developer, manufacturer, and marketer of aesthetic and medical technologies and  
27 solutions. Harnessing its novel technologies, InMode strives to both enable new and  
28 emerging surgical procedures and improve upon existing treatments.

1           43. Recognizing the demand for safe and effective alternatives to  
2 traditionally invasive procedures, InMode has leveraged its wide range of  
3 minimally- and non-invasive radiofrequency technologies and treatments—  
4 including treatments for face and body contouring, medical aesthetics, and women’s  
5 health—to “offer a comprehensive line of products across several categories for  
6 aesthetic medicine, gynecology, dermatology and ophthalmology.” *See* Ex. 19.

7           44. By way of example, between 2010 and 2021, InMode launched nine  
8 revolutionary product platforms in the aesthetics solutions market, including the  
9 InMode BodyTitle, Optimas, Votiva, Contoura, Triton, EmbraceRF, Evolve, Evoke,  
10 and Morpheus8.

11           45. InMode has also substantially invested in developing a broad array of  
12 women’s wellness products and treatments. In fact, just this year, InMode  
13 strategically acquired certain assets from Viveve Inc., a pioneer in the field of  
14 women’s wellness. *See id.* In doing so, InMode further solidified itself as a leader  
15 in the women’s wellness market and “reaffirm[ed] its commitment to  
16 commercializing innovative technologies.” *See id.*

17           46. InMode’s continued success in introducing successful, minimally- and  
18 non-invasive medical and aesthetic solutions is evidence of its innovative approach  
19 and business acumen. Resultantly, InMode remains one of the most reputable and  
20 recognizable innovators of medical and aesthetic solutions, today.

21           47. InMode brings the instant lawsuit because BTL is unlawfully infringing  
22 InMode’s intellectual property—intellectual property that is a direct result of  
23 InMode’s innovation and ingenuity, and its investments in aesthetic solutions and  
24 women’s healthcare.

25           **THE ASSERTED PATENT AND ACCUSED PRODUCTS**

26           48. One of the assets InMode acquired from Viveve, Inc. is United States  
27 Patent No. 8,961,511 (the “’511 Patent”). The ’511 Patent, entitled “Vaginal  
28 Remodeling Device And Methods,” was duly and legally issued on February 24,

1 2015, naming Jonathan B. Parmer as the sole inventor and Viveve, Inc. as the sole  
2 assignee. The '511 Patent was issued from U.S. Patent Application No. 11/704,067,  
3 filed on February 7, 2007. A true and accurate copy of the '511 Patent is attached  
4 hereto as Exhibit 20.

5 49. InMode acquired all right, title, and interest to the '511 Patent from  
6 Viveve, Inc., with sole rights to enforce the '511 Patent and sue infringers, including  
7 for past infringement and damages.

8 50. The '511 Patent relates generally to apparatus and methods for  
9 tightening tissue of the female genitalia by heating targeted connective tissue with  
10 radiant energy. The effect of the applied heat is to remodel genital tissue by  
11 tightening it. *See id.* at Abstract.

12 51. Vaginal childbirth can lead to permanent stretching of the vaginal  
13 tissue, leaving some women with long term medical consequences, including uterine  
14 prolapse, cystoceles, stress urinary incontinence, decreased sexual pleasure, and  
15 more. *See id.* at 1:62-2:9. While certain surgical options are available to alleviate  
16 these problems, such approaches can frustrate the issue by leaving scarring that is  
17 counterproductive to the intended result. *Id.* at 2:9-12. Further, surgical approaches  
18 are generally less popular given the risks associated with invasive procedures in a  
19 sensitive area. *Id.* at 2:13-16.

20 52. As an alternative to invasive and risky surgical procedures, the '511  
21 Patent describes a non-invasive method to effectively tighten genital tissue “by  
22 heating targeted connective tissue with radiant energy, while cooling the mucosal  
23 epithelial surface over the targeted tissue to protect it from the heat.” *See id.* at  
24 Abstract.

25 53. While non-uniform delivery of energy can cause damage to the mucosal  
26 epithelium, embodiments of the claimed invention include adaptive configurations  
27 of the energy delivery element and treatment tip to make the best contact with the  
28

1 genital epithelial surface, thereby uniformly delivering energy into the target tissue.  
2 *Id.* at 2:53-3:7.

3 54. The desired remodeling can occur while the genital tissue is being  
4 heated due to the denaturation of existing collagen within the target tissue's  
5 collagen-rich areas. *Id.* at 4:58-65. Remodeling may also substantially occur in the  
6 days or weeks thereafter due to biological healing responses to the heat, which can  
7 include the deposition of new collagen. *Id.* at 4:65-5:2. In either case, the effect is  
8 generally one of tissue contraction or tightening, resulting in an overall tightening of  
9 the vagina and introitus. *Id.* at 5:2-6.

10 55. Defendant BTL markets vaginal reconstruction products and treatments  
11 under the tradenames UltraFemme 360 and EmFemme 360 (the "Accused  
12 Products"). *See, e.g., EmFemme 360, BODY BY BTL,*  
13 [https://www.bodybybtl.com/solutions/](https://www.bodybybtl.com/solutions/emfemme-360)  
14 [emfemme-360](https://www.bodybybtl.com/solutions/emfemme-360) (last visited May 30, 2024). Upon information and belief, the  
15 UltraFemme 360 product and corresponding treatment was launched in the United  
16 States after gaining FDA 510(k) approval in 2017. Upon further information and  
17 belief, the EmFemme 360 product and corresponding treatment was launched in the  
18 United States in 2022.

19 56. Defendant BTL's UltraFemme 360 and EmFemme 360 devices are  
20 used to provide non-invasive, radiofrequency vaginal rejuvenation treatments. BTL  
21 touts the EmFemme 360 as "the shortest radio frequency treatment available on the  
22 market," which "homogeneously delivers volumetric heating throughout the treated  
23 area" for a "fast and uniform treatment." *See* Ex. 21.

24 57. On information and belief, BTL's UltraFemme 360 apparatus is a  
25 predecessor to BTL's EmFemme 360 device. Both Accused Products function  
26 similarly to the inventions claimed in the '511 Patent. For example, the National  
27 Menopause Association describes the UltraFemme 360 as a "radiofrequency skin-  
28

1 tightening device . . . [that] treat[s] the unique anatomy of women” by “heat[ing] the  
2 vaginal introitus and canal” to stimulate “new collagen formation.” *See* Ex. 22.

3 58. On information and belief, BTL has made, used, offered for sale, and/or  
4 sold, and continues to make, use, offer for sale, and/or sell its Accused Products and  
5 corresponding treatments within this District.

### 6 **COUNT I**

#### 7 **(DIRECT INFRINGEMENT OF THE '511 PATENT)**

8 59. InMode incorporates by reference and realleges each allegation of  
9 Paragraphs 1-58 as set forth herein.

10 60. Defendant BTL has made, had made, used, imported, supplied,  
11 distributed, sold, and/or offered for sale the Accused Products, including BTL’s  
12 UltraFemme 360 products (as part of both the UltraFemme 360 Platform and the  
13 Exilis Ultra 360 Platform) or EmFemme 360 products (as part of both the EmFemme  
14 Platform and the Exion Platform, which comprises the EmFemme 360 product along  
15 with other products and services), and corresponding treatments using the Accused  
16 Products in the United States and specifically in this District. For example, BTL  
17 provides demonstrations and training for third-party healthcare providers utilizing  
18 the Accused Products and corresponding treatments utilizing the Accused Products  
19 at Defendant’s Body Boutique locations in New York City (3 Great Jones Street,  
20 New York, NY 10012) and Beverly Hills (216 North Canon Drive, Beverly Hills,  
21 CA 90210). *See Body Boutique*, BODY BY BTL, [https://bodybybtl.com/body-](https://bodybybtl.com/body-boutique/)  
22 [boutique/](https://bodybybtl.com/body-boutique/) (last visited Sept. 30, 2023). Accordingly, Defendant BTL is liable for  
23 infringement of the ’511 Patent pursuant to 35 U.S.C. § 271(a).

24 61. As set forth in the attached non-limiting claim chart (Exhibit 23), BTL  
25 has infringed and continues to infringe at least claims 1, 33, 35, and 41 of the ’511  
26 Patent by making, having made, using, importing, supplying, distributing, selling,  
27 and/or offering for sale the Accused Products and corresponding treatments utilizing  
28

1 the Accused Products, including, but not limited to, providing demonstrations and  
2 training sessions utilizing the Accused Products.

3 62. Upon information and belief, Defendant BTL has had, and continues to  
4 have, knowledge of the '511 Patent. At the very least, Defendant BTL has had  
5 knowledge of the '511 Patent since the filing of this Complaint. Upon information  
6 and belief, however, BTL was aware of the '511 Patent as a result of a patent  
7 infringement lawsuit filed by the previous owner of the '511 Patent, Viveve, Inc.  
8 ("Viveve"), asserting infringement of the '511 Patent against ThermiGen, LLC  
9 ("ThermiGen") (and related entities and persons). *See Viveve, Inc. v. ThermiGen,*  
10 *LLC et al.*, Case No. 2:16-CV-1189-JRG (E.D. Tex. 2016) (the "Viveve Lawsuit").  
11 Viveve, ThermiGen, and BTL are and/or were competitors in the aesthetic  
12 healthcare industry and each offered competing RF vaginal rejuvenation products  
13 and treatments in the market.

14 63. Upon information and belief, BTL knew of the Viveve Lawsuit and  
15 reviewed information associated with the status of the Viveve Lawsuit such that BTL  
16 knew or should have known of the '511 Patent and that the Accused Products and  
17 corresponding treatments using the Accused Products infringe the '511 Patent. For  
18 example, both Viveve and ThermiGen issued press releases announcing the  
19 settlement of the Viveve Lawsuit. *See Thermi Announces Settlement of Patent*  
20 *Infringement Litigation with Viveve*, CISION PR NEWSWIRE (June 4, 2018, 8:30 ET),  
21 [https://www.prnewswire.com/news-releases/thermi-announces-settlement-of-](https://www.prnewswire.com/news-releases/thermi-announces-settlement-of-patent-infringement-litigation-with-viveve-300659000.html)  
22 [patent-infringement-litigation-with-viveve-300659000.html](https://www.prnewswire.com/news-releases/thermi-announces-settlement-of-patent-infringement-litigation-with-viveve-300659000.html); *Viveve Announces*  
23 *Settlement of Patent Infringement*, GLOBAL NEWSWIRE (JUNE 4, 2018, 8:28 ET),  
24 [https://www.globenewswire.com/en/news-](https://www.globenewswire.com/en/news-release/2018/06/04/1516178/0/en/Viveve-Announces-Settlement-of-Patent-Infringement-Litigation-with-Thermi.html)  
25 [release/2018/06/04/1516178/0/en/Viveve-Announces-Settlement-of-Patent-](https://www.globenewswire.com/en/news-release/2018/06/04/1516178/0/en/Viveve-Announces-Settlement-of-Patent-Infringement-Litigation-with-Thermi.html)  
26 [Infringement-Litigation-with-Thermi.html](https://www.globenewswire.com/en/news-release/2018/06/04/1516178/0/en/Viveve-Announces-Settlement-of-Patent-Infringement-Litigation-with-Thermi.html). To the extent that Defendant BTL was  
27 not aware of the '511 Patent as a result of the Viveve Lawsuit, BTL was willfully  
28 blind to the existence of and its infringement of the '511 Patent.





1           70. Defendant BTL is liable for actively inducing infringement, under 35  
2 U.S.C. § 271 (b), of one or more claims of the '511 Patent, including, but not limited  
3 to, claims 1, 33, 35 and 41, by knowingly taking active steps to encourage and  
4 facilitate direct infringement by others, such as third-party healthcare providers, who  
5 use the Accused Products and patented methods.

6           71. Upon information and belief, Defendant BTL knowingly provides  
7 literature, instructional videos, training guides, user manuals and other instructional  
8 materials encouraging and facilitating direct infringement of the patented methods  
9 of the '511 Patent by third-party healthcare providers.

10          72. Upon information and belief, Defendant BTL also knowingly provides  
11 demonstrations and clinical trainings or other instructional exercises encouraging  
12 and facilitating direct infringement of the patented methods of the '511 Patent by  
13 third-party healthcare providers.

14          73. Upon information and belief, Defendant BTL has had, and continues to  
15 have, knowledge of the '511 Patent. At the very least, Defendant BTL has had  
16 knowledge of the '511 Patent since the filing of this Complaint. Upon information  
17 and belief, however, BTL was aware of the '511 Patent as a result of the Viveve  
18 Lawsuit, asserting infringement of the '511 Patent against ThermiGen (and related  
19 entities and persons). *See Viveve, Inc.*, Case No. 2:16-CV-1189-JRG. Viveve,  
20 ThermiGen, and BTL are and/or were competitors in the aesthetic healthcare  
21 industry and each offered competing RF vaginal rejuvenation products in the market.

22          74. Upon information and belief, BTL knew of the Viveve Lawsuit and  
23 reviewed information associated with the status of the Viveve Lawsuit such that BTL  
24 knew or should have known of the '511 Patent and that the Accused Products and  
25 corresponding treatments using the Accused Products infringe the '511 Patent. For  
26 example, both Viveve and ThermiGen issued press releases announcing the  
27 settlement of the Viveve Lawsuit. *See Thermi Announces Settlement of Patent*  
28 *Infringement Litigation with Viveve, supra* ¶ 38; *Viveve Announces Settlement of*

1 *Patent Infringement, supra* ¶ 38. To the extent that Defendant BTL was not aware  
2 of the '511 Patent as a result of the Viveve Lawsuit, BTL was willfully blind to the  
3 existence of and its infringement of the '511 Patent.

4 75. Defendant BTL contributes to the infringement of the '511 Patent in  
5 violation of 35 U.S.C. § 271(c), including, but not limited to claims 1, 33, 35 and 41,  
6 by making, using, selling, offering to sell, and distributing into the United States the  
7 Accused Products that are a material part of the patented invention, knowing that the  
8 Accused Products are specially made, or specially adapted, for use in a manner that  
9 infringes at least claims 1, 33, 35 and 41 of the '511 Patent.

10 76. Upon information and belief, Defendant BTL also contributes to the  
11 infringement of the '511 Patent in violation of 35 U.S.C. § 271(c), including, but not  
12 limited to claims 1, 33, 35 and 41, by making, using, selling, offering to sell, and  
13 distributing into the United States consumables that are intended to be combined  
14 with products already owned or in the possession of third-party healthcare providers  
15 and are a material part of the patented invention, knowing that the consumables are  
16 specially made, or specially adapted for use in a manner that infringes at least claims  
17 1, 33, 35 and 41 of the '511 Patent.

18 77. Upon information and belief, the Accused Products are not a staple  
19 article or commodity suitable for substantial non-infringing use.

20 78. Defendant BTL's indirect infringement of the '511 Patent has caused  
21 substantial and irreparable harm to InMode and will continue to cause such harm  
22 unless and until its infringing activities are enjoined by this Court.

23 79. InMode is entitled to damages adequate to compensate it for Defendant  
24 BTL's indirect infringement pursuant to 35 U.S.C. § 284, in an amount to be  
25 determined at trial, but in no event less than a reasonable royalty.

26 80. Upon information and belief, Defendant BTL's indirect infringement  
27 of the '511 Patent has been deliberate and willful, making this an exceptional case  
28

entitling InMode to recover additional damages and attorneys' fees pursuant to 35 U.S.C. § 285.

**PRAYER FOR RELIEF**

WHEREFORE, InMode respectfully requests that:

A. The Court find that BTL has directly infringed the '511 Patent and hold BTL liable for such infringement;

B. The Court find that BTL has indirectly infringed the '511 Patent by inducing its customers to directly infringe the '511 Patent and hold BTL liable for such infringement;

C. The Court find that BTL has indirectly infringed the '511 Patent by contributing to BTL's customers' direct infringement of the '511 Patent, and hold BTL liable for such infringement;

D. The Court preliminarily and permanently enjoin BTL from further infringement of the '511 Patent;

E. The Court award damages pursuant to 35 U.S.C. § 284 adequate to compensate InMode for BTL's past infringement of the '511 Patent, including both pre- and post-judgment interest and costs as fixed by the Court;

F. The Court declare that this is an exceptional case entitling InMode to its reasonable attorneys' fees under 35 U.S.C. § 285; and

G. The Court award such other relief as the Court may deem just and proper.

Dated: May 31, 2024

VENABLE LLP

By: /s/ William A. Hector

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**DEMAND FOR JURY TRIAL**

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, InMode hereby demands a trial by jury on all issues raised by this Complaint.

Dated: May 31, 2024

Respectfully submitted,

By: /s/ William A. Hector

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VENABLE LLP

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