

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

Iron Stop, Inc.,	§	
	§	
Plaintiff,	§	
	§	CIVIL ACTION NO. _____
v.	§	
	§	
M. Akbik & Co., Ltd.,	§	
	§	
Defendant.	§	

ORIGINAL COMPLAINT

Comes now Iron Stop, Inc., (hereinafter “Iron Stop” or “Plaintiff”) and files its Original Complaint against Defendant M. Akbik & Co., Ltd. (hereinafter “Akbik” or “Defendant”) and would show the Court as follows:

I. THE PARTIES

1. Plaintiff Iron Stop, Inc. is a corporation organized and existing under the laws of the State of Texas with its principal place of business at 3917 Morse Street, Suite 216, Denton, TX 76208.

2. Defendant M. Akbik & Co., Ltd. is a Wisconsin corporation, upon information and belief, having a principal place of business at 3102 Commercial Avenue, Madison, Dane County, WI 53714. M. Akbik & Co., Ltd. may be served through its registered agent, M. Akbik at 3102 Commercial Avenue, Madison, WI 53714, or at any place where he may be found.

II. JURISDICTION

3. This Court has subject matter jurisdiction over the following causes of action under 28 U.S.C. §§ 1331, 1338, 1367, 2201 and 2202, as a declaratory judgment action arising under the Patent Laws, Title 35 of the United States Code.

4. This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1338, as an action for unfair competition under the Lanham Act, Title 15 of the United States Code and has supplemental jurisdiction under 28 U.S.C. § 1367 over the state law claims for unfair competition, tortious interference with contracts and prospective business relations and business disparagement.

5. This Court has subject matter jurisdiction to adjudicate the Plaintiff's claims against Defendant pursuant to 28 U.S.C. § 1332(a). This Court has original jurisdiction over this case and controversy because the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and is between citizens of different states and/or countries. The Plaintiff is a citizen of the state of Texas and the Defendant is a citizen of the state of Wisconsin.

6. This Court has personal jurisdiction over the Defendant under the Texas Long Arm Statute, in that the Defendant is a nonresident who has done business in the state of Texas by virtue of (1) committing a tort, in whole or in part, in Texas; and (2) engaging in intentional conduct which was purposely directed at and which targeted a Texas resident, for the purpose of causing effects in Texas, all within the meaning of Tex. Civ. Prac. & Rem. Code. § 17.042. Defendant conducts business in Texas and purposely availed itself of the laws of the state of Texas. Iron Stop's claim arose, in part, out of Defendant's contacts in the state of Texas.

7. Defendant advertises, sells and distributes its products in the state of Texas, upon information and belief, through, among other avenues, websites such as crystaltwister.com and makbik.com that advertise its products provide information for customers in Texas to order and tradeshows where it sells and ships to Texas customers, as well as selling in the state of Texas on Amazon.com, another interactive websites of a commercial nature that gains information for Texas residents.

8. Moreover, Texas courts have jurisdiction over Defendant because Defendant committed a tort in whole or in part in this state by committing the torts set forth in this Complaint, which are incorporated in this section by reference. Such acts were intentionally directed at the Texas forum and intended to cause harm to Iron Stop at its principal place of business in Denton, Texas. Additionally, Defendant knew that its false claims of infringement and various other business torts would result in injury to Iron Stop in the state of Texas. In fact, Iron Stop's alleged acts of infringement took place, in part, at its principal place of business in this District.

9. Additionally, on information and belief, in the summer of 2009, Mr. M. Akbik, as an agent for Akbik, sent a letter to Iron Stop in Denton that demanded that Iron Stop cease selling its Double Twist product. However, at that time Akbik had no patents on his alleged invention. On September 21, 2010, M. Akbik, as an agent for Akbik, sent a second request for Iron Stop to stop selling the Double Twist product and stop advertising it on the Internet. Later, on or about November 18, 2010, after the Akbik Patents had issued, Scott Cleere, attorney for Akbik, sent another letter alleging patent infringement to Iron Stop at its headquarters in Denton County, Texas. Scott Cleere also sent letters to at least six of Iron Stop's customers alleging that the products they purchased from Iron Stop are covered by Akbik's Patents and suggesting that these customers should refrain from purchasing from Iron Stop due to the alleged infringement. As a direct result of these letters, at least one customer of Iron Stop's has removed Iron Stop's Ornamental Spinners from its website so as to refrain from selling to customers.

10. Further, Defendant has placed phone calls to and received phone calls from Iron Stop in Texas.

11. In his phone call in 2009, prior to obtaining the Patents, M. Akbik, presumably as an agent for Akbik, told Ron Spinks of Iron Stop that Iron Stop better quit selling its Ornamental Spinners because they are Akbik's design. He told Iron Stop that he was going to talk to an attorney about his rights. In November of 2010, after the Patents had issued and Akbik had sent letters to many of Iron Stop's customers, Mr. Spinks called Mr. M. Akbik. M. Akbik informed Iron Stop that Akbik had obtained patents on its designs. He stated that Iron Stop can no longer sell its product. He further stated that Akbik owned all of Iron Stop's inventory. He threatened to contact more customers of Iron Stop and told Iron Stop that, if it didn't quit selling, he would take further action. Iron Stop understood this to mean that he would file a lawsuit. Upon information and belief, Akbik also has made similar statements to customers of Iron Stop.

12. As such, Defendant purposefully directed substantial activities at residents from Texas, the claims against Defendant arises out of and relate to these activities within Texas and the assertion of personal jurisdiction over Defendant is reasonable and fair, and because the exercise of in personam jurisdiction over such Defendant would not offend Due Process and is consistent with traditional notions of fair play and substantial justice.

III. VENUE

13. As a substantial part of the events giving rise to these claims as stated throughout the Complaint (and incorporated herein by reference) has occurred in the Eastern District of Texas, venue is proper in this Court under 28 U.S.C. § 1391 and 1400(b). On information and belief, Defendant regularly conducts business within this District and maintains a website to sell to customers in this District. Defendant committed a tort in this District for the purpose of causing effects in this District and knew that the harm inflicted would be suffered by Iron Stop in this District. Additionally, Iron Stop's acts of alleged infringement took place within this

District. Further, Defendant made demands upon Plaintiff in this District. As such, Defendant is subject to personal jurisdiction in this District.

IV. NATURE OF ACTION

14. This is an action for declaratory judgment of patent invalidity and unenforceability, declaratory judgment of patent non-infringement, declaratory judgment of exceptional case, unfair competition, tortious interference with contracts and prospective business relations, and business disparagement.

V. FACTUAL BACKGROUND

15. Iron Stop is a Texas corporation with its principal place of business in Denton, Texas. Iron Stop has created, marketed, and sold, and Iron Stop continues to create, market and sell, decorative spinning garden ornaments. One line of the garden ornaments that it created, markets and sells is a double twisted spinning garden ornament with a crystal (hereinafter the “Ornamental Spinner”). Iron Stop markets and sells its Ornamental Spinners through various channels of trade, including through independent sales representatives and retailers.

16. Akbik is a manufacturer of hanging ornaments that compete with Iron Stop’s Ornamental Spinners. The Plaintiff and Defendant have an interest in the outcome of this dispute.

17. Akbik claims to own all right, title and interest in U. S. Patent No. D625,222 titled “Hanging Ornament” (the “’022 Patent”), U. S. Patent No. D626,027 titled “Hanging Ornament” (the “’027 Patent”), and U.S. Patent No. D626,028 titled “Hanging Ornament” (the “’028 Patent”) (collectively also referred to as the “Akbik Patents”).

18. On or about November 18, 2010, Akbik (through its attorney) sent a demand letter to Iron Stop that stated: “[i]t has come to our attention that Iron Stop, Inc. is making,

using, importing, and/or selling or offering for sale ornamental spinners or hangers that appear to be identical or very similar to one or more of Akbik's patented designs." It further stated: "[i]t is our understanding that you claim that your product was developed in 2009 by Richard Study. Even if this claim is correct, which we do not concede, prior use and/or independent development are not defenses to patent infringement."

19. Prior to the commencement of this action, during the two weeks before Thanksgiving, Akbik (through its attorney) sent demand letters to Iron Stop's customers, including but not limited to Blaine's Supply, Home Depot, Hollywood Studios, Sam's, unitedjoy.com and others. These letters contained statements such as "[i]t has come to our attention that [name of customer] is selling or offering for sale ornamental spinners that appear to be identical or very similar to one or more of Akbik's patented designs." On belief, Akbik timed the mailing of these letters to correspond with Iron Stop's peak selling season between Thanksgiving and Christmas so as to inflict the most harm against Iron Stop.

20. As a result of Akbik's letters, some of Iron Stop's customers have put a temporary hold on marketing and/or selling Iron Stop's Ornamental Spinners alleged to infringe Akbik's patents.

21. Upon belief, in conjunction with its letters, representatives or agents of Akbik also communicated with some or all of Iron Stop's customers. These communications included insinuations and allegations that Iron Stop's Ornamental Spinners infringe Akbik's patents. Akbik is liable for the acts and conduct of its representatives and agents alleged herein.

VI. CAUSES OF ACTION

FIRST CAUSE OF ACTION

(Declaratory Judgment of Invalidity and/or Unenforceability of '222 Patent)

22. Iron Stop repeats and realleges the foregoing paragraphs, as if fully set forth herein.

23. A justifiable case and controversy exists between the Plaintiff, as more specifically identified below, and the Defendant as to whether the '222 patent is valid and enforceable.

24. Iron Stop seeks a judicial declaration that the '222 Patent is invalid, void and/or unenforceable.

25. A judicial declaration is necessary and appropriate so that Iron Stop may ascertain its rights as may relate to the '222 Patent. Iron Stop seeks a judicial declaration that the '222 Patent is invalid, void and/or unenforceable for failure to comply with the conditions of patentability specified in Title 35 of the United States Code, including, but not limited to Sections 101, 102, 103, 111, 112, 116, 132 and/or 251 thereof.

26. There exists, therefore, an actual case in controversy between Iron Stop and Akbik as to whether the '222 Patent is invalid.

27. As the result of defendant's erroneous accusation of patent infringement and other wrongdoing before the United States Patent Office, Defendant has misused this '222 Patent. It was necessary for the Plaintiff to file this lawsuit and seek a declaratory judgment from the Court to protect Plaintiff's rights. Accordingly, Plaintiff is entitled to recover from Defendant reasonable and necessary attorney's fees and expenses incurred by the Plaintiff in this action.

SECOND CAUSE OF ACTION
(Declaratory Judgment of Non-Infringement of '222 Patent)

28. Iron Stop repeats and realleges the foregoing paragraphs, as if fully set forth herein.

29. Akbik alleges that it owns all right, title, and interest in and to the '222 Patent.

30. Akbik, by its letters and words, has charged Iron Stop with infringement of the '222 Patent.

31. Iron Stop denies any infringement and is not infringing any claim of the '222 Patent. Iron Stop denies that it has or is contributorily infringing or inducing others to infringe any claim of the '222 Patent.

32. A justifiable case and controversy exists between the Plaintiff, as more specifically identified below, and the Defendant as to whether Iron Stop has infringed the '222 Patent.

33. A judicial declaration is necessary and appropriate so that Iron Stop may ascertain its rights as may relate to the '222 Patent. Iron Stop seeks a judicial declaration that it does not infringe, contributorily infringe, or induce infringement, directly or indirectly, willfully or otherwise, any valid and enforceable claim of the '222 Patent.

34. There exists, therefore, an actual controversy between Akbik and Iron Stop with respect to the '222 Patent.

35. As the result of defendant's erroneous accusation of patent infringement and other wrongdoing, it was necessary for the Plaintiff to file this lawsuit and seek a declaratory judgment from the Court to protect Plaintiff's rights. Accordingly, Plaintiff is entitled to recover from Defendant reasonable and necessary attorney's fees and expenses incurred by the Plaintiff in this action.

THIRD CAUSE OF ACTION

(Declaratory Judgment of Invalidity and/or Unenforceability of '027 Patent)

36. Iron Stop repeats and realleges the foregoing paragraphs, as if fully set forth herein.

37. A justifiable case and controversy exists between the Plaintiff, as more specifically identified below, and the Defendant as to whether the '027 Patent is valid and enforceable.

38. Iron Stop seeks a judicial declaration that the '027 Patent is invalid, void and/or unenforceable.

39. A judicial declaration is necessary and appropriate so that Iron Stop may ascertain its rights as may relate to the '027 Patent. Iron Stop seeks a judicial declaration that the '027 Patent is invalid, void and/or unenforceable for failure to comply with the conditions of patentability specified in Title 35 of the United States Code, including, but not limited to Sections 101, 102, 103, 111, 112, 116, 132 and/or 251 thereof.

40. There exists, therefore, an actual case in controversy between Iron Stop and Akbik as to whether the '027 Patent is invalid.

41. As the result of defendant's erroneous accusation of patent infringement and other wrongdoing, Defendant has misused the '027 Patent. It was necessary for the Plaintiff to file this lawsuit and seek a declaratory judgment from the Court to protect Plaintiff's rights. Accordingly, Plaintiff is entitled to recover from Defendant reasonable and necessary attorney's fees and expenses incurred by the Plaintiff in this action.

FOURTH CAUSE OF ACTION
(Declaratory Judgment of Non-Infringement of '027 Patent)

42. Iron Stop repeats and realleges the foregoing paragraphs, as if fully set forth herein.

43. Akbik alleges that it owns all right, title, and interest in and to the '027 Patent.

44. Akbik, by its letters and words, has charged Iron Stop with infringement of the '027 Patent.

45. Iron Stop denies any infringement and is not infringing any claim of the '027 Patent. Iron Stop denies that it has or is contributorily infringing or inducing others to infringe any claim of the '027 Patent.

46. A justifiable case and controversy exists between the Plaintiff, as more specifically identified below, and the Defendant as to whether Iron Stop has infringed the '027 Patent.

47. A judicial declaration is necessary and appropriate so that Iron Stop may ascertain its rights as may relate to the '027 Patent. Iron Stop seeks a judicial declaration that it does not infringe, contributorily infringe, or induce infringement, directly or indirectly, willfully or otherwise, any valid and enforceable claim, either literally or under the doctrine of equivalents, of the '027 Patent.

48. There exists, therefore, an actual controversy between Akbik and Iron Stop with respect to the '027 Patent.

49. As the result of defendant's erroneous accusation of patent infringement and other wrongdoing, it was necessary for the Plaintiff to file this lawsuit and seek a declaratory judgment from the Court to protect Plaintiff's rights. Accordingly, Plaintiff is entitled to recover from

Defendant reasonable and necessary attorney's fees and expenses incurred by the Plaintiff in this action.

FIFTH CAUSE OF ACTION
(Declaratory Judgment of Invalidity and/or Unenforceability of '028 Patent)

50. Iron Stop repeats and realleges the foregoing paragraphs, as if fully set forth herein.

51. A justifiable case and controversy exists between the Plaintiff, as more specifically identified below, and the Defendant as to whether the '028 Patent is valid and enforceable.

52. Iron Stop seeks a judicial declaration that the '028 Patent is invalid, void, and/or unenforceable.

53. A judicial declaration is necessary and appropriate so that Iron Stop may ascertain its rights as may relate to the '028 Patent. Iron Stop seeks a judicial declaration that the '028 Patent is invalid, void and/or unenforceable for failure to comply with the conditions of patentability specified in Title 35 of the United States Code, including, but not limited to Sections 101, 102, 103, 111, 112, 116, 132 and/or 251 thereof.

54. There exists, therefore, an actual case in controversy between Iron Stop and Akbik as to whether the '028 Patent is invalid.

55. As the result of defendant's erroneous accusation of patent infringement and other wrongdoing before the United States Patent Office, Defendant has misused the '028 Patent. It was necessary for the Plaintiff to file this lawsuit and seek a declaratory judgment from the Court to protect Plaintiff's rights. Accordingly, Plaintiff is entitled to recover from Defendant reasonable and necessary attorney's fees and expenses incurred by the Plaintiff in this action.

SIXTH CAUSE OF ACTION
(Declaratory Judgment of Non-Infringement of '028 Patent)

56. Iron Stop repeats and realleges the foregoing paragraphs, as if fully set forth herein.

57. Akbik alleges that it owns all right, title, and interest in and to the '028 Patent.

58. Akbik, by its letters and words, has charged Iron Stop with infringement of the '028 Patent.

59. Iron Stop denies any infringement and is not infringing any claim of the '028 Patent. Iron Stop denies that it has or is contributorily infringing or inducing others to infringe any claim of the '028 Patent.

60. A justifiable case and controversy exists between the Plaintiff, as more specifically identified below, and the Defendant as to whether Iron Stop has infringed the '028 Patent.

61. A judicial declaration is necessary and appropriate so that Iron Stop may ascertain its rights as may relate to the '028 Patent. Iron Stop seeks a judicial declaration that it does not infringe, contributorily infringe, or induce infringement, directly or indirectly, willfully or otherwise, any valid and enforceable claim, either literally or under the doctrine of equivalents, of the '028 Patent.

62. There exists, therefore, an actual controversy between Akbik and Iron Stop with respect to the '028 Patent.

63. As the result of Defendant's erroneous accusation of patent infringement and other wrongdoing, it was necessary for the Plaintiff to file this lawsuit and seek a declaratory judgment from the Court to protect Plaintiff's rights. Accordingly, Plaintiff is entitled to recover

from Defendant reasonable and necessary attorney's fees and expenses incurred by the Plaintiff in this action.

SEVENTH CAUSE OF ACTION
(Declaration of Exceptional Case)

64. Iron Stop repeats and realleges the foregoing paragraphs, as if fully set forth herein.

65. This is an exceptional case because Akbik knows or should know that Iron Stop cannot reasonably be said to infringe any valid, enforceable and properly construed claim of the '222, '027 or '028 Patents. Further, upon information and belief, Akbik has acted in bad faith with regard to its statements and representations to the United States Patent Office, used inequitable conduct to procure the Akbik Patents, and misused the Akbik Patents, and yet Akbik has maintained its infringement claims against Iron Stop.

66. As such, Iron Stop is entitled to, among other things, enhanced damages and its reasonable and necessary attorneys' fees.

EIGHTH CAUSE OF ACTION
(Tortious Interference with Contracts and Prospective Business Relations)

67. Iron Stop repeats and realleges the foregoing paragraphs, as if fully set forth herein.

68. Akbik interfered with Iron Stop's actual contracts and prospective business relations with Blaine's Supply, Home Depot, Hollywood Studios, Sam's, unitedjoy.com and others by sending a letter to them suggesting that Iron Stop's products were infringing its patents. Such letters were sent to induce those customers to refrain from selling the Iron Stop Ornamental Spinner products. By doing such, Defendant intentionally interfered and attempted to induce each of these companies to breach their agreement with Iron Stop.

69. These contracts and other prospective contracts were, for the most part, negotiated and entered into by Plaintiff in Denton County in the state of Texas.

70. Iron Stop had a reasonable expectation of economic gain resulting from such relationship(s) and others. Defendant's conduct, as alleged herein, had an adverse effect upon the relationship(s) and prevented further economic gain from occurring.

71. Defendant intended to cause harm to and the destruction of such relationship(s).

72. Defendant's conduct was not privileged or justified.

73. Defendant's conduct was the proximate cause of the destruction of, or harm to, said business relationship(s). Such injury occurred, in part, to Iron Stop in Denton County, Texas.

74. Prior to defendant's interference, there was a reasonable probability that these companies and others would fulfill their obligations under their existing contracts and would have entered into additional agreements with Iron Stop. By doing such, Defendant tortiously interfered with Plaintiff's business relationships with these companies and others.

75. Defendant's actions were conducted with malice and intent to cause damage to Iron Stop and during its peak season and it was foreseeable that such damages would occur in Texas.

76. Defendant had no legal right, or good faith claim to a colorable legal right, to take the actions described above.

NINTH CAUSE OF ACTION
(Violations of Lanham Act)

77. Defendant made false and misleading statements of fact in the commercial advertising or promotion regarding Iron Stop's products to wit, that Akbik is the creator of the Crystal Twister, Akbik is the sole authorized wholesaler of the Crystal Twister, that Iron Stop's

Ornamental Spinners are identical or very similar to Akbik's patented designs and that the claims asserted against Iron Stop were legally and factually meritorious. Upon information and belief, Akbik knew at the time it made these statements that the Akbik Patents were invalid, unenforceable and/or not infringed. As such, its statements were false and made in bad faith.

78. Akbik's written statements to Iron Stop's customers suggesting that the products made by Iron Stop infringe the '222, '027, and '028 Patents constitute unfair competition under § 43 of the Lanham Act (15 U.S.C. § 1125). On belief, Akbik has made oral statements to Iron Stop's customers suggesting that Iron Stop's Ornamental Spinner infringes one or more of the Akbik Patents. Said oral and written statements actually deceived persons or were likely to deceive or actually deceived a substantial segment of the intended customers who received such statements.

79. These statements were material in that they were likely to influence Iron Stop's customers' decisions to purchase (or not to purchase, as in this case) the Iron Stop "Ornamental Spinners."

80. Defendant caused such statements to enter interstate commerce.

81. Such statements resulted in actual or probably injury to Iron Stop, including declining sales and loss of good will, and will continue to result in probable injury to Iron Stop unless prevented in the future. Such injury has occurred, in part, in Denton County, Texas.

82. Iron Stop has suffered substantial damages as a result of such conduct, including but not limited to lost profits, investment in its business, and lost return on investments.

TENTH CAUSE OF ACTION
(Unfair Competition)

83. Iron Stop repeats and realleges the foregoing paragraphs, as if fully set forth herein.

84. Akbik's oral and written statements to Iron Stop's customers suggesting that the products made by Iron Stop infringe the '222, '027, and '028 Patents constitute unfair competition and state unfair competition laws.

85. The statements made by Akbik to Iron Stop's customers are false and were made with knowledge of their incorrectness or falsity, or with disregard to their incorrectness or falsity, and were therefore made in bad faith.

86. The statements made by Akbik to Iron Stop's customers constitute false or misleading descriptions or representations of fact in connection with Iron Stop's Ornamental Spinners that are likely to cause confusion, or to cause mistake, or to deceive Iron Stop's customers regarding the commercial activities of Iron Stop related to their garden ornaments and that, with respect to the commercial promotion of the Ornamental Spinner, misrepresent the nature, characteristics, and qualities of Iron Stop's Ornamental Spinner and commercial activities related to the garden ornaments in violation of state unfair competition laws and § 43 of the Lanham Act.

87. Akbik's statements have interfered with Iron Stop's ability to conduct business.

88. Akbik's statements have disparaged Iron Stop and its Ornamental Spinner product in the marketplace, have interfered with contractual relations and/or prospective contractual relations and/or prospective economic advantage, and constitute unfair competition under state law.

89. The bad faith statements made by Akbik to Iron Stop's customers have caused damage to Iron Stop based on customer reluctance to sell Iron Stop's "Ornamental Spinner." Such injury has occurred, in part, in Denton County, Texas.

90. Iron Stop's progress in getting its Ornamental Spinner to market has been delayed due to the statements made by Akbik and the apprehension created in Iron Stop's customers.

91. Iron Stop is entitled to a judgment that Defendant's actions constitute unfair competition under Texas unfair competition laws.

ELEVENTH CAUSE OF ACTION
(Business Disparagement)

92. Iron Stop repeats and realleges the foregoing paragraphs, as if fully set forth herein.

93. Defendant has published disparaging words about the Plaintiff and/or Plaintiff's economic interests. The published statements were false, were published with malice and were published without privilege. As such, Plaintiff has been damaged and that damage occurred, among other places, at its principal place of business in Denton County, Texas. Plaintiff's damages in the state of Texas were foreseeable to Defendant.

TWELFTH CAUSE OF ACTION
(Actual Damages)

94. Iron Stop repeats and realleges the foregoing paragraphs, as if fully set forth herein.

95. As a direct and proximate result of defendant's actions as alleged herein, Plaintiff has suffered actual damages and consequential damages in the amount in excess of the jurisdictional limits of this Court and in excess of the amounts required to gain subject matter jurisdiction due to diversity of citizenship.

THIRTEENTH CAUSE OF ACTION
(Exemplary Damages)

96. Iron Stop repeats and realleges the foregoing paragraphs, as if fully set forth herein.

97. Exemplary damages should be awarded against the Defendant because the harm with respect to which Plaintiff seeks recovery of exemplary damages resulted from malice, which means that (a) there was a specific intent by the Defendant to cause substantial injury to Plaintiff or (b) the Defendant's acts and/or omissions (i) when viewed objectively from the Defendant's standpoint at the time of the acts and/or omissions involved an extreme degree of risk, considering the probability and magnitude of potential harm to Plaintiff, and (ii) were such that the Defendant had an actual, subjective awareness of the risk of injury to Plaintiff and nevertheless proceeded with conscious indifference to the rights, safety or welfare of Plaintiff.

FOURTEENTH CAUSE OF ACTION
(Attorneys' Fees)

98. Iron Stop repeats and realleges the foregoing paragraphs, as if fully set forth herein.

99. The Defendant is liable to Plaintiff for reasonable and necessary attorneys' fees incurred by Plaintiff in this litigation for all causes of action supporting an aware of attorneys' fees.

FIFTEENTH CAUSE OF ACTION
(Conditions Precedent)

100. Iron Stop repeats and realleges the foregoing paragraphs, as if fully set forth herein.

101. All conditions precedent related to Plaintiff's claims have been performed, have been waived or have occurred as required by law. Alternatively, Defendant is stopped from asserting the non-occurrence of any such obligations or conditions precedent.

VII. PRAYER FOR RELIEF

WHEREFORE, Iron Stop respectfully prays for judgment against Akbik as follows:

1. Declaring that the '222 Patent is invalid, unenforceable, and/or void;
2. Declaring that Iron Stop does not infringe directly, (e.g., contributorily infringe, or induce infringement) or indirectly of any claim of the '222 Patent;
3. Declaring that the '207 Patent is invalid, unenforceable, and/or void;
4. Declaring that Iron Stop does not infringe, contributorily infringe, or induce infringement of any claim of the '207 Patent;
5. Declaring that the '208 Patent is invalid, unenforceable, and/or void;
6. Declaring that Iron Stop does not infringe, contributorily infringe, or induce infringement of any claim of the '208 Patent;
7. Declaring that this is an exceptional case under 35 U.S.C. § 285, including but not limited to, awarding to Iron Stop enhanced damages and its attorneys' fees;
8. Enter a judgment that Defendant's actions constitute unfair competition under federal law, including the Lanham Act;
9. Enter a judgment that Defendant's actions constitute unfair competition under Texas state law;

10. Enter a judgment against Akbik for the damages incurred by Plaintiff as a direct and proximate result of Akbik's tortious interference with Iron Stop's contracts and potential business relations;
11. Enter a judgment against Akbik for business disparagement;
12. Enter a judgment against Akbik for actual and exemplary damages;
13. Enter a judgment against Akbik for the reasonable and necessary attorneys' fees, expenses and court costs incurred by Plaintiff;
14. Awarding Plaintiff such other and further relief, at law and in equity, to which Plaintiff may show itself justly entitled.

JURY DEMAND

Iron Stop hereby demands a jury trial on all issues so triable.

Dated: December 22, 2010.

Respectfully submitted,

/s/ Kimberly A. Elkjer

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