

THE HONORABLE MARSHA J. PECHMAN

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

MODUMETAL, INC.,

Plaintiff,

v.

INTEGRAN TECHNOLOGIES, INC.,

Defendant.

No. 2:10-CV-01592

PLAINTIFF MODUMETAL, INC.'S  
SECOND AMENDED COMPLAINT FOR  
DECLARATORY JUDGMENT OF NON-  
INFRINGEMENT AND INVALIDITY

Plaintiff Modumetal, Inc. ("Modumetal") alleges by and through its attorneys as follows:

**I. PARTIES**

1. Modumetal is a Delaware corporation, and has a principal place of business at 1443 N. Northlake Way, Seattle, Washington 98103.

2. On information and belief, Integran Technologies, Inc. ("Integran") is a Canadian corporation, with a principal place of business at 1 Meridian Road, Toronto, ON, M9W 4Z6, Canada.

**II. JURISDICTION**

3. This is an action seeking a declaratory judgment that Modumetal has not infringed and is not infringing (directly, contributorily, or by inducement), literally or pursuant to the doctrine of equivalents, any valid and enforceable claim of the U.S. Patent No. 5,433,797 (the

SECOND AMENDED COMPLAINT FOR  
DECLARATORY JUDGMENT – 1

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1 '797 patent); U.S. Patent No. 7,553,553 (the '553 patent); U.S. Patent No. 7,320,832 (the '832  
2 patent); U.S. Patent No. 5,352,266 (the '266 patent); and U.S. Patent No. 7,824,774 (the '774  
3 patent), and that the claims of those patents that Integran has asserted against Modumetal  
4 (hereinafter the "Asserted Claims") are invalid. The Court has jurisdiction pursuant to 28 U.S.C.  
5 §§ 2201 and 2202 (declaratory judgment actions), and 28 U.S.C. § 1331 (federal question).  
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11 4. The Court may exercise personal jurisdiction over Integran because Integran's  
12 contacts with the State of Washington satisfy due process. Integran has conducted business  
13 within the State of Washington by participating in exhibitions and/or conferences in Seattle in  
14 which it promoted its products and/or services. See, e.g., Exhibit A (2010 exhibition/conference  
15 in which Integran participated). Integran also maintains an interactive website that provides  
16 information about Integran's products and technology. That website allows potential customers  
17 in the State of Washington to request information via a link provided in the website and also  
18 provides contact telephone numbers for such potential customers. Integran 's website further  
19 implies that it has a relationship with Boeing, a corporation that maintains offices in Seattle,  
20 Washington. In fact, Integran uses images of Boeing's aircraft on its published materials (see  
21 Exhibit B). Upon information and belief, sporting good products such as golf club shafts and  
22 tennis, squash and racquetball rackets, which have been made under license from Integran, have  
23 been sold into the United States stream of commerce with potential for sale and use in the State  
24 of Washington. (See Exhibits C and D.)  
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39 5. Furthermore, the claims herein arise from Integran's intentional sending of  
40 correspondence to Modumetal in this district (see Exhibit E). Integran also has intentionally  
41 attempted to interfere with the business of Modumetal, a forum resident, by corresponding with  
42 Modumetal's customer and production partner, Steel Dynamics, Inc. about Integran's patents  
43 which it believes are implicated by Modumetal's products and processes (see Exhibit F). Most  
44 recently, Integran sent correspondence to another of Modumetal's business partners, Happy  
45 Plating GmbH, a business located in Austria.  
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1 6. Because Integran has availed itself of the privileges of conducting activities in this  
2 forum, it is now subject to personal jurisdiction in this district. Given that Modumetal is  
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4 headquartered in Seattle, the State of Washington clearly has a sufficient interest in resolving this  
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6 dispute.  
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9 **III. VENUE**

10 7. Venue is proper in this judicial district under 28 U.S.C. § 1391(b), (c) and/or (d)  
11 because Integran is subject to personal jurisdiction in this district and thus resides in this district,  
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13 and a substantial part of the alleged events or omissions giving rise to the claim occurred in this  
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15 district, and/or because Integran is an alien corporation.  
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19 **IV. FACTUAL ALLEGATIONS AND BACKGROUND**

20 8. Modumetal engages in the design, development and manufacture of nanotech  
21 materials and technology, and particularly nanolaminate materials and technology. For several  
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23 years, Modumetal has invested significant time, financial resources, and efforts in the research  
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25 and development of its technology. As a result of its innovations, Modumetal has made multiple  
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27 applications for patent rights relating to its technology.  
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30 9. Modumetal is partnering with corporations and other entities that seek to use its  
31 technology, including Steel Dynamics, Inc. Modumetal's success in partnering and moving its  
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33 technology toward the market has been the subject of both press releases and other media  
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35 coverage.  
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38 10. On August 24, 2010, Integran sent a letter to the President and CEO of  
39 Modumetal indicating that Integran believes that Modumetal may be infringing valid patent  
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41 rights owned by Integran. In particular, Integran claimed in the letter to own at least four issued  
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43 United States patents and four pending and published applications (Exhibit E, mentioned above).  
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45 That letter expressed Integran's "concern that Modumetal's production and use of nanolaminated  
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47 materials in the United States may fall within the scope of one or more claims of Integran's  
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49 patents."  
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1           11.     On August 27, 2010, three days after sending its letter to Modumetal, Integran  
2 sent a similar letter to Modumetal's customer and production partner, Steel Dynamics, Inc., of  
3 Fort Wayne, IN (Exhibit F, mentioned above). In its letter to Steel Dynamics, Inc., Integran  
4 implied that Modumetal's ModuGalv™ product and/or the related coating technology may  
5 infringe one or more of Integran's patents. That letter again mentioned the same four issued  
6 United States patents and four published United States applications recited in the August 24<sup>th</sup>  
7 letter to Modumetal.  
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14           12.     On September 28, 2010, Integran specifically referred Modumetal to claim 6 of  
15 the '797 patent; claim 1 of the '553 patent; and claim 1 of the '832 patent as claims that are  
16 relevant to Modumetal's technology. And most recently, Integran sent a letter to another of  
17 Modumetal's known business partners, Happy Plating GmbH.  
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21           13.     On March 15, 2011, Integran filed Amended Counterclaims for Infringement in  
22 this action asserting that Modumetal infringes certain claims of the '797, '832, '553, '266 and '774  
23 patents.  
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27           14.     As a result, an actual and justiciable controversy exists between Modumetal and  
28 Integran with respect to the non-infringement and invalidity of the asserted claims of the '797,  
29 '832, '553, '266 and '774 patents.  
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33           **V.     MODUMETAL'S CLAIMS FOR DECLARATORY JUDGMENT**

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35           **A.     Declaratory Judgment of Non-Infringement of U.S. Patent No. 5,433,797**

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37           15.     Modumetal incorporates by reference all allegations in Paragraphs 1-14 above.  
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39           16.     Modumetal has not infringed and is not infringing (directly, contributorily, or by  
40 inducement), literally or pursuant to the doctrine of equivalents, any valid and enforceable claim  
41 of the '797 patent.  
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43           17.     Modumetal seeks a declaration that it has not infringed and is not infringing  
44 (directly, contributorily, or by inducement), literally or pursuant to the doctrine of equivalents,  
45 any valid and enforceable claim of the '797 patent.  
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1 **B. Declaratory Judgment of Non-Infringement of U.S. Patent No. 7,320,832**

2 18. Modumetal incorporates by reference all allegations in Paragraphs 1-17 above.

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4 19. Modumetal has not infringed and is not infringing (directly, contributorily, or by  
5  
6 inducement), literally or pursuant to the doctrine of equivalents, any valid and enforceable claim  
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8 of the '832 patent.  
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11 20. Modumetal seeks a declaration that it has not infringed and is not infringing  
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13 (directly, contributorily, or by inducement), literally or pursuant to the doctrine of equivalents,  
14  
15 any valid and enforceable claim of the '832 patent.  
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17 **C. Declaratory Judgment of Non-Infringement of U.S. Patent No. 7,553,553**

18 21. Modumetal incorporates by reference all allegations in Paragraphs 1-20 above.

19  
20 22. Modumetal has not infringed and is not infringing (directly, contributorily, or by  
21  
22 inducement), literally or pursuant to the doctrine of equivalents, any valid and enforceable claim  
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24 of the '553 patent.  
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27 23. Modumetal seeks a declaration that it has not infringed and is not infringing  
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29 (directly, contributorily, or by inducement), literally or pursuant to the doctrine of equivalents,  
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31 any valid and enforceable claim of the '553 patent.  
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33 **D. Declaratory Judgment of Non-Infringement of U.S. Patent No. 5,352,266**

34 24. Modumetal incorporates by reference all allegations in Paragraphs 1-23 above.

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36 25. Modumetal has not infringed and is not infringing (directly, contributorily, or by  
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38 inducement), literally or pursuant to the doctrine of equivalents, any valid and enforceable claim  
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40 of the '266 patent.  
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43 26. Modumetal seeks a declaration that it has not infringed and is not infringing  
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45 (directly, contributorily, or by inducement), literally or pursuant to the doctrine of equivalents,  
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47 any valid and enforceable claim of the '266 patent.  
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49 **E. Declaratory Judgment of Non-Infringement of U.S. Patent No. 7,824,774**

50 27. Modumetal incorporates by reference all allegations in Paragraphs 1-26 above.  
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1 28. Modumetal has not infringed and is not infringing (directly, contributorily, or by  
2 inducement), literally or pursuant to the doctrine of equivalents, any valid and enforceable claim  
3 of the '266 patent.  
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7 29. Modumetal seeks a declaration that it has not infringed and is not infringing  
8 (directly, contributorily, or by inducement), literally or pursuant to the doctrine of equivalents,  
9 any valid and enforceable claim of the '266 patent.  
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13 **F. Declaratory Judgment of Invalidity of U.S. Patent No. 5,433,797**

14 30. Modumetal incorporates by reference all allegations in Paragraphs 1-29 above.

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16 31. The Asserted Claims of the '797 patent are is invalid under one or more sections  
17 of 35 U.S.C. § 1 *et seq.*, including without limitation §§ 102, 103 and/or 112.  
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19 32. Modumetal seeks a declaration that the Asserted Claims of the '797 patent are  
20 invalid under one or more sections of 35 U.S.C. § 1 *et seq.*, including without limitation §§ 102,  
21 103 and/or 112.  
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27 **G. Declaratory Judgment of Invalidity of U.S. Patent No. 7,320,832**

28 33. Modumetal incorporates by reference all allegations in Paragraphs 1-32 above.

29 34. The Asserted Claims of the '832 patent are invalid under one or more sections of  
30 35 U.S.C. § 1 *et seq.*, including without limitation §§ 102, 103 and/or 112.  
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32 35. Modumetal seeks a declaration that the Asserted Claims of the '832 patent are  
33 invalid under one or more sections of 35 U.S.C. § 1 *et seq.*, including without limitation §§ 102,  
34 103 and/or 112.  
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41 **H. Declaratory Judgment of Invalidity of U.S. Patent No. 7,553,553**

42 36. Modumetal incorporates by reference all allegations in Paragraphs 1-35 above.

43 37. The Asserted Claims of the '553 patent are invalid under one or more sections of  
44 35 U.S.C. § 1 *et seq.*, including without limitation §§ 102, 103 and/or 112.  
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1 38. Modumetal seeks a declaration that the Asserted Claims of the '553 patent are  
2 invalid under one or more sections of 35 U.S.C. § 1 *et seq.*, including without limitation §§ 102,  
3 103 and/or 112.  
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7 **I. Declaratory Judgment of Invalidity of U.S. Patent No. 5,352,266**

8 39. Modumetal incorporates by reference all allegations in Paragraphs 1-38 above.  
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10 40. The Asserted Claims of the '266 patent are invalid under one or more sections of  
11 35 U.S.C. § 1 *et seq.*, including without limitation §§ 102, 103 and/or 112.  
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13 41. Modumetal seeks a declaration that the Asserted Claims of the '266 patent are  
14 invalid under one or more sections of 35 U.S.C. § 1 *et seq.*, including without limitation §§ 102,  
15 103 and/or 112.  
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21 **J. Declaratory Judgment of Invalidity of U.S. Patent No. 7,824,774**

22 42. Modumetal incorporates by reference all allegations in Paragraphs 1-41 above.  
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24 43. The Asserted Claims of the '774 patent are invalid under one or more sections of  
25 35 U.S.C. § 1 *et seq.*, including without limitation §§ 102, 103 and/or 112.  
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28 44. Modumetal seeks a declaration that the Asserted Claims of the '774 patent are  
29 invalid under one or more sections of 35 U.S.C. § 1 *et seq.*, including without limitation §§ 102,  
30 103 and/or 112.  
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35 **VI. JURY DEMAND**

36 Pursuant to Federal Rule of Civil Procedure 38(b), Modumetal demands a trial by jury as  
37 to all issues so triable in this action.  
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41 **VII. PRAYER FOR RELIEF**

42 WHEREFORE, Plaintiff requests entry of judgment in its favor against Integran as  
43 follows:  
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45 A. Declare that Modumetal has not infringed and is not infringing any valid and  
46 enforceable claim of the '797, '832, '553, '266 and '774 patents;  
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1 B. Declare that the Asserted Claims of the '797, '832, '553, '266 and '774 patents are  
2 invalid.  
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4 C. Permanently enjoin Integran and its officers, agents, servants, employees,  
5 attorneys, and any other person acting in concert or participation with such persons, who receive  
6 actual notice of the order, from representing that the asserted claims of the '797, '832, '553, '266  
7 and '774 patents are valid;  
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10 D. Declare this to be an exceptional case under 35. U.S.C. § 285 and award  
11 Modumetal its attorney's fees;  
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13 E. Award Modumetal its costs of this action; and  
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15 F. Award Modumetal such other and further relief as the Court deems just and  
16 proper.  
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25 DATED: April 6, 2011

/s/ Ramsey M. Al-Salam (with permission)

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*Attorneys for Plaintiff Modumetal, Inc.*



**CERTIFICATE OF SERVICE**

1  
2  
3 On April 6, 2011, I electronically filed the foregoing with the Clerk of the Court using the  
4 CM/ECF system, which will send notification of such filing to all attorneys of record for the  
5 parties.  
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10 **I certify under penalty of perjury that the foregoing is true and correct.**

11  
12 DATED this 6th day of April, 2011:

13  
14  
15 /s/ Tyler C. Peterson  
16 Tyler C. Peterson, WSBA No. 39816  
17 **Perkins Coie LLP**  
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24 *Attorney for Plaintiff Modumetal, Inc.*  
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