

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND

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TECHNICAL FURNITURE GROUP, LLC	:
10717 Faulkner Ridge Circle	:
Columbia, MD 21044, and	:
	:
SMARTDESKS, INC.	:
10717 Faulkner Ridge Circle	:
Columbia, MD 21044, and	:
	:
THOMAS WHITE, individually	:
5736 Greenville Road	:
Sykesville, MD 21784, and	:
	:
MARCIA STENGEL, Personal Representative	:
Of the Estate of Peter J. Stengel	:
10717 Faulkner Ridge Circle	:
Columbia, MD 21044,	:
	:
Plaintiffs,	:
	:
v.	:
	:
CBT SUPPLY, INC.	:
514 F. Progress Drive	:
Linthicum, MD 21090,	:
	:
Serve on Resident Agent:	:
The Corporation Trust, Inc.	:
300 E. Lombard St.	:
Baltimore, MD 21202, and	:
	:
JEFFREY KORBER, individually	:
83 Jacobs Road	:
Rockaway, NJ 07866, and	:
	:
Defendants.	:
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CIVIL ACTION NO.: MJG-08-2639

COMPLAINT:  
JURY TRIAL DEMANDED

**COMPLAINT**

Plaintiffs, TECHNICAL FURNITURE GROUP, LLC, (hereafter “Technical Furniture”), SMARTDESKS, INC., THOMAS WHITE (“White”), and MARCIA

STENGEL, by and through their undersigned attorneys Conwell, LLC., sue CBT SUPPLY, INC. (hereinafter “CBT” or “Defendant CBT”), and JEFFREY KORBER (hereinafter “Korber” or “Defendant Korber”) (collectively, hereinafter “Defendants”) for fraud associated with the ‘890 Patent and related Patent Applications, the ‘084 Patent and related application, and the SMARTDESKS trademarks, fraud related to the filing of false documents with the U.S. Patent and Trademark Office (“USPTO”) and in federal court, fraud and misrepresentation related to the books and records related to Stengel’s ownership, licensing and business use of Stengel’s intellectual property, and Defendants’ fiduciary duty owed to Plaintiffs, and for breach of contract and unjust enrichment related to the parties’ working agreement dated June 6, 2001, and further state:

**i. Summary of Claims**

- Count 1—Fraud – Patent Number 7,047,890
- Count 2—Fraud – “Retrofit” Patent Application Number 10/971,571 And Related Applications
- Count 3—Fraud – Design Patent Number D541,084 And Related Applications
- Count 4—Fraud – SMARTDESKS Trademarks And Trade Name
- Count 5—Fraud – Financial
- Count 6—Breach Of Fiduciary Duty
- Count 7—Negligent Misrepresentation
- Count 8—Breach Of Contract
- Count 9— Promissory Estoppel and Detrimental Reliance
- Count 10—Quantum Meruit
- Count 11—Unjust Enrichment
- Count 12—Accounting

**I. JURISDICTION AND VENUE**

1. This is a civil action having claims related to case MJG-06-3424, originally filed on December 26, 2006, authorized under 35 U.S.C. § 256, which sought to correct inventorship of the United States Patent No. 7,047,890 (hereafter the “‘890 Patent”) and United States Patent No. D541,084 (hereafter the “‘084 Design Patent”) and which

formerly presented Claim III for Fraud related to a false patent assignment document and Claim IV for filing that false patent assignment document with the USPTO. The claims in this complaint present the fraud associated with Defendant Korber's scheme to create the fraudulent patent assignment document, the Defendants' filings of the fraudulent document with the USPTO to obtain Plaintiffs' rights to the '890 Patent and related patent applications, and the Defendants' continued claim of Plaintiffs' patent rights by fraudulent assignment to the USPTO and to third parties. In this federal litigation, Defendants additionally filed fraudulent documents in an attempt to invalidate the '084 design patent, and subsequently filed fraudulent documents with the USPTO Board of Interferences in the interference proceeding also seeking to invalidate the '084 design patent.

2. This is a civil action having claims related to case MJG-05-3456, originally filed on December 29, 2005, authorized under the Copyright Act of 1976, as amended, 17 U.S.C. §§ 101 *et seq.*, 28 U.S.C. §§ 1331 (federal question), 28 U.S.C. 1338 (a) (copyrights and trademarks), 28 U.S.C. 1338(b)(unfair competition related to claims of copyright and trademark), 15 U.S.C. § 1125(d)(cyberpiracy), and false designation of origin pursuant to 15 U.S.C. § 1125. In this federal litigation, Defendants filed one or more fraudulent documents in an attempt to obtain rights to the SMARTDESKS marks and assets. Plaintiffs are investigating a questionable document first received on November 10, 2008 in Defendants' attempt to obtain rights to all the intellectual property involved in MJG-05-3456.

3. This Court has supplemental jurisdiction over the state law and common law claims under 28 U.S.C. §1367(a).

4. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391 and 1400(a) as an action where Marcia Stengel and Thomas White reside, and where the principal offices of the Plaintiffs and Defendant CBT Supply and the resident agent for Defendant CBT Supply are registered.

## II. PARTIES

5. Plaintiff Technical Furniture Group, a Maryland Limited Liability Corporation with principal place of business at 10717 Faulkner Ridge Circle Columbia, Maryland, 21044, is the legal assignee of all patent rights formerly presented in MJG-06-3424 and related patent applications. Technical Furniture Group is co-owned by Smartdesks, Inc. and G.T. Brothers, Inc. and its CEO and President is Marcia Stengel.

6. Plaintiff Smartdesks, Inc., a Maryland corporation with principal place of business at 10717 Faulkner Ridge Circle Columbia, Maryland, 21044, is the legal assignee of all copyrights, trademarks, trade dress, and other intellectual property rights and assets formerly presented in case MJG-05-3456. Marcia Stengel is the CEO and President of Smartdesks, Inc.

7. Plaintiff Thomas White, a Maryland resident, owns G.T. Brothers, Inc., which has a factory located in Westminster, Maryland. G.T. Brothers is an owner of Technical Furniture. White has manufactured SMARTdesks computer furniture products as a subcontractor since 1998. He currently manufactures SMARTdesks for Smartdesks, Inc., an owner of Technical Furniture. White is an undisputed inventor of one or more patents addressed in this lawsuit and was a party to case MJG-06-3424 to correct inventorship of the '890 Patent. White's patent rights have been legally assigned to Technical Furniture Group.

8. Marcia Stengel is the widow and Personal Representative of Peter J. Stengel, deceased. Peter J. Stengel is an undisputed inventor of every patent addressed in this lawsuit. Peter J. Stengel asserted his exclusive ownership over the intellectual property addressed in case MJG-05-3456. Stengel's patent rights have been legally assigned to Technical Furniture Group and other intellectual property rights have been legally assigned to Smartdesks, Inc

9. Defendant CBT Supply, Inc. is a corporation registered in the state of Maryland. The Maryland State Department of Assessments and Taxation currently describes it in good standing. It has a principal address listing as 514 F. Progress Drive, Linthicum, MD 21090. CBT has a resident agent listed as The Corporation Trust Incorporated at 300 E. Lombard St., Baltimore, Maryland 21202.

10. Defendant Jeffrey Korber resides at 83 Jacobs Road, Rockaway, New Jersey 07866. Defendant Korber has a 49 percent ownership interest in Defendant CBT Supply, Inc., with the remaining 51 percent ownership interest by Lisa Kaslow, Defendant Korber's wife.

11. Defendants CBT Supply and Korber conduct continuous and systematic business activities within the State of Maryland, where the wrongs alleged herein occurred.

### **III. FACTS COMMON TO ALL COUNTS**

#### **A. INTELLECTUAL PROPERTY**

The fraud claims in this complaint specifically refer to the following intellectual property:

12. The term "890 Patent" shall refer to the invention disclosed in the following patent and applications:

- a. Provisional Patent Application 60/436,515 (“‘515 Provisional Application”), filed December 27, 2002, which lists Jeffrey Korber and Peter Stengel as co-inventors.
  - b. Patent No. 7,047,890 (“‘890 Patent”) which issued May 23, 2006 from Application 10/616,461 (“‘461 Application”), filed July 9, 2003, which lists Jeffrey Korber, James Babcock and Peter Stengel as co-inventors. The ‘890 Patent discloses the product marketed as “FlipIt” by Jeffrey Korber and CBT Supply, Inc (“CBT Supply”) and as “Level” by SMARTdesks, Inc. (“SMARTdesks”).
  - c. U.S. Patent Application No. 11/351,421 (“‘421 Application”), filed February 10, 2006 lists Stengel and White as co-inventors and is a continuation of the ‘461 Application with identical claims and corrected inventorship.
13. The term “‘571 Patent Applications” or “‘Retrofit” patent applications shall refer to the invention disclosed in the following patent applications:
- a. Patent Application No. 10/971,571 (“‘571 Application”), filed October 22, 2004, which lists Peter Stengel, Thomas White and Jeffery Korber as co-inventors and is a continuation-in-part of the ‘461 Application. The ‘571 application was abandoned on or about August 13, 2008.
  - b. U.S. Application No. 11/353,833 (“‘833 Application”), filed February 14, 2006, lists Stengel and White as inventors and is a continuation of the ‘571 Application with claims that encompass the ‘571 application and corrected inventorship.

14. The “’084 Design Patent” refers to the to the invention disclosed in the following patent and applications:

- a. U.S. Patent No. D541,084, which issued from Patent Application No. 29/217,868 (“’868 Application”), filed on November 24, 2004, which lists Jeffrey Korber and Peter Stengel as inventors. The ‘084 Design Patent is currently in an interference proceeding with the ‘938 Application before the USPTO Board of Interferences.
- b. U.S. Application No. 29/253,938 (“’938 Application”), filed February 15, 2006, which lists Peter J. Stengel and Jasen Stengel as inventors and is a continuation of the ‘868 Application with claims that encompass the ‘868 application and corrected inventorship.

15. The SMARTDESKS trademarks (or “marks”) shall refer to the following common law and federal trademark rights:

- a. Plaintiff Stengel’s creation, usage, marketing and commercial sales under the term “SMART*desks*” word and logo. Stengel is the owner by common law of the SMARTDESKS word trademark and logo design.
- b. SMARTDESKS Mark, U.S. Serial No. 78768870 (“’870 Mark”), which consists of the SMARTDESKS word mark, which lists owner Peter J. Stengel. The SMARTDESKS word mark was approved by the USPTO for publication in the Federal Register, publication date February 27, 2007. Defendants opposed the issuance of the ‘870 Mark to the Plaintiffs and the matter is on hold pending resolution of case MJG-05-3456. Plaintiffs have alleged that Defendants’ actions with regard to the SMARTDESKS marks are unlawful.

- c. SMARTDESKS Mark, U.S. Serial No. 78751976 (“‘976 Mark”), which consists of the SMARTDESKS design mark (logo), which lists owner Peter J. Stengel. The SMARTDESKS design mark was approved by the USPTO for publication in the Federal Register, publication date February 13, 2007. Defendants opposed the issuance of the ‘976 Mark to the Plaintiffs and the matter is on hold pending resolution of case MJG-05-3456. Plaintiffs have alleged that Defendants’ actions with regard to the SMARTDESKS marks are unlawful.

**B. BACKGROUND**

16. Peter J. Stengel came from a multi-generation family line of very successful entrepreneurs in the furniture industry, going back to Krebs Stengel, Inc., which sold furniture through Sears and Roebuck, J.C. Penny, and most major catalog and retail store companies. He left the family furniture business to begin his own, including in 1996 his foundation of the business he called SMARTdesks. Stengel had a successful career designing and marketing commercial and residential furniture for 40 years.

17. Peter Stengel involved his own family in his furniture business, including his son Jasen and wife Marcia. Jasen Stengel was involved at the creation of his SMARTdesks business in 1996 and worked closely with Peter over the years. Jasen Stengel is an inventor of other furniture related patents and is active in running the Technical Furniture Group and Smartdesks, Inc. businesses.

18. By January 18, 2002, Peter Stengel had created the concept for the invention that became the ‘890 Patent and was initially sold as the “FlipIt” mechanism beginning in



2003. In 2003, Stengel and White improved the initial concept and invented what became known as the “Retrofit.”

19. Virtually all “FlipIt” mechanisms sold since have been of the invention as improved with the “Retrofit.”

20. After a contentious history involving the Defendants, Peter Stengel incorporated Smartdesks, Inc. as a Maryland corporation on November 16, 2005 and ceased doing business with Defendants Korber and CBT Supply on December 7, 2005.

21. On December 29, 2005, Smartdesks, Inc. and Peter Stengel filed a complaint in federal court, case MJG-05-3456, alleging, among other claims, that Defendants CBT Supply and Korber infringed Stengel’s trademark and copyrights.

22. Upon Peter J. Stengel’s untimely death on February 25, 2006, his business interests were taken over by his widow and Personal Representative, Marcia Stengel.

23. Technical Furniture was founded to manage the business interests in the patents of Peter J. Stengel, Jason Stengel and Thomas White upon Peter J. Stengel’s untimely death due to a long-existing disease. Marcia Stengel is currently the President of Smartdesks, Inc. and Technical Furniture Group.

24. On December 26, 2006, Plaintiff Technical Furniture Group filed a complaint in federal court alleging, among other claims, that the ’890 Patent was filed incorrectly with Korber erroneously listed as an inventor, that Korber committed acts of fraud to wrongfully obtain ownership of Thomas White’s rights to the ’890 Patent and committed fraud on the USPTO with having his attorneys use a fraudulent assignment to attempt to obtain ownership and control of all the related patent applications.

25. Since at least December 7, 2005, while the Plaintiffs continue to seek to enforce their exclusive intellectual property rights at the USPTO and in the above ongoing litigation, Defendants have continued to receive millions of dollars in revenues through their use of and doing business under the SMARTDESKS marks, Defendants' sales of products covered by the '890 Patent, Retrofit patent applications and '084 Design Patent, and Defendants' exploitation of and marketing of patent rights associated with the '890 Patent, Retrofit patent applications and '084 Design Patent.

#### **IV. CAUSES OF ACTION**

##### **COUNT 1--FRAUD – PATENT NUMBER 7,047,890**

26. Incorporated by reference as though fully set forth herein are all allegations contained in paragraphs 1 through 25 above.

27. By 2005, Korber attempted to obtain the patent rights to the inventions disclosed in the '890 Patent (at the time the '461 Patent Application) and the '571 Retrofit Patent Application. By July, 2005, Korber had caused the relationship with Stengel to deteriorate by refusing to pay moneys due to Peter Stengel and stating that the June 6, 2001 working agreement was over. At this time, Korber became concerned about his rights to continue to use intellectual property responsible for significant revenues. Korber knew that his contribution to the inventions was not as an inventor but as business manager and coordinator. Korber therefore sought to obtain an ownership position in the patents to protect the millions in revenue he received associated with sales of the patented products and his plan to force Stengel to sign over all of his intellectual property rights associated with the sales of these products. Initially, Korber attempted to have Peter Stengel assign his patent rights to CBT Supply, but Stengel refused.

28. At Korber's direction, by letter dated July 18, 2005, the Law Offices of Royal Craig sent a demand to Thomas White that White assign his interest in the pending '571 Application to CBT Supply, Inc.

29. The letter dated July 18, 2005 expressly stated that the enclosed assignment document to CBT Supply, Inc. was sent "at the request of Jeff Korber." The letter advised White that "It is our understanding that your contribution to the invention was work-for-hire and this document is necessary to have clear title to the invention." The letter requested that White sign and return the assignment, and that he could call with any questions.

30. At all relevant times, the Law Offices of Royal Craig represented Thomas White and Peter Stengel on the '890 Patent and '571 Patent Application.

31. The demand and associated advice was given without any legal or factual analysis, was clearly erroneous, and was directly against the interests of Thomas White and Peter Stengel, and for the benefit of Jeffrey Korber and CBT Supply. The rights that Defendants sought to fraudulently and/or inequitably obtain by the assignment are worth millions of dollars.

32. The letter from White's own attorney to White constitutes evidence of an affirmative misrepresentation of material facts and fails to disclose the material information that White was being asked to relinquish a valuable right—to which he had a clear claim—to his own detriment.

33. The demand and associated advice was given under Korber's direction with intent to deceive Thomas White. Thomas White responded to Jeffrey Korber and Royal Craig's July 18, 2005 demand that he assign his rights to CBT Supply via a letter dated July 26,

2005. White's July 26, 2005 letter expressly refused to execute the assignment, stating "I have no intention of signing this letter now or in the future. If you have any questions please feel free to contact me at the numbers listed below." Thomas White never received any follow-up call from Royal Craig's offices.

34. Korber subsequently made other attempts to obtain rights to the invention and was unsuccessful.

35. Having failed to accomplish his ends by direct means, Korber resorted to a surreptitious and fraudulent scheme to obtain a document he could file with the Patent Office as a supposed Assignment of White's interests in the '461 and '571 Applications. Korber's scheme was to obtain White's signature on one mostly blank page and attach it to another document assigning White's patent rights to CBT Supply.

36. In November, 2005, Thomas White's business, G.T. Bros., Inc., was a supplier and manufacturer of products that incorporated the patented inventions and dealt directly on such business matters with Korber and CBT Supply.

37. On November 3, 2005, Korber appeared unannounced at White's Baltimore Office of G.T. Brothers after traveling from his home in New Jersey. Korber told White a story about his health worries and his desire that his wife, Lisa Kaslow, be able to continue his business in the event of Korber's death. Korber stated that his wife insisted that he get signed documents from all of their vendors stating that in the event of his death, they would continue to conduct business with her. Korber stated that they could not continue to do business with any vendor that would not agree to sign this document.

38. White reasonably relied upon Korber's representations.

39. Korber presented White with a three page document wherein the top pages constituted statements related to preserving the business relationship on the contingency of his death and the third and bottom page consisted of a couple lines at the top of the page and then a signature line. Korber then used the top two pages to cover the top lines on the third page above the signature line and requested that White sign the document.

40. Because White had to attend an appointment at the time of Korber's unannounced appearance, he hurriedly reviewed the first two pages of the document, a document in which he thought he had little to be concerned. White signed the signature line on the third page.

41. White briefly left his front office to check the shut-down of his factory at the end of the day. Korber then immediately replaced the pages relating to Lisa Kaslow and business contingencies with one page constituting patent assignment terms and faxed the document to the Law Offices of Royal Craig.

42. On February 27, 2006, the document at *Exhibit (1)* was provided by Royal Craig. This "Assignment" document provided by Craig was never recorded at the USPTO by Craig. Defendants never presented or provided this document to the Plaintiffs.

43. Defendants have asserted that *Exhibit (2)* is the "original" assignment to which Defendants claim White's patent rights. The first time the Defendants presented this document was on November 27, 2007. The "Assignment" document provided in *Exhibit (2)* is a different "Assignment" document than that provided in *Exhibit (1)*.

44. At the time that Korber fraudulently obtained White's signature and transmitted the document to Patent Counsel Royal Craig, Craig's co-clients for this Patent matter consisted of Korber, Stengel and White. At no time did Craig attempt to communicate

with either Stengel or White concerning the supposed assignment, despite the fact that White had previously expressly stated in writing to Craig that he had no intention, either now or in the future, of assigning his interest in the Application or resulting Patent to Korber.

45. At all relevant times, Royal Craig, and all subsequent patent counsel, purportedly acting as agent of and at the direction of and/or on behalf of the Defendants, had a duty under the federal patent regulations of “inquiry reasonable under the circumstances” as to the validity of any third party signature before filing any paper with the USPTO. 37 CFR § 1.4(d)(4); 37 CFR § 10.18. Royal Craig and all subsequent patent counsel had a federal duty of determining whether it had a “reasonable belief” that the signature was authentic regarding the purported assignment.

46. Facts on the face of the “Assignment” document and circumstances surrounding the document placed the Royal Craig and successive Patent Attorneys on notice that the assignment was fraudulent.

47. Upon information and belief, Royal Craig recognized that the “assignment” document and circumstances surrounding the creation and appearance of the document demonstrated the likelihood that the document was fraudulent and this was the reason that Craig never contacted his client White about the assignment or followed the direction of his client Korber to file the document with the USPTO.

48. On February 10, 2006, the Plaintiffs originally filed documents at the USPTO to correct the inventorship of the ‘461 Application that would mature into the ‘890 Patent. The correction of inventorship would remove Korber and Babcock and add White to properly list the legal inventors according to USPTO standards.

49. On March 3, 2006, the fraudulent “Assignment” of White’s patent rights was filed with the USPTO by the law office Seyfarth Shaw on the ‘461 Application that would mature into the ‘890 Patent. This USPTO filing is provided at *Exhibit (3)*. The law office of Seyfarth Shaw is defending Defendants in the case MJG-05-3456.

50. The “Assignment” document provided in *Exhibit (3)* is a different “Assignment” document than that provided in *Exhibits (1) and (2)*.

51. The Seyfarth Shaw attorney(s) who filed the assignment with the USPTO never made any inquiry to Thomas White about the purported authenticity of the “Assignment” or attempted to communicate with him in any way regarding this document before filing this document with the USPTO on the ‘461 Application.

52. Currently, the USPTO lists CBT Supply as owning White’s rights to the ‘890 Patent by the filing of the fraudulent assignment document.

53. At the time this document was filed, it was stale according to USPTO rules by one (1) month.

54. Defendants have made statements to third parties that they own the rights to the ‘890 Patent due to the fraudulent White “assignment.”

55. As of October 29, 2008, Defendants continued to assert ownership of White’s rights by the fraudulent “assignment” to the ‘890 Patent to the USPTO and to third parties and refused to file the necessary documents at the USPTO to remove the fraudulent assignment filings from the record.

56. The foregoing material acts and misrepresentations were made with intent to deceive and defraud.

57. Korber’s conduct on behalf of himself and CBT Supply constitutes fraud.

58. The procurement, substitutions, misrepresentations and filings constitute affirmative material misrepresentations of fact, and failures to disclose material information.

59. Defendants' conduct constitutes inequitable conduct.

60. As a result of Korber's fraudulent scheme, the "Assignment" to CBT should be declared null and void and all uses by the Defendants to file and record the "Assignment" with the USPTO also be declared null and void. The Commissioner of Patents should be directed to remove the "Assignment" from the files of the '890 Patent and the on-line listing on the USPTO.gov web page.

61. As a direct and proximate result of Defendants' fraud, Plaintiffs have suffered damage, including but not limited to the loss of their exclusive rights under the subject patent, unfair competition, financial loss, and attorneys' fees.

**COUNT 2--FRAUD – “RETROFIT” PATENT APPLICATION NUMBER  
10/971,571 AND RELATED APPLICATIONS**

62. Incorporated by reference as though fully set forth herein are all allegations contained in paragraphs 1 through 61 above.

63. On March 3, 2006, the fraudulent "Assignment" of White's patent rights was filed with the USPTO by the law office Seyfarth Shaw on the '571 Retrofit Application. This USPTO filing is provided at *Exhibit (3)*. The law office of Seyfarth Shaw is defending Defendants in the case MJG-05-3456.

64. The "Assignment" document provided in *Exhibit (3)* is a different "Assignment" document than that provided in *Exhibits (1) and (2)*.

65. The Seyfarth Shaw attorney(s) who filed the assignment with the USPTO never made any inquiry to Thomas White about the purported authenticity of the "Assignment"



or attempted to communicate with him in any way regarding this document before filing this document with the USPTO on the '571 Application.

66. On September 22, 2006, the fraudulent "Assignment" of White's patent rights was filed with the USPTO by the law office Whiteford Taylor on the '833 Retrofit Application. This USPTO filing is provided at *Exhibit (4)*. The law office of Whiteford Taylor is defending Defendants in the case MJG-06-3424.

67. The "Assignment" document provided in *Exhibit (4)* is a different "Assignment" document than that provided in *Exhibits (1) and (2)*.

68. The Whiteford Taylor attorney(s) who filed the assignment with the USPTO never made any inquiry to Thomas White about the purported authenticity of the "Assignment" or attempted to communicate with him in any way regarding this document before filing this document with the USPTO on the '833 Application.

69. Currently, the USPTO lists CBT Supply as owning White's rights to the Retrofit Applications by the filing of the fraudulent assignment document.

70. At the time this document was filed, it was now stale according to USPTO rules by over seven (7) months.

71. On November 9, 2006, Defendants used the fraudulent "Assignment" in filings with the USPTO as grounds to revoke Plaintiffs' power of attorney in the '833 Patent Application, and assign Whiteford Taylor as Thomas White's attorneys through this assignment.

72. On January 18, 2007, Defendants used the fraudulent "Assignment" in filings with the USPTO as grounds to revoke Plaintiffs' power of attorney in the '571 Patent

Application, and assign Whiteford Taylor as Thomas White's attorneys through this assignment.

73. Defendants have made statements to third parties that they own the rights to the Retrofit patent applications due to the fraudulent White "assignment."

74. As of October 29, 2008, Defendants continued to assert ownership of White's rights by the fraudulent "assignment" to the Retrofit patent applications to the USPTO and to third parties and refused to file the necessary documents at the USPTO to remove the fraudulent assignment filings from the record.

75. The foregoing material acts and misrepresentations were made with intent to deceive and defraud.

76. Korber's conduct on behalf of himself and CBT Supply constitutes fraud.

77. The procurement, substitutions, misrepresentations and filings constitute affirmative material misrepresentations of fact, and failures to disclose material information.

78. Defendants' conduct constitutes inequitable conduct.

79. As a result of Korber's fraudulent scheme, the "Assignment" to CBT should be declared null and void and all uses by the Defendants to file and record the "Assignment" with the USPTO also be declared null and void. The Commissioner of Patents should be directed to remove the "Assignment" from the files of the '571 Patent Application and the '833 Patent Application and the on-line listing on the USPTO.gov web page.

80. As a direct and proximate result of Defendants' fraud, Plaintiffs have suffered damage, including but not limited to the loss of their exclusive rights under the subject patent, unfair competition, financial loss, and attorneys' fees.

**COUNT 3--FRAUD --DESIGN PATENT NUMBER D541,084 AND RELATED APPLICATIONS**

81. Incorporated by reference as though fully set forth herein are all allegations contained in paragraphs 1 through 80 above.

82. Korber knew that his contribution to the invention described in the '084 Design Patent was not as an inventor but as business manager and coordinator. Korber further knew that he had no corroborating evidence to demonstrate that he was an inventor and was concerned with the trial in which he was to testify and provide evidence scheduled for July 23, 2008. On July 10, 2008, less than two weeks prior to the trial, Korber submitted a false document to try to invalidate the patent in which he claimed he was an inventor and owner. The false documents are emails dated November 3, 2003 as provided at *Exhibit (5)*. These documents were provided and filed with the federal court on July 17, 2008—one week prior to trial—as provided at *Exhibit (6)*. On August 29, 2008, Defendants submitted the false document labeled “Korber Exhibit 1004” to the USPTO to also attempt to invalidate the '084 Patent as provided at *Exhibit (7)*.

83. To invalidate the '084 Design Patent, Defendants claim that the design disclosed in the '868 Patent Application filed on November 24, 2004 was offered for sale more than one year prior to the filing. Korber knew that the design disclosed in the '084 Design Patent was significantly different than the initial design concept of early November 2003 and that the design had in fact undergone a significant redesign in December 2003 and afterwards. Thus Korber created the document at *Exhibits (5)-(7)* by, apparently, cutting and pasting electronic pictures and performing other electronic manipulation.

84. The email press release provided by Defendants could not have existed on November 3, 2003. The picture displayed, which purports to be the picture in an email sent from Peter Stengel, was not created until March 17, 2004, and was created to be used for a press release for the 2004 FOSE Show on March 23, 2004. *Exhibits (5)-(7)* are clearly fraudulent.

85. More than four years after the design patent application was filed on November 24, 2004, more than two years after the parties officially initiated a dispute over the inventorship of the '084 Design Patent, no person challenged the validity or enforceability of the patent. During the extensive discovery process completed between the parties, the answers to interrogatories signed by Korber under oath never alleged any defense as to the validity of the '084 patent or provided any information at all calling the patent into question in any way. In the production of millions of documents by Stengel, Korber and White, at no time did Party Korber ever challenge or question the validity or enforceability of the patent. And during that time, the fraudulent email and press release documents were never produced by any party.

86. The foregoing material acts and misrepresentations were made with intent to deceive and defraud.

87. Korber's conduct on behalf of himself and CBT Supply constitutes fraud.

88. The procurement, substitutions, misrepresentations and filings constitute affirmative material misrepresentations of fact, and failures to disclose material information.

89. Defendants' conduct constitutes inequitable conduct.

90. As a result of Korber's fraud, all versions of the email press release should be declared null and void and all uses by the Defendants to file with the USPTO also be declared null and void.

91. The Defendants' affidavit is clearly false and constitutes inequitable conduct.

92. As a direct and proximate result of Defendants' fraud, Plaintiffs have suffered damage, including but not limited to the loss of enforceability of the patent and related patent rights, future attorneys' fees, the likelihood of increased litigation expenses, unfair competition, financial loss, and attorneys' fees.

**COUNT 4--FRAUD --SMARTDESKS TRADEMARKS AND TRADE NAME**

93. Incorporated by reference as though fully set forth herein are all allegations contained in paragraphs 1 through 92 above.

94. CBT Supply was a licensee of the SMARTDESKS marks from Peter Stengel under their working business arrangement in the profit sharing Agreement of June 6, 2001 provided at *Exhibit (8)*.

95. CBT Supply's rights to use the SMARTDESKS marks ended when the parties' working business arrangement ended. The Agreement of June 6, 2001 had ended by December 7, 2005 and on that date the parties' working business arrangement ended.

96. Plaintiffs had informed the Defendants that they had no right to continue to use the SMARTDESKS marks without the express permission of Stengel which would only be provided in an acceptable follow-on Agreement and payment by Korber and CBT Supply of unlawfully withheld past-due payments.

97. Plaintiffs attempted to stop Defendants from unlawfully using Plaintiffs' marks in the federal lawsuit filed on December 29, 2005.

98. Defendants continued to unlawfully use the Plaintiffs' marks and continue to this day to receive millions in revenues from their use of the Plaintiffs' marks.

99. Defendants have opposed Plaintiffs' attempts to stop them from using their marks. In doing so, Korber asserted rights to the SMARTDESKS marks and trade name in an affidavit filed in federal court on March 1, 2007, see *Exhibit (9)*, and by an agreement he states was signed by Peter Stengel, also filed in federal court on March 1, 2007, see *Exhibit (10)*.

100. Korber has attempted to prevent Stengel from regaining his exclusive rights to the SMARTDESKS marks and trade name.

101. The best copy of the document was eventually produced by the Defendants at *Exhibit (11)*, showing that the document filed in federal court at *Exhibit (10)* had apparently been altered.

102. Defendants have never produced an original document or any document with original signatures or writing. Defendants have never produced a clean document that did not have Korber and Kaslow's writing and comments on it nor have they ever provided such a document that filled in or otherwise stated the date for the purported agreement and signatures.

103. The purported "Witness" of the signatures, Deborah Miller, was Korber's babysitter. Plaintiffs subsequently discovered that Ms. Miller did not claim to witness Stengel's signature.

104. In fact, Stengel never signed the document provided at *Exhibit (10) and (11)*.

105. Again, on November 10, 2008, Defendants first provided another "Agreement" purportedly dated December 22, 2000, as provided at *Exhibit (12)*, that they used to

assert Defendant CBT Supply's rights to the "SMARTdesks" name and trademark and to release Defendants from all of the claims made by the Plaintiffs.

106. Almost three years after the lawsuit was filed addressing the SMARTDESKS trademarks, *Exhibit (12)* was produced. During the extensive discovery process completed between the parties in which this document was required to be produced years ago, the answers to interrogatories signed by Korber under oath and in the multiple depositions under oath of Korber, he never cited or provided any information at all regarding this document in any way.

107. As *Exhibit (12)* was produced for the first time less than two weeks ago, the Plaintiffs' investigation has just begun, but the document is highly questionable and may also be fraudulent.

108. The foregoing material acts and misrepresentations were made with intent to deceive and defraud.

109. Korber's conduct on behalf of himself and CBT Supply constitutes fraud.

110. The Defendants' affidavit is clearly false and constitutes inequitable conduct.

111. As a direct and proximate result of Defendants' fraud, Plaintiffs have suffered damage, including but not limited to the loss of revenues, extensive litigation costs, unfair competition, financial loss, and attorneys' fees.

**COUNT 5--FRAUD – FINANCIAL**

112. Incorporated by reference as though fully set forth herein are all allegations contained in paragraphs 1 through 111 above.

113. CBT Supply was a licensee of the SMARTDESKS marks from Peter Stengel under their business relationship in the profit sharing agreement of June 6, 2001 provided

at *Exhibit (8)*. A license to use these marks and the other Stengel intellectual property were the consideration for the Exhibit (8) Agreement, which provided that “Stengel will be paid a percentage of the annual gross profits of CBT Supply . . . .” Under the Agreement, the payments were to be made “within sixty (60) days” of the calculation of the gross profits “as of the 30<sup>th</sup> of June and the 31<sup>st</sup> of December of each year”.

114. Gross profit is the difference between revenue and the cost of making the products and providing the installation services, before deducting such expenses as overhead, marketing, payroll, taxation, and interest payments.

115. As the business was a virtual business, and the parties did not themselves own any manufacturing facilities or perform any manufacturing, all manufacturing costs and most installation costs were subcontracted to third parties. Thus the gross profit calculation was intended to be the revenues received subtracting the invoiced amount paid to the third parties for product manufacturing and installation.

116. As originally agreed between the parties when they began their business relationship on or about December 1997, Korber was to administer certain customer, production and financial matters. This relationship continued under the business Agreement of June 6, 2001.

117. Under the Agreement, Korber had a duty to provide an accounting of all finances related to the sales and the gross profits calculation.

118. Until the Agreement ended, Korber actually simply provided a figure representing the total amount owed and a sales figure that he stated represented the sales in the applicable time period.



119. Since the date of the June 6, 2001 Agreement until the end of 2004 time period, Defendants provided a check to Peter Stengel which they stated represented the due portion of Stengel's "gross profits" for that time period under the Agreement.

120. The time period to December 31, 2004 was the last check received by Stengel representing the gross profits.

121. For some new product sales utilizing Stengel's intellectual property after the time period of December 2004 (the time period that Defendants last paid Stengel his portion of the gross profits), Stengel received no payments of gross profits at all from Defendants.

122. After this Agreement was signed, additional product lines were administered under this CBT Supply portion of the Agreement that were not originally intended. Instead, these product lines were intended to be administered under another portion of the June 6, 2001 Agreement, provided at *Exhibit (13)*, under Peter Stengel's entity Niche Direct.

123. The respective CBT Supply and Niche Direct portions of the Agreement mirrored each other. Under the portion of the Agreement administered by CBT Supply, Stengel was to be paid up to seventeen and one half percent (17 ½ %) of the gross profits, with the remaining eighty two and one half percent (82 ½%) of the gross profits for Korber's company CBT Supply. Under the portion of the Agreement administered by Niche Direct, Korber was to be paid up to seventeen and one half percent (17 ½ %) of the gross profits, with the remaining eighty two and one half percent (82 ½%) of the gross profits for Stengel's entity Niche Direct. Thus, for products administered in the CBT Supply portion that were originally intended for the Niche Direct, Korber received sixty five percent (65%) more of the gross profits than originally intended by the parties.

124. Each year since Stengel started doing business under the SMARTDESKS marks in 1996, the revenues and gross profits associated with the SMARTDESKS marks and Stengel's increasing intellectual property assets grew enormously.

125. By the end of July 2005, when CBT Supply's biannual gross profits statement representing the time period to June 30, 2005 became due, business had greatly increased and substantial gross profits were due to be paid to Stengel by Defendants. By August, when Peter had still not received a statement of gross profits, he became concerned. Korber then requested that they meet on or about August 17, 2005. At that meeting, Korber told Stengel that their profit sharing Agreement had expired at the end of 2004 and that he would not be paying Stengel his percentage of profits for 2005. Korber instead stated that the only way he would pay Stengel is for Stengel to assign over all of his intellectual property rights, including SMARTDESKS and the patents, to Korber.

126. Following this meeting, Stengel retained his own independent counsel who negotiated with Korber and his representatives. During those negotiations, Defendants stated that the only way they would pay Stengel is for Stengel to assign over all of his intellectual property rights, including SMARTDESKS and the patents, to Defendants. Stengel refused. The parties had officially terminated their relationship by December 7, 2005. Litigation commenced December 29, 2005.

127. Defendants planned and undertook a course of action to defraud Stengel out of his percentage share of the annual gross business profits, his share of the joint business venture and the share of profits upon the anticipated sale of the business. This fraud was consummated on December 7, 2005, at which time and for the last approximately three (3) years Defendants have kept one hundred percent (100%) of the gross profits from

sales of products utilizing Plaintiffs' intellectual property, excluded Plaintiff from all profits of any kind, and utilized the millions of dollars of profits to finance litigation against Plaintiffs to maintain their unlawful actions and keep the profits they obtained from their ill-gotten exploitation of Plaintiffs' property. The profits kept by Defendants even include those associated with products not originally intended to be administered under the CBT Supply portion of the Agreement.

128. During the discovery process for the litigation, in early 2007, the Defendants eventually turned over an initial set of their books and records, namely some federal tax return documents. In these documents, for the first time, Defendants received some notice that Defendants had been defrauding Stengel through the years under their Agreement. More detailed discovery, including receipt of some financial records kept in a Quick Books accounting program, and depositions of Defendants, including Korber and CBT Supply's "accountant", Charlotte Howard, further demonstrated that Defendants had been defrauding Stengel under the Agreement.

129. The extensive fraud discovered in early 2007 included Defendants' calculation of gross profits that included all of Defendants' costs, including CBT Supply's overhead, Korber and his wife Lisa Kaslow's personal expenses, and even expenses paid to Stengel to reimburse him and for other additional services provided by Stengel.

130. Defendants knew they had defrauded Stengel and sought to keep Plaintiffs from discovering their theft.

131. Defendants' acts of fraud have cost Plaintiffs millions of dollars.

132. Had Stengel discovered any of this fraud, he would not have continued the business relationship with Defendants.

133. The foregoing material acts and misrepresentations were made with intent to deceive and defraud.

134. Korber's conduct on behalf of himself and CBT Supply constitutes fraud.

135. As a direct and proximate result of Defendants' fraud, Plaintiffs have suffered damage, including but not limited to loss of profits due to Stengel, loss of sales and profits due to having to rebuild the foundation of the Smartdesks business, unfair competition as customers who purchased Smartdesks products from the unlawful competitor, unfair competition as Defendants disparaged Plaintiffs to the public and third parties, unfair competition as Defendants have fraudulently exploited Stengel's intellectual property rights with vendors and manufacturers, loss of goodwill as Defendants have intentionally harmed customer relationships and invoked the threats and concerns of litigation, unfair competition through loss of brand and product exclusivity, financial loss and attorneys' fees.

**COUNT 6—BREACH OF FIDUCIARY DUTY**

136. Incorporated by reference as though fully set forth herein are all allegations contained in paragraphs 1 through 135 above.

137. As previously stated, CBT Supply was a licensee of the SMARTDESKS marks from Peter Stengel under their business relationship and profit sharing Agreement. Under this Agreement, Defendants paid Stengel what they stated was Stengel's share of the gross profits through the time period December 31, 2004. Subsequent to the Agreement, Defendants received a larger share of gross profits than originally contemplated by the parties in the June 6, 2001 Agreement.

138. Under the parties' business relationship, the parties each received extensive confidential information. Korber provided information to Stengel regarding his extensive previous business failures, financial difficulties, marital woes that affected the business, and other problems. Stengel provided Korber with his SMARTdesks business plans, product development plans, trade secrets and other plans and information regarding Stengel's intellectual property.

139. Under the Agreement and in the business relationship between the parties, in which Defendants were due to pay Stengel "gross profits" from the intellectual property licenses that Stengel provided, and in which Defendants received the additional benefit of receiving larger gross profits from Stengel's product lines that were not originally intended to be part of the CBT Supply portion of the Agreement, and wherein the parties shared extensive confidential information, Korber and CBT Supply were accountable to Stengel as a fiduciary.

140. In acting as a fiduciary, administering Stengel's intellectual property under the license, managing the revenues resulting from Stengel's intellectual property, and in having knowledge of Stengel's confidential business plans, trade secrets and information, Defendants owed Stengel a duty to act for the benefit of Stengel and his intellectual property with loyalty and good faith, without self-interest or self dealing.

141. Defendants breached their fiduciary duties to Stengel through the foregoing acts and as a direct and proximate result, Plaintiffs suffered extensive damages.

**COUNT 7—NEGLIGENT MISREPRESENTATION**

142. Incorporated by reference as though fully set forth herein are all allegations contained in paragraphs 1 through 141 above.

143. The foregoing conduct of Korber and CBT Supply as herein alleged constitutes Defendants' making misrepresentations of past or present material facts, failure to disclose past or present material facts and/or concealment of past or present material facts, conduct which Defendants had a duty not to engage.

144. The foregoing conduct of Korber and CBT Supply as herein alleged constitutes a breach of the duty owed by Defendants to Plaintiffs to not fail to make full and complete disclosure to the Plaintiffs of past or present material facts so as to create a false impression of the actual facts, and not to conceal past or present material facts for purposes of having Plaintiffs act in a manner which would be inconsistent with their expected course of conduct had they been aware of past or present material facts, the existence of which had been concealed.

145. Plaintiffs acted and/or refrained from acting in reliance upon the assumed integrity of Defendants, the fiduciary owed to Plaintiffs by Defendants, and the integrity and completeness of the financial books and records as completed and maintained by Defendants, including inside and outside accounting professionals.

146. Plaintiffs were justified in relying on the integrity of Defendants, the fiduciary owed to Plaintiffs by Defendants, and the integrity and completeness of the financial books and records as completed and maintained by Defendants, including inside and outside accounting professionals.

147. As a direct and proximate result of Defendants' aforesaid negligent misrepresentation, concealment and non-disclosure, the Plaintiffs have suffered and will continue to suffer extensive damages and losses.

**COUNT 8—BREACH OF CONTRACT**

148. Incorporated by reference as though fully set forth herein are all allegations contained in paragraphs 1 through 147 above.

149. Defendants materially breached the June 6, 2001 Agreement by not paying Plaintiffs for any gross profits due during the 2005 time period.

150. Defendants materially breached the June 6, 2001 Agreement by secretly improperly manipulating their calculation of the “gross profits” due by withholding millions of dollars due Stengel by improperly deducting CBT Supply’s overhead, Korber’s and his wife Lisa Kaslow’s personal expenses, and even expenses paid to Stengel to reimburse him and for other additional services provided by Stengel, from the revenues received. These secret deductions were first discovered in early 2007 with the Defendants’ production of some financial tax documents.

151. In reliance on accurate payment of gross profits under the Agreement, Stengel passed up numerous other business opportunities, including using his intellectual property for his own exclusive use.

152. As a direct and proximate result of Defendants’ aforesaid material breaches of contract, the Plaintiffs have suffered and will continue to suffer extensive damages and losses.

**COUNT 9—PROMISSORY ESTOPPEL AND DETRIMENTAL RELIANCE**

153. Incorporated by reference as though fully set forth herein are all allegations contained in paragraphs 1 through 152 above.

154. Defendant Korber waited until August 17, 2005 to inform Stengel that he did not intend to pay him under the Agreement for gross profits since January 1, 2005.

155. Stengel reasonably relied on expectation of payment under the Agreement for extensive sales and revenues that he had knowledge had accrued in that time period.

156. Stengel reasonably relied on Defendants not breaching their fiduciary duty due Stengel and not committing fraud against him.

157. As a direct and proximate result of Defendants' failures to make payments of the gross profits, the Plaintiffs have suffered and will continue to suffer extensive damages and losses.

#### **COUNT 10—QUANTUM MERUIT**

158. Incorporated by reference as though fully set forth herein are all allegations contained in paragraphs 1 through 157 above.

159. Stengel rendered valuable intellectual property rights and provided other services to Defendants with the intention of receiving from Defendants his due portion of the gross profits from sales. Defendants were aware that Stengel expected to be paid for such rights and services. The rights and services conferred by Stengel on the Defendants were accepted, used and enjoyed by the Defendants.

160. As a result of Defendants' refusal to pay for the rights and services conferred by the Plaintiff, the Plaintiff has suffered extensive damages.

#### **COUNT 11—UNJUST ENRICHMENT**

161. Incorporated by reference as though fully set forth herein are all allegations contained in paragraphs 1 through 160 above.

162. The services and rights conferred by the Plaintiff on the Defendants were of great benefit to the Defendants, entirely responsible for the Defendants' receipt of large sales and profits, and provided with the Defendants' knowledge.



163. It would be inequitable for Defendants to retain the benefits of the rights and services conferred upon them without payment of their fair value.

**COUNT 12—ACCOUNTING**

164. Incorporated by reference as though fully set forth herein are all allegations contained in paragraphs 1 through 163 above.

165. Defendants have been in exclusive control of the financial records associated with sales and profit calculations under the June 6, 2001 agreement and with all sales associated with any of the intellectual property described in this complaint and the related federal complaints.

166. The Plaintiffs are fearful that the electronic documents have been manipulated and the books and records altered and that multiple sets of books have been kept, all actions consistent with the electronic document alterations and fraudulent actions taken by the Defendants as described in this complaint.

167. The rights and obligations described above and duties owed to the Plaintiffs by the Defendants, in combination with the extensive fraudulent actions undertaken by the Defendants, confer an obligation on the part of the Defendants to perform an independent and auditable financial report at the expense of the Defendants accounting for all sales, revenues, and profits related to any party or asset described in this complaint or the related federal complaints.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays for a Judgment:

A. Awarding Plaintiff compensatory damages in the amount of twenty million dollars (\$20,000,000.00), its reasonable attorneys' fees, costs and disbursements incurred

herein in view of Defendants' wrongful, inequitable, intentional and fraudulent conduct;  
and

B. That the Defendants be Ordered by decree of this Court to provide a full accounting for all sales, revenues, and profits related to any party or asset described in this complaint; and

C. Award Plaintiff punitive damages in view of Defendants' wrongful, intentional, and fraudulent conduct; and

D. Grant the Plaintiff such further relief as the Court deems just.

Respectfully submitted,

/s/  
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