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**UNITED STATES DISTRICT COURT**

**DISTRICT OF OREGON**

**PORTLAND DIVISION**

**SEABERG COMPANY, INC., dba  
SAM MEDICAL PRODUCTS, an  
Oregon corporation,**

Plaintiffs,

v.

**ROBERT H. HARDER ASSOCIATES,  
INC., f/k/a H&H ASSOCIATES, INC., a  
Virginia corporation,**

Defendant.

Civil Case No. \_\_\_\_\_

**COMPLAINT FOR DECLARATORY  
JUDGMENT AND JURY DEMAND**

**(An action related to Patents)**

**JURY TRIAL DEMANDED**

The Seaberg Company, Inc. (“Plaintiff”), through its undersigned counsel and this Complaint, seeks declaratory judgment and a jury trial against defendant Robert H. Harder Associates, Inc. (“Defendant”), and alleges as follows:

## NATURE OF THE ACTION

1. This is an action for a declaratory judgment that Plaintiff does not infringe any valid claim of United States Patent No. 7,834,231 (the '231 patent or the "Asserted Patent"), and for a declaratory judgment that the claims of the Asserted Patent are invalid.
2. Attached as Exhibit A is a true and correct copy of the '231 patent.
3. Defendant purports to own the Asserted Patent.
4. This is also an action for injunctive relief against Defendant that it be permanently enjoined from making any further allegations that Plaintiff, its clients, and/or its customers infringe any of the claims of the Asserted Patent.
5. Plaintiff is an Oregon corporation with its principal place of business at 27350 SW 95<sup>th</sup> Avenue, Suite 3038, Wilsonville, Oregon, 97070.
6. Plaintiff is a developer and manufacturer of innovative medical products used for emergency, military, and hospital care. For more than 25 years, Plaintiff has represented innovation and quality to the medical professional.
7. On information and belief, Defendant is a Virginia corporation and purports to have a principal place of business at 4173 George Washington Memorial Highway, Ordinary, Virginia, 23131.
8. Defendant and Plaintiff are competitors.
9. On May 18, 2012, Defendant filed a lawsuit in the Eastern District of Virginia against Plaintiff alleging infringement of the Asserted Patent. The case is entitled *Robert H. Harder Associates, Inc. f/k/a H&H Associates, Inc. v. The Seaberg Company, Inc., d/b/a SAM Medical Products*, No. 1:12-cv-547 (E.D. Vir.). Plaintiff has not been served with this case.

10. Plaintiff apprehends that Defendant will commence litigation against Plaintiff to obtain business advantage over Plaintiff.

11. Plaintiff manufactures and sells a range of medical products including the SAM Chest Seal. Defendant alleges that the SAM Chest Seal infringes Defendant's '231 patent.

12. This Court has subject matter jurisdiction over Plaintiff's causes of action under 28 U.S.C. § 1331 because these claims involve federal questions; under 28 U.S.C. § 1338(a) because these claims arise under an Act of Congress relating to the patent laws of the United States in 35 U.S.C. §§ 101, *et seq.*; and under the Federal Declaratory Judgment Act 28 U.S.C. § 2201(a), as an actual controversy. Defendant's filed (but not served) complaint with respect to the Asserted Patent has given Plaintiff reasonable apprehension that it will be wrongly sued for infringement of the Asserted Patent. Plaintiff believes that the threat of suit is imminent. A definite case and controversy exists between Plaintiff and Defendant with respect to the infringement, validity, and scope of the Asserted Patent.

13. On information and belief, this Court has personal jurisdiction over the Defendant because it has made constitutionally sufficient minimum contacts with Oregon, and has purposefully availed itself of the benefits and protections of the laws of this state and judicial district. On information and belief, Defendant maintains ongoing contractual relationships and conducts business in this district, including selling Defendant's products in Oregon.

14. On information and belief, Defendant is subject to this Court's specific and general jurisdiction based on Defendant's business contacts and activities in this district. Defendant has offered to sell and sold medical products within this district. Defendant also has an interactive web site accessible to end customers in this district which promotes its products

and identifies distributors of those products.

15. On information and belief, Defendant advertised, promoted, and offered for sale to end customers within this judicial district Defendant's products through Defendant's website at <http://www.gohandh.com/>.

16. On information and belief, Defendant advertised, promoted, and offered for sale to end customers within this judicial district Defendant's products through third party resellers who market to end customers working or residing in Oregon.

17. Venue in this Court is proper under 28 U.S.C. §§ 1391(b), (c) and 1400(b) because, *inter alia*, a substantial part of the events giving rise to the claims occurred here, and Plaintiff resides in this district. This Court is a convenient forum because Plaintiff's documents and witnesses are within or near this district and, on information and belief, Defendant's most important documents are its patent.

**COUNT ONE**  
**DECLARATORY JUDGMENT OF NON-INFRINGEMENT OF THE '231 PATENT**

18. Plaintiff re-alleges preceding paragraphs 1 through 17 in this Complaint.

19. Neither the SAM Chest Seal nor any other of Plaintiff's products infringe any valid claim of the '231 patent asserted by Defendant.

20. An actual controversy exists between Plaintiff and Defendant as to whether or not Plaintiff has infringed, or is infringing, the '231 patent; or has induced, or is inducing infringement of the '231 patent.

21. The controversy entitles Plaintiff to a declaration in a judgment from this Court under Federal Rule of Civil Procedure 57 and 28 USC §§ 2201 *et. seq.* that Plaintiff (i) has not infringed and is not infringing any valid and enforceable claim of the '231 patent; (ii) has not

contributed to infringement and is not contributing to infringement of the '231 patent; and (iii) has not induced infringement and is not inducing infringement of the '231 patent. It is an appropriate time for such a declaration.

**COUNT TWO**  
**DECLARATORY JUDGMENT OF INVALIDITY OF THE '231 PATENT**

22. Plaintiff re-alleges preceding paragraphs 1 through 21 in this Complaint.

23. Based on the above-stated conduct, Plaintiff believes that Defendant contends that Plaintiff infringes one or more claims of the '231 patent.

24. Plaintiff denies that it infringes any valid and enforceable claim of the '231 patent, and avers that the assertions of infringement cannot be maintained consistently with statutory conditions of patentability and the statutory requirements for disclosure and claiming that must be satisfied for patent validity under at least one of 35 U.S.C. §§ 101, 102, 103 and 112.

25. Accordingly, an actual controversy exists between Plaintiff and the Defendant as to the validity of the '231 patent. The controversy is such that, pursuant to Federal Rule of Civil Procedure 57 and 28 U.S.C. §§ 2201 *et. seq.*, Plaintiff is entitled to a declaration, in the form of a judgment, that the '231 patent is invalid. It is an appropriate time for such a declaration.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays for judgment in its favor as follows:

- A. For judgment in favor of Plaintiff against the Defendant on all claims;
- B. For a declaration that Plaintiff's SAM Chest Seal Products and other products do

not infringe any valid claim of the Asserted Patent;

C. For a declaration that the one or more claims of the Asserted Patent are invalid under one or more of 35 U.S.C. §§ 101, 102, 103, and 112;

D. For an awarding to Plaintiff for reasonable attorneys' fees and costs, including costs for experts, pursuant to state and federal law, including 35 U.S.C. § 285;

E. For an order enjoining Defendants from alleging Plaintiff's SAM Chest Seal Products and other products do not infringe any valid claim of the Asserted Patent

F. Awarding Plaintiff such other and further relief as this Court deems just and proper.

#### **DEMAND FOR A JURY TRIAL**

Plaintiff hereby demands a trial by jury on all counts so triable.

DATED: May 24, 2012

CHERNOFF, VILHAUER, McCLUNG &  
STENZEL, LLP

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