



1 2. Plaintiff is informed and believes, and on the basis of  
2 such information and belief alleges, Defendant JAMES  
3 MATTHEW STEPHENS (hereinafter referred to as "STEPHENS") is  
4 an individual residing in Cincinnati, Ohio, and doing  
5 business as Spectrum Laboratories and/or Spectrum  
6 Labs (hereinafter referred to as "SPECTRUM").

7 3. Plaintiff is informed and believes, and on the basis of  
8 such information and belief alleges, Defendant SPECTRUM  
9 LABORATORIES, LLC (hereinafter referred to as "SPECTRUM  
10 LLC") is a limited liability company formed in accordance  
11 with the laws of the State of Ohio and having a principal  
12 place of business of 550 Reading Road, Cincinnati, Ohio  
13 45202. SPECTRUM LLC also does business as Spectrum  
14 Laboratories and/or Spectrum Labs.

15 4. Plaintiff is informed and believes, and on the basis of  
16 such information and belief alleges, that Defendant  
17 STEPHENS is one of only two members of SPECTRUM LLC. The  
18 other member of SPECTRUM LLC is Jacinda Stephens, who is  
19 the wife of Defendant STEPHENS. STEPHENS owns a majority  
20 membership interest in SPECTRUM LLC.

21 5. Plaintiff is informed and believes, and on the basis of  
22 such information and belief alleges, that at all times  
23 relevant hereto, Stephens was the managing member of  
24 SPECTRUM LLC and in sole control of all day to day business  
25 activities of SPECTRUM LLC.

26 6. Spectrum Laboratories, Inc. (hereinafter referred to as  
27 "SPECTRUM INC" is a corporation formed in accordance with  
28 the laws of the State of Ohio and having a principal place

1 of business of Cincinnati, Ohio. SPECTRUM INC was  
2 incorporated on September 9, 1992 and dissolved on May 18,  
3 2010. SPECTRUM INC. also did business as Spectrum  
4 Laboratories and/or Spectrum Labs.

5 7. Plaintiff is informed and believes, and on the basis of  
6 such information and belief alleges, that from on or about  
7 September 9, 1992 to May 18, 2010, STEPHENS was the sole  
8 shareholder of SPECTRUM INC, president of SPECTRUM INC. and  
9 sole director of SPECTRUM INC. From September 9, 1992 to  
10 May 18, 2010 STEPHENS was in sole control of all day to day  
11 business activities of SPECTRUM INC.

12 8. Plaintiff is informed and believes, and on the basis of  
13 such information and belief alleges, that Defendant  
14 STEPHENS is, and was at all times relevant hereto, a  
15 resident of the State of Ohio.

16 9. Defendants STEPHENS, SPECTRUM and SPECTRUM LLC are  
17 collectively referred to herein as "Defendants".

18 10. The court has jurisdiction of this action because this  
19 litigation arises under the Patent Laws of the United  
20 States of America, namely 35 U.S.C. § 1 et seq. The Court  
21 has jurisdiction over this action under 28 U.S.C. § 1331  
22 (federal question), and 28 U.S.C. § 1338(a) (patents).

23 11. The court has jurisdiction of this action for related  
24 state law claims arising out of this litigation. The court  
25 has jurisdiction over this action under 28 U.S.C. § 1367(a)  
26 (supplemental jurisdiction).

27 12. This Court has personal jurisdiction over the Defendants  
28 because, on information and belief, Defendants conduct

1 business in the State of California and within this  
2 district, including contracts with California corporations  
3 and the advertising and sale of products within this State  
4 and through the Internet to California residents.

5 13. Venue is proper in this district under 28 U.S.C. §§  
6 1391(b) and 1391(c).

7  
8 **General Allegations**

9 14. Prior to and including 1999, DR. GREENS acted as an  
10 exclusive distributor for STEPHENS, SPECTRUM and/or  
11 SPECTRUM INC and purchased and sold numerous products  
12 pursuant to that relationship. Beginning in 2001, DR.  
13 GREENS purchased synthetic urine from STEPHENS, SPECTRUM  
14 and/or SPECTRUM INC under the brand name Quick Fix. DR.  
15 GREENS then sold Quick Fix to various retail customers  
16 throughout the United States.

17 15. At the end of 2001, STEPHENS terminated the exclusive  
18 distributor relationship, however, DR. GREENS continued to  
19 purchase Quick Fix from STEPHENS, SPECTRUM and/or SPECTRUM  
20 INC and re-sale it to various Dr. GREENS customers. From  
21 the end of 2001 up to the beginning of this dispute in  
22 2009, Dr. GREENS had continually purchased Quick Fix from  
23 STEPHENS, SPECTRUM and/or SPECTRUM INC and offered the same  
24 as a product for sale to Dr. GREENS' various retail  
25 customers at a small mark up in price.

26 16. Beginning in late 2003 or early 2004, Dr. GREENS sought  
27 out a new synthetic urine that could be sold under a Dr.  
28 GREENS' owned brand name. By mid 2004, Dr. GREENS began

1 marketing and selling synthetic urine under the Dr. GREENS  
2 owned brand name "Agent X." Notwithstanding Dr. GREENS'  
3 sales of Agent X, Dr. GREENS continued to purchase Quick  
4 Fix from STEPHENS and/or SPECTRUM INC and re-sell the same  
5 as an alternative product to Quick Fix.

6 17. On or about January 8<sup>th</sup>, 2004, defendant STEPHENS applied  
7 for a United States Patent for a "Synthetic Urine and  
8 Method Of Manufacturing Same."

9 18. The thrust of the patent application asserted that  
10 STEPHENS had invented a novel synthetic urine by using  
11 biocides to inhibit microbial growth and sepsis.

12 19. On or about March 20, 2007, patent number 7,192,776 for a  
13 "Synthetic Urine and Method Of Manufacturing Same" was  
14 issued to Defendant STEPHENS by the United States Patent  
15 and Trademark Office ("USPTO").

16 20. The registration of the patent number 7,192,776,  
17 "Synthetic Urine and Method Of Manufacturing Same" (herein  
18 after the "'776 Patent"), is attached hereto as exhibit "A"  
19 and is incorporated herein by reference the same as if set  
20 forth verbatim. All claims in the '776 Patent include a  
21 closed Markush Group of a list of biocides.

22 21. Plaintiff Dr. GREENS has never sold a synthetic urine  
23 under any of its brand names, including Agent X, that  
24 included a biocide set forth in any claim of the '776  
25 Patent.

26 22. Because Agent X has never included one of the specific  
27 biocides claimed in the '776 Patent, there can be no  
28 infringement of any claim of the '776 Patent.

First Claim of Infringement by Defendants

1  
2  
3  
4 23. On or about July 22, 2009 Defendants, through STEPHENS'  
5 legal counsel Mr. Cupar, sent a cease and desist letter to  
6 Plaintiff DR. GREENS. The cease and desist letter received  
7 by Plaintiff DR. GREENS from Mr. Cupar is attached hereto  
8 as exhibit "B" and is incorporated herein by reference the  
9 same as if set forth verbatim. Exhibit B reads in part:  
10 "Spectrum believes that your Agent X product likely  
11 infringes the '776 Patent." Exhibit B concludes with the  
12 following: "Please review the '776 Patent and let us know  
13 by Monday, August 3, 2009 any basis for which you do not  
14 believe that you infringe."

15 24. As of July 22, 2009, STEPHENS was the owner of record of  
16 the '776 Patent. The letter only referenced Spectrum  
17 Laboratories, and did not specifically state whether Mr.  
18 Cupar was writing on behalf of STEPHENS, SPECTRUM, SPECTRUM  
19 INC and/or SPECTRUM LLC.

20 25. As of July 22, 2009, both SPECTRUM INC and SPECTRUM LLC  
21 existed and did business under the names Spectrum  
22 Laboratories and Spectrum Labs.

23 26. Plaintiff is informed and believes and based thereon  
24 alleges that STEPHENS has an educational background in  
25 chemistry and at all times mentioned herein had the  
26 technical expertise to conduct and/or evaluate chemical  
27 testing of the composition of Agent X to discern the  
28

1 presence or absence of any one of the biocides claimed in  
2 the '776 Patent.

3 27. As of July 22, 2009 plaintiff is informed and believes  
4 and based thereon alleges that STEPHENS, SPECTRUM, SPECTRUM  
5 INC and SPECTRUM LLC had conducted no chemical testing to  
6 determine the presence of a biocide claimed in the '776  
7 Patent in Agent X or deliberately ignored the results of  
8 such testing indicating that Agent X contained none of the  
9 biocides claimed in the '776 Patent. Accordingly, as of  
10 July 22, 2009, STEPHENS, SPECTRUM INC and SPECTRUM LLC  
11 could have no reasonable basis to believe that Agent X  
12 infringed any claim of the '776 Patent.

13 28. As of July 22, 2009, STEPHENS knew of the prior sales to  
14 Dr. GREENS that took place years before the filing date of  
15 the application giving rise to the '776 Patent and further  
16 knew that these sales constituted a bar to the validity of  
17 the '776 Patent.

18 29. Because STEPHENS knew or should have known that the '776  
19 Patent was invalid as a result of the prior sales of Quick  
20 Fix to Dr. GREENS, STEPHENS authorized Exhibit B with no  
21 good faith belief that Agent X actually infringed any claim  
22 in the '776 Patent. Exhibit B was therefore sent to Dr.  
23 GREENS in bad faith.

24 30. As of July 22, 2009, STEPHENS also knew that he had  
25 deliberately concealed from the USPTO a printed  
26 publication, which constitutes prior art and from which  
27 STEPHENS, or his authorized agent, copied the entire list  
28 of biocides set forth in the '776 Patent specification and

1 claims. STEPHENS knew, or should have known, that his  
2 deliberate concealment of the printed publication prior art  
3 from which he, or his authorized agent, copied the entire  
4 list of biocides presented in the patent specification and  
5 claims constituted inequitable conduct before the USPTO and  
6 served as grounds for patent invalidity and/or renders the  
7 '776 patent unenforceable. The printed publication prior  
8 art from which STEPHENS, or his authorized agent, copied  
9 the entire list of biocides was material to patentability  
10 and should have been disclosed to the USPTO. STEPHENS'  
11 failure to disclose information material to patentability  
12 during the prosecution of the application giving rise to  
13 the '776 patent is a breach of his duty of candor and  
14 constitutes inequitable conduct.

15 31. Because STEPHENS knew or should have known that the '776  
16 Patent was invalid as a result of his deliberate  
17 concealment of the printed publication prior art from the  
18 USPTO, Stephens authorized Exhibit B with no good faith  
19 belief that Agent X actually infringed any claim in the  
20 '776 Patent. Exhibit B was therefore sent to Dr. GREENS in  
21 bad faith.

22 32. On August 3, 2009, Plaintiff, through counsel, responded  
23 to Defendants' attorney Mr. Cupar denying any infringement,  
24 and also raised substantive issues surrounding the  
25 questionable validity of the '776 Patent. A copy of the  
26 denial letter to Mr. Cupar is attached as Exhibit "C".  
27 This letter put STEPHENS, SPECTRUM, SPECTRUM INC and  
28 SPECTRUM LLC on notice that Dr. GREENS contested the



1 validity of the '776 Patent. Notwithstanding such notice,  
2 no effort was ever made in 2009 to deny Dr. GREENS claims  
3 that the '776 Patent was invalid.

4 33. On August 6, 2009, counsel for Defendant Mr. Cupar  
5 responded that he had been out of town, but that he "... will  
6 work with you regarding this mater over the next few  
7 weeks." A copy of the letter from Mr. Cupar, counsel for  
8 Defendant, is attached as Exhibit "D."

9 Legal Action Notification Letter

10 34. On September 16, 2009, Dr. GREENS received a copy of a  
11 letter entitled "Legal Action Notification" (hereinafter  
12 the "Legal Action Notification") dated September 8, 2009  
13 from one of Dr. GREENS' customers who had received the  
14 Legal Action Notification letter from "Spectrum Labs" on or  
15 shortly after September 8, 2009. A copy of this Legal  
16 Action Notification letter is attached as Exhibit "E".

17 35. STEPHENS, as the then '776 Patent holder, was responsible  
18 for the creation and transmission of the Legal Action  
19 Notification as set for more fully below. STEPHENS either  
20 personally authored or otherwise authorized as the  
21 president of SPECTRUM INC or manager of SPECTRUM LLC the  
22 Legal Action Notification letter. STEPHENS approved of the  
23 content and widespread circulation of Legal Action  
24 Notification letters to the synthetic urine retail industry  
25 with content identical to the Legal Action Notification  
26 letter attached as Exhibit "E". When the Legal Action  
27 Notification letter was created, STEPHENS intended on  
28 personally owning the '776 Patent because he had not

1 assigned the '776 Patent to either SPECTRUM INC or SPECTRUM  
2 LLC, both of which existed as of that time.

3 36. At the direction of STEPHENS, letters identical in form  
4 to the Legal Action Notification letter were widely  
5 circulated to many thousands of businesses located  
6 throughout the United States that engage in retail sales of  
7 synthetic urine, including customers and prospective  
8 customers of Dr. GREENS. These Legal Action Notification  
9 letters were circulated in the fall of 2009, including but  
10 not limited to August of 2009 and September of 2009.

11 37. The language of the thousands of Legal Action  
12 Notification letters was intentionally designed to chill  
13 competition through a combination of overbroad, vague and  
14 untrue statements as set forth more fully below.

15 38. The Legal Action Notification letters read in part: "[a]s  
16 you know, Spectrum Labs' "Quick Fix" synthetic urine is the  
17 only patented product of its kind in the market." This  
18 statement was false, created a false impression and was  
19 misleading because STEPHENS was aware of several synthetic  
20 urine patents in existence that disclosed the use of a  
21 known biocide in the synthetic urine solution.

22 39. The Legal Action Notification letters failed to reference  
23 any specific pending litigation or anticipated litigation  
24 against any particular synthetic urine manufacturer.  
25 Instead, the Legal Action Notification letters indicated  
26 that "Spectrum Labs is in the process of taking action  
27 against all synthetic urine manufactures who are  
28 potentially violating our patent" without providing the

1 recipient any information as to what specific synthetic  
2 urine manufacturer "Spectrum Labs" suspected infringed.  
3 This language was specifically selected and/or approved by  
4 STEPHENS with the specific intent that the recipient be  
5 deprived of any ability to independently discern whether  
6 the synthetic urine purchased by them infringed the '776  
7 Patent.

8 40. The Legal Action Notification letter threatened legal  
9 action against "whoever", without authority, makes, uses,  
10 offers to sell, or sells any patented invention, within the  
11 United States, or imports into the United States any  
12 patented invention during the term of the patent therefor."  
13 This language was specifically selected and/or approved by  
14 STEPHENS with the specific intent that the recipient be  
15 concerned of the possibility that he or she could be held  
16 responsible for selling a synthetic urine that possibly  
17 infringed the '776 Patent.

18 41. The Legal Action Notification letter instructed the  
19 recipient that "[t]o avoid potential liability, please  
20 avoid offering for sale, or selling, any potentially  
21 infringing products." This language was specifically  
22 selected and/or approved by STEPHENS with the specific  
23 intent that the recipient would construe the Legal Action  
24 Notification letter to mean that he or she would become  
25 involved in litigation if he or she purchased or sold any  
26 synthetic urine other than synthetic urine covered by the  
27 '776 Patent and sold by Spectrum Labs.  
28

1 42. STEPHENS intended that the Legal Action Notification  
2 letter coupled with its widespread circulation in the  
3 synthetic urine industry would chill competition from all  
4 of Defendants' competitors and particularly from Dr.  
5 GREENS.

6 43. STEPHENS intended that the Legal Action Notification  
7 letter, when read by a recipient, would mislead said  
8 recipient to conclude that purchasing synthetic urine from  
9 anyone other than Spectrum Labs, including Dr. GREENS,  
10 would subject the recipient to legal action.

11 44. STEPHENS intended that the Legal Action Notification  
12 letter, when read by a recipient, would mislead said  
13 recipient to conclude the only safe course to avoid  
14 liability would be to purchase synthetic urine directly  
15 from Spectrum Labs.

16 45. The language selected and/or approved by STEPHENS in the  
17 Legal Action Notification letter, was broad enough to  
18 plainly imply that Dr. GREENS' product, another synthetic  
19 urine on the market, infringes the '776 Patent.

20 46. The Legal Action Notification Letter was false, created a  
21 false impression and/or was misleading to its recipients  
22 because the '776 Patent was invalid under 35 USC 102(b)  
23 resulting from STEPHENS', SPECTRUMS' and/or SPECTRUM INC's  
24 sales of Quick Fix to Dr. GREENS in 2001 and 2002, and thus  
25 precluding the possibility of liability for infringement  
26 upon the '776 Patent.

27 47. The Legal Action Notification Letter was false, created a  
28 false impression and/or was misleading to its recipients

1 because the '776 Patent was invalid resulting from STEPHENS  
2 inequitable conduct before the USPTO during prosecution of  
3 the patent application giving rise to the '776 Patent, and  
4 thus precluding the possibility of liability for  
5 infringement upon the '776 Patent.

6 48. The Legal Action Notification Letter was false, created a  
7 false impression and/or was misleading to its recipients  
8 because Dr. GREENS' Agent X did not infringe any claim of  
9 the '776 Patent.

10 49. The Legal Action Notification Letter was false, created a  
11 false impression and/or was misleading because neither  
12 STEPHENS, SPECTRUM, SPECTRUM INC nor SPECTRUM LLC initiated  
13 legal action against anyone for patent infringement in 2009  
14 or 2010, nor did they intend to do so at the time the Legal  
15 Action Notification Letters were circulated to the entire  
16 synthetic urine retail industry.

17 50. The Legal Action Notification Letter was false, created a  
18 false impression and/or was misleading because there were  
19 other synthetic urines on the market that did not infringe  
20 any claim in the '776 Patent.

21 51. As a result of the false and misleading language  
22 contained in the thousands of Legal Action Notification  
23 letters, coupled with its indiscriminate and widespread  
24 circulation throughout the entire synthetic urine retail  
25 industry, STEPHENS, SPECTRUM, SPECTRUM INC and/or SPECTRUM  
26 LLC enjoyed a substantial increase in sales of synthetic  
27 urine from recipients of the Legal Action Notification  
28

1 letter, including customers and prospective customers of  
2 Dr. GREENS.

3 52. The Legal Action Notification letters have misled and  
4 continue to mislead thousands of Dr. GREENS customers and  
5 prospective customers into wrongly believing that Dr.  
6 GREENS' Agent X and all other synthetic urine products  
7 infringe the '776 Patent.

8 53. The Legal Action Notification letters were created and  
9 circulated in bad faith because at the time the Legal  
10 Action Notification letter was created and circulated,  
11 STEPHENS knew that the '776 Patent was invalid.

12 54. At the time the Legal Action Notification letters were  
13 circulated, STEPHENS knew that synthetic urine covered by  
14 one or more of the claims of the '776 Patent had been sold  
15 to numerous persons and companies, including Dr. GREENS,  
16 more than one year before the filing date of the  
17 application giving rise to the '776 Patent. STEPHENS knew  
18 that these prior sales constituted an on sale bar and  
19 invalidated the '776 Patent.

20 Exchanged Correspondence

21 55. On September 19, 2009, counsel for Plaintiff sent Mr.  
22 Cupar, attorney for Defendants, a follow up letter to  
23 Plaintiff's August 3<sup>rd</sup> letter, again requesting specifics of  
24 the allegations of infringement and further warning of  
25 Defendants' patent misuse and unfair competition through  
26 the mailing of false claims to Plaintiff's current and  
27 potential customers. A copy of this letter is attached as  
28 Exhibit "F".

1 56. On September 21, 2009, Mr. Cupar, counsel for Defendant,  
2 responded, requesting information regarding the basis for  
3 non-infringement, and specific proof of letters sent to  
4 Plaintiff's customers regarding the threats of  
5 infringement. A copy of this E-mail letter is attached as  
6 Exhibit "G".

7 57. The September 21, 2009 letter was sent on behalf of  
8 STEPHENS by his authorized agent. The demand for  
9 information regarding Dr. GREENS' basis for concluding non-  
10 infringement was written with the specific objective to  
11 obtain the chemical formula of Agent X. This demand was  
12 made without any reasonable subjective or objective basis  
13 to support a belief of infringement on the part of  
14 STEPHENS, his agents, SPECTRUM, SPECTRUM INC or SPECTRUM  
15 LLC. This demand was therefore made in bad faith.

16 58. No effort was made by STEPHENS, or any of his agents, or  
17 anyone else on behalf of Defendants, to evaluate Dr. GREENS  
18 claims of patent invalidity under 35 USC 102(b) from July  
19 22, 2009 to September 21, 2009.

20 59. No effort was made by STEPHENS, or any of his agents, or  
21 anyone else on behalf of Defendants to chemically test  
22 Agent X for the presence of any one of the biocides claimed  
23 in the '776 Patent from July 22, 2009 to September 21,  
24 2009.

25 60. On September 23, 2009, counsel for Plaintiff responded to  
26 Mr. Cupar with specifics regarding a 35 U.S.C. §102 basis  
27 for the non-infringement, namely, that the patent is  
28 invalid based on a prior sale of the product by Defendants

1 more than a year before the earliest filing date of the  
2 application for patent. Also, Plaintiff provided Mr. Cupar  
3 with a copy of the "Legal Action Notification" letter that  
4 had been received by one of Plaintiff's customers. A copy  
5 of this Response is attached as Exhibit "H". Mr. Cupar  
6 never responded to or otherwise acknowledged this letter or  
7 the attached Legal Action Notification letter.

8 61. On October 23, 2009, counsel for Plaintiff sent a letter  
9 to follow up on the September 23, 2009 letter that had  
10 provided a complete response to Defendant's request, and  
11 demanded that Defendants provide the identities of  
12 companies that had received Defendants "Legal Action  
13 Notification". A copy of Plaintiff's letter is attached as  
14 Exhibit "I". Mr. Cupar never responded to or otherwise  
15 acknowledged this letter.

16  
17 First Lawsuit

18 62. On or about August 2009, Plaintiff filed suit in this  
19 Court for Declaratory Judgment of Non Infringement and  
20 other related causes of action against SPECTRUM INC,  
21 SPECTRUM LLC, and STEPHENS personally, Case No. 09-cv-  
22 01673-MMA-JMA (hereinafter the "First Lawsuit").

23 63. After hearing nothing further from Mr. Cupar, on December  
24 2, 2009, SPECTRUM INC was served with a copy of the  
25 original complaint in the First Lawsuit; however, service  
26 was never made on Defendants STEPHENS or SPECTRUM LLC.  
27 Notwithstanding said service, SPECTRUM INC never filed an  
28 answer to the original complaint. Notwithstanding said



1 service, no telephone call, letter, email or any other  
2 communication was received by STEPHENS' lawyer Mr. Cupar.

3 64. Plaintiff is informed and believes and based thereon  
4 alleges that STEPHENS took deliberate steps to avoid  
5 personal service of the prior complaint in the First  
6 Lawsuit because STEPHENS knew that if he were served, he  
7 would have been compelled as the '776 Patent owner to file  
8 a compulsory counterclaim alleging patent infringement.  
9 STEPHENS also knew, as alleged above, that the '776 Patent  
10 was not valid and any claim of patent infringement based  
11 upon the '776 Patent would be false and would subject  
12 STEPHENS to further personal liability. STEPHENS elected to  
13 continue to avoid personal service and caused SPECTRUM INC  
14 and Defendants' lawyer Mr. Cupar to cease all  
15 communications with counsel for Dr. GREENS and avoid  
16 participation in the First Lawsuit.

17 65. Plaintiff received no further correspondence from  
18 Defendant or its Attorney, Mr. Cupar, in 2009 or 2010, nor  
19 did SPECTRUM INC file an Answer to the prior Complaint in  
20 the First Lawsuit. Despite Dr. GREENS' efforts to locate  
21 and serve STEPHENS, he successfully avoided personal  
22 service of the prior complaint in the First Lawsuit.

23 66. At no time in 2009 or 2010 did STEPHENS or anyone acting  
24 on behalf of SPECTRUM INC or SPECTRUM LLC ever deny Dr.  
25 GREENS contention that the early sales of Quick Fix to Dr.  
26 GREENS constituted an on sale bar under 35 USC 102(b). The  
27 failure to respond to these claims or to otherwise  
28 participate in the First Lawsuit by STEPHENS, SPECTRUM INC

1 or SPECTRUM LLC evidences that STEPHENS authorized a letter  
2 campaign claiming an unfounded belief in patent  
3 infringement with no intent to file suit. The failure to  
4 respond to these claims or to otherwise participate in the  
5 First Lawsuit by STEPHENS, SPECTRUM INC or SPECTRUM LLC  
6 evidences that the Legal Action Notification letter was  
7 created and circulated with no good faith intent to  
8 initiate any legal action against Dr. GREENS.

9  
10 Nunc Pro Tunc Assignment

11 67. On January 4, 2010, Unbeknownst to Plaintiff, STEPHENS  
12 recorded a document with the USPTO purporting to assign his  
13 interest in the '776 Patent to SPECTRUM LLC, effective,  
14 nunc pro tunc, on March 4, 2008. (Hereinafter the "Nunc  
15 Pro Tunc Assignment). Plaintiff is informed and believes  
16 and based thereon alleges that all Legal Action  
17 Notification Letters were drafted after March 4, 2008.

18 68. The Nunc Pro Tunc Assignment was created by an authorized  
19 agent of STEPHENS as part of a tactical plan to shield  
20 STEPHENS from additional personal liability that would  
21 arise from filing a compulsory counterclaim based upon the  
22 '776 Patent that STEPHENS knew to be invalid as set forth  
23 above, and to shield STEPHENS from the liabilities  
24 associated with the many thousands of Legal Action  
25 Notification letters sent on behalf of "Spectrum Labs."

26 69. STEPHENS knew that the Nunc Pro Tunc Assignment could not  
27 retroactively convey standing to SPECTRUM LLC to assert a  
28 counterclaim in response to the prior Complaint, therefore



1 test the accuracy of that contention in accordance  
2 with 35 U.S.C. § 295.”

3 72. Exhibit J was the first letter written by Mr. Cupar that  
4 specifically referenced his client as the entity SPECTRUM  
5 LLC.

6 73. As of February 11, 2011 plaintiff is informed and  
7 believes and based thereon alleges that STEPHENS, SPECTRUM  
8 INC and SPECTRUM LLC had conducted no chemical testing to  
9 determine the presence of any biocide claimed in the '776  
10 Patent in Agent X or deliberately ignored the results of  
11 such testing indicating that Agent X contained none of the  
12 biocides claimed in the '776 Patent. Accordingly, as of  
13 February 11, 2011, STEPHENS, SPECTRUM and SPECTRUM LLC  
14 could have no reasonable basis to believe that Agent X  
15 infringed any claim of the '776 Patent.

16 74. As of February 11, 2011, STEPHENS knew of the prior sales  
17 to Dr. GREENS that took place years before the filing date  
18 of the application giving rise to the '776 Patent and  
19 further knew that these sales constituted a bar to the  
20 validity and enforcement of the '776 Patent.

21 75. Because STEPHENS knew or should have known that the '776  
22 Patent was invalid as a result of the prior sales of Quick  
23 Fix to Dr. GREENS, STEPHENS authorized Exhibit J with no  
24 good faith belief that Agent X actually infringed any claim  
25 in the '776 Patent. Exhibit J was therefore sent to Dr.  
26 GREENS in bad faith.

27 76. As of February 11, 2011, STEPHENS also knew that he had  
28 deliberately concealed from the USPTO the printed

1 publication prior art from which STEPHENS, or his  
2 authorized agent, copied the entire list of biocides set  
3 forth in the '776 Patent specification and claims.  
4 STEPHENS knew, or should have known, that his deliberate  
5 concealment of the printed publication prior art from which  
6 he, or his authorized agent, copied the entire list of  
7 biocides presented in his patent constituted misconduct  
8 before the USPTO and served as grounds for patent  
9 invalidity.

10 77. Because STEPHENS knew or should have known that the '776  
11 Patent was invalid as a result of his deliberate  
12 concealment of the printed publication prior art from the  
13 USPTO, Stephens authorized Exhibit J with no good faith  
14 belief that Agent X actually infringed any claim in the  
15 '776 Patent. Exhibit J was therefore sent to Dr. GREENS in  
16 bad faith.

17 78. Exhibit J failed to respond to Dr. GREENS multiple  
18 letters claiming the applicability of the on sale bar under  
19 35 U.S.C. § 102(b) or otherwise even acknowledge the  
20 letters that had been sent in September and October of 2009  
21 by counsel for Dr. GREENS.

22 79. Because Exhibit J was sent to Dr. GREENS without any good  
23 faith belief in infringement by STEPHENS and SPECTRUM LLC,  
24 Exhibit J is not protected by any privilege under the  
25 patent laws of the United States.

26 80. Exhibit J was sent to Dr. GREENS for the specific purpose  
27 of discovering the chemical formula of Agent X to enable  
28

1 STEPHENS and his company SPECTRUM LLC to obtain a  
2 competitive advantage over their competitor Dr. GREENS.

3 81. Defendants knew the '776 Patent was invalid at the time  
4 the Legal Action Notification letters were created and  
5 widely circulated because:

- 6 a. Defendants entirely failed to respond to Dr.  
7 GREENS' claim that it purchased synthetic urine  
8 from Defendants' that was covered by the '776  
9 Patent years before STEPHENS filed the patent  
10 application giving rise to the '776 Patent;
- 11 b. Defendants' refused to provide to Dr. GREENS any  
12 factual basis to support the alleged belief of  
13 that Dr. GREENS' Agent X infringed the '776  
14 Patent;
- 15 c. The Legal Action Notification letter was widely  
16 disseminated to the entire retail synthetic urine  
17 industry, including the customers and prospective  
18 customers of Dr. GREENS, without Defendants  
19 having taken any reasonable steps to confirm that  
20 Dr. GREENS' Agent X in fact infringed one or more  
21 claims of the '776 Patent;
- 22 d. Defendants failed to take any action in 2009  
23 against Dr. GREENS after the widespread  
24 circulation of the Legal Action Notification  
25 letter to the retail synthetic urine industry,  
26 including Dr. GREENS' customers and prospective  
27 customers;
- 28

- 1 e. Defendants knew that the Dr. GREENS claims of  
2 patent invalidity would have been tested in the  
3 First Lawsuit;
- 4 f. SPECTRUM INC refused to participate in the First  
5 Lawsuit even though STEPEHNS was the president,  
6 sole shareholder and one of only two directors  
7 for SPECTRUM INC at the time the prior complaint  
8 in the First Lawsuit was served on SPECTRUM INC;
- 9 g. Defendants resumed their claims that Dr. GREENS'  
10 Agent X infringed the '776 Patent only after the  
11 complaint in the First Lawsuit was dismissed in  
12 2011.

13  
14 **Claim for Relief**

15 **COUNT I.a. PATENT NON-INFRINGEMENT.**

16 82. Plaintiff re-alleges and incorporates herein by  
17 reference, the same as if set forth verbatim, the  
18 allegations contained in paragraphs 1 through 81.

19 83. Plaintiff is informed and believes and based thereon  
20 alleges that the Nunc Pro Tunc Assignment is unsupported by  
21 consideration, therefore the purported assignment of the  
22 '776 Patent is null and void. Accordingly, STEPHENS  
23 remains the true owner of the '776 Patent.

24 84. Defendants have alleged that the '776 Patent is infringed  
25 by Plaintiff's DR. GREEN'S AGENT X product.

26 85. Plaintiff, however, asserts that Plaintiff's products do  
27 not infringe the claims of the '776 Patent.

1 86. Plaintiff asserts that the DR. GREEN'S AGENT X product  
2 manufactured by Plaintiff does not fall within any of the  
3 claims of the '776 Patent.

4 87. There is a continuing judiciable controversy between  
5 Plaintiff and Defendants as to Defendants' right to  
6 threaten or maintain suit for infringement of the '776  
7 Patent, and as to the scope and enforceability thereof, and  
8 as to whether any of Plaintiffs' products infringes any  
9 valid claim thereof.

10 88. Plaintiff has not infringed, willfully infringed,  
11 contributorily infringed, or induced others to infringe,  
12 any claim of the '776 Patent.

13 89. Plaintiff desires a judicial determination of its rights  
14 and duties, and declarations by this Court of non-  
15 infringement of the '776 Patent.

16  
17 **COUNT I.b. PATENT INVALIDITY**

18 90. Plaintiff re-alleges and incorporates herein by  
19 reference, the same as if set forth verbatim, the  
20 allegations contained in paragraphs 1 through 89.

21 91. Defendants have asserted that the '776 Patent is valid  
22 and infringed by one or more of Plaintiff's products.

23 92. Plaintiff is informed and believes and based thereon  
24 alleges that the Nunc Pro Tunc Assignment is unsupported by  
25 consideration, therefore the purported assignment of the  
26 '776 Patent is null and void. Accordingly, STEPHENS  
27 remains the true owner of the '776 Patent.  
28



1 93. On information and belief, Plaintiffs assert that  
2 Defendants manufactured and sold product covered by one or  
3 more claims of the '776 Patent years before the filing date  
4 of the '776 Patent, and hence in violation of 35 U.S.C.  
5 §102(b), resulting in any issued patent being invalid on  
6 its face.

7 94. Plaintiff further asserts that the solutions described in  
8 the '776 Patent are well known in the industry, and thus,  
9 would be obvious in light of the prior art which results in  
10 the claims for the '776 Patent being anticipated and thus  
11 not patentable under 35 U.S.C §103.

12 95. Plaintiff is informed and believes, and on the basis of  
13 such information and belief alleges, that the claims of the  
14 '776 Patent are invalid and therefore cannot be infringed  
15 by any of Plaintiff's products as a result of STEPHENS  
16 failure to disclose a prior art printed publication  
17 reference material that is relevant and material to  
18 patentability from which either STEPHENS or his authorized  
19 agent copied the entire list of biocides claimed in the  
20 '776 Patent.

21 96. There is a continuing judiciable controversy between  
22 Plaintiff and Defendants as to Defendants' right to  
23 threaten or maintain suit for infringement of the '776  
24 Patent, and as to the validity and enforceability thereof.

25 97. Plaintiff asserts that the 7,192,776 Patent is invalid  
26 for failing to comply with the patent laws of the United  
27 States, including but not limited to 35 U.S.C. §§ 102, 103,  
28 112, and/or 132.

1 98. Plaintiffs desire a judicial determination of their  
2 rights and duties, and declarations by this Court of  
3 invalidity of the 7,192,776 Patent.  
4

5 **COUNT II. MISUSE OF PATENT**

6 99. Plaintiff re-alleges and incorporates herein by  
7 reference, the same as if set forth verbatim, the  
8 allegations contained in paragraphs 1 through 98.

9 100. Plaintiff is informed and believes and based thereon  
10 alleges that the Nunc Pro Tunc Assignment is unsupported by  
11 consideration, therefore the purported assignment of the  
12 '776 Patent is null and void. Accordingly, STEPHENS  
13 remains the true owner of the '776 Patent.

14 101. Defendants repeated threats of patent infringement  
15 against Dr. GREENS were made with the specific intent to  
16 coerce Dr. GREENS into providing the formula of Agent X in  
17 order to give Defendants a competitive advantage against  
18 Dr. GREENS.

19 102. Defendants repeated threats of patent infringement  
20 against Dr. GREENS were unfounded and unsupported by any  
21 objective or subjective reasonable belief that Dr. GREENS'  
22 Agent X infringed any claim of the '776 Patent because:

- 23 a. STEPHENS had either conducted chemical testing  
24 that conclusively established that Agent X did  
25 not infringe any claim of the '776 Patent or  
26 deliberately avoided such chemical testing to  
27 feign a belief that Agent X did infringe the '776  
28

1 Patent wherein said belief was unfounded in fact,  
2 both objectively and subjectively.

3 b. STEPHENS knew that he had sold Quick Fix to Dr.  
4 GREENS years before filing the patent application  
5 giving rise to the '776 Patent. STEPHENS knew  
6 that these sales gave rise to an on sale bar that  
7 invalidated the '776 Patent.

8 c. STEPHENS failed to deny, either through counsel  
9 or through SPECTRUM INC or SPECTRUM LLC, Dr.  
10 GREENS' claims of patent invalidity resulting  
11 from the prior sales of Quick Fix to Dr. GREENS.

12 d. STEPHENS was aware of Dr. GREENS' sales of Agent  
13 X since 2004 and took no steps to assert any  
14 belief of patent infringement at any time from  
15 when the '776 Patent issued in March of 2007 to  
16 July 22, 2009.

17 e. STEPHENS evaded personal service of the prior  
18 complaint during the First Lawsuit.

19 f. After authoring and/or authorizing the widespread  
20 circulation of the Legal Action Notification  
21 letters, STEPHENS executed the Nunc Pro Tunc  
22 Assignment, unsupported by any consideration, in  
23 an effort to shield himself from personal  
24 liability.

25 g. STEPHENS failed to ever provide any basis in fact  
26 as to why "Spectrum" believed that Agent X  
27 infringed the '776 Patent in 2009.  
28

1 h. STEPHENS failure to ever provide any basis in  
2 fact as to why "Spectrum" believed that Agent X  
3 infringed the '776 Patent in 2010.

4 i. STEPHENS failure to ever provide any basis in  
5 fact before the original complaint in this action  
6 was filed in 2011 as to why "Spectrum" believed  
7 that Agent X infringed the '776 Patent.

8 j. STEPHENS failed to take any legal action as the  
9 patent owner of the '776 Patent against Dr.  
10 GREENS in 2009 or 2010, notwithstanding the wide  
11 circulation of the Legal Action Notification  
12 letter that represented that "'Spectrum Labs" is  
13 in the process of taking against all synthetic  
14 urine manufactures who are potentially violating  
15 our patent."

16 k. STEPHENS knew that Dr. GREENS' invalidity  
17 argument would have been tested in the First  
18 Lawsuit and therefore he declined to participate  
19 in that action in order to protect the '776  
20 Patent and avoid personal liability that would  
21 ultimately arise from bringing a baseless  
22 compulsory counterclaim alleging infringement of  
23 the '776 Patent by Dr. GREENS.

24 l. SPECTRUM INC, although served, failed to file an  
25 answer to the original complaint or otherwise  
26 participate in the First Lawsuit.

27 m. Only after the Nunc Pro Tunc Assignment was  
28 executed and after the original complaint in the

1 First Lawsuit was dismissed did SPECTRUM LLC  
2 first assert a claim of infringement against Dr.  
3 GREENS.  
4

5 103. Because Defendants knew or should have known that Agent X  
6 could not and did not infringe any claim in the '776  
7 Patent, the repeated demands for Dr. GREENS formulas were  
8 made in bad faith and impermissibly expanded the scope of  
9 the '776 Patent. The repeated claims of patent  
10 infringement and demands for the formula constitute patent  
11 misuse.

12 104. The widespread circulation of the Legal Action  
13 Notification letter is a violation of U.S. anti-trust laws  
14 because the Legal Action Notification letter falsely  
15 implies that "Spectrum Labs" holds an exclusive monopoly to  
16 all synthetic urine. The violation of U.S. anti-trust law  
17 as herein alleged constitutes patent misuse.

18 105. The Legal Action Notification Letter improperly and  
19 willfully expanded the scope of the claims of the '776  
20 Patent with the specific intent to exclude others from  
21 selling synthetic urine, including Dr. GREENS.

22 106. The Legal Action Notification Letter was widely  
23 circulated to the retail synthetic urine industry in bad  
24 faith because Defendants, and STEPHENS specifically, knew  
25 during the time period that the Legal Action Notification  
26 letters were circulated:

- 27 a. that Dr. GREENS' synthetic urine does not  
28 infringe any claim of the '776 Patent;

- 1 b. that the '776 Patent was invalid;
- 2 c. that numerous synthetic urines were on the market
- 3 by third parties prior to the issuance of the
- 4 '776 Patent and that these synthetic urines did
- 5 not infringe the '776 Patent;
- 6 d. that multiple United States patents had been
- 7 granted on synthetic urine solutions prior to the
- 8 issuance of the '776 Patent;
- 9 e. that Defendants did not intend on taking legal
- 10 action for patent infringement against Dr. GREENS
- 11 or any other synthetic urine manufacturer for
- 12 infringement of the '776 Patent;
- 13 f. that Defendants did not intend on taking legal
- 14 action against any retail synthetic urine
- 15 recipients of the Legal Action Notification
- 16 letter;
- 17 g. that recipients of the Legal Notification letter
- 18 whom purchased Agent X from Dr. GREENS would in
- 19 fact not be liable for infringement of the '776
- 20 Patent;
- 21 h. that recipients of the Legal Action Notification
- 22 letter would likely be deceived into believing
- 23 that "Spectrum Labs" was in the process of taking
- 24 action against synthetic urine manufacturers for
- 25 patent infringement;
- 26 i. that recipients of the Legal Action Notification
- 27 letter would likely be deceived into believing
- 28

1           that Dr. GREENS synthetic urine infringes the  
2           '776 Patent;

3           j. that recipients of the Legal Action Notification  
4           letter would likely be deceived into believing  
5           that the '776 Patent is valid and enforceable;  
6           and

7           k. that recipients of the Legal Action Notification  
8           letter would likely be deceived into believing  
9           that said recipients could only buy synthetic  
10          urine from "Spectrum Labs" to avoid legal action.

11  
12 107.     The widespread circulation of the Legal Action  
13     Notification letters is an abuse of the inherent rights  
14     granted upon the issuance of the '776 Patent and  
15     constitutes patent misuse.

16 108.     At the time the Legal Action Notification letters were  
17     created and widely circulated, STEPHENS had already engaged  
18     in inequitable conduct relating to the '776 Patent because  
19     he intentionally failed to disclose a prior art publication  
20     material to patentability to the USPTO during prosecution  
21     of the application giving rise to the '776 Patent.  
22     STEPHENS or his authorized agent intentionally copied the  
23     list of biocides set forth in the specification and claims  
24     of the '776 Patent from a printed publication and  
25     intentionally failed to disclose the existence of this  
26     printed publication as prior art during the prosecution of  
27     the application giving rise to the '776 Patent. Widespread  
28     circulation of the Legal Action Notification letter after

1 having engaged in inequitable conduct before the USPTO  
2 constitutes patent misuse.

3 109. Plaintiffs desire a judicial determination of their  
4 rights and duties, and declarations by this Court of  
5 unenforceability of the '776 Patent under the doctrine of  
6 patent misuse.

7  
8 **COUNT III. FEDERAL STATUTORY UNFAIR COMPETITION**

9 110. Plaintiff re-alleges and incorporates herein by  
10 reference, the same as if set forth verbatim, the  
11 allegations contained in paragraphs 1 through 109.

12 111. Plaintiff is informed and believes, and on the basis of  
13 such information and belief alleges, that Defendants have  
14 mischaracterized Plaintiff's products as an infringement of  
15 the '776 Patent in a deliberate effort to coerce Dr. GREENS  
16 into disclosing the formula for its synthetic urine.

17 112. Plaintiff is informed and believes, and on the basis of  
18 such information and belief alleges, that Defendants'  
19 mischaracterization of Plaintiff's products has and will  
20 continue to lead to the loss of reputation and goodwill  
21 associated with Plaintiff's products.

22 113. Plaintiff is informed and believes, and on the basis of  
23 such information and belief alleges, Defendants'  
24 mischaracterization of Dr. GREENS' Agent X product  
25 constitutes Federal Unfair Competition under 15 U.S.C.  
26 §1125(a), commonly known as §43(a) of the Lanham Act.

27 114. At the time The repeated allegations of infringement and  
28 demands for the formula of Agent X were made by Defendants,



1           STEPHENS knew that Agent X did not infringe any claim  
2           because:

3           a. STEPHENS had either conducted chemical testing  
4           that conclusively established no infringement  
5           took place or deliberately avoided such chemical  
6           testing to feign his belief of infringement that  
7           was in truth unfounded in fact, both objectively  
8           and subjectively;

9           b. STEPHENS knew that he had sold Quick Fix to Dr.  
10           GREENS years before filing the patent application  
11           giving rise to the '776 Patent and also knew that  
12           these sales gave rise to an on sale bar that  
13           invalidated the '776 Patent;

14           c. STEPHENS knew that he had engaged in inequitable  
15           conduct during the prosecution of the patent  
16           application giving rise to the '776 Patent by  
17           failing to disclose a prior art printed  
18           publication from which STEPHENS, or his  
19           authorized agent, copied the list of biocides set  
20           forth in the specification and claims of the  
21           patent application giving rise to the '776  
22           Patent;

23           d. STEPHENS failed to deny, either through counsel  
24           or through SPECTRUM INC or SPECTRUM LLC, Dr.  
25           GREENS' claims of patent invalidity resulting  
26           from the prior sales of Quick Fix to Dr. GREENS;

27           e. STEPHENS was aware of Dr. GREENS' sales of Agent  
28           X since 2004 and took no steps to assert any

1 belief of patent infringement at any time from  
2 when the '776 Patent issued in March of 2007 to  
3 July 22, 2009;

4 f. STEPHENS evaded personal service of the prior  
5 complaint during the First Lawsuit;

6 g. After authoring and/or authorizing the widespread  
7 circulation of the Legal Action Notification  
8 letters, STEPHENS executed the Nunc Pro Tunc  
9 Assignment, unsupported by any consideration, in  
10 an effort to shield himself from personal  
11 liability;

12 h. STEPHENS failed to ever provide any basis in fact  
13 as to why "Spectrum" believed that Agent X  
14 infringed the '776 Patent in 2009;

15 i. STEPHENS failure to ever provide any basis in  
16 fact as to why "Spectrum" believed that Agent X  
17 infringed the '776 Patent in 2010;

18 j. STEPHENS failure to ever provide any basis in  
19 fact before the original complaint in this action  
20 was filed in 2011 as to why "Spectrum" believed  
21 that Agent X infringed the '776 Patent;

22 k. STEPHENS failed to take any legal action as the  
23 patent owner of the '776 Patent against Dr.  
24 GREENS in 2009, notwithstanding the wide  
25 circulation of the Legal Action Notification  
26 letter that represented that ""Spectrum Labs" is  
27 in the process of taking against all synthetic  
28

1 urine manufactures who are potentially violating  
2 the '776 Patent";

3 1. STEPHENS knew that Dr. GREENS' invalidity  
4 argument would have been tested in the prior  
5 Complaint and therefore he declined to  
6 participate in the First Lawsuit in order to  
7 protect the '776 Patent and avoid personal  
8 liability that would ultimately arise from  
9 bringing a baseless compulsory counterclaim  
10 alleging infringement of the '776 Patent by Dr.  
11 Greens;

12 m. SPECTRUM INC, although served, failed to  
13 participate or otherwise file an answer to  
14 original complaint or otherwise participate in  
15 the First Lawsuit; and

16 n. only after the Nunc Pro Tunc Assignment was  
17 executed, after SPECTRUM INC was dissolved in  
18 2010 and after the original complaint in the  
19 First Lawsuit was dismissed did SPECTRUM LLC  
20 first assert a claim of infringement against Dr.  
21 GREENS.

22 115. Plaintiff is informed and believes, and on the basis of  
23 such information and belief alleges, Defendants' creation  
24 and widespread circulation of thousands of Legal Action  
25 Notification letters to the retail synthetic urine  
26 community constitutes Federal Unfair Competition under 15  
27 U.S.C. §1125(a), commonly known as §43(a) of the Lanham  
28 Act.

1 116. The Legal Action Notification Letters were created and  
2 circulated in bad faith and with the specific intent to  
3 chill competition and increase revenues for STEPHENS and  
4 his companies as more fully set forth herein.

5 117. At the time the Legal Action Notification letters were  
6 created and widely circulated, STEPHENS knew that the '776  
7 Patent was invalid because he intentionally failed to  
8 disclose prior art to the USPTO during prosecution of the  
9 application giving rise to the '776 Patent. Specifically,  
10 STEPHENS, or his authorized agent, intentionally copied the  
11 list of biocides set forth in the specification and claims  
12 of the patent application giving rise to the '776 Patent  
13 from a printed publication and intentionally failed to  
14 disclose the existence of this printed publication as prior  
15 art.

16 118. At the time the Legal Action Notification letters were  
17 created and widely circulated STEPHENS also knew that  
18 biocides had been used regularly in synthetic urine  
19 solutions to inhibit bacterial growth long before  
20 application giving rise to the '776 Patent was filed.

21 119. At the time the Legal Action Notification letters were  
22 widely circulated throughout the synthetic urine industry,  
23 STEPHENS knew that Agent X did not infringe any claim  
24 because:

- 25 a. STEPHENS had either conducted chemical testing  
26 that conclusively established no infringement  
27 took place or deliberately avoided such chemical  
28 testing to feign his belief of infringement that

1 was in truth unfounded in fact, both objectively  
2 and subjectively;

3 b. STEPHENS knew that he had sold Quick Fix to Dr.  
4 GREENS years before filing the patent application  
5 giving rise to the '776 Patent and also knew that  
6 these sales gave rise to an on sale bar that  
7 invalidated the '776 Patent;

8 c. STEPHENS knew that he had engaged in inequitable  
9 conduct during the prosecution of the patent  
10 application giving rise to the '776 Patent by  
11 failing to disclose a prior art printed  
12 publication from which STEPHENS, or his  
13 authorized agent, copied the list of biocides set  
14 forth in the specification and claims of the  
15 patent application giving rise to the '776  
16 Patent;

17 d. STEPHENS failed to deny, either through counsel  
18 or through SPECTRUM INC or SPECTRUM LLC, Dr.  
19 GREENS' claims of patent invalidity resulting  
20 from the prior sales of Quick Fix to Dr. GREENS;

21 e. STEPHENS was aware of Dr. GREENS' sales of Agent  
22 X since 2004 and took no steps to assert any  
23 belief of patent infringement at any time from  
24 when the '776 Patent issued in March of 2007 to  
25 July 22, 2009;

26 f. STEPHENS evaded personal service of the prior  
27 complaint during the First Lawsuit;

28

- 1 g. STEPHENS executed the Nunc Pro Tunc Assignment  
2 unsupported by any consideration in an effort to  
3 shield himself from personal liability;
- 4 h. STEPHENS failed to ever provide any basis in fact  
5 as to why "Spectrum" believed that Agent X  
6 infringed the '776 Patent in 2009;
- 7 i. STEPHENS failed to ever provide any basis in fact  
8 as to why "Spectrum" believed that Agent X  
9 infringed the '776 Patent in 2010;
- 10 j. STEPHENS failure to ever provide any basis in  
11 fact before the original complaint in this action  
12 was filed in 2011 as to why "Spectrum" believed  
13 that Agent X infringed the '776 Patent;
- 14 k. STEPHENS failed to take any legal action as the  
15 patent owner of the '776 Patent against Dr.  
16 GREENS in 2009, notwithstanding the wide  
17 circulation of the Legal Action Notification  
18 letter that represented that "Spectrum Labs" is  
19 in the process of taking against all synthetic  
20 urine manufactures who are potentially violating  
21 the '776 Patent;
- 22 l. STEPHENS knew that Dr. GREENS' invalidity  
23 argument would have been tested in the prior  
24 Complaint and therefore he declined to  
25 participate in the First Lawsuit in order to  
26 protect the '776 Patent and avoid personal  
27 liability that would ultimately arise from  
28 bringing a baseless compulsory counterclaim

1           alleging infringement of the '776 Patent by Dr.  
2           GREENS;

3           m. SPECTRUM INC, although served, failed to file an  
4           answer to the original complaint or otherwise  
5           participate in the First Lawsuit; and

6           n. Only after the Nunc Pro Tunc Assignment was  
7           executed, after SPECTRUM INC was dissolved in  
8           2010 and after the original complaint in the  
9           First Lawsuit was dismissed did Spectrum LLC  
10          first assert a claim of infringement against Dr.  
11          GREENS.

12 120.     The Legal Action Notification Letters were widely  
13          circulated to the retail synthetic urine industry in bad  
14          faith because Defendants, and STEPHENS specifically, knew  
15          during the time period that the Legal Action Notification  
16          letters were circulated:

- 17           a. that Dr. GREENS' synthetic urine does not  
18           infringe any claim of the '776 Patent;  
19           b. that the '776 Patent was invalid;  
20           c. that numerous synthetic urines were on the market  
21           by third parties prior to the issuance of the  
22           '776 Patent and that these synthetic urines did  
23           not infringe the '776 Patent;  
24           d. that multiple United States patents had been  
25           granted on synthetic urine solutions prior to the  
26           issuance of the '776 Patent;

- 1 e. that Defendants did not intend on taking legal  
2 action for patent infringement against Dr. GREENS  
3 or any other synthetic urine manufacturer;
- 4 f. that Defendants did not intend on taking legal  
5 action against any retail synthetic urine  
6 recipients of the Legal Action Notification  
7 letter;
- 8 g. that recipients of the Legal Notification letter  
9 whom purchased Agent X from Dr. GREENS would in  
10 fact not be liable for infringement of the '776  
11 Patent;
- 12 h. that recipients of the Legal Action Notification  
13 letter would likely be deceived into believing  
14 that Spectrum Labs was in the process of taking  
15 action against synthetic urine manufacturers for  
16 infringement of the '776 Patent;
- 17 i. that recipients of the Legal Action Notification  
18 letter would likely be deceived into believing  
19 that Dr. GREENS synthetic urine infringes the  
20 '776 Patent;
- 21 j. that recipients of the Legal Action Notification  
22 letter would likely be deceived into believing  
23 that the '776 Patent is valid and enforceable;  
24 and
- 25 k. that recipients of the Legal Action Notification  
26 letter would likely be deceived into believing  
27 that said recipients could only buy synthetic  
28 urine from "Spectrum Labs" to avoid legal action.



1 121. Plaintiff is informed and believes, and on the basis of  
2 such information and belief alleges, that Defendants knew,  
3 or should have known, that the '776 Patent is invalid and  
4 unenforceable and further knew, or should have known that  
5 no product of Dr. GREENS had infringed any claim of the  
6 '776 Patent, and as a result, the various actions set forth  
7 above were malicious, oppressive and despicable willful and  
8 without a reasonable basis, and therefore Plaintiff is  
9 entitled to an award of treble damages.

10  
11 **COUNT IV. UNFAIR COMPETITION UNDER CALIFORNIA BUSINESS &**  
12 **PROFESSIONS CODE SECTION 17200**

13 122. Plaintiff re-alleges and incorporates herein by  
14 reference, the same as if set forth verbatim, the  
15 allegations contained in paragraphs 1 through 121.

16 123. Defendants have mischaracterized Plaintiff's products as  
17 an infringement of the '776 Patent in both the Legal Action  
18 Notification letters as well as in repeated demands for the  
19 formula of Agent X under the falsely asserted claim that  
20 Agent X infringed the '776 Patent.

21 124. The Legal Action Notification Letter was created and  
22 circulated in bad faith and with the specific intent to  
23 chill competition and increase revenues for STEPHENS and  
24 his companies.

25 125. The creation and wide spread circulation of the Legal  
26 Action Notification letter is an unlawful business act or  
27 practice under California Business & Profession Code  
28 Section 17200 in that it violated Section 43(a) of the

1 Lanham Act and further constituted an act of interference  
2 with business relations and prospective economic advantage  
3 as set forth more fully below.

4 126. The creation and wide spread circulation of the Legal  
5 Action Notification letter is an unfair business practice  
6 under California Business & Professions Code Section 17200  
7 because it implies that Dr. GREENS synthetic urine product  
8 infringes the '776 Patent when in fact Defendants had no  
9 information to hold such a belief and knew the '776 Patent  
10 was invalid as a result of prior sales of Quick Fix to Dr.  
11 GREENS and the inequitable conduct of STEPHENS.

12 127. The creation and wide spread circulation of the Legal  
13 Action Notification letters is a fraudulent business  
14 practice under California Business & Professions Code  
15 Section 17200 in that thousands of recipients of the Legal  
16 Action Notification letter are likely to be deceived into  
17 believing (i) that "Spectrum Labs" was in the process of  
18 taking action against synthetic urine manufacturers for  
19 patent infringement, (ii) that Dr. GREENS synthetic urine  
20 infringes the '776 Patent, (iii) that the '776 Patent is  
21 valid and enforceable, and (iv) that said recipients could  
22 only buy synthetic urine from "Spectrum Labs" to avoid  
23 legal action.

24 128. The creation and wide spread circulation of the Legal  
25 Action Notification letters constitutes unfair, deceptive,  
26 untrue and misleading advertising.

27 129. Plaintiff is informed and believes, and on the basis of  
28 such information and belief alleges, that Defendants'

1 mischaracterization of Plaintiff's products has and will  
2 continue to lead to the loss of reputation and goodwill  
3 associated with Plaintiff's products.

4 130. Defendants' repeated demands for the formula of Agent X  
5 under the threat of patent infringement constituted unfair  
6 competition under California Business & Profession Code  
7 Section 17200 because Defendants had no good faith belief  
8 in the validity of the '776 Patent and because Defendants  
9 had no good faith belief that Agent X infringed any claim  
10 of the '776 Patent.

11 131. At the time The repeated allegations of infringement and  
12 demands for the formula of Agent X were made by Defendants,  
13 STEPHENS knew that Agent X did not infringe any claim  
14 because:

- 15 a. STEPHENS had either conducted chemical testing  
16 that conclusively established no infringement  
17 took place or deliberately avoided such chemical  
18 testing to feign his belief of infringement that  
19 was in truth unfounded in fact, both objectively  
20 and subjectively;
- 21 b. STEPHENS knew that he had sold Quick Fix to Dr.  
22 GREENS years before filing the patent application  
23 giving rise to the '776 Patent and also knew that  
24 these sales gave rise to an on sale bar that  
25 invalidated the '776 Patent;
- 26 c. STEPHENS knew that he had engaged in inequitable  
27 conduct during the prosecution of the patent  
28 application giving rise to the '776 Patent by

1 failing to disclose a prior art printed  
2 publication from which STEPHENS, or his  
3 authorized agent, copied the list of biocides set  
4 forth in the specification and claims of the  
5 patent application giving rise to the '776  
6 Patent;

7 d. STEPHENS failed to deny, either through counsel  
8 or through SPECTRUM INC or SPECTRUM LLC, Dr.  
9 GREENS' claims of patent invalidity resulting  
10 from the prior sales of Quick Fix to Dr. GREENS;

11 e. STEPHENS was aware of Dr. GREENS' sales of Agent  
12 X since 2004 and took no steps to assert any  
13 belief of patent infringement at any time from  
14 when the '776 Patent issued in March of 2007 to  
15 July 22, 2009;

16 f. STEPHENS evaded personal service of the prior  
17 complaint during the First Lawsuit;

18 g. STEPHENS executed the Nunc Pro Tunc Assignment  
19 unsupported by any consideration in an effort to  
20 shield himself from personal liability;

21 h. STEPHENS failed to ever provide any basis in fact  
22 as to why "Spectrum" believed that Agent X  
23 infringed the '776 Patent in 2009;

24 i. STEPHENS failure to ever provide any basis in  
25 fact as to why "Spectrum" believed that Agent X  
26 infringed the '776 Patent in 2010;

27 j. STEPHENS failure to ever provide any basis in  
28 fact before the original complaint in this action

1 was filed in 2011 as to why "Spectrum" believed  
2 that Agent X infringed the '776 Patent;

3 k. STEPHENS failed to take any legal action as the  
4 patent owner of the '776 Patent against Dr.  
5 GREENS in 2009, notwithstanding the wide  
6 circulation of the Legal Action Notification  
7 letter that represented that "Spectrum Labs" is  
8 in the process of taking against all synthetic  
9 urine manufactures who are potentially violating  
10 the '776 Patent;

11 l. STEPHENS knew that Dr. GREENS' invalidity  
12 argument would have been tested in the prior  
13 Complaint and therefore he declined to  
14 participate in the First Lawsuit in order to  
15 protect the '776 Patent and avoid personal  
16 liability that would ultimately arise from  
17 bringing a baseless compulsory counterclaim  
18 alleging infringement of the '776 Patent by Dr.  
19 Greens;

20 m. SPECTRUM INC, although served, failed to  
21 participate or otherwise file an answer to  
22 original complaint or otherwise participate in  
23 the First Lawsuit; and

24 n. only after the Nunc Pro Tunc Assignment was  
25 executed, after SPECTRUM INC was dissolved in  
26 2010 and after the original complaint in the  
27 First Lawsuit was dismissed did SPECTRUM LLC  
28

1 first assert a claim of infringement against Dr.  
2 GREENS.

3 132. As a result of the of the acts of unfair competition as  
4 set forth above, Plaintiff is entitled to restitution and  
5 an injunction prohibiting further circulation of the Legal  
6 Action Notification letter and requiring a formal  
7 retraction to be circulated to all persons that received a  
8 Legal Action Notification letter.

9  
10 **COUNT V. INTERFERENCE WITH BUSINESS RELATIONS**

11 133. Plaintiff re-alleges and incorporates herein by  
12 reference, the same as if set forth verbatim, the  
13 allegations contained in paragraphs 1 through 132.

14 134. Plaintiff is informed and believes, and on the basis of  
15 such information and belief alleges, that Defendants have  
16 mischaracterized Plaintiff's products as an infringement of  
17 the '776 Patent through widespread circulation of the Legal  
18 Action Notification letters to thousands of recipients in  
19 the retail synthetic urine sales industry.

20 135. Plaintiff is informed and believes, and on the basis of  
21 such information and belief alleges, that some number of  
22 Plaintiff's current and prospective customers were among  
23 those to whom Defendants mischaracterized Plaintiff's  
24 products and services. The Legal Action Notification Letter  
25 was created and circulated in bad faith and with the  
26 specific intent to chill competition and increase revenues  
27 for STEPHENS and his companies.

1 136. Plaintiff is informed and believes, and on the basis of  
2 such information and belief alleges, that Defendants were  
3 aware the mischaracterizations of Plaintiff's products and  
4 services were reaching current and prospective customers of  
5 Plaintiff.

6 137. Plaintiff is informed and believes, and on the basis of  
7 such information and belief alleges, Defendants' creation  
8 and transmission of the Legal Action Notification letter  
9 was for the purpose of damaging Plaintiff's business by  
10 discouraging Plaintiff's customers from doing business with  
11 Plaintiff under the false fear of patent infringement  
12 litigation by Defendants.

13 138. Plaintiff is informed and believes, and on the basis of  
14 such information and belief alleges, that Defendants  
15 intended the mischaracterizations of Plaintiff's products  
16 to discourage current customers from using Plaintiff's  
17 products.

18 139. Plaintiff is informed and believes, and on the basis of  
19 such information and belief alleges, that some of  
20 Plaintiff's current customers were discouraged from using  
21 Plaintiff's products by Defendants' mischaracterization of  
22 Plaintiff's products and services.

23 140. Plaintiff is informed and believes, and on the basis of  
24 such information and belief alleges, that  
25 mischaracterizations by Defendants of Plaintiff's products  
26 by the defendants were the cause of some number of lost  
27 sales by Plaintiff.  
28

1 141. Plaintiff is informed and believes, and on the basis of  
2 such information and belief alleges, that Defendants knew,  
3 or should have known, that the '776 Patent is invalid and  
4 unenforceable and further knew, or should have known that  
5 no product of Dr. GREENS had infringed any claim of the  
6 '776 Patent, and as a result, such actions were fraudulent,  
7 malicious, oppressive and despicable willful and without a  
8 reasonable basis, and therefore Plaintiff is entitled to an  
9 award of Punitive Damages.

10  
11 **COUNT VI. INTERFERENCE WITH PROSPECTIVE ECONOMIC ADVANTAGE**

12 142. Plaintiff re-alleges and incorporates herein by  
13 reference, the same as if set forth verbatim, the  
14 allegations contained in paragraphs 1 through 141.

15 143. Plaintiff is informed and believes, and on the basis of  
16 such information and belief alleges, that Defendants have  
17 mischaracterized Plaintiff's products as an infringement of  
18 the '776 Patent by widespread circulation of the Legal  
19 Action Notification letter to Dr. GREENS' current, former  
20 and prospective customers. The Legal Action Notification  
21 Letter was created and circulated in bad faith and with the  
22 specific intent to chill competition and increase revenues  
23 for STEPHENS and his companies.

24 144. Plaintiff is informed and believes, and on the basis of  
25 such information and belief alleges, that some number of  
26 Plaintiff's current and potential future customers were  
27 among those to whom Defendants mischaracterized Plaintiff's  
28 products.



1 145. Plaintiff is informed and believes, and on the basis of  
2 such information and belief alleges, that Defendants were  
3 aware the mischaracterizations of Plaintiff's products were  
4 reaching current and potential future customers of  
5 Plaintiff.

6 146. Plaintiff is informed and believes, and on the basis of  
7 such information and belief alleges, that Defendants  
8 intended the mischaracterizations of Plaintiff's products  
9 to discourage Plaintiff's current and potential future  
10 customers from using Plaintiff's products.

11 147. Plaintiff is informed and believes, and on the basis of  
12 such information and belief alleges, that some of  
13 Plaintiff's potential future customers were discouraged  
14 from using Plaintiff's products by Defendants'  
15 mischaracterization of Plaintiff's products.

16 148. Plaintiff is informed and believes, and on the basis of  
17 such information and belief alleges, that  
18 mischaracterizations by Defendants of Plaintiff's products  
19 by the Defendants were the cause of some number of lost  
20 sales by Plaintiff.

21 149. Plaintiff is informed and believes, and on the basis of  
22 such information and belief alleges, that Defendants knew,  
23 or should have known, that the '776 Patent is invalid and  
24 unenforceable and further knew, or should have known that  
25 no product of Dr. GREENS had infringed any claim of the  
26 '776 Patent, and as a result, such actions were fraudulent,  
27 malicious, oppressive and despicable willful and without a  
28

1 reasonable basis, and therefore Plaintiff is entitled to an  
2 award of Punitive Damages.

3  
4 **WHEREFORE, plaintiff prays for relief as follows:**

5 a. The Court declare that United States Patent  
6 number 7,192,776, and each claim thereof, is invalid;

7 b. The Court declare that United States Patent  
8 number 7,192,776, and each claim thereof, is not infringed  
9 by Plaintiff;

10 c. The Court declare that United States Patent  
11 number 7,192,776 is unenforceable;

12 d. A permanent injunction issue against Defendants'  
13 further assertion of allegations of patent infringement  
14 against Plaintiff;

15 e. A permanent injunction prohibiting further  
16 circulation of the Legal Action Notification letter and  
17 requiring a formal retraction to be circulated to all  
18 persons that received a Legal Action Notification letter;

19 f. Plaintiff be awarded damages in an amount to be  
20 determined by the Court;

21 g. Plaintiff be awarded its attorneys' fees.

22 h. Plaintiff be awarded its costs of suit herein;

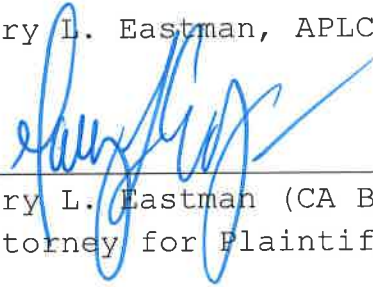
23 i. That a determination be made that Defendants have  
24 acted intentionally, knowingly, and willfully to mislead  
25 the public and customers of Plaintiff, entitling Plaintiff  
26 to an award of punitive damages to discourage future like  
27 conduct;

1 j. That a determination be made that this is an  
2 exceptional case and that Plaintiff be awarded its  
3 reasonable attorneys' fees, costs and treble damages; and

4 k. Plaintiff be awarded such other and further  
5 relief as the Court deems just and proper.  
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8 Dated: April 19, 2012

Gary L. Eastman, APLC

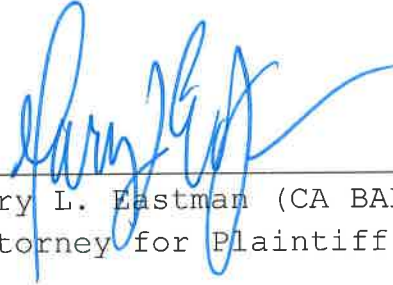


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11 Gary L. Eastman (CA BAR# 182518)  
12 Attorney for Plaintiff Dr. Greens, Inc.  
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JURY TRIAL DEMANDED

Plaintiff hereby requests trial by jury on Counts II through VI of this first amended complaint.

Dated: April 19, 2012



\_\_\_\_\_  
Gary L. Eastman (CA BAR# 182518)  
Attorney for Plaintiff Dr. Greens, Inc.

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EXHIBIT "A"

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US007192776B2

(12) **United States Patent**  
**Stephens**

(10) **Patent No.:** US 7,192,776 B2  
(45) **Date of Patent:** Mar. 20, 2007

(54) **SYNTHETIC URINE AND METHOD OF MANUFACTURING SAME**

(76) **Inventor:** James Matthew Stephens, 550 Wards Corner Rd., Unit 102, Cincinnati, OH (US) 45140

(\* ) **Notice:** Subject to any disclaimer, the term of this patent is extended or adjusted under 35 U.S.C. 154(b) by 0 days.

(21) **Appl. No.:** 10/766,165

(22) **Filed:** Jan. 28, 2004

(65) **Prior Publication Data**  
US 2005/0164395 A1 Jul. 28, 2005

(51) **Int. Cl.**  
*G01N 31/00* (2006.01)

(52) **U.S. Cl.** ..... 436/8; 436/18; 436/98; 252/408.1; 424/545

(58) **Field of Classification Search** ..... 436/8, 436/18, 98, 19; 252/408.1; 424/545  
See application file for complete search history.

(56) **References Cited**  
U.S. PATENT DOCUMENTS  
3,880,646 A \* 4/1975 Mc Connell et al. .... 504/113  
4,146,644 A 3/1979 Griffith et al.  
4,714,564 A \* 12/1987 Lynch et al. .... 510/402

4,825,851 A \* 5/1989 Cocks et al. .... 601/4  
4,989,607 A \* 2/1991 Keusch et al. .... 600/391  
5,036,013 A 7/1991 Wood et al.  
5,105,007 A \* 4/1992 Adamczyk et al. .... 562/450  
5,176,668 A \* 1/1993 Bernardin ..... 604/368  
5,328,954 A 7/1994 Sarangapani  
5,489,281 A 2/1996 Watanabe et al.  
5,651,778 A \* 7/1997 Melius et al. .... 604/385.19  
5,993,840 A \* 11/1999 Fawkes et al. .... 424/404  
6,306,422 B1 10/2001 Batich et al.  
6,716,632 B1 \* 4/2004 Dom ..... 436/18  
2002/0106807 A1 8/2002 Novinski et al.  
2004/0077106 A1 \* 4/2004 Haddad ..... 436/536

\* cited by examiner

*Primary Examiner*—Maureen M. Wallenhorst  
(74) *Attorney, Agent, or Firm*—McDonald Hopkins LLC

(57) **ABSTRACT**

A synthetic urine solution and method of its manufacture are disclosed. The solution includes water having a pH between 3 and 10. The solution further includes creatinine and means for removing bacteria from the solution so as to control or eliminate sepsis of the urine solution, preferably through the use of biocide. The solution exhibits a specific gravity of from 1.005 g/cm<sup>3</sup> to 1.025 g/cm<sup>3</sup>. Additional compounds may also be included to further enhance the aesthetics or apparent authenticity of the synthetic urine produced according to this invention.

**13 Claims, No Drawings**

US 7,192,776 B2

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## SYNTHETIC URINE AND METHOD OF MANUFACTURING SAME

### BACKGROUND OF THE INVENTION

This invention relates to a composition and method of manufacturing synthetic urine.

The kidneys remove unwanted substances circulating in the blood by way of producing urine, which is excreted from the body. Consequently, diverse waste substances and other substances unwanted by the body find their way into urine for subsequent removal from the body. Urinalysis is the testing of the composition and amounts of waste substances in urine, and provides a tremendously powerful diagnostic tool for the medical profession. In particular, many of these substances are indicative of certain medical conditions or other substances which have been metabolized by a person's kidneys.

Using current urinalysis techniques, unwanted substances in a urine sample can mask existing medical conditions, while still some others can masquerade as non-existent medical conditions. In each instance, these unwanted substances undermine the usefulness of urinalysis as a medical diagnostic tool. Some of the unwanted substances that find their way into a urine sample are drugs (both legal and illegal) and metabolites thereof, along with other chemical residues or contaminants that may be present or otherwise contacted during the handling procedures. These substances can disturb the sensitive tests, making the actual state of the body difficult or impossible to determine.

For example, insulin levels, para-aminohippuric acid, phenol sulfonphthalein, phosphate, arylsulfatase-A, lysosome, urine amylase, total urine estrogens, specific estrogens, progestins, aldosterone, catecholamines, 5-hydroxyindoleacetic acid, cortisol, homovanillic acid, human chorionic gonadotrophin, creatine, urea, uric acid, bilirubin, hemoglobin, hydroxyproline, melanin, porphorins, total protein, acid mucopolysaccharide, copper, glucose oxidase and urine ketone can all influence the results of most standard urinalysis testing methods in unintended or unpredictable ways.

Essentially, these testing methods include a variety of immunoassays or assays by other techniques, such as isolation followed by gas or liquid chromatography followed by mass spectrometry. These tests make urinalysis a powerful diagnostic tool for identifying a whole range of conditions. For example, substance abuse and other indicia of disease or bodily state can easily be detected by urinalysis. However, in order to accurately establish standards of comparison for such tests, reliable urine samples are needed which are entirely free from any of the aforementioned substances. Thus, the development of a suitable, synthetic urine substitute would improve testing methods by providing researchers, potential urine donors and testing technicians with an accurate baseline reading for "clean" urine samples to compare against other suspect samples.

To illustrate, a method for detecting this compound is described in U.S. Pat. No. 5,036,013, issued to El Sohly et al., where various deuterated cannabinoids are synthesized to help determine the quantitative amount of tetrahydrocannabinol in a urine sample. One method in particular involves spiking a clean urine sample with known amount of deuterated tetrahydrocannabinol and analyzing the resultant sample with gas chromatography/mass spectrometry in order to establish set standards of comparison. However, a failure to possess a truly clean sample could substantially influence and negatively affect the results of these methods.

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Another example of the problems created by interfering chemicals in urine is exemplified by the case of ibuprophan. Ibuprophan is a prostaglandin synthetase inhibitor that may be taken in large doses to relieve pain and inflammation characteristic of arthritis. When a patient taking these massive doses is subjected to urinalysis, it may mask other drugs being taken by the donor, or may even be mistaken for tetrahydrocannabinol (a metabolite which many testing technicians classify as being indicative of marijuana use).

Any misidentification of controlled substance use/abuse, personal information (pregnancy, use of cigarettes, etc.) or any of the numerous medical conditions that can be determined using urinalysis can have devastating personal consequences for the urine donor. Thus, some companies sell inexpensive home testing kits in order to provide some level of reassurance to potential urine donors whether they may have such a misidentification. However, given the potential liability for a misidentified or positive test, many lay persons feel intimidated by testing procedures, and these persons would welcome the ability to utilize a known sample, free from unwanted or unknown substances, for the sake of comparison.

In response to the need for a reliable source of relatively inexpensive, "clean" urine samples which are free from any unwanted or unknown substances, numerous attempts to formulate synthetic urine have been made. For example, U.S. Pat. No. 6,306,422 to Batich et al. (table 3, col. 16, line 50 et seq.), U.S. Pat. No. 5,328,954 to Sarangapani (table 1, col. 9, line 29 et seq.), U.S. Pat. No. 5,489,281 to Watanabe et al. (col. 12, example 6) and U.S. Pat. No. 4,146,644 to Griffith et al. (table 1, col. 10). However, none of these references appears to address a simple composition which can be manufactured in an inexpensive manner.

Additionally, all of these references require the use of creatinine or other compounds which can be consumed by bacteria present in the sample. Accordingly, all of these samples will undergo sepsis unless they are immediately used, thereby making these compounds as unattractive candidates for mass production and/or consumer sales.

### SUMMARY OF THE INVENTION

It is an object of this invention to provide a reliable source of synthetic urine, along with a method for its manufacture, which is free from any and all unwanted or unknown substances.

It is a further object of this invention to provide a synthetic urine, along with a method for its manufacture, which is capable of retaining its viability and utility for extended periods of time.

Still further uses for such a synthetic urine can and will be devised by a prospective user based upon her or her own personal disposition, interests and privacy concerns.

Accordingly, a composition of synthetic urine is claimed. This composition includes water, having a pH between 3 and 10 with creatinine and biocide dissolved therein. The composition further includes any compound which dissolves and dissociates in a water solution in a manner which insures that the specific gravity of the resulting solution mixture is between 1.005 g/cm<sup>3</sup> and 1.025 g/cm<sup>3</sup>. Urea can be added as another possible element of the invention, and those skilled in the art will readily identify appropriate specific types of biocide oxidizers, organics or in situ agents, along with a host of carbonates, halide salts, hydroxide salts and other chemicals which could serve as ideal ionic compounds within the meaning of the invention.

US 7,192,776 B2

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A method for manufacturing synthetic urine is also disclosed. The method involves providing water, dissolving creatinine and biocide in the water, adjusting the resulting solution's specific gravity to be between 1.005 and 1.025 and, if necessary, the pH level of the solution. In another aspect, the method contemplates providing water with a pH

5 between 3 and 10, mixing creatinine and at least one dissociating ionic compound to adjust the specific gravity of the resulting solution to be between 1.005 g/cm<sup>3</sup> and 1.025 g/cm<sup>3</sup> and removing bacteria from the solution so as to avoid sepsis of the creatinine. In each of these embodiments the same types of biocides and ionic compounds can be used as were identified in the composition embodiment above.

#### DETAILED DESCRIPTION OF THE PREFERRED EMBODIMENTS

While human urine may at varying times reflect a wide range of chemical compounds, almost all current urinalysis rely upon observation of three basic traits: pH level, specific gravity and the presence of creatinine. Consequently, it was discovered that an effective, yet cost efficient, synthetic urine solution having a final specific gravity between 1.005 g/cm<sup>3</sup> and 1.025 g/cm<sup>3</sup> needed only to contain three basic components: water with a pH between 3 and 10; creatinine; and some means for controlling or eliminating the unwanted sepsis of the creatinine. With respect to this final element, this bacteria control/elimination is most readily accomplished through the use of a biocide.

Examining each of these three traits separately, the need for a water-based solution should be apparent. However, it is significant to note that human urine displays a wide range in terms of pH variation—anywhere from 3 to 10. This variation can be attributed to any number of factors regarding regional water quality, metabolic idiosyncrasies displayed by each individual and the like. Thus, the water supplied for the composition and method may need to have its pH adjusted accordingly. Significantly, while use of distilled, deionized water will produce the most reliable synthetic urine solutions in terms of elimination of unwanted substances, the invention may be practiced with equal efficacy using distilled water, deionized water or even regular tap water (drawn from any fresh water source having an appropriately low specific gravity—discussed below). Unless specifically noted to the contrary, use of the term “water” throughout this specification and appended claims is intended to embrace the broadest array of appropriate water sources available.

The final synthetic urine solution must also have a specific gravity between 1.005 g/cm<sup>3</sup> and 1.025 g/cm<sup>3</sup>. Insofar as specific gravity is a measure of relative ionic content of a solution, it should be apparent to those familiar with body chemistry or kidney functioning that certain ions and compounds will be commonly found in human urine, especially those commonly encountered in food and water sources (for example, sodium, potassium, chloride, etc.). In contrast, other elements will be inherently unwise choices at anything beyond a trace level (for example Lanthanoid and Actinoid series ions). The precise amount of the particular compound or compounds selected to adjust the specific gravity will depend directly on the concentration of compound (if in solution), the molecular weight of its constituents, water temperature, relative volume of water solvent being used and other similar factors. With respect to the water used to manufacture the synthetic urine of the present invention, it is anticipated that significant increases will need to be made to the specific gravity, as distilled, deionized water has a

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specific gravity of 1.000 g/cm<sup>3</sup> and tap water, while likely to vary by region, has a specific gravity around 1.003 g/cm<sup>3</sup>.

In terms of the best compounds to utilize in adjusting the specific gravity, the single most important trait is that the compound must dissociate when dissolved in water. Additionally, it is preferred to find an inexpensive, widely available compound so as to minimize production costs. To that end, it is believed that carbonate salts, halide salts, hydroxide salts and certain bromides will have particular applicability. By way of illustration rather than limitation, these salts might include sodium bicarbonate, sodium, potassium, magnesium or calcium chlorides; sodium, potassium, or calcium hydroxides; and other similarly inexpensive and widely available salts.

Creatinine is a protein created in connection with muscular activity. As such, medical science recognizes creatinine as an important constituent in the human bloodstream and, to the extent that the kidneys cleanse and purify the bloodstream, in the waste stream expelled from the kidneys in the form of urine. Significantly, because creatinine is a protein, it is the subject of sepsis and decomposition. Thus, creatinine serves as an excellent indicator in urinalysis because it is indicative of human origin and, by virtue of its septic disposition, creatinine also provides a natural measure to determine whether or not a sample was, in fact, recently produced.

In order to insure stable creatinine levels in synthetic urine, it is therefore essential to remove or control the presence of sepsis-causing bacteria. However, whatever method of control is applied must also not interfere with the processes underpinning most urinalysis techniques. Thus, the use of an appropriate biocide is absolutely critical to the proper practice of the present invention. To the extent that human urine is sterile when excreted (under normal body conditions), the use of biocide represents a distinct departure from previous approaches to the manufacture of synthetic urine which relied solely on mimicking the compounds in actual urine without any regard for the long term shelf life of the synthetic solution. Moreover, it further demonstrates the need to select a biocide which is biologically active, yet does not interfere overtly with the chemistry of the synthetic urine solution itself (either through its chemical signature or by virtue of an abnormally large amount being detectable in the solution).

Biocide can be generically defined as substances used to control or eliminate microbial populations in a sample. Three general classes have been identified as having particular applicability when used in connection with the present invention: oxidizing biocides, organic biocides and a somewhat more generalized category referred to as in situ agents. Each will be discussed briefly below, although it should be understood that biocides are a term of art, known to those familiar with water chemistry processes.

Oxidizing biocides are generally self explanatory. This class includes any biologically effective agent which relies upon an oxidation process, including but not limited to various peroxides, hypochlorites, bromides and super oxides. Organic biocides encompass an expansive list of proteins and cyclical compounds known to those skilled in the art. In situ agents can be chemical compounds or actual physical processes designed to kill bacteria in a manner which is either self-generating or effective enough to prevent future degradation of the urine. Generic examples of such in situ agents include ozone, chlorine dioxide (or other dioxides), and ultraviolet radiation or irradiation processes followed by hermetic sealing of the sample.



US 7,192,776 B2

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Specific examples of various biocides contemplated above include: BHAP (such as 2-Bromo-4-hydroxyacetophenone, an organo-bromine group); Bronopol (such as 2-Bromo-2-nitropropane-1,3 diol, an organo-bromine group); Carbamates (such as a mix of sodium dimethylthiocarbamate (DIBAM) and disodium ethylene dithiocarbamate (NIBAM), or single product, such as potassium n-hydroxymethyl-n-methylthiocarbamate, an organo-sulfur group); Chlorothioether (such as 2,2 Dihydroxy-5,5-dichlorodiphenyl monosulfide, a chlorinated phenolic thioether); DBNPA (such as 2-2-Dibromo-3-nitropropionamide, an organo-bromine group); DTEA, DTEA II (such as 2-(Decylthio)ethanamine, an alkylthioamine group); Guanides (including Guanidine and Biguanides) (such as dodecylguanidine hydrochloride and acetate, also polyhexamethylene biguanide hydrochloride, and tetradecylguanidine, all aliphatic guanadines); Glutaraldehyde (such as Pentane-1,5-dial., an aldehyde group); Isothiazolines (such as Alkyl isothiazolin-3-ones, an organo-sulfur group); MBT (such as Methylene bis(thiocyanate), an organo-sulfur group); Polyquat (such as broad-spectrum, cationic polymers of low molecular weight); Quats (AD-BACs) (such as Alkyldimethylbenzylammonium chloride (also known as alkylbenzyltrimethyl ammonium chloride or benzalkonium chloride), a quaternary ammonium compound group); Sulfone (such as Bis(trichloromethyl)sulfone, an organo-sulfur group); TBTO (such as Bis(tributyltin) oxide, an organo-tin group); TBZ (Tertbutylazine) (such as 2-(tert-butylamino)-4-chloro-6-(ethylamino)-s-triazine, a Triazine group); TCCBN (such as Tetrachloro-2,4,6-cyano-3-benzonitrile, TCCBN functions similarly to the chlorophenols); TCMTB (such as 2(thiocyanomethylthio)benzothiazole); Thione (such as Tetrahydro-3,5-dimethyl-2H-1,3,5-thiadiazine-2-thione, an organo-sulfur group); THPS (TKHPS) (such as Tetrakis(hydroxymethyl)phosphonium sulfate, an alkyl phosphonium group); and TTPC (such as Tributyltetradecylphosphonium chloride, an alkylphosphonium group). Additionally, with respect to more commonly understood items, such as peroxides, hypochlorites and the like, it should be understood that this specification encompasses all forms of such compounds (for example, hydrogen peroxide, sodium peroxide, sodium hypochlorite, potassium hypochlorite, etc.). Other examples of biocides may exist and are expressly encompassed within the purvey of this specification.

Notably, as embraced by this specification, oxidizing biocides—and hypochlorite in particular—should not be confused with the agents that are employed to oxidize metabolites in urine samples. Such metabolite oxidizers are often referred to as “adulterants” within the urinalysis industry. Adulterants are substances deliberately added to actual urine samples to chemically alter the metabolites indicative of certain conditions so as to render these metabolites undetectable by standard urinalysis techniques.

Even though some substances like hypochlorite may possess utility as both a biocide and as an adulterant, the intended use of that substance (as either a biocide or an metabolite oxidizer) will substantially influence the conditions, concentration and manner in which the substance is provided. In particular, use as a biocide requires smaller concentrations and little to no regard for when the biocide is added during the manufacturing process. To illustrate, an oxidizing biocide such as sodium hypochlorite can be added in amounts as small as 1 mL per 3.8 L of water. Similar concentrations of other oxidizing biocides will have equal efficacy, as recognized by those skilled in the art.

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In contrast, use of hypochlorite as an adulterant as taught, inter alia, in U.S. patent application Ser. No. 2002/0106807 must occur at higher concentrations and in a specific manner so as to oxidize certain metabolites or compounds. Thus, hypochlorite (and other oxidizing biocides) found in the present solution prevents the unwanted growth of bacteria. Moreover, to the extent that adulterants are often added to actual urine samples, the composition of the resulting mixture is substantially more complex, in terms of the variety of chemical species present, than the simplified composition of the present invention.

Another aspect of the present urine solution relates to the addition of urea in some form to the synthetic urine sample. While urea is not presently accounted for in most urinalysis techniques, its presence within a synthetic urine could add an additional level of realism for some applications. Notably, to the extent that urea is provided, it will need to be considered in the calculations of the amount of ionic dissociating compounds required to adjust the specific gravity and/or pH to the desired levels.

Other functionally inconsequential additives or steps may also be included without departing from the principles of this invention. While these additives and steps expressly cover all foreseeable equivalents of the elements recited above, additional variations are possible. For example, it is possible to include a coloring agent and or olfactory substances to enhance the aesthetics or apparent authenticity of the synthetic urine produced according to this invention.

The foregoing detailed description has been given for clearness of understanding only and no unnecessary limitations should be understood therefrom as some modifications will be obvious to those skilled in the art without departing from the scope and spirit of the appended claims.

I claim:

1. A synthetic urine solution comprising:

water having a pH between 3 and 10;  
creatinine and a biocide, said creatinine and biocide dissolved within said water to form a solution exhibiting a specific gravity and said creatinine and biocide selected in relative concentrations to minimize sepsis; at least one dissociated ionic compound also dissolved within said solution to adjust the specific gravity of the solution to between 1.005 g/cm<sup>3</sup> and 1.025 g/cm<sup>3</sup>; and wherein said biocide is selected from the group consisting of 2-bromo-4-hydroxyacetophenone, bronopols, carbamates, chlorothioethers, 2-2-Dibromo-3-nitropropionamide, 2-(Decylthio)ethanamine, glutaraldehydes, isothiazolines, Methylene bis(thiocyanate), polyquat, Alkyldimethylbenzylammonium chloride, sulfones, Bis(tributyltin) oxide, tertbutylazines, Tetrachloro-2, 4,6-cyano-3-benzonitrile, 2(thiocyanomethylthio)benzothiazole, thiones, Tetrakis(hydroxymethyl)phosphonium sulfate, Tributyltetradecylphosphonium chloride, peroxides, hypochlorites, and super oxides.

2. The synthetic urine solution of claim 1, further including urea dissolved within said solution.

3. The synthetic urine solution of claim 1, wherein said at least one ionic compound is selected from the group consisting of carbonate salts, halide salts, hydroxide salts and bromides.

4. The synthetic urine solution of claim 3, further including urea dissolved within said solution.

5. A method of manufacturing a synthetic urine solution comprising:

providing water;  
dissolving creatinine and biocide into said water to form a solution exhibiting a specific gravity level, said

US 7,192,776 B2

7

creatinine and biocide being selected in relative concentrations to minimize sepsis, wherein said biocide is selected from the group consisting of 2-bromo-4-hydroxyacetophenone, bronopols, carbamates, chlorothioethers, 2-2-Dibromo-3-nitrilopropionamide, 2-(Decylthio)ethanamine, glutaraldehydes, isothiazolines, Methylene bis(thiocyanate), polyquat, Alkyldimethylbenzylammonium chloride, sulfones, Bis(tributyltin) oxide, tertbutylazines, Tetrachloro-2, 4,6-cyano-3-benzonitrile, 2(thiocyanomethylthio)benzothiazole, thiones, Tetrakis(hydroxymethyl)phosphonium sulfate, Tributyltetradecylphosphonium chloride, peroxides, hypochlorites, and super oxides; and

adjusting said specific gravity level of said solution to between 1.005 g/cm<sup>3</sup> and 1.025 g/cm<sup>3</sup>.

6. The method of claim 5 further comprising sealing said synthetic urine solution within a container so as to further minimize sepsis of said synthetic urine solution.

7. The method of claim 6 further comprising adding urea to said synthetic urine solution.

8. The method of claim 5 further comprising adding urea to said synthetic urine solution.

9. The method of claim 5, further comprising the step of adjusting the pH level of the solution between 3 and 10.

10. A method of manufacturing a synthetic urine solution comprising:

providing water having a pH between 3 and 10;  
dissolving creatinine and at least one dissociating ionic compound in the water to form a solution exhibiting a

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specific gravity, said creatinine and at least one dissociating ionic compound selected in relative concentrations to adjust said specific gravity to between 1.005 g/cm<sup>3</sup> and 1.025 g/cm<sup>3</sup>; adding a biocide into said solution, said biocide is selected from the group consisting of 2-bromo-4-hydroxyacetophenone, bronopols, carbamates, chlorothioethers, 2-2-Dibromo-3-nitrilopropionamide, 2-(Decylthio)ethanamine, glutaraldehydes, isothiazolines, Methylene bis(thiocyanate), polyquat, Alkyldimethylbenzylammonium chloride, sulfones, Bis(tributyltin) oxide, tertbutylazines, Tetrachloro-2, 4,6-cyano-3-benzonitrile, 2(thiocyanomethylthio)benzothiazole, thiones, Tetrakis(hydroxymethyl)phosphonium sulfate, Tributyltetradecylphosphonium chloride, peroxides, hypochlorites, and super oxides; and removing bacteria from said solution.

11. The method of claim 10 wherein the step of dissolving creatinine and at least one dissociating ionic compound also includes dissolving urea in the water, said urea selected in a concentration relative to that of said creatinine and at least one dissociating ionic compound so as to maintain the specific gravity of the solution between 1.005 g/cm<sup>3</sup> and 1.025 g/cm<sup>3</sup>.

12. The method of claim 11, further comprising the step of sealing said synthetic urine solution within a container.

13. The method of claim 10, further comprising the step of sealing said synthetic urine solution within a container.

\* \* \* \* \*

EXHIBIT "B"

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**McDonald** Hopkins LLC  
Attorneys at Law

600 Superior Avenue, East  
Suite 2100  
Cleveland, Ohio 44114

P 216.348.5400  
F 216.348.5474

July 22, 2009

**VIA EXPRESS MAIL**

Dr. Green's  
Matt Green  
4901 Morena Blvd., Suite 1106  
San Diego, CA 92117

**Re: Spectrum Laboratories' U.S. Patent No. 7,192,776**

Dear Mr. Green:

For nearly two decades Spectrum Laboratories has prided itself on creating and having innovative and original products were an original idea to the market. Spectrum has spent significant resources on the research and development of such products.

Consistent with this, Spectrum owns U.S. Patent No. 7,192,776, a copy of which is enclosed. Spectrum believes that your Agent X product likely infringes the '776 patent. Please review the '776 patent and let us know by *Monday, August 3, 2009* any basis for which you do not believe that you infringe.

Sincerely,



David B. Cupar

{1783186:}

Chicago | Cleveland | Columbus | Detroit | West Palm Beach

[www.mcdonaldhopkins.com](http://www.mcdonaldhopkins.com)

EXHIBIT "C"

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## GARY L. EASTMAN, APLC

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Focusing on Start-Up and  
Emerging Company Counseling  
Patent, Trademark, Copyright  
and Related Litigation

401 West "A" Street, Suite 1785  
San Diego, California 92101  
Telephone (619) 230-1144  
Facsimile (619) 230-1194

GARY L. EASTMAN, Esq.  
Registered Patent Attorney  
garyeastman@sbcglobal.net

August 3, 2009

David B. Cupar, Esq.  
McDonald Hopkins, LLC  
600 Superior Avenue, East, Suite 2100  
Cleveland, Ohio 44114

RE: Spectrum Laboratories adv. Dr. Greens, Inc.  
United States Patent No. 7,192,776

Dear Mr. Cupar:

I represent Mr. Matt Green and Dr. Greens, Inc., in their intellectual property matters. I have been forwarded your letter dated July 22, 2009. Please direct all future communications regarding this matter to me at the address and telephone indicated above.

I have reviewed the allegations of patent infringement made in your July 22, 2009, letter, and have reviewed both United States Patent No. 7,192,776, and its rather substantial file history. While I have not yet finished my analysis of the claims for the '776 patent, it is my preliminary assessment that each of the independent claims includes an element or process step which is not included in any product of Dr. Greens, Inc., and particularly not in the AGENT X product. Thus, on first impression, it is my belief that Dr. Greens in no way infringes any claims of the '776 patent.

In addition to the technical aspects of an infringement analysis of the claims which lead me to an impression of non-infringement, my investigation has also revealed that the alleged inventor Mr. Stephens and Spectrum Laboratories had sold the solution specified in the '776 patent long before the January 24, 2004 filing date. As you may know, under 35 U.S.C. §102, any offer for sale or public disclosure more than one year before the earliest filing date renders any invention unpatentable. It is our strong belief that for this, and other, reasons the '776 patent is invalid.

Mr. Cupar  
August 3, 2009  
Page -2-

It has also been brought to my attention that your clients have been publicizing their bold claim that Agent X infringes the '776 patent. Specifically, many of Dr. Greens' existing clients have notified Dr. Greens that they had been warned of the "infringement" by Spectrum Laboratories, and instructed not to purchase any AGENT X product from Dr. Greens. As you know, your clients' mischaracterization of Dr. Greens' AGENT X product constitutes Federal Unfair Competition under 15 U.S.C. §1125(a), commonly known as §42(a) of the *Lanham Act*, as well as many other related causes of action for misuse of patents, common law unfair competition, and interference with prospective economic advantage. More seriously, however, is that this gross mischaracterization has already resulted in lost sales and substantial harm to Dr. Greens' business.

Please provide us with a listing of all customers, potential customers, businesses and individuals that have been contacted by Spectrum Laboratories, and/or Mr. Stephens, regarding these claims of patent infringement. We will also require an immediate retraction be sent by Spectrum Laboratories to each of these contacts in order to avoid any further economic harm to Dr. Greens. Please provide the list of contacts to me no later than Friday, August 7, 2009.

It is our sincere hope that this matter may be resolved amicably. To this end, should you have any details which might support your allegations of patent infringement, please feel free to forward them to me as I will be finalizing my evaluation of your infringement claims. Dr. Greens and Matt Green specifically reserve all rights and remedies, and this letter shall not be construed as a waiver of any kind.

I look forward to your early response.

Very truly yours,



Gary L. Eastman

GLE:

EXHIBIT "D"

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## Gary Eastman

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**From:** Cupar, David B. [dcupar@mcdonaldhopkins.com]  
**Sent:** Thursday, August 06, 2009 12:13 PM  
**To:** garyeastman@sbcglobal.net  
**Cc:** Baiers, Amanda  
**Subject:** Spectrum Matter

Gary,

Thank you for your August 3, 2009 letter. I have been out of town and am about to head out of town again in a few minutes. While I can't get back to you by tomorrow for the information you requested, I will work with you regarding this matter over the next few weeks. Thank you for your cooperation.

Best regards,  
Dave

**David B. Cupar, Esq.**  
**Direct: 216.430.2036 | Fax: 216.348.5474**  
**[dcupar@mcdonaldhopkins.com](mailto:dcupar@mcdonaldhopkins.com)**



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EXHIBIT "E"

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# Legal Action Notification

Dear Valued Retailer,

We wanted to make you aware of legal actions Spectrum Labs is in the process of taking against all synthetic urine manufacturers who are potentially violating our patent. As you know, Spectrum Labs' "Quick Fix" synthetic urine is the only patented product of its kind in the market. Other companies have brought similar products into the marketplace. It has come to our attention that these products potentially violate Spectrum's U.S. Patent No. 7,192,776.

According to our attorneys, patent laws are very clear on protecting the patent holder against "whoever", without authority, makes, uses, offers to sell, or sell any patented invention, within the United States, or imports into the United States any patented invention during the term of the patent therefor." 35 U.S.C. § 271. Violator whether the manufacture or seller – can be held legally and financially responsible for any losses to Spectrum due to infringement.

While we do not wish to place any financial hardships on our customers, we must take action to protect our patented products. Due to the number of companies flooding the market with inferior products, knock-offs and potentially infringing formulas we have no option but to consider moving forward with legal action.

To avoid potential liability, please avoid offering for sale, or selling, any potentially infringing products. If you have any questions regarding this matter please contact us.

Spectrum  
Labs

EXHIBIT "F"

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## GARY L. EASTMAN, APLC

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Focusing on Start-Up and  
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GARY L. EASTMAN, Esq.  
Registered Patent Attorney  
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September 19, 2009

David B. Cupar, Esq.  
McDonald Hopkins, LLC  
600 Superior Avenue, East, Suite 2100  
Cleveland, Ohio 44114

RE: Spectrum Laboratories adv. Dr. Greens, Inc.  
United States Patent No. 7,192,776

Dear Mr. Cupar:

I represent Mr. Matt Green and Dr. Greens, Inc., in their intellectual property matters. I was forwarded your letter dated July 22, 2009, in which you allege Dr. Greens is infringing the above-referenced patent. A copy of your letter is attached as Exhibit 1 for your reference. Your letter requested a response no later than August 3, 2009. In response to your allegations, I sent you a responsive letter on August 3, 2009. A copy of my response letter is attached as Exhibit 2 for your reference. In this letter, we denied all allegations of infringement, and in fact asserted that the patent was invalid.

In my letter dated August 3, 2009, I also cautioned you that your clients, Spectrum Laboratories, is actively sending out letters containing bold claims of Dr. Greens' alleged infringement, and that these claims are actionable under the Federal Unfair Competition of the Lanham Act 15 U.S.C. §1125(a). It was requested that your client immediately cease sending out such misleading letters, and provide a listing of all customers, potential customers, businesses and individuals that have been contracted by Spectrum Laboratories and/or Mr. Stephens, regarding the allegations of infringement no later than August 7, 2009.

I received an E-mail from you on August 7, 2009, in which you indicated you received my letter of August 3, 2009, are preparing to leave town, but "[w]hile [you] can't get back to [me] by tomorrow for the information [I] requested, [you] will work with [me] regarding this matter over the next few weeks." A copy of your E-mail is attached as Exhibit 3 for your reference.

Mr. Cupar  
September 19, 2009  
Page -2-

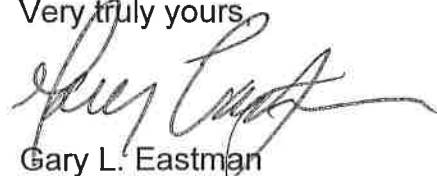
To date, I have not received any further communication from you, nor have I received the listing of all customers, potential customers, businesses and individuals that have been contacted by Spectrum Laboratories, and/or Mr. Stephens, regarding the claims of patent infringement.

It has been brought to my attention that your clients, Spectrum Laboratories, are continuing to send out the "LEGAL ACTION NOTIFICATION" letters alleging patent infringement by "all synthetic urine manufacturers..." A copy of the "LEGAL ACTION NOTIFICATION" is attached as Exhibit 4. This letter clearly rises to patent misuse, unfair competition, and is causing harm to my clients' business.

From your lack of response, and your client's continuing acts of unfair competition, it is becoming apparent that you do not share our hope that this matter will be resolved amicably. Nevertheless, we are making this one final attempt to resolve the situation.

Please provide us with an immediate response to our demands of August 3, 2009, and confirm that your clients Spectrum Laboratories and/or Mr. Stephens will immediately cease sending out the "LEGAL ACTION NOTIFICATION". If we do not receive these items within ten (10) days from the date of this letter, we will have no alternative but to take further action. Meanwhile, please note that Dr. Greens and Matt Green specifically reserve all rights and remedies, and this letter shall not be construed as a waiver of any kind.

Very truly yours,



Gary L. Eastman

GLE:

Exhibits

- 1) Mr. Cupar's Letter of July 22, 2009
- 2) My Letter of August 3, 2009
- 3) Mr. Cupar's E-mail of August 7, 2009
- 4) "LEGAL ACTION NOTIFICATION"

EXHIBIT "G"

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## Gary Eastman

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**From:** Cupar, David B. [dcupar@mcdonaldhopkins.com]  
**Sent:** Monday, September 21, 2009 6:00 AM  
**To:** garyeastman@sbcglobal.net  
**Subject:** Spectrum Matter

Gary,

I am in receipt of your facsimile letter of 10:22 pm ET Friday night on September 19, 2009. I also received your 8:30 pm ET call last week as well. If you would like to reach me while I am in the office, please contact me between normal business hours - I am on EDT. I am available until 9:30 am EDT this morning to discuss. Otherwise, I am traveling for and taking depositions out of town for nearly the rest of the week. If you are not available this morning to discuss, then I am available Friday, 9/25 at 4 pm EDT for a call.

Spectrum respects your client is willing to work amicably to ensure that your client's products are outside of Spectrum's patent. You mentioned that in your August 3 letter that you performed only a preliminary assessment at that time. I have not received any further information from you since then. Therefore, in advance of our call, I proposed the following action items to make our meeting productive:

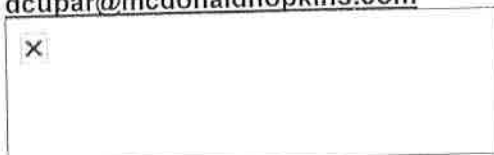
- Your final assessment regarding your client's product and reasons why it does not believe that its product does not fall within the claims of Spectrum's patent. If you believe that your client needs an NDA with me to view the formulation under "attorney's eye's only" so that Spectrum does not see the formulation, my client is willing to do so.
- Please provide the letters supporting your claim in your September 19 letter that Spectrum "is actively sending out letters containing bold claims of Dr. Greens' alleged infringement" in violation of the Lanham Act. That is a very strong claim that requires significant evidence - I just want to make sure that I am not missing any letters or correspondence that supports your client's threat. As you know, Spectrum has not threatened anything against your client and I want to continue handling this in a professional, amicable manner instead.

Further, your letter and your client's demands appear as though Spectrum has made an infringement claim with the threat of litigation. This is untrue. Spectrum has not made any specific threat of infringement and has not threatened any litigation whatsoever against your client. Rather, Spectrum has and continues to work with your client amicably without any legal threat. I hope that you and your client do not take Spectrum's willingness to work amicably with your client out of context to make a number of unfounded legal threats against Spectrum. I have found that such needless fingerpointing just gets in the way of working together. I raise this to the extent that your client may have the incorrect legal and factual belief that it somehow has jurisdiction for a declaratory judgment claim - rest assured that it does not.

Thank you for your help with this. Please let me know if you have any questions or concerns.

Best regards,  
Dave

**David B. Cupar, Esq.**  
**Direct: 216.430.2036 | Fax: 216.348.5474**  
**dcupar@mcdonaldhopkins.com**



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## GARY L. EASTMAN, APLC

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GARY L. EASTMAN, Esq.  
Registered Patent Attorney  
  
garyeastman@sbcglobal.net

September 23, 2009

David B. Cupar, Esq.  
McDonald Hopkins, LLC  
600 Superior Avenue, East, Suite 2100  
Cleveland, Ohio 44114

RE: Spectrum Laboratories adv. Dr. Greens, Inc.  
United States Patent No. 7,192,776

Dear Mr. Cupar:

Thank you for your letter dated September 21, 2009. I apologize for the tone taken in my recent letter as I was under the belief your lack of any response for the past six weeks since your initial E-mail of August 6, 2009, was an indication of your and your clients' lack of interest in resolving this issue.

Your letter to Mr. Green dated July 22, 2009, included the statement that "Spectrum believes that your Agent X product likely infringes the '776 patent." Your client has also sent multiple letters to many of Dr. Greens' customers that "[W]e wanted to make you aware of legal actions Spectrums Labs is in the process of taking against all synthetic urine manufacturers who are potentially violating our patent. ... To avoid potential liability, please avoid offering for sale, or selling, any potentially infringing products."

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A copy of a recent "Legal Action Notification" is attached to this letter. The basic concern of Dr. Greens is that the "Legal Action Notification" gives Dr. Greens' customers the false impression that all synthetic urine products infringe the '776 patent. This impression has resulted in lost sales to Dr. Greens.

Before we even finalized our analysis of the Agent X product and the claims of the '776 patent, we discovered that the most critical analysis is with respect to 35 U.S.C. §102(b). As you may know, any sale of a product more than one year prior to the earliest application filing date renders the invention unpatentable.

Mr. Cupar  
September 23, 2009  
Page -2-

**35 U.S.C. 102**

**Conditions for patentability; novelty and loss of right to patent.**

A person shall be entitled to a patent unless —

...  
(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of the application for patent in the United States... (emphasis added).

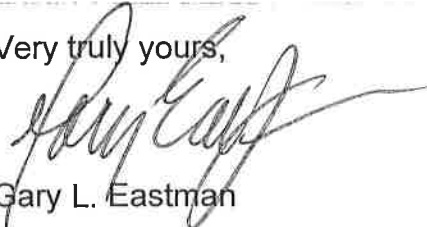
Our investigation reveals that Spectrum Laboratories has been selling its QUICK FIX synthetic urine product long before the filing date of the '776 patent. In fact, Dr. Greens has been purchasing that exact product from Spectrum Laboratories since as early as 2001, more than three years prior to Mr. Stephens' application for patent.

I find it perplexing that, on the one hand, you assert Dr. Greens' product "likely infringes the '776 patent" and your clients has sent notices to many of Dr. Greens' customers and potential customers warning them not to buy any synthetic urine products. Yet, on the other hand, you assert in your E-mail letter of September 21, 2009, that Spectrum has not made any specific threat of infringement. I find these two positions fundamentally inconsistent.

Based on the above, and the continuing harm that your clients' misrepresentations are having to Dr. Greens' business, we request that you provide us with a listing of all customers, potential customers, businesses and individuals that have been contacted by Spectrum Laboratories, and/or Mr. Stephens, regarding these "potential" claims of patent infringement. We also request an immediate retraction be sent by Spectrum Laboratories to each of these contacts in order to avoid any further economic harm to Dr. Greens.

Thank you for your cooperation. Meanwhile, please note that Dr. Greens and Matt Green specifically reserve all rights and remedies, and this letter shall not be construed as a waiver of any kind.

Very truly yours,



Gary L. Eastman

GLE:

## Legal Action Notification

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September 8, 2009

Dear Valued Retailer,

We wanted to make you aware of legal actions Spectrum Labs is in the process of taking against all synthetic urine manufacturers who are potentially violating our patent. As you know, Spectrum Labs' "Quick Fix" synthetic urine is the only patented product of its kind in the market. Other companies have brought similar products into the marketplace. It has come to our attention that these products potentially violate Spectrum's U.S. Patent No. 7,192,776.

According to our attorneys, patent laws are very clear on protecting the patent holder against "whoever", without authority, makes, uses, offers to sell, or sells any patented invention, within the United States, or imports into the United States any patented invention during the term of the patent therefor." 35 U.S.C. § 271. Violators— whether the manufacture or seller — can be held legally and financially responsible for any losses to Spectrum due to infringement.

While we do not wish to place any financial hardships on our customers, we must take action to protect our patented products. Due to the number of companies flooding the market with inferior products, knock-offs and potentially infringing formulas we have no option but to consider moving forward with legal action.

To avoid potential liability, please avoid offering for sale, or selling, any potentially infringing products. If you have any questions regarding this matter please contact us.



Spectrum  
Labs

P.O. Box 8401 Cincinnati, Ohio 45208 (513) 321-7747 Fax (513) 979-5392

EXHIBIT "I"

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## GARY L. EASTMAN, APLC

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Focusing on Start-Up and  
Emerging Company Counseling  
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and Related Litigation

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GARY L. EASTMAN, Esq.  
Registered Patent Attorney  
garyeastman@sbcglobal.net

October 23, 2009

David B. Cupar, Esq.  
McDonald Hopkins, LLC  
600 Superior Avenue, East, Suite 2100  
Cleveland, Ohio 44114

RE: Spectrum Laboratories adv. Dr. Greens, Inc.  
United States Patent No. 7,192,776

Dear Mr. Cupar:


It has been a month since my letter to you dated September 23, 2009, and I have yet to receive any meaningful response from your office regarding to the allegations of patent invalidity, and the request for information concerning the dissemination of the misleading "Legal Action Notification" sent from your clients, Spectrum Labs.

I find it extraordinarily unprofessional, and in fact wholly irresponsible, to flatly ignore our requests for information regarding the "Legal Action Notification", particularly since our request is based primarily on the highly misleading propaganda campaign by your client that is resulting in actual lost sales and undoubtedly cause additional future harm to Dr. Greens' business ventures.

I wish that I could genuinely thank you for your cooperation; however, there has been none. Please provide us with the information requested in our earlier correspondence, not the least of which is the identity of all recipients of the "Legal Action Notification" letters.

Meanwhile, please note that Dr. Greens and Matt Green specifically reserve all rights and remedies, and this letter shall not be construed as a waiver of any kind.

Very truly yours,



Gary L. Eastman

GLE:

EXHIBIT "J"

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February 11, 2011

Gary L. Eastman  
401 West "A" Street, Suite 1785  
San Diego, CA 92101

**Re: U.S. Patent No. 7,192,776**  
**Titled: SYNTHETIC URINE AND METHOD FOR MANUFACTURING SAME**

Dear Mr. Eastman:

We represent Spectrum Laboratories, LLC, which owns U.S. Patent No. 7,192,776 ("the '776 patent"), which claims a synthetic urine and a method for manufacturing synthetic urine. A copy of the '776 patent is enclosed for your reference.

I previously wrote to your client, Dr. Greens, Inc., on July 22, 2009, expressing Spectrum's belief that Dr. Greens' Agent X product potentially infringes the '776 patent. My letter asked that Dr. Greens provide to us any basis for its believing that it does not infringe the '776 patent. Although you responded on behalf of Dr. Greens with a letter dated August 3, 2009, generally denying infringement, neither you nor Dr. Greens have ever provided any specific information identifying why it believes it does not infringe.

While a rash of counterfeiting in California has continued to occupy Spectrum's litigation and business resources, Spectrum remains committed to ensuring there is no infringement of its '776 patent. Consequently, Spectrum again asks that Dr. Greens identify any reasons why it does not believe it is infringing. Specifically, if Dr. Greens contends that its Agent X product does not infringe, please provide the formula and method used to manufacture that product so we can test the accuracy of that contention in accordance with 35 U.S.C. § 295.

Sincerely,



David B. Cupar

Enclosure

**PROOF OF SERVICE**

I, the undersigned declare under penalty of perjury that I am over the age of eighteen years and not a party to this action; that I served the above named person the following documents:

FIRST AMENDED COMPLAINT FOR DECLARATORY JUDGMENT OF PATENT NON-INFRINGEMENT, PATENT INVALIDITY, MISUSE OF PATENT, FEDERAL STATUTORY UNFAIR COMPETITION, UNFAIR COMPETITION UNDER CALIFORNIA BUSINESS & PROFESSIONS CODE SECTION 17200, INTERFERENCE WITH BUSINESS RELATIONS, INTERFERENCE WITH PROSPECTIVE ECONOMIC ADVANTAGE, AND DEMAND FOR JURY TRIAL

in the following manner: (check one)

- 1. \_\_\_\_\_ By personally delivering copies to the person served.
- 2. \_\_\_\_\_ By leaving, during usual office hours, copies in the office of the person served with the person who apparently was in charge and thereafter mailing (by first-class mail, postage prepaid) copies to the person served at the place where the copies were left.
- 3. \_\_\_\_\_ By leaving copies at the dwelling house, usual place of abode, or usual place of business of the person served in the presence of a competent member of the household or a person apparently in charge of his office or place of business, at least 18 years of age, who was informed of the general nature of the papers, and thereafter mailing (by first-class mail, postage prepaid) copies to the person served at the place where the copies were left.
- 4. \_\_\_\_\_ By placing a copy in a separate envelope, with postage fully prepaid, for each address named below and depositing each in the U.S. Mail at \_\_\_\_\_ on \_\_\_\_\_, 2012.
- 5. XX By ECF Filing Service by filing the above-identified documents with the Court via ECF electronic filing to attorneys of record in the case.

David B. Cupar  
McDonald Hopkins, LLP  
600 Superior Avenue East  
Cleveland, OH 44114

Matthew J. Cavanagh  
McDonald Hopkins, LLP  
600 Superior Avenue East  
Cleveland, OH 44114

Executed on April 19, 2012, 2011 at San Diego, California.

/s/ Gary L. Eastman

Gary L. Eastman