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**IN THE UNITED STATES DISTRICT COURT  
OF NEW JERSEY**

OTICON, INC.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 08-5489
	)	
SEBOTEK HEARING SYSTEMS, LLC,	)	
GENNUM CORPORATION,	)	
and	)	JURY DEMANDED
SOUND DESIGN TECHNOLOGIES, LTD.,	)	
	)	
Defendants.	)	

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**SECOND AMENDED COMPLAINT FOR PATENT INFRINGEMENT**

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Plaintiff Oticon, Inc. (“Oticon”) for its Complaint for patent infringement against Defendants SeboTek Hearing Systems, LLC, Gennum Corporation, and Sound Design Technologies, Ltd., jointly and severally, alleges as follows:

### **THE PARTIES**

1. Plaintiff, Oticon, Inc. (“Oticon”), is a California corporation with its principal place of business located at 29 Schoolhouse Road, Somerset, New Jersey 00873-1275.
2. On information and belief, Defendant SeboTek Hearing Systems, LLC (“SeboTek”), is a limited liability company duly organized and existing under the laws of the state of Oklahoma, having a principal place of business at 2488 E 81st Street, Suite 2000, Tulsa, Oklahoma 74137-4224.
3. On information and belief, Defendant Gennum Corporation (“Gennum”) is a corporation duly organized and existing under the laws of Canada, having a principle place of business at 4281 Harvester Road, Burlington, Ontario, Canada.
4. On information and belief, Defendant Sound Design Technologies, Ltd. (“Sound Design”) is a corporation duly organized and existing under the laws of Canada, having a principle place of business at 970 Fraser Drive, Burlington, Ontario, Canada.
5. On information and belief, Sound Design is Gennum’s successor-in-interest with respect to the technology related to the instant cause of action set forth herein.

### **JURISDICTION AND VENUE**

6. This is an action for patent infringement arising under the acts of Congress for violations relating to patents, namely The Patent Laws of the United States, 35 U.S.C. §§ 1 *et. seq.*
7. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a).
8. Upon information and belief Defendant SeboTek has solicited business in the State of New Jersey, is doing business in this judicial district, and has attempted to derive financial benefit from residents of the State of New Jersey, including benefits directly related to the instant cause of action set forth herein.

9. Defendant SeboTek has committed and continues to commit acts of patent infringement in this district. Therefore, this Court has specific jurisdiction over SeboTek.
10. Upon information and belief Defendants Gennum and Sound Design have solicited business in the State of New Jersey, regularly introduced articles in to the stream of commerce that have been sold in the State of New Jersey, and have attempted to derive financial benefit from residents of the State of New Jersey, including benefits directly related to the instant cause of action set forth herein.
11. Upon information and belief Defendant Gennum has, for the relevant time periods, extensively, continuously and systematically solicited business in the State of New Jersey concerning, *inter alia*, Digital Signal Processors (“DSPs”) and other electronic components including but not limited to numerous analog, mixed signal and optical signal integrity products (such as ActiveConnect™ Display Port, backplate interconnect and optical transceiver ICs, laser drivers, equalizers, limiting amplifiers (TIAs), R-chip technology) and IP cores for advanced consumer connectivity, enterprise, video broadcast and data communications applications, such as high speed controller IP and advanced physical layer IP cores for high-speed data communications. Therefore, this Court has general jurisdiction over Gennum.
12. Alternatively, (A) Defendant Gennum fails to establish sufficient contacts to be subject to personal jurisdiction in any state’s courts of general jurisdiction, however, Gennum has aggregated minimum contacts over the entire United States (1) through its sales of, *inter alia*, DSPs and other electronic components including but not limited to numerous analog, mixed signal and optical signal integrity products (such as ActiveConnect™ Display Port, backplate interconnect and optical transceiver ICs, laser drivers, equalizers,

limiting amplifiers (TIAs), R-chip technology) and IP cores for advanced consumer connectivity, enterprise, video broadcast and data communications applications, such as high speed controller IP and advanced physical layer IP cores for high-speed data communications, and (2) through its application for and/or assignment of about 135 U.S. patents and patent application, and application for and/or assignment of about eight (8) U.S federal trademarks, and the claims of Plaintiff Oticon arise under federal law.

Therefore, this Court has jurisdiction over Gennum pursuant to Federal Rule of Civil Procedure 4(k)(2); (B) there is no state in which Defendant Gennum could be subject to personal jurisdiction.

13. Upon information and belief Defendant Sound Design has extensively, continuously and systematically solicited business in the State of New Jersey concerning, *inter alia*, DSPs and other electronic components including but not limited to Barium Strontium Titanate (BST) capacitors and radio frequency components for wireless headsets, hearing devices and professional audio equipment. Therefore, this Court has general jurisdiction over Sound Design.

14. Alternatively, (A) Defendant Sound Design fails to establish sufficient contacts to be subject to personal jurisdiction in any state's courts of general jurisdiction, however, Sound Design has aggregated minimum contacts over the entire United States (1) through its sales of, *inter alia*, DSPs and other electronic components including but not limited to Barium Strontium Titanate (BST) capacitors and radio frequency components for wireless headsets, hearing devices and professional audio equipment, and (2) through its application for and/or assignment of about forty-two (42) U.S. patents and patent application, and application for and/or assignment of about thirteen (13) U.S federal

trademarks, and the claims of Plaintiff Oticon arise under federal law. Therefore, this Court has jurisdiction over Sound Design pursuant to Federal Rule of Civil Procedure 4(k)(2); (B) there is no state in which Defendant Sound Design could be subject to personal jurisdiction.

15. Venue is proper in this judicial district under 28 U.S.C. §§ 1391 and 1400(b) in that, among other things, the acts of infringement complained of have been committed in this judicial district, Defendants SeboTek, Gennum and Sound Design reside in this judicial district, and Defendants Gennum and Sound Design are alien corporations.

### **FACTS AND STATEMENT OF CLAIM**

#### **COUNT I INFRINGEMENT OF U.S. PATENT NO. 5,365,233**

16. Plaintiff Oticon realleges and incorporates paragraphs 1-15 as if set forth herein in full.
17. Plaintiff Oticon is the owner by assignment of U.S. Patent No. 5,365,233 (the “‘233 patent”), titled “Method for Digitizing a Band-Limited, Analog Signal, Analog-Digital Processing Unit to Implement the Method, a Method For Digital Filtering and a Digital Filter for its Implementation,” which issued on November 15, 1994. A copy of the ‘233 patent is attached as Exhibit A.
18. Plaintiff Oticon is in compliance with any applicable marking and notice provisions of 35 U.S.C. § 287.
19. Defendants SeboTek, Gennum, and Sound Design have infringed and/or continue to infringe at least claims 1 and 8 of the ‘233 patent by making, using, selling, importing and/or offering for sale products and methods covered by one or more claims of the ‘233 patent without Plaintiff Oticon’s authorization, in violation of 35 U.S.C. § 271(a).

Defendants, and each of them, knew, and continues to know, that its customers would use its hearing aid products and/or components.

20. Upon information and belief, the infringing products of SeboTek include its SeboTek Voice-Q hearing aids, including the Voice-Q 410, the Voice-Q 510, the Voice-Q 620, the Voice-Q 720, and the Voice-Q 721; and its Sebo HD hearing aids, including the Sebo HD-8, HD-12, and HD-16, the infringing products of Gennum include its Foundation, Paragon and Voyager DSPs, and the infringing products of Sound Design include its Foundation, Paragon and Voyager DSPs.
21. The customers of SeboTek, Gennum, and Sound Design actually used and continue to use the infringing products sold to them by each respective Defendant.
22. Prior to the filing of this suit, each of the Defendants had knowledge of the '233 patent. Each Defendant knew, or should have known, that there was an objectively high likelihood that each was infringing the '233 patent.
23. In addition, Defendants SeboTek, Gennum, and Sound Design's actions have constituted and/or continue to constitute contributory infringement of the '233 patent in violation of 35 U.S.C. § 271 (c) and/or the active inducement of others under 35 U.S.C. § 271(b) to engage in direct infringement under 35 U.S.C. § 271(a) with a knowledge and an intent to induce the specific infringement.
24. Upon information and belief, Defendants SeboTek, Gennum, and Sound Design significantly, knowingly, willfully, actively, and intentionally aided, abetted, participated in and were and are a proximate, contributory and concurring cause of the aforesaid infringement, because, without limitation, Defendants SeboTek, Gennum, and Sound

Design had an affirmative specific intent to cause and induce others to directly infringe through the use, selling and/or offer to sell the infringing products and methods.

25. Defendants SeboTek, Gennum, and Sound Design infringement of the '233 patent is willful, deliberate and intentional pursuant to 35 U.S.C. §§ 284 and 285.

26. By Defendants SeboTek, Gennum, and Sound Design's infringement of the '233 patent, each has made unlawful gains and profits, and Oticon, due to the same infringing conduct, has been deprived of rights and remunerations such as current and future lost sales, lost profits and/or lost royalties that would have otherwise come to Oticon, but for the infringement.

27. Defendants SeboTek, Gennum, and Sound Design have caused irreparable harm to Plaintiff Oticon from each Defendant's infringement and will continue to do so unless enjoined from continuing to infringe the '233 patent.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff Oticon prays for judgment and relief including:

(A) Judgment, jointly and severally, that Defendants SeboTek, Gennum, and Sound Design have been and are infringing one or more claims of the '233 patent pursuant to 35 U.S.C. §§ 271(a), (b) and/or (c);

(B) Preliminary and permanent injunctive relief prohibiting and enjoining Defendants SeboTek, Gennum, and Sound Design, and each of their officers, agents, servants, employees, licensees, attorneys, related business entities and all those acting or attempting to act in active consent or participation with them from infringing, inducing others to infringe and/or committing acts of contributing to the infringement of the '233 patent;

(C) A judgment, jointly and severally, that Defendants SeboTek, Gennum, and Sound Design be ordered to account for and pay all damages caused and/or to be caused by reason of SeboTek, Gennum, and Sound Design's infringement but in no event less than a reasonable royalty pursuant to 35 U.S.C. § 284, including enhanced damages for willful infringement under 35 U.S.C. § 284 or an amount to be determined by the Court;

(D) A judgment, jointly and severally, that SeboTek, Gennum, and Sound Design be ordered to pay Oticon's costs, expenses and reasonable attorney's fees pursuant to 35 U.S.C. §§ 284 and 285;

(E) An award of pre-judgment and post-judgment interest on the damages caused and/or to be caused to Oticon by SeboTek, Gennum, and Sound Design's infringement; and

(F) Such other and further relief as the Court may deem just and proper under the circumstances.

**JURY DEMAND**

Plaintiff Oticon demands trial by jury on all issues so triable.

Respectfully submitted,

BUCHANAN INGERSOLL & ROONEY PC

Dated: April 21, 2011

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