7310 North 16 th Street, Suite 330	Phoenix, Arizona 85020
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6	Attorneys for Plaintiffs
7	UNITED STATES DISTRICT COURT
8	DISTRICT OF ARIZONA
9	Ernesto Castro, an individual; and Ergis
~ 1	Linesto Castro, an marriada, and Ligis

Case No.:

Plaintiffs,

Company, LLC., an Arizona limited liability

VS.

company,

Tidwell's Orthotics, LLC, a Florida limited liability company,

Defendant.

COMPLAINT

 $(Patent\ Infringement)$

Ernesto Castro, an individual, and Ergis Company, LLC, an Arizona Limited Liability Company, for their Complaint against Defendant Tidwell's Orthotics, LLC, a Florida Limited Liability Company, complain and allege as set forth below.

Parties, Jurisdiction & Venue

- 1. Ernesto Castro ("Castro") is an individual residing in Mesa, Maricopa County, Arizona.
- 2. Ergis Company, LLC ("Ergis") is an Arizona limited liability company with its principal place of business in Mesa, Maricopa County, Arizona.

			3.	Upon infor	mation and	belie	f, T	idwell's C	Orthoti	cs,	LLC ("Ti	dw	ell's"
is	a	Florida	Limite	d Liability	Company	with	its	principal	place	of	business	in	Cora
Sp	rir	ngs, Flor	ida.										

- 4. This matter arises under the United States Patent Laws, 35 U.S.C. § 101, et seq.
 - 5. Tidwell's has engaged in acts of infringement in this jurisdiction.
- 6. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §1338.
 - 7. Venue is proper in this district pursuant to 28 U.S.C. §1400.

General Allegations

- 8. Castro is the owner of U.S. Patent No. 6,155,997 issued December 5, 2000 for a Custom Ankle Brace System (the "'997 Patent").
 - 9. Castro is the owner of and a principal in Arizona AFO.
 - 10. Ergis is the exclusive licensee of the '997 Patent.
- 11. Ergis has licensed the '997 Patent to others who are is in the business of manufacturing and selling custom orthotic ankle braces and ankle brace systems based upon the technology embodied in the '997 Patent.
- 12. Castro has been creating and manufacturing orthotic ankle brace systems and similar products for many years, both directly and through his companies Ergis and Arizona AFO, Inc.
- 13. Tidwell's is also in the business of manufacturing and selling custom orthotic ankle braces.
- 14. Tidwell's manufactures and sells an ankle brace system known as the Amber AFO. This ankle brace system has been advertised, offered for sale and sold throughout the United States by Tidwell's. Upon information and belief Tidwell's has advertised, marketed, sold and offered for sale the Amber AFO in Arizona.

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Count I

Infringement of '997 Patent

- 15. Plaintiffs incorporate the allegations of paragraphs 1-14 above by this reference.
 - 16. Castro is the owner of the '997 Patent.
 - 17. Ergis is the exclusive licensee of the '997 Patent.
- 18. Ergis is in the business of licensing the '997 Patent and related patents. Among others, Ergis has licensed Arizona AFO, Inc., a company that is a leader in the business of manufacturing and selling custom orthotic ankle brace systems which are the subject of the '997 Patent.
- 19. Neither Castro nor Ergis has licensed or authorized Tidwell's to manufacture or sell products under the '997 Patent.
- 20. Castro by and through his licensees has at all relevant times marked its product with an appropriate patent notice.
- 21. Tidwell's has in the past manufactured, used, sold and offered for sale products, including without limitation the Amber AFO ankle brace system, which infringe the '997 Patent and it is currently doing so.
- 22. Tidwell's has sold and offered for sale infringing products, including the Amber AFO ankle brace system, in this District.
- 23. Such actions by Tidwell's have caused and continue to cause immediate and irreparable injury to Plaintiffs.
- 24. Such actions by Tidwell's have caused harm and damage to Plaintiffs in an amount to be proven at trial; but in no event less than a reasonable royalty.
- 25. Plaintiffs have given notice to Tidwell's of its actions of infringement. Despite such notice, Tidwell's continues to infringe upon Plaintiffs' rights in the '997 Patent.

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§ 284.

26.	Tidwell's actions in continuing to infringe upon the '997 Patents ar

- 27. Plaintiffs are entitled to recover treble damages pursuant to 35 U.S.C.
- 28. This action is an exceptional case pursuant to 35 U.S.C. § 285. Plaintiffs are entitled to recover their attorneys fees incurred in this matter.

WHEREFORE, Plaintiffs request the following relief:

- A. A preliminary and permanent injunction prohibiting and restraining Tidwell's, its officers, directors, employees, agents, representatives and all persons in active concert with it from manufacturing, using, selling, offering for sale, or importing into the United States any product which infringes upon the '997 Patent, including without limitation its Amber AFO ankle brace system.
- B. A court order requiring that all infringing products in the possession or control of Defendant be seized pending trial in this matter; and upon final judgment that such items be ordered destroyed.
- C. Awarding Plaintiffs their actual damages incurred in this matter; but not less than a reasonable royalty.
 - D. Awarding Plaintiffs treble damages pursuant to 35 U.S.C. § 284.
- E. An award finding this matter to be an exceptional case and awarding Plaintiffs their reasonable attorneys' fees incurred in this matter.
 - F. Awarding Plaintiffs such further relief as the Court deems just and proper.

DECONCINI MCDONALD YETWIN & LACY, P.C.

By <u>s/Ira M. Schwartz</u>
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