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10 **UNITED STATES DISTRICT COURT**
11 **DISTRICT OF ARIZONA**

12 Airware Holdings, Inc. (d/b/a Airware
13 Labs), Crown Dynamics Corp.,

14 Plaintiffs,

15 vs.

16 Clerisy Corp., Reed Transition
17 Technologies, LLC,

18 Defendants.

No. **2:12-cv-01809-ROS**

**FIRST AMENDED COMPLAINT
FOR DECLARATORY JUDGMENT
OF PATENT NON-INFRINGEMENT**

**JURY DEMAND: Plaintiff demands a
trial by jury.**

19 Plaintiffs AirWare Holdings, Inc. and Crown Dynamics Corp. (collectively
20 “Plaintiffs”) request a jury trial on all issues and state and allege as follows:

21 **PARTIES**

22 1. Plaintiff AirWare Holdings, Inc. (“AirWare”) is a wholly-owned subsidiary of
23 Crown Dynamics Corp. and is a corporation organized and existing under the laws of the
24 State of Nevada with a place of business at 8399 East Indian School Road, Suite 202,
25 Scottsdale, Arizona 85251. AirWare is engaged in the study, research, and development of
26 products related to improving people’s breathing. AirWare, among other things, makes, uses,
27 and sells nasal devices.

28 2. Plaintiff Crown Dynamics Corp. is a corporation organized and existing under
the laws of the State of Delaware and has a business address at 8399 East Indian School
Road, Suite 202, Scottsdale, Arizona 85251.

1 3. Upon information and belief, Defendant Clerisy Corporation (“Clerisy”) is a
2 New York corporation with a place of business at 3543 Winton Place, Rochester, New York
3 14623.

4 4. Upon information and belief, Defendant Reed Transition Technologies, LLC
5 (“Reed”) is a limited liability company organized and existing under the laws of the State of
6 Nevada with a business address at 80 Elberta Drive, Sedona, Arizona 86336.

7 **JURISDICTION AND VENUE**

8 5. This is an action for a Declaratory Judgment under 28 U.S.C. §§ 2201 and 2202
9 relating to an actual controversy between the parties with regard to the non-infringement of
10 United States Patent No. 6,295,982 (the “982 patent”) (copy attached as Exhibit A).

11 6. This court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and
12 1338(a).

13 7. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391(b) and (c).
14 Defendants Clerisy and Reed are subject to personal jurisdiction in this district. Reed is
15 subject to personal jurisdiction in this district as it resides and has a principal place of
16 business in this district. Clerisy is subject to personal jurisdiction in this district as it asserts
17 that it is Reed’s sole licensee under the ‘982 patent, and asserts that it has acquired from
18 Reed the right to prosecute any and all claims against alleged infringers of the ‘982 patent.
19 Accordingly, Clerisy has engaged in licensing transactions with Reed, a resident of this
20 District, which are closely related to the subject matter of the claims alleged herein.
21 Moreover, Clerisy, by virtue of its arrangement with Reed, and together with Reed, have
22 accused Plaintiffs of patent infringement, and written to entities interested in purchasing
23 Plaintiffs’ products, advising them of the litigation instituted by Reed and Clerisy, thereby
24 causing injury to Plaintiffs’ and their business interests in this district.

25 **THE PATENT**

26 8. The ‘982 patent entitled “Apparatus for and Methods of Administering Volatile
27 Substances into an Inhalation Flow Path,” issued on October 2, 2001.

28 9. Upon information and belief, Reed is the assignee of the ‘982 patent.

1 10. Upon information and belief, Clerisy is the sole licensee of the '982 patent.

2 11. Defendants Clerisy and Reed have asserted that Plaintiffs infringe the '982
3 patent in a Complaint filed in the Western District of New York. (Complaint attached as
4 Exhibit B).

5 **COUNT I – Declaration of Non-Infringement**

6 12. The allegations of the preceding paragraphs 1-11 are incorporated herein by
7 reference.

8 13. Plaintiffs have not infringed, are not now infringing, and have not
9 contributorily infringed or induced infringement of any valid claim of the '982 patent.

10 14. The '982 patent includes two independent claims: 1 and 11. Claim 1 is
11 generally directed to a method of introducing a vapor of a volatile substance into an
12 inhalation flow path via a carrier. Claim 11 is generally directed to a vehicle for introducing
13 a vapor of a volatile substance into an inhalation flow path.

14 15. Each of the independent claims requires a carrier provided with at least one
15 volatile substance and “a barrier coupled to a surface of the carrier, the barrier being
16 substantially impermeable to the [] volatile substances carried by the carrier.” Furthermore,
17 the barrier is “adapted to be interposed between the carrier and the [] skin to prevent the []

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1 volatile substances from contacting the skin.”¹ Because all of the remaining claims depend
2 from the independent claims, they too require these same limitations.

3 16. Exhibit D shows a nasal device product made by Plaintiffs that does not include
4 a filter. As indicated on the Exhibit, the oval, tubular portions of the device are inserted into
5 each of the nostrils. The nasal bridge remains outside of nasal cavities for easy removal of
6 the device.

7 17. Exhibit E shows a nasal device product made by Plaintiffs that includes a filter.
8 The filter is circled and identified on the Exhibit. The filtered product is used, inserted, and
9 removed in substantially the same manner as the non-filtered product.

10 18. As may be seen, Plaintiffs’ products do not include a barrier as required by the
11 claims of the ‘982 patent. More particularly, Plaintiffs’ products do not include a barrier
12 “substantially impermeable to the [] volatile substances carried by the carrier” and “adapted
13 to be interposed between the carrier and the [] skin.”

14 19. All of the products named in the Defendants’ Complaint made by Plaintiffs are
15 substantially similar to those shown in Exhibits D and E.

16 20. Because the products made, used, and/or sold by Plaintiffs do not include each
17 and every element of any claim of the ‘982 patent, Plaintiffs do not infringe the ‘982 patent.

18 **Prayer for Relief**

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20 ¹ Figures 2 and 3 of the ‘982 patent (included as Exhibit C with relevant elements
21 circled and labeled) illustrate a vehicle claimed in the ‘982 patent, including the limitations
22 related to the barrier. Column 3, lines 20-36 explain that as shown in Figures 2 and 3,
23 “vehicle 20 is generally comprised of a series of layers including a carrier generally
24 designated at 31, a barrier 32, an adhesive backing 33 and a cover 34 for protecting adhesive
25 backing 33 prior to use. . . . Barrier 32 is fixed to barrier [sic] 31 with, for instance, a suitable
26 adhesive and is constructed of a metallic foil, wax paper, thin plastic or other material
27 substantially impermeable to the one or more volatile substances carried by barrier [sic] 31.”
28 The specification later makes clear why the impermeable barrier is so important: “Barrier 32
is important for preventing the one or more volatile substances carried by barrier [sic] 31
from seeping into the adhesive layer which may not only compromise adhesive backing 33,
but also cause the one or more volatile substances to contact the skin which, in some
instances, may result in unwanted skin irritation.” Column 3, lines 54-59.

1 WHEREFORE, Plaintiffs pray judgment against Defendants as follows:

2 1. A declaratory judgment that U.S. Patent No. 6,295,982 is not infringed,
3 contributorily infringed, or infringed through inducement by Plaintiffs.

4 2. An order enjoining Defendants, and those in active concert or participation
5 with Defendants who receive actual notice thereof, from in any way charging or threatening
6 patent infringement against Plaintiffs or any of Plaintiffs' current or prospective customers,
7 dealers, licensees, agents, servants, or employees based on the patent-in-suit.

8 3. An order awarding Plaintiffs their reasonable costs and attorneys' fees, in
9 accordance with 35 U.S.C. §285.

10 Pursuant to Fed. R. Civ. P. 38, Plaintiffs request a trial by jury on all counts so triable.

11 Respectfully submitted this 28th day of August, 2012.

12 DAVID C. LARKIN, P.C.

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14 By: s/ David C. Larkin
15 David C. Larkin
16 Attorney for Plaintiffs
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