

Thomas R. Curtin
George C. Jones
GRAHAM CURTIN
A Professional Association
4 Headquarters Plaza
P.O. Box 1991
Morristown, New Jersey 07962-1991
(973) 292-1700

Attorneys for Plaintiff
NIPPON STEEL & SUMITOMO METAL CORPORATION

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

NIPPON STEEL & SUMITOMO METAL
CORPORATION,

Plaintiff,

v.

POSCO and POSCO AMERICA
CORPORATION,

Defendants.

Civil Action No. 12-2429 (DMC) (MF)

**FIRST AMENDED COMPLAINT FOR
PATENT INFRINGEMENT, FALSE
ADVERTISING, UNFAIR COMPETITION,
AND VIOLATION OF NEW JERSEY FAIR
TRADE ACT**

DEMAND FOR JURY TRIAL

FIRST AMENDED COMPLAINT

Plaintiff Nippon Steel & Sumitomo Metal Corporation (“Plaintiff” or “NSSMC”), by way of its First Amended Complaint against POSCO and POSCO America Corporation (together, “Defendants”), alleges as follows:

THE PARTIES

1. Nippon Steel & Sumitomo Metal Corporation (“NSSMC”) is a corporation organized and existing under the laws of Japan with its corporate headquarters at 6-1, Marunouchi 2-chome, Chiyoda-ku, Tokyo 100-8071, Japan. NSSMC was previously known as Nippon Steel Corporation, which changed its name on October 1, 2012, after merging with Sumitomo Metal Industries, Ltd. NSSMC operates under the same corporate registration as Nippon Steel—Japanese Corporation number 0100-01-008848, established April 1, 1950. NSSMC operates a diversified group of international industrial businesses, and is one of the world’s largest manufacturers and innovators of steel products. In this First Amended Complaint, current references to Nippon Steel have been changed to NSSMC, but references to Nippon Steel remain to describe certain acts that took place prior to October 1, 2012.

2. POSCO is a corporation organized and existing under the laws of the Republic of Korea (a.k.a. South Korea), with its corporate headquarters at 1, Goedong-dong, Nam-gu, Pohang, Kyongsangbuk-do 790-600, Korea. POSCO operates a group of international industrial businesses, which, among other things, manufactures, sells, offers to sell, and imports into the United States various types of steel products, including “electrical steel.”

3. POSCO America Corporation (“POSCO America”) is a wholly owned corporate subsidiary of POSCO, organized and existing under the laws of the State of Delaware, with its headquarters and principal place of business at 2 Executive Drive, Fort Lee, New Jersey 07024. As it explains on its website, POSCO America supplies steel products, including electrical steel products, from POSCO to customers in the North America market.

NATURE OF THE ACTION

4. This is an action for (i) infringement of U.S. Patent Nos. 5,261,972 (“the ’972 patent”), 6,613,160 (“the ’160 patent”), 7,442,260 (“the ’260 patent”), and 7,976,644 (“the ’644 patent”) arising under the federal patent laws of United States, Title 35, United States Code, §§ 1

et seq., including 35 U.S.C §§ 271 and 281, (ii) false advertising arising under Section 43(a) of the Lanham Act, Title 15, United States Code § 1125(a); (iii) unfair competition arising under common law, and (iv) violation of the New Jersey Fair Trade Act, N.J.S.A. § 56:4-1.

JURISDICTION AND VENUE

5. With respect to claims arising under Titles 15 and 35 of the United States Code, this Court has federal subject matter jurisdiction over this action pursuant to 15 U.S.C. § 1121, 28 U.S.C §§ 1331, 1338(a), and the patent laws of the United States, 35 U.S.C. §§ 1 *et seq.* With respect to claims arising under state law, including that of the state of New Jersey, this Court has supplemental jurisdiction pursuant to 28 U.S.C. § 1367(a) because all of the claims herein share a common nucleus of operative facts.

6. This Court has personal jurisdiction over POSCO and POSCO America because each of these entities has committed and continues to commit acts of infringement in violation of 35 U.S.C. § 271 and places infringing products into the stream of commerce, with the knowledge or understanding that such products are sold in or from the State of New Jersey as well as other locations throughout the United States. In addition, POSCO and POSCO America have committed and continue to commit acts of false advertising, unfair competition, and violations of fair trade practices in this State and District. The acts in this District by POSCO and POSCO America cause injury to NSSMC. On information and belief, POSCO and POSCO America, derive substantial revenue from the sale of infringing products within this District and derive substantial revenue from interstate and international commerce associated with the infringing products. POSCO and POSCO America have also voluntarily submitted to this Court's jurisdiction by answering the Complaint in this action and asserting Counterclaims here.

7. Since at least 1984, when POSCO established POSCO America in this District, POSCO and POSCO America have regularly transacted and continue to regularly transact business into and/or through this District. POSCO, for example, exports to and POSCO America imports through shipping ports in New Jersey products advertised, offered for sale, sold and/or used in this District and State, and in the United States as a whole, including the products at issue

in this action. Such continuous and systematic contacts subject POSCO and POSCO America to general jurisdiction in this Court. Furthermore, because this continuous business includes transactions related to the infringing products that give rise to this action, POSCO and POSCO America are subject to this Court's specific jurisdiction.

8. Therefore, this Court has personal jurisdiction over Defendants for this action, and venue is proper in this District under 28 U.S.C. §§ 1391(b-d) and 1400(b).

FACTUAL BACKGROUND

9. Grain-oriented electrical steel ("GOES") is a specially designed and manufactured steel made by advanced processes that affect the formation and orientation of the steel's "grain" so as to optimize the steel's magnetic flux density. This specialized steel is used in, among other things, the cores of power and distribution transformers, and serves an important role in improving efficiency in the electrical power distribution industry. With the adoption of higher energy efficiency standards, the demand for highly efficient transformers has increased, which, in turn, has enhanced the demand for GOES. Such high efficiency power transformers are increasingly made in the United States, which, again, has enhanced the demand for GOES in the United States.

10. NSSMC, by way of its predecessor Nippon Steel, has long been a worldwide innovator in research and manufacturing that advance the quality and efficiency of industrial steel production. Nippon Steel has long been recognized in the industry as the market leader in high-quality GOES and as one of the pioneers in its development. In the field of grain-oriented electrical steel, NSSMC, through its predecessor Nippon Steel, has spent decades innovating GOES technology. Over those decades, NSSMC, again, through its predecessor Nippon Steel, has invested millions of dollars into research and development that have resulted in numerous innovations that have revolutionized the quality and efficiency of GOES products as well as the way in which GOES is manufactured. Among other things, NSSMC's predecessor Nippon Steel pioneered the development of low temperature manufacturing techniques for grain-oriented electrical steel. Low temperature manufacturing techniques produce high quality GOES at less

cost than GOES produced using alternative techniques. NSSMC is one of only a few steel manufacturers in the world to have developed the technical capabilities to produce GOES.

11. As a result of its substantial investment in research and development, NSSMC has obtained numerous patents throughout the United States, Japan, and other nations covering its technological advances. In addition, such investment has led NSSMC, often through its predecessor Nippon Steel, to develop numerous proprietary and commercially valuable refinements in that technology, including advances made to both patented and unpatented manufacturing techniques and associated processes.

12. Apparently recognizing the increasing importance of GOES to the power industry, by at least the late 1980's, POSCO was actively looking for ways to advance its GOES manufacturing capabilities and sought licenses from NSSMC's predecessor Nippon Steel to practice Nippon Steel's patented and proprietary GOES technology. Despite various partnering projects Nippon Steel had entered into with POSCO unrelated to GOES, Nippon Steel declined to execute any GOES-related agreements with POSCO. Frustrated by Nippon Steel's refusal to license this critical technology, POSCO implemented a long-running program whereby it obtained and copied Nippon Steel's technology by illicit means. Using bribery and pay-offs to former Nippon Steel employees in the form of "technical consulting," POSCO obtained scores of internal Nippon Steel technical documents that detailed GOES specifications, strategic plans, and manufacturing techniques for Nippon Steel's advanced patented, proprietary grain-oriented electrical steel. POSCO incorporated Nippon Steel's—now NSSMC's—proprietary patented and unpatented technology into its GOES products and manufacturing processes.

13. Suspicious of the apparent improvements in POSCO's grain-oriented electrical steel achieved over an unusually short period, Nippon Steel wrote to POSCO in 2007 to remind it that Nippon Steel owned many patents throughout the world that cover processes used to manufacture GOES. Nippon Steel identified, for example, several of its Korean patents covering such processes (including the counterpart for certain of the patents at issue in this action) and asked that POSCO explain whether it used such patents. Although POSCO denied that it

infringed Nippon Steel's patents (now NSSMC's patents) and asserted that it used "different" manufacturing technology than Nippon Steel, Nippon Steel remained suspicious—with good reason.

14. In late 2007, the Korean government arrested, prosecuted, and convicted two former POSCO employees for selling alleged POSCO trade secrets related to grain-oriented electrical steel to a Chinese company. Although the complete record of those proceedings is sealed, publicly-available portions of the proceedings reveal that POSCO had, in fact, obtained internal Nippon Steel technical documentation and had studied Nippon Steel's GOES patents. Without revealing any alleged supporting evidence, the Korean court attempted to distinguish POSCO's processes from Nippon Steel's process, but the court nonetheless recognized that POSCO had obtained technical information regarding Nippon Steel's GOES technology in an unfair manner. NSSMC, through its predecessor Nippon Steel, has repeatedly requested that the Korean government make available the Nippon Steel-related evidence used in the case, but those requests have been refused. NSSMC, through its predecessor Nippon Steel, has appealed those refusals to the Korean Supreme Court. Those appeals are currently pending.

15. After learning of the theft of its technology through the criminal judgments against former POSCO employees in late 2008, Nippon Steel again approached POSCO and requested that POSCO stop using Nippon Steel's technology. POSCO has failed to abide by these requests and has failed to cease its wrongful activities. Having no choice, concurrently with the present case, Nippon Steel—now NSSMC—filed suit in Japan seeking to remedy—and stop—POSCO's unauthorized use of NSSMC's technology.

16. Undeterred, POSCO and POSCO America have competed and continue to compete unfairly against NSSMC with unabated infringement, false advertising, and violations of fair trade practices. Although NSSMC's GOES products offered for sale and sold in the United States and around the world (including as vital components for key products such as power transformers) are the result of its years of substantial and costly research and innovation, POSCO has been unfairly and falsely building its position in the United States by importing into

New Jersey, and other states, goods made using NSSMC's proprietary technology without authorization. POSCO has likewise been unfairly and falsely representing to customers that its products are made as the result of POSCO's own technology, when this is not the case. This has forced Nippon Steel (now NSSMC) to compete against these POSCO products made using the very technology that POSCO has misappropriated from NSSMC. Such competition occurs in the United States directly, as well as indirectly through the sale for importation into the United States of GOES products made and sold outside the United States.

17. Although Defendants advertise in the United States that POSCO "produces the world's best electrical steel with its outstanding manufacturing technologies," this is false—POSCO does not use just "its" technology, but rather wrongfully relies on valuable technology proprietary to and misappropriated from NSSMC. The "excellent performance and high energy efficiency," "superior electric and magnetic property," and "consistent quality improvement" that POSCO and POSCO America advertise as the bases for customers "prefer[ring] products made by POSCO" are not the result of POSCO technology as advertised, but rather the result of technology misappropriated from NSSMC. Likewise, when POSCO advertises that its GOES is made using its own "latest laser technology," customers are falsely misled at NSSMC's expense because the technology referred to—and illicitly used by POSCO—is NSSMC's own proprietary and cutting-edge laser technology, not POSCO's as advertised. Attached as Exhibits E and F are two examples of POSCO GOES product brochures targeting purchasers of GOES (including manufacturers of power transformers) to illustrate these false and misleading statements.

18. Korea is the largest exporter of large power transformers using GOES and the largest source of such imports to the United States, with POSCO being the only manufacturer of GOES in Korea. *See, e.g., Large Power Transformers from Korea*, U.S. International Trade Commission Investigation No. 731-TA-1189, Publication 4346, at 14 (August 2012) (hereinafter "ITC Investigation"); U.S. Department of Energy, Infrastructure Security and Energy Restoration Office of Electricity Delivery and Energy Reliability, *Large Power Transformers and the U.S. Electric Grid*, at 13, 34–35 (June 2012) (hereinafter "Dept. of Energy Report"). In

fact, Hyundai Heavy Industries has recently opened a power transformer factory in Alabama, and, upon information and belief, POSCO in turn processes electrical steel at its facility in Alabama. According to U.S. Customs data available from the International Trade Commission, *see, e.g.*, <http://dataweb.usitc.gov/>, imports of POSCO GOES into the United States including through POSCO America have increased dramatically in recent years—up over 30% year-to-date in 2012 alone. Likewise, publicly-available U.S. Customs records show that in just the last few months, very substantial shipments of POSCO GOES for delivery to Hyundai in Alabama have been registered through POSCO America. *See, e.g.*, <http://www.importgenius.com/>.

19. Moreover, in just the last few months, the U.S. International Trade Commission has finally ruled that industry in the United States has been “materially injured” by imports of large power transformers from Korea sold in the United States “at less than fair value,” mainly by Hyundai and Hyosung Corporation, both major customers of POSCO. *See, e.g.*, ITC Investigation at 1, 23. The Department of Commerce is now set to issue an “antidumping duty order” on such Korean imports. *See, e.g.*, News Release 12-010, U.S. ITC (August 9, 2012), *available at* http://www.usitc.gov/press_room/news_release/2012/er0809kk1.htm. Up to 25% of the cost of such transformers is the underlying GOES, *see, e.g.*, Dept. of Energy Report at 11; ITC Investigation at 18, which, despite increased demand, POSCO is able to sell at lower costs, no doubt due to research savings at the expense of NSSMC.

20. In sum, POSCO and POSCO America are advertising in the United States and importing into the United States GOES products made using technology misappropriated from NSSMC. This unfair and improper conduct is intended to build POSCO’s reputation in the market at NSSMC’s irreparable expense, passing off NSSMC’s proprietary technology as if it were POSCO’s own, and requiring NSSMC to compete on an unfair playing field. GOES customers, such as makers or purchasers of power transformers, base their purchasing decision on factors including cost and product quality (such as, in POSCO’s own estimation, the “excellent performance and high energy efficiency” and “superior electric and magnetic property” of the GOES). Defendants’ infringement, false advertising, unfair competition, and

unfair trade practices have irreparably harmed NSSMC's position in the market, and threaten to increasingly do so in the future unless and until enjoined by the Court.

COUNT 1

INFRINGEMENT OF U.S. PATENT NO. 5,261,972

21. Nippon Steel & Sumitomo Metal Corporation repeats and realleges the allegations of Paragraphs 1 to 20 of its First Amended Complaint.

22. On November 16, 1993, United States Patent No. 5,261,972 was duly and legally issued by the United States Patent and Trademark Office for inventions entitled "Process for Producing Grain-Oriented Electrical Steel Strip Having High Magnetic Flux Density." The processes described and claimed in the patent were invented by NSSMC's (then Nippon Steel's) scientists, and Plaintiff is the owner by assignment of all rights, title, and interest in the '972 patent. A copy of the '972 patent is attached as Exhibit A.

23. POSCO and POSCO America have infringed and continue to infringe one or more claims of the '972 patent by engaging in acts constituting infringement under 35 U.S.C. § 271 including, for example, importing, without authority, into the United States grain-oriented electrical steel made by a process claimed in the '972 patent. The grain-oriented electrical steel manufactured by POSCO, and imported into the United States by POSCO and POSCO America, is neither materially changed by any subsequent process, nor is it a trivial and nonessential component of another product.

24. POSCO and POSCO America indirectly, through induced and/or contributory infringement, infringe the '972 patent by knowingly, or with willful blindness, causing others to infringe the '972 patent through such other's use, without authority, of grain-oriented electrical steel within the United States that is made by a process claimed in the '972 patent. POSCO and POSCO America gained knowledge of the '972 patent, or were willfully blind to its existence, through at least communications had with Nippon Steel and/or POSCO's efforts to obtain and copy NSSMC's (then Nippon Steel's) technology. Despite knowledge or willful blindness of the '972 patent, POSCO and POSCO America intentionally practiced and practice one or more

claims of the '972 patent, imported and continue to import GOES into the United States, and sold and continue to sell such GOES to customers with the intention that such GOES be used in the United States. Such GOES is not a staple article or commodity of commerce and has no non-infringing uses.

25. POSCO and POSCO America's infringement of the '972 patent has been and continues to be intentional, willful, and without regard to NSSMC's rights. POSCO and POSCO America's infringement of the '972 patent is and has been intentional, deliberate, and willful at least because POSCO had knowledge of the '972 patent through direct or indirect communications with Nippon Steel and/or as a result of POSCO's illicit efforts to obtain NSSMC's (then Nippon Steel's) technology. In fact, Nippon Steel expressly identified the Korean counterpart to the '972 patent to POSCO in the parties' prior correspondence.

26. NSSMC is informed and believes that POSCO and POSCO America have gained profits by virtue of their infringement of the '972 patent.

27. NSSMC has sustained damages as a direct and proximate result of POSCO and POSCO America's infringement of the '972 patent.

28. NSSMC will suffer and is suffering irreparable harm from POSCO and POSCO America's infringement of the '972 patent. NSSMC has no adequate remedy at law and is entitled to an injunction against POSCO and POSCO America's continuing infringement of the '972 patent. Unless enjoined, POSCO and POSCO America will continue their infringing conduct.

29. This case is exceptional and therefore NSSMC is entitled to its attorneys' fees and costs in prosecuting this case pursuant to 35 U.S.C. § 285.

COUNT 2

INFRINGEMENT OF U.S. PATENT NO. 6,613,160

30. Nippon Steel & Sumitomo Metal Corporation repeats and realleges the allegations of Paragraphs 1 to 29 of its First Amended Complaint

31. On September 2, 2003, United States Patent No. 6,613,160 was duly and legally issued by the United States Patent and Trademark Office for inventions entitled “Method to Produce Grain-Oriented Electrical Steel Sheet Having High Magnetic Flux Density.” The processes described and claimed in the patent were invented by NSSMC’s (then Nippon Steel’s) scientists, and Plaintiff is the owner by assignment of all rights, title, and interest in the ’160 patent. A copy of the ’160 patent is attached as Exhibit B.

32. POSCO and POSCO America have infringed and continue to infringe one or more claims of the ’160 patent by engaging in acts constituting infringement under 35 U.S.C. § 271 including, for example, importing, without authority, into the United States GOES made by a process claimed in the ’160 patent. The GOES manufactured by POSCO, and imported into the United States by POSCO and POSCO America, is neither materially changed by any subsequent process, nor is it a trivial and nonessential component of another product.

33. POSCO and POSCO America indirectly, through induced and/or contributory infringement, infringe the ’160 patent by knowingly, or with willful blindness, causing others to infringe the ’160 patent through such other’s use, without authority, of GOES within the United States that is made by a process claimed in the ’160 patent. POSCO and POSCO America gained knowledge of the ’160 patent, or were willfully blind to its existence, through at least communications had with Nippon Steel and/or POSCO’s efforts to obtain and copy NSSMC’s (then Nippon Steel’s) technology. Despite knowledge or willful blindness of the ’160 patent, POSCO and POSCO America intentionally practiced and practice one or more claims of the ’160 patent, imported and continue to import GOES into the United States, and sold and continue to sell such GOES to customers with the intention that such GOES be used in the United States. Such GOES is not a staple article or commodity of commerce and has no non-infringing uses.

34. POSCO and POSCO America’s infringement of the ’160 patent has been and continues to be intentional, willful, and without regard to NSSMC’s rights. POSCO and POSCO America’s infringement of the ’160 patent is and has been intentional, deliberate, and willful at least because POSCO had knowledge of the ’160 patent through direct or indirect

communications with Nippon Steel and/or as a result of POSCO's illicit efforts to obtain NSSMC's (then Nippon Steel's) technology.

35. NSSMC is informed and believes that POSCO and POSCO America have gained profits by virtue of their infringement of the '160 patent.

36. NSSMC has sustained damages as a direct and proximate result of POSCO and POSCO America's infringement of the '160 patent.

37. NSSMC will suffer and is suffering irreparable harm from POSCO and POSCO America's infringement of the '160 patent. NSSMC has no adequate remedy at law and is entitled to an injunction against POSCO and POSCO America's continuing infringement of the '160 patent. Unless enjoined, POSCO and POSCO America will continue their infringing conduct.

38. This case is exceptional and therefore NSSMC is entitled to its attorneys' fees and costs in prosecuting this case pursuant to 35 U.S.C. § 285.

COUNT 3

INFRINGEMENT OF U.S. PATENT NO. 7,442,260

39. Nippon Steel & Sumitomo Metal Corporation repeats and realleges the allegations of Paragraphs 1 to 38 of its First Amended Complaint.

40. On October 28, 2008, United States Patent No. 7,442,260 was duly and legally issued by the United States Patent and Trademark Office for inventions entitled "Grain-Oriented Electrical Steel Sheet Superior in Electrical Characteristics and Method of Production of Same." The processes described and claimed in the patent were invented by NSSMC's (then Nippon Steel's) scientists, and Plaintiff is the owner by assignment of all rights, title, and interest in the '260 patent. A copy of the '260 patent is attached as Exhibit C.

41. POSCO and POSCO America have infringed and continue to infringe one or more claims of the '260 patent by engaging in acts constituting infringement under 35 U.S.C. § 271 including, for example, importing, without authority, into the United States GOES made by a process claimed in the '260 patent. The GOES manufactured by POSCO, and imported into

the United States by POSCO and POSCO America, is neither materially changed by any subsequent process, nor is it a trivial and nonessential component of another product.

42. POSCO and POSCO America indirectly, through induced and/or contributory infringement, infringe the '260 patent by knowingly, or with willful blindness, causing others to infringe the '260 patent through such other's use, without authority, of GOES within the United States that is made by a process claimed in the '260 patent. POSCO and POSCO America gained knowledge of the '260 patent, or were willfully blind to its existence, through at least communications had with Nippon Steel and/or POSCO's efforts to obtain and copy NSSMC's (then Nippon Steel's) technology. Despite knowledge or willful blindness of the '260 patent, POSCO and POSCO America intentionally practiced and practice one or more claims of the '260 patent, imported and continue to import GOES into the United States, and sold and continue to sell such GOES to customers with the intention that such GOES be used in the United States. Such GOES is not a staple article or commodity of commerce and has no non-infringing uses.

43. POSCO and POSCO America's infringement of the '260 patent has been and continues to be intentional, willful, and without regard to NSSMC's rights. POSCO and POSCO America's infringement of the '260 patent is and has been intentional, deliberate, and willful at least because POSCO had knowledge of the '260 patent through direct or indirect communications with Nippon Steel and/or as a result of POSCO's illicit efforts to obtain NSSMC's (then Nippon Steel's) technology.

44. NSSMC is informed and believes that POSCO and POSCO America have gained profits by virtue of their infringement of the '260 patent.

45. NSSMC has sustained damages as a direct and proximate result of POSCO and POSCO America's infringement of the '260 patent.

46. NSSMC will suffer and is suffering irreparable harm from POSCO and POSCO America's infringement of the '260 patent. NSSMC has no adequate remedy at law and is entitled to an injunction against POSCO and POSCO America's continuing infringement of the

'260 patent. Unless enjoined, POSCO and POSCO America will continue their infringing conduct.

47. This case is exceptional and therefore NSSMC is entitled to its attorneys' fees and costs in prosecuting this case pursuant to 35 U.S.C. § 285.

COUNT 4

INFRINGEMENT OF U.S. PATENT NO. 7,976,644

48. Nippon Steel & Sumitomo Metal Corporation repeats and realleges the allegations of Paragraphs 1 to 47 of its First Amended Complaint.

49. On July 12, 2011, United States Patent No. 7,976,644 was duly and legally issued by the United States Patent and Trademark Office for inventions entitled "Method of Production of Grain-Oriented Electrical Steel Sheet with High Magnetic Flux Density." The processes described and claimed in the patent were invented by NSSMC's (then Nippon Steel's) scientists, and Plaintiff is the owner by assignment of all rights, title, and interest in the '644 patent. A copy of the '644 patent is attached as Exhibit D.

50. POSCO and POSCO America have infringed and continue to infringe one or more claims of the '644 patent by engaging in acts constituting infringement under 35 U.S.C. § 271 including, for example, importing, without authority, into the United States GOES made by a process claimed in the '644 patent. The GOES manufactured by POSCO, and imported into the United States by POSCO and POSCO America, is neither materially changed by any subsequent process, nor is it a trivial and nonessential component of another product.

51. POSCO and POSCO America indirectly, through induced and/or contributory infringement, infringe the '644 patent by knowingly, or with willful blindness, causing others to infringe the '644 patent through such other's use, without authority, of GOES within the United States that is made by a process claimed in the '644 patent. POSCO and POSCO America gained knowledge of the '644 patent, or were willfully blind to its existence, through at least communications had with Nippon Steel and/or POSCO's efforts to obtain and copy NSSMC's (then Nippon Steel's) technology. Despite knowledge or willful blindness of the '644 patent,

POSCO and POSCO America intentionally practiced and practice one or more claims of the '644 patent, imported and continue to import GOES into the United States, and sold and continue to sell such GOES to customers with the intention that such GOES be used in the United States. Such GOES is not a staple article or commodity of commerce and has no non-infringing uses.

52. POSCO and POSCO America's infringement of the '644 patent has been and continues to be intentional, willful, and without regard to NSSMC's rights. POSCO and POSCO America's infringement of the '644 patent is and has been intentional, deliberate, and willful at least because POSCO had knowledge of the '644 patent through direct or indirect communications with Nippon Steel and/or as a result of POSCO's illicit efforts to obtain NSSMC's (then Nippon Steel's) technology.

53. NSSMC is informed and believes that POSCO and POSCO America have gained profits by virtue of their infringement of the '644 patent.

54. NSSMC has sustained damages as a direct and proximate result of POSCO and POSCO America's infringement of the '644 patent.

55. NSSMC will suffer and is suffering irreparable harm from POSCO and POSCO America's infringement of the '644 patent. NSSMC has no adequate remedy at law and is entitled to an injunction against POSCO and POSCO America's continuing infringement of the '644 patent. Unless enjoined, POSCO and POSCO America will continue their infringing conduct.

56. This case is exceptional and therefore NSSMC is entitled to its attorneys' fees and costs in prosecuting this case pursuant to 35 U.S.C. § 285.

COUNT 5

FALSE ADVERTISING (VIOLATION OF LANHAM ACT)

57. Nippon Steel & Sumitomo Metal Corporation repeats and realleges the allegations of Paragraphs 1 to 56 of its First Amended Complaint.

58. In connection with the offer for sale in, sale in, importation into, or exportation to the United States of POSCO GOES products, which are offered in interstate commerce and

incorporated into products offered in interstate commerce, Defendants have made literally false, impliedly false, and/or misleading descriptions or representations of fact regarding the nature, characteristics, and/or qualities of these goods.

59. Defendants' false and/or misleading statements have deceived or have the tendency to deceive a substantial portion of the intended audience (e.g., industrial purchasers of GOES products) about matters that are material to purchasing decisions, or to cause confusion among the intended audience regarding the same.

60. Defendants' false and/or misleading statements were made in commercial advertising and promotion related to interstate commerce and constitute false advertising in violation of Section 43(a)(1)(B) of the Lanham Act, 15 U.S.C. § 1125(a)(1)(B).

61. Defendants' actions have been with knowledge of the false or misleading nature of the statements or in reckless disregard for their false and misleading nature and for the impact these false and misleading statements have had and will have on the public and on NSSMC. Defendants' actions make this an exceptional case under 15 U.S.C. § 1117(a).

62. Defendants' conduct has irreparably damaged NSSMC, and will, unless stopped, further impair the value of NSSMC's reputation, goodwill, sales, and position in the market. Unless Defendants' false advertising is enjoined, it will continue to cause irreparable injury to NSSMC and to the public. NSSMC has no adequate remedy at law.

COUNT 6

COMMON LAW UNFAIR COMPETITION

63. Nippon Steel & Sumitomo Metal Corporation repeats and realleges the allegations of Paragraphs 1 to 62 of its First Amended Complaint.

64. As described above, Defendants' actions separately and in concert constitute unfair competition. Defendants have advertised, represented, and passed off POSCO GOES as if it was the product of POSCO technology and innovation, when this is not the case and such products are illicitly made using NSSMC's own proprietary and commercially valuable technology, which was wrongfully obtained and/or used by POSCO. Defendants are importing

into the U.S. market GOES products made using technology misappropriated from NSSMC, and falsely advertising that these GOES products are “superior” to NSSMC’s as a result of POSCO’s own technological advances. Such false statements build POSCO’s reputation in the market for GOES at NSSMC’s irreparable expense, passing off NSSMC’s proprietary technology as if it were POSCO’s own, and requiring NSSMC to compete on an unfair playing field.

65. Defendants’ actions represent an attempt to misappropriate NSSMC’s proprietary and commercially valuable intellectual property to leverage and trade on the investment, ingenuity, goodwill, and reputation of NSSMC in the GOES market.

66. Defendants’ wrongful actions have been knowing and willful and/or done with reckless disregard for the truth, the consequences of the conduct, or its impact on NSSMC or customers. Defendants’ wrongful acts are thus voluntary, intentional acts calculated to deceive and/or not made in good faith according to accepted norms for fair competition, and done with intent to harm NSSMC’s interests or with knowledge that harm will inevitably result.

67. Defendants’ conduct has irreparably damaged NSSMC, and will, unless stopped, further impair the value of NSSMC’s reputation, goodwill, and position in the market. Unless Defendants’ acts of unfair competition are enjoined, they will continue to cause irreparable injury to NSSMC and the public. NSSMC has no adequate remedy at law.

COUNT 7

VIOLATION OF NEW JERSEY FAIR TRADE ACT (N.J.S.A. § 56:4-1)

68. Nippon Steel & Sumitomo Metal Corporation repeats and realleges the allegations of Paragraphs 1 to 67 of its First Amended Complaint.

69. As described above, Defendants’ actions separately and in concert constitute violations of the New Jersey Fair Trade Act, N.J.S.A. § 56:4-1. Defendants have advertised, represented, and passed off POSCO GOES as if it was the product of POSCO technology and innovation, when this is not the case and such products are made using NSSMC’s own proprietary and commercially valuable technology, which was wrongfully obtained and/or used by POSCO. Defendants are, in this state, advertising and selling GOES products made using

technology misappropriated from NSSMC, and falsely advertising that these GOES products are “superior” to NSSMC’s as a result of POSCO’s own technological advances. This builds POSCO’s reputation in the market for GOES at NSSMC’s irreparable expense, passing off NSSMC’s proprietary technology as if it were POSCO’s own, and misappropriating NSSMC’s reputation and goodwill with respect to the GOES technology in which the parties deal.

70. Defendants’ wrongful actions have been knowing and willful and/or done with reckless disregard for the truth, the consequences of the conduct, or its impact on NSSMC or customers. Defendants’ wrongful acts are thus voluntary, intentional acts calculated to deceive and/or not made in good faith according to accepted norms for fair trade practices, and done with intent to harm NSSMC’s interests or with knowledge that harm will inevitably result.

71. Defendants’ conduct has irreparably damaged NSSMC, and will, unless stopped, further impair the value of NSSMC’s reputation, goodwill, and position in the market. Unless Defendants’ violations of fair trade practices are enjoined, they will continue to irreparably injure NSSMC. NSSMC has no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Nippon Steel & Sumitomo Metal Corporation respectfully requests that the Court enter judgment in its favor and against Defendants as follows:

A. Declaring that Defendants have infringed and are infringing one or more claims of U.S. Patent Nos. 5,261,972, 6,613,160, 7,442,260, and/or 7,976,644;

B. Awarding to Plaintiff the damages arising out of Defendants’ infringement of the ’972, ’160, ’260, and/or ’644 patents, in an amount according to proof and as provided by law, together with prejudgment and post-judgment interest and costs as fixed by the Court;

C. Awarding to Plaintiff pursuant to 35 U.S.C. § 284 enhanced damages, up to and including trebling of Plaintiff’s damages, for Defendants’ willful infringement of Plaintiff’s patents;

D. A judgment that Defendants have engaged in unfair competition, violations of fair trade practices, and false advertising by either directly or in knowing concert with others offering

for sale in, selling in, importing into, or exporting to the United States and this state GOES products made using NSSMC's proprietary and commercially valuable technology and passed off and/or falsely advertised as the exclusive product of POSCO's own technology;

E. Directing an accounting to determine Defendants' profits resulting from their wrongful acts of false advertising, unfair competition, and violations of fair trade practices;

F. Declaring that this case is exceptional with the meaning of 35 U.S.C. § 285 and/or 15 U.S.C. § 1117(a)(3);

G. Declaring that Defendants acts of unfair competition, violations of fair trade practices, and false advertising was willful;

H. Awarding the maximum dollar amount in damages and/or a disgorgement of Defendants' profits as authorized under 15 U.S.C. § 1117 and/or New Jersey or other state law for their wrongful acts of false advertising, unfair competition, and violations of fair trade practices, trebled as provided by law, including as allowed under 15 U.S.C. § 1117(a)(3) and/or N.J.S.A. § 56:4-2;

I. Awarding to Plaintiff pursuant to 15 U.S.C. § 1117(a)(3) and/or 35 U.S.C. § 285 reasonable attorneys' fees due to the exceptional nature of this case, or awarding such fees as otherwise permitted by law;

J. Granting a permanent injunction restraining and enjoining Defendants and their officers, agents, attorneys, and employees, and those acting in privity or concert with them, from engaging in the importation into the United States, or the manufacture, offering to sell, sales, or use in the United States, of any products made by processes claimed in one or more claims of the '972, '160, '260, and/or '644 patents until the expiration of each of the relevant patents or until such later date as the Court may determine;

K. Granting a permanent injunction restraining and enjoining Defendants and their officers, agents, attorneys, and employees, and those acting in privity or concert with them, from any sale, offer for sale, or transfer of title, whether in the United States or abroad, of any GOES made using NSSMC's confidential, proprietary, commercially valuable technology to be sold,

offered for sale, exported, or imported into the United States, or for incorporation into products to be sold, offered for sale, exported, or imported into the United States;

L. Granting a permanent injunction restraining and enjoining Defendants and their officers, agents, attorneys, and employees, and those acting in privity or concert with them, from directly or indirectly using in commerce or causing to be published or otherwise disseminated any of the false or misleading claims described or discovered in this action;

M. Directing Defendants to issue appropriate corrective advertisements and press releases designed to retract the false and misleading claims and designed to reach all businesses to whom Defendants' false and misleading statements were disseminated, including but not limited to those customers who have purchased POSCO GOES or related products sold in, imported into, or exported to the United States;

N. Awarding such further and other relief as this Court may deem just and appropriate.

DEMAND FOR JURY TRIAL

Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiff Nippon Steel & Sumitomo Metal Corporation demands a trial by jury on any and all issues so triable.

CERTIFICATION PURSUANT TO L.CIV.R. 11.2

NSSMC, by its undersigned counsel, hereby certifies pursuant to L.CIV.R. 11.2 that the matters in controversy are not the subject of any other action pending in any court in the United States or of any pending arbitration or administrative proceeding in the United States.

Dated: October 26, 2012

Respectfully submitted,

/s/ Thomas R. Curtin

Thomas R. Curtin

George C. Jones

GRAHAM CURTIN

A Professional Association

4 Headquarters Plaza, P.O. Box 1991

Morristown, New Jersey 07962-1991

Telephone: 973-292-1700

Facsimile: 973-292-1767

Attorneys for Plaintiff

NIPPON STEEL & SUMITOMO METAL
CORPORATION

Of Counsel:

Mark Reiter

GIBSON, DUNN & CRUTCHER LLP

2100 McKinney Avenue

Suite 1100

Dallas, TX 75201-6912

Telephone: 214-698-3100

Jason Lo

Raymond LaMagna

GIBSON, DUNN & CRUTCHER LLP

333 South Grand Avenue

Los Angeles, CA 90071-3197

Telephone: 213-229-7000