

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

BODYMEDIA, INC.

Plaintiffs,

v.

BASIS SCIENCE, INC.

Defendant.

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CIVIL ACTION NO. 1:12-cv-00133-GMS

SECOND AMENDED COMPLAINT

Plaintiff BodyMedia, Inc. (“BodyMedia”), by and through its undersigned counsel, for its Complaint against Defendant Basis Science, Inc. (“Basis” or “Defendant”), hereby alleges as follows:

NATURE OF CLAIMS

1. BodyMedia brings this action for patent infringement against Basis for making, using, offering to sell, selling and/or importing multi-sensor body monitors incorporating the patented technology owned by BodyMedia.

2. By this Complaint, BodyMedia asserts at least 111 claims found in the following six patents against Basis to prevent its infringing conduct: U.S. Patent No. 6,605,038 (“the ’038 patent”), U.S. Patent No. 7,020,508 (“the ’508 patent”), U.S. Patent No. 7,261,690 (“the ’690 patent”), U.S. Patent No. 7,285,090 (“the ’090 patent”), U.S. Patent No. 7,689,437 (“the ’437 patent”), U.S. Patent No. 8,073,707 (“the ’707 patent”), and U.S. Patent No. 8,157,731 (“the ’731 patent”) (collectively, “the Patents-in-Suit”).

THE PARTIES

3. BodyMedia is a corporation organized under the laws of Delaware, having its principal place of business at 420 Fort Duquesne Boulevard, Suite 1900, One Gateway Center, Pittsburgh, Pennsylvania. BodyMedia is the pioneer in developing wearable body monitoring systems and sensor fusion technology.

4. Upon information and belief, Basis is a corporation organized under the laws of Delaware, having its principal place of business at 842 Folsom Street, San Francisco, California.

JURISDICTION AND VENUE

5. This Court has subject matter jurisdiction over this action under 28 U.S.C. §§ 1331 and 1338(a).

6. Venue is proper in this District under 28 U.S.C. §§ 1391 and 1400(b) because Defendant Basis is a Delaware corporation and resides in this District.

7. This Court has personal jurisdiction over Basis because Basis has established minimum contacts with the forum such that the exercise of personal jurisdiction over Basis will not offend the traditional notions of fair play and substantial justice. In addition, this Court has personal jurisdiction over Basis because Defendant has knowingly and actively engaged in acts that have infringed and will infringe and/or contribute, induce, aid and/or abet the direct infringement of claims of the Patents-in-Suit in the District of Delaware.

FACTUAL BACKGROUND

BodyMedia and the Patented Wearable Body Monitor Technology

8. BodyMedia has been a leader in the medical and consumer electronic technology development field since 1999 and has developed multi-sensor technologies that have been adapted for a variety of uses and markets.

9. BodyMedia's research and development efforts have resulted in the grant of 17 patents by the United States Patent and Trademark Office ("USPTO") covering various physiological monitoring and reporting technologies, which include the use of such technologies in medical and consumer applications.

10. Basis infringes at least seven BodyMedia patents and at least 111 claims within those patents. The infringed patents are set forth below.

11. The '038 patent entitled "System For Monitoring Health, Wellness And Fitness" was duly and legally issued by the USPTO on August 12, 2003. A copy of the '038 patent is attached as Exhibit A.

12. The '508 patent entitled "Apparatus For Detecting Human Physiological And Contextual Information" was duly and legally issued by the USPTO on March 28, 2006. A copy of the '508 patent is attached as Exhibit B.

13. The '690 patent entitled "Apparatus For Monitoring Health, Wellness And Fitness" was duly and legally issued by the USPTO on August 27, 2007. A copy of the '690 patent is attached as Exhibit C.

14. The '090 patent entitled "Apparatus For Detecting, Receiving, Deriving And Displaying Human Physiological And Contextual Information" was duly and legally issued by the USPTO on October 23, 2007. A copy of the '090 patent is attached as Exhibit D.

15. The '437 patent entitled "System For Monitoring Health, Wellness And Fitness" was duly and legally issued by the USPTO on March 30, 2010. A copy of the '437 patent is attached as Exhibit E.

16. The '707 patent entitled "System For Detecting, Monitoring, And Reporting an Individual's Physiological or Contextual Status" was duly and legally issued by the USPTO on December 6, 2011. A copy of the '707 patent is attached as Exhibit F.

17. The '731 patent entitled "Method and Apparatus for Auto Journaling of Continuous or Discrete Body States Utilizing Physiological and/or Contextual Parameters" was duly and legally issued by the USPTO on April 17, 2012. A copy of the '731 patent is attached as Exhibit N.

18. BodyMedia is the assignee of, and owns all right, title and interest in, the Patents-in-Suit.

19. The Patents-in-Suit are fundamental technology in the field of body monitoring and sensor fusion.

BodyMedia's FIT™ System and SenseWear® Products

20. BodyMedia, using the technology of the Patents-in-Suit, has developed the FIT™ system, the first wearable body monitors that can be worn on a person's arm and utilize multiple different types of sensors to detect health data parameters and derive parameters from that data that are not measured directly. Additionally, BodyMedia, using technology similar to that used

by the FIT™ system, has developed SenseWear® products that detect health data parameters and derive additional parameters from that data that are not measured directly.

21. BodyMedia's FIT™ and SenseWear® products monitor calorie expenditure, physical activity, steps taken, sleep efficiency and the duration and intensity of physical activity.

22. The BodyMedia FIT™ system gives users accurate information on their activity, calories and sleep patterns. The FIT™ system consists of a wearable monitor that includes multiple sensors that provide health data to display devices and/or online data management tools accessible by other devices.

23. The BodyMedia FIT™ system also utilizes Internet applications and downloadable applications for mobile devices and computers.

24. The BodyMedia FIT™ system also provides for integration with other systems, such as data services, social media services, application programming interface services, computers, and mobile devices.

25. The multiple sensors of the BodyMedia FIT™ system include a multi-axis accelerometer, a galvanic skin response sensor, a heat flux sensor, a near body ambient temperature sensor and a skin temperature sensor.

26. BodyMedia FIT™ system products are configured to automatically track information related to a user's daily activities, the amount of calories burned during a user's daily activities, total number of steps taken by the user, and indications of sleep quality.

27. Information tracked by a wearable monitor of the BodyMedia FIT™ system can be provided to BodyMedia's online data management system to derive additional data and to be displayed for a user.

28. The information that is tracked by a wearable monitor of the BodyMedia FIT™ system can also be analyzed by the wearable monitor and can also be provided to a mobile device having an application offered by BodyMedia for displaying such data and/or further analyzing such data.

29. Information tracked by a BodyMedia FIT™ system wearable monitor can be analyzed by that monitor and output to a display on the wearable monitor or an accessory device.

30. BodyMedia FIT™ system customers may view the tracked and/or analyzed information on the wearable monitor or on a separate device by utilizing software offered by BodyMedia that is installed on that device, or by visiting a website offered by BodyMedia.

31. SenseWear® products allow medical personnel to track a patient's conditions via a wearable monitor and to display graphical representations of a patient's lifestyle parameters that are monitored directly or derived from monitored conditions.

32. The BodyMedia FIT™ and SenseWear® products are also configured for integration with other systems, applications, services and devices.

33. The BodyMedia FIT™ system includes different wearable products such as the CORE™, the LINK™ and ADVANTAGE™ products that are available for sale by well known retail partners, health and fitness clubs, consumer weight loss companies, medical clinics, corporate wellness providers, and a number of on-line health & wellness partners.

34. SenseWear® products include the SenseWear® Armband and SenseWear® Software 7.0.

35. The CORE™, LINK™ and ADVANTAGE™ products, the BodyMedia FIT™ system, the BodyMedia SenseWear® products, and their use are covered by the Patents-in-Suit.

36. BodyMedia marketing materials describing the LINK™, CORE™ and ADVANTAGE™ products, the BodyMedia FIT™ system and the BodyMedia SenseWear® products are attached hereto as Exhibit G.

37. BodyMedia sells and offers to sell its products in the District of Delaware.

Defendant Basis and the Infringing Activity

38. Defendant Basis is a developer, manufacturer and purveyor of health related consumer electronic products that compete with BodyMedia in various geographic markets.

39. Basis owns and operates a website at the Uniform Resource Locator (“URL”): <http://mybasis.com/>.

40. The website www.mybasis.com has been utilized and publicly accessible at least as early as November 12, 2010, and is currently accessible via the Internet.

41. Basis uses, makes, offers to sell, sells and/or imports a line of Basis Band wearable, multi-sensor monitors that can be worn by a user.

42. One such product offered for pre-order by Basis is referred to as the “Basis B1 Band.”

43. The Basis B1 Band product, services offered in connection with the Basis B1 Band product, and the use of both the Basis B1 Band and the services offered by Basis infringe the Patents-in-Suit.

44. Basis has publicly demonstrated, published and provided interviews regarding the Basis B1 Band which, upon information and belief, accurately describes the structure and function of the product and its operation both alone and in conjunction with other devices.

45. For example, Basis published “Basis B1 Band Presents the Whole Picture - in Real Time, All the Time”, retrieved on November 23, 2011 from its website at URL

<http://blog.mybasis.com/wp-content/uploads/2011/10/BasisTechnology-Overview-v101811.pdf>, a copy of which is attached hereto as Exhibit H and is currently publicly available. On information and belief, Exhibit H accurately describes the Basis B1 Band product.

46. Similarly, Basis founder and Chief Alliance Officer Nadeem Kassam gave an interview regarding the structure and operation of the Basis B1 Band published on October 13, 2011. A copy of the transcript of the interview, attached hereto as Exhibit I, was available on the Internet at <http://www.startupproject.org/2011/10/mybasis/> on November 23, 2011 and upon information and belief is currently publicly available. On information and belief, Kassam's statements as reported in Exhibit I accurately describe the Basis B1 Band product.

47. According to Basis, the Basis B1 Band uses "five sensor technologies and advanced data aggregation and analysis." (Ex. H, p. 1).

48. The sensors of the Basis B1 Band continuously measure and collect biosignals and "translate these biosignals into insightful metrics." (Ex. H, p. 1).

49. The Basis B1 Band uses a variety of sensors, including an optical blood flow sensor, an accelerometer, an ambient temperature sensor, a body temperature sensor and a galvanic skin response sensor. (Ex. H, p. 3).

50. Additionally, the Basis B1 Band uses its sensors to collect data regarding a user's heart rate, body movement, body temperature, ambient temperature, and skin moisture to determine such factors as calories burned, physical activity levels and sleep patterns. (Ex. H, p. 3).

51. Basis further touts that its Basis B1 Band “links to a personal online dashboard where users can easily view performance, share data, earn rewards, and engage with the Basis community.” (Ex. I, p. 2).

52. Upon information and belief, the data the Basis B1 Band collects and transmits is analyzed or otherwise processed by Basis and is presented to users via an “online dashboard” so that the collected data is viewable in graphical formats via a website and/or electronic devices using software provided by and/or offered by Basis. (Ex. I, p. 2).

53. Basis presented the Basis B1 Band at the Consumer Electronics Show held in Las Vegas, Nevada from January 10, 2012 through January 13, 2012 (hereafter referred to as “the Consumer Electronics Show”). At that show, Basis personnel provided a demonstration of a Basis B1 Band product and services offered in connection with the product to BodyMedia representatives. The Basis representative identified multiple sensors on the device, including galvanic skin response, multi-axis accelerometer and optical pulse sensors. In addition, the representative described the Basis B1 Band as providing derived data via the fusion of data from the different sensors.

54. Jef Holove, the CEO of Basis, demonstrates the structure and function of the Basis B1 Band on a video that is available throughout the United States at the URL <http://venturebeat.com/2012/01/16/hands-on-demo-of-the-basis-band-for-tracking-your-daily-health-video/> (“the Holove video”). That demonstration, on information and belief, provides an accurate description of the Basis B1 Band product and services Basis provides in connection with that product.

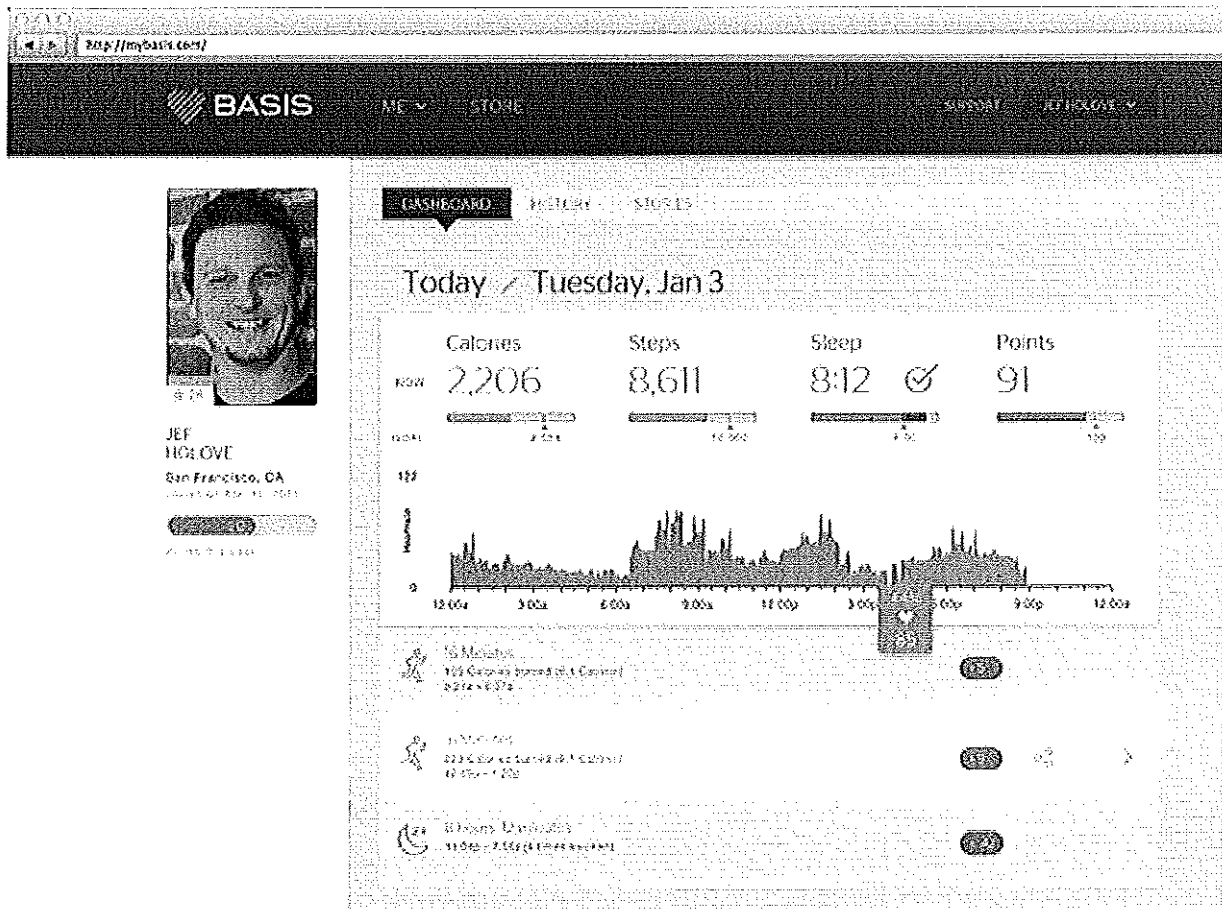
55. Upon information and belief, the Holove video demonstration was provided for the purposes of advertising and/or marketing the Basis B1 Band for Basis.

56. A copy of an article discussing the Holove video demonstration given by Jef Holove of the Basis B1 Band has been available via the Internet at the URL <http://venturebeat.com/2012/01/16/hands-on-demo-of-the-basis-band-for-tracking-your-daily-health-video> at least as early as January 16, 2012. A copy of the article is attached hereto as Exhibit J. The article may be reached by a link on the Basis website, www.mybasis.com.

57. Attached hereto as Exhibit K is an article from the Engadget website, www.engadget.com, that has been available at least as early as January 9, 2012 at the URL <http://www.engadget.com/2012/01/09/basis-unveils-web-dashboard-for-basis-band-health-tracker-makes/>. On information and belief, Exhibit K accurately describes the Basis B1 Band product.

58. In the Holove video, Mr. Holove described the Basis B1 Band product and services offered by Basis in connection with this product during the Consumer Electronics Show by saying “we use this device to track all that data automatically and then all that data gets uploaded automatically to a cloud service where it gets analyzed. We run some fancy algorithms uh based on that data and then we try to find interesting insights and events. We try to boil all that data down to metrics that regular folks can understand and appreciate and to do that we have our dashboard.”

59. An example of a display using the “dashboard” feature is shown in Exhibit K and is also provided below:



(Ex. K, pg. 2).

60. To describe the “dashboard” feature during the Consumer Electronics Show, Mr. Holove as captured in the Holove video said “at the top will show you your kind of key metrics. We boil it down to calories, how many calories am I burning today versus how many I should be. The same for steps and a view of sleep-how much sleep am I getting. Beneath that I can also see the pattern of my heart rate through the day. I can see how my heart rate changes based on these different activities. You can see here that I am earning points for doing the right things for my health and all those points add up to my goal for the day.”

61. During the Consumer Electronics Show, Mr. Holove also said that “the [Basis] system can automatically classify all this data into meaningful events.”

62. Basis has also confirmed on its website materials printed on January 27, 2012 and attached hereto as Exhibit L that the Basis B1 Band product is connectable to the internet via a USB connection and that a Bluetooth connection is “coming soon.” (Ex. L, p. 5). On information and belief, Exhibit L accurately describes the Basis B1 Band product.

63. Preorders of the Basis B1 Band may be requested by a customer by visiting the Basis website at “www.mybasis.com.” Exhibit M is a snapshot of a pre-order screen that was retrieved from Defendant’s website at URL <http://mybasis.com/preorder/create> on January 27, 2012. Upon information and belief the snapshot of Exhibit M is currently publicly available.

64. Upon information and belief, Basis intends to sell the Basis B1 Band for \$199 and is accepting pre-order requests for the Basis B1 Band. (Ex. M, p. 1).

65. Upon information and belief, Basis, either directly or through intermediaries (including distributors, retailers and others), uses, ships, distributes, offers for sale, sells or advertises the Basis B1 Band and services, and other products related to the Basis B1 Band, within the United States and in the District of Delaware.

66. Basis has purposely and voluntarily placed and used infringing products and/or services using the claimed inventions of the Patents-in-Suit into the stream of commerce with the expectation that they will be purchased by consumers in the District of Delaware as well as other parts of the United States.

67. Basis’ products and/or services have been made, used, and/or offered for sale in the District of Delaware and other parts of the United States.

68. Basis committed and continues to commit acts of patent infringement within the United States and in the District of Delaware by making, using, offering to sell, selling and/or importing the Basis B1 Band line of products and services related thereto.

69. BodyMedia has been and will continue to be irreparably harmed by the statements made by and activities of Basis.

COUNT I: INFRINGEMENT OF THE '038 PATENT

70. BodyMedia restates and realleges the foregoing allegations as if fully stated herein.

71. Basis has infringed and continues to infringe at least claims 1, 19-22, 24-28, 30-34, 39, 41-43, and 46 of the '038 patent in violation of 35 U.S.C. § 271(a).

72. Basis has indirectly infringed and continues to indirectly infringe at least claims 1, 19-22, 24-28, 30-34, 39, 41-43, and 46 of the '038 patent in violation of 35 U.S.C. § 271(b) and (c), by actively inducing such infringement with knowledge of the '038 patent and by contributing to the infringement of such patent.

73. The Basis products are not a staple article of commerce suitable for substantial noninfringing use.

74. BodyMedia has, at all relevant times, complied with the notice provisions of 35 U.S.C. § 287(a) with respect to the '038 patent.

75. BodyMedia has been, and continues to be, damaged and irreparably harmed by Defendant's infringement, which will continue unless the Court enjoins that infringement.

76. BodyMedia, under 35 U.S.C. § 284, is entitled to recover damages adequate to compensate for Defendant's infringement.

77. The infringement of the '038 patent by Defendant has been, and continues to be, deliberate, willful, and knowing.

78. The Court should declare this an exceptional case under 35 § U.S.C. 285, entitling BodyMedia to recover treble damages and attorney's fees.

COUNT II: INFRINGEMENT OF THE '508 PATENT

79. BodyMedia restates and realleges the foregoing allegations as if fully stated herein.

80. Basis has infringed and continues to infringe at least claims 102-107, 148-151, 183, and 216 of the '508 patent in violation of 35 U.S.C. § 271(a).

81. Basis has indirectly infringed and continues to indirectly infringe at least claims 102-107, 148-151, 183, and 216 of the '508 patent in violation of 35 U.S.C. § 271(b) and (c), by actively inducing such infringement with knowledge of the '508 patent and by contributing to the infringement of such patent.

82. The Basis products are not a staple article of commerce suitable for substantial noninfringing use.

83. BodyMedia has at all relevant times, complied with the notice provisions of 35 U.S.C. § 287(a) with respect to the '508 patent.

84. BodyMedia has been, and continues to be, damaged and irreparably harmed by the infringement of Defendant, which will continue unless the Court enjoins Defendant.

85. BodyMedia, under 35 U.S.C. § 284, is entitled to recover damages adequate to compensate for Defendant's infringement.

86. The infringement of the '508 patent by Defendant has been, and continues to be, deliberate, willful, and knowing.

87.

The Court should declare this an exceptional case under 35 § U.S.C. 285, entitling BodyMedia to recover treble damages and attorney's fees.

COUNT III: INFRINGEMENT OF THE '690 PATENT

88. BodyMedia restates and realleges the foregoing allegations as if fully stated herein.

89. Basis has infringed and continues to infringe at least claims 32, 37, 38, 41, 42, 44-45 and 55 of the '690 patent in violation of 35 U.S.C. § 271(a).

90. Basis has indirectly infringed and continues to indirectly infringe at least claims 32, 37, 38, 41, 42, 44-45 and 55 of the '690 patent in violation of 35 U.S.C. § 271(b) and (c), by actively inducing such infringement with knowledge of the '690 patent and by contributing to the infringement of such patent.

91. The Basis products are not a staple article of commerce suitable for substantial noninfringing use.

92. BodyMedia has, at all relevant times, complied with the notice provisions of 35 U.S.C. § 287(a) with respect to the '690 patent.

93. BodyMedia has been, and continues to be, damaged and irreparably harmed by the infringement of Defendant, which will continue unless the Court enjoins Defendant.

94. BodyMedia, under 35 U.S.C. § 284, is entitled to recover damages adequate to compensate for Defendant's infringement.

95. The infringement of the '690 patent by Defendant has been, and continues to be, deliberate, willful, and knowing.

96. The Court should declare this an exceptional case under 35 § U.S.C. 285, entitling BodyMedia to recover treble damages and attorney's fees.

COUNT IV: INFRINGEMENT OF THE '090 PATENT

97. BodyMedia restates and realleges the foregoing allegations as if fully stated herein.

98. Basis has infringed and continues to infringe at least claims 1-5, 11-13, and 15-19 of the '090 patent in violation of 35 U.S.C. § 271(a).

99. Basis has indirectly infringed and continues to indirectly infringe at least claims 1-5, 11-13, and 15-19 of the '090 patent in violation of 35 U.S.C. § 271(b) and (c), by actively inducing such infringement with knowledge of the '090 patent and by contributing to the infringement of such patent.

100. The Basis products are not a staple article of commerce suitable for substantial noninfringing use.

101. BodyMedia has at all relevant times, complied with the notice provisions of 35 U.S.C. § 287(a) with respect to the '090 patent.

102. BodyMedia has been, and continues to be, damaged and irreparably harmed by the infringement of Defendant, which will continue unless the Court enjoins Defendant.

103. BodyMedia, under 35 U.S.C. § 284, is entitled to recover damages adequate to compensate for Defendant's infringement.

104. The infringement of the '090 patent by Defendant has been, and continues to be, deliberate, willful, and knowing.

105. The Court should declare this an exceptional case under 35 § U.S.C. 285, entitling BodyMedia to recover treble damages and attorney's fees.

COUNT V: INFRINGEMENT OF THE '437 PATENT

106. BodyMedia restates and realleges the foregoing allegations as if fully stated herein.

107. Basis has infringed and continues to infringe at least claims 1-12, 14-17, 19-20, 23, 25, 27, 29, 30, 32-39, 41-48, 50-51, 53 and 54 of the '437 patent in violation of 35 U.S.C. § 271(a).

108. Basis has indirectly infringed and continues to indirectly infringe at least claims 1-12, 14-17, 19-20, 23, 25, 27, 29, 30, 32-39, 41-48, 50-51, 53 and 54 of the '437 patent in violation of 35 U.S.C. § 271(b) and (c), by actively inducing such infringement with knowledge of the '437 patent and by contributing to the infringement of such patent.

109. The Basis products are not a staple article of commerce suitable for substantial noninfringing use.

110. BodyMedia has been, and continues to be, damaged and irreparably harmed by the infringement of Defendant, which will continue unless the Court enjoins Defendant.

111. BodyMedia, under 35 U.S.C. § 284, is entitled to recover damages adequate to compensate for Defendant's infringement.

112. The infringement of the '437 patent by Defendant has been, and continues to be, deliberate, willful, and knowing.

113. The Court should declare this an exceptional case under 35 § U.S.C. 285, entitling BodyMedia to recover treble damages and attorney's fees.

COUNT VI: INFRINGEMENT OF THE '707 PATENT

114. BodyMedia restates and realleges the foregoing allegations as if fully stated herein.

115. Basis has infringed and continues to infringe at least claims 1, 2, 7, 8, 12-14, 16-17, 20, and 22 of the '707 patent in violation of 35 U.S.C. § 271(a).

116. Basis has indirectly infringed and continues to indirectly infringe at least claims 1, 2, 7, 8, 12-14, 16-17, 20, and 22 of the '707 patent in violation of 35 U.S.C. § 271(b) and (c), by actively inducing such infringement with knowledge of the '707 patent and by contributing to the infringement of such patent.

117. The Basis products are not a staple article of commerce suitable for substantial noninfringing use.

118. BodyMedia, under 35 U.S.C. § 284, may recover damages adequate to compensate for the infringement of Defendant.

119. BodyMedia has at all relevant times, complied with the notice provisions of 35 U.S.C. § 287 with respect to the '707 patent.

120. BodyMedia has been, and continues to be, damaged and irreparably harmed by the infringement of Defendant, which will continue unless the Court enjoins Defendant.

121. BodyMedia, under 35 U.S.C. § 284, is entitled to recover damages adequate to compensate for Defendant's infringement.

122. The infringement of the '707 patent by Defendant has been, and continues to be, deliberate, willful, and knowing.

123. The Court should declare this an exceptional case under 35 § U.S.C. 285, entitling BodyMedia to recover treble damages and attorney's fees.

COUNT VII: INFRINGEMENT OF THE '731 PATENT

124. BodyMedia restates and realleges the foregoing allegations as if fully stated herein.

125. Basis has infringed and continues to infringe at least claims 9, 10, 17, and 22 of the '731 patent in violation of 35 U.S.C. § 271(a).

126. Basis has indirectly infringed and continues to indirectly infringe at least claims 9, 10, 17, and 22 of the '731 patent in violation of 35 U.S.C. § 271(b) and (c), by actively inducing such infringement with knowledge of the '731 patent and by contributing to the infringement of such patent.

127. The Basis products are not a staple article of commerce suitable for substantial noninfringing use.

128. BodyMedia, under 35 U.S.C. § 284, may recover damages adequate to compensate for the infringement of Defendant.

129. BodyMedia has at all relevant times, complied with the notice provisions of 35 U.S.C. § 287 with respect to the '731 patent.

130. BodyMedia has been, and continues to be, damaged and irreparably harmed by the infringement of Defendant, which will continue unless the Court enjoins Defendant.

131. BodyMedia, under 35 U.S.C. § 284, is entitled to recover damages adequate to compensate for Defendant's infringement.

132. The infringement of the '731 patent by Defendant has been, and continues to be, deliberate, willful, and knowing.

133. The Court should declare this an exceptional case under 35 § U.S.C. 285, entitling BodyMedia to recover treble damages and attorney's fees.

DEMAND FOR JURY TRIAL

134. BodyMedia demands a trial by jury under Federal Rule of Civil Procedure 39 for all issues triable by jury.

PRAYER FOR RELIEF

BodyMedia prays for judgment in its favor and against Basis as follows:

- (a) That Defendant has infringed, contributed to and/or induced the infringement of one or more claims of each of the Patents-in-Suit;
- (b) That Defendant's infringement has been willful;
- (c) That this case be declared an exceptional case under 35 U.S.C. § 285;
- (d) That BodyMedia be awarded damages adequate to compensate BodyMedia for Defendant's infringement of each of the Infringed Patents, including lost profits, but in no event less than a reasonable royalty;
- (e) That BodyMedia's damages be trebled pursuant to 35 U.S.C. § 284;
- (f) That BodyMedia be awarded its attorney's fees and costs pursuant to 35 U.S.C. § 285;
- (g) That this Court permanently enjoin Defendant, its officers, directors, principals, agents, servants, employees, successors, assigns, affiliates, and all that are in active concert

or participation with Defendant, or any of them, from further infringement of the Patents-in-Suit and that Defendant be permanently enjoined from infringing each of the Patents-in-Suit and from making, using, selling, offering to sell, or distributing the Basis B1 Band product.

- (h) That BodyMedia be awarded pre- and post-judgment interest on all damages;
- (i) That BodyMedia be awarded all its costs and expenses in this action; and
- (j) Such further and other relief as the Court may deem just and proper.

Respectfully submitted,

By: /s/ Geoffrey G. Grivner

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Dated: February 12, 2013