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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

FitnessAge Services, Inc., a Nevada corporation, CASE NO.

Plaintiff,

vs.

Polar Electro, Inc., a New York corporation,

Defendant.

ORIGINAL COMPLAINT FOR:

PATENT INFRINGEMENT

DEMAND FOR JURY TRIAL

Plaintiff FitnessAge Services, Inc. ("Plaintiff" or "FitnessAge"), files this complaint against Polar Electro, Inc. ("Defendant" or "Polar"), as follows:

NATURE OF ACTION

This is an action for patent infringement. Plaintiff seeks damages, attorney's fees and costs.

JURISDICTION & VENUE

1. This action arises under the patent laws of the United States of America, 35 U.S.C. § 1 *et seq.*, and jurisdiction is properly based on 35 U.S.C. § 271 and 28 U.S.C. § 1338(a).

2. This court has personal jurisdiction over Polar because Polar has continuous, systematic, and substantial presence within this Judicial District by (a) operating web sites on

COMPLAINT

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1 the Internet that are accessible to residents of the State of Nevada, (b) offering for sale and
 2 selling infringing products on said web sites, (c) listing retail locations in Nevada on said web
 3 sites at which Polar's products may be purchased, (d) transacting business in Nevada through
 4 sales of Polar's infringing products in Nevada through said web sites and at retail locations in
 5 Nevada, (e) attending trade shows within this Judicial District at which Polar has displayed and
 6 offered infringing products for sale, and (f) committing acts of patent infringement that it knew
 7 or should have known would cause injury to Plaintiff in the State of Nevada, and which acts
 8 form a substantial part of the events or omissions giving rise to Plaintiff's claim.

9 3. Venue is proper in this district under 28 U.S.C. §§ 1391(a), (b) and (c) and
 10 1400(b).

11 THE PARTIES

12 4. Plaintiff, FitnessAge Services, Inc. is a Nevada corporation with a principal
 13 place of business located at 27 W. Anspamu St., Suite 332, Santa Barbara, CA 93101.

14 5. Defendant, Polar Electro, Inc., on information and belief, is a corporation
 15 organized under the laws of the State of New York and has a principal place of business at
 16 1111 Marcus Ave., Lake Success, NY 11042.

17 ALLEGATIONS

18 6. On January 4, 2000, United States Patent No. 6,010,452 ("the '452 patent")
 19 entitled "Article, System and Method for Determining a Fitness Age for an Individual" was
 20 duly and legally issued. The '452 patent, in general, relates to an article, system, and method
 21 for calculating an individual's overall fitness age. A copy of the '452 patent is attached as
 22 Exhibit A.

23 7. Plaintiff is the owner and assignee of the '452 patent.

24 8. Pursuant to 35 U.S.C. § 282, the '452 patent is presumed valid.

25 9. Polar, on information and belief, manufactures, uses, and sells systems that
 26 infringe at least claim 4 of the '452 patent, including but not limited to, Polar's BodyAge
 27
 28

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product.¹ By manufacturing, using and/or selling such products, Polar has infringed and continues to infringe, contribute to the infringement of, or induce the infringement of at least claims 4 of the '452 patent, either literally or under the doctrine of equivalents.

10. Accordingly, the Defendant's acts of infringement of the '452 patent, as alleged above, have injured Plaintiff and thus, Plaintiff is entitled to recover damages adequate to compensate it for Defendant's acts of infringement, which in no event can be less than a reasonable royalty.

FIRST CLAIM FOR RELIEF

Patent Infringement – 35 U.S.C. 271

11. Plaintiff incorporates the allegations in the preceding paragraphs as if fully set forth herein.

12. Defendants have and continue to directly infringe the '452 Patent, contribute to the infringement of the '452 Patent, and/or induce the infringement of the '452 Patent by directly or indirectly manufacturing, using, selling and/or offering to sell systems and products that infringe one or more claims of the '452 Patent.

13. Defendants have derived and received gains, profits and advantages from their infringement of Plaintiff's '452 Patent, and will continue to derive and receive gains, profits and advantages from their infringement of Plaintiff's '452 Patent, in amounts and to an extent which is not presently known to Plaintiff.

14. Defendants' infringing acts have been, and continue to be, without Plaintiff's permission, license, or consent.

15. Defendants' infringing acts have been, and continue to be, intentional, willful and deliberate, with the full knowledge of Plaintiff's patent rights, thus entitling Plaintiff to the recovery of treble damages, and making this an exceptional case within the meaning of 35 U.S.C. § 285.

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¹ Advertised at http://www.polarusa.com/us-en/b2b_products/club_solutions/polar_BodyAge

PRAYER FOR RELIEF

- A. A declaration that Defendants directly infringed, induced others to infringe or contributed to the infringement of the ‘452 Patent;
- B. A declaration that Defendants have willfully and deliberately infringed the ‘452 Patent;
- C. A finding that pursuant to 35 U.S.C. § 284, Defendants account for actual and treble damages to Plaintiff by virtue of the Defendants’ infringement of the ‘452 Patent;
- D. that Defendant accounts for and pays to Plaintiff all damages caused by the infringement of the ‘452 patent, which by statute can be no less than a reasonable royalty;
- E. A finding that this case is exceptional pursuant to 35 U.S.C. § 285, and an award of Plaintiff’s attorneys fees, costs and expenses;
- F. A preliminary and permanent injunction against Defendants’ officers, partners, employees, agents, parents, subsidiaries, attorneys, and anyone acting or participating with Defendants, precluding the manufacture, use, sale, or offer for sale any product that infringes the ‘452 Patent.
- G. An order requiring Defendants to deliver up for impoundment during the pendency of this action and, thereafter, to destroy any and all infringing goods; and

1 H. An award to Plaintiff of any other relief to which Plaintiff is entitled, or which
2 the Court deems just and reasonable.

3 **JURY TRIAL DEMANDED**

4 Plaintiff demands a trial by jury on all issues raised by this Complaint which are
5 properly triable by jury.

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7 Dated: September 7, 2011

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