

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TENNESSEE  
AT KNOXVILLE**

<b>NEUROWAVE MEDICAL</b>	)	
<b>TECHNOLOGIES LLC, an Illinois Limited</b>	)	
<b>Liability Company,</b>	)	
 	)	
<b>Plaintiff,</b>	)	<b>Case No.</b> _____
 	)	
<b>v.</b>	)	<b>Judge</b>
 	)	
<b>THOMAS MANN, an individual,</b>	)	<b>JURY DEMAND</b>
 	)	
<b>Defendant.</b>	)	

**COMPLAINT**

Neurowave Medical Technologies LLC (“Neurowave”) files this Complaint against Thomas Mann (“Defendant”) for infringement of United States Patent Nos. 6,076,018 (hereinafter “the ‘018 patent”), 6,567,695 (hereinafter “the ‘695 patent”), and 7,127,288 (hereinafter “the ‘288 patent”). The ‘018, ‘695 and ‘288 patents are each individually referred to as an “Asserted Patent” and collectively as the “Asserted Patents.”

**THE PARTIES**

**Neurowave Medical Technologies LLC**

1. Neurowave is a limited liability company organized and existing under the laws of the State of Illinois with its principal place of business at 200 East Randolph Street, Suite 2200, Chicago, Illinois 60601.
  
2. Neurowave, formerly known as Relief Band Medical Technology LLC (see name-change document at Exhibit A), is a privately held neuroscience company that develops, manufactures, and commercializes patented transdermal neuromodulation devices for the treatment of a wide range of acute and chronic clinical conditions.

3. Prior to 2010, Neurowave marketed and sold its patented transdermal neuromodulation devices on both a prescription basis (“RX Devices”) and an over-the-counter basis (“OTC Devices”). In an effort to obtain a Current Procedural Terminology (CPT) code from the CPT Editorial Panel of the American Medical Association for its RX Devices to enable patients to obtain reimbursement for the devices from insurance, Neurowave temporarily ceased marketing its OTC Devices in the US market in September 2010.

4. Since December 2012, when it became apparent that a new CPT code would not be granted for the RX Devices, Neurowave has been planning for re-entry of its OTC Devices into the market.

5. Neurowave’s efforts to reintroduce its patented OTC Devices into the market have been materially hindered by Comfort Quest’s selling of the Accused Products to Neurowave’s former customer of the OTC Devices.

**Defendant Thomas Mann**

6. Upon information and belief, Defendant Thomas Mann is an individual residing at 1909 Hidden Meadow Drive, Knoxville, Tennessee, 37922.

7. Upon information and belief, Defendant Mann is currently an officer and/or director of Comfort Quest, Inc. a Delaware corporation with a principal place of business at 41 Post St., San Jose, CA 95113. In his role at Comfort Quest, Mr. Mann knowingly and actively assisted in Comfort Quest’s infringement of the Asserted Patents.

8. ComfortQuest, Inc. has and continues to import, sell, and/or offer to sell the Comfort Quest Morning Sickness Relief device (Model: CQ-P3, as shown in Exhibit

B) and the Comfort Quest Anti Motion Sickness Band (Model: CQ-M3, as shown in Exhibit C) at least for resale by various retailers in this Judicial District and through website that can be accessed by residents of this Judicial District for purchase.

9. Defendant Mann worked for Plaintiff Neurowave's predecessor company, Woodside Biomedical Inc, from January 1997 through 2003, then for Neurowave from December 2006 through January 2010. At Woodside Biomedical Inc., Mr. Mann was Executive Vice President of Operations, and he was later retained as a consultant for Neurowave regarding its OTC Devices and RX Devices. In both roles, Mr. Mann had access to Neurowave's confidential and proprietary product and business information, and was integrally involved in the sales and marketing strategies of Neurowave. Mr. Mann also had intimate knowledge of Neurowave's patent portfolio relating to its transdermal neuromodulation devices, including the Asserted Patents, and knew or should have known his actions would induce Comfort Quest to infringe.

10. This cause of action arises under the patent laws of the United States, and in particular, 35 U.S.C. §§ 271, *et seq.*

### **JURISDICTION AND VENUE**

11. Jurisdiction is proper in this Court pursuant to 28 U.S.C. §§ 1331 (Federal Question) and 1338(a) (Patents) because this is a civil action for patent infringement arising under the United States' patent statutes, 35 U.S.C. § 101 *et seq.*

12. Venue is proper under 28 U.S.C. §§ 1391(c) and 1400(b) because Defendant has committed acts of infringement in this district and is deemed to reside in this district.

13. This Court has personal jurisdiction over Defendant and venue is proper in this district because Defendant has committed, and continues to commit, acts of infringement

in the State of Tennessee, including in this district and/or has engaged in continuous and systematic activities in the State of Tennessee, including in this district.

**COUNT I**

**(INFRINGEMENT OF U.S. PATENT NO. 6,076,018)**

14. Neurowave incorporates paragraphs 1 through 13 herein by reference.

15. On June 13, 2000, the United States Patent and Trademark Office duly issued U.S. Patent No. 6,076,018, entitled “Method and Apparatus for Low Power Regulated Output in Battery Powered Electrotherapy Devices.” A true and correct copy of the ‘018 patent is attached as Exhibit D.

16. Neurowave is the owner of all right, title and interest in and to the ‘018 patent, including the right to recover any and all remedies for current and past infringement.

17. Defendant has directly and/or indirectly infringed and continues to directly and/or indirectly infringe one or more claims of the ‘018 patent in this judicial district and elsewhere in Tennessee and the United States, without the consent or authorization of Neurowave, by or through his making, having made, offering for sale, selling, and/or use of the patented apparatuses and methods for regulating the output in a battery powered electrotherapy device, and controlling the discharge of a battery to a load.

18. On information and belief, Defendant has actual knowledge that his acts would constitute infringement of the ‘018 patent and still pursued the actions described herein in wanton disregard of Neurowave’s exclusive rights.

19. Neurowave has been substantially and irreparably harmed by Defendant’s infringing conduct and will continue to be irreparably damaged as a result

of his infringing activities. Defendant's actions complained of herein will continue unless Defendant is enjoined by this Court.

20. Defendant is, thus, liable to Neurowave in an amount that adequately compensates it for his infringement of the '018 patent, which, by law, cannot be less than a reasonable royalty, together with interest and costs as fixed by this Court under 35 U.S.C. § 284.

21. As a result of Defendant's willful infringement of the '018 patent, Neurowave is further entitled to an award of its attorneys' fees and up to treble damages from Defendant under 35 U.S.C. § 285.

22. Neurowave is further entitled to an injunction prohibiting Defendant from continuing his infringing acts.

## **COUNT II**

### **(INFRINGEMENT OF U.S. PATENT NO. 6,567,695)**

23. Neurowave incorporates paragraphs 1 through 22 herein by reference.

24. On May 20, 2003, the United States Patent and Trademark Office duly issued U.S. Patent No. 6,567,695, entitled "Electro-Acupuncture Device with Stimulation Electrode Assembly." A true and correct copy of the '695 patent is attached as Exhibit E.

25. Neurowave is the owner of all right, title and interest in and to the '695 patent, including the right to recover any and all remedies for current and past infringement.

26. Defendant has directly and/or indirectly infringed and continues to directly and/or indirectly infringe one or more claims of the '695 patent in this judicial district and elsewhere in Tennessee and the United States, without the consent or authorization of Neurowave, by or through his making, having made, offering for sale,

selling, and/or use of the patented apparatuses and methods for regulating the output in a battery powered electrotherapy device, and controlling the discharge of a battery to a load.

27. On information and belief, Defendant has actual knowledge that his acts would constitute infringement of the '695 patent and still pursued the actions described herein in wanton disregard of Neurowave's exclusive rights.

28. Neurowave has been substantially and irreparably harmed by Defendant's infringing conduct and will continue to be irreparably damaged as a result of his infringing activities. Defendant's actions complained of herein will continue unless Defendant is enjoined by this Court.

29. Defendant is, thus, liable to Neurowave in an amount that adequately compensates it for his infringement of the '695 patent, which, by law, cannot be less than a reasonable royalty, together with interest and costs as fixed by this Court under 35 U.S.C. § 284.

30. As a result of Defendant's willful infringement of the '695 patent, Neurowave is further entitled to an award of its attorneys' fees and up to treble damages from Defendant under 35 U.S.C. § 285.

31. Neurowave is further entitled to an injunction prohibiting Defendant from continuing his infringing acts.

### COUNT III

#### (INFRINGEMENT OF U.S. PATENT NO. 7,127,288)

32. Neurowave incorporates paragraphs 1 through 31 herein by reference.

33. This cause of action arises under the patent laws of the United States, and in

particular, 35 U.S.C. §§ 271, *et seq.*

34. On October 24, 2006, the United States Patent and Trademark Office duly issued U.S. Patent No. 7,127,288, entitled “Method and Apparatus for Low Power, Regulated Output in Battery Powered Electrotherapy Devices.” A true and correct copy of the ‘288 patent is attached as Exhibit F.

35. Neurowave is the owner of all right, title and interest in and to the ‘288 patent, including the right to recover any and all remedies for current and past infringement.

36. Defendant has directly and/or indirectly infringed and continues to directly and/or indirectly infringe one or more claims of the ‘288 patent in this judicial district and elsewhere in Tennessee and the United States, without the consent or authorization of Neurowave, by or through his making, having made, offering for sale, selling, and/or use of the patented apparatuses and methods for regulating the output in a battery powered electrotherapy device, and controlling the discharge of a battery to a load.

37. On information and belief, Defendant has actual knowledge that his acts would constitute infringement of the ‘288 patent and still pursued the actions described herein in wanton disregard of Neurowave’s exclusive rights.

38. Neurowave has been substantially and irreparably harmed by Defendant’s infringing conduct and will continue to be irreparably damaged as a result of his infringing activities. Defendant’s actions complained of herein will continue unless Defendant is enjoined by this Court.

39. Defendant is, thus, liable to Neurowave in an amount that adequately compensates it for his infringement of the ‘288 patent, which, by law, cannot be less than

a reasonable royalty, together with interest and costs as fixed by this Court under 35 U.S.C. § 284.

40. As a result of Defendant's willful infringement of the '288 patent, Neurowave is further entitled to an award of its attorneys' fees and up to treble damages from Defendant under 35 U.S.C. § 285.

41. Neurowave is further entitled to an injunction prohibiting Defendant from continuing his infringing acts.

### **PRAYER FOR RELIEF**

Neurowave requests that this Court find in its favor and against Defendant, and that this Court grant Neurowave the following relief:

- a. Enter judgment for Neurowave on this Complaint;
- b. Enter judgment that one or more claims of the '018, '695, and '288 Patents have been infringed, either directly or indirectly by Defendant;
- c. Enter judgment that the Defendant account for and pay to Neurowave all damages to and costs incurred by Neurowave because of Defendant's infringing activities and other conduct complained of herein;
- d. Award Neurowave damages resulting from Defendant's infringement in accordance with 35 U.S.C. § 284;
- e. Enter a permanent injunction enjoining Defendant and others acting in active concert or participation with him, from infringing or inducing infringement of each Asserted Patent, or, in the alternative, judgment that Defendant account for and pay to Neurowave a reasonable royalty and an ongoing post judgment royalty because of Defendant's past, present and future infringing activities and other conduct complained of herein;
- f. That Neurowave be granted pre-judgment and post-judgment interest on the damages caused by Defendant's infringing activities and other conduct complained of herein; and
- g. That Neurowave be granted such other and further relief as the Court may deem just and proper under the circumstances.

**JURY DEMAND**

Neurowave hereby requests a trial by jury pursuant to Rule 38 of the Federal Rules of Civil Procedure.

Dated: August 13, 2013

Respectfully submitted,

/s/ Michael A. Johnson

Michael Johnson, No. 30210 (*pro hac vice* pending)  
LOEB & LOEB LLP  
1906 Acklen Avenue  
Nashville, Tennessee 37212  
Telephone: (615) 749-8300  
Facsimile: (615) 749-8308  
mjohanson@loeb.com

Of Counsel:

Jordan A. Sigale  
Julie Langdon  
LOEB & LOEB LLP  
321 North Clark Street  
Chicago, Illinois 60610  
Telephone: (312) 464-3100  
Facsimile: (312) 464- 3111  
jsigale@loeb.com  
jlangdon@loeb.com  
*Attorneys for Plaintiff,  
Neurowave Medical Technologies, LLC*