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GLOBAL, INC.
7

8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA, SOUTHERN DIVISION
10

11 DEXCOWIN GLOBAL, INC.,

12 Plaintiff,

13 vs.

14 ARIBEX, INC.,

15 Defendant.
16

CASE NO.

**COMPLAINT FOR
DECLARATORY JUDGMENT OF
PATENT NON-INFRINGEMENT
AND INVALIDITY OF U.S.
PATENTS 7,224,769 and 7,496,178**

DEMAND FOR JURY TRIAL

Trial Date: None Set

17
18 **COMPLAINT**

19 Plaintiff DEXCOWIN GLOBAL, INC. (“Plaintiff” or “Dexcowin”) alleges as
20 follows for this Complaint for Declaratory Judgment of Patent Non-Infringement
21 and Invalidity (“Complaint”) against Defendant ARIBEX, INC. (“Defendant” or
22 “Aribex”):

23 **NATURE OF ACTION**

24 1. This is an action for declaratory relief pursuant to Fed. R. Civ. P. 57
25 and 28 U.S.C. § 2201.

26 2. Dexcowin seeks a declaratory judgment that Dexcowin is not liable for
27 infringement of properly construed, valid, and enforceable claims of U.S. Patent
28 Nos. 7,224,769 (the “769 patent”) and 7,496,178 (the “178 patent”) (collectively,

1 “Patents-in-Suit”) under 35 U.S.C. § 271.

2 3. Dexcowin also seeks a declaratory judgment that properly construed
3 claims of one or both of the Patents-in-Suit are invalid under at least 35 U.S.C. §§
4 102, 103, and/or 112.

5 4. On information and belief, Aribex is the owner by assignment of the
6 ‘769 patent which is entitled “Digital X-Ray Camera” and which issued on May 29,
7 2007. A true and correct copy of the ‘769 patent is attached hereto as **Exhibit A.**

8 5. On September 12, 2014, an Ex Parte Reexamination Certificate was
9 issued after reexamination of the ‘769 patent. A true and correct copy of the
10 certificate is attached hereto as **Exhibit B.**

11 6. On information and belief, Aribex is the owner by assignment of the
12 ‘178 patent, which is entitled “Portable X-Ray Device” and which issued on
13 February 24, 2009. A true and correct copy of the ‘178 patent is attached hereto as
14 **Exhibit C.**

15 7. This action arises out of allegations by Aribex that Dexcowin imports
16 and sells products that infringe the Patents-in-Suit, as alleged more fully below.

17 **PARTIES**

18 8. Dexcowin is a California corporation with a principal place of business
19 at 155 N. Lake Avenue, Suite 800, Pasadena, California 91101.

20 9. Since 2004, Dexcowin has developed and produced mobile X-ray and
21 digital solutions for the dental, medical, veterinary, inspection and security markets.

22 10. On information and belief, Aribex is a Utah corporation, with its
23 principal place of business at 744 South, 400 East Orem, Utah 84097. Based on
24 information provided on Aribex’s website at www.aribex.com, on information and
25 belief, Aribex also has corporate offices located at 11729 Fruehauf Drive, Charlotte,
26 North Carolina 28273.

27 11. On information and belief Aribex develops, manufactures, and markets
28 devices in the x-ray radiography fields.

1 **JURISDICTION AND VENUE**

2 12. This Court has subject matter jurisdiction over Dexcowin's claims
3 asserted herein pursuant to 28 U.S.C. §§ 1331 and 1338(a) because those claims
4 arise under the patent laws of the United States, 35 U.S.C. § 1, *et seq.*, and under the
5 Federal Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202. As alleged more
6 fully below, there is a substantial controversy of sufficient immediacy and reality
7 between Dexcowin and Aribex regarding non-infringement and invalidity of the
8 Patents-in-Suit to warrant the issuance of a declaratory judgment.

9 13. This Court has personal jurisdiction over Aribex. On information and
10 belief, Aribex has purposely availed itself of the privilege of conducting activities in
11 the State of California and in this District. On information and belief, Aribex,
12 directly and through intermediaries such as distributors, sells, offers for sale,
13 advertises, ships and/or distributes products such as X-ray devices in the State of
14 California and in this District. On information and belief, Aribex has purposely
15 directed its products to the State of California with the expectation that those
16 products will be purchased by customers in this District.

17 14. As alleged more fully below, Aribex has purposely directed its patent-
18 infringement threats and accusations in regard to the Patents-in-Suit at Dexcowin,
19 which maintains a principal place of business in this judicial district. This
20 declaratory judgment action arises out of Aribex's threats, accusations, and
21 attempts, to enforce the Patents-in-Suit against Dexcowin, a resident in this judicial
22 district.

23 15. Venue is proper in this judicial district pursuant to 28 U.S.C. §§
24 1391(b) and (c).

25 **BACKGROUND AND EXISTENCE OF ACTUAL CONTROVERSY**

26 16. On or about June 10, 2015, Mr. Michael A. Fisher, the Chief
27 Intellectual Property Counsel for Kavo Kerr Group, wrote to Dexcowin's then-
28 counsel, Mr. William E. Curry. Mr. Fisher sent the letter on behalf of Aribex. On

1 information and belief, Kavo Kerr Group acquired Aribex in or about November
2 2012.

3 17. According to Aribex's June 2015 letter, Aribex owns a number of
4 patents in the U.S. (and other countries), which include the Patents-in-Suit.
5 According to the letter: "It has come to our attention that your client DEXCOWIN
6 continues to import and sell products that infringe some or all of these patents,
7 including but not limited to its iRay D3 (a/k/a "DX3000) and MaxRay handheld X-
8 ray systems."

9 18. Aribex's June 2015 letter then demanded that Dexcowin, including its
10 agents and distributors, cease and desist from making, selling, offering for sale, or
11 importing allegedly infringing products, including the iRay D3, the MaxRay
12 products. The letter further requested that Dexcowin inform Aribex when the
13 products have been withdrawn from the market.

14 19. On or about October 6, 2015, Mr. Fisher, again on behalf of Aribex,
15 sent a letter to Mr. Curry, following up on the June 2015 letter and referenced an
16 October 2, 2015 voice mail he had left for Mr. Curry.

17 20. On or about October 14, 2015, Mr. Fisher, on behalf of Aribex, sent a
18 letter to Archer Dental, Inc. ("Archer"), alleging that Archer was selling products,
19 such as the MaxRay product, that infringed one or more of Aribex's patents (which
20 include the Patents-in-Suit), and demanding that Archer cease and desist from
21 making, selling, offering for sale, or importing the MaxRay product and other
22 alleged infringing products. The letter further requested that Archer inform Aribex
23 when the products have been withdrawn from the market.

24 21. On or about October 14, 2015, Mr. Fisher, on behalf of Aribex, sent a
25 letter to Vector R&D ("Vector"), alleging that Vector was selling products, such as
26 the MaxRay product, that infringed one or more of Aribex's patents (which include
27 the Patents-in-Suit), and demanding that Vector cease and desist from making,
28 selling, offering for sale, or importing the MaxRay product and other alleged

1 infringing products. The letter further requested that Vector inform Aribex when
2 the products have been withdrawn from the market.

3 22. On October 21, 2015, Dexcowin's counsel sent a letter to Mr. Fisher,
4 responding to the above-referenced cease and desist letters to Dexcowin, Vector,
5 and Archer. This letter requested that Aribex provide for each of the patents being
6 asserted (including the Patents-in-Suit), the identity of which claim(s) Aribex
7 contended was/were being infringed, the identity of each and every product Aribex
8 contended was infringed and an explanation of why or how each such claim was
9 infringed. The letter also inquired whether Aribex was interested in licensing its
10 patents, and if so, requested that Aribex provide the general terms for such a license.

11 23. On or about October 22, 2015, Mr. Fisher, on behalf of Aribex, sent a
12 letter to Darby Dental Supply, LLC ("Darby"), alleging that Darby was selling
13 products, such as the MaxRay product, that infringed one or more of Aribex's
14 patents (which include the Patents-in-Suit), and demanding that Darby cease and
15 desist from making, selling, offering for sale, or importing the MaxRay product and
16 other alleged infringing products. The letter further requested that Darby inform
17 Aribex when the products have been withdrawn from the market.

18 24. On November 16, 2015, having no reply from Aribex, Dexcowin's
19 counsel sent a letter and e-mail to Mr. Fisher, following up on the October 21, 2015
20 letter, and referencing the cease and desist letter sent by Aribex to Darby on October
21 22, 2015. The November 16 letter again requested the same information requested
22 in the October 22, 2015 letter, and again, requested whether Aribex was interested in
23 licensing its patents.

24 25. On November 25, 2015, Mr. Fisher, on behalf of Aribex, responded to
25 Dexcowin's letters, alleging "continued infringement of Aribex patents", and
26 providing a set of claim charts purporting to show how Dexcowin products, such as
27 the MaxRay product, infringe several "exemplary" claims of the Patents-in-Suit.
28 Aribex requested a responsive claim chart (e.g., non-infringement and/or invalidity)

1 by no later than December 31, 2015, and noted that Aribex was not interested in
2 licensing its patents at that time.

3 26. Dexcowin contends that it has not infringed and is not infringing
4 properly construed, valid, and enforceable claims of the Patents-in-Suit, either
5 literally or under the doctrine of equivalents.

6 27. Dexcowin further contends that properly construed claims of the
7 Patents-in-Suit are invalid for failure to comply with the requirements for
8 patentability of, *inter alia*, 35 U.S.C. §§ 102, 103, and/or 112.

9 28. By virtue of Aribex's statements directed at Dexcowin and third parties
10 regarding Dexcowin's handheld X-ray products, including but not limited to the
11 iRay D3 (or the DX 3000) and MaxRay handheld X-ray devices, there is an actual
12 and substantial controversy between Aribex and Dexcowin regarding Dexcowin's
13 liability for infringement of the Patents-in-Suit with respect to such products,
14 including other, handheld X-ray products such as the DX 4000 and DX 6000 X-ray
15 products. There is also an actual and substantial controversy between Aribex and
16 Dexcowin regarding the validity of the Patents-in-Suit.

17 29. The facts alleged herein show that an actual, substantial and justiciable
18 controversy exists between Aribex and Dexcowin, parties having adverse legal
19 interests, regarding the validity and alleged infringement of the Patents-in-Suit, and
20 this controversy is of sufficient immediacy and reality to warrant the issuance of
21 declaratory judgment under 28 U.S.C. § 2201(a).

22 **DEXCOWIN'S PETITIONS FOR *INTER PARTES* REVIEW OF THE**
23 **PATENTS-IN-SUIT**

24 30. On January 6, 2016, Dexcowin filed a petition for *inter partes* review
25 of certain claims of the '178 patent before the United States Patent and Trademark
26 Office Patent Trial and Appeal Board, which has been assigned Case Number
27 IPR2016-00436.

28 31. On January 7, 2016, Dexcowin filed a petition for *inter partes* review

1 of certain claims of the '769 patent before the United States Patent and Trademark
2 Office Patent Trial and Appeal Board, which has been assigned Case Number
3 IPR2016-00440.

4 32. Pursuant to 35 U.S.C. § 315(a)(2), because Dexcowin filed the instant
5 civil action after it filed its petitions for *inter partes* review, the instant civil action
6 shall be automatically stayed until either: (A) the patent owner moves the court to
7 lift the stay; (B) the patent owner files a civil action or counterclaim alleging that the
8 petitioner or real party in interest has infringed the patent; or (C) the petitioner or
9 real party in interest moves the court to dismiss the civil action.

10 **FIRST CAUSE OF ACTION**

11 **(Declaratory Judgment of Non-Infringement - U.S. Patent No. 7,224,769)**

12 33. Dexcowin restates and incorporates by reference as if fully set forth
13 herein the allegations of the foregoing paragraphs 1 through 32.

14 34. Aribex has asserted and continues to assert that Dexcowin has infringed
15 and continues to infringe Aribex patents, including the Patents-in-Suit, and in
16 particular, the '769 patent. Aribex has asserted and continues to assert that one or
17 more of Dexcowin's handheld X-ray products, including but not limited to the iRay
18 D3 (or the DX 3000) and MaxRay handheld X-ray devices, infringe the Patents-in-
19 Suit.

20 35. On information and belief, Dexcowin has never infringed and is not
21 currently infringing, whether directly or indirectly; contributorily or by inducement;
22 or literally or under the doctrine of equivalents, any valid claim of the '769 patent,
23 with respect to one or more of Dexcowin's handheld X-ray products, including,
24 *inter alia*, the iRay D3 (or the DX 3000), the MaxRay handheld X-ray devices, and
25 the DX 4000 and DX 6000 X-ray devices. Dexcowin disputes that it has infringed
26 properly construed, valid, and enforceable claims of the '769 patent.

27 36. Therefore, an actual and substantial controversy exists between
28 Dexcowin and Aribex, parties having adverse legal interests, of sufficient

1 immediacy and reality to warrant the issuance of a declaratory judgment that
2 Dexcowin has not infringed and does not infringe any properly construed, valid, and
3 enforceable claim of the '769 patent, in particular, with respect to one or more of
4 Dexcowin's handheld X-ray products, including, *inter alia*, the iRay D3 (or the DX
5 3000), the MaxRay handheld X-ray devices, and the DX 4000 and DX 6000 X-ray
6 devices.

7 37. Dexcowin requests a judicial determination and declaration of its
8 rights, duties, and obligations with respect to the '769 patent. Such a determination
9 and declaration is necessary and appropriate to enable the parties to ascertain their
10 respective rights and duties relative to the '769 patent.

11 **SECOND CAUSE OF ACTION**

12 **(Declaratory Judgment of Non-Infringement - U.S. Patent No. 7,496,178)**

13 38. Dexcowin restates and incorporates by reference as if fully set forth
14 herein the allegations of the foregoing paragraphs 1 through 37.

15 39. Aribex has asserted and continues to assert that Dexcowin has infringed
16 and continues to infringe Aribex patents, including the Patents-in-Suit, and in
17 particular, the '178 patent. Aribex has asserted and continues to assert that
18 Dexcowin's handheld X-ray products, including but not limited to the iRay D3 (or
19 the DX 3000) and MaxRay handheld X-ray devices, infringe the Patents-in-Suit.

20 40. Dexcowin also has never infringed and is not currently infringing,
21 whether directly or indirectly, contributorily or by inducement, or literally or under
22 the doctrine of equivalents, any valid claim of the '178 patent with respect to one or
23 more of Dexcowin's handheld X-ray products, including, *inter alia*, the iRay D3 (or
24 the DX 3000), the MaxRay handheld X-ray devices, and the DX 4000 and DX 6000
25 X-ray devices. Dexcowin disputes that it has infringed properly construed, valid,
26 and enforceable claims of the '178 patent.

27 41. Therefore, an actual and substantial controversy exists between
28 Dexcowin and Aribex, parties having adverse legal interests, of sufficient

1 immediacy and reality to warrant the issuance of a declaratory judgment that
2 Dexcowin has not infringed and does not infringe any properly construed, valid, and
3 enforceable claim of the '178 patent, in particular, with respect to Dexcowin's
4 handheld X-ray products, including, *inter alia*, the iRay D3 (or the DX 3000), the
5 MaxRay handheld X-ray devices, and the DX 4000 and DX 6000 X-ray devices.

6 42. Dexcowin requests a judicial determination and declaration of its
7 rights, duties, and obligations with respect to the '178 patent. Such a determination
8 and declaration is necessary and appropriate to enable the parties to ascertain their
9 respective rights and duties relative to the '178 patent.

10 **THIRD CAUSE OF ACTION**

11 **(Declaratory Judgment of Invalidity - U.S. Patent No. 7,224,769)**

12 43. Dexcowin restates and incorporates by reference as if fully set forth
13 herein the allegations of the foregoing paragraphs 1 through 42.

14 44. Aribex has asserted and continues to assert that Dexcowin has infringed
15 and continues to infringe Aribex patents, including the Patents-in-Suit, and in
16 particular, the '769 patent. Aribex has asserted and continues to assert that
17 Dexcowin's handheld X-ray products are infringing, including but not limited to the
18 iRay D3 (or the DX 3000) and MaxRay handheld X-ray devices, infringe the
19 Patents-in-Suit.

20 45. Dexcowin disputes that it has infringed or that it continues to infringe,
21 properly construed, valid, and enforceable claims of the Patents-in-Suit, and
22 affirmatively alleges that the claims of the '769 patent are invalid for failure to meet
23 one or more of the requirements for patentability under *inter alia*, 35 U.S.C. §103.

24 46. Therefore, an actual and substantial controversy exists between
25 Dexcowin and Aribex, parties having adverse legal interests, of sufficient
26 immediacy and reality to warrant the issuance of a declaratory judgment that the
27 properly construed claims of the '769 patent are invalid for failure to meet one or
28 more of the requirements for patentability under *inter alia*, 35 U.S.C. § 103.

1 47. Dexcowin requests a judicial determination and declaration of its
2 rights, duties, and obligations with respect to the ‘769 patent. Such a determination
3 and declaration is necessary and appropriate to enable the parties to ascertain their
4 respective rights and duties relative to the ‘769 patent.

5 **FOURTH CAUSE OF ACTION**

6 **(Declaratory Judgment of Invalidity- U.S. Patent No. 7,496,178)**

7 48. Dexcowin restates and incorporates by reference as if fully set forth
8 herein the allegations of the foregoing paragraphs 1 through 47.

9 49. Aribex has asserted and continues to assert that Dexcowin has infringed
10 and continues to infringe Aribex patents, including the Patents-in-Suit, and in
11 particular, the ‘178 patent. Aribex has asserted and continues to assert that
12 Dexcowin’s handheld X-ray products are infringing, including but not limited to the
13 iRay D3 (or the DX 3000) and MaxRay handheld X-ray products, infringe the
14 Patents-in-Suit.

15 50. Dexcowin disputes that it has infringed or that it continues to infringe,
16 properly construed, valid, and enforceable claims of the Patents-in-Suit, and
17 affirmatively alleges that the claims of the ‘178 patent are invalid for failure to meet
18 one or more of the requirements for patentability under *inter alia*, 35 U.S.C. §§ 102,
19 103 and/or 112.

20 51. Therefore, an actual and substantial controversy exists between
21 Dexcowin and Aribex, parties having adverse legal interests, of sufficient
22 immediacy and reality to warrant the issuance of a declaratory judgment that the
23 properly construed claims of the ‘178 patent are invalid for failure to meet one or
24 more of the requirements for patentability under *inter alia*, 35 U.S.C. §§ 102, 103
25 and/or 112.

26 52. Dexcowin requests a judicial determination and declaration of its
27 rights, duties, and obligations with respect to the ‘178 patent. Such a determination
28 and declaration is necessary and appropriate to enable the parties to ascertain their

1 respective rights and duties relative to the ‘178 patent.

2 **PRAYER FOR RELIEF**

3 WHEREFORE, Dexcowin respectfully request the Court to enter judgment in
4 Dexcowin’s favor as to all claims asserted in this Complaint and, specifically, to
5 enter judgment:

- 6 A. Declaring that Dexcowin is not liable for any infringement of any
7 properly construed, valid, and enforceable claim of the ‘769 patent;
- 8 B. Declaring that Dexcowin is not liable for any infringement of any
9 properly construed, valid, and enforceable claim of the ‘178 patent;
- 10 C. Declaring that one or more claims of the ‘769 patent are invalid;
- 11 D. Declaring that one or more claims of the ‘178 patent are invalid;
- 12 E. Enjoining Aribex, its officers, owners, partners, employees, agents,
13 parents, subsidiaries, attorneys, and anyone acting in concert or
14 participation with any of them from making any claim that Dexcowin
15 infringes the ‘769 patent, or that Dexcowin’s handheld X-ray products,
16 including, *inter alia*, the iRay D3 (or the DX 3000), the MaxRay
17 handheld X-ray products, and the DX 4000 and DX 6000 X-ray
18 products, infringe the ‘769 patent;
- 19 F. Enjoining Aribex, its officers, owners, partners, employees, agents,
20 parents, subsidiaries, attorneys, and anyone acting in concert or
21 participation with any of them from making any claim that Dexcowin
22 infringes the ‘178 patent, or that Dexcowin’s handheld X-ray products,
23 including, *inter alia*, the iRay D3 (or the DX 3000), the MaxRay
24 handheld X-ray products, and the DX 4000 and DX 6000 X-ray
25 products, infringe the ‘178 patent;
- 26 G. Finding that this case is exceptional pursuant to 35 U.S.C. § 285,
27 entitling Dexcowin to an award against Aribex of Dexcowin’s
28 reasonable attorneys’ fees;

- 1 H. Awarding to Dexcowin its costs and disbursements; and
2 I. Awarding to Dexcowin such other and further relief as this Court
3 deems just and proper.

4 **DEMAND FOR JURY TRIAL**

5 Pursuant to Fed. R. Civ. P. 38(b) and L.R. 38-1, Dexcowin hereby demands a
6 trial by jury on all issues so triable.

7 DATED: January 8, 2016

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11 By: /s/ Jon E. Hokanson
12 Jon E. Hokanson
13 Attorneys for Plaintiff DEXCOWIN
14 GLOBAL, INC.