

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI**

DESERT HARVEST, Inc., a North Carolina corporation;

Plaintiff,

vs.

PLUS EV HOLDINGS Inc. d/b/a Intimate Rose, a Missouri corporation;

Defendant.

Case No. 4:22-cv-0319

**COMPLAINT FOR PATENT
INFRINGEMENT**

Plaintiff, Desert Harvest, Inc. (“**Desert Harvest**” or “**Plaintiff**”), for its Complaint against Defendant Plus EV Holdings, Inc., (“**Plus EV**” or “**Defendant**”) alleges as follows:

NATURE OF THE CASE

1. This action arises under the Patent Laws of the United States, 35 U.S.C. § 1 et seq.
2. This is an action for patent infringement of United States Patent No. 7,695,489 (the “**489 Patent**”), and 7,963,977 (the “**977 Patent**”). Specifically, Defendant has knowingly and actively engaged in acts in the forum state that have infringed, will infringe, induce, or contribute to the direct infringement of at least claims 1-2, 4-6, 9-10, 15-19, 22, 24, 27 and 31 of Desert Harvest’s ‘489 Patent, and at least claims 1-2, 4-9, 12-13, 16, 19, 20-21, 24, 28-30, 32 and 34 of Desert Harvest’s ‘977 Patent.

THE PARTIES

3. Desert Harvest is a corporation organized and existing under the laws of the State of North Carolina and does business throughout the western United States. Desert Harvest has its principal place of business at 192 Main Street, Ellsworth, ME 04605, United States.

4. Plus EV is a corporation organized and existing under the laws of the State of Missouri. Plus EV has its principal place of business at 14375 NW 67th Street, Parkville MO 64152, United States.

5. Aaron Wilt is the President of Plus EV and upon information and belief has a principal residence of 14375 NW 67th Street, Parkville MO 64152, United States. Amanda Olsen is the Co-President and Chief Clinical Officer of Intimate Rose, and is a resident of Medford Oregon. Upon information and believe Intimate Rose is not a separate corporate entity but a tradename for the Defendant. Mr. Wilt and Mrs. Olsen, each directed, controlled, ratified, participated in, and was the moving force behind the infringing activity complained of herein, and as such, are personally liable for such infringement without regard to piercing of the corporate veil.

JURISDICTION

6. This Court has personal jurisdiction over Defendant. Defendant is domiciled in Missouri and regularly conduct business and have committed acts of patent infringement and/or have induced acts of patent infringement by others in this judicial district and/or have contributed to patent infringement by others in this judicial district, the State of Missouri, and elsewhere in the United States. Defendant's product packaging and website, instructs consumers to use its infringing Temperature Therapy Pelvic Wand according to the methods of at least claims 1-2, 4-6, 9-10, 15-19, 22, 24, 27 and 31 of Desert Harvest's '489 Patent, and at least claims 1-2, 4-9, 12-13, 16, 19, 20-21, 24, 28-30, 32 and 34 of Desert Harvest's '977 Patent.

7. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391 and 1400(b) because, among other things, Defendant is subject to personal jurisdiction in this judicial district, has a regular and established place of business in this judicial district and has purposely transacted

business involving the accused patents in this judicial district, and certain of the acts complained of herein occurred in this judicial district.

8. Defendant is subject to this Court's jurisdiction pursuant to due process due at least to their substantial business in this State and judicial district, including (a) at least part of their past infringing activities, (b) regularly doing or soliciting business in Missouri, and/or (c) engaging in persistent conduct and/or deriving substantial revenue from goods and services provided to customers in Missouri.

FACTUAL BACKGROUND

9. Plaintiff, Desert Harvest is a leading manufacturer of health and wellness products, including products and supplements specific to the treatment of Interstitial Cystitis/Bladder Pain Syndrome (IC/BPS). In an effort to further expand its product offering in the field of female health, Desert Harvest acquired the assets of IC Relief, LLC, a Florida limited liability company with a principal place of business of 1101 Oxbridge Drive Lutz, Florida 33549, United States.

10. IC Relief LLC has offered a therapeutic wand to treat pelvic floor disorders since 2005 under the brand ezMAGIC™.¹



¹ <https://store.icrelief.com/product/ez-magic/>

11. The ezMAGIC™ wand is subject to two separate U.S. patents acquired by Desert Harvest, namely:

- The **‘489 Patent** entitled “Devices and Related Methods For Targeted Pressure and Temperatures Therapies For Pelvic Region Disorders and Syndromes” (a true and accurate copy provided herein as Exhibit A);
- and
- The **‘977 Patent** entitled “Devices and Related Methods For Targeted Pressure and Temperatures Therapies For Pelvic Region Disorders and Syndromes” (a true and accurate copy provided herein as Exhibit B).

12. Desert Harvest, is the sole and exclusive owner of all right, title and interest in and to the ‘489 the ‘977 Patents (collectively the “Patents-In-Suit”) and holds the exclusive right to take all actions necessary to enforce its rights to the Patents-in-Suit, including the filing of this patent infringement action. Desert Harvest also has the right to recover all damages for past, present, and future infringement of the Patents-in-Suit and to seek injunctive relief as appropriate under the law. (Exhibits C-D).

13. The Patents-In-Suit are valid and enforceable.

14. Desert Harvest, and the prior owner of the Patents-In-Suit have complied with the marking provisions of 35 U.S.C. §287.

15. Desert Harvest has not licensed or otherwise authorized Defendant to make, use, offer for sale, or sell any products that embody the claims of the ‘489 Patent.

INFRINGEMENT OF THE PATENTS-IN-SUIT BY DEFENDANT

16. Defendant, operating under the trademark “Intimate Rose,” offers a variety of products related to female health, and in particular, pelvic floor disorders. Included in these products are a variety of pelvic wands designed to treat various pelvic floor disorders, such as Vaginismus, Dyspareunia, Painful Sex, Vestibulodynia, Pelvic Floor Tension Myalgia, Levator

Ani Syndrome, and Endometriosis, among others, hereinafter generally referred to a “Pelvic Floor Disorders.”

17. Defendant specifically sells to consumers a “Temperature Therapy Pelvic Wand²” which is designed to be heated and/or cooled to treat various pelvic floor disorders, including pelvic pain and symptoms caused by endometriosis. (Exhibit E).

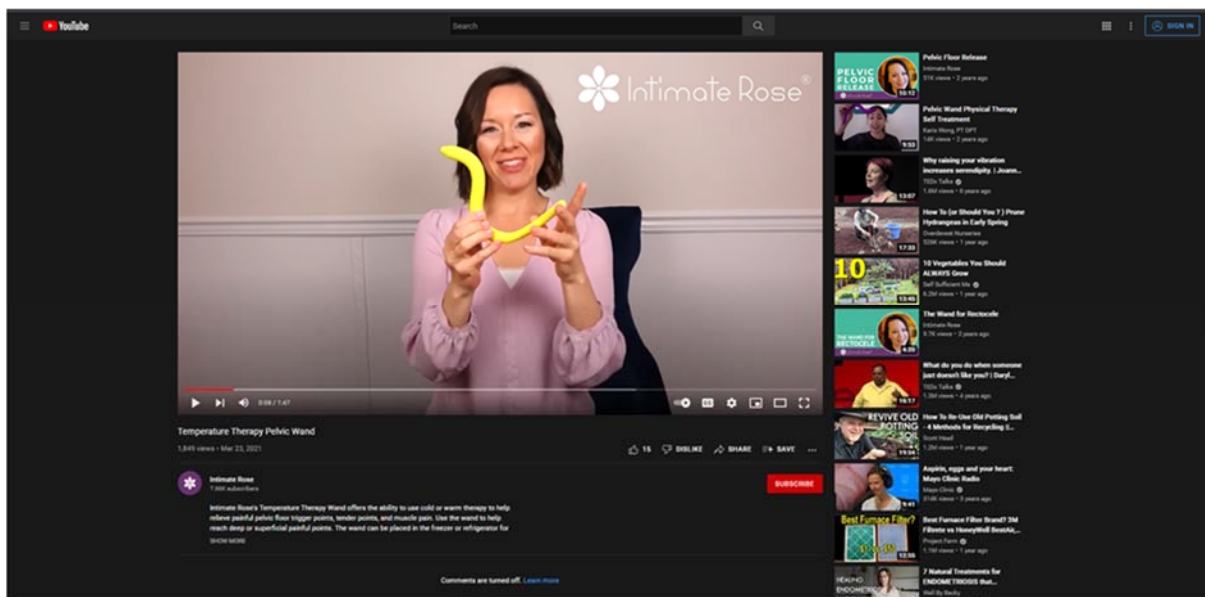


18. Instructions for how to use the temperature therapy pelvic wand are prominently provided, *inter alia*, on Defendant’s website. (Exhibit E)



² <https://www.intimaterose.com/products/temperature-therapy-pelvic-wand>

19. Instructions for how to use the temperature therapy pelvic wand are prominently provided by the Defendant though YouTube.



20. Defendant highlights on its website³ that that it provides “Videos, Guides, & Resources” on how to use its Temperature Therapy Pelvic Wand:



Temperature Therapy Pelvic Wand

	Intimate Rose	Competitor 1	Competitor 2
 Covered in body safe, smooth, medical grade silicone	✓	X	X
Unique, anatomically correct, ergonomic design to reach deep pelvic floor muscles	✓	X	X
Warm and cooling therapy for endometriosis symptom relief	✓	X	X
Relieves pain associated with trigger points	✓	✓	✓
Recommended by Doctors & Pelvic Physical Therapists	✓	✓	X
Videos, Guides, & Resources	✓	X	X
Soft and comfortable to use for men and women	✓	X	X



³ <https://www.intimaterose.com/products/temperature-therapy-pelvic-wand>

21. Defendant's Temperature Therapy Pelvic Wand and their use infringed at least one claim of Patents-In-Suit.

22. Defendant, Mr. Wilt and Mrs. Olsen engaged in extensive direct testing of their Temperature Therapy Pelvic Wand during its design and development, such testing and use infringed at least one claim of Patents-In-Suit.

23. Defendant, including Mrs. Olsen, routinely instructs users to use Temperature Therapy Pelvic Wand in a manner that directly infringed at least one claim of Patents-In-Suit the claims of Patents-In-Suit. (*See* Exhibit G) Defendant describes its instructions as "medically revised" such that consumers are more likely to follow them without deviation. (*Id.*)

24. Instructions for the use of the Temperature Therapy Pelvic Wand are produced to Defendant's consumers with the product. These instructions are explicitly followed by consumers, such that their use of the Temperature Therapy Pelvic Wand directly infringes one or more of the claims of the Patents-In-Suit.

25. For example, Emily S., identified as a verified buyer on Defendant's website, provided a product review on August 21, 2021 for of Defendant's infringing Temperature Therapy Pelvic Wand stating:

"I put of [sic] buying a pelvic wand because I didn't want to spend money on yet another essential but uncomfortable/painful treatment/device for my endo and pelvic floor dysfunction...boy howdy do I wish I had gotten this sooner. The **heat option is nice and soothing**, but also it just works so well...it can be uncomfortable to release a trigger point, but using the wrong tools and failing is much worse. So worth it, but if you want to save a few bucks, I think the standard one would be just fine, too. Also, these are way cheaper than TheraWands, and seem very high quality. **The instruction booklet was handy, too, because the technique is different than what my PT taught me.**"

(Exhibit H; *see also* Exhibit G)(emphasis added)

26. Defendant had actual, or constructive knowledge of the Patents-in-Suit, and its actions constituted, induced or contributed to infringement the claims of the Patents-in-Suit.

27. For example, Mr. Wilt and Mrs. Olsen are both listed as the inventors of U.S. Patent Application No. 16/524,877, entitled “Apparatus for pelvic floor muscle trigger point therapy,” filed with the USPTO on July 29, 2019.

28. Defendant and its agents had knowledge of the Patents-in-Suit. For example, on May 11, 2021, the ‘489 Patent was cited by the USPTO in in an Office Action rejecting a patent application filed by the Defendant for its Temperature Therapy Pelvic Wand. The USPTO superficially stated that the ‘489 Patent was “considered pertinent to applicant disclosure.” (Exhibit F at ¶ 40) The USPTO further stated that the ‘489 Patent was cited:

“...for its method of relieving pelvic pain (see abstract), and is further cited for its discussion of the capability for either a tapered end or a rounded end of the device to be inserted either vaginally or rectally (Col. 8, lines 29-58 and Col. 9, lines 1-70, as well as its discussion of stimulation of the puborectalis muscle (example 1)”
(*Id.*)

29. The ‘977 Patent is a continuation of the ‘489 Patent. It claims the same priority date as the ‘489 Patent, and contains the same specification and figures. Upon information and belief, the USPTO’s citation of the ‘489 Patent placed the Defendant and its agents on notice of the ‘977 Patent.

30. Upon information and belief, USPTO’s citation of the ‘489 Patent caused Defendant and its agent to also investigate and review the ‘977 Patent, such that Defendant had knowledge of the Patents-in-Suit.

31. Defendant’s Temperature Therapy Pelvic Wand is often packaged and sold with secondary products, such as lubricant, or aloe vera supplements (Exhibit I).

COUNT I
(INFRINGEMENT BY INDUCEMENT UNDER 35 U.S.C. § 271(B) OF THE ‘489 PATENT)

32. All prior and subsequent allegations are incorporated herein.

33. Defendant has been and are actively inducing others to infringe claims 1-2, 4-6, 9-10, 15-19, 22, 24, 27 and 31 of the ‘489 Patent, in this District and elsewhere in the United States by making, offering to sell, selling, importing and otherwise promoting and distributing the infringing Temperature Therapy Pelvic Wand.

34. Defendant includes with its packaging, on its website, and through social media channels, such as YouTube, detailed instructions for the use of infringing Temperature Therapy Pelvic Wand for the treatment of one more pelvic floor disorders.

35. Consumers have used the instructions for the use of infringing Temperature Therapy Pelvic Wand provided by Defendant for the treatment of one more pelvic floor disorders.

36. Defendant has made statements in person, on its packaging and website, as well as through social media channels, such as YouTube, that if consumers follow the instructions for the use of the infringing Temperature Therapy Pelvic Wand, consumers will be able to effectively treat one more pelvic floor disorders.

37. Defendant has made statements in person, on its packaging and website, as well as through social media channels, such as YouTube, that if consumers follow the instructions for the use of the infringing Temperature Therapy Pelvic Wand, consumers will be able to effectively mitigate symptoms of treat one more pelvic floor disorders.

38. Defendant possessed specific intent to encourage direct infringement of claims 1-2, 4-6, 9-10, 15-19, 22, 24, 27 and 31 of the ‘489 Patent, including because Defendant instructs users to perform those patented methods (*See e.g.*, Exhibit G), providing evidence of an affirmative intent to induce infringement. Furthermore, because Defendant’s infringing Temperature Therapy

Pelvic Wand has no substantial noninfringing uses, Defendant intended for the use of their infringing Temperature Therapy Pelvic Wand to directly infringe the '270 Patent.

39. On information and belief, Defendant knew that the use of their infringing Temperature Therapy Pelvic Wand for the treatment of one more pelvic floor disorders would be an act of direct infringement of claims 1-2, 4-6, 9-10, 15-19, 22, 24, 27 and 31 of the '489 Patent, and that the activities referenced in this Complaint, including the sale of Defendant's infringing Temperature Therapy Pelvic Wand, and providing instructions to infringe claims 1-2, 4-6, 9-10, 15-19, 22, 24, 27 and 31 of the '489 Patent through their various product instructions, would actively induce direct infringement of claims 1-2, 4-6, 9-10, 15-19, 22, 24, 27 and 31 of the '489 Patent. On information and belief, despite such knowledge, Defendant has been and are actively inducing infringement of claims 1-2, 4-6, 9-10, 15-19, 22, 24, 27 and 31 of the '489 Patent by others.

40. Numerous consumers have used the infringing Temperature Therapy Pelvic Wand according to the instructions provided by Defendant and as a result, directly infringed claims 1-2, 4-6, 9-10, 15-19, 22, 24, 27 and 31 of the '489 Patent in this jurisdiction, and through the United States.

41. Defendant induced infringement by others, including end users of the infringing Temperature Therapy Pelvic Wand, with the intent to cause infringing acts by others or, in the alternative, with the belief that there was a high probability that others, including end users of the infringing Temperature Therapy Pelvic Wand, infringe the '489 Patent, but while remaining willfully blind to the infringement.

42. Defendant and its agents had actual and/or constructive knowledge of the '489 Patent such that its actions were at all times willful.

43. Furthermore, upon receipt of the instant Complaint, Defendant will be put on notice about the '489 Patent and Defendants' infringement thereof.

44. Upon further information and belief, individual Mr. Wilt and Mrs. Olsen, each directed, controlled, ratified, participated in, and was the moving force behind the direct and indirect infringement of the '489 Patent.

45. On information and belief, Defendant will continue to induce the infringement of claims 1-2, 4-6, 9-10, 15-19, 22, 24, 27 and 31 of the '489 Patent unless and until they are enjoined by the Court.

46. As a result of Defendant's inducement of infringement of claims 1-2, 4-6, 9-10, 15-19, 22, 24, 27 and 31 of the '489 Patent, Plaintiff have suffered damages, in an amount to be proved at trial.

47. Plaintiff has suffered, and will continue to suffer, irreparable harm as a result of Defendant's infringement of the '489 Patent, for which there is no adequate remedy at law, unless Defendant's infringement is enjoined by this Court.

COUNT II

(INFRINGEMENT BY INDUCEMENT UNDER 35 U.S.C. § 271(B) OF THE '977 PATENT)

48. All prior and subsequent allegations are incorporated herein.

49. Defendant has been and are actively inducing others to infringe claims 1-2, 4-9, 12-13, 16, 19, 20-21, 24, 28-30, 32 and 34 of the '977 Patent, in this District and elsewhere in the United States by making, offering to sell, selling, importing and otherwise promoting and distributing the infringing Temperature Therapy Pelvic Wand.

50. Defendant includes with its packaging, on its website, and through social media channels, such as YouTube, detailed instructions for the use of infringing Temperature Therapy Pelvic Wand for the treatment of one more pelvic floor disorders.

51. Consumers have used the instructions for the use of infringing Temperature Therapy Pelvic Wand provided by Defendant for the treatment of one more pelvic floor disorders.

52. Defendant has made statements in person, on its packaging and website, as well as through social media channels, such as YouTube, that if consumers follow the instructions for the use of the infringing Temperature Therapy Pelvic Wand, consumers will be able to effectively treat one more pelvic floor disorders.

53. Defendant has made statements in person, on its packaging and website, as well as through social media channels, such as YouTube, that if consumers follow the instructions for the use of the infringing Temperature Therapy Pelvic Wand, consumers will be able to effectively mitigate symptoms of treat one more pelvic floor disorders.

54. Defendant possessed specific intent to encourage direct infringement of claims 1-2, 4-9, 12-13, 16, 19, 20-21, 24, 28-30, 32 and 34 of the '977 Patent, including because Defendant instructs users to perform those patented methods (*See e.g.*, Exhibit G), providing evidence of an affirmative intent to induce infringement. Furthermore, because Defendant's infringing Temperature Therapy Pelvic Wand has no substantial noninfringing uses, Defendant intended for the use of their infringing Temperature Therapy Pelvic Wand to directly infringe the '270 Patent.

55. On information and belief, Defendant knew that the use of their infringing Temperature Therapy Pelvic Wand for the treatment of one more pelvic floor disorders would be an act of direct infringement of claims 1-2, 4-9, 12-13, 16, 19, 20-21, 24, 28-30, 32 and 34 of the '977 Patent, and that the activities referenced in this Complaint, including the sale of Defendant's infringing Temperature Therapy Pelvic Wand, and providing instructions to infringe claims 1-2, 4-9, 12-13, 16, 19, 20-21, 24, 28-30, 32 and 34 of the '977 Patent through their various product instructions, would actively induce direct infringement of claims 1-2, 4-9, 12-13, 16, 19, 20-21,

24, 28-30, 32 and 34 of the '977 Patent. On information and belief, despite such knowledge, Defendant has been and are actively inducing infringement of claims 1-2, 4-9, 12-13, 16, 19, 20-21, 24, 28-30, 32 and 34 of the '977 Patent by others.

56. Numerous consumers have used the infringing Temperature Therapy Pelvic Wand according to the instructions provided by Defendant and as a result, directly infringed claims 1-2, 4-9, 12-13, 16, 19, 20-21, 24, 28-30, 32 and 34 of the '977 Patent in this jurisdiction, and through the United States.

57. Defendant induced infringement by others, including end users of the infringing Temperature Therapy Pelvic Wand, with the intent to cause infringing acts by others or, in the alternative, with the belief that there was a high probability that others, including end users of the infringing Temperature Therapy Pelvic Wand, infringe the '977 Patent, but while remaining willfully blind to the infringement.

58. Upon information and belief, Defendant and its agents had actual and/or constructive knowledge of the '977 Patent such that its actions were at all times willful.

59. Furthermore, upon receipt of this Complaint, Defendant will be put on notice about the '977 Patent and Defendant's infringement thereof.

60. Upon further information and belief, individual Mr. Wilt and Mrs. Olsen, each directed, controlled, ratified, participated in, and was the moving force behind the direct and indirect infringement of the '977 Patent.

61. On information and belief, Defendant will continue to induce the infringement of claims 1-2, 4-9, 12-13, 16, 19, 20-21, 24, 28-30, 32 and 34 of the '977 Patent unless and until they are enjoined by the Court.

62. As a result of Defendant's inducement of infringement of claims 1-2, 4-9, 12-13,

16, 19, 20-21, 24, 28-30, 32 and 34 of the '977 Patent, Plaintiff have suffered damages, in an amount to be proved at trial.

63. Plaintiff has suffered, and will continue to suffer, irreparable harm as a result of Defendant's infringement of the '977 Patent, for which there is no adequate remedy at law, unless Defendant's infringement is enjoined by this Court.

COUNT III
(CONTRIBUTORY INFRINGEMENT OF THE '489 PATENT)

64. All prior and subsequent allegations are incorporated herein.

65. Defendant has been and is contributing to the infringement of claims 1-2, 4-6, 9-10, 15-19, 22, 24, 27 and 31 of the '489 Patent in this District and elsewhere in the United States by making, offering to sell, selling, importing and otherwise promoting and distributing their infringing Temperature Therapy Pelvic Wand for the treatment of pelvic floor disorders, which is a material or apparatus for use in practicing the methods of claims 1-2, 4-6, 9-10, 15-19, 22, 24, 27 and 31 of the '489 Patent.

66. Consumers using Defendant's infringing Temperature Therapy Pelvic Wand within the United States for the treatment of pelvic floor disorders according to the instructions provided Defendant packaging, website and social media directly infringe claims 1-2, 4-6, 9-10, 15-19, 22, 24, 27 and 31 of the '489 Patent.

67. On information and belief, Defendant knew that the use of their infringing Temperature Therapy Pelvic Wand for the treatment of one more pelvic floor disorders would be an act of direct infringement of claims 1-2, 4-6, 9-10, 15-19, 22, 24, 27 and 31 of the '977 Patent, and that the activities referenced in this Complaint, including the sale of Defendant's infringing Temperature Therapy Pelvic Wand, and providing instructions to infringe claims 1-2, 4-6, 9-10, 15-19, 22, 24, 27 and 31 of the '977 Patent through their various product instructions, would

actively contribute to the direct infringement of claims 1-2, 4-6, 9-10, 15-19, 22, 24, 27 and 31 of the '977 Patent. On information and belief, despite such knowledge, Defendant has been and is actively contributing to the infringement of claims 1-2, 4-6, 9-10, 15-19, 22, 24, 27 and 31 of the '977 Patent by others.

68. Defendant possessed specific intent to encourage direct infringement of claims 1-2, 4-6, 9-10, 15-19, 22, 24, 27 and 31 of the '977 Patent, including because Defendant instructs users to perform those patented methods (*See e.g.*, Exhibit G), providing evidence of an affirmative intent to contribute to the infringement. Furthermore, because Defendant's infringing Temperature Therapy Pelvic Wand has no substantial noninfringing uses, Defendant intended for the use of their infringing Temperature Therapy Pelvic Wand to directly infringe the '270 Patent.

69. Numerous consumers have used the infringing Temperature Therapy Pelvic Wand according to the instructions provided by Defendant and as a result, directly infringed claims 1-2, 4-6, 9-10, 15-19, 22, 24, 27 and 31 of the '489 Patent in this jurisdiction, and through the United States.

70. On information and belief, Defendant knew that the infringing Temperature Therapy Pelvic Wand is a material part of the methods of treatment of claims 1-2, 4-6, 9-10, 15-19, 22, 24, 27 and 31 of the '489 Patent, Defendant's infringing Temperature Therapy Pelvic Wand was especially made or especially adapted for administration by consumers in a manner that would infringe claims 1-2, 4-6, 9-10, 15-19, 22, 24, 27 and 31 of the '489 Patent, and that Defendant's infringing Temperature Therapy Pelvic Wand was not a staple article or commodity of commerce suitable for a substantial non-infringing use.

71. Defendant contributed to the infringement by others, including end users of the infringing Temperature Therapy Pelvic Wand, with the intent to cause infringing acts by others or,

in the alternative, with the belief that there was a high probability that others, including end users of the infringing Temperature Therapy Pelvic Wand, infringe the '489 Patent, but while remaining willfully blind to the infringement.

72. Defendant and its agents had actual and/or constructive knowledge of the '489 Patent such that its actions were at all times willful.

73. Upon further information and belief, individual Mr. Wilt and Mrs. Olsen, each directed, controlled, ratified, participated in, and was the moving force behind the direct and indirect infringement of the '489 Patent.

74. On information and belief, Defendant will continue to induce the infringement of claims 1-2, 4-6, 9-10, 15-19, 22, 24, 27 and 31 of the '489 Patent unless and until they are enjoined by the Court.

75. As a result of Defendant's inducement of infringement of claims 1-2, 4-6, 9-10, 15-19, 22, 24, 27 and 31 of the '489 Patent, Plaintiff have suffered damages, in an amount to be proved at trial.

76. Plaintiff has suffered, and will continue to suffer, irreparable harm as a result of Defendant's infringement of the '489 Patent, for which there is no adequate remedy at law, unless Defendant's infringement is enjoined by this Court.

COUNT IV
(CONTRIBUTORY INFRINGEMENT OF THE '977 PATENT)

77. All prior and subsequent allegations are incorporated herein.

78. Defendant has been and is contributing to the infringement of claims 1-2, 4-9, 12-13, 16, 19, 20-21, 24, 28-30, 32 and 34 of the '977 Patent in this District and elsewhere in the United States by making, offering to sell, selling, importing and otherwise promoting and distributing their infringing Temperature Therapy Pelvic Wand for the treatment of pelvic floor

disorders, which is a material or apparatus for use in practicing the methods of claims 1-2, 4-9, 12-13, 16, 19, 20-21, 24, 28-30, 32 and 34 of the '977 Patent.

79. Consumers using Defendant's infringing Temperature Therapy Pelvic Wand within the United States for the treatment of pelvic floor disorders according to the instructions provided Defendant packaging, website and social media directly infringe claims 1-2, 4-9, 12-13, 16, 19, 20-21, 24, 28-30, 32 and 34 of the '977 Patent.

80. On information and belief, Defendant knew that the use of their infringing Temperature Therapy Pelvic Wand for the treatment of one more pelvic floor disorders would be an act of direct infringement of claims 1-2, 4-9, 12-13, 16, 19, 20-21, 24, 28-30, 32 and 34 of the '977 Patent, and that the activities referenced in this Complaint, including the sale of Defendant's infringing Temperature Therapy Pelvic Wand, and providing instructions to infringe claims 1-2, 4-9, 12-13, 16, 19, 20-21, 24, 28-30, 32 and 34 of the '977 Patent through their various product instructions, would actively contribute to the direct infringement of claims 1-2, 4-9, 12-13, 16, 19, 20-21, 24, 28-30, 32 and 34 of the '977 Patent. On information and belief, despite such knowledge, Defendant has been and is actively contributing to the infringement of claims 1-2, 4-9, 12-13, 16, 19, 20-21, 24, 28-30, 32 and 34 of the '977 Patent by others.

81. Defendant possessed specific intent to encourage direct infringement of claims 1-2, 4-9, 12-13, 16, 19, 20-21, 24, 28-30, 32 and 34 of the '977 Patent, including because Defendant instructs users to perform those patented methods (*See e.g.*, Exhibit G), providing evidence of an affirmative intent to contribute to the infringement. Furthermore, because Defendant's infringing Temperature Therapy Pelvic Wand has no substantial noninfringing uses, Defendant intended for the use of their infringing Temperature Therapy Pelvic Wand to directly infringe the '270 Patent.

82. Numerous consumers have used the infringing Temperature Therapy Pelvic Wand

according to the instructions provided by Defendant and as a result, directly infringed claims 1-2, 4-9, 12-13, 16, 19, 20-21, 24, 28-30, 32 and 34 of the '977 Patent in this jurisdiction, and through the United States.

83. On information and belief, Defendant knew that the infringing Temperature Therapy Pelvic Wand is a material part of the methods of treatment of claims 1-2, 4-9, 12-13, 16, 19, 20-21, 24, 28-30, 32 and 34 of the '977 Patent, Defendant's infringing Temperature Therapy Pelvic Wand was especially made or especially adapted for administration by consumers in a manner that would infringe claims 1-2, 4-9, 12-13, 16, 19, 20-21, 24, 28-30, 32 and 34 of the '977 Patent, and that Defendant's infringing Temperature Therapy Pelvic Wand was not a staple article or commodity of commerce suitable for a substantial non-infringing use.

84. Defendant contributed to the infringement by others, including end users of the infringing Temperature Therapy Pelvic Wand, with the intent to cause infringing acts by others or, in the alternative, with the belief that there was a high probability that others, including end users of the infringing Temperature Therapy Pelvic Wand, infringe the '977 Patent, but while remaining willfully blind to the infringement.

85. Defendant and its agents had actual and/or constructive knowledge of the '977 Patent such that its actions were at all times willful.

86. Upon further information and belief, individual Mr. Wilt and Mrs. Olsen, each directed, controlled, ratified, participated in, and was the moving force behind the direct and indirect infringement of the '977 Patent.

87. On information and belief, Defendant will continue to induce the infringement of claims 1-2, 4-9, 12-13, 16, 19, 20-21, 24, 28-30, 32 and 34 of the '977 Patent unless and until they are enjoined by the Court.

88. As a result of Defendant's inducement of infringement of claims 1-2, 4-9, 12-13, 16, 19, 20-21, 24, 28-30, 32 and 34 of the '977 Patent, Plaintiff have suffered damages, in an amount to be proved at trial.

89. Plaintiff has suffered, and will continue to suffer, irreparable harm as a result of Defendant's infringement of the '977 Patent, for which there is no adequate remedy at law, unless Defendant's infringement is enjoined by this Court.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for relief against Defendant as follows:

- a. The Court declare that the Patents-in-Suit are valid and enforceable;
- b. Entry of judgment declaring that Defendant have directly infringed one or more claims of the Patents-in-Suit, and that such infringement was willful;
- c. Entry of judgment declaring that Defendant have contributed to the infringement of one or more claims of each of the Patents-in-Suit, and that such infringement was willful;
- d. Entry of judgment declaring that Defendant have induced others to infringe one or more claims of the Patents-in-Suit, and that such infringement was willful;
- e. A finding that Mr. Wilt and Mrs. Olsen, each directed, controlled, ratified, participated in, and was the moving force behind the direct and indirect infringement of the 'Patents-in-Suit;
- f. An order pursuant to 35 U.S.C. § 283 permanently enjoining Defendant, their officers, agents, servants, employees, attorneys, instrumentalities and those persons in privity, active concert or participation with it, from further acts of direct and/or indirect infringement of the Patents-in-Suit including the manufacture, sale, offer for sale, and use of the Infringing Product;

g. A full accounting for and an award of damages to Plaintiff for Defendant's infringement of the Patents-in-Suit, including Defendant's profits, and Plaintiff's actual losses, but in no event less than a reasonable royalty, including enhanced damages pursuant to 35 U.S.C. § 284, together with pre- and post-judgment interest; and

h. A full accounting for and an award of damages to Plaintiff for sales or products incorporating one or more infringing components, as well as all convoyed sales, including Defendant's profits, and Plaintiff's actual losses, but in no event less than a reasonable royalty, including enhanced damages pursuant to 35 U.S.C. § 284, together with pre- and post-judgment interest;

i. Entry of judgment declaring that this case is exceptional and awarding Plaintiff its costs and reasonable attorney fees under 35 U.S.C. § 285; and

j. Such other and further relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a jury for all issues so triable.

Dated: May 13, 2022

Respectfully submitted,

/s/ Anthony G. Simon

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