

and/or otherwise pursuant to Japanese law or FRCP 4, including by mailing duplicate copies of the summons and complaint to the Japanese Central Authority: Ministry of Foreign Affairs, 2-2-1 Kasumigaseki, Chiyoda Ku, Tokyo 100-8919, Japan, Attention: Division for the Protection of Japanese Nationals Overseas, Consular and Migration Affairs Department.

4. Upon information and belief, Defendant Colantotte International, Inc. is a Nevada corporation, affiliated with Arc Quest, with its principal place of business at 1930 Palomar Point Way, Suite 105, Carlsbad, CA 92008. Service of process may be had upon its registered agent R. Glen Woods located at 1349 Galleria Drive, Suite 200, Henderson, Nevada 89014.

II. JURISDICTION AND VENUE

5. This cause of action arises, among other things, under the United States patent laws, Title 35 of the United States Code, and under Declaratory Judgment Statutes 28 U.S.C. §§ 2201-02, by requesting that this Court adjudge US. Patent No. 6,913,663 (“the ‘663 Patent”) invalid, unenforceable and not infringed by IonLoop and Gotfredson. This Court has original subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338. This Court also has original subject matter jurisdiction over this action pursuant to 35 U.S.C. § 292, 29 U.S.C. § 623, and 29 U.S.C. § 201. Pursuant to 28 U.S.C. § 1367(a), this Court has supplemental jurisdiction over the state law claims because they are interrelated with the federal claims.

6. This Court has personal jurisdiction over Defendants because they do business within the State of Texas and in the Northern District of Texas and have directed communications regarding this dispute into the forum.

7. Upon information and belief, Defendants have minimum contacts with the Dallas Division of the Northern District of Texas such that this venue is fair and reasonable. Defendants have committed such purposeful acts and/or transactions in Texas and in the Northern District of

Texas that they reasonably should know and expect that they could be hailed into this Court as a consequence of such activity. Upon information and belief, Defendants have transacted and/or attempted to transact and, at the time of the filing of this Complaint, are transacting and/or attempting to transact business within the Dallas Division of the Northern District of Texas. For these reasons, personal jurisdiction exists and venue is proper in this Court pursuant to 28 U.S.C. § 1391(b) and (c) and 28 U.S.C. § 1400(b).

III. FACTUAL BACKGROUND

8. Upon information and belief, at some point during the 1990s, Katsumi Komatsu (“Komatsu”) created a magnetic tank top and waist belt that use permanent magnets to treat ailments.

9. Upon information and belief, in 1997, Komatsu formed Arc Quest to produce various products that use permanent magnets to treat ailments.

10. Upon information and belief, on or about February 24, 1999, AAKU Quest KK filed a patent application in Japan for a “Magnetic Treatment Tool” (application number 11-46595) in which Komatsu was listed as an inventor.

11. Upon information and belief, on or about August 15, 2000, Japanese patent application number 11-46595 was published as P2000-225202A. *See Exhibit A, attached hereto and made a part hereof for all purposes.*

12. Upon information and belief, on or about November 9, 2001, AAKU Quest KK filed a patent application in Japan for a “Magnetic Treatment Tool” (application number 2001-344850) in which Komatsu was listed as an inventor.

13. Upon information and belief, on or about June 25, 2002, Japanese patent application number 2001-344850 was published as P2002-177403A. *See Exhibit B, attached hereto and made a part hereof for all purposes.*

14. Upon information and belief, on or about September 13, 2002, Komatsu assigned all right, title and interest in and to the '663 Patent to Arc Quest.

15. Upon information and belief, Komatsu is an owner of Arc Quest.

16. On September 26, 2002, Komatsu filed a patent application in the United States for a "Method for Fabricating a Magnetic Therapeutic Device" (application serial number 10/256,332) in which Arc Quest was listed as the assignee.

17. On July 5, 2005, after examination of patent application serial number 10/256,332, the United States Patent and Trademark Office ("USPTO") issued the '663 Patent, entitled "Method for Fabricating a Magnetic Therapeutic Device".

18. Upon information and belief, Komatsu and Arc Quest knew about the existence of the Japanese patent application numbers 11-46595 and 2001-344850 at all times during the examination of U.S. patent application serial number 10/256,332, which issued as the '663 Patent.

19. Upon information and belief, Komatsu and Arc Quest failed to notify the USPTO of the existence of Japanese patent application numbers 11-46595 and 2001-344850.

20. The '663 Patent has one independent claim for a method of manufacturing a magnetic therapeutic device that recites, in part, the steps of:

providing a dummy member . . . ;

covering the dummy member with a sheet member . . . ;

supplying a plurality of therapeutic permanent magnets to the other side of the sheet member conforming to the dummy member . . . ; and

fixing the therapeutic permanent magnets to the other side of the sheet member.

See Exhibit C, attached hereto for all purposes.

21. Upon information and belief, in 2005, Arc Quest and Colantotte began marking its packaging for magnetic ion bracelets and other products with “US Patent# 6,913,663”. *See Exhibit D, attached hereto for all purposes.*

22. Upon information and belief, in 2005, Komatsu and Arc Quest had full knowledge that the magnetic ion bracelets and necklaces were not manufactured using a dummy member, covering the dummy member with a sheet member, or supplying and fixing the therapeutic permanent magnets to the sheet as required by the claims of the ‘663 Patent.

23. In 2005, with Gotfredson as one of its co-founders, Colantotte was formed in Nevada to distribute Arc Quest products branded as Trion:Z initially in the United States and eventually throughout the world with the exception of the Asian markets. The understanding was that Arc Quest had exclusive distribution rights in the Asian markets.

24. Upon information and belief, in 2005, Colantotte had full knowledge that the magnetic ion bracelets and necklaces were not manufactured using a dummy member, covering the dummy member with a sheet member, or supplying and fixing the therapeutic permanent magnets to the sheet as required by the claims of the ‘663 Patent.

25. As a co-founder of the company, Gotfredson advised Colantotte to increase the number of the magnetic ion bracelet’s available color choices and to market the magnetic ion bracelet in the United States under the name Trion:Z.

26. In 2005, Colantotte began using the trade name Trion:Z.

27. Upon information and belief, in late 2005, Jim Uno informed Gotfredson that the '663 Patent did not cover the Arc Quest and Colantotte magnetic ion bracelets.
28. In 2006, Jim Uno became Chief Executive Officer of Colantotte.
29. Upon information and belief, on or about November 28, 2006, Arc Quest assigned all right, title and interest in and to the '663 Patent to Komatsu.
30. In 2007, Gotfredson became employed with Colantotte and assumed the position of Vice President of Global Sales. Gotfredson also became a Director and Stockholder of Colantotte.
31. Under Gotfredson's leadership, Colantotte's sales of the bracelet increased substantially.
32. In 2008, Gotfredson, on behalf of Colantotte, met with a representative of Adidas AG ("Adidas") to discuss the possibility of a sales arrangement between Colantotte and Adidas throughout the world including Asia. However, Toru Kamatari, the CEO of Colantotte by this time, and Komatsu, determined that they did not want Colantotte to do business with Adidas in Asia.
33. On March 2, 2009, Gotfredson received a call at his home in Irving, Texas from Kamatari advising Gotfredson that Colantotte was terminating Gotfredson's employment with Colantotte effective March 3, 2009. Gotfredson was shocked by the news because, to his knowledge, Colantotte had never been dissatisfied with his performance.
34. On March 13, 2009, Gotfredson resigned as a Colantotte board member but retained his 15% stock ownership in Colantotte.
35. Thereafter, in 2009, Double Reef was formed and began doing business as IonLoop selling ion producing magnetic bracelets. Gotfredson currently acts as an independent representative of Double Reef.

36. Double Reef's ion producing bracelets are not manufactured using a dummy member, covering the dummy member with a sheet member, or supplying and fixing the therapeutic permanent magnets to the sheet.

37. Komatsu is currently the President of Colantotte.

38. On July 16, 2010, Arc Quest and Colantotte sent a letter to Adidas, with whom Double Reef has a business relationship, accusing Double Reef and Gotfredson with infringement of the '663 Patent and all claims thereof by reason of Double Reef's manufacture and offering for sale and selling its competing ion producing magnetic products. *See Exhibit E, attached hereto and made a part hereof for all purposes.*

39. In that same letter to Adidas, Arc Quest and Colantotte accused Gotfredson and Double Reef of tortiously interfering with their contractual and business relationships with third parties. *Id.* They also accused Gotfredson of misappropriating company information from Colantotte.

40. On August 20, 2010, Double Reef and Gotfredson's counsel responded to Arc Quest and Colantotte's letter to Adidas setting forth the reasons why infringement was impossible; advising Arc Quest and Colantotte of their false marking of the Trion:Z products; and explaining why Double Reef and Gotfredson had not tortiously interfered with Arc Quest and Colantotte's contracts and business relationships. *See Exhibit F, attached hereto and made a part hereof for all purposes.*

41. On September 2, 2010, Arc Quest and Colantotte's counsel responded to the letter from Double Reef and Gotfredson's counsel wherein allegations were again made that Double Reef and Gotfredson infringed the '663 Patent; that they tortiously interfered with Arc Quest and Colantotte's contracts and business relationships; and that Gotfredson had breached a fiduciary

duty to Colantotte and misappropriated company information from Colantotte. *See Exhibit G, attached hereto and made a part hereof for all purposes*

42. Arc Quest and Colantotte also threatened to file a lawsuit against Gotfredson and Double Reef unless Double Reef discontinued its business relationship with Adidas by September 17, 2010. *Id.*

43. Additionally, despite Arc Quest and Colantotte's knowledge that the Trion:Z magnetic ion bracelets and necklaces are not covered by the '663 Patent, Arc Quest and Colantotte mark every package of their Trion:Z magnetic ion bracelets and necklaces with U.S. Patent No. 6,913,663. *See Exhibit D.* Colantotte's website www.trionz.com also discusses the "Patented Alternating North-South Polarity Orientation" and the '663 Patent in relation to the Trion:Z products.

44. There is a substantial and continuing justifiable controversy between Plaintiffs and Defendants as to Defendants' right to threaten or maintain suit for infringement of said patent, and as to the validity and scope thereof, and as to whether Double Reef's product infringes any claim thereof.

45. There is also substantial and continuing justifiable controversy between Plaintiffs and Defendants as to Defendants' right to threaten or maintain suit alleging that Double Reef and Gotfredson tortiously interfered with Arc Quest and Colantotte's contracts and business relationships.

46. Finally, there is substantial and continuing justifiable controversy between Plaintiffs and Defendants as to Defendants' right to threaten or maintain suit alleging Gotfredson breached a fiduciary duty to Colantotte and misappropriated company information from Colantotte.

IV. CAUSES OF ACTION

Count 1 - Declaratory Judgment Regarding Arc Quest and Colantotte's Claim That Double Reef and Gotfredson are Infringing The '663 Patent and For Invalidity and Unenforceability of The '663 Patent.

47. Plaintiffs incorporate the preceding allegations herein by reference.

48. An actual controversy exists between Double Reef and Gotfredson and Arc Quest and Colantotte as to whether the '663 patent is valid and enforceable, and whether Double Reef and Gotfredson's conduct constitutes infringement of any claim of the '663 patent.

49. A judicial declaration that the '663 patent is invalid and unenforceable, and that Double Reef and Gotfredson do not infringe any claim of the '663 patent, is necessary and appropriate at this time so that Double Reef and Gotfredson can ascertain their rights and duties with respect to Double Reef's manufacturing and marketing of the products that Arc Quest and Colantotte claim to infringe the '663 Patent and because all accused actions by Gotfredson occurred on behalf of Double Reef as an independent representative and not in his individual capacity. Double Reef and Gotfredson are entitled to a declaration and judgment that the '663 Patent is invalid and unenforceable and that their acts do not constitute infringement of any claim in the '663 Patent.

Count 2 - Declaratory Judgment Regarding Arc Quest and Colantotte's Claim That Double Reef and Gotfredson Tortiously Interfered With Arc Quest and Colantotte's Contracts.

50. Plaintiffs incorporate the preceding allegations herein by reference.

51. An actual controversy exists between Double Reef and Gotfredson and Arc Quest and Colantotte as to whether Double Reef and Gotfredson tortiously interfered with Arc Quest and Colantotte's contracts.

52. A judicial declaration that Double Reef and Gotfredson have not tortiously interfered with Arc Quest and Colantotte's contracts is necessary and appropriate at this time so that

Double Reef can ascertain its rights and duties with respect to the manufacturing and marketing of its products and because all accused actions by Gotfredson occurred on behalf of Double Reef as an independent representative and not in his individual capacity

Count 3 - Declaratory Judgment Regarding Arc Quest and Colantotte's Claim that Double Reef and Gotfredson Tortiously Interfered with Arc Quest and Colantotte's Prospective Business Relationships.

53. Plaintiffs incorporate the preceding allegations herein by reference.

54. An actual controversy exists between Double Reef and Gotfredson and Arc Quest and Colantotte as to whether Double Reef and Gotfredson tortiously interfered with Arc Quest and Colantotte's prospective business relationships.

55. A judicial declaration that Double Reef and Gotfredson have not tortiously interfered with Arc Quest and Colantotte's prospective business relationships is necessary and appropriate at this time so that Double Reef can ascertain its rights and duties with respect to the manufacturing and marketing of its products and because all accused actions by Gotfredson occurred on behalf of Double Reef as an independent representative and not in his individual capacity.

Count 4 - Declaratory Judgment regarding Arc Quest and Colantotte's Claim That Gotfredson Breached a Fiduciary Duty to Colantotte.

56. Plaintiffs incorporate the preceding allegations herein by reference.

57. An actual controversy exists between Gotfredson and Arc Quest and Colantotte as to whether Gotfredson breached a fiduciary duty to Colantotte.

58. A judicial declaration that Gotfredson did not breach a fiduciary duty to Colantotte is necessary and appropriate based upon Arc Quest and Colantotte's allegations and threat to file a lawsuit against Gotfredson related to such allegations.

Count 5 - Declaratory Judgment Regarding Arc Quest and Colantotte's Claim That Gotfredson Misappropriated Trade Secrets or Protectable Company Information From Colantotte.

59. Plaintiffs incorporate the preceding allegations herein by reference.

60. An actual controversy exists between Gotfredson and Arc Quest and Colantotte as to whether Gotfredson misappropriated trade secrets or protectable company information from Colantotte.

61. A judicial declaration that Gotfredson did not misappropriate trade secrets or protectable company information or trade secrets from Colantotte is necessary and appropriate based upon Arc Quest and Colantotte's allegations and threat to file a lawsuit against Gotfredson related to such allegations.

Count 6 - Arc Quest and Colantotte's Tortious Interference With Double Reef's Existing Contracts.

62. Plaintiffs incorporate the preceding allegations herein by reference.

63. Double Reef had and has valid contracts with third parties.

64. Arc Quest and Colantotte willfully and intentionally interfered with those contracts.

65. Arc Quest and Colantotte's interference proximately caused injury to Double Reef.

66. As a result, Double Reef has suffered actual damages.

Count 7 - Arc Quest and Colantotte's Tortious Interference With Double Reef's Prospective Business Relations.

67. Plaintiffs incorporate the preceding allegations herein by reference.

68. There was a reasonable probability that Double Reef would have entered into a business relationship with one or more third parties.

69. Double Reef also had and has continuing business relationships with third parties or other customary relationships with third parties that do not amount to a formal contract.

70. Arc Quest and Colantotte interfered with those relationships.
71. Arc Quest and Colantotte's conduct was independently tortious or unlawful.
72. Arc Quest and Colantotte's interference proximately caused injury to Double Reef.
73. As a result, Double Reef has suffered actual damages.

Count 8 - Arc Quest and Colantotte's False Marking of Their Trion:Z Products in Violation of 35 U.S.C. § 292.

74. Plaintiffs incorporate the preceding allegations herein by reference.
75. 35 U.S.C. § 292 states in relevant part, that:

(a) . . . Whoever marks upon, or affixes to . . . any unpatented article, the word "patent" or any word or number importing that the same is patented, for the purpose of deceiving the public . . . Shall be fined not more than \$500 for every such offense.
(b) Any person may sue for the penalty in which event one-half shall go to the person suing and the other to the use of the United States.

76. Arc Quest and Colantotte mark every package of their Trion:Z magnetic ion bracelets and necklaces with US Patent # 6,913,663. *See Exhibit C.*

77. Arc Quest and Colantotte's website www.trionz.com also discusses the "Patented Alternating North-South Polarity Orientation" and the '663 Patent in relation to the Trion:Z products. The device claimed in the '663 Patent is not disclosed, discussed or sold on Arc Quest and Colantotte's website.

78. Arc Quest and Colantotte's Trion:Z magnetic ion bracelets and necklaces are unpatented articles that are not covered by the '663 Patent.

79. Arc Quest and Colantotte knew that the magnetic ion bracelets and necklaces were not covered by the '663 Patent and deceptively marked the packaging of the unpatented Trion:Z magnetic ion bracelets with the '663 Patent.

80. A violation of "35 U.S.C § 292 requires courts to impose penalties for false marking on a per article basis." *The Forest Group, Inc. v. Bon Tool Co.*, 590 F.3d 1295 (Fed. Cir. 2009).

81. Arc Quest and Colantotte are liable for up to \$500 for every Trion:Z product packaged and marked with the '663 Patent.

V. ATTORNEYS FEES

82. Plaintiffs incorporate the preceding allegations herein by reference.

83. Plaintiffs are entitled to recover reasonable and necessary attorneys' fees that are equitable and just because this is a suit for declaratory relief.

VI. DEMAND FOR JURY TRIAL

84. Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure and the Local Rules of this Court, Plaintiffs demand a trial by jury on all issues triable to a jury.

VII. PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray that:

(i) The Court find and enter a judgment declaring that the '663 Patent is invalid and unenforceable and that Double Reef and Gotfredson's acts do not constitute infringement of any claim in the '663 Patent;

(ii) The Court enter a judgment or decree that Double Reef has the right to continue to manufacture and market its products without any threat or other interference whatsoever against Double Reef by Defendants, based on or arising out of the ownership of the '663 Patent;

(iii) The Court enter an order permanently enjoining Defendants, their officers, agents, employees, heirs, assigns, attorneys, or other representatives or successors in interest from prosecuting or bringing or threatening to bring any action against Double Reef and Gotfredson or any buyers, sellers or users of Double Reef's product for alleged infringement of the '663 Patent or any other patent held by Defendants;

(iv) The Court enter an order requiring Defendants to retract their claims of

infringement made to any third party, and to refrain from making such claims in the future;

(v) The Court declare this case exceptional under 35 U.S.C. § 285 against Defendants;

(vi) The Court find and enter a judgment declaring that Double Reef and Gotfredson have not tortiously interfered with Arc Quest and Colantotte's contracts;

(vii) The Court enter an order permanently enjoining Defendants, their officers, agents, employees, heirs, assigns, attorneys, or other representatives or successors in interest from prosecuting or bringing or threatening to bring any action against Double Reef and Gotfredson for tortious interference with Arc Quest and Colantotte's contracts;

(viii) The Court enter an order requiring Defendants to retract their claims that Double Reef and Gotfredson tortiously interfered with Arc Quest and Colantotte's contracts made to any third party, and to refrain from making such claims in the future;

(ix) The Court find and enter a judgment declaring that Double Reef and Gotfredson have not tortiously interfered with Arc Quest and Colantotte's prospective business relationships;

(x) The Court enter an order permanently enjoining Defendants, their officers, agents, employees, heirs, assigns, attorneys, or other representatives or successors in interest from prosecuting or bringing or threatening to bring any action against Double Reef and Gotfredson for tortious interference with Arc Quest and Colantotte's prospective business relationships;

(xi) The Court enter an order requiring Defendants to retract their claims that Double Reef and Gotfredson tortiously interfered with Arc Quest and Colantotte's prospective business relationships made to any third party, and to refrain from making such claims in the future;

(xii) The Court find and enter a judgment declaring that Gotfredson did not breach any fiduciary duty to Colantotte;

(xiii) The Court enter an order permanently enjoining Defendants, their officers, agents, employees, heirs, assigns, attorneys, or other representatives or successors in interest from prosecuting or bringing or threatening to bring any action against Gotfredson for breach of any fiduciary duty to Colantotte;

(xiv) The Court enter an order requiring Defendants to retract their claims that Gotfredson breached a fiduciary duty to Colantotte made to any third party, and to refrain from making such claims in the future;

(xv) The Court find and enter a judgment declaring that Gotfredson did not misappropriate trade secrets or protectable company information from Colantotte;

(xvi) The Court enter an order permanently enjoining Defendants, their officers, agents, employees, heirs, assigns, attorneys, or other representatives or successors in interest from prosecuting or bringing or threatening to bring any action against Gotfredson for misappropriation of trade secrets or protectable company information from Colantotte;

(xvii) The Court enter an order requiring Defendants to retract their claims that Gotfredson misappropriated trade secrets or protectable company information from Colantotte made to any third party, and to refrain from making such claims in the future;

(xviii) The Court award Double Reef and Gotfredson compensation for their actual damages;

(xix) The Court award Double Reef and Gotfredson exemplary damages;

(xx) The Court award Double Reef and Gotfredson half of the amount of any penalty imposed upon Defendants, with the other half of the penalty going to the United States, for Defendants' violation of 35 U.S.C § 292;

(xxi) The Court award Double Reef and Gotfredson their attorneys' fees, expenses and

costs against Defendants;

(xxii) The Court award Double Reef and Gotfredson pre-judgment and post-judgment interest on all damages, attorneys' fees, expenses and costs awarded; and

(xxiii) The Court award Double Reef and Gotfredson such other and further relief as it deems just and proper.

Dated: September 17, 2010

Respectfully submitted,

CHALKER FLORES, LLP

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