

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

VARIDESK LLC

Plaintiff,

v.

NORTEK, INC.

and

ERGOTRON, INC.

Defendants.

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CIVIL ACTION NO. _____

COMPLAINT FOR PATENT
INFRINGEMENT

JURY TRIAL DEMANDED

Plaintiff Varidesk LLC (“Varidesk”) files this complaint against Nortek, Inc. (“Nortek”) and Ergotron, Inc. (“Ergotron”) (collectively “Defendants”) alleging on its own knowledge and on information and belief as follows:

PARTIES

1. Varidesk is a Texas limited liability corporation having its headquarters at 117 Wrangler Dr., Coppell, Texas, 75019. Varidesk is a pioneer and leader in the field of height-adjustable desk technology.

2. Upon information and belief, Nortek, Inc. is a Delaware corporation with its headquarters at 500 Exchange Street, Providence, Rhode Island, 02903. It can be served through its registered agent for service of process in Delaware: Corporation Service Company, 2711 Centerville Road, Suite 400, Wilmington, Delaware, 19808.

3. Upon information and belief, Ergotron, Inc. is a Minnesota Corporation with its headquarters at 1181 Trapp Road, St. Paul, Minnesota, 55121. It can be served through its registered agent for service of process in Minnesota: Corporation Service Company, 2345 Rice

Street, Suite 230, Roseville, Minnesota, 55113. Ergotron, Inc. is a wholly owned subsidiary of Nortek, Inc. Exhibit 1 (Nortek, Inc. 2015 10-K) at Exhibit 21.1.

4. Upon information and belief, Nortek, Inc. controls and directs its subsidiary Ergotron, Inc. with respect to the infringing acts described in this Complaint. Exhibit 1 at 3, 4, 6, 8, 24, Exhibit 21.1.

JURISDICTION AND VENUE

5. This is an action for patent infringement arising under the patent laws of the United States, Title 35 of the United States Code § 1, *et seq.*

6. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

7. Defendants are subject to this Court's specific and general personal jurisdiction under due process and/or the Texas Long Arm Statute due at least to Defendants' substantial business in this forum, including: (i) at least a portion of the infringements alleged herein; and (ii) regularly doing or soliciting business, engaging in other persistent courses of conduct, and/or deriving substantial revenue from goods and services provided to individuals in Texas and in this District.

8. Venue is appropriate in this District pursuant to 28 U.S.C. §§ 1391(b) and (c), and/or 28 U.S.C. § 1400(b). Upon information and belief, Defendants have transacted business in this District and has committed acts of patent infringement in this District.

VARIDESK'S PATENTS

9. On August 25, 2015, United States Patent No. 9,113,703 ("the '703 Patent") was duly and legally issued by the United States Patent and Trademark Office for an invention titled "Adjustable Desk Platform." A copy of the '703 Patent is attached hereto as Exhibit 2.

10. On December 8, 2015, Varidesk filed a petition to change inventorship, which remains pending in the U.S. Patent & Trademark Office (Application Number 14013285). *See* Exhibit 3.

11. Varidesk is the owner by assignment of the '703 Patent with all substantive rights in and to that patent, including the sole and exclusive right to prosecute this action and enforce the '703 Patent against infringers, and to collect damages for all relevant times.

12. By way of a general description, the '703 Patent relates to height-adjustable desk structures and assemblies.

13. On March 8, 2016, United States Patent No. 9,277, 809 (“the ‘809 Patent”) was duly and legally issued by the United States Patent and Trademark Office for an invention titled “Adjustable Desk Platform.” A copy of the ‘809 Patent is attached hereto as Exhibit 4.

14. Varidesk is the owner by assignment of the '809 Patent with all substantive rights in and to that patent, including the sole and exclusive right to prosecute this action and enforce the '809 Patent against infringers, and to collect damages for all relevant times.

15. By way of a general description, the '809 Patent relates to height-adjustable desk structures and assemblies.

DEFENDANTS' INFRINGING PRODUCTS

16. Upon information and belief, Nortek, through its subsidiary Ergotron, is in the business of developing, manufacturing and selling height-adjustable desks.

17. Upon information and belief, Defendants have made, used, imported, provided, supplied, distributed, sold, and/or offered for sale certain height-adjustable desks, including at least the following height-adjustable desk models: WORKFIT-T, the WORKFIT-TL and the

WORKSPACE LIFT35 (the “Accused Products”). *See* Exhibit 5 (product manuals for the Ergotron Accused Products).

18. The Accused Products practice each and every limitation of at least one claim of the ’703 Patent.

19. The Accused Products practice each and every limitation of at least one claim of the ’809 Patent.

20. Upon information and belief, Defendants are knowingly and willfully directly infringing the ’703 Patent by offering to sell and selling the Accused Products in the United States, including within this judicial district.

21. Upon information and belief, Defendants are knowingly and willfully directly infringing the ’809 Patent by offering to sell and selling the Accused Products in the United States, including within this judicial district.

COUNT I – PATENT INFRINGEMENT OF THE ’703 PATENT

22. Varidesk restates and incorporates by reference paragraphs 1 through 21 as if stated fully herein.

23. Upon information and belief, in violation of 35 U.S.C. § 271, Defendants have, literally and under the doctrine of equivalents, infringed the ’703 Patent and still are, literally and under the doctrine of equivalents, infringing the ’703 Patent, by, among other things, making, using, offering for sale, and/or selling the Accused Products and will continue to do so unless such infringing activities are enjoined by this Court. Non-limiting examples of such infringement are set forth below and in the claim chart attached as Exhibit 6.

24. For example, Claim 1 of the ’703 Patent recites:

1. An adjustable desk platform comprising:

an upper platform defining a first substantially planar work surface, and a lower surface opposite the work surface;

first and second lower mounting brackets extending below the upper platform, the first and second lower mounting brackets laterally spaced apart from one another;

a base located beneath the upper platform, the base defining a bottom surface without legs that is adapted to sit on an existing desk;

first and second upper mounting brackets extending upward from the base, the first and second upper mounting brackets laterally spaced apart from one another;

first and second sets of arms connecting the first and second lower mounting brackets to the first and second upper mounting brackets, respectively, the first and second sets of arms adapted to move the upper platform substantially in parallel with the base between a fully raised position and a fully lowered position; and

a first locking mechanism associated with the first set of arms, the first locking mechanism comprising:

a first anchor coupled to the first lower mounting bracket, the first anchor adapted to releasably lock the first set of arms in position with respect to the first lower mounting bracket, and

a first handle connected to the lower surface of the upper platform, the first handle user-operable to unlock the first set of arms to permit movement of the upper platform between the fully raised and the fully lowered positions.

25. Upon information and belief, all limitations of at least claim 1 of the '703 Patent are embodied by each of the Accused Products. By way of illustration and without limitation, the WorkFit-T is an adjustable desk platform.

26. The WorkFit-T includes an upper platform defining a first substantially planar work surface, and a lower surface opposite the work surface, constituting element 1[a] of claim 1 of the '703 Patent. *See* Exhibit 6.

27. The WorkFit-T includes first and second lower mounting brackets extending below the upper platform, the first and second lower mounting brackets laterally spaced apart from one another, constituting element 1[b] of claim 1 of the '703 Patent. *See* Exhibit 6.

28. The WorkFit-T includes a base located beneath the upper platform, the base defining a bottom surface without legs that is adapted to sit on an existing desk, constituting element 1[c] of claim 1 of the '703 Patent. *See* Exhibit 6.

29. The WorkFit-T includes first and second upper mounting brackets extending upward from the base, the first and second upper mounting brackets laterally spaced apart from one another, constituting element 1[d] of claim 1 of the '703 Patent. *See* Exhibit 6.

30. The WorkFit-T includes first and second sets of arms connecting the first and second lower mounting brackets to the first and second upper mounting brackets, respectively, the first and second sets of arms adapted to move the upper platform substantially in parallel with the base between a fully raised position and a fully lowered position, constituting element 1[e] of claim 1 of the '703 Patent. *See* Exhibit 6.

31. The WorkFit-T includes a first locking mechanism associated with the first set of arms, constituting element 1[f] of claim 1 of the '703 Patent. *See* Exhibit 6.

32. The WorkFit-T includes a first anchor coupled to the first lower mounting bracket, the first anchor adapted to releasably lock the first set of arms in position with respect to the first lower mounting bracket, constituting element 1[g] of claim 1 of the '703 Patent. *See* Exhibit 6.

33. The WorkFit-T includes a first handle connected to the lower surface of the upper platform, the first handle user-operable to unlock the first set of arms to permit movement of the

upper platform between the fully raised and the fully lowered positions, constituting element 1[h] of claim 1 of the '703 Patent. *See* Exhibit 6.

34. Defendants had knowledge of the '703 Patent at least as of the date they were notified of the filing of this action.

35. Varidesk has suffered, and continues to suffer, damages and irreparable harm as a result of Defendants' past and ongoing infringement.

36. Unless Defendants' infringement is enjoined, Varidesk will continue to be damaged and irreparably harmed.

37. Varidesk meets the criteria for, and is entitled to, a permanent injunction.

38. Upon information and belief, Defendants' infringement of the '703 Patent has been willful and deliberate, making this an exceptional case and entitling Varidesk to recover enhanced damages and attorneys' fees pursuant to 35 U.S.C. §§ 284, 285.

COUNT II – PATENT INFRINGEMENT OF THE '809 PATENT

39. Varidesk restates and incorporates by reference paragraphs 1 through 38 as if stated fully herein.

40. Upon information and belief, in violation of 35 U.S.C. § 271, Defendants have, literally and under the doctrine of equivalents, infringed the '809 Patent and still are, literally and under the doctrine of equivalents, infringing the '809 Patent, by, among other things, making, using, offering for sale, and/or selling the Accused Products and will continue to do so unless such infringing activities are enjoined by this Court. Non-limiting examples of such infringement are set forth below and in the claim chart attached as Exhibit 7.

41. For example, Claim 1 of the '809 Patent recites:

1. An adjustable desk platform comprising:

an upper platform defining a substantially planar work surface, the upper platform defining a recess;

a base located beneath the upper platform, the base having a bottom that is adapted to sit on an existing desk;

first and second sets of arms coupling the upper platform to the base, wherein the first and second sets of arms are adapted for movement of the upper platform substantially in parallel with the base between a raised position and a lowered position;

a locking mechanism associated with the upper platform, the locking mechanism adapted to releasably lock the upper platform in the raised position, and in at least one intermediate position between the raised position and the lowered position, the locking mechanism comprising:

a first anchor biased into a locked position to immobilize the first set of arms;

a second anchor biased into a locked position to immobilize the second set of arms;

a first handle user-operable to move the first anchor into an unlocked position to permit movement of the first set of arms; and

a second handle user-operable to move the second anchor into an unlocked position to permit movement of the second set of arms;

the adjustable desk platform further comprising: a keyboard tray suspended below the recess in the upper platform, wherein the keyboard tray defines first and second lateral edges;

a first support bracket extending between the first lateral edge of the keyboard tray and a first lateral side of the recess; and

a second support bracket extending between the second lateral edge of the keyboard tray and a second lateral side of the recess;

wherein the surface area of the keyboard tray is less than one half of the surface area of the upper platform.

42. Upon information and belief, all limitations of at least claim 1 of the '809 Patent are embodied by each of the Accused Products. By way of illustration and without limitation, the WorkFit-T is an adjustable desk platform.

43. The WorkFit-T includes an upper platform defining a substantially planar work surface, the upper platform defining a recess, constituting element 1[a] of claim 1 of the '809 Patent. *See* Exhibit 7.

44. The WorkFit-T includes a base located beneath the upper platform, the base having a bottom that is adapted to sit on an existing desk, constituting element 1[b] of claim 1 of the '809 Patent. *See* Exhibit 7.

45. The WorkFit-T includes first and second sets of arms coupling the upper platform to the base, wherein the first and second sets of arms are adapted for movement of the upper platform substantially in parallel with the base between a raised position and a lowered position, constituting element 1[c] of claim 1 of the '809 Patent. *See* Exhibit 7.

46. The WorkFit-T includes a locking mechanism associated with the upper platform, the locking mechanism adapted to releasably lock the upper platform in the raised position, and in at least one intermediate position between the raised position and the lowered position, constituting element 1[d] of claim 1 of the '809 Patent. *See* Exhibit 7.

47. The WorkFit-T includes a first anchor biased into a locked position to immobilize the first set of arms, constituting element 1[e] of claim 1 of the '809 Patent. *See* Exhibit 7.

48. The WorkFit-T includes a second anchor biased into a locked position to immobilize the second set of arms, constituting element 1[f] of claim 1 of the '809 Patent. *See* Exhibit 7.

49. The WorkFit-T includes a first handle user-operable to move the first anchor into an unlocked position to permit movement of the first set of arms, constituting element 1[g] of claim 1 of the '809 Patent. *See* Exhibit 7.

50. The WorkFit-T includes a second handle user-operable to move the second anchor into an unlocked position to permit movement of the second set of arms, constituting element 1[h] of claim 1 of the '809 Patent. *See* Exhibit 7.

51. The WorkFit-T includes a keyboard tray suspended below the recess in the upper platform, wherein the keyboard tray defines first and second lateral edges, constituting element 1[i] of claim 1 of the '809 Patent. *See* Exhibit 7.

52. The WorkFit-T includes a first support bracket extending between the first lateral edge of the keyboard tray and a first lateral side of the recess, constituting element 1[j] of claim 1 of the '809 Patent. *See* Exhibit 7.

53. The WorkFit-T includes a second support bracket extending between the second lateral edge of the keyboard tray and a second lateral side of the recess, constituting element 1[k] of claim 1 of the '809 Patent. *See* Exhibit 7.

54. The surface area of the keyboard tray of the WorkFit-T is less than one half of the surface area of the upper platform, constituting element 1[l] of claim 1 of the '809 Patent. *See* Exhibit 7.

55. Defendants had knowledge of the '809 Patent at least as of the date they were notified of the filing of this action.

56. Varidesk has suffered, and continues to suffer, damages and irreparable harm as a result of Defendants' past and ongoing infringement.

57. Unless Defendants' infringement is enjoined, Varidesk will continue to be damaged and irreparably harmed.

58. Varidesk meets the criteria for, and is entitled to, a permanent injunction.

59. Upon information and belief, Defendants' infringement of the '809 Patent has been willful and deliberate, making this an exceptional case and entitling Varidesk to recover enhanced damages and attorneys' fees pursuant to 35 U.S.C. §§ 284, 285.

JURY DEMAND

Varidesk hereby requests a trial by jury on all issues so triable.

PRAYER FOR RELIEF

Varidesk requests that the Court find in its favor and against Defendants and that the Court grant Varidesk the following relief:

- a. Judgment be entered that Defendants have infringed one or more claims of the '703 Patent, literally and/or under the doctrine of equivalents;
- b. Judgment be entered that Defendants' infringement of the '703 Patent was willful;
- c. An accounting be had for the damages resulting from Defendants' infringement of the '703 Patent, including, without limitation, lost profits caused by Defendants' infringing activities and/or a reasonable royalty for the infringement, and that the damages so ascertained be trebled pursuant to 35 U.S.C. § 284 and awarded together with interests and costs;
- d. An injunction be issued, restraining and enjoining Defendants and their respective officers, directors, agents, servants, affiliates, employees, divisions, branches, subsidiaries, parents, and all others acting in privity or in concert with them, from engaging in the commercial manufacture, use, offer for sale, or sale within the United States, or importation into the United States, of products infringing the '703 Patent;
- e. Judgment be entered that Defendants have infringed one or more claims of the '809 Patent, literally and/or under the doctrine of equivalents;
- f. Judgment be entered that Defendants' infringement of the '809 Patent was willful;

g. An accounting be had for the damages resulting from Defendants' infringement of the '809 Patent, including, without limitation, lost profits caused by Defendants' infringing activities and/or a reasonable royalty for the infringement, and that the damages so ascertained be trebled pursuant to 35 U.S.C. § 284 and awarded together with interests and costs;

h. An injunction be issued, restraining and enjoining Defendants and their respective officers, directors, agents, servants, affiliates, employees, divisions, branches, subsidiaries, parents, and all others acting in privity or in concert with them, from engaging in the commercial manufacture, use, offer for sale, or sale within the United States, or importation into the United States, of products infringing the '809 Patent;

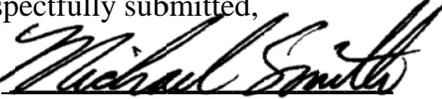
i. Judgment be entered that this is an exceptional case, and that Varidesk is entitled to its reasonable attorneys' fees and costs in accordance with 35 U.S.C. § 285; and

j. The Court award such other and further relief as the Court may deem just and proper under the circumstances.

Dated: March 18, 2016

Respectfully submitted,

By:


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