

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

HEARING LAB TECHNOLOGY, LLC,

Plaintiff,

v.

AUDITORY LICENSING COMPANY, LLC,

Defendant.

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Civil Action No. 3:18-cv-02230

Jury Trial Demanded

COMPLAINT

Plaintiff Hearing Lab Technology, LLC (“HLT”) hereby complains of Defendant Auditory Licensing Company, LLC (“ALC”) as follows:

NATURE OF THE ACTION

1. In this action, HLT seeks affirmative and declaratory relief relating to a license agreement entered into between HLT and ALC (the “License Agreement”) whereby ALC purportedly granted HLT rights under four United States patents – United States Patent Nos. 7,751,580 (the “`580 Patent”), 8,483,419 (the “`419 Patent”), 7,720,245 (the “`245 Patent”) and 7,421,086 (the “`086 Patent”) directed to hearing aid systems (the `580, `419, `245, and `086 Patents are collectively referred to as the “Licensed Patents”).

2. In particular, HLT seeks a declaratory judgment pursuant to the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202 declaring that the `419 Patent is unenforceable because the patent was procured by ALC through inequitable conduct.

3. HLT also seeks a declaratory judgment pursuant to the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202 declaring that none of HLT’s hearing aid products infringe any

enforceable claims of the `419 and the `580 Patents -- the only patents among the Licensed Patents with claims that have not been cancelled for lack of patentability.

4. In addition, because a principal basis for the License Agreement was the existence of the patent rights embodied in the `419 Patent, ALC's inequitable conduct rendering the `419 Patent unenforceable has completely frustrated this principal purpose of the agreement. HLT, therefore, seeks a declaration that the License Agreement is void and that HLT's obligations under the agreement are excused under the frustration of purpose doctrine. Furthermore, the cancellation of all 89 claims of the `245 and `086 Patents and 35 of 40 claims of the `580 Patent -- the only claims that could have any application to any HLT products -- also has completely frustrated the principal purpose of the agreement. HLT, therefore, seeks a declaration that the License Agreement is void and that HLT's obligations under the agreement are excused under the frustration of purpose doctrine for this reason as well. HLT also seeks restitution of all fees and royalty payments made to ALC pursuant to the License Agreement following ALC's inequitable conduct rendering the `419 Patent unenforceable and the cancellation of the claims of the `245, `086 and `580 Patents.

5. HLT also seeks a declaration pursuant to the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202 that all amendments to and modifications of the License Agreement entered into between HLT and ALC after 2013 are void and unenforceable because ALC induced HLT to enter into these agreements through fraud by failing to disclose to HLT in 2013 that ALC rendered the `419 Patent unenforceable through its inequitable conduct. HLT also seeks a declaration pursuant to the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202 that all amendments to and modifications of the License Agreement entered into between HLT and ALC after 2013 are void and unenforceable as induced by fraud as a result of ALC failing to disclose to HLT that all of the

claims of the `245 and `086 Patents were cancelled for lack of patentability and that 35 of 40 claims of the `580 Patent -- the only claims that could have any application to any HLT products -- were cancelled for lack of patentability. Thus, HLT is relieved of any further obligations under the License Agreement, as amended and modified. HLT further seeks the restitution of all payments made by it to ALC pursuant to the License Agreement, as amended and modified, induced by ALC's fraud.

PARTIES

6. Plaintiff Hearing Lab Technology, LLC is a Texas Limited Liability Company with its principal place of business located at 14301 FAA Boulevard, Suite 105, Fort Worth, Texas 76155.

7. Defendant Auditory Licensing Company, LLC is a Delaware Limited Liability Company with its principal place of business located at 100 Newtown Turnpike, Weston, Connecticut 06883. Defendant may be served with process through its registered agent, JHK Investments, LLC, One Gorham Island, Westport, CT 06880.

JURISDICTION AND VENUE

8. The Court has subject matter jurisdiction over this action under 28 U.S.C. 1331 and 1338(a) because this action arises under the patent laws of the United States of America, Title 35, United States Code.

9. Plaintiff HLT is a citizen of the State of Texas and Defendant ALC is a citizen of the State of Connecticut. The amount in controversy in this case exceeds \$75,000. Thus, this Court has original diversity jurisdiction over the state law claims asserted in this action pursuant to 28 U.S.C. § 1332.

10. An actual controversy exists between the HLT and ALC with respect to the continued enforceability of a patent license agreement between them. In particular, the declaration

sought by HLT that the '419 Patent is unenforceable due to ALC's inequitable conduct will result in the License Agreement between the parties being deemed void and unenforceable under the frustration of purpose doctrine thereby terminating any obligation by HLT to pay ALC any fees or royalties under the agreement. A declaration that the '419 Patent is unenforceable due to ALC's inequitable conduct also will result in HLT being entitled to restitution of all fees and royalties it paid to ALC after such inequitable conduct. A declaration that the '419 Patent is unenforceable due to ALC's inequitable conduct also will result in the amendments and modifications to the License Agreement being deemed null and void as induced by ALC's fraudulent concealment of this conduct from HLT. It also will entitle HLT to restitution of all fees and royalties it paid to ALC after such fraudulent concealment. A declaration that HLT is not liable to ALC for infringement of the '419 and '580 patents will preclude any claim of infringement of those patents by ALC in the absence of the License Agreement.

11. The Court has personal jurisdiction over Defendant ALC because ALC has committed acts constituting doing business in the State of Texas pursuant to Tex. Civ. Prac. & Rem. Code § 17.042 and, therefore, has minimum contacts with the State of Texas. In particular, ALC has entered into contracts with HLT, a citizen and resident of the State of Texas, to be performed in whole or in part in Texas -- namely the amendments and modifications to the License Agreement. In addition, ALC has committed torts in whole or in part in the State of Texas by inducing HLT to enter into these contracts through fraud. The exercise of jurisdiction by this Court over ALC comports with traditional notions of fair play and substantial justice.

12. Venue of this action is proper in the Northern District of Texas under 28 U.S.C. § 1391(b)(1) and (2) because ALC is subject to the personal jurisdiction of this Court in this Judicial District and thus qualifies as a resident of this Judicial District under 28 U.S.C.

§ 1391(c)(2). Venue is also proper in this district pursuant to 28 U.S.C. §1391(b) because a substantial part of the events that give rise to HLT's claims occurred in this district.

FACTUAL BACKGROUND

The Licensing Agreement and Amendments

13. Defendant ALC was formerly known as Vivatone Hearing Systems, LLC ("Vivatone"). Vivatone was the owner of by assignment of United States Patent No. 7,421,086 (the "'086 Patent") entitled "Hearing Aid System" which was issued by the United States Patent and Trademark Office on September 2, 2008.

14. On November 29, 2008, Vivatone entered into a license agreement with America Hears Inc. (the "License Agreement"), which granted American Hears, Inc., a non-exclusive license to make, use, and sell "Licensed Products," which is defined in the agreement as "hearing aids, or any apparatus, device or system which is designed for use with a hearing aid . . . which if unlicensed, would infringe one or more claims of a Licensed Patent." The term "Licensed Patent" is defined in the agreement as "the patents and patent applications listed in Exhibit A to this Agreement, as well as any patents which are later issued from any patent applications listed in Exhibit A, and all continuations, divisions or reissues of any of said patents or applications, and any future issued patents that otherwise relate substantially to the subject matter of any patents and patent applications listed in Exhibit A." The '086 Patent was among the patents listed on Exhibit A. Also listed on Exhibit A was the United States patent application which became the '580 Patent.

15. On December 31, 2008, Vivatone changed its name to Auditory Licensing Company, LLC. On December 31, 2011, America Hears, Inc., with ALC's consent, assigned all of its right, title, and interest, and delegated all of its obligations, responsibilities and duties, in and to the License Agreement to HLT.

16. HLT entered into an agreement with ALC effective January 1, 2012 through December 31, 2012, amending certain terms of the License Agreement, including the amount of fees and royalties to be paid by HLT to ALC for the patent rights granted under the License Agreement (the “2012 License Agreement Amendment”). At the time, HLT’s principal place of business was located at 3385 Roy Orr Boulevard, Grand Prairie, Texas. HLT entered into another agreement with ALC effective January 1, 2013 through December 31, 2013, amending certain terms of the License Agreement, including the amount of fees and royalties to be paid by HLT to ALC for the patent rights granted under the License Agreement (the “2013 License Agreement Amendment”). HLT entered into an agreement with ALC effective January 1, 2014 through December 31, 2014, amending certain terms of the License Agreement, including the amount of fees and royalties to be paid by HLT to ALC for the patent rights granted under the License Agreement (the “2014 License Agreement Amendment”). HLT entered into an agreement with ALC effective January 1, 2015 through December 31, 2015, amending certain terms of the License Agreement, including the amount of fees and royalties to be paid by HLT to ALC for the patent rights granted under the License Agreement (the “2015 License Agreement Amendment”). HLT entered into an agreement with ALC effective January 1, 2016 through December 31, 2016, amending certain terms of the License Agreement, including the amount of fees and royalties to be paid by HLT to ALC for the patent rights granted under the License Agreement (the “2016 License Agreement Amendment”). HLT entered into an agreement with ALC effective January 1, 2017 through December 31, 2017, amending certain terms of the License Agreement, including the amount of fees and royalties to be paid by HLT to ALC for the patent rights granted under the License Agreement (the “2017 License Agreement Amendment”). On December 13, 2017, HLT entered into an agreement with ALC effective extending the 2017 License Agreement Amendment

through December 31, 2018 (the “2018 License Agreement Amendment”). The 2012 through 2018 amendments to the License Agreement are collectively referred to herein as the “License Agreement Amendments.”

The `419 Patent Application

17. On July 2, 2010, ALC filed the application for what became the `419 Patent. This was a continuation of the application for the `580 Patent. Given that both patent applications are based upon the same specification and invention, the claims of the two applications are substantially related and similar.

The `580 Patent *Inter Partes* Reexamination Proceeding

18. On January 10, 2011, a third party filed a request for *Inter Partes* reexamination challenging the validity of 35 of the 40 claims of the `580 Patent (claims 1-7, 9-18, 21-34 and 37-40). On March 28, 2011, the United States Patent and Trademark Office (the “PTO”) granted the *Inter Partes* reexamination finding that the third party requester had shown a substantial new question of patentability with regard to these claims. This *Inter Partes* reexamination proceeding is referred to herein as the “`580 Patent *Inter Partes* Reexamination Proceeding.”

19. ALC retained H.M. Bedingfield of the law firm of Cantor Colburn LLP to represent it in the `580 Patent *Inter Partes* Reexamination Proceeding. Bedingfield was the same attorney who was representing ALC in the prosecution of the application for the `419 patent before the PTO.

ALC’s Inequitable Conduct Regarding the `580 Patent *Inter Partes* Reexamination Proceeding

20. Pursuant to 37 C.F.R. §1.56, “Each individual associated with the filing and prosecution of a patent application has a duty of candor and good faith in dealing with the Office, which includes a duty to disclose to the Office all information known to that individual to be

material to patentability[.] Thus, Bedingfield had such a duty of candor. Pursuant to 37 C.F.R. §1.56(a), the duty to disclose information exists until a patent is granted on that application or the application becomes abandoned.

21. On June 15, 2011, the PTO issued its First Non-Final Office Action of Reexamination in the `580 Patent *Inter Partes* Reexamination Proceeding rejecting claims 1-7, 9-18, 21-34, and 37-40 -- all of the challenged claims -- under 28 U.S.C §103 as obvious in view of several prior art references.

22. On August 15, 2011, ALC filed a response to the First Non-Final Office Action of Reexamination in the `580 Patent *Inter Partes* Reexamination Proceeding. On March 27, 2012, the PTO sent ALC's counsel a letter advising ALC that its response to the First Non-Final Office Action of Reexamination was improper. On April 27, 2012, ALC's counsel submitted amendments to its Response to the First Non-Final Office Action of Reexamination Office Action and in response to the March 27, 2012 notice from the PTO.

23. Bedingfield, in accordance with the duty of candor, disclosed to the PTO in the `419 patent application proceeding the filing of the *Inter Partes* reexamination request, the issuance of the PTO's First Non-Final Office Action of Reexamination and ALC's Response to the First Non-Final Office Action of Reexamination Office Action in the `580 Patent *Inter Partes* Reexamination Proceeding, confirming the materiality of the validity challenges made in the `580 Patent *Inter Partes* Reexamination Proceeding to the patentability issues in the `419 patent application proceeding. Inexplicably, Bedingfield did not disclose the PTO's notice of the granting of the request finding a substantial question concerning the patentability of the challenged claims.

24. On April 12, 2013, in the `580 Patent *Inter Partes* Reexamination Proceeding, the PTO issued a Notice of Intent to Issue an *Inter Partes* Reexamination Certificate finding all of the

challenged and non-cancelled claims of the '580 Patent unpatentable for five separate reasons under 35 U.S.C. §§ 102(b), 103(a), and 103(b) and rejecting those claims (the "'580 Patent Notice of Intent to Issue an *Inter Partes* Reexamination Certificate"). The claims of the '419 patent application pending before the PTO are virtually identical to the claims of the '580 Patent found unpatentable by the PTO in the *Inter Partes* reexamination proceeding.

25. Significantly, Bedingfield did not disclose the '580 Patent Notice of Intent to Issue an *Inter Partes* Reexamination Certificate to the PTO in the '419 patent application proceeding. Instead, Bedingfield withheld this material information from the PTO in that proceeding.

26. The '580 Patent Notice of Intent to Issue an *Inter Partes* Reexamination Certificate was material to the issue of the patentability of the claims sought in the pending '419 patent application proceeding. As stated above, the claims of the '580 Patent found unpatentable by the PTO in the '580 Patent *Inter Partes* Reexamination Proceeding were virtually identical to many of the claims of the '419 patent application pending before the PTO and the grounds for rejecting and cancelling the claims of the '580 Patent were equally applicable to the similar claims in the application for the '419 patent. In fact, the differences between pending claims of the '419 patent application and the claims of the '580 Patent rejected by the PTO is that the pending claims of the '419 patent application were broader than the rejected claims of the '580 Patent. Thus, the reasons given by the PTO for rejecting the challenged claims of the '580 Patent applied with even greater force to the pending claims of the '419 patent application. If the PTO had been aware of the '580 Patent Notice of Intent to Issue an *Inter Partes* Reexamination Certificate, the PTO would not have allowed the claims of the '419 patent application analogous to the claims of the '580 Patent rejected by the PTO in the '580 Patent *Inter Partes* Reexamination Proceeding.

27. Bedingfield withheld and failed to disclose the `580 Patent Notice of Intent to Issue an *Inter Partes* Reexamination Certificate from the PTO in the `419 patent application proceeding with the specific intent to deceive the PTO into allowing the claims of the `419 patent application. Bedingfield was aware of the `580 Patent Notice of Intent to Issue an *Inter Partes* Reexamination Certificate, knew that it was material and made the deliberate decision to withhold it from the PTO.

28. There is no legitimate explanation for Bedingfield's failure disclosure to the PTO in the `419 patent application proceeding the `580 Patent Notice of Intent to Issue an *Inter Partes* Reexamination Certificate in 2013 when he disclosed in 2011 the PTO's First Non-Final Office Action of Reexamination and ALC's Response to the First Non-Final Office Action of Reexamination Office Action in the `580 Patent *Inter Partes* Reexamination Proceeding. Bedingfield's disclosure to the PTO in the `419 patent application proceeding of the preliminary and non-final office action in 2011 but not the final `580 Patent Notice of Intent to Issue an *Inter Partes* Reexamination Certificate issued in April 2013 rejecting all of the challenged claims of the `580 Patent reflects Bedingfield's intent to deceive the PTO about the patentability regarding the virtually identical claims pending in the `419 patent application proceeding.

29. Also indicative of Bedingfield's intent to deceive the PTO in the `419 patent application proceeding by withholding from it the final `580 Patent Notice of Intent to Issue an *Inter Partes* Reexamination Certificate is the fact that on May 9, 2013 -- less than a month after the PTO issued the `580 Patent Notice of Intent to Issue an *Inter Partes* Reexamination Certificate -- Bedingfield disclosed to the PTO the transcript of an oral hearing held by the PTO on March 14, 2013, in an *Inter Partes* reexamination proceeding involving a related patent -- the `086 Patent. The only reasonable explanation for Bedingfield's decision to withhold the highly material information in the `580 Patent Notice of Intent to Issue an *Inter Partes* Reexamination Certificate

but disclosing the transcript of an oral hearing held by the PTO in a different *Inter Partes* reexamination proceeding is that Bedingfield specifically intended to deceive the examiner in the '419 patent application proceeding about the patentability of the claims in that application.

30. After the PTO issued the '580 Patent Notice of Intent to Issue an *Inter Partes* Reexamination Certificate, ALC embarked on strategy of filing papers with the PTO in the '580 Patent *Inter Partes* reexamination proceeding designed to prolong that proceeding and delay the issuance of a reexamination certificate reflecting the cancellation of all of the challenged claims of the '580 Patent. On April 25, 2013, ALC filed a petition to revive the terminated *Inter Partes* Reexamination Proceeding. Although the PTO granted ALC's petition to revive on July 12, 2013, on October 13, 2013, the PTO rejected all of ALC's arguments in support of the patentability of the challenged claims on the same grounds stated in the First Non-Final Office Action and issued an Action Closing Prosecution officially closing the prosecution of the reexamination proceeding.

31. On November 4, 2013, ALC submitted to the PTO remarks in response to the Action Closing Prosecution and requested a continuation of the '580 Patent *Inter Partes* Reexamination Proceeding. On December 18, 2013, the PTO dismissed ALC's Petition for Continued *Inter Partes* Reexamination. On April 4, 2014, the PTO issued ALC a Right of Appeal Notice. All of the challenged claims in the '580 Patent *Inter Partes* Reexamination Proceeding – Claims 1-7, 9-18, 21-34 and 37-40 of '580 Patent -- remained rejected.

32. On May 2, 2014, ALC filed a Notice of Appeal with the Patent Trial and Appeal Board appealing the PTO's rejections of the claim challenged in the '580 Patent *Inter Partes* Reexamination Proceeding. Between June and October 2014, ALC and other parties to the '580 Patent *Inter Partes* Reexamination Proceeding filed briefs in the appeal. On August 4, 2015, the

PTAB issued its decision affirming all of the rejections of all of the claims of the '580 Patent challenged in the '580 Patent *Inter Partes* Reexamination Proceeding.

33. In view of the PTAB's decision, On October 23, 2015, the PTO issued another Notice of Intent to Issue a Reexam Certificate and on November 6, 2015, the PTO issued a Reexamination Certificate cancelling Claims 1-7, 9-18, 21-34, and 37-40 of the '580 Patent.

**ALC's Inequitable Conduct Regarding the
'245 Patent *Inter Partes* Reexamination Proceeding**

34. On November 19, 2011, a third party filed a request for *Inter Partes* reexamination challenging the validity all 89 claims of the '245 Patent. On February 7, 2011, the PTO granted the *Inter Partes* reexamination request finding that the third party requester had shown a substantial new question of patentability with regard to all these claims. This *Inter Partes* reexamination proceeding is referred to herein as the "'245 Patent *Inter Partes* Reexamination Proceeding." ALC retained H.M. Bedingfield of the law firm of Cantor Colburn LLP to represent it in the '245 Patent *Inter Partes* Reexamination Proceeding.

35. During the prosecution the '419 Patent and prior to its issuance, Bedingfield, ALC's prosecuting attorney, failed to disclose to the PTO in the '419 patent application proceeding facts concerning the '245 Patent *Inter Partes* Reexamination Proceeding that were material to the patentability of the claims of the '419 Patent.

36. On April 2, 2013, for example, ALC received a "Notice of Intent to Issue an *Inter Partes* Reexam Certificate" with the intent of canceling all claims subject to reexamination, namely claims 1 through 89 (the "'245 Patent Notice of Intent to Issue an *Inter Partes* Reexamination Certificate"). The '245 Patent Notice of Intent to Issue an *Inter Partes* Reexamination Certificate found all of the claims of the '245 Patent unpatentable for numerous reasons under 35 U.S.C. §§ 102(b), 103(a), and 103(b) and rejected those claims. The claims of

the `419 patent application pending before the PTO were virtually identical to the claims of the `245 Patent found unpatentable by the PTO in the `245 Patent *Inter Partes* Reexamination Proceeding and the grounds for rejecting and cancelling the claims of the `245 Patent were equally applicable to the claims in the `419 patent application.

37. Furthermore, Bedingfield, on April 19, 2013, and after receiving the `245 Patent Notice of Intent to Issue a Reexam Certificate, filed on behalf of ALC a Petition to Revive the Terminated *Inter Partes* Reexamination on the grounds of unavoidably delayed response, or in the alternative, unintentionally delayed response (the “Petition to Revive”). The Petition to Revive acknowledged that PTO had issued a final rejection of the claims of the `245 Patent and that the PTO would be formally cancel those claims imminently. Bedingfield, however, failed to disclose the Petition to Revive to the PTO in the `419 patent application proceeding.

38. On April 24, 2013, the PTO issued a Reexamination Certificate that canceled all claims of the `245 Patent (the “First `245 Patent *Inter Partes* Reexamination Certificate”). Although the PTO subsequently vacated the First `245 Patent *Inter Partes* Reexamination Certificate to allow ALC to make further arguments regarding the patentability of the cancelled claims, on August 5, 2014, it reissued that Reexamination Certificate formally and finally cancelling all of the claims of the `245 Patent for lack of patentability (the “Second `245 Patent *Inter Partes* Reexamination Certificate”). Bedingfield also did not disclose the First `245 Patent Reexamination Certificate to the PTO in the `419 patent application proceeding.

39. The `245 Patent Notice of Intent to Issue an *Inter Partes* Reexamination Certificate, Petition to Revive, and the First `245 Patent Reexamination Certificate (collectively the “`245 Patent *Inter Partes* Reexamination Materials”) were all material to the issue of the patentability of the claims sought in the pending `419 patent application proceeding. As stated above, the claims

of the '245 Patent found unpatentable by the PTO in the '245 Patent *Inter Partes* Reexamination Proceeding were virtually identical to many of the claims of the '419 patent application pending before the PTO. Thus, the reasons given by the PTO for rejecting the claims of the '245 Patent applied with equal force to the pending claims of the '419 patent application. If the PTO had been aware of the '245 Patent *Inter Partes* Reexamination Materials, the PTO would not have allowed the claims of the '419 patent application analogous to the rejected claims of the '245 Patent.

40. Bedingfield withheld and failed to disclose the '245 Patent *Inter Partes* Reexamination Materials from the PTO in the '419 patent application proceeding with the specific intent to deceive the PTO into allowing the claims of the '419 patent application. Bedingfield was aware of the '245 Patent *Inter Partes* Reexamination Materials, knew that they were material to the patentability of the claims of the '419 patent application and made the deliberate decision to withhold them from the PTO.

41. There is no legitimate explanation for Bedingfield's failure disclosure to the PTO in the '419 patent application proceeding the '245 Patent *Inter Partes* Reexamination Materials when he disclosed other, less material facts concerning the '245 Patent *Inter Partes* Reexamination Proceeding. Bedingfield's decision to withhold the '245 Patent *Inter Partes* Reexamination Materials from the PTO reflects Bedingfield's intent to deceive the PTO about the patentability regarding the virtually identical claims pending in the '419 patent application proceeding.

FIRST CLAIM FOR RELIEF
Declaratory Judgment of Unenforceability
of the '419 Patent for Inequitable Conduct

42. HLT incorporates paragraphs 1 through 41 as though fully set forth herein.

43. H. M. Bedingfield was the attorney representing ALC and the named inventor of the '419 Patent during the prosecution of the application for that patent before the PTO.

Bedingfield also was the attorney representing ALC and the named inventor in the `580, `245 and `086 Patent *Inter Partes* Reexamination Proceedings (collectively the “*Inter Partes* Reexamination Proceedings”).

44. Bedingfield knew of the `580 Patent Notice of Intent to Issue an *Inter Partes* Reexamination Certificate issued in the `580 Patent *Inter Partes* Reexamination Proceeding. Bedingfield knew that the `580 Patent Notice of Intent to Issue an *Inter Partes* Reexamination Certificate was material to the patentability of the claims pending in the `419 patent application proceeding. If the PTO had been aware of the `580 Patent Notice of Intent to Issue an *Inter Partes* Reexamination Certificate, the PTO would not have allowed the claims of the `419 patent application analogous to the claims of the `580 Patent rejected by the PTO in the `580 Patent *Inter Partes* Reexamination Proceeding.

45. Bedingfield withheld the `580 Patent Notice of Intent to Issue an *Inter Partes* Reexamination Certificate from the PTO in the `419 patent application proceeding with a specific intent to deceive the PTO into allowing the claims of the `419 Patent.

46. Bedingfield’s withholding of the `580 Patent Notice of Intent to Issue an *Inter Partes* Reexamination Certificate from the PTO in the `419 patent application proceeding violates the duty of candor and constitutes inequitable conduct and renders all the claims of the `419 Patent unenforceable.

47. Bedingfield knew of the `245 Patent *Inter Partes* Reexamination Materials issued and filed in the `245 Patent *Inter Partes* Reexamination Proceeding. Bedingfield knew that the `245 Patent *Inter Partes* Reexamination Materials were material to the patentability of the claims pending in the `419 patent application proceeding. If the PTO had been aware of the `245 Patent *Inter Partes* Reexamination Materials, the PTO would not have allowed the claims of the `419

patent application analogous to the claims of the '245 Patent rejected by the PTO in the '245 Patent *Inter Partes* Reexamination Proceeding.

48. Bedingfield withheld the '245 Patent *Inter Partes* Reexamination Materials from the PTO in the '419 patent application proceeding with a specific intent to deceive the PTO into allowing the claims of the '419 Patent.

49. Bedingfield's withholding of the '245 Patent *Inter Partes* Reexamination Materials from the PTO in the '419 patent application proceeding violates the duty of candor and constitutes inequitable conduct and renders all the claims of the '419 Patent unenforceable.

50. The Court should declare all claims of the '419 Patent unenforceable as a result of Bedingfield's inequitable conduct.

SECOND CLAIM FOR RELIEF

Declaratory Judgment that the License Agreement is Void and Unenforceable Under the Frustration of Purpose Doctrine

51. HLT incorporates paragraphs 1 through 50 as though fully set forth herein.

52. When HLT assumed the obligations of America Hears under the License Agreement with ALC's consent, the parties understood that the principal purpose of the License Agreement was to provide HLT with the right to make, use, and sell hearing aid products in the United States which, if unlicensed, would infringe one or more claims of the United States patents owned by ALC and licensed under the agreement. HLT agreed to pay and did pay ALC substantial licensing fees and royalties for this right. If ALC did not own United States patent rights which were enforceable against HLT's hearing aid products, then HLT's entering into the License Agreement and paying the licensing fees and royalties would not serve any purpose. Thus, a basic assumption of the parties to the License Agreement was that ALC would maintain ownership of

enforceable United States patents which would be infringed by HLT's making, using or selling hearing aid products if ALC did not license to HLT those patents.

53. As explained above, Bedingfield, ALC's attorney and agent, engaged in inequitable conduct in connection with the prosecution of the '419 patent application resulting in rendering the '419 Patent unenforceable. Such inequitable conduct was not foreseeable by the parties to the License Agreement when it was first entered into or when HLT later assumed the obligations of America Hears under the agreement.

54. Bedingfield, on behalf of ALC, engaged in such inequitable conduct solely on its own and HLT did not have any involvement in or responsibility for such inequitable conduct.

55. Because Bedingfield's inequitable conduct has rendered the '419 Patent unenforceable, the entire purpose of the Licensing Agreement has been completely undermined and thwarted. In the absence of an enforceable '419 Patent, the License Agreement no longer served any purpose or benefited HLT. Bedingfield's inequitable conduct rendered the License Agreement worthless to HLT.

56. In addition, HLT did not assume any risk associated with the possibility that a party associated with the prosecution of the application for the '419 Patent would engage in inequitable conduct and render the '419 Patent unenforceable.

57. In addition, as a result of the *Inter Partes* Reexamination Proceedings, all of the claims of the '580, '245 and '086 Patents that could have any application to any HLT products have been cancelled by the PTO as unpatentable. Consequently, since the outcome of the *Inter Partes* Reexamination Proceedings, none of the Licensed Patents have been of any value to HLT.

58. Thus, because the principal purpose of the License Agreement has been completely frustrated because ALC's lawyer engaged in inequitable conduct rendering the '419 Patent

unenforceable, the License Agreement has been rendered void and HLT's obligations under that agreement have been excused. Furthermore, as alleged below, HLT is entitled to restitution of all licensing fees and royalty payments it paid to ALC subsequent to the inequitable conduct of ALC's lawyer.

THIRD CLAIM FOR RELIEF
Declaration that the License Agreement Amendments
Are Void as Induced by Fraud

59. HLT incorporates paragraphs 1 through 58 as though fully set forth herein.

60. As stated above, from 2012 through 2017, ALC and HLT negotiated amendments and modifications to the License Agreement on an annual basis. These amendments and modifications are reflected in the Licensing Agreement Amendments.

61. During the negotiations of License Agreement Amendments for 2014-2018, Leon Hirsch, Chairman of ALC, made statements to HLT expressly stating or implying that the '419 Patent was still enforceable. In addition, Hirsch reiterated the representation in the License Agreement that ALC "is the owner of the entire right, title and interest in the Licensed Patents [including the '419 Patent] and has the right to grant the licenses granted herein." Hirsch also made statements to HLT expressly stating or implying that the Licensed Patents contained patentable claims applicable to HLT products.

62. These representations were false and misleading in view of the fact that the '419 Patent had been rendered unenforceable due to the inequitable conduct of ALC's lawyer and because virtually all of the claims of the '580, '245, and '086 Patents (and the only claims possibly applicable to HLT's products) were found unpatentable during the *Inter Partes* reexamination proceeding. Also, because the '419 Patent had been rendered unenforceable because of the inequitable conduct, ALC no longer had the right to grant a license to the '419 Patent.

63. Hirsch and ALC had knowledge of the inequitable conduct and the cancellation of virtually all of the claims (and all of the relevant claims) of the '580, '245 and '086 Patents and knew that these statements made by him on behalf of ALC to HLT were false and misleading at the time they were made and were false representations of material facts because HLT would not have entered into the License Agreement Amendments if it knew about the inequitable conduct completely undermining the principal purpose of the License Agreement and the cancellation of virtually all of the claims (and all of the relevant claims) of the '580, '245 and '086 Patents.

64. Also, in view of Hirsch's statements made to HLT when negotiating the License Agreement Amendments, Hirsch and ALC had a duty to disclose to HLT the facts relating to the inequitable conduct concerning the '419 Patent. Hirsch and ALC did not disclose to HLT that ALC's lawyer had engaged in inequitable conduct in connection with the prosecution of the '419 patent application. Thus, ALC did not make a full and fair disclosure of known facts connected with the negotiation of the License agreement Amendments.

65. Hirsch and ALC knew that the facts about the inequitable conduct which they failed to disclose to HLT were material because HLT would not have entered into the License Agreement Amendments if it knew about the inequitable conduct completely undermining the principal purpose of the License Agreement.

66. Hirsch and ALC made these false representations and failed to disclose the material fact that ALC's lawyer engaged in inequitable conduct in connection with the prosecution of the '419 patent application with the intent and expectation that HLT would enter into the License Agreement Amendments.

67. HLT detrimentally relied on the false representations and failure to disclose the facts about ALC's inequitable conduct by entering into the License Agreement Amendments.

HLT would not have entered into those agreements if Hirsch and ALC had not made the false representations and had not failed to disclose the facts about ALC's inequitable conduct. Also, if Hirsch and ALC had not engaged in such fraud, HLT would have terminated the License agreement for cause. HLT was injured as a result of these false representations and fraudulent failure to disclose material facts by continuing to make payments of license fees and royalties to ALC pursuant to the License Agreement.

68. The License Agreement Amendments, therefore, should be declared null and void because they were induced by ALC's fraud. In addition, as alleged below, HLT is entitled to restitution of all license fees and royalties paid to ALC after the inequitable conduct occurred in April 2013.

FOURTH CLAIM FOR RELIEF **Fraud**

69. HLT incorporates paragraphs 1 through 68 as though fully set forth herein.

70. ALC's fraudulent representations and fraudulent failure to disclose material facts alleged above constitutes fraud.

71. ALC's fraud has caused substantial injury to HLT. For example, but for ALC's fraud, HLT would have terminated the License Agreement for cause and would not have entered into the License Agreement Amendments. Consequently, HLT would not have paid ALC any license fees or royalties after April 2013 pursuant to the License Agreement. HLT is entitled to restitution of all such license fees or royalties.

72. Furthermore, ALC's fraud was an intentional and wanton violation of HLT's rights or a reckless indifference to those rights. Thus, HLT is entitled to an award of punitive damages against ALC.

FIFTH CLAIM FOR RELIEF
Declaratory Judgment of Non-Infringement of the Licensed Patents

73. HLT incorporates paragraphs 1 through 72 as though fully set forth herein.

74. Inequitable conduct rendering a patent unenforceable bars a finding of infringement.

75. HLT has not infringed and does not infringe any claims of the `419 and `580 Patents because HLT's products do not contain one or more of the required elements of those claims and/or because such claims are unenforceable.

76. Thus, HLT is entitled to a declaration that it has not infringed, and does not infringe, any valid claim of the Licensed Patents.

SIXTH CLAIM FOR RELIEF
Unjust Enrichment

77. HLT incorporates paragraphs 1 through 76 as though fully set forth herein.

78. As stated above, because the principal purpose of the License Agreement has been completely frustrated because ALC's lawyer engaged in inequitable conduct rendering the `419 Patent unenforceable, and because all of the claims of the `580, `245, and `086 Patents that could have any application to any HLT products had been cancelled by the PTO as unpatentable, the License Agreement has been rendered void and HLT's obligations have been excused. As a result, HLT is entitled to restitution of all licensing fees and royalty payments it has paid to ALC subsequent to the inequitable conduct of ALC's lawyer.

79. As stated above, the 2014-2018 License Agreement Amendments are null and void because they were induced by ALC's fraud. As a result, HLT is entitled to restitution of all license fees and royalties paid to ALC after the inequitable conduct pursuant to those agreements.

REQUEST FOR RELIEF

WHEREFORE, HLT requests the following relief:

1. That the Court declare that the '419 Patent is unenforceable;
2. That the Court declare that the License Agreement has been rendered void and HLT's obligations under that agreement have been excused pursuant to the frustration of purpose doctrine.
3. That the Court declare that the License Agreement Amendments are null and void because they were induced by ALC's fraud;
4. That the Court award HLT restitution of all such license fees or royalties paid to ALC pursuant to the 2014 through 2018 License Agreement Amendments as a result of ALC having fraudulently induced HLT to enter into these agreements;
5. That the Court declare that HLT has not infringed, and does not infringe, any valid and enforceable claim of the Licensed Patents.
6. That the Court award HLT restitution of all such license fees or royalties paid to ALC after April 2013 because HLT was not obligated to pay such fees or royalties and ALC has been unjustly enriched by receiving such payments to which it was not entitled;
7. That the Court award HLT punitive damages for ALC's fraud;
8. That the Court award pre-judgment and post-judgment interest and such other and further relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, HLT hereby demands a trial by jury of all issues so triable.

Dated: August 23, 2018

Respectfully submitted,

BUETHER JOE & CARPENTER, LLC

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