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7 Parker West International, LLC

8 U. S. DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA

10 PARKER WEST INTERNATIONAL, LLC, a California limited liability company,

11 Plaintiff,

12 vs.

13 CLEAN UP AMERICA, INC., a Virginia
14 corporation; CLEAN UP AMERICA
15 FRANCHISE DEVELOPMENT
16 CORPORATION, a Florida corporation,

17 Defendants.

Case No. **CV 08 2810**
COMPLAINT FOR PATENT
INFRINGEMENT, BREACH OF
CONTRACT, FRAUD, BREACH OF THE
COVENANT OF GOOD FAITH AND FAIR
DEALING, INTENTIONAL
INTERFERENCE WITH PROSPECTIVE
BUSINESS ADVANTAGE, NEGLIGENT
INTERFERENCE WITH PROSPECTIVE
BUSINESS ADVANTAGE AND
VIOLATION OF B&P § 17200

18 DEMAND FOR JURY TRIAL

19 Plaintiff PARKER WEST INTERNATIONAL, LLC ("plaintiff") for its claims against
20 defendants allege as follows:

21 JURISDICTION AND VENUE

22 1. This action is brought under the U.S. Patent Laws, 35 U.S.C. §1 et seq., for the
23 infringement of plaintiff's utility and design patents. This Court has subject matter jurisdiction over
24 this patent infringement action under 28 U.S.C. §§ 1332 (diversity) and 1338 (patents).

25 2. This Court also has supplemental jurisdiction under 28 U.S.C. §1367 over the
26 subject matter of plaintiff's claims based on the statutory and common law of the State of
27 California, because those claims are so related to plaintiff's federal claims as to form part of the
28 same case or controversy under Article III of the United States Constitution.

1 THE DEFENDANTS

2 10. Plaintiff is informed and believes and thereon alleges that defendant CLEAN UP
3 AMERICA, INC. is a Virginia corporation with its principal place of business in Chesapeake,
4 Virginia.

5 11. Plaintiff is informed and believes, and thereon alleges, that defendant CLEAN UP
6 AMERICA FRANCHISE DEVELOPMENT CORPORATION is a Florida corporation with its
7 principal place of business in Orlando, Florida.

8 12. Plaintiff is informed and believes, and thereon alleges, that William Clemons is a
9 majority owner and managing principal of both CUA and CUA Franchise.

10 LICENSING AND CROSS MARKETING AGREEMENT

11 13. On or about August 18, 2003, plaintiff and CUA entered into a Licensing and Cross
12 Marketing Agreement (the "LCM Agreement") which granted to CUA a non-exclusive license and
13 distributorship to use and sell the technology set forth in the '012 Patent.

14 14. Under the LCM Agreement, CUA was required to pay a royalty to plaintiff arising
15 from the use or sale of equipment that incorporates the '012 Patent.

16 15. Under the LCM Agreement, plaintiff had the exclusive right to sell clay based
17 flocculent to CUA customers that were generated by plaintiff. In addition, CUA had the right to
18 purchase the clay based polymer flocculent from plaintiff for resale to its other customers based on
19 plaintiff's direct cost plus 20%. Plaintiff has not received any orders for flocculent from CUA nor
20 been provided the opportunity to sell its flocculent to customers of CUA.

21 16. CUA does not have the right under the LCM Agreement to sublicense the rights to
22 the '012 Patent or the PWI Flocculent.

23 17. The LCM Agreement expired on or about August 18, 2006.

24 18. Plaintiff is informed and believes, and thereon alleges, that CUA disseminated
25 information, offered to sell and sold products and services that incorporated the technology set forth
26 in the '012 Patent during the term of the LCM Agreement but failed to pay the required royalty.

27 19. Plaintiff is informed and believes, and thereon alleges, that CUA has directly, or
28 through its related company CUA Franchise, continued to sell products and services that

1 incorporate the technology set forth in the '012 Patent despite the fact that the term of the LCM
2 Agreement has expired. Here again, no royalty has been paid to plaintiff.

3 20. Under U.S. patent law, Plaintiff has the right to exclude others from making, using,
4 offering to sell, selling, and importing products that incorporate the technology identified in the
5 '012 Patent.

6 21. Defendants have actual or constructive knowledge of the '012 Patent, were notified
7 of the patent violations, and have continued since the notification to manufacture and distribute
8 unauthorized and infringing product.

9 **FIRST CLAIM FOR RELIEF**

10 **PATENT INFRINGEMENT**

11 22. Plaintiff realleges and incorporates by reference the allegations of Paragraphs 1-21,
12 inclusive.

13 23. Since the expiration of the LCM Agreement, but during the term of the '012 Patent
14 and without authority from plaintiff, defendants have made, used, offered to sell and sold within the
15 United States one or more products that infringe on one or more claims of the '012 Patent.

16 24. Defendants' conduct was and is in complete disregard of plaintiff's rights under the
17 '012 Patent and in deliberate knowing and wanton disregard of the rights of plaintiff.

18 25. As a proximate result of defendants' acts, plaintiff has been damaged by defendants'
19 infringement in an amount to be determined at trial.

20 26. This is an exceptional case and plaintiff is entitled to recover three times its damages
21 plus reasonable attorneys' fees under 35 U.S.C. §284.

22 27. Because of defendants' infringement, plaintiff has been irreparably harmed and has
23 suffered impairment of the value of their '012 Patent rights. Moreover, plaintiff will continue to
24 suffer irreparable harm unless defendants are restrained from infringing the claims of the '012
25 Patent.

26 WHEREFORE, plaintiff prays judgment as set forth below.
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1 **SECOND CLAIM FOR RELIEF**

2 **BREACH OF CONTRACT**

3 28. Plaintiff realleges and incorporates by reference the allegations of Paragraphs 1-27,
4 inclusive.

5 29. In accord with the LCM Agreement, and at various dates and times thereafter,
6 plaintiff has performed all things necessary on its part to be performed under the LCM Agreement,
7 except to the extent prevented and excused by the breaches of defendant CUA as described.

8 30. Defendant CUA has breached the LCM Agreement by failing to pay royalties due to
9 plaintiff under the agreement and by its failure to properly market and sell the PWI Technology as
10 required by the agreement, all in an amount according to proof, but in excess of the jurisdictional
11 limits of this Court.

12 WHEREFORE, plaintiff prays judgment as set forth below.

13 **THIRD CLAIM FOR RELIEF**

14 **FRAUD**

15 31. Plaintiff realleges and incorporates by reference the allegations of Paragraphs 1-30,
16 inclusive.

17 32. As described above, defendants have intentionally implemented business practices
18 for the purpose of gaining revenues for themselves, knowing that such practices were not proper
19 under the law or under the terms of the LCM Agreement. The business practices have adversely
20 affected the value of plaintiff's business and the '012 Patent, all to its detriment.

21 33. On information and believe, plaintiff alleges that defendant CUA intentionally
22 misrepresented its intent to pay compensation to plaintiff.

23 34. On information and believe, plaintiff alleges that defendant CUA intentionally
24 misrepresented its intent to participate in or facilitate the sale of the PWI Flocculent.

25 35. Plaintiff justifiably relied on defendant CUA to comply with the LCM Agreement
26 and with all laws and regulations applicable to their business.

27 36. As a proximate result of the failure of defendant to disclose the foregoing material
28 facts, plaintiff has suffered damages in an amount in excess of the jurisdictional limits of this Court.

1 **SEVENTH CLAIM FOR RELIEF**

2 **VIOLATION OF CALIFORNIA BUSINESS & PROFESSIONS CODE §17200)**

3 50. Plaintiff realleges and incorporates by reference the allegations of Paragraphs 1-49,
4 inclusive.

5 51. Defendants' conduct and actions constitute an unfair business practice in violation of
6 California Business and Professions Code §17200 et seq.

7 52. Defendants' unfair business practices have caused and if not enjoined, will continue
8 to cause, irreparable and continuing harm to plaintiff, for which plaintiff have no adequate remedy
9 at law.

10 53. As a proximate result of defendants' unfair business practices, defendants have
11 received, and will continue to receive, improper fees and profits that rightfully belong to plaintiff.

12 WHEREFORE, plaintiff prays judgment as follows:

13 **PRAYER FOR RELIEF**

14 Plaintiff prays that the Court enter judgment as follows:

15 A. That defendants, and all of their officers, agents, affiliates, servants, employees and
16 attorneys, and all other persons in active concert or participation with them, be temporarily,
17 preliminarily and permanently enjoined from importing, making, using, offering to sell and selling
18 products which embody the inventions claimed in the '012 Patent or any colorable imitations
19 thereof.

20 B. That plaintiff be awarded damages, in an amount to be proven at trial, adequate to
21 compensate it for defendants' infringement of the '012 Patent.

22 C. As to plaintiff's claim for the violation of Business and Professions Code §17200,
23 that defendants be required to pay restitution for its ill-gotten gains to plaintiff, together with
24 attorney fees and costs incurred herein.

25 D. That the Court determine this to be an exceptional case under the U.S. Patent Laws
26 and award plaintiff its reasonable attorneys' fees.

27 E. That the Court determines this to be an exceptional case under the U.S. Patent Laws
28 and increase the damages awarded to plaintiff by three times the amount found or assessed.

1 F. As to plaintiff's tort claims, that plaintiff be awarded compensatory damages in an
2 amount to be proven at trial.

3 G. As to plaintiff's tort claims, that plaintiff be awarded punitive damages in an amount
4 to be proven at trial.

5 H. That defendants be ordered to make a written report within a reasonable period, to be
6 filed with the Court, detailing the manner of their compliance with each and every injunction
7 ordered by the Court.

8 I. That plaintiff be awarded their costs and pre-judgment interest on its damages.

9 J. That plaintiff be granted such other and further relief as this Court determines is just
10 and proper.

11 DATED: June 3, 2008

SPAULDING McCULLOUGH & TANSIL LLP
Attorneys for Plaintiff
PARKER WEST INTERNATIONAL, LLC

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14 By: 
15 Warren L. Dranit

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DEMAND FOR JURY TRIAL

(Civil Local Rule 3-6)

Pursuant to Civil Local Rule 3-6, plaintiff Parker West International hereby demands a trial by jury.

DATED: June 3, 2008

**SPAULDING McCULLOUGH & TANSIL LLP
Attorneys for Plaintiff
PARKER WEST INTERNATIONAL, LLC**

By: 
Warren L. Dranit